

The Supreme Court of Canada and Religious Freedom: The Ruling on Trinity Western University's Proposed Law Faculty

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[0 : 0 0] When I woke up this morning and came down for an early breakfast, about 5.30 or so, I looked out and there was a tremendous amount of fog up where we are in East Vancouver.

And I thought to myself, oh no, people will be stuck and they won't come, and it'll be postponed or something else. Then I thought, I had a consoling thought that fog never impeded the legal mind.

They cut through it, you know, or they breathe it in. Okay, so this is, whoops, we've already lost it, have we?

There it is. Okay, every so often I'll have to touch it with my finger. This is the topic. And if I look back in my neatly organized digital files, I think I have four or five or six learners' exchanges, not all of them on legal questions, but I think this is the fourth or fifth time I've been talking since 2013 on the question of Trinity Western University's quest to establish law faculty.

Now, they've been working on this idea for something like 20 years, according to what they've said. But it was only in 2012 that the proposal took shape to establish a law faculty under the necessary legal agreements, provincial, that would be a Christian law faculty, but would attract a faculty and students that would be at least above what other law faculties could offer.

[1 : 5 8] And so since that initial decision and project, this idea, this proposal has been in and out of the law societies in various provinces in Canada.

It's gone before the courts, particularly in Nova Scotia, Ontario, and British Columbia. And it ultimately went to the Supreme Court in 2017, and the leave to appeal was granted to the various parties, and the decision was rendered or the judgment was rendered by the Supreme Court on the 15th of June, 2018.

So that's what I want to talk about today. And in short, I'm going to be arguing, and I think I'll have a fairly sympathetic reception here, that this is very, very negative for the cause of religious freedom in Canada.

It's not a disaster. It's not a tragedy, but it's a major setback. And later on, we can talk about what the religious communities in Canada do when faced with this type of a decision.

It wasn't a close decision, seven to two in terms of the majority, but this has been a very, very important decision.

[3 : 4 1] Now, as I've been addressing the issues relating to law politics, this, as I've said each time I've been at Lerner's Exchange, I'm approaching this in the context of a larger project that I've been working on for a couple of decades now, but I hope and pray that it's going to come into a book in the not-too-distant future.

But it's a project on law, religion, politics, jurisprudence in Canada since the Second World War.

And so I'm putting this case in context. Let me say that in working on this project, on which I've kept publishing what are effectively chapters on aspects of the major turning points.

And I've been doing this over the last couple of decades, too, but now I'm working on tuning these up, adding new perspective, and filling it in up until the Charter of Rights and Freedoms, which is adopted in 1982 under the Trudeau government, and looking at jurisprudence court cases on the major issues of religion in Canadian culture, Canadian law, in the post-charter period.

So just by way of a bit of review, I'm going to, in a sense, speak very quickly and briefly about how I, in history, see the relationship between law and politics and the major transitional points.

[5 : 35] Let me also put a plug in for what I'm doing. Although there is increasing amount of legal commentary, and, of course, all of the case evidence, including this most important of the judgments here.

As far as I can see, no one else in law faculties or in history departments is looking at it from the top in terms of the major transitions in the evolving nature of Canadian pluralism.

I think that's the best term I can do to encompass the legal, the political aspects of all of this. So if you can remember what I've been saying over the last few years in addressing this topic, what I see is the major transitions from basically the longer legal tradition that we have in Canada since, and even before Confederation, which is, as it's manifestly called by the time of the Second World War, a Christian democracy, where liberal values, liberal ideology, and religious Protestant and Catholic Christianity serve to legitimate government and in many ways morally direct government and, again, chosen and intentionally, you have a Protestant and Catholic type of denominational pluralism.

That's been the tradition, and that's there going strong in the immediate post-World War II period. It's worth saying also that when you have major crises in history, in Canadian history, and the two major crises are war and economic depression, governments very intentionally seek support from the churches, and the term that sociologists use, which is very important in this, is they seek legitimation, and the churches generally have been very happy to supply that legitimation and foundational support then.

So you've got this sense of a Christian democracy with a positive, cooperative relationship between church and state, between religion and liberal values, both supporting and, in a sense, critiquing discipline, disciplining each other.

[8 : 26] But it's a cooperative and, I think, very fruitful relationship, and it endured for a long time in Canadian history, including our jurisprudence.

It's gone now, and that's where we're going to be getting to today. So after this traditional period of Christian democracy, you shift slightly in the 1950s to what we can call no longer an exclusively Christian pluralism or denominational pluralism, but by the time the Diefenbaker government is attempting to legislate the Canadian Bill of Rights, the Jewish community in Canada, very intentionally in the part of the government, and not just conservatives, but liberals at that time, want to draw them into a religious pluralism.

And this is intentional, and I've got all the evidence on all of this, and I talked to Davey Fulton, justice minister under Diefenbaker. He was a not-too-distant neighbor in Shaughnessy at that time.

So this is what I argue here. From the late 50s and through the early 60s, you have the switch to a religious pluralism, and the term pluralism is becoming used in legal parlance and in popular discourse too.

Now, through the early 60s and mid-60s, you have what I would argue is from a religious pluralism to a liberal pluralism, where governments and liberal ideology is hospitable to the public functions of religion.

[10 : 14] And the best example of this is the centennial celebrations and all the religious pavilions, and the part of celebrating Canada includes very positively.

Pearson was very strong on this, Lester Pearson, the prime minister at that time, as we celebrated Canada's 100th anniversary. Interestingly, just by, I won't go into this, but by the time we get to the 150th celebrations, very recently, just a couple years ago, religion plays zero role, effectively, in the public celebrations.

Okay. After this, we go into the late 60s and 70s, and you have much more intentionally an ideological liberalism and a more secular type of pluralism that is, in a sense, directed by the powerful leadership of Pierre Trudeau.

And his quest in dealing with religious, sorry, with political crises in Canada, particularly on the quest for Quebec independence and French-Canadian nationalism and things like this.

Trudeau sees a shift in Canadian jurisprudence and political theory to bringing in a constitutional, entrenched charter of rights and freedoms.

[11 : 53] This is distinct from the Diefenbaker Canadian Bill of Rights, which was simply, had legislative status at the federal level. So we have that transitional moment in 1982 when, after much legal and political maneuvering, Trudeau's success is the Canadian Charter of Rights and Freedoms.

So that's fine. And in that Charter of Rights and Freedoms, of course, along with the other foundational freedoms, right at the top of Section 2, Section 2A is religious freedom.

So freedom of religion, freedom of conscience, freedom of assembly, freedom of expression, all those things are there for Canadians as individuals throughout the country.

Okay, now, tracing then the jurisprudence from 1982 on, which we can't do in any detail today, we see increasingly the nature of pluralism going from a neutral state, which you have effectively by 1982, where the state is neutral on religions, neutral on major ideologies.

As long as individuals or institutions, groups are lawful, they have every right to express, to propagate, to campaign, to organize for whatever value system they wish to embrace, including religion.

[13 : 38] Now, you have a neutral state on all of that. We don't have, as in the American Constitution, the separation of church and state, but effectively we are implementing that type of an idea, not just separation, but strict separation, and increasingly this becomes more secularist as an ideology or part of liberal ideology itself, from secular to secularist.

There's articles on the major distinctions on that key term. But increasingly we see that public opinion, elite opinion, media opinion, academic opinion, legal opinion courts become increasingly hostile to religious freedoms as distinct from being neutral on all of this.

So that, I would argue, is the position we are in today, where a dogmatic, secularist, pluralist state is being put in place, hostile to the public functions of religion, and insisting increasingly on their privatization.

You can believe whatever you want in whatever corner you live in. You can go to church on Sunday and believe whatever you want as long as you're lawful. But you do not have a right to express or advance your positions in the public sphere.

Keep it private. Okay. Now, let's look at, and by the way, here, I better get this up. I'm going to follow this again.

[15 : 27] I have another, my notes I may put up when I want to, do some quotations. But whenever anyone has a question, please jump up and ask it.

We will have discussion at the end of all of this, too. Okay, background. I've mentioned Trinity Western's quest to establish a law faculty to train lawyers, and particularly those that adhered and wished to see their practice of law as a Christian calling.

The problem here was the community covenant, which Trinity Western insisted it was mandatory, not voluntary, but their staff, their faculty, and all their students had to subscribe to this covenant.

Now, this had already got them in a lot of trouble, most notably with the British Columbia College of Teachers, when Trinity Western desired to establish their own training program for teachers.

Previously, they had initial programs, but then they had to go to Simon Fraser to be finished off and get certification. Now, when they wanted to establish the full training program located at Trinity Western, they were challenged by the BC Teachers College, a long, long legal struggle here, but in 2013, I think it was, if I remember correctly, the court, the Supreme Court of Canada, sided with Trinity Western on the basis of religious freedoms, and on the differentiation, very important, between what you believe and how you behave.

[17 : 24] And because there was no evidence, and there never has been any evidence, that those that are trained at Trinity Western violate the, you know, the just human rights of others in that they are homophobic or discriminatory.

No evidence whatsoever found in the BC Teachers College case, nor in the present case that we're looking today, and therefore, the court argued they had every right under Section 2 to establish their own teachers' training program, and it's worked well.

It's still operating very successfully, from what I can understand. However, given what's happened with the judgment on the proposed law faculty, it would not be much of a surprise if the College of Teachers come back again now with the precedent, this precedent, and say, well, same rules apply, and the court has evolved since 2013, and therefore, this training program is ultra-virus and to be proscribed then.

Okay. Initially, Trinity Western was quite optimistic. I know several of the leaders at Trinity Western and several of the faculty, and they were understandably quite optimistic that they could proceed, given the precedent on the Teachers College, that they could proceed to establish a successful law faculty.

They had lots of people that wanted to teach there at a high level, and they certainly thought they would have a good market to draw from in terms of training students then.

[19 : 24] There was a high demand for all of this. Also, they went through all the hoops, they got clearance from the law societies, what is it called?

It was the law federation, the Federation of Canadian Law Societies, which represented all of the law societies across Canada and was established fairly reasonably with the principal objective of making common standards for recognition, accreditation, examinations, and all of that of law students.

They looked at what Trinity Western was doing in terms of the quality of students, the quality of the program. That's what they were mandated to judge, and they said, yes, we support this.

This is a reasonable thing to do. With that, the BC Minister of Advanced Education also gave support to this.

That's when things hit the fan. The law societies in several provinces, notably Ontario, and in BC, and in Nova Scotia, Dalhousie, there was opposition to granting this new accreditation to this new law faculty.

[20 : 50] What was the opposition based on? Well, it would be a grand study to try and decrypt the real roots of the opposition, but the manifest point was the discrimination against those students that were LGBTQ, whose rights to equality would be infringed by coercively or having to sign the community covenant.

And the heart of the issue there was its proscription of sexual intimacy between anybody except heterosexual married couples.

Okay, that sent the LGBT community and their supporters right. You know, this was major opposition, and one can understand given their values, what the opposition is here and how they have been extremely successful in mobilizing political and public support for their position, but not least in law faculties as the charter values have come to be the foundation for Canadian jurisprudence.

legal discourse. Okay, so here we have the beginning of a major legal discourse. And I'm not a lawyer, I'm a historian, but I've had to become, in a sense, appraised of legal terminology and how the courts and the legal professionals and the judges function in these cases.

Now, there were several cases, and I can't go into the details of all of them, but the lines pretty much became clear early on. The major disputes were in BC, the home of this proposal, in Ontario, the Law Society of Upper Canada, now called the Law Society of Ontario, and at Dalhousie then.

[23 : 04] And what had happened before it went to the Supreme Court was that the Law Societies adopted a charter value case that emphasized section 15 of the Charter of Rights and Freedoms, which is the equality section, and which has been the most controversial of all the sections of the history of the Charter of Rights and Freedoms.

And the supporters of Trinity Western emphasized the section 2 to a the right to religious freedoms. The Law Societies that were hostile to this, BC, Nova Scotia, and Ontario, were challenged by Trinity Western, and Trinity Western did fairly well in the provincial courts going up to, you know, appeal courts, the rest of it.

Nova Scotia, I talked about the Nova Scotia appeal, which supported Trinity Western's rights, and then the BC Court of Appeal was the latest of the provincial reviews of all of this, and full support for Trinity Western in establishing lawfully their faculty here.

I think it was a unanimous 5 to nothing judgment from the BC Court of Appeal. Well, okay, it didn't stop there. This was big enough that it went to the Supreme Court of Canada, and the Supreme Court of Canada granted leave for appeal.

That was in 2017, and they had intensive hearings once everybody got mobilized, and then the ruling of the 15th of June 2018.

[25 : 07] Okay, what are the issues here? You know, you can figure these out, and they become clear, and the various positions taken by law societies and the positions and rulings of the courts have served, and I think this is very, very important for all of us, we've got a court system that can proceed freely, and can articulate and clarify what the issues are, and then they rule, they may be wrong in all of this, I think they're wrong, a good number of lawyers think they're wrong, but it has been done peacefully, and that is something very precious in a democracy like Canada.

Okay, the issues. First, the competence of law societies under their legislative mandates, or statutory mandates, as they're called, to rule on the policies and practices of private institutions like Trinity Western.

Private institutions in Canada are not covered under the Charter of Rights and Freedoms. This is a major misapprehension.

The Charter of Rights and Freedoms was manifestly, clearly designed to limit the scope of the state, of political institutions, particularly, not to be extended to private spheres where people would have freedoms as individuals, and freedom of association, freedom of expression, and all those states.

Trinity Western is a private institution, manifestly religious, evangelical. Apparently, I looked this up, I didn't know this, but this is the evangelical, what's the name of their actual church?

[27 : 13] Evangelical Free Church. You mean Free, Evangelical Free Church. Yes, that's right, Evangelical Free Church. Now, what is this? I didn't know, but it is apparently a bunch of dissident Lutherans to start with.

How's that? Joe? I'm interested in your use of prizes, and this is an honest question, I do not know. Does Trinity Western take public funding?

No. That's a key thing I was going to say. I'm glad you were there. Sorry to jump ahead. Yeah, okay. No, they indeed do very well on endowments. They charge very high student fees.

They've got more students that they can handle, and since these challenges, their fundraising, from what they tell me, has been quite amazing. One of my old friends, Robert Birkenshaw, Bob Birkenshaw is a graduate of the history department where I taught for over 40 years, and he is, I don't know what he is now, he's probably getting close to retirement himself, but he was the dean of arts at one stage, and he told me, he says, George, we get more funds out of these disputes than anything else.

It's humorous in a way, but of course, it's deep down very serious as to what they do with the funds then. Okay, you have this first question, the competence of the law societies to be the gatekeepers for a private institution then.

[28 : 49] Secondly, and the deep issue really is the charter rights that are in conflict. On the one hand, the right to freedom of religion, on the other hand, equality rights to freedom from discrimination.

the So, Trinity Western and its supporting interveners argued that section 2A of the charter gave the religious right to establish a law school and to require adherence to the covenant, the community covenant, for admission.

that the refusal of the provincial law societies to admit Trinity Western graduates, which of course, kill their if you can't get admitted to the bar in any provincial or major provincial like BC, there's no use of even trying to put up a law faculty where you have nowhere to go.

Okay, so the argument here is that the refusal of the law societies to admit or accredit graduates from the Trinity Western University law faculty was beyond their legal statutory mandates, and that such a prescription was itself discriminatory against evangelical Christians or any kind of conservative, traditional, not just Christians, but other religions, as well, discriminatory, and also it impeded the public interest in promoting diversity and democratic ideals.

Okay, so that's the principal argument that is put forward by Trinity Western, its legal, very skilled legal advocates, and its supporting intervenors intervenors here.

[30 : 59] It's a massive long list of interventions and what are called factums, as they put their case in these clear terms, and then the judges have to decide how they're going to respond.

Now, let me just pause here. We're going to get to the law societies and their supporters and intervenors as well, but who is there as granted permission by the court to submit their fact and appear before the court as intervenors in support of Trinity Western here.

I've listed what I think are the more important ones, and there's a long list of people that were given this right, but first and foremost, I would say the Evangelical Fellowship of Canada, well prepared, well briefed, and on top of all of this, and very practiced in this area, not just in terms of the law faculty, we had a whole series of cases which impinge upon religious freedom in recent history.

The Canadian Council of Catholic Bishops, here again you see, and there's also the Roman Catholic Archdiocese of Vancouver, National Coalition of Catholic Trustees Association, the Seventh-day Adventists were there too, but here we see an interesting phenomenon that has become increasingly important, and that is the convergence of Catholics and Evangelical Protestants in Canada.

It is noteworthy that the United Church of Canada did not appear to champion the rights of Trinity Western, but indeed appeared on the other side of this case here.

[32 : 49] Aside the Catholics, the Seventh-day Adventists, and the United Church are the three religious organizations that appear.

Okay, another really interesting thing in terms of shifting jurisprudence here, the BC Civil Liberties Association.

Generally, the Civil Liberties Association at the national and provincial levels has supported, unpopular, irritating rights to religious freedoms of groups that don't belong to them generally, but in all fairness and honesty, they have supported the rights to freedom of assembly and expression and opposed attempts to prescribe these freedoms in Canadian society.

They came out to start with in favor, supportive of Trinity Western University's project for law faculty.

They had a debilitating fight from what I understand. It went on for months and months and months and months. Votes here, votes there, and finally they reversed their initial decision and supported the proscription of this religious right, giving the equality rights their support then.

[34 : 18] And this, interestingly, it was announced, I read up on their minutes and everything else, the president of the BC Civil Liberties Association identifies himself as queer.

One would say he would have been on the side of equality rights. No, he wasn't. He was on the side of Trinity Western. Strange bedfellows and surprises in all of this.

Now, if we look at the side, the law society's case and their supporting intervenors, they argued that their statutory mandate authorized them, indeed required them, to prescribe Trinity Western University students from admission to bar associations on the grounds that the covenant presented discrimination against LGBTQ students seeking admission, although there weren't too many of these, from what we understand, thereby violating their equality rights set out in Section 15, subsection 1 of the Charter, and that non-accreditation of this proposed law school was justified in the public interest in promoting non-discrimination, equality, and diversity.

diversity, but not for evangelical Christians, as it turns out. This is the deep contradiction here. And who were the principal intervenors here?

The Canadian Bar Association, the Advocate Society, the British Columbia Humanist Association, the Canadian Secularist Alliance, and I've mentioned the BC Liberties Association, the Canadian Association of University Teachers, so much for freedom of expression and freedom of religion, and of course the BC LGBTQ Coalition, EGAL Canada Human Rights Trust, the Lesbians, Gays, Bisexual, and Trans People of the University of Toronto, and the United Church of Canada.

[36 : 17] Okay, and all of that. Now, the ruling as of June the 15th, much anticipated, and I think Trinity Western University students out in BC were all watching all of this on webcast.

It must have been quite exciting and traumatizing ultimately. The Supreme Court of Canada, with the majority of seven to two, argued that the law societies, BC and Ontario, functioned as public actors.

There's no problem with that. they were clearly public actors under their statutory mandates, and they were therefore subject to the rights of the charter, and the charter, and this is important to us as an extension, the rights of the charter, and charter values.

The charter values, which they argued, underlay and gave meaning to the specific charter rights that were spelled out. Trinity Western Union, sorry, Trinity Western University was accorded no specific corporate standing, institutional standing, or protection.

Now, this is important because the jurisprudence wants to focus much more on individual rights, and the Trinity Western University community has individual rights, but establishing corporate rights is another thing, and they were not to enjoy these rights in law.

[38 : 11] Functioning as a private religious institution, Trinity Western was free to do anything lawful, including establish a law faculty if they wanted to do this. Of course, it would be insane to do it under these circumstances, but they're free to do this.

For the majority, the question the court had to answer was whether the law society's decisions not to accredit Trinity Western's proposed law school, whether the decisions were reasonable.

Reasonable is the central issue here. They said that they were reasonable. The court said they were reasonable. To be considered reasonable, the decisions had to strike a proportionate balance between the religious rights of the Trinity Western University community and the law society's objectives to protect the public interest.

For the majority, the public interest included promoting equality by ensuring equal access to the legal profession, supporting diversity within the bar, or the bars, provincial bars, and preventing harm to LGBTQ law students.

Neither the law societies, B.C. or Ontario, was stopping anyone from following his or her religious beliefs, including following the covenant at Trinity Western if he or she wanted to.

[39 : 44] No prescription, then, they're arguing on belief. They only prevented Trinity Western Union from enforcing their beliefs on other members of the law school community.

Because of this, the majority said the decisions did not seriously limit anyone's religious freedoms. The terms of the covenant were not essential to studying law in a religious context.

Since the covenant was mandatory for students, and Trinity Western University was, at that stage, unwilling to amend or drop the covenant, the choice for the law societies was binary, either to accept and accredit or not to accredit.

A compromise did not seem possible. It was suggested in the discourse from the law societies, but this was not acceptable from anything that came back from Trinity Western.

This was at the heart of their belief and practice as an evangelical Christian community. As the benefits of protecting the public interest were important, and the limitations on religious rights were minor, that's one of the terms that was used, the majority of the court said that both law societies decisions reflected a proportional balance and were therefore reasonable, and therefore they awarded in favor of the case from the law societies then.

[41 : 27] Chief Justice Beverly McLaughlin, this was her last case before she retired, while recording her opinion, that the limitation of Trinity Western University's religious freedoms were serious, not minor, not insubstantial, they were serious, they were major, they were substantial.

She nevertheless joined the majority ruling since, as she put it, accrediting the Trinity Western University law faculty would mean approving discrimination.

So, equality rights, in her thinking, still trumped religious freedom rights. Now, the two dissenting judges, they were Justice Côté and Brown.

I don't know anything about their religious backgrounds or anything, and what they argue, they argue from a type of liberalism, which I think is much more within the tradition of Canadian jurisprudence.

But anyway, they would have ruled in support of Trinity Western University's proposal. They argued that the statutory laws that gave the law societies their powers limited what they could consider in deciding whether to approve a law school.

[42 : 49] Moreover, statutory law was itself subordinate to charter rights. That's a powerful argument. The decision was only about whether graduates, would be fit to practice law.

And what would make them fit? If they were competent, and if they had the abilities, and if they approached it lawfully, ethically, they should not be prescribed.

And since there was no evidence that Trinity Western University graduates would not be fit, they said that the law society should have approved the proposal.

In their view, the dissenting justices' view, freedom of religion also protects the freedom to express religious views, for example, through this covenant, and to associate to study in an educational community, reflecting their religious beliefs.

They also objected to the majority's reliance on charter values as distinct from written charter rights, and relying on charter values to determine the limitations of their statutory mandates, the law society's statutory mandates, which of course they very substantially extended beyond the very clear limitations of the laws that were passed to establish these societies.

[44 : 24] Unlike the rights embedded in the charter, the dissenting justices argued, charter values are ill-defined and can reflect merely the unsourced idiosyncrasies and preferences of the legal mind.

I love that. The foggy legal mind. Who wrote that? That is from the dissenting justices, but I'm also using the summary of the case that is part of what the Supreme Court has written.

Who's the court around? I just wanted to know. Could be both of them, because it was a joint dissent, yes. Anyway, these should not be imposed to limit constitutionally protected rights.

To do this violated the neutrality position of the state. They disagreed with Chief Justice McLaughlin as well, that approving the proposal meant condoning discrimination.

For them, a state actor, like the law societies, accommodating a private actor, like Trinity Western, did not mean it supports the private actor's beliefs.

[45 : 47] If this were so, it would indirectly force private actors to follow the charter, even though the charter only applies to state actors. They noted that it was also in the public interest to accommodate different religious beliefs, as charter rights protected public, lawful, democratic participation of all citizens on their own terms, as long as they're lawful.

For dissenting justices, the law society's decisions seriously limited, these were not minor limitations, they were serious limitations on the religious freedom of members of the Trinity Western University community, and they were therefore not reasonable, not justified.

Okay, so that's the minority position, clearly presented and powerfully presented, very similar to the majority decision on the B.C. teachers' case just a few years previously.

Okay, I'm getting near the end now. What are the implications of this? You can sense from what I've said that I'm very negative, and evangelical Christians have been, for the most part, very negative on this ruling.

It's not just for Trinity Western, but for Canadian Christian, and not just Christian, but religious communities and institutions and individual believers through Canada.

[47 : 26] And I've got the next thing here, for starters, what does this mean in terms of the jurisprudence that gave Trinity Western the right not only to have their own college of education, but there's nursing, there's business, there's three or four professional training programs that have accreditation.

This could very seriously reverse the successful functioning of these programs at Trinity Western University.

What about all the lawyers and law students who never went to Trinity Western, and maybe don't know much about it, but who hold very similar values?

Say, sincere traditional Catholic lawyers, of which there are thousands and thousands and thousands across Canada. What do they sense? Is their practice of law now proscribed because of equality rights?

do they have to be silent or their religion privatized? Do they have no freedom of religion and freedom of expression in the courts, in public space in Canada?

[48 : 48] It's a big question, and there's a big fight right now in the Law Society of Ontario. I don't know if it's been resolved or whatever, but in the latest elections to the benchers or the executive of the Law Society of Ontario, there is a deep division between those that want to continue down the path of requiring lawyers through a statement of principles to subscribe to the effect of equality rights, promote inclusion, diversity, equality, and that program, and on the others who argue that it's no function of law societies to promote or require ideological or philosophic or religious positions as part of their membership belonging to a law society.

So there was an opposition. I don't know if the elections have been held, but it's indicative of what's happening within most of the major professional associations in Canada, provincial level, federal level now.

Okay. What I see here is this also, in negative terms, that this decision marks a major departure from legal precedent in ranking charter rights.

Now, this was obviously a problem right from the beginning. I remember I was in Ottawa shortly after the 1982, and I attended the cathedral in Ottawa, and the speaker at that time was a quite well-known Anglican leader, Gordon Robertson.

No, was it Gordon Robertson? Gordon Forrester. Yeah, I think it was Gordon Robertson. Anyway, he was an Anglican, and he was, I think, by that time, the head of the Canadian Civil Rights Association.

[51 : 05] And he spoke very powerfully on all the virtues of the new Charter of Rights and Freedoms. Well, we all had tea and coffee afterwards, and I went down to the basement, and everybody was affable and quite willing to talk about this.

But the place was stuffed with lawyers, Anglican lawyers, of all things. And Gordon Fairweather, I'm sorry, that was the guy's name. He was the brother of Eugene Fairweather, who was a very prominent Anglo-Catholic theologian at Trinity Anglican College at University of Toronto.

Well, these lawyers, every one of them, I was quite fascinated by this, and I remember it clearly. every one of them were rubbing their hands. There is going to be so much casework in the equality area, and they were all retraining for this now.

I mean, their firms, their corporations, and everything else knew that this was going to be a gold mine for lawyers in the future, and they were certainly right.

Another factor here that I think is very troublesome is the failure to make distinctions between belief and behavior, which was really foundational to the Teachers College case.

[52 : 27] There's no evidence that anyone could find or anyone put forward that Trinity Western University graduates practiced discrimination, illegal violations of Charter of Rights and Dreams, no evidence whatsoever.

So it's what they believe that really prescribes their public, any public role based on their religious freedom. This is very, very troublesome.

Okay, I'm going to stop there and open it up to, let's put this up again. The last thing, I've got a list of remedies and what's been happening.

For instance, just let me start this off and then we can open this up to discussion. discussion. What do Christians, evangelical Christians, like most of us, do in cases like this?

Now, I telephoned in preparations for today. I telephoned my good friend at Trinity Western University, who's been a vice president there, Guy, Saffel, it's not Saffron, it's Saffel, yeah, Saffel.

[53 : 41] And I've had dinner with him and met him and kept in touch with him. What is Trinity Western going to do? Well, they went on at the decision of their Senate to make the covenant no longer mandatory but voluntary for those wishing, if it ever got to it, to be admitted to the law school.

Now, he said, at this stage, no, they have a new president. They've had, as I've mentioned, a very successful fundraising drive. They have more students applying for it and high quality students than they've ever had.

And at this stage, it's a period of rethinking, discernment, and, in a sense, figuring out what they're going to do in future.

But they are too tired, and they don't think the political or legal climate is inviting right now, even with making the covenant mandatory.

It would be another big legal fight with the law societies. and probably, he didn't say this, but the political climate of the NDP government in BC is probably pretty hostile to force law faculty being established in British Columbia.

[55 : 06] So that's where the position is there. But they are willing to make a major accommodation for which they are roundly criticized for, from a lot of their evangelical supporters.

But they're willing to do this, and in the long run, they may come back and reapply without a mandatory, simply a voluntary covenant that I'm sure most of law students from an evangelical background would be happy to subscribe to, rightly understood.

So that's where they're at now. But these questions are becoming really big issues in politics and the media and culture in Canada.

And my sense is, from not being a lawyer, but having to master all the legal terminology here, that one of the most important things we can do, and which is being done, is supporting the coalitions, the think tanks, like the Evangelical Fellowship of Canada, whose factums on all of this are simply very clear and very, I think, well informed and full of legal wisdom and all of this.

But coalitions like Cardus is another one. I've got a list of things here. And they can be very helpful.

[56 : 39] Because, let's face it, most of us as individuals, mastering all this stuff would take years of, we're not going to be trained as lawyers. Some of us want to be doctors and professors and just ordinary Canadians, too.

These are very, very complex, but very, very important issues.