Responding to limitations of the public square

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Abstract

True freedom is dependent upon respect for a diversity of views, including religious beliefs and practices. However, the law appears increasingly reluctant to accommodate religion. Instead, it seeks to force religion into its own image on sexual identity politics, by exerting legal pressure on religious communities to make them conform to the prevailing social norms. The Trinity Western University law school case in Canada vividly illustrates the current tensions between law and religion, which are likened to a cross-cultural interaction. Moving forward, we must choose between treating religion as the nemesis of equality and accepting differences within a pluralist democracy.

Keywords Accommodation of religion, law and religion, traditional marriage, public square, ideologies, sexual equality, conformity.

1. Introduction

"If liberty means anything at all," George Orwell (1972:SM12) observed, "it means the right to tell people what they do not want to hear." In an age of "de-platforming," where speakers may be denied the right to speak if their message is considered unacceptable,[2] Orwell's adage is as revolutionary today as it was prescient when he said it.

If freedom of religion means anything at all, it means the right to believe and practice what other people find objectionable on important matters of belief, human life and the public good. Religious freedom is possible only when mainstream society respects the fact that other people have different opinions and practices.

With an emphasis on the Canadian context, this paper discusses how law is seeking to force religion into its own image on sexual identity politics, by exerting legal pressure on religious communities to make them conform to prevailing social norms. This is the case even when the religious group has done nothing illegal. Such an imposition is an attempt to exclude non-compliant religious communities from the public square.

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[2] In Britain, for example, the National Union of Students has a "no-platforming" policy whereby "people or groups on a banned list for holding racist or fascist views are not given a platform to speak on student union premises" (Bell 2016).

First, I will consider a recent case before the Supreme Court of Canada (SCC) which illustrates the tensions between law and religion that Benjamin Berger describes as a "cross-cultural interaction." Then I will consider two alternatives moving forward: to treat religion as the nemesis of equality, with resultant pressure either to nudge or coerce religion into conformity with secular norms, or to accept differences within a pluralist democracy.

2. Trinity Western University's School of Law

Christians have been operating universities for a long time – at least since the sixth century (Riché 1978). Although secular law schools may not acknowledge this reality, they are, to a large extent, beneficiaries of a Christian heritage (Berman 2000:351). So it should not have been surprising when Trinity Western University (TWU), a private Christian university in British Columbia, Canada, envisioned a law school as part of its future expansion. Yet, even though Canada professes to be a multicultural society that celebrates diversity, the prospect of one small, faith-based school of law among eighteen secular, common law schools caused an unparalleled level of antagonism within the legal fraternity.

Despite vocal opposition from academics and journalists, the Federation of Law Societies of Canada (FLSC) gave "preliminary approval" for the law school in 2013. Days later, the British Columbia government also approved the proposal, noting it "met the degree program quality assessment criteria" (BC Government News 2013).

With the necessary approvals granted, what could possibly go wrong? Plenty, it turned out. Thanks to pressure from activists across the country (Fish 2014; Craig 2013; Newman 2014), three provincial law societies decided not to accredit the proposed school, leading to five years of legal challenges that culminated in two SCC decisions in 2018 (referred to collectively in this paper as *TWU* 2018).[3] Ultimately, the SCC upheld the law societies' position, in effect "de-platforming" a Christian university because its religious beliefs were seen to conflict with LGBTQ rights.

This hostility against TWU arose not because of concerns about the academic merits of the program, but because of the university's faith-based policies. At issue was its "Community Covenant Agreement" (CCA), which, amongst other expectations, required all students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." This traditional definition of marriage stood in contrast to the secular view of marriage that was redefined in Canada in 2005 (*Civil Marriage Act* 2005). It was deemed discriminatory and offensive to the LGBTQ community. Prominent lawyer Clayton Ruby declared that "this

[3] The decisions were *Law Society of British Columbia v. Trinity Western University,* [2018] 2 SCR 293, 2018 SCC 32 (hereinafter "LSBC v TWU 2018") and *Trinity Western University v. Law Society of Upper Canada*, [2018] 2 SCR 453, 2018 SCC 33 (hereinafter *"TWU v LSUC 2018").*

[policy] alone makes [TWU] incompetent to deliver legal education in the public interest" (Green 2013).

Ironically, TWU had faced a similar case in the late 1990s, when the British Columbia College of Teachers denied accreditation for TWU's education degree because of the school's beliefs on sexuality. In 2001 the Supreme Court of Canada ruled in TWU's favour (*Trinity Western University v. British Columbia College of Teachers*, hereinafter "*TWU* 2001"). The Court urged respect for a "diversity of views," affirming that "freedom of conscience and religion … co-exist with the right to equality" (paras 33, 25). But in 2018, the same Court insisted that the law societies had a "heightened duty to maintain equality" (*LSBC v TWU* 2018: para 150).[4] This dramatic change in sentiment is indicative of a legal revolution unfolding against the accommodation of religion. It demonstrates that identity politics, not law, motivated the SCC's 2018 decisions on TWU (Bussey 2018).[5] Those decisions were the crowning result of opposition in the legal profession to religious institutions that do not accept current sexual moral norms.[6]

The implications are troubling, to say the least. Given the Court's rejection of TWU's law school proposal based on its religious beliefs, what is to prevent the profession from turning on those legal practitioners who hold the same "discriminatory" views?[7] Although the direct judicial effects of this decision are restricted to the Canadian setting, Christian universities in other Western nations may well experience similar barriers to their operation, unless we can find a more productive way forward (see section 6). The perceived conflict between religious freedom and LGBTQ rights is pervasive in the contemporary West, making the TWU case and its ramifications relevant far beyond Canada's borders.

3. TWU changes its policy

Less than two months after the 2018 SCC decisions, TWU's Board of Governors decided that it would no longer require students to sign the CCA. TWU President Bob Kuhn (2018) stated that the university would continue to live out its "Christian identity, mission and ministry" while "simultaneously welcoming and affirming the unique value of each member of our diverse student body." He further emphasized that even though the CCA would not be mandatory, the institution would "remain a Biblically-based, mission-focused, academically excellent University, fully committed to our foundational evangelical Christian principles."

This was a stunning development, given the extent to which TWU had fought to maintain its code of conduct not once but twice, all the way to the SCC. However, critics were still unsatisfied with the concession, arguing that the covenant ought to be made optional for staff as well as students (Bouwman 2018; Craig 2018). Professor Richard Moon even expressed concern that "discriminating based on

religious commitment raises similar problems as discriminating based on sexual orientation" (Brean and Selley 2018). These objections overlook the fact that TWU is a private, religious institution designed by and built for Christians. Indeed, rights claims are inflationary in their incremental demands for greater recognition and accommodation (Bussey 2016-2017:197, 200).

4. Law's religion

According to Benjamin Berger, the interaction of law and religion is not a juridical or a technical problem to be resolved by better laws but is "profitably understood" as a cross-cultural interaction that is "endlessly unstable and provocative" (2015:18). The "guiding metaphor," says Berger, is jurisdiction: "the conceptual means of 'mapping' authorities within the legal world" (2015:46). Jurisdiction organizes and interprets territorial or spatial relations.

Law's organization of space includes the private-public divide. Private space is the area where "the state has the weakest claim to authority. The public [realm], by contrast, is the domain of state power and, concomitantly, is governed by the demands of public reason over personal interest or preference" (Berger 2015:48). When law interacts with religious practice, then religious freedom is subject to the court's ability to reconcile a certain practice within a given space (Berger 2015:50-51).

According to Berger, Canadian constitutional law's imagining or understanding of religion has three components: (1) religion is based within the individual; (2) religion is valuable and deserving of protection because it expresses personal autonomy; and (3) religion is a private matter centred on the individual's personal choices and preferences, not reason (Berger 2015:66).

In other words, law (at least according to Berger's characterization) assumes religion "is quintessentially private" (Berger 2015:98). Yet human experience has shown just the opposite: religion often takes on a very public function. As Rex Ahdar and Ian Leigh explain, "There is an ineradicable collective or communal dimension to religion. … An individual's religious life is very much tied to and dependent upon the health of the religious community to which that believer belongs" (2013:376; see also Domingo 2016). The failure to account for the public nature of religion is to the law's detriment and has created confusion as to when or how religion or religious institutions may operate in the public square.

Berger's explanation of law as culture suggests that law has a mesmerizing quality that seeks to fashion "religion in its own cultural image and likeness" (2015:19). In other words, law affirms or restricts religion according to its own preferences, whereby religion is seen as a private, individual choice. Berger's insight allows us to better comprehend the complex machinations of law when it does not appreciate or respect religious claims for deference in managing institutional codes of

conduct. If the law accepts the presuppositions of the sexual equality claimants that a certain code – as in the case of TWU – is discriminatory, then the law's intuition, at least from Berger's assessment, would be to force the institution into its likeness, demanding compliance with non-discriminatory principles. That is indeed what happened.

TWU's decision to make the CCA voluntary seems to fulfil Berger's observation that the law will remould religion into its own image. In effect, law is an instrument by which those in power seek to export their own ideology. In the minds of the legal elite, religion no longer merits a special status to demand accommodation when it runs counter to sexual identity politics.

5. Religion as nemesis

In an essay titled "Equality's Nemesis?" Queen's University law professor Beverley Baines (2006) advocates for an interventionist, three-pronged approach to deal with religion and sex equality. Although she writes in the context of women's equality, her contentions are applicable to equality rights generally.

Baines asserts first that there should be a hierarchy of rights wherein religious and cultural claims are subject to the guarantee of equality. She states that "no reason exists to immunize [religious societies] from the constitutional guarantee of sex equality" (75). Her description accurately captures recent legal developments; as Matthew Harrington concludes, "It is quite clear that a new hierarchy of rights has emerged and that 'equality' is, in fact, at the top of the pyramid" (2019:340).

Second, Baines asserts that religious communities should operate jointly with the state in certain areas (77). If a member of a religious community finds that his or her equality right is not accepted by that religious community, then he or she can appeal to the state for redress.

Third, Baines advocates for the privatization of religion. Since religious communities are private by nature, she writes, they should not be given any special protections (78) such as the fundamental freedom of religion found in section 2 of the *Canadian Charter of Rights and Freedoms* (hereinafter "the *Charter*"). Rather, religious communities should rely on the freedoms of expression and association. Unfortunately, this argument ignores the fact that religion is an enumerated ground in section 15 of the *Charter* ("equality before and under the law and equal protection and benefit of law") and therefore has its own equality rights.

Framing religion as equality's nemesis ignores its long sociopolitical history in promoting human rights (Witte and Green 2011). However, this diminution of religion is beginning to take shape, and Baines' vision is not far from becoming reality. In the SCC case *Loyola High School v. Quebec (AG),* (hereinafter "*Loyola*), Justice Abella questioned whether a private, religious school should

be allowed to teach from an "ethical framework" that contradicts "national values" (*Loyola* hearing 2014, transcript:7; webcast 11:27-12:10). Writing for the majority, Justice Abella went on to define those values as "equality, human rights and democracy." She argued, "Religious freedom must therefore be understood in the context of a secular, multicultural and democratic society with a strong interest in protecting dignity and diversity, promoting equality, and ensuring the vitality of a common belief in human rights" (para 47, citations omitted). The groundwork is now set for future decisions to elaborate on how those "values" interact with religion – as, indeed, the SCC majority did in *TWU* 2018, to the detriment of religious freedom (para 41).

Writes Richard Moon, "If equality, including sexual orientation equality, is an important public value, it should be affirmed in the schools and should underpin classroom learning, even in the face of religiously based opposition from some parents" (2011:336). He insists that if religion wants to participate in the public square, it "must be treated as contestable and as open to public repudiation" (2011:337). Bruce MacDougall of the University of British Columbia echoes Moon's position, arguing, "Religious ideology cannot be used to determine what people who are not of that religion can do or how they should lead their lives" (2000-2001:247-48).

There is an obvious problem with this line of argument, in that "religious ideology" in a pluralistic society has the same right as any other ideology to seek to advance a position in public discourse. Through a process of deliberative dialogue, society establishes its norms – but even when there is a consensus, debate does not suddenly stop. Public debate on issues must continue if we are to remain free and democratic. The fact that a particular opinion is rooted in a religious worldview should not prevent it from being considered.

MacDougall further contends that religions should not be able to maintain their religious views on marriage and sexuality even within their own communities. He suggests that "children being raised in a particular religious tradition should not be exposed to ideology that excludes and refuses to accommodate homosexuality in their education. The state has an interest in all education of the young and this ideal should prevail" (2000-2001:248, footnote 63).

According to this line of argument, the distinction between private and public spheres suddenly becomes obsolete in the area of human sexuality. Rather, the public norm of human sexuality must prevail because "the state has an interest". There is no room for the individual to recognize the sovereignty of God in matters of sexuality; instead, the sovereignty of the state is now supreme.[8]

[8] David Corbett (2002:415) has characterized the tension between religion and sexual orientation as "a struggle to protect our public policy from being infused with religious ideals for the purpose of denying a particular and disapproved group their equal place within Canadian society. ... It is a conflict

Amongst many other problems, framing the issue this way fails to present a complete picture of the situation. From the very beginning, humanity has struggled with the issue of sovereignty, as states have demanded sole allegiance at the expense of the individual conscience. Liberal democracies replaced the absolutist state paradigm with one that intentionally leaves protected space for religious belief and practice. The special status given to religion was what made other rights possible – it was prototypical.

Indeed, virtually all of what we consider fundamental freedoms today had their origin in the protection of religion and its practice. Therefore, it is illogical to suggest that religious views that do not accept non-traditional sexual norms are somehow a "negative animus" (Corbett 2002:415) and not worthy of protection. Rather, there is an overt anti-religious bias here that seeks to cancel religion's firmly established legal protection in matters of sexuality. Religion is now seen as the nemesis of equality.

6. The way forward

The legal community's revolt against religious accommodation has created a heightened sense of incompatibility between the current legal norm on sexuality and the traditional religious sexual norm (as exemplified in the TWU case). Two crucial questions arise concerning how the law will address this crisis.

First, how should the law balance religious and secular interests going forward? The solution cannot be a zero-sum result where one is removed or restricted at the expense of the other. Many religious communities will certainly maintain their traditional teachings and practice on sexuality for some time to come. A two-thousand-year-old, foundational understanding of human relationships does not simply disappear overnight. Furthermore, an effort by a supposedly liberal society to impose a sexual ethic upon the traditional religious view strikes at the very heart of religion's status in the law.

Second, what does society do with a voluntary community of members who establish internal rules of conduct? The emerging consensus on liberalism's new moral understanding of sexuality will have to address the issue of whether religious communities may continue their internal governance on sexual lifestyles that are anchored in ancient religious texts, opinions and religious cultures.

I see three possibilities for the future of religion in the public squares of Western society.

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between the fundamental principles of our secular state – the Rule of Law, the principle of equality, and the primacy of the Constitution on the one hand, and a religiously based negative animus against homosexuality on the other."

6.1 Be strategic: Don't rock the boat, nudge it

The first possibility is a strategic approach that seeks to gradually nudge religion until it agrees with the mainstream. Academics who predict that religion will evolve into conformity with the "Sexular Age" advocate short-term accommodation rather than coercion. They assume that religious beliefs and practices will eventually coalesce into the new paradigm of equality – or, more accurately, uniformity.

Yale law professor William Eskridge (2011), for instance, suggests giving religious communities time and space to get on the "right side" of history. Eskridge points out that religious groups often change their views on moral issues over time. The United States has experienced such change on the issues of slavery, interracial marriage and civil rights – although in actuality, there was never uniformity in the religious community regarding support for the now-abandoned positions on any of these issues. In fact many leading anti-slavery voices came from within the religious community. Nevertheless, Eskridge sees indications that religious objections to sexual equality will fade over time.[9]

This approach appears to show respect for religion, but only temporarily. It presupposes that religion will eventually "get through" this transition or crisis period and reach a new paradigm. However, sexual norms have not been contested, at least in Christian circles, in the same way that slavery and racial relations were, nor can the theological and hermeneutical perspectives or traditions on these topics be equated.

At the same time, TWU's policy change as discussed above suggests that Eskridge's gradual approach could be successful.

6.2 Be dogmatic: No-holds-barred enforcement of state sexual norms

A second, more aggressive or dogmatic attitude contends that all religious exemptions should be removed; religious objections to sexual equality rights are seen as a threat to all groups. Advocates of this position, such as Harvard law professor Mark Tushnet (2016), insist that the public debate on sexuality has ended: marriage has been redefined, the culture wars are over, and the state ought to enforce sexual norms.

Proponents of this view are intent on destroying any differences of opinion and, in so doing, characterize all differences as offensive. Entities that refuse to acquiesce to political demands are deemed discriminatory and barred from operating in the public square. In short, opponents of religious accommodation require compliance with their social values. The British Columbia Court of Appeal declared that "there is no Charter or other legal right to be free from views that offend and contradict an individual's strongly held beliefs" (*Trinity Western University v. The*

[9] Robert Wintemute similarly predicts that religions, through the "courageous efforts of LGBT individuals working from within," will realize that "they have been wrong all these years" (2002:154).

Law Society of British Columbia 2016: para 188). That may change. The SCC has now shown itself sympathetic to sexual identity politics and creative in reaching decisions that it sees as consistent with the majority's norms.

Examples of this approach include seeking to deny registered charitable status for religious groups who "discriminate" (see Bussey 2020); "de-platforming" conservative or religious speakers;[10] or imposing a particular worldview as a precondition for funding, licensing, or other forms of state recognition.[11]

However, carrying a heavy stick against religious communities that refuse to accept the state's version of the good life has never been the approach of liberal democratic societies. Instead, liberalism's strength has been the tradition of accommodation. The ability to compromise and allow space for religious expression has given us a rich legacy of freedom.

6.3 Be accepting of differences

Both Tushnet's "hard line" strategy and Eskridge's vision of voluntary change (without state enforcement) may well be frustrated. The reason is simple: history does not always go the way revolutionaries expect. Christianity has advocated for traditional, heterosexual marriage for two millennia. It is unlikely that this practice will ever disappear completely. Christians run organizations in accordance with principles which have endured for thousands of years. And if we are to remain a liberal democratic society, these organizations – and the individuals who operate them – are entitled to protection of their beliefs and practices.[12]

The ramifications of the emerging legal revolution against the current legal paradigm of accommodating religion will bring disruption to law, society and the democratic project. Such an environment will not encourage ongoing dialogue or respect between competing views of the public good. We need a deliberative approach that accepts dissonance as a strength, not a failure. The following suggestions introduce an attempt to move forward.

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[10] For example, Michelangelo Signorile (2015) argues that mainstream media must prohibit religious leaders who support traditional marriage from appearing on their talk shows, "to stop legitimizing defamation as rational debate, particularly when genuine debates on many of these issues have long since ended." According to Signorile, "that debate has come to an end. … Every individual has a constitutional right to free speech – but no one has a right to appear on a television talk show" (126–37).

[11] In 2018, the Canadian federal government required charities to attest to certain partisan "values," including support for abortion, in order to receive grants for summer jobs. Thousands of religious charities refused to "check the box" and were denied funding. As a result of the furor, the government modified the application forms for 2019 to remove the problematic attestation.

[12] "The individual and collective aspects of freedom of religion are indissolubly intertwined. The freedom of religion of individuals cannot flourish without freedom of religion for the organizations through which those individuals express their religious practices and through which they transmit their faith" *(Loyola* 2006:para 94, per Chief Justice McLachlin).

6.3.1 Religion matters

In 1927, an Ontario provincial judge opined, "Our conception of God is … an integral part of our national life. So much is this the case that we are prepared to say that love to God and trust in Him are the very foundation of our nation's greatness. … We look upon the Bible as the basis of every good law in our country" (*R. v. Sterry* (jury charge), cited in Patrick 2010:144). Several decades later, Justice Ivan Rand of the SCC concurred that "a religious incident reverberates from one end of this country to the other, and there is nothing to which the 'body politic of the Dominion' is more sensitive" (*Saumur v. City of Quebec 1953*:97). Today, however, there is a troubling lack of respect for religion, especially among legal and political elites.

Religion matters. It is central to the identity of believers, and people are willing to pay a high personal cost to practice their beliefs. In the past, the law made sense of this reality by seeking accommodation. The present is no different. The law must be willing to engage in conversation that does not simply put religion in a private corner as if it had no bearing on our mutual well-being. Given the importance of religion to our increasingly diverse and pluralistic society, we must allow religious individuals and their institutions to operate without fear of state reprisal.

6.3.2 Legal knowledge of religion

The legal profession ought to reacquaint itself with religion and its societal impact. It is not helpful to characterize religion as equality's nemesis when even a cursory review of history reminds us of religiously motivated individuals who sought to break down barriers of inequality. Examples include Mahatma Gandhi, Martin Luther King Jr. (1967), and Nellie McClung (1945), one of the "Famous Five" who championed women's equality.

The law must understand the historic and current place of religion. Secular education will not "cure" people of religious belief or cause religion to disappear. Religion may change over time to some degree, but its basic principles will remain salient for a significant portion of society. By maintaining religion's legal status, the state acknowledges that it can never be the sole determiner of individual conscience.[13] Unanimous agreement will never be achieved on such intimate issues as human sexuality. Maintaining an attitude of tolerance is a practical application of the Golden Rule: do unto others as you would have them do unto you (Matt 7:12). All human beings, religious or non-religious, have the right to be respected and allowed to live as their consciences dictate. This is the very essence of liberalism.[14]

[14] What is considered to be on the "right side of history" today may not be so tomorrow. Liberal democratic pluralism ought to provide a check against dramatic swings in public or political sentiment by

6.3.3 State neutrality

In his analysis cited earlier, Professor Berger rightly calls out the liberal democratic conceit that claims to be neutral toward religion when it is not. Law is not neutral. It remains a very interested player in maintaining a dominant position over and against any religious practice that challenges the current power structure. To the extent that a religious culture harmonizes with the law's assumptions, religious practice will not be as problematic (2015:101). However, the moment religious practices are dissonant with the law's underlying assumptions, then all bets are off. Law will at that moment become antagonistic.

Berger's position is reminiscent of Roland Bainton's observation that religious freedom "has come to depend upon a diversion of interest" (1958:15). As long as religious concerns are less important than other issues of state, the liberal state will leave religions alone. However, when religious issues become politically salient, one can expect the state to interfere in its own self-interest.

Given the historical, philosophical and practical reasons for accommodating religious beliefs and practices, the Western state would do well to remain truly neutral in matters of religion while permitting religion to retain a public role. Certainly, the state should not simply ignore the practical impact of religious practices, but it should be very reluctant to interfere with religion.[15] When religious communities run enterprises such as universities, the state has a "democratic imperative," to use the words of Justice Gascon in a 2015 SCC case, to ensure that it does not favour "certain religious groups and is hostile to others. It follows that the state may not, by expressing its own religious preference, promote the participation of believers to the exclusion of non-believers or vice versa" (*Mouvement laïque québécois v. Saguenay (City) 2015*: para 75).

7. Conclusion

Citizens of a modern Western democracy can expect dissonance between their beliefs and practices and those of fellow citizens, or even those of the state. The fact that another person maintains different beliefs and practices in private matters such

accommodating, as much as possible, the differing views of its citizens, religious or otherwise. William Galston warns that to remain liberal, democracies "must safeguard a sphere in which individuals and groups can act, without state interference, in ways that reflect their understanding of what gives meaning and value to their lives" (1999:907).

[15] Justice LeBel stated, "The concept of neutrality allows churches and their members to play an important role in the public space where societal debates take place, while the state acts as an essentially neutral intermediary in relations between the various denominations and between those denominations and civil society." *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine* [2004], para 67.

as sexuality must not put that citizen, or the religious institution with which he or she is affiliated, at a disadvantage. As the SCC has declared:

> [T]he demand for tolerance cannot be interpreted as the demand to approve of another person's beliefs or practices. When we ask people to be tolerant of others, we do not ask them to abandon their personal convictions. We merely ask them to respect the rights, values and ways of being of those who may not share those convictions. … Learning about tolerance is therefore learning that other people's entitlement to respect from us does not depend on whether their views accord with our own. (*Chamberlain v. Surrey School District No. 36 2002*:para 66)

When an institution such as TWU is private, peaceable, non-commercial, and presents no "grave and impending public danger" (*Thomas v. Collins* 1945), and when there is no evidence of abuse of private power (Inazu 2012:184), then the law should allow that institution to maintain an ambience in accordance with its religious sensibilities. The choice comes down to whether we are a free and democratic society that allows for differences and the expression of those differences, or whether we require sameness in all areas. Entities such as TWU depend upon the ability to lawfully discriminate for their very existence.

Unfortunately, TWU's 2018 experience is a troubling harbinger for those religious organizations that are involved in government-regulated industries. The SCC has made it abundantly clear that state actors will be given deference in carrying out their statutory mandates. The ability of these state actors to self-define the "public interest," as did the law societies in the TWU case, will mean a further expansion of government into the private sphere. What was once private has now become public.

The implications are sobering. Christopher J. Eberle observes, "Since freedom of religion underwrites pluralism, and since pluralism enhances the vitality of religion, members of religious groups have a deep and abiding interest in affirming a political culture that values freedom of religion and a constitutional order that enshrines it" (2002:44). Former Chief Justice Brian Dickson of the SCC stressed that the emphasis on individual conscience and individual judgement "lies at the heart of our democratic political tradition"; each citizen's ability to "make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government" (*R. v. Big M Drug Mart Ltd.* 1985: para 122).

Therefore, limiting religious accommodation removes the religious individual's incentive to support the political system itself. This possibility must not be taken lightly, as the health of our democratic project depends upon each citizen's support.

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