Globe editorial

**At Trinity Western, how to decide when rights collide**

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The right to equality before the law, and to equal benefit of the law without discrimination, is one of the basic rights protected by Canada’s Charter of Rights and Freedoms. It’s a foundational principle of any liberal society. The same goes for the freedom of religion, which is also guaranteed by the Charter. What happens when those values clash? That’s the question raised by Trinity Western University’s application to start a new law school.

TWU, based in Langley, B.C., describes itself as a Christian university “rooted in the evangelical Protestant tradition.” Students are expected to abide by a “Community Covenant Agreement,” which states that the school’s “core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible.” The Bible, according to the text of the community covenant, is “the divinely inspired, authoritative guide for personal and community life.”

The covenant is five pages long, and includes rules and principles that students are expected to live up to. They range from avoiding pornography to refraining from smoking. And this: “According to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God’s intention that it be enjoyed as a means for marital intimacy and procreation.” Students are effectively promising to abstain from behaviour that violates that belief. The university considers it “vital that each person who accepts the invitation to become a member of the TWU community carefully considers and sincerely embraces this community covenant.”

After TWU made its application for a law school, the response was swift. Critics read the no-sex-outside-of-marriage clause and said the university was clearly discriminating against gay students. The covenant defines marriage as between a man and a woman; even a married gay student would have to pledge to abstain from sex. The critics had a point. It looks like discrimination.

But, the school shot back, what about freedom of religion? TWU has been down this road before. More than a decade ago, the university applied to create a teacher’s training college. The B.C. College of Teachers looked at the covenant, which at the time included wording condemning “homosexual behaviour,” and balked. So Trinity Western took the BCCT to court. The case went all the way up to the Supreme Court of Canada, and the university mostly, but not entirely, won.

In the 2001 case of Trinity Western University v. The British Columbia College of Teachers, the judges pointed out that the Charter both protects against discrimination on the basis of sexual orientation and guarantees freedom of religion. The Court held that neither right trumps the other, and that they must be balanced. What’s more, the university as a private institution is largely not covered by the Charter. And TWU is also exempted in part from the non-discrimination provisions of the B.C. Human Rights Code. Why would the university be exempt? Because it’s a religious institution, and freedom of religion includes the freedom to hire and associate with people of the same faith. For example, the Catholic Church does not ordain women, and Canada’s courts are not about to force it to.

The court, however, didn’t find that TWU was unconditionally entitled to receive its teacher’s college. The court said that there was a line that the university or its students might cross, which could jeopardize the accreditation of individual graduates or even the college itself. “The proper place to draw the line,” said the court, “is generally between belief and action. The freedom to hold beliefs is broader than the freedom to act on them.”

What the court meant was that students are free to study at an institution, such as TWU, that a decade ago forbade homosexual sex, and today treats gay marriage as something other than a full marriage. Canadians who wish to believe that gay marriage is wrong are free to do so, including even Canadians attending a teacher’s college. But once they become teachers, if they bring those beliefs into the classroom, or act in a discriminatory manner in the performance of their jobs, then that crosses the line, and the B.C. College of Teachers’ would have the legal authority to discipline them. But, “absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C.,” said the court, “the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.”

Last week, leaning heavily on that Supreme Court decision, the Federation of Law Societies of Canada granted preliminary approval to TWU’s application for a law school. This newspaper, while strongly supportive of the freedom of religion of the university and its students, several months ago also urged TWU to slightly modify its admission principles to indicate that the university does not discriminate among applicants on the basis of sexual orientation, even while continuing to ask students to abstain from sex outside of marriage. It is not as if the school’s covenant is immutable; since 2001, the school has altered the language, including removing a formerly explicit prohibition of homosexuality.

Freedom of religion is one of the cornerstone freedoms. It is not always popular; it can involve defending an unpopular minority with unconventional ideas. Freedom of religion is part of the reason why this newspaper and others have condemned the Parti Québécois’s illiberal Charter of Values, which aims to prevent the public expression of religious identity. Freedom from catching a glimpse of somebody else’s religious symbols or headgear is not a liberal idea, or a Charter value, even if the religion is one you disagree with. Especially if the religion is one you disagree with. As the Supreme Court put it in 2001, “for better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.”