



## From our President, Phil Horgan

On September 28-29, Christian Elia and I attended a conference of the Fellowship of Catholic Scholars in Calgary, in which

retired Bishop Fred Henry provided the opening lecture. He made reference to a famous quotation from the late Cardinal Francis George of Chicago from 2010:

“I expect to die in bed, my successor will die in prison, and his successor will die a martyr in the public square. His successor will pick up the shards of a ruined society and slowly help rebuild civilization, as the Church has done so often in human history.”

Before he died, His Eminence took issue with whether the quotation was a dire prediction for the future: “You’d have to be an utter fool to say something like that as a statement about what’s going to happen next,” he said. “How the heck would I know?”

As it turns out, His Eminence may have been smarter than he let on.

On June 15 of this year, our Supreme Court released its decision in the Trinity Western appeals, which has served to upset what was understood as our previous understanding of our constitutional order, especially in respect of religious freedom. The majority 7-2 decision accepted the arguments of “civic totalism”, whereby loosely defined Charter “values” and the “public interest” were acceptable in trumping the “fundamental freedoms” of the Charter.

Eight of the nine justices found an infringement had occurred against the religious freedoms enjoyed by a Christian university in its application for the accreditation of its proposed law school. However, the majority accepted the position of the law societies not to provide such accreditation to a previously approved program, on the basis of perceived harm that would result to members of the LGBTQ+ community, arising from the university’s community covenant, and its expectation that students and staff maintain a biblical understanding of the place of sexual relations within a traditional marriage.

Just this past August, Trinity Western dropped its demand that students comply with the Community Covenant, an example of a Christian university suppressing its mainline Evangelical beliefs to a secularist apostasy imposed by the state.

Earlier, on January 31, Ontario’s Divisional Court accepted the mandate imposed by the College of Physicians and Surgeons of Ontario (CPSO) to force Ontario doctors to provide an “effective referral” to another service provider, in the event they did not wish to participate in morally objectionable medical services, such as assisted suicide. Speaking on behalf of the three-member panel, Mr. Justice Wilton-Siegel asserted that while an infringement of the religious rights of doctors was engaged, the CPSO limit on such rights, while not trivial, did not create a substantial infringement, even if it meant forcing a physician to change his or her practice choices. So much for a Christian physician who wishes to practice medicine in his or her preferred field!

This case is under appeal, with arguments scheduled to be heard in December, in which the CCRL has intervened once again.

Is it unreasonable to contemplate further oppression from the state, even to the extent of having to face incarceration in the pursuit of what were formerly understood as civil liberties?

Think of bubble zones to prevent peaceful protests outside abortion clinics, or hospitals, recently expanded into Alberta and Ontario. Such laws infringe on rights of assembly, association, and to religious and conscientious freedom.

Think of having to “check the box”, to acknowledge your support for an unfettered abortion licence, in order to qualify for summer jobs funding from the federal government.

These are all recent examples of developments for which the work of the CCRL requires your financial, or at a minimum, prayerful assistance.

Our work is made that much more difficult in a climate

of increased skepticism about the moral authority of the Church, arising from the cascade of reports issued in the past few months from sexual abuse, and failed disciplinary steps from dioceses around the world.

It can be overwhelming at times.

We operate on the principle that God will provide. Members of the board already serve on a volunteer basis. But we still require your assistance, especially given that our coffers are at an all-time low.

Give some thought to recommending the CCRL to a colleague who may not know of work. Perhaps you can arrange for further names and email addresses on the enclosed petition form.

Please be assured that we treat your donations with utmost respect in the work of our apostolate.

Can we count on you?

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## **CCRL Petition Against Demands for Ideological Conformity, “Just check the box!”**

The League has previously raised the issue of the new demand from the federal government to require an “attestation” or commitment from charities, non-profit organizations and small businesses applying for Canada Summer Jobs (CSJ) grants to affirm that the job and the organization’s core mandate respect and adhere to support for gender fluidity and support for abortion.

In January, we published the release, “The Trudeau Government – Abortion Absolutists – Imposes its Will over the Conscientious and Religious Freedoms of Canadians.”

When the federal employment minister said that it is no big deal to “just check the box”, even if you do believe that the preborn child is a human being worthy of protection in law, the CCRL responded with a petition against the attestation requirement.

Prime Minister Justin Trudeau has previously disallowed prolife candidates from running for the Liberal party. Earlier this year, he described objections to such attestation demands as a mere “kerfuffle”, and that Canadian groups who believed in the sanctity of human life are “not in line with where we are as a government and quite frankly where we are as a society.”

Mr. Trudeau was directly referring to observant Catholics and all prolife Canadians with those words.

So, what’s the big deal? Is checking a box really the end of our cherished freedoms?

People from Eastern Europe, China, and many other regions intimately know what the imposition of statist norms has meant. It was often the basis of their immigration to Canada, which was recognized as being a free country.

Those more inclined to watch a film should see Martin Scorsese's 2016 film "Silence", to learn of the oppression imposed on Jesuit missionaries in Japan in the 17th century. They were forced to denounce their faith, or see their congregations martyred.

One might consider St. Thomas More, martyr and patron saint of politicians, lawyers, and judges, who was executed for failing to comply with the King's demand to swear allegiance to his severance with the Catholic Church.

These examples are not far removed from the current government's demand to "just check the box", a soft totalitarianism. It is how convictions are eroded, or at least dumbed down. After all, it's so simple – by design – to affirm the State ideology of "inclusion" and "reproductive rights". Just check the box!

The CCRL has proposed a different response. We must dare to dissent. As Catholic Christians, we need to live within the truth. We have a far more profound understanding of the meaning of the human person, formed in the image and likeness of God. The effort of the federal government to impose the euphemism of "reproductive rights" or "inclusion", in opposition to

profound understandings of science and our Catholic faith, in order to secure a modest public benefit, is an outrageous diktat more suited to oppressive regimes.

We are called to dissent because we know what is true. Our faith has been purchased at a greater price than what the federal government sponsors with pieces of silver.

With this October 2018 newsletter, we are making a final push with our petition. Please sign the enclosed CCRL petition against the government's demands for ideological conformity and please return it in the self-addressed envelope, hopefully with the donation card, if you are able to contribute financially as well.

Please join us in telling Prime Minister Justin Trudeau that we will not check the box, we will not submit to a murderous ideology.

Please circulate the enclosed petition with family, friends, parishioners, and all those who support our work. Please place a postage stamp on the enclosed envelope and return it to us.

We will be registering all of the signed petitions by the end of the year.



## **Dr. Catherine Ferrier,** **Winner of CCRL's Exner Award**

The CCRL was pleased to announce that it had chosen Catholic physician Dr. Catherine Ferrier from Montreal as winner of this year's Archbishop Adam

Exner Award for Catholic Excellence in Public Life.

The award was presented at the CCRL's annual Spring Dinner on June 18 in Toronto, featuring a keynote address by Tanya Granic Allen, CCRL Ontario Director and President of Parents as First Educators (PAFE).

CCRL President Phil Horgan confirmed the League's selection:

Dr. Catherine Ferrier has used her talents and skills far beyond providing medical care to her patients, advancing studies in geriatrics, or teaching future doctors from her base in Montreal, or at McGill University. We recognize the tireless work of Dr. Ferrier in our modest way with the League's Exner Award and we thank her for her professional excellence.

Dr. Ferrier has been an active opponent to euthanasia since the mid 1990s.

From 2010, Dr. Ferrier has been active in the formation of Living with Dignity, an organization established to protect the life and the inherent and inalienable dignity of people who have become vulnerable through illness, old age, or disability.

In 2012, Dr. Ferrier was part of the original group of Quebec doctors to form the Physicians' Alliance against Euthanasia, to take on the challenge imposed by governments and lobbyists who sought to introduce and impose euthanasia into Quebec and Canadian society. She continues to serve as its President since 2014.

She continues to participate in leading roles in these organizations, which have no religious or political

affiliation, while remaining active within the Catholic community in Montreal, and the rest of Canada, through conferences, writing, and other engagements.

She has also served as the President of the Association Jérôme Lejeune des médecins catholiques de Montréal since 2008.

On receiving the Exner award, Dr. Ferrier said:

I am grateful to the CCRL for choosing me for the Archbishop Adam Exner award for Catholic excellence in public life. It gives well-deserved recognition to all my colleagues and friends in Quebec and across the country who have been working tirelessly to protect vulnerable Canadians from the euthanasia laws and to defend doctors' freedom of conscience. It is in their name that I accept the award.

### **About the Archbishop Exner Award**

The CCRL established the Archbishop Exner Award in 2004 to honour Archbishop Adam Exner, OMI, Archbishop Emeritus of Vancouver, upon his retirement and to recognize outstanding achievement in advocacy, education, life issues, media and culture, and philanthropy.

Previous recipients include:

Dr. Robert Walley, founder of MaterCare International (2017)

Alex Schadenberg, anti-euthanasia/assisted suicide activist (2016)

Dr. Donald DeMarco, scholar, writer, seminary professor, and pro-life activist (2015)

Gwen Landolt, long time national Vice-President of REAL Women of Canada, pro-life advocate, promoter of the family in national and international circles (2014)

Fr. Alphonse de Valk, CSB, pro-life activist, writer and editor (2013)

Michael D. O'Brien, artist and author, for creative work incorporating authentic Catholicism and Catholic teaching (2012)

Michael Coren, author and broadcaster, for his outspoken defense of Catholicism in media (2011)

Suzanne LaVallee of Quebec for leadership in education (2010)

The late Frank Chauvin of Windsor, Ontario, founder of Haiti's first orphanage for girls and initiator of an application for review of the process by which Henry Morgentaler was awarded the Order of Canada (2009)

Dr. and Mrs. Andrew and Joan Simone of Toronto, co-founders of Canadian Food for Children, for services to philanthropy and international aid (2008)

Campaign Life Coalition President Jim Hughes of Toronto for service to the pro-life movement (2007)

J. Fraser Field of Vancouver, founder of Catholic Educators' Resource Centre, for service to education (2006)

The late Regina business leader Frederick W. Hill for philanthropy and community service (2005)

# The CCRL Applauds Supreme Court Decision in Highwood Congregation v. Wall

The Catholic Civil Rights League applauds the May 31 unanimous ruling in the appeal of Highwood Congregation of Jehovah's Witnesses v. Randy Wall, as a strong statement in recognition of the independence of private religious institutions.

The CCRL intervened jointly with the Evangelical Fellowship of Canada (EFC), asserting that ecclesiastical decisions, including decisions over qualifications or determination of membership, or decisions on internal discipline, should not be subject to judicial oversight absent some other legal basis. Our brief submitted that secular courts are not qualified to make rulings on theological or ecclesiastical concerns. Moreover, it was submitted that the Charter was not applicable to private entities, or if the court found the Charter to apply, that the broad protection of freedom of religion in section 2(a) of the Charter should be found in favour of the congregation in this case.

The Supreme Court of Canada (SCC), in a unanimous 9-0 ruling, overturned the lower court's allowance of a judicial review claim of a Jehovah's Witness congregation's decision to "disfellow" Mr. Hughes over its assessment of his "sinful" behaviour.

Writing the judgment of the Court, Mr. Justice Malcolm Rowe stated at Para 12:

First, judicial review is reserved for state action. In this case, the Congregation's Judicial Committee was not exercising statutory authority. Second, there is no free-standing right to procedural fairness. Courts may only interfere to address the procedural fairness concerns related to the decisions of religious groups or other voluntary associations if legal rights are at stake. Third, even where review is available, the courts will consider only those issues that are justiciable. Issues of theology are not justiciable.

The decision clarified that private institutions are shielded from review of its internal decisions, in the absence of some underlying legal claim such as a property or contractual claim, even where there may be some "public" import. From Para 21:

The proposition that private decisions of a public body will not be subject to judicial review does not make the inverse true. Thus it does not follow that "public" decisions of a private body – in the sense that they have some broad import – will be reviewable. The relevant inquiry is whether the legality of state decision making is at issue.

Mr. Justice Rowe, with reference to the underlying Alberta Court of Appeal decision, reiterated some specific examples of what matters which were not appropriate for judicial intervention, at Para 35:

By way of example, the courts may not have the legitimacy to assist in resolving a dispute about the greatest hockey player of all time, about a bridge player who is left out of his regular weekly game night, or about a cousin who thinks she should have been invited to a wedding.

CCRL President and constitutional lawyer Philip Horgan commented:

Mr. Justice Rowe's reasons provide a strong statement on the limited role courts should have on reviewing internal decisions of private institutions, and in particular, ecclesiastical bodies. We are pleased with the court's analysis of the limited role for judicial review of such institutional decisions, and the further recognition that secular courts are not qualified to rule on theological or ecclesiastical concerns. Every private institution serves to benefit from this analysis, especially those with underlying religious conceptions.

Mr. Justice Rowe's reiteration of previous case law, to the effect that "courts have neither legitimacy nor institutional capacity to deal with" religious dogma (Para 36), is a helpful synopsis of the limits of courts in adjudicating ecclesiastical decisions.

Mr. Justice Rowe summarized his ruling, on behalf of the entire court, at Para 39:

In the end, religious groups are free to determine their own membership and rules; courts will not intervene in such matters save where it is necessary to resolve an underlying legal dispute.

While the League was happy with the 9-0 decision released in Wall, it was followed on June 15 with

the 7-2 decision in Trinity Western, where the same court came to a drastically different understanding of the right of a Christian university to impose its Code of Conduct on all members of a private educational institution.

A distinction appears to be drawn on the authority of a Church to impose its rules within its own membership, or as part of its ecclesiastical understanding, as opposed to a Christian educational institution, which is open to non-members of the religious community.

It appears that situations closer to the ecclesiastical community, or within recognized membership criteria, will enjoy a greater exercise of religious freedom in their self governance.

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## **Supreme Court Finds Religious Discrimination Against Trinity Western, Yet Still Refuses to Permit Accreditation of its Proposed Law School**

The CCRL notes the irony in the June 15 majority decision. A proposed Christian law school, with a stated emphasis to educate lawyers in the charitable and non-profit sectors, has been denied accreditation of its graduates by two provincial law societies. The court's ruling limits diversity of legal education options of a previously approved law school, by expanding the notion of a public interest test over enumerated grounds for religious freedom in the Charter.

And while 8 of 9 judges recognized an infringement of TWU's rights to religious freedom, the 7-2 majority found that the law societies were "justified" in making a "balanced" decision not to accredit the previously approved law school.

In effect, the Supreme Court has allowed the non-accreditation of a single proposed Christian law school, which proposed to add 60 new spaces for potential law students to gain entry to the profession, on the basis that it imposed an "inequitable barrier on entry to the profession", without explaining how any existing available law school spaces were affected.

The minority decision is highly critical of the majority. The decision of the law societies should have been focused on whether proposed graduates met competence and ethical standards, for which there was no issue. The reliance on a referendum to make decisions affecting constitutionally protected rights needed the further explanation or treatment by the law society benchers, which was not provided. Amorphous and undefined Charter "values" cannot be seen as overruling what two judges described as a profound interference with TWU's religious freedoms and contrary to the state's duty of religious neutrality. The decision of the law societies was substantively coercive in nature.

The broader implications of the SCC's decision will cast a pall on the future interface between religious viewpoints and state engagements in the public square. Questions will now be raised on continued or future access to state benefits, public funding, or government approvals of available programs.

While members of the majority expressed statements that their ruling was based on the importance of

the public perception of legal practitioners and the means to becoming a lawyer, this ruling will provide a launching pad for future attacks on the continued access of religious organizations to public benefits.

The case concerned TWU's institutional religious freedom and decisions by the provincial law societies in Ontario and British Columbia that voted not to accredit future TWU law school graduates.

In June 2012, TWU sought approval for its proposed law school with the joint Federation of the Law Societies of Canada and the BC Ministry of Advanced Education. Despite opposition from several sources, the Federation gave its approval in December 2013 on the basis that the proposal met the required academic qualifications, and further stated that there was "no public interest reason" to exclude future TWU law school graduates.

Most provincial law societies provided accreditation of the TWU program. However, three law societies, in Nova Scotia, British Columbia, and Ontario ultimately denied accreditation. Court challenges followed, ultimately leading to the Supreme Court hearings.

The point of contention from the law societies was the TWU Community Covenant, which required that students commit themselves to a set of behaviours, including a shared understanding that sexual relations be reserved to a man and woman within the confines of a biblical understanding of marriage, in accordance with the Evangelical Christian beliefs of the institution.

Numerous interveners participated in the cases at all levels. The CCRL and Faith and Freedom Alliance (FFA), in conjunction with the Archdiocese of Vancouver, submitted throughout its involvement in three provinces, and ultimately before the Supreme Court of Canada, of the importance, and recognition, of authentic pluralism, meaning that Canadian law and society is comprised of differing viewpoints, and dissentient views should not be excluded from participation in the public square. The proposed

TWU law school was an expression of such authentic pluralism, by providing a dedicated Christian approach to law and to the future practice of lawyers pursuant to shared faith commitments.

In summary, the 7-2 majority found that the concerns of the law societies on the public interest, and in particular, the concern over access to the legal profession, were justified in denying accreditation of future TWU law school graduates.

This court recently ruled that private institutions were not otherwise subject to the Charter (*Wall v. Highwood*). The difference here was TWU's sought accreditation from the various provincial law societies, which are delegated statutory authorities to self-regulate the profession.

In our view, this decision is a distressing example of same-sex and gender viewpoints trumping enumerated Charter rights.

In brief, we are seeing the continued diminished acceptance of religious viewpoints in the public square, in favour of a civic totalism, where dissenting viewpoints are pushed to the margins.

It remains to be seen whether TWU will seek to pursue its law school program on some different basis, or the response of B.C.'s government to the TWU law school going forward.

But the implications for religious freedoms, and for the status of religious institutions in accessing public benefits, has been seriously altered by this decision.

We have warned in the past that the position the court will take on Trinity Western will have serious implications on provincial education rights, the position of Catholic or private schools, or the status of religious charities.

During the hearings, the various law societies downplayed such concerns. However, it was made explicit in the submissions of certain activists, including the Canadian Bar Association, that the "logical implication" of refusing accreditation of TWU

was that religious charities would soon face future pressures to abandon religious positions in favour of the demands of gender, gay, lesbian, or trans activists, in order to retain the benefit of charitable status.

With the minority decision, we continue to maintain that our constitutional system recognizes differences of views, rather than imposing a majoritarian viewpoint when it comes to religion or religious institutions in the public square. The approach by the state actors in this case, being the Law Societies in Ontario and British Columbia, to deny accreditation of the proposed Trinity Western law school, or its future graduates, represents a denial of dissentient religious viewpoints.

As expressed by the 5-0 decision of the British Columbia Court of Appeal, a majoritarian, or civic totalist approach, is quite illiberal in its application.

The Supreme Court majority has stated otherwise by suggesting that the law societies here were “balanced” in their assessments.

We maintain that Trinity Western, or other religious institutions, such as the Catholic Church, are entitled to maintain their respective religious views, including positions on marriage and gender, and should not be the subject of prejudice, or exclusion of state benefits, for maintaining such views.

The implications for Catholics and Catholic institutions in the fields of education and healthcare are unknown. We must not be compelled to have our teachings suppressed as a requirement for participation in the public square. The further implications of this ruling need to be opposed.

### **Dear CCRL Supporters,**

Our coffers are at an all-time low. If your financial situation allows, please do make a donation by placing a stamp on the return envelope provided and enclosing the donation card along with a cheque or credit card information. We no longer operate on a membership model and you will not be contacted about membership renewal. Instead, we ask that you simply donate what you can when we make our appeals at certain points throughout the year. Even donating the reasonable amount of \$15 for seniors/students/clergy/religious will ensure that as a CCRL supporter you will receive in-print mailings in addition to what we offer all of our supporters electronically.

The enclosed donation card also allows you to set up a monthly pledge via credit card or direct withdrawal from a chequing or savings account. We would be particularly grateful if you were to consider an on-going monthly contribution. Our operating principle that God will provide is not incorrect, but it is stressful. We also know that the Lord helps those who work hard to help themselves and their neighbours. We are trying to do the former, please help us to continue doing the latter.

The CCRL also asks that you and your family and friends, fellow parishioners and all like minded people in your community sign the petition enclosed in this mailing. It too can be returned to us in the return envelope with or without the donor card and donation or pledge.

On behalf of our president Phil Horgan, executive director Christian Elia, and all of the CCRL board, thank you for your continued generosity and support.

Please direct all questions regarding donations, pledges, the petition or any other issue of interest to the CCRL to Christian Elia at [celia@ccrl.ca](mailto:celia@ccrl.ca) or (416) 466-8244, 1-844-722-CCRL (2275).



**The Catholic Civil Rights League** [www.ccrl.ca](http://www.ccrl.ca)  
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