

In Our Time

Michael Mulligan – law society special general meeting June 10, 2014

In our time, we are just coming out of a long dark history of wrongful discrimination on the basis of sexual orientation.

Some relief has come in our time, but we are not yet done rectifying this terrible injustice.

As with other struggles, such as against racism, we will not be able to rest on seeing some, even great, progress.

If we do not continue to stand up against ignorance & bigotry, they will take us back & the historical wrongs will be repeated.

In the case of discrimination on the basis of sexual orientation, we need to remember that our brothers & sisters, sons & daughters, neighbours & colleagues, fellow human beings have been:

- Bashed, blacklisted & blackmailed
- Denied dignity, fulfillment & opportunity
- Criminalized & condemned
- Persecuted & punished
- Shunned, shamed & stigmatized
- Required to hide their very essence
- Suffered unspeakably as one of the horrors of the holocaust

And here is another critical truth – much of this horrible history has been derived from or justified by religious references. In the present context, there is no moral – or legal – equivalency between religious freedom and the right to be free from discrimination on the basis of sexual orientation. One is about freedom of belief & dogma, even if rooted in ignorance & sometimes resulting in bigotry. The other is a right to be free from harm.

Some speak of the rule of law, precedent & stare decisis. This is not the same as the teachers' case. Much has happened in the years since that judgment – including wider recognition of what is necessary to progress against wrongful discrimination. Against the progressive flow is this request for us to take a step back & approve a discriminatory law school.

Our law society mandate, to decide whether or not to approve a law school, is different than the legal framework in the teachers' case. The key word in the pertinent rule for us is 'approve'. We are mandated to consider the public interest, and in so doing, ensure the honour of the profession while protecting the rights and freedoms of all persons. As a matter of both legal obligation, and high principle, we need to refuse to 'approve' TWU, so long as it engages in wrongful discrimination. We are not just dealing with academic qualifications & curriculum. This is something much more important.

While TWU is desperate to claim that we are here to consider an application by a future student for admission, by reference to their religious beliefs, that is simply not the case. We need not speculate about future conduct. Beliefs are not the concern. Our concern is with the conduct of the university, as an institution, and not the religious views of the faculty or students. Our task is to assess the conduct of the university in order to determine if its approval would further the objects and duties of the law society. On that score there is no need for speculation and the answer is no.

In addition, as we all know, past judgments are sometimes seen as distinguishable. Previous interpretations & legal doctrines are developed and refined. Once in a while, they are even found to be wrong & abandoned. 'Separate, but equal' is no longer accepted and women are now 'persons'.

As recently as 1967, the supreme court of Canada upheld a life sentence for a man convicted of four counts of gross indecency: engaging in consensual sexual activity with other men.

We are not an inferior court trying to apply a decision from another time. Our task is to act reasonably, in accordance with our statutory mandate, and the charter. If called upon to defend our decision in court we will do so.

TWU is seeking our stamp of approval for a notional discriminatory banner to be hung on a new law school. Courts & legislatures will probably get to speak again on our issue. Today, we get to say where we stand. That stand will be one of the many influences on social, political & legal development. Let's refuse to step back in the continuing difficult fight for human dignity & civil rights. Let's refuse to approve what we know is wrong in our time.