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**CANADIAN CHARTER OF RIGHTS
ANNOTATED**

**Dunn • Bernstein
Greenspan • Laskin**

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In this Update

Legislative updates including:

- The Ontario Superior Court, in *R. v. Safieh*, 2018 ONSC 4468, found the mandatory minimum five-year sentence in s. 286.3(2) of the *Criminal Code* for procuring underage female for sex, violated s. 12 of the Charter and was not saved by s. 1. The provision was declared of no force of effect under s. 52 of the *Constitution Act, 1982*.

New cases including:

- In *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, the Supreme Court of Canada held that a law society

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proportionately balanced Charter rights with statutory objectives in deciding not to approve a proposed law school that required students to sign a covenant stating they will abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman”.

- The Supreme Court in *R. v. Brassington*, 2018 SCC 37, ruled that police cannot disclose information to their lawyers for their own defence to criminal charges that might identify an informant without bringing an innocence at stake application.
- The Supreme Court of Canada held in *Groia v. Law Society of Upper Canada*, 2018 SCC 27, that professionally disciplining a lawyer for erroneous but good faith in-court statements alleging another lawyer’s misconduct does not proportionately balance statutory objectives with s. 2(b).
- In *McKitty v. Hayani*, 2018 ONSC 4015, the Ontario Superior Court of Justice refused to strike an application because of lack of standing, despite the person claiming the Charter rights having been declared dead by neurologic criteria. The court also held that the common law definition of death does not violate the Charter value protecting religious belief in the soul.
- In *Miller c. Mohawk Council of Kahnawà:ke*, 2018 QCCS 1784, the Superior Court of Québec held that a law requiring members of the Mohawk Nation of Kahnawà:ke who marry a non-indigenous person to leave the Kahnawà:ke Reserve infringed s. 15 and could not be justified under s. 1.