In Support of TWU Law School

Justine Clark

From:

j pet Friday, February 28, 2014 3:39 PM Submissions Sent:

To: Subject: Attachments: TWU Submission

Law Society of BC- TWU submission.pdf

Follow up Completed Follow Up Flag: Flag Status:

To the executive director,

Please see the attached submission.

William

Executive Director
The Law Society of BC
845 Cambie Street,
Vancouver, BC, V6B 4Z9

To whom it may concern:

Re: Trinity Western University Law School Accreditation

In making your decision on whether to deny TWU from being an accredited school, I urge you to consider the following points.

THE LAW SOCIETY'S ROLE

I have concerns over the Law Society's mandate. The call for submissions states: "The Law Society's rules provide that the Benchers have the final say in whether any faculty of law is an approved faculty of law for the purpose of meeting the <u>academic qualification requirement</u> of the Law Society's admission process." Based on the press, and from what I can gather, the real issue for this public hearing is TWU's code of conduct, which is not mentioned in the call for submissions.

It seems to me that TWU's code of conduct has nothing to do with <u>academic qualifications</u> and is an irrelevant consideration that falls outside the Law Society's statutory mandate. The code of conduct applies to all individuals who attend TWU. Its sex-related regulations apply to same-sex couples, but also apply to heterosexual singles, polyamorists, and common-law couples. GLBTQ individuals are not singled out.

I don't agree with TWU imposing such a code of conduct on law students. But it is TWU's right to do so. In my mind, the code of conduct does not produce discrimination in students. TWU has already had 12 years in graduating teachers without any incident. I have met many graduates from TWU, including some who are gay. I have found them to surprisingly open minded, thoughtful, critical thinking, and engaging. I have never encountered any among them who have been disrespectful or discriminatory to GLBTQ individuals. So why would the Law Society deny TWU the ability to teach law?

It is difficult to know what issue is weighing on the bencher's minds given the vague call for submissions. This lack of clarity makes the process unfair. If the Law Society wishes to make a decision, it should allow the public to have input on what the Law Society is proposing. Is it TWU's code of conduct? Is it something in their proposal? Does it concern TWU's ability to teach the law adequately? The call for submissions does not say.

THE LAW SCHOOL'S ROLE

The concern that TWU will not be able to adequately teach equality law in the law school does not ring true. This is like saying a secular university cannot teach about religion. In fact, lawyers frequently make arguments they don't personally agree with. Lawyers represent clients who break the laws that everyone must uphold. In fact, professors routinely do teach cases, laws, and subjects they do not agree with. It does not mean they cannot do an adequate job at it. If the Law Society is truly concerned about this issue, they can put questions related to this in its PLTC bar admission test.

DENYING TWU

If the Law Society were to deny accreditation to TWU on the basis of its code of conduct, it creates a number of significant problems:

- o The Law Society may be considering denying TWU on a "public interest" basis. However, the BCCT denied TWU its accreditation on this exact basis and lost at the Supreme Court of Canada. Its conclusion is directly applicable: "In considering the religious precepts of TWU **instead of the actual impact of these beliefs on the public school environment**, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly." (*TWU v. BCCT*, 2001 SCC 31 at para. 43)
- TWU grads are already lawyers, teachers, doctors, politicians, businessmen, etc. I cannot see what valid public interest justification there could be as to why TWU law grads cannot be lawyers in BC moving forward.
- o TWU as a private institution may ignore "Charter values" of equality in its code of conduct; but the Law Society should not ignore directly binding caselaw (TWU v. BCCT, 2001 SCC 31) and the Charter in recognizing TWU's religious freedom. What TWU is doing is legally permissible, but the Law Society defying binding the law is unconscionable and sets a bad

example. The Law Society's mandate includes "preserving and protecting the rights and freedoms of all persons" (*Legal Profession Act* (SBC 1998 c. 9) s. 3). Should this not include TWU's religious rights and freedoms it is legally exercising in its code of conduct?

- o The Law Society would be punishing TWU based on exercising its right to have a code of conduct; the code of conduct is totally irrelevant to the practice of law. Justice Rand of the Supreme Court of Canada in *Roncarelli v. Duplessis* said that: "To deny or revoke a permit because a citizen exercises an unchallengeable right totally irrelevant to the sale of liquor in a restaurant is equally beyond the scope of the discretion conferred." TWU's right to impose a code of conduct is similarly totally irrelevant if the Law Society denied accrediting TWU on this basis.
- o TWU would discriminate by prohibiting behaviour; the Law Society would discriminate by prohibiting an entire institution and law graduates for holding certain minority religious beliefs. In not accrediting TWU, the Law Society is effectively punishing individuals because of their association with TWU. It previously tried to do so when it prevented British citizens from practicing law in BC. The Law Society lost (*Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143). What the Law Society did then is similar to what they would be doing now. Such behaviour was condemned:
 - . . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to the personal characteristics of the individual or group which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classified.
- o The Law Society would not be treating TWU equally. If the Law Society would treat TWU equally, it would set up public hearings and investigations for every single law school recognized by the Federation of Law Societies that has a similar code of conduct. Further, should current lawyers who come from such schools be disbarred? Equal treatment means current

practicing BC lawyers from Pepperdine, Brigham Young, Baylor, Notre Dame, Catholic University of America, etc. should be disbarred because their law school is contrary to the public interest? If so, this is highly troubling.

- The Law Society may be going down a slippery road. If the Law Society prohibits TWU law grads from the bar as contrary to the public interest, then why not those who went to a Christian, Catholic, Jewish, Muslim high school? Or those that belong to church, synagogue, or a mosque? Each of them has similar "codes of conduct" for attendees as TWU. Will it soon be in the public interest to deny them admission to the law society? This is why denying TWU accreditation is concerning. It signals that religious individuals are not eligible for participation in public life because of their association with religious institutions that hold a minority view on moral matters.
- o The Law Society would not be treating TWU law grads equally with law graduates from other provinces. Many provincial law societies, including Alberta and Saskatchewan, will recognize TWU law grads. This means that TWU grads can be admitted in BC under mobility agreements, but only if they pass the bar in Alberta, for example. This is discriminatory and contrary to those agreements.

I hope you carefully consider these matters when you consider your decision.

William J. Afham

Justine Clark

From: L. John Alexander [Alexander@coxtaylor.ca]
Sent: Thursday, February 13, 2014 4:25 PM

To: ea@cbabc.org; Submissions

Subject: Trinity Western University and CBA resolution regarding discrimination

Follow Up Flag: Follow up Completed

It seems to me TWU has always offered those persons with certain moral beliefs the opportunity to attend a post-secondary and graduate learning institution in an environment, and with an approach to learning, that reflects their beliefs. It also seems to me that no person has ever been forced to attend TWU, nor has TWU been the only place to obtain certain course programs. Law school programs are a good example. I believe there are 3 other universities offering 3 alternative approaches to legal education. Uvic for instance offers a co-op program that some may not prefer, but they do not have to attend Uvic.

While I know very little about TWU, or the details of the commitments they seek from students who wish to attend, I suspect it is similar to expectations of some other independent schools at other education levels. Catholic high schools for instance. It may be that some people who come up through those streams want to continue in similar institutions. It may be they have beliefs that the CBA membership, or the Benchers do not accept. I suspect like all groups in our communities, there are more than a few lawyers who harbour beliefs that the Benchers do not accept.

Is the TWU approach to seeking people with certain beliefs, or refusing people without those beliefs discrimination? Perhaps, but it is not unlawful discrimination, as the Supreme Court of Canda found in the similar case, dealing with teacher certification.

IACOBUCCI and BASTARACHE JJ said:

"To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality."

They also said:

"Instead, the proper place to draw the line in cases like the one at bar is generally between belief and **conduct**. The freedom to hold beliefs is broader than the freedom to act on them.",

And:

"Acting on those beliefs, however, is a very different matter. If a teacher in the public school system **engages in** discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT"

The Law Society, like the BCCT, is the only route to lawyering in this province. One cannot elect to join the "Catholic Law Society", or the "Buddhist Lawyers Federation".

In my view the proposed resolution of the CBA, an organization that I have belonged to for over 30 years, would be demonstrating the very discrimination it seeks to stamp out, if it were to say that people with certain beliefs cannot be lawyers.

The Law Society in turn would likely be discriminating unlawfully if it were to refuse to accept a properly trained graduate of TWU, for no other reason than some evidence that they may have pledged themselves to respect beliefs they truly hold. Isn't this just like the old case where admission was refused to a student who was shown to have been a member of the communist party at one time?

If, as was said in the Teachers college case, a lawyer, prospective, or admitted, behaves in a discriminatory fashion, that is what discipline is for. Otherwise, the Law Society going to become a reviewer of beliefs, and a gatekeeper as against groups, instead of persons.

I suggest that the proposed resolution of the CBA is unnecessary. I suggest the consideration of this aspect of the TWU education by the Law Society is wrong. If the course curriculum meets requirements, the focus shifts to the suitability of the individual. That is where these considerations lie. Just keep high standards for all individual applicants, nothing more, nothing less.

Thanks.

L. John Alexander Cox Taylor

26 Bastion Sq. Victoria B.C. CANADA V8W 1H9 Phone 250-388-4457, fax 250-382-4236

Justine Clark

From: Peter Anderson [panderson@boughtonlaw.com]
Sent: Wednesday, February 12, 2014 9:40 AM

To: ea@cbabc.org
Cc: Submissions

Subject: CBA resolution - Trinity Western University School of Law

Attachments: CBA Letter (TWU School of Law).pdf

Follow Up Flag: Follow up Flag Status: Flagged

February 12, 2014

Dean A. Crawford (<u>ea@cbabc.org</u>)
President, Canadian Bar Association (BC Branch)

Dear Dean:

Re: Trinity Western University ("TWU") School of Law

Further to your Message from the President yesterday regarding the proposed CBA resolution against the TWU School of Law, I attach a <u>personal</u> response to your message.

The views and opinions expressed in the attached letter are solely mine, and do not necessarily represent the views and opinions of my colleagues in my firm or the firm itself.

Yours very truly,

Peter J. Anderson

cc. submissions@lsbc.org

February 12, 2014

Dean A. Crawford (ea@cbabc.org)
President, Canadian Bar Association (BC Branch)

Dear Dean:

Re: Trinity Western University ("TWU") School of Law

Thank-you for your Message from the President yesterday regarding the proposed CBA resolution against the TWU School of Law. At the outset, please accept my apology for the somewhat rough nature of my letter. I don't claim to have the eloquence of "men or angels", and many of my colleagues could write much more well-reasoned responses than I. However, I've been drafting real estate contracts for nearly 30 years, and I hope I've learned the ability to say things clearly, if perhaps a bit bluntly.

First off, thank you for providing this opportunity to respond. I've been aware of the whirlwind of discussion surrounding the TWU School of Law, but other than contacting my bencher, I didn't know who to write to.

After reading your message, I decided to have a look at the TWU community covenant (the "Covenant"). It is unfortunate that, while your message contained a link to the proposed CBA resolution, it did <u>not</u> contain a link to the Covenant. After all, the resolution is a reaction to this Covenant. Shouldn't it have been quoted or at least referenced somewhere in your message?

The "Community Life at TWU" portion of the Covenant appears to be what has drawn the ire of the CBA Non-Discrimination in Legal Education ("NDLE") group. And in reading it over, quite frankly, I do not understand their reaction. If I may quote the covenant at length (I assume you've read it, but I'm not sure that the others reading this letter will have done so), it states the following:

3. Community Life at TWU

The TWU community covenant involves a commitment on the part of all members to embody attitudes and to practise actions identified in the Bible as virtues, and to avoid those portrayed as destructive. Members of the TWU community, therefore, commit themselves to:

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity
- communicate in ways that build others up, according to their needs, for the benefit
 of all
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society
- observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce

- exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others
- encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another.

In keeping with biblical and TWU ideals, community members voluntarily abstain from the following actions:

- communication that is destructive to TWU community life and inter–personal relationships, including gossip, slander, vulgar/obscene language, and prejudice
- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others
- sexual intimacy that violates the sacredness of marriage between a man and a woman
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event.

Now, apart from the current mayor of a major Canadian city, who (according to the media) feels that we should all engage in many of the negative behaviours set out above on a regular basis, this looks to me like a very sensible, gracious and community oriented covenant for young people on the road to advanced education. Although various persons' lifestyles might conflict with these terms, members of the community are being asked to <u>voluntarily abstain</u> from these behaviours <u>while attending TWU</u>, in order to be part of a larger community.

The NDLE is focusing in on *one single phrase* in this section of the Covenant, namely the phrase "sexual intimacy that violates the sacredness of marriage <u>between a man and a woman</u>". So far as I can determine, this is the only ground of discrimination which the NDLE objects to. At least, that is the issue which I have seen raised on several occasions. There is no one championing the cause of the liar, the cheater, the plagiarizer or the thief. Let alone those who wish to use (or abuse) tobacco, alcohol, drugs or other substances. It all comes down to sexual orientation, which the NDLE (as stated in their resolution) considers to be "integral to and inseparable from identity". In doing so, they assume that religious belief is, first, subordinate to sexual drive, desire and orientation (something any first year theology student would argue is contrary to religious belief in the first place) and second, can be set aside at will (to be picked up later on at a convenient time).

In my view, the Covenant comes down to the opening statement: that the members of TWU's community will embody attitudes and practice actions identified in the Bible as virtues, and avoid those portrayed as destructive. The Covenant does not ask members to agree with these attitudes and actions, simply to embody and practice them while attending TWU. This is one of the steps involved in building a community. Further, I believe that if a single "plank" of this Covenant were to be removed, the Covenant would cease to have any internal validity. It would no longer be a Bible based covenant, but would become a watered down, doctrinally challenged, statement.

Having considered at the Covenant in greater detail (something which has been lacking from the discussion I've read to date), let me respond briefly to the position apparently taken by

NDLE. To paraphrase McLachlin C.J. (as she then was) in <u>British Columbia College of Teachers</u> v. <u>Trinity Western University</u> (2001 SCC 31), "absent concrete evidence that training [lawyers] at TWU fosters discrimination in the [courts] of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected". Wiser legal heads than mine have probably poured over this statement trying to find a reason why TWU should be able to train teachers but not lawyers. However, as McLachlin C.J. (as she then was) went on to say, "The evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct". In short, the Supreme Court of Canada's position was, wait for graduation and see if there is evidence that training at TWU leads to an intolerant, discriminatory world view. The Supreme Court of Canada found no such evidence in the case of the teachers.

In 2001, TWU had already been "graduating" teachers for some time. However, up to that time the students spent their 5th year at Simon Fraser University ("SFU"). TWU was simply seeking the right to graduate teachers directly from its campus, without the need for a 5th year at SFU. The problem facing those challenging TWU in 2001 was that there were teachers in the system with 4 years of TWU instruction, who showed no sign of discrimination or prejudice in the performance of their duties. With respect, NDLE's approach in this case is to try to stop the TWU School of Law from ever coming into existence, so that it does not have to deal with the fact that TWU graduates are not the intolerant people they are portrayed to be. As a result, NDLE's approach is, in my view, itself intolerant and biased, in that it assumes that any law students graduated from TWU School of Law will be intolerant toward persons with differing sexual orientation. In effect, the NDLE resolution is trying to put the clock back to before the 2001 Supreme Court of Canada decision, and prevent a school from starting by determining in advance that its graduates will be ineligible to practice law anywhere in Canada.

In my view, this goes beyond simple discrimination, and borders on **religious persecution**. If NDLE's resolution is passed, students of TWU School of Law will be punished (persecuted) on the basis of the Christian faith-based Covenant they agreed to adhere to during their time as a student of TWU. The decision will not be based on the students' training or education. Nor will it be based on their personal beliefs or personal world view (the Covenant speaks to actions and attitudes, not beliefs). Above all, it will not be based on their ability to fulfill the duties of a barrister and solicitor in the Province of B.C.

I strongly oppose NDLE's resolution. I cannot in good conscience support any organization - including CBA - which takes such an intolerant and biased position. Nor can I support any law society in Canada which would endorse such a resolution, to the extent of preventing duly qualified graduates from TWU School of Law from entering the bar admission program of such province.

Yours very truly,

Peter J. Anderson Called to the BC Bar 1985

CC.

submissions@lsbc.org

Justine Clark

From: A G

Sent: Saturday, March 01, 2014 10:18 AM

To: Submissions

Subject: Support for Trinity Western University

Follow Up Flag: Follow up Completed

I support Trinity Western University in their effort and plan to put up a law school founded on biblical teachings. We have to remember that because of biblical teachings the poor are being cared for and defended in places that the secular people will not even set foot in.

To deny TWU a law school or their graduates to practice on the basis that they uphold the definition of marriage as between a man and a woman infringes on freedom of a person to follow the teachings of their faith and their freedom of thought and expression. It is tantamount to persecution and violation of human rights. Canada is multi-cultural and multi-faith country. We cannot have one group of people, who hold a different view on marriage, dictate how we practice our faith.

Christian school graduates and communities have helped many people on the margins of society. When Typhoon Haiyan/Yolanda destroyed Tacloban, Philippines, the first people and groups on the ground were Christians. This was the same case when Typhoon Sendong struck another place in that country.

TWU's graduates will contribute a lot toward defending the poor and oppressed. We should not get stuck on one lightning-rod issue and forget that there are other needs in this world that TWU law graduates can ably meet.

Please allow them to have a law school and practice.

Annie

Justine Clark

From: JLM.

Sent: Saturday, March 01, 2014 12:38 AM

To: Submissions

Subject: Accreditation of Trinity Western University School of Law

Follow Up Flag: Follow up Completed

Dear Benchers,

Re: Accreditation of Trinity Western University School of Law

It is with great concern that I write to you regarding Trinity Western University's School of Law. The faculty and student associations at my law school have submitted statements opposing TWU's law school. These statements do not reflect my position on the issue, and for this reason, I write to you voicing my full support of TWU and the accreditation of its law school.

This issue, unsurprisingly, has been a contentiously debated matter on campus. While I understand the concerns held by those who oppose TWU, I believe the nature of such opposition demonstrates the very kind of intolerance TWU is being unfairly accused of. By rejecting the approval given to TWU by the Federation of Law Societies of Canada and BC government, the Law Society will effectively send a message to Canadians of faith that we are not fully welcomed in the legal community.

I have heard arguments suggesting graduates from TWU will be unable to practice law in a manner that accords with the laws and equality standards of Canada. I strongly disagree with this premise. The Federation accepted evidence from TWU which promises to uphold its duty to teach equality and non-discrimination in its courses, and found no evidence to suggest that TWU will be incapable of teaching students about their obligations as legal professionals. TWU's Community Covenant is rooted in Biblical teachings, which includes the call for Christians to demonstrate love and respect for all people. I have been a practicing Christian for over twenty years, and know my religiously informed values and beliefs will enhance, not impair my ability to fulfill my legal duties in the future.

I have also heard arguments opposing TWU's School of Law because of the Community Covenant's potential effect on LGBT applicants. The Community Covenant was upheld by the Supreme Court of Canada in *BC College of Teachers*, and TWU has repeatedly stated that it does not admit nor reject students on the basis of sexual orientation. LGBT students do attend TWU. Does this mean future TWU law graduates who are also members of the LGBT community will not be recognized by the Law Society because of this proposed blanket ban?

Equality is of fundamental importance in Canada, and even more so in a profession built on protecting equal rights. Members of the LGBT community deserve nothing less than to be treated as equal citizens of Canada, as human beings. Members of faith-based communities deserve this same treatment. It is frightening to think that law school graduates could be refused from being admitted to the bar, not because of academic short comings, but because they have attended a school that has aligned itself with unpopular beliefs. The effect of the Law Society's decision, should it decide to reject the Federation's approval of TWU, is to suggest that people who hold religious beliefs are not welcomed in the legal community unless we conform to the beliefs of the majority. I am deeply concerned about what this might mean for religious students like me, who hope to

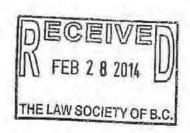
join the legal community. This concern is the reason I have chosen to submit this statement anonymously.

Balancing freedom of equality and freedom of religion is an important but difficult task, so I thank you for the opportunity to share my concerns and my views on TWU's law school. I respectfully urge the Benchers to make the decision fairly, based not on personal feelings, but on TWU's ability to meet the academic requirements for a faculty of law. I ask the Benchers to accept the Federation's approval, and give accreditation to future TWU law graduates.

Respectfully,

Anonymous





February 25, 2014

Mr. Timothy E. McGee, QC, Chief Executive Office and Executive Director The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mr. McGee:

I write today to address the opposition being faced by Trinity Western University in its efforts to establish a Law School. The hostility the School is facing, based solely on the statement of community standards that TWU requires that its students pledge to observe, although not necessarily agree with, is of great concern to me.

The Catholic Bishops of Canada recently released a 12-page pastoral letter entitled *Freedom of Conscience and Religion*. We wrote the letter for two reasons:

- because of our conviction that religious believers and their communities and projects can enrich society with their innumerable contributions to culture, political and economic life, health care and education; and
- 2) out of a growing sense that people of religious faith were finding themselves in difficult situations where they may be pressured to act against their religious faith or consciences.

We noted a disturbing trend of threats, around the world and here in Canada, where individuals' freedom of conscience and religion is being threatened with bias, prejudice, hate propaganda, discrimination and persecution. Our Letter noted that attempts to limit expressions of religious faith to places of worship and certain areas of social justice represent a serious curtailment of a guaranteed right which necessarily entails aspects of public manifestation.

Canada's courts have consistently upheld this right, despite attempts to advance the concept of a "secular" society as being "free of religion." In R v. Big M Drug Mart Ltd., (1985) 1 S.C.R. 295., the first decision of the Supreme Court of Canada dealing with the Freedom of Conscience and Religion, Chief Justice Dickson stated: "The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination."

True pluralism in Canada, as the courts have recognized, must allow religion to operate freely in our democratic society, rather than giving a preferred place to the convictions of non-religious believers and driving religious believers into the private sphere.

With the Supreme Court of Canada, I believe that Canada should have a "religiously inclusive" public sphere. While a religiously informed conscience should not be accorded any privilege, neither should it be placed under a disability. Canada is a diverse society and this means the co-existence of different spheres of belief in the public sphere as well.

When Trinity Western University was denied full accreditation from the B.C. College of Teachers, over a decade ago, for its teacher-training program because of "discriminatory practices that are contrary to the public interest and public policy," the B.C. Supreme Court, the Court of Appeal, and later the Supreme Court of Canada, ruled in favour of Trinity Western University, stating that there was no evidence for "the concern that graduates of TWU will act in a detrimental fashion in the classroom."

In Chamberlain v. The Board of Trustees of School District #36 (Surrey), Mackenzie JA, speaking for a unanimous Appeal Court, held that "the division of moral conviction on (same-sex relationships) cuts across society and divides religious communities as well as people of no religious persuasion." In essence, the courts have rejected any notion that the beliefs of one group, such as gays and lesbians, have superior or trump value compared to the beliefs of other

citizens. This is as it should be in a society where different spheres of belief must co-exist in a free and democratic society.

I urge you to consider the worrisome ramifications of a society where religious freedom becomes increasingly restricted, and I respectfully ask you to affirm a commitment to the rights of freedom of conscience and religious liberty of the future graduates of TWU's proposed Law School.

With cordial best wishes, I am

Sincerely yours,

+ J. Michael Miller CSB

Archbishop of Vancouver

Justine Clark

From: Thomas Attieh

Sent: Saturday, March 01, 2014 9:31 AM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

Hi there,

My submission is simply to say that I believe it is proper for TWU to have a Law School. It is my opinion that it is equally right for those graduates to practice law in B.C. just like the Canadian Federation of Law Societies declared. The question of legitimacy of whether TWU ought to be included in the group of Law Schools or if those who were trained there should be given permission to practice in BC is to me a a misappropriated question. I have to wonder if the desire to block TWU and its law school graduates is punitive and completely the opposite of neutrality or innocent until proven guilty.

Thanks

Tom Attieh

Justine Clark

From: Ms. Lindsay M. Lyster [lindsaylyster@unionlawyers.com]

Sunday, March 02, 2014 6:59 PM Sent:

Submissions To:

Subject: Submission of the BCCLA to the Law Society in respect of TWU's application for accreditation Attachments:

2014.03.02 - Submission to Law Society re TWU.pdf; ATT00001.htm; BCCLA letter to

Federation of Law Societies.pdf; ATT00002.htm

Follow Up Flag: Follow up Completed Flag Status:

Categories: **Red Category**

Dear Sirs/Mesdames,

I attach the submission of the British Columbia Law Society to the Benchers in respect of Trinity Western University's application for accreditation. Please contact me should there be any difficulties with receiving this email or should you require anything further.

Regards,

Lindsay M. Lyster President, BCCLA



Lindsay M. Lyster President president@bccla.org

March 2, 2014

By email to submissions@lsbc.org

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The Law Society of BC 845 Cambie Street, Vancouver, BC, V6B 4Z9 Attention: Tim McGee, Executive Director

Dear Mr. McGee:

Re: Trinity Western University School of Law Proposal

I write in my capacity as President of the British Columbia Civil Liberties Association (the "BCCLA"), in response to the January 24, 2014 news posting on the Law Society of British Columbia website inviting submissions to be presented before March 3, 2014 for consideration by the Benchers at their April 2014 meeting in relation to the application of Trinity Western University ("TWU") for approval as a faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

The BC Civil Liberties Association ("BCCLA") was established in 1962, and is Canada's oldest and most active civil liberties organization. Our mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. We are an independent, non-partisan charity.

In making this submission to the Benchers, the BCCLA takes the position that TWU's status as a private, faith-based institution, and more specifically, the Community Covenant which members of the

TWU community agree to abide by, ought not to stand in the way of TWU's accreditation nor the right of its graduates to become members of the Law Society of BC.

Page 2/11

The Federation of Canadian Law Societies (the "Federation") has already approved TWU's application and the British Columbia Ministry of Advanced Education has granted TWU the right to grant law degrees, and in doing so have approved the academic standards and curriculum of TWU's proposed law school. The only apparent basis upon which the Law Society could now deny TWU accreditation would be that their voluntary adherence to the Community Covenant while attending TWU somehow renders its graduates unfit to practice law. The BCCLA submits that, as a matter of binding legal precedent and fundamental constitutional principle, the Law Society of BC must not adopt any resolution that would deny TWU accreditation and its graduates entry into the profession of law on such a discriminatory basis.

To adopt such a resolution would be to discriminate against TWU, its faculty and students, on the basis of their conscientiously held religious beliefs, and to deny them their freedom to associate, on the terms they choose to associate, in accordance with their freedom of religion.

TWU is a private religious educational institution that has proposed to open a new law school and is seeking formal accreditation from the Law Society. As stated in the Law Society's news release:

In December 2013, the Federation of Law Societies of Canada announced the Canadian Common Law Program Approval Committee had completed its work and decided to grant TWU preliminary approval of its proposed law school program. Shortly thereafter, the BC Ministry of Advanced Education authorized TWU the right to grant law degrees.

The question now is whether the Law Society of BC will exercise its authority under Rule 2-27(4.1) to declare that TWU's faculty of law is not or has ceased to be an approved faculty of law.

The BCCLA wrote to the Federation in January 2013 while it was considering its decision. We made a number of arguments that were directly in response to a submission by the Canadian Council of Law Deans. In sum, we took the position that any decision to grant or deny TWU's bid to have a law school accredited must be considered properly on its merits, and not be rejected on grounds that would violate the freedom of religion and freedom of association of the school's community. A copy of that letter is attached to this submission for your reference.

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The BCCLA

At the outset, we wish to provide some background about our Association and the perspective we bring to bear on the issue now before the Benchers.

The BCCLA has long fought against discrimination on the basis of sexual orientation, including in multiple court cases. This includes our acting as co-plaintiffs in *Little Sisters Book and Art Emporium v. Canada* to protect the rights of the LGBT community from discrimination by Canada Customs agents targeting shipments to bookstores catering to the community, and intervening in *Chamberlain v. Surrey School District No. 36* to support the principle of the public school system remaining secular and to ensure that respectful education of students concerning same-sex relationships was achieved. It is the BCCLA's deeply held conviction that queer rights are human rights.

Of course, we intervened as well in *Trinity Western University v*. *British Columbia College of Teachers* ("*Trinity Western University*"), where the issue was whether TWU, as a private, religious-based university, should be denied accreditation for its educational degree program. In that case, as now, we took the position that TWU's Community Covenant should not disqualify its professional programs from accreditation nor bar its students from entry into our self-regulated professions.

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In each of these and the many other cases we have been involved with, we have sought to maintain a consistent theme of protecting the rights and freedoms of individual Canadians and safeguarding the pluralistic and diverse nature of Canada. We see those rights and freedoms as both grounded in a profound respect for the dignity of the individual and each individual's inviolable right to choose for themselves how to live, subject only to proven harms to others. It is this respect for human dignity and the right of each person to choose for themselves how to live in accordance with their conception of the good life which enables the BCCLA to both advocate for equality rights for GLBTQ people and to defend the equality rights and fundamental freedoms of those who may not share all of our views.

Given the BCCLA's commitment to both equality and civil liberties, we are well-versed in the challenges that may arise when it appears that rights and freedoms collide. We are convinced that one group's right to equality and non-discrimination cannot be bought at the price of intolerance for the fundamental freedoms of others. As Chief Justice Dickson said in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the *Charter*. Freedom must surely be grounded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or Page 5/11

the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority". (paragraphs 94-96)

Those words, written in 1985 in the infancy of our *Charter* jurisprudence, remain true today, and in our respectful submission, must guide the Benchers in their present deliberations.

Discussion

As civil libertarians, we value the fundamental freedoms of people to come together with like-minded persons to express and seek to further their conscientiously held beliefs. That's what s. 2 of the *Canadian Charter of Rights and Freedoms* is all about, protecting our freedoms of association, of assembly, of belief and of expression.

Those freedoms were called "fundamental" by the framers of the *Charter* for a reason – without them, we would have no right to hold or express our conscientiously held beliefs, religious or not, or to join with

others, whether to worship, to educate, to celebrate, to create art, for mutual support, or to work for political, social or economic change. Indeed, the freedom to join together in accordance with our beliefs with those who share our beliefs, on the terms we choose, is vital, not least for equality-seeking groups. That freedom is essential to the ability of the marginalized, the powerless, and the vulnerable to act collectively to challenge unjust laws, practices and institutions.

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The Law Society is mandated by statute to regulate the legal profession of BC in accordance with the public interest. In the exercise of these responsibilities, the Law Society is bound by the *Canadian Charter of Rights and Freedoms*, and it is bound to respect and comply with the freedoms and rights the *Charter* guarantees in the exercise of its regulatory powers. In the application before you, the right to equality, freedom of expression, freedom of association and freedom of religion are all implicated. In our respectful submission, only through adopting the Federation's approval of TWU's proposed law school for accreditation can the fundamental freedoms of the students and faculty of TWU be recognized and respected.

TWU is a private religious university. TWU requires its students, as a condition of enrolment, to sign a Community Covenant under which they agree to "voluntarily abstain" from "sexual intimacy that violates the sacredness of marriage between a man and a woman." While it is the implications that this aspect of the Community Covenant have for LGBTQ students that that have received the most attention in this current controversy, it is worth noting that that is only one part of a comprehensive faith-based code of conduct that members of the TWU community agree to abide by.

Were such conditions imposed on students attending a public faculty of law they would rightly be seen as unlawful discrimination contrary to s. 8 of the *Human Rights Code* of BC, as well a breach of students' rights to equality under s. 15 of the *Charter*. But it is crucial to remember that TWU is not a public university and these conditions are not imposed on TWU students – they are voluntarily accepted by those students who choose to attend TWU. The *Charter* does not apply to TWU as a private

institution, and, as held by the Supreme Court in *Trinity Western University*, s. 41 of the *Code* means that TWU does not contravene the *Code* where it prefers members of its religious constituency (para. 35).

Human rights anti-discrimination laws and *Charter* guarantees of equality are of vital importance to the legal ordering of Canadian society, but they are not the only the legal norms which play a role in defining and safeguarding our social relations and personal rights and freedoms. Our legal norms also create space for private relationships ordered under self-defined terms and conditions, such as those that exist between TWU, its students and faculty.

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The BCCLA believes that any private religious institution must have the right to its conditions for membership in accordance with the religious beliefs held by that membership. Individual members of a religious faith are similarly free to observe or to reject these conditions, and to make decisions about whether they wish to belong to these institutions accordingly. These freedoms are essential to the ability of any religious group to carry on its existence. People who are not members of a particular religion (and even those who are) may not approve of or be comfortable with the beliefs of that faith. However, BCCLA's position – in accordance with the decision of the Supreme Court of Canada in *Trinity Western University* - is that the repugnance of a certain set of beliefs even to a majority of Canadians cannot be the basis to deny a public good, such as entry to a profession, to members of that faith.

In this case, the public good is accreditation for the purpose of admission to the bar by students graduating from TWU's proposed law school. The denial of that public good to graduates of TWU's law school would infringe the freedom of religion, of association and of expression of the members of the TWU community. We are unaware of any sufficient rationale being offered that would justify that infringement. Permitting graduates of TWU to enter the legal profession does not send the message from the state to LGBTQ Canadians that they are less worthy of respect than others nor does it deny them any rights or freedoms to which they would otherwise be

entitled. All it does is respect the freedom of those who wish to govern their own conduct in accordance with the religious tenets encompassed within the Community Covenant.

In the *Trinity Western University* case, the Supreme Court of Canada considered whether TWU should be certified to train teachers. The Supreme Court held that TWU's policies and standards did not constitute discrimination as understood under section 15 of the *Charter*:

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Although the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which coexist with the right to equality. (paragraph 25) (emphasis added)

The Court decided that the BC College of Teachers had inappropriately narrowed its consideration of relevant matters. Instead of considering all rights, it focused just on discrimination to the exclusion of freedom of religion. Instead of considering whether there was real evidence of misconduct, it focused on whether it regarded the beliefs of a particular religious group as acceptable. (paragraphs 32-33)

It is fundamentally wrong to assume that because some law students are prepared to agree to conduct themselves in accordance with the Community Covenant while attending TWU that they will not also conduct themselves in accordance with the legal requirement, found

both in the *Human Rights Code* and the rules that govern the legal profession, that they not discriminate in their practice of law. Again, the decision of the Supreme Court of Canada in *Trinity Western University* is dispositive:

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It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In Ontario Human Rights Commission v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". In this particular case, it can reasonably be inferred that the B.C. legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. Although this evidence is not conclusive, given that no students have yet graduated from a teacher education program taught exclusively at TWU, it is instructive. Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. (paragraph 35) (emphasis added)

The Court also made clear that a fear about future discrimination by TWU graduates was no reason to deny TWU the ability to train teachers, and that such discrimination could be dealt with through its usual disciplinary processes:

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[T]he proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society. (paragraph 36) (emphasis added)

The same reasoning applies to the accreditation of TWU's law school and the training of lawyers. To apply section 15 *Charter* in a way that would deny a public good to a group of people who have adopted a code of conduct based on their religious beliefs would deeply undermine the freedom of religion, and the freedom of association, of members of the TWU community.

As for graduates of the TWU faculty of law, they, like all lawyers, ought to be judged on their conduct and not on their beliefs. The fact that a law student has graduated from TWU does not mean that he or she will discriminate against people on the basis of sexual orientation in the future. If a lawyer discriminates in the future legal practice, their conduct can and will be addressed by the Law Society, and the *Human Rights Code*.

Conclusion

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We submit that Law Society of BC should, in accordance with the Federation's decision, approve TWU's application for accreditation. The question is not whether the Benchers, individually or as a group, agree with TWU's Community Covenant or would choose to abide by it themselves. The question is whether the acceptance by law students attending TWU of the Community Covenant should bar TWU graduates from joining the ranks of the legal profession in British Columbia. Our commitment to a society in which LGBTQ people are free from unlawful discrimination on the basis of sexual orientation does not give us licence to discriminate against others on the basis of their conscientiously held religious beliefs, not to deny them their fundamental freedoms. There is no basis for believing that accreditation of TWU's law school will lead to unlawful discrimination against LGBTQ people, or would otherwise be contrary to the public interest. To the contrary, for the Law Society to deny TWU's application for accreditation would itself be contrary to law, as established by the Supreme Court of Canada, and would result in unlawful discrimination against and infringement of the fundamental freedoms of those who seek only to be able to study law and be allowed entry to the legal profession without discrimination based on their religious beliefs.

All of which is respectfully submitted on behalf of the British Columbia Civil Liberties Association.

Juday M. hysto

Yours truly,

Lindsay M. Lyster

President



BY EMAIL to jherman@flsc.ca and dwolfe@flsc.ca Jonathan Herman, Chief Executive Officer Deborah Wolfe, Director, Law School Programs Federation of Law Societies of Canada World Exchange Plaza 45 O'Connor Street Suite 1810 Ottawa ON K1P 1A4

Dear Mr. Herman and Ms. Wolfe:

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Re: Statement by the Canadian Council of Law Deans (the "CCLD") on the Application by Trinity Western University ("TWU") for Accreditation for a Proposed Law School

We read with concern statements reported in the media and attributed to the CCLD, apparently found in a letter dated November 24, 2012 addressed to you concerning the application by TWU for Accreditation for a Proposed Law School. We are concerned as well to have heard that certain law deans have made presentations to other legal professional groups, apparently in a concerted effort to have the TWU application denied without notice to or an invitation to TWU to respond.

Our concerns are fourfold. First, we entirely reject the notion that existing law schools ought to monopolize legal education in Canada so as to exclude religious or conscience-based universities. Second, we reject the premise of the CCLD's submission that persons who adhere to religious principles ought to be excluded from legal education. Third, we reject the suggestion by the CCLD that the Association of University and College Teachers' concerns over academic freedom in religious or conscience-based universities disqualify such universities from providing an accredited legal education. Fourth, we are concerned that the process of evaluation of TWU's application may be tainted were any of the CCLD or their nominees to participate in the process or decision.

The BCCLA is a non-profit society that was formed 50 years ago to educate people about and promote civil liberties, human rights and freedoms. We have long stood for the protection of freedom of expression, freedom of association, and freedom of religion and conscience. We have long stood for the protection of all persons from unlawful discrimination. We are pleased that those protections are enshrined in our Canadian Charter of Rights and Freedoms and human rights legislation.



Our work has involved us in many court proceedings. Those have included acting as co-plaintiff in Little Sisters Book and Art Emporium v. Canada (Minister of Justice), 2000 SCC 69, to protect the rights of the GLBT community from discrimination by Canada Customs agents who sought to filter what materials could be imported to Canada. We intervened in Chamberlain v. Surrey School District No. 36, 2002 SCC 86, to support the principle of the public school system remaining secular and to ensure that respectful education of students concerning same-sex relationships was achieved. We intervened as well in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, where the issue was whether TWU as a private, religious-based university, should be denied accreditation for its educational degree program. In each of these and the many other cases we have been involved with or spoken out about, we have maintained a consistent theme of protecting the rights and freedoms of Canadians and the pluralistic and diverse nature of Canada.

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With regard to our first concern, we note that Canada is a country founded upon diversity and tolerance. It is thus startling for deans of publicly-funded university law schools to use their position to attempt to thwart the entry of another voice into academe, particularly where that voice is a religious one. We note that the Human Rights Code of British Columbia expressly provides for religious-based groups, among others, to be exempt from certain of its provisions when they grant preferences to members of those groups. Obviously, in order for such groups to survive they must be able to prescribe the conditions of membership of their group and set out their fundamental beliefs.

The CCLD appear to miss that point. That is surprising given that a decade ago the issue was explicitly and emphatically dealt with by the Supreme Court of Canada in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31. The court there rejected the attempt to deny accreditation of TWU's educational training program based upon assumptions made about whether religiously-based beliefs that it promoted would result in discrimination if its graduates were hired as teachers in the public school system. The court's majority wrote this:

TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the



voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.

The court decided that the BC College of Teachers had inappropriately narrowed its consideration of matters. Instead of considering all rights, it focused just on discrimination. Instead of considering whether there was real evidence of misconduct, it focused on whether it regarded the beliefs of a particular religious group as acceptable. The court found that the BC College of Teachers was improperly forcing TWU to elect to abandon its beliefs in order to obtain accreditation:

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There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year. These are important considerations. What the BCCT was required to do was to determine whether the rights were in conflict in reality.

Finally, the court concluded that the BC College of Teachers should have left accreditation of TWU's program in place, and deal with any discriminatory misconduct by a TWU-educated teacher (or any other teacher, for that matter) through its usual disciplinary processes:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

The CCLD apparently were aware of that court decision, but reject its application here, calling their view a "principled" approach. With respect, their implicit derogation of the Supreme Court's decision as being



unprincipled is inappropriate. CCLD posits that "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools." If the topic were just about public law schools, we would agree. But the topic here is whether private educational institutions formed by religious or conscience-based groups are to have their constitutional rights recognized and protected. Leaving that out of the equation is unprincipled. The CCLD approach is as burdensome to fundamental freedoms and as contrary to the Charter as the BC College of Teachers' approach was.

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The second concern noted above was the CCLD's premise that those who are religiously-minded should be excluded from legal education. That would, by extension from their argument, include all professors, students and, eventually, lawyers and judges who held the religious views that the CCLD say are repugnant. Yet the same law schools that the CCLD preside over have admitted TWU undergraduates into their law school programs. There are religious adherents among the student population in existing law schools in Canada. And although no current legal scholar writing from a religious viewpoint readily comes to mind among the academics at existing public law schools, no doubt there are at least some professors who are members of religions.

Also, we note that Law Societies across Canada have not made a question about the religious beliefs of applicants part of their questionnaire for articling student program admissions. In British Columbia, we still have the stain of the Martin v. Law Society of British Columbia, [1950] 3 D.L.R. 173, decision of our Law Society and Court of Appeal on the books. There, the Law Society denied admission to the bar on grounds the applicant was a communist. The court upheld that. Such McCarthy-like tests as a condition of entering a profession are something that we would hope had long since disappeared.

The third concern was over the use by the CCLD of the CAUT criticism of TWU and other religiously-based educational institutions as somehow not being places of academic freedom. Given the absence among publicly-funded universities of encouragement for religiously-based academics to voice their perspective, one could be forgiven for questioning why CAUT would find fault elsewhere when diversity is not uniformly practiced in public universities, at least as CAUT preaches it.

The argument of CAUT adopted by CCLD reduces itself to the absurd. Secular universities preclude teaching from a religious perspective in order to maintain their secular and non-sectarian status; religious institutions require



professors to be adherents and provide instruction from the perspective of their group. Positing that academic freedom does not exist in religious educational institutions becomes a front for asserting that the religious perspective simply cannot be taught anywhere. The argument about a lack of freedom in religious educational institutions circles back as a supposed justification for suppression of religious viewpoints. That simply cannot be right.

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Fourth, we note that the Federation of Law Societies of Canada delegates functions to deans of law schools in Canada, including seeking their advice on the examination of credentials of foreign-educated students and also, more recently in the case of Thompson River University and Lakehead University, on the ad hoc committee formed to report on whether to approve accreditation of law schools there. The CCLD has, by putting forward a marker on behalf of all deans of existing accredited law schools in Canada, created a reasonable apprehension of bias were any of their number to be included in the process of evaluating and deciding upon the TWU application for accreditation.

The BCCLA encourages the Federation of Law Societies of Canada to give proper consideration to the application of TWU and to reject the anti-freedom-of-religion precepts of the CCLD's letter and public statements.

Sincerely,

Lindsay M. Lyster

President

cc: The Council of Canadian Law Deans

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March 2, 2014

Timothy E. McGee, QC Chief Executive Officer and Executive Director The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

By email: <u>submissions@lsbc.org</u>

Re: Submission to the Law Society of British Columbia regarding Trinity

Western University Law School

Dear Mr. McGee:

The Becket Fund for Religious Liberty submits these comments to the Law Society in response to the January 30, 2014 invitation for public input regarding the new law school at Trinity Western University.

By way of background, the Becket Fund for Religious Liberty is an international non-profit organization and law firm dedicated to protecting the free expression of all religious traditions. It has represented agnostics, Buddhists, Christians, First Nations, Hindus, Jews, Muslims, Sikhs, and Zoroastrians, among many others, in civil and common-law jurisdictions around the world. As an organization that has been accorded special consultative status by the United Nations Economic and Social Council, the Becket Fund has regularly submitted human rights reports to the United Nations Human Rights Council and has made frequent interventions at that body. The Becket Fund has also frequently intervened at the European Court of Human Rights and represented parties in that forum.¹

The Becket Fund is concerned that the proposal to deprive Trinity Western University Law School graduates of the right to practice law in British Columbia will violate Canada's obligations under binding international human rights norms.

Canada's international obligations. The Universal Declaration of Human Rights (UDHR) protects "the right to freedom of thought, conscience, and religion," including the "freedom, either alone or in community with others" to "manifest ...

¹ See, for example, *Juma Mosque Congregation and Others v. Azerbaijan*, App. No. 15405/04 (ECHR 8 January 2013) (Becket Fund represented pro-democracy mosque and imam).

religion or belief in teaching, practice, worship and observance."² The International Covenant on Civil and Political Rights (ICCPR), which entered into force in Canada on May 19, 1976, likewise protects the "freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."³ By ratifying the ICCPR, Canada "undertook to respect" these rights and "to ensure" them "to all individuals within its territory and subject to its jurisdiction"⁴ The right to freedom of conscience and religion has long been recognized and protected in section 2 of the Charter of Rights and Freedoms.

Canada has also signed the U.N. General Assembly's Statement on Human Rights, Sexual Orientation, and Gender Identity,⁵ and the Organization of American States' 2012 Resolution on Human Rights, Sexual Orientation, and Gender Identity.⁶ These documents, although not legally binding, nevertheless affirm that "non-discrimination . . . requires that human rights apply equally to every human being regardless of sexual orientation or gender identity" and "condemn discrimination against persons by reason of their sexual orientation and gender identity." These non-discrimination norms are recognized in Canadian law under section 15 of the Charter.

Taken together, these international human rights documents demonstrate Canada's commitment to protecting the rights of all people, regardless of their religion, sexual orientation or gender identity. Indeed, Canada has the reputation of being an exemplary state when it comes to compliance with international human rights norms.

⁵ UN General Assembly, Statement on Human Rights, Sexual Orientation and Gender Identity, 18 December 2008, available at: http://www.refworld.org/docid/49997ae312.html.

² Universal Declaration of Human Rights, art. 18.

³ International Covenant on Civil and Political Rights, art. 18(1), 999 UNTS 171 (1967). Canada is also a member of the Organization for Security and Cooperation in Europe (OSCE). OSCE calls on member states to grant legal recognition to "communities of believers" and to respect the rights of "religious communities." Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, Principle 16, adopted in Vienna on 17 January 1989.

⁴ ICCPR, art. 2(1).

⁶ Organization of American States, Resolution on Human Rights, Sexual Orientation, and Gender Identity, 4 June 2013, AG/RES. 2721 (XLII-O/12).

⁷ UN General Assembly, Statement on Human Rights, Sexual Orientation and Gender Identity, Para. 3.

⁸ Organization of American States, Resolution on Human Rights, Sexual Orientation, and Gender Identity, Res. 1.

⁹ Sexual orientation was held to fall within the ambit of s. 15 in *Egan v. Canada*, [1995] 2 S.C.R. 513.

Application to the School of Law proposal. Trinity was established by the Evangelical Free Church of Canada to "manifest" its religion "in community with others" through "worship, observance, practice and teaching." As Trinity's mission statement says:

The mission of Trinity Western University, as an arm of the Church, is to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life.¹¹

Members of the Trinity community—faculty, students, and staff—carry out this mission by pledging to live together according to specific standards required by their faith. Among other things, they promise to abstain from 'lying, cheating, or other forms of dishonesty,' "stealing, misusing or destroying property belonging to others," "gossip, slander," and "prejudice," and "sexual intimacy that violates the sacredness of marriage between a man and a woman. Although Trinity welcomes students of all faiths or no faith, it asks all of its students to live by these standards—known as a "community covenant"—while enrolled. *Id*.

In 2001 the Supreme Court of Canada was asked to decide whether an earlier version of Trinity's community covenant was evidence of discrimination under section 15 of the Charter that disqualified Trinity from offering a self-contained teacher training program. The British Columbia College of Teachers, the since-dissolved professional self-regulatory body for the Province, had denied Trinity's teacher training program accreditation on that basis. Trinity asserted its freedom of religion under section 2 of the Charter as a defense.

The court agreed that, because of the agreement to refrain from sexual intimacy outside of opposite-sex marriage, "a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost." But it also recognized that denying accreditation to Trinity's teacher-training program because of the community covenant "places a burden on members of a particular religious group and in effect, is preventing them

¹⁰ See International Covenant on Civil and Political Rights, art. 18(1).

¹¹ Trinity Western University, Our Mission, https://www.twu.ca/academics/about/mission.html.

¹² Trinity Western University, Community In Covenant, http://twu.ca/studenthandbook/university-policies/community-covenant.html; Trinity Western University, Student Handbook — Community Covenant Agreement, http://twu.ca/studenthandbook/university-policies/community-covenant.html.

¹³ Trinity Western University, Community In Covenant, http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html.

¹⁴ Trinity Western University v. College of Teachers, [2001] 1 S.C.R. 772, at para. 25.

from expressing freely their religious beliefs and associating to put them into practice." 15

The court concluded that "the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence." It also observed that "[t]o state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage [Charter] s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality." ¹⁷

The Supreme Court's 2001 decision reflects an approach consistent with Canada's international human rights obligations, which both require the protection of religious freedom and uphold the principle of non-discrimination.

Implications of non-recognition for Canada's international human rights obligations. When reaching its 2001 decision, the Supreme Court observed that "if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church," and that the freedom of religion enjoyed by Trinity's students—which includes the "free[dom] to adopt personal rules of conduct based on their religious beliefs"—"is not accommodated if the consequence of its exercise is the denial of the right of full participation in society." 18

The court was correct to be concerned about the potentially broad implications of denying accreditation on the basis of Trinity's community covenant. Indeed, it appears that some of the groups opposing Trinity's proposed law school—notably the Faculty Council of the University of British Columbia Law Faculty—would also have the Law Society deny or revoke the law licenses of Trinity graduates and administrators.¹⁹

The Law Faculty's position appears to be that (1) administrators who enforce Trinity's religiously-based rules of conduct may lose their law licenses for engaging in invidious discrimination, and (2) otherwise-qualified individuals may be prevented from practicing law because, while attending Trinity, they "adopt[ed] personal rules of conduct based on their religious beliefs." In addition to violating

¹⁵ *Id.* at para. 32.

¹⁶ Id. at para. 25, 29.

¹⁷ *Id.* at para. 25.

¹⁸ *Id.* at para. 33, 35.

¹⁹ Faculty Council of the UBC Law Faculty, Motion Addressed to the Law Society of B.C., Mot. 3, 5, http://news.ubc.ca/wp-content/uploads/2014/01/Motion-addressed-to-Law-Society-of-BC-as-passed1.pdf.

²⁰ Trinity Western University, [2001] 1 S.C.R. 772, at para. 33, 35. The Faculty Council's Motion calls on the Law Society to "have express regard" to Trinity's community covenant when deciding whether "accrediting graduates of [Trinity's] proposed school of law program would be 'in the public interest." The Faculty Council also called on the Law Society to "have express regard to the possibility . . . that any practicing lawyer who is employed by TWU and in a position to make employment or

the Charter rights of Trinity administrators and graduates, each of these assertions is flatly inconsistent with international human rights law.

As to the first: although the scope of the right varies, it is trite law that religious educational institutions like Trinity may make employment decisions based on religious principles without violating human rights norms, including norms of non-discrimination. This right, which is necessary to protect the freedom and autonomy of religious institutions, has been repeatedly vindicated not only in Canada²¹ but also in the United States²² and throughout Europe.²³ The Law Faculty's assertion that any enforcement of Trinity's community covenant may be inconsistent with the *Code of Professional Conduct for BC* entirely ignores this important dimension of international human rights law.

As to the second: restricting admission to the professions based on an individual's religious affiliation is an ancient form of religious persecution. In eighteenth-century Ireland, all barristers, solicitors, and notaries were required to take an anti-Catholic oath.²⁴ In nineteenth-century Maryland, Jews were prohibited from holding any civil position or practicing law.²⁵ In Canada, Jews could not hold public office until 1832.²⁶ Today, restrictions on admission to the bar based on religious affiliation are fewer in number, but remain a feature of governments that promote a particular religion or oppose religion altogether, such as Saudi Arabia and North Korea. Not surprisingly, the official commentary on Article 18 of the UDHR makes it clear that "Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including . . . policies . . . restricting access to

disciplinary decisions may therefore be forced to choose between enforcing the Community Covenant Agreement and complying with the *Code of Professional Conduct for BC*." Faculty Council of the UBC Law Faculty, Motion Addressed to the Law Society of B.C., Mot. 3, 5, http://news.ubc.ca/wpcontent/uploads/2014/01/Motion-addressed-to-Law-Society-of-BC-as-passed1.pdf.

²¹ Caldwell v. Stuart, [1984] 2 S.C.R. 603 (dismissing marital status discrimination claim and upholding the right of Catholic school authorities to dismiss a teacher who divorced and remarried in a civil ceremony, contrary to Catholic teaching).

²² Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C., 132 S. Ct. 694 (2012) (dismissing disability discrimination claim and upholding the right of Lutheran school authorities to dismiss an ordained teacher for violating Lutheran teaching regarding dispute resolution).

²³ Fernández-Martínez v. Spain, App. No. 56030/07 (ECHR Third Section, 15 May 2012) (referred to the Grand Chamber Sept. 24, 2012) (upholding the right of school authorities to fire a priest responsible for teaching religion on the ground that his marriage and public role in the "Optional Celibacy Movement" were inconsistent with the teaching of the Catholic Church); Siebenhaar v. Germany, (ECHR, App. No. 18136/02, 3 February 2011) (upholding the right of Protestant school authorities to fire a teacher who had converted to another faith).

²⁴ An Act for preventing Dangers which may happen from Popish Recusants, 25 Car. II, c.2, §2 (1673), in 5 *Statutes of the Realm* 782, 783 (Hein 1993); An Act for Enlarging the Time for taking the Oath of Abjuration, 1 Anne, stat. 2, c. 21, §5 (1702), in 8 *id*. 218, 219.

²⁵ Seamus Hasson, The Right to Be Wrong 110 (1st ed. 2005).

²⁶ Richard S. Levy, ed., 1 Antisemitism: A Historical Encyclopedia of Prejudice and Persecution 94 (2005).

education [or] employment."²⁷ A rule preventing otherwise-qualified individuals from practicing law because they chose to enter into a religiously-based community covenant while at law school—or revoking the license of a lawyer who enforced such a covenant for religious reasons—would violate this longstanding principle of international human rights law.

* * *

In 2001, the Supreme Court held that it would violate the Charter to deny Trinity accreditation on the basis of its community covenant. That decision is consistent with Canada's obligations under international human rights law and should guide the decision of the Law Society regarding Trinity's new school of law. The Law Society should reject the suggestion that the community covenant disqualifies Trinity graduates or administrators from practicing law in British Columbia. Relying on Trinity's community covenant to deny law licenses to Trinity graduates—or to revoke the law licenses of Trinity administrators—would be a violation of Canada's obligations under international human rights norms. It would also be an unnecessary and unwelcome black mark on Canada's otherwise exemplary reputation as a defender of human rights.

Very truly yours,

Eric Rassbach

Deputy General Counsel

²⁷ UN Human Rights Committee, CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: http://www.refworld.org/docid/453883fb22.html.

From: Mark Belanger [mark@bordersolutionslaw.com]

Sent: Friday, January 31, 2014 12:12 AM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

Sirs/Mesdames:

In full disclosure, I have no religious affiliations and do not consider myself a "spiritual" man. I actually don't think very highly of organized religion, to put it mildly. However, I am in support of a law school program being granted to TWU.

I have met all types of lawyers from all different walks of life. Diversity is a large part of what makes our bar association a living, breathing, body. Diversity of backgrounds, religious beliefs, nationalities, sexual orientation, etc. Just because I don't subscribe to a particular religious belief, sexual orientation, or background does not mean those that do, should not be afforded an equal opportunity to pursue a law degree.

Each candidate for membership to our bar association should be judged as an individual, on the merits, once they have completed their law degree and articles. I see a graduate of TWU law school as no different than any other lawyer, who has a particular universal belief system, religion, nationality, race or sexual orientation, that is different from mine.

To assume that any TWU grad is against the LGBT community would be speculative at best. To do so would be stereotyping a group of individuals based on a program they graduated from. In essence, it would be discriminating against those individuals. Some of those TWU graduates might have family members, friends or even lovers from the LGBT community.

I shudder to think that a group of people different from my belief system, would be prejudiced from having an equal opportunity to pursue their education in the law, in the program of their choosing, due to fear. You can't overcome fear with fear, ignorance with ignorance, or prejudice with prejudice.

If we choose the path of discrimination, we walk along a slippery slope.

Yours truly,

W. Mark Belanger Lawyer



Suite 1400 - 1125 Howe Street, Vancouver, B.C. V6Z-2K8

Tel: (604) 684-4211 Fax: (604) 688-0933

Email: <u>mark@bordersolutionslaw.com</u> Web: www.bordersolutionslaw.com

This message may contain privileged and or confidential information. Any unauthorized use is strictly prohibited. If you receive this e-mail in error, please contact me immediately.

From: Arnold Bennett

Sent: Sunday, March 02, 2014 8:21 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

To the Benchers, Law Society of B.C.

I am appalled that the Law Society of B.C. is considering discriminating against Christians who wish to study law at a university that upholds Christian values, and would deny them the right to practice law in B.C. because of their religious faith.

Trinity Western is a private university that does not receive any government funding. As a result, it's tuition fees are considerably higher than taxpayer subsidized universities. The reason that it's students are prepared to pay this high cost for their education, at a considerable sacrifice, is because they desire to receive their education at an institution that upholds their convictions and does not attack their religious beliefs.

My daughter received her law degree from the UBC law school. During her time at UBC her religious beliefs were often challenged or mocked by her professors. After initially standing up to these challenges, she realized that she had to pass the courses, and she wasn't going to change the minds of these professors who were the ones marking her papers. It seems that at secular universities it is OK to make negative comments about Christian beliefs, but not positive ones.

I am not sure whether a private university adhering to another religious belief would be as targeted as Trinity Western, or whether the aim is to have only atheist lawyers in B.C. Many Christians seek Christian lawyers to represent them since there is a level of comfort that these lawyers will share their moral and ethical values, which is more than they may feel towards the legal profession as a whole. If there are only atheist lawyers then who is going to defend Christians who may be attacked for their Christian beliefs? Hate towards Christians is on the ascendancy, as this motion suggests.

This is not the first attack that Trinity Western has had from deep pocketed organizations that would like to deny Trinity Western the right to educate students for professions in B.C. Unfortunately, while these attacks have not been successful so far, the financial cost of defending themselves against these attacks has been a significant burden for a small private university to bear. These legal costs have ultimately had to be paid for by the students.

Please do not pass this motion discriminating against Christians.

Arnold Bennett



From: Adam Whitcombe

Sent: Monday, March 03, 2014 9:23 AM

To: Submissions

Subject: FW: TWU and the Establishment of a Private Christian Law School.

Attachments: Benson Submission to the Law Society of BC regarding TWU March 3 2014 PDF.pdf;

ATT00001.htm

Follow Up Flag: Follow up Completed

From: Iain Benson

Date: March 3, 2014 at 6:54:50 AM PST

To: <JLindsay@lsbc.org>, Tony Wilson <twilson@boughton.ca>

Subject: TWU and the Establishment of a Private Christian Law School.

Dear Ms. Lindsay:

Please accept the attached letter as a contribution to the debate that I understand is underway regarding the question of whether Trinity Western University should be precluded from law school accreditation or, should it gain accreditation, whether its graduates should be prejudiced in their legal careers due to their religious views.

Please put my short submission before the Benchers of the Law Society of British Columbia.

It should be read as supplementary to an article by the undersigned which sets out the law and philosophy that should govern in the dispute: "Law Deans, Legal Coercion and The Freedoms of Association and Religion in Canada" *The Advocate*, September 2013, Vol. 71, Part 5, 671-675.

I hope these comments are useful to your deliberations.

T

Sincerely,

Iain T. Benson

--

PhD, JD, MA (Cantab.) BA (Hons.),

Writer,

Barrister & Solicitor,

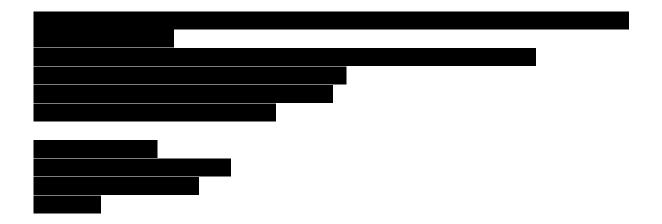
Consultant,

Board and Executive Committee Member, Global Centre for Pluralism, Ottawa, Canada.

Visiting Professor, Faculty of Law, University of Western Ontario, London, Ontario, Canada.

Professor Extraordinary
Department of Constitutional Law
and Philosophy of Law,
Faculty of Law
University of the Free State
Bloemfontein, South Africa

Canada, France and South Africa



IAIN T. BENSON

PhD., JD., MA. (Cantab.), BA (Hons.)
Professor of Law,
Barrister & Solicitor
Of the Bars of Ontario and British Columbia

3.iii.2014 Johannesburg, South Africa

The Law Society of British Columbia 845 Cambie Street Vancouver, B.C. Canada

V6B 4Z9 Attn: Jan Lindsay, President and Benchers

Dear Ms. Lindsay

Re: Trinity Western University, Diversity and the Free Society

There is, apparently, some suggestion that those who have certain views on the morality of sexual practices are unfit to be lawyers and that a law school graduating people who adhere to (or merely study within this ethos) ought not to have accreditation.

Fortunately, Canada has long prided itself on diversity. At the very least this concept means that we accord the widest possible acceptance of divergent views to individuals and extend the same respect to their communities. Very few things should be put in the "hard box" where society shuts the door on contestation - - cannibalism, child abuse, female genital mutilation, these sorts of matters are not contestable and shall not be publicly advanced and may be outlawed.

Many areas of argument, however, remain contestable and not everything that matters to identity is placed in the "hard box" and removed from contestation and it is important that we understand why this is the case.

Everyone's identity is rooted, in part, in their allegiances, be they political, racial, religious or otherwise. Upon reflection it becomes clear that these "allegiances" are of different sorts. Some of these we are born with (race, sex and religion) and others are, or *may be chosen or changed* (political viewpoints, religious affiliation, sexual preferences or moral views and sometimes "gender"). Some may be both (sexual desire or chosen sexual practices, religious allegiance).

Some of these choices and changes are controversial and contested. A person's political, sexual and religious beliefs are not always going to be agreed with by others. This is how things should be in a free society. Totalistic societies, on the other hand, seek to narrow the scope of permissible difference. That I am born a male heterosexual for example, does not mean that I have the right within certain groups to

act on my sexual orientation (to be a male heterosexual) and force the association to hold my particular view, say, in relation to marriage and what should flow from it. So within many religious traditions a married male cannot hold certain religious offices. Similarly, women may be excluded, or homosexuals. The rules of religions are not going to be agreed with necessarily within a religion not only outside one but the freedom of association is no less important than equality and the law should not be involved in determining dogma.

When movements arise that seek to eradicate alternative viewpoints using law and regulation to do so, an open society must point out that the area of disagreement about contested political, religious or sexual views, should remain as open and public as possible.

It would be a bad thing if the Law Society started to say what citizens must believe about matters that remain contestable - - about, say, religious beliefs, moral beliefs, sexual conduct beliefs and so on.

This is because it is not the jurisdiction of law societies to invigilate (outside the "hard box") what lawyers should believe. The freedom of expression is said to be important, in part, because it helps protect the "search for truth" and that search is going to be controversial and is assisted by different visions of the truth and different spheres of operation.

The Law Society does not know, nor could it, what is "true" about religion or the morality of sexual practices (outside the hard box). It can point out that the law, for example, allows any two persons to marry but it cannot and must not say that those who do not hold to this belief are outside the social compact and must have their views eradicated.

The dignity of religious believers who wish to group together to study or practice law while holding certain views is no less valuable or protected than the dignity of those who wish to argue against those viewpoints. What is impermissible is to use law to close the door on arguments or narrow the spheres of disagreement.

Sincerely,

lain T. Benson (Prof. Dr.)



SOUTHEAST BC'S REGIONAL LAW FIRM

J. Andrew Bird, J.D.* K. Mary Pickering, LL.B.

Graeme R. Nunn, J.D.

Kenneth R. Steidl, Q.C.

Marko M. Maryniak, J.D.

Gerald J. Kambeitz, Q.C. Steven M. Brine, LL.B.* Natalie L. Hebert, LL.B. Karen Tse, J.D.

Our File No: 18000

03 March 2014

Law Society of British Columbia

845 Cambie Street Vancouver, BC V6B 4Z9

By email: submissions@lsbc.org

Dear Mesdames/Sirs,

Submissions on Trinity Western University ("TWU") Re:

Please accept this as my submission to the Law Society in relation to TWU.

I was a nascent Christian when I attended University of Toronto Law School from 2003-2006. Law school is one of the hardest places to learn how to follow Christ. Christians are underrepresented in law school and I was one of only a handful in my class of nearly a hundred. In discussions about gay marriage, freedom of religion and minority rights, which occupy a good deal of law school, the general culture framed Christianity as a threat to the public good.

Because law school has a tendency to consume one's life, and because I was a young Christian without a strong and mature faith, the law school culture had a great impact on me. I wish a Christian law school had existed so I could have studied in fellowship with other believers, in a culture that nurtured my faith.

TWU's covenant is all about fellowship. For Christians, living in community with one another is a directive given by Jesus and is essential to spiritual development. To borrow a proverb, Christians sharpen one another as iron sharpens iron. We lift one another up when we fall in sin, and we inspire one another to strive to live out Christ's ideals.

Christians are also commanded to engage with the world, share the gospel, and be a beacon of light unto it. That requires a strength of faith that needs to be developed. Studying in fellowship with other Christians helps develop it.

The point of the covenant is to gather those who share the same belief, whether heterosexual or homosexual. It is not to exclude people based upon the type of sinner they are, for we are all sinners. But it does require a common belief of what sin is. It requires a commitment to resist temptation, not a commitment to never be tempted. When it comes to sex, which is but a small

ROCKIES LAW

To: The Law Society of British Columbia

Re: Trinity Western University

Date: March 3, 2014

Page 2 Confidential

part of the covenant, it asks for a commitment to sexual practices, including abstinence outside heterosexual marriage. Given that most law students are not married, the burden on heterosexual law students and homosexual law students is the same: abstinence.

Those who believe Christians are hateful towards homosexuals misunderstand or misconstrue our beliefs. The struggle with sin is a continual part of the Christian walk. Although outsiders are liable to think sexual sins are the most grievous, mature Christians recognize otherwise. Pride is the greatest sin as it directly offends the greatest command there is: to love God with our whole heart and mind and soul and strength. The second greatest command is to love our neighbours as ourselves. To be sure, we believe our sexuality is a gift from God that nurtures a spiritual intimacy, and when we use our bodies out of accordance with God's intentions that corrupts us spiritually. Sexuality is not the essence of Christianity, but it does matter. Maintaining sexual purity in our era is countercultural and radical, and abstinence is just as difficult for heterosexuals as it is for homosexuals. I can tell you firsthand, as an unmarried man of 35 years, that abstinence in a dating relationship is a mighty challenge, even moreso when the girl isn't equally as committed to it, and that I do not have a perfect record. But though I may have failed it, I would have agreed with TWU's covenant, and welcomed the support that would have been offered me.

The covenant does not discriminate based on sexual orientation. It discriminates based on belief; and based on a willingness to join a community that strives to live out a faith.

There are Christian homosexuals who may want to make the covenant. There also a multitude of heterosexuals and homosexuals who, because of their conscience, would not want to make the covenant. That is a matter of their conscience.

The covenant is a commitment to noble ideals, and little of it relates to sex. I reproduce it here. Students must commit to:

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity
- communicate in ways that build others up, according to their needs, for the benefit of all
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death

ROCKIES LAW

To: The Law Society of British Columbia

Re: Trinity Western University

Date: March 3, 2014

Page 3 Confidential

• be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society

• observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce

• exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others

• encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another.

One might ask why the Law Society is not concerned that other law schools require no such commitment; and further, whether the absence of a commitment to, for example, honesty should disqualify those students from being admitted to the bar.

Instead the Law Society is considering whether students, who graduate with a valid degree from an institution that has met every academic standard, should be excluded from the bar because they made such a noble commitment.

It would do well to remember that every Christian who already practises law makes the same commitment every day. Is the Law Society going to disbar them?

This isn't about whether TWU grads will conduct themselves honourably in the practice of law. There is absolutely no evidence that they will not, nor that the thousands of Christian lawyers who have practised in our nation bring disgrace to our profession.

If the Law Society believes that it is not in the public interest to have Christian lawyers it should simply say so. Otherwise there is no basis for refusing to admit TWU grads to the bar. They will have done nothing more than declare that they are Christians.

If the Law Society does not allow TWU grads to become licensed lawyers, the effect is to prevent Christians from studying in fellowship; to force them to attend secular, non-Christian law schools; to deprive them of their right of association; and to signal that Christianity is inimical to the public good.

TWU's discrimination is private and specifically protected by law, and those who disagree have plenty of other law schools they can attend. By contrast, no-one can practise law in British Columbia without being licensed by the Law Society. The Law Society is statutorily granted monopoly power to control who can become a lawyer. Excluding TWU grads would be a much

ROCKIES LAW CORPORATION

To: The Law Society of British Columbia

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greater form of discrimination. Even if one were to disapprove of TWU's covenant, the medicine would be far worse than the disease.

All of which is respectfully submitted,

ROCKIES LAW CORPORATION

gerse

Per:

J. Andrew Bird, J.D.

JAB/tcs



March 2, 2014

Executive Director Law Society of British Columbia 845 Cambie Street Vancouver, BC, V6B 4Z9

Re: Trinity Western University Law School

Dear Sir:

The Law Society of BC has invited input on the issue of whether the proposed Trinity Western University (TWU) law school should be recognized by the BC Law Society as an approved faculty of law. These submissions were to be made by March 3, 2014. This will be emailed today (March 2) and delivered to the Law Society on March 3, 2014.

Note: Also sent by email to: [submissions@lsbc.org]

I have practiced law primarily in the areas of education, business and workplace law for a decade and have a written a book on education law.

TWU requires all students, faculty and staff to sign a pledge that they will not engage in activities that are biblically condemned including sexual intimacy that violates the sacredness of marriage.

I understand the decision made by provincial government officials under the Degree Authorization Act to not block this new TWU law school. Given the nature of that statute the officials likely had little option. Similarly, I believe the Federation of Law Societies acted correctly when it chose to not block this law school. The federation said these covenants had no bearing on whether the university has the capacity to teach law. I agree.

I have no detailed comment on the Supreme Court of Canada judgment in the case where the BC Teachers Federation challenged TWU's covenant after the BC government agreed it could grant degrees. I don't believe that case dictates what can or should be done by the BC Law Society.

Some have asked this question: How can any Canadian institution – particularly a University – overtly discriminate against people on the basis of sexual orientation? This question need not be addressed here – aside from stating that there are existing laws in place - the Charter and provincial human rights laws - to address instances of discrimination and the refusal to provide services on the basis of identified criteria. It is not clear whether the Law Society's power to approve a law school (so grads can be admitted to the bar) is the best way to protect individual rights.

Another question asked is: Can TWU be trusted to turn out law grads that will uphold Canadian law? The main example cited here is the legalization of same sex marriage as the result of Supreme Court of Canada decisions that were centered on constitutionally guaranteed equality rights. Some ask if a TWU trained justice would make that kind of ruling? Would a TWU trained lawyer be willing or able to passionately argue both sides of the question?

These are legitimate questions, but they can be asked outside the TWU context. There are persons attending and graduating from many law schools in Canada that hold similar views. Their commitments to their personal views may not come in the form of a covenant such as exists at TWU, but their commitment to those ideals is just as strong as those attending TWU. Many law students, lawyers and judges have strongly held religious views.

If the Law Society is going to make a decision to not recognize TWU's law school on the grounds that its grads may not live up to our profession's standards and Canadian legal standards then it should place just as much attention on

the views of students at other law schools that may have similar views. I do not like the prospect of law students and prospective law students having to make declarations as a condition of their admission and ongoing attendance. The appropriate gateways of control exist: where persons swear an oath upon admission to the Law Society or the bench; or in other instances where requirements to act in accordance with the laws of the land and our profession's code of ethics can be asserted and enforced.

To illustrate the point - When I was in law school in Saskatchewan in the 1980s I engaged in an acrimonious argument with a fellow law student. He was Catholic with what I considered to be extreme views on gays, abortion and many other issues. I am not a Christian and have views more in line with various eastern religions. He accused me of not being representative of Canadian values and questioned if I should be a lawyer or potentially a judge. I won't summarize my response because it would take too long and involve language not appropriate in this context.

It is not appropriate for any education regulator or, in this case, a professions regulator to block two parties from engaging in what I call a "knowledge enhancement" transaction because they think the consuming party in that transaction may not live up to certain legal or professional standards at some time in the future. Freedom of contract principles and constitutional freedoms must not be cast aside when it is not clear how a grad will act in the future.

To be an approved faculty of law an institution may have to meet standards that go beyond curricula, content and faculty expertise issues. Nevertheless, these fundamental contract and constitutional freedoms must be part of the equation. Again, the key question is whether there are downstream controls that can sufficiently guard against the dangers cited and that some say could arise if TWU has a law school.

Similarly, officials under the Degree Authorization Act or benchers under the Legal Profession Act should not block law schools that satisfy all core program content and instruction expertise criteria just because they think there are too many lawyers. This is not a factor here, but it is another example of why the fundamental freedoms of student learners and education service providers must not be blocked needlessly. If governments do not want to subsidize, provide loans for or otherwise finance specific transactions then that is a choice they can make – a choice they must base on universally applicable criteria and not on criteria that they only apply to private institutions like TWU.

It should be noted that the federation of law societies has rules regarding foreign lawyers. If they pass the federation's qualification exams they can seek membership in provincial law societies. If the BC Law Society is going to challenge TWU because of its covenants then the federation and its provincial members must similarly challenge foreign law schools and their grads. Many countries – e.g. India and some African and Islamic countries – have antigay or other laws in place that do not coincide with Canadian laws and values. Their legal professions and law schools are not committed to the same legal protections that exist in Canada.

In summary, while I do not ascribe to the religious views promoted by TWU, the TWU law school should be approved by the BC Law Society for the reasons stated above. There are other downstream legal and ethical controls that can be used at the time of admission to the profession or the bar or when these law grads progress through their professional lives.

I appreciate having this opportunity.

John Boon J.D.

March 1, 2014

Delivered via e-mail to submissions@lsbc.org

The Law Society of British Columbia 845 Cambie Street Vancouver, BC, V6B4Z9

Attention: Timothy E. McGee, QC, Executive Director

Dear Mr. McGee:

Re: Proposed Trinity Western University Law School ("TWU")

I write to provide my input to assist the Benchers with their upcoming decision relating to Trinity Western University. I wish to make three points:

- 1. Trust the Process
- 2. Practical issues
- 3. Intolerance

I will deal with each in turn:

1. Trust the Process

In October 2011, the Benchers passed unanimously a motion to approve the final report of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee. This report recommended a uniform national requirement (the "National Requirement") for entry to law society admission programs in Canadian common law jurisdictions. The 20 recommendations in the report included a detailed implementation structure involving a central Approval Committee. The intent was to create a consistent standard for competencies and resources that will "strengthen and advance the institutional relationship between law societies and Canadian law schools at a national level" to further the "commitment to a legal profession that is learned, competent and dedicated to the public interest".

In so doing, the Benchers approved the "National Requirement" and agreed to rely on the expertise of the Approval Committee to review and apply the National Requirement for university law schools. This was done after careful consideration of the objects of the Law Society and the provisions of the *Legal Profession Act* including sections 19 – 21.

I attended the October 2011 meeting and I recall that the approval was given with great enthusiasm and acknowledgement of the very hard work of those involved.

¹ From the Federation Report August 2011 at page 1.

At its meeting in September 2013 the Benchers approved a revision to Rule 2-27 to give effect to the October 2011 approval. This is the first appearance of the words "approved law school". The concern of the Benchers was that without an amendment the Benchers would have to accept a graduate of a common law faculty even if it had <u>not</u> been approved by the Federation.

The memorandum supporting the proposed resolution included the following:

"While the power to delegate the ultimate determination as to whether an institution had met the requirements might be permissible so long as the Benchers had themselves set the requirements, the safer course would be to retain the final decision to the Benchers, recognizing that the Benchers should not stray from the Federation's decision unless there is a very compelling public interest reason to do so. Essentially, the Benchers would have to have determined that the Federation had erred in its determination..."

In adopting this reasoning in its resolution, it appears that the Benchers decided to defer to the discretion of the Federation, barring a compelling public interest error in principle.

Three months later, in December 2013, the Federation's Approval Committee issued its report with respect to TWU. It followed the rigorous process that the Law Society of BC approved in October 2011. Many submissions were received and reviewed and it appears to me that all of the issues that are being raised now were considered carefully by the Approval Committee or by the Special Advisory Committee.

The Federation eventually granted "preliminary approval" to the proposed TWU program. This is important.

"Until a program is operating and has produced its first graduating class, assessment of whether it meets the national requirement is prospective only. To reflect this, a proposed program that would meet the national requirement will be given preliminary approval. Once a new program has received preliminary approval it is subject to the annual review process in the same manner as existing law school programs." ²

The TWU program will be under the close scrutiny of the Federation. If there are further concerns they will be identified and TWU will need to ensure they are addressed.

It should also be noted that in its report the Approval Committee noted 3 "concerns":

- i. the teaching of Ethics and Professionalism;
- ii. the teaching of the elements of the Public Law competency relating to the *Canadian Charter of Rights and Freedoms* and human rights law principles; and
- iii. the budget for the proposed school.

The first two concerns reflect the issues that were raised in the submissions relating to the Community Covenant and that are being raised again in this LSBC process. The Federation has already committed to continue to monitor and assess these concerns.

1625 Coleman St., North Vancouver BC V7K1X2 P: 604-838-2149; E: kari.boyle@shaw.ca

² Approval Committee decision, December 2013, paragraph 18.

Further, I support the Federation's review of the recommendations of the Special Advisory Committee (paras 54 – 62) to consider adding to the National Requirement non-discrimination provisions similar to those used by the ABA and AALS. This is a helpful process and it should continue. At the same time, it should be noted that even in the US these provisions permit "the prohibition of certain <u>conduct</u> deemed incompatible with the religious values of the institutions."

I also note that, at the end of the day, section 19(1) of the *Legal Profession Act* gives the Law Society of BC final authority with respect to individual applications for enrolment, call, admission and reinstatement.⁴

The Benchers approved a good process and I suggest that the process should be trusted. I do not think that there is a "compelling public interest reason" to stray from or attempt to second-guess the Federation's decision in this matter.

2. Practical Issues

It appears likely that these complex human rights and constitutional issues will ultimately be decided by the Courts. In the meantime, they threaten to distract the Benchers from the many other important initiatives on their agenda including those relating to access to justice. For this reason also it makes sense to defer to the decision of the Federation.

I also worry about the practical implications of the National Mobility Agreement but I defer to others who are experts in this area.

3. Intolerance

I am very concerned about the level of rhetoric used in some of the submissions. In attempting to identify and protest against intolerance these submissions themselves demonstrate significant intolerance. As noted by the Approval Committee, many seem to equate "Christian worldview" with intolerance and bigotry. They imply that holding Christian values is antithetical to the ability to practice law in BC.

I am a woman of faith. I embrace Christian values. I have practiced law in BC for over 33 years in a way that I have tried to ensure is consistent with the integrity and principles of my faith. These principles require that everyone be treated with respect, dignity, compassion, tolerance and grace. It is very disturbing to see those who are passionate about equity lash out at the very people who support the values underlying their cause.

³ Special Advisory Committee decision, December 2013, para 62.

⁴ 19 (1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

In making its decision it would be helpful for the Benchers to ensure that the debate does not become an attack on religious values (Christian or otherwise).

Yours very truly,

Kari D. Boyle

February 17, 2014

Dean A. Crawford (<u>EA@CBABC.org</u>)
President, Canadian Bar Association (BC Branch)

Dear Dean:

Re: Proposed Resolution re "Non-Discrimination in Legal Education"

Thank you for this opportunity to provide feedback on the resolution proposed by various CBA constituent groups (SOGIC, Equality Committee, Young Lawyers – CBA and CCCA Diversity Committee) for consideration by the National Council of the CBA on February 22-23.

I wish to express my opposition to this resolution. I do so for the following reasons:

- 1. The resolution is clearly aimed at the TWU proposed school of law and yet the wording does not provide this important factual underpinning. To that extent I find it very misleading.
- 2. The resolution is a superficial attempt to address a very complex topic.
- 3. The resolution fails to mention critical facts and issues including:
 - a. The distinction between "discrimination" and "unlawful discrimination";
 - b. The need to balance equality rights with religious freedom;
 - c. The Supreme Court of Canada decision in <u>British Columbia College of Teachers</u> v. <u>Trinity Western University</u> (2001 SCC 31) which touches on key issues closely associated with this matter (although with respect to teachers instead of lawyers);
 - d. That in October 2011 the Law Society of BC unanimously approved a national process for approval of law schools, including a comprehensive process for proposed law schools, overseen by an appointed Approval Committee;
 - e. That the Federation's Approval Committee implemented its process to consider the application of TWU submitted in July 2012 and issued a detailed decision in December 2013 to grant "preliminary approval" to TWU;
 - f. That "preliminary approval" means that the Federation identified the very issues raised by the resolution and will continue to track TWU's steps to address those issues in its law school program;
 - g. That as part of its function the Federation also empowered a Special Advisory Committee to deal in a comprehensive and reasoned way with the constitutional, human rights and public interest issues raised during its inquiry with respect to the Community Covenant. The Special Advisory Committee's report, also issued in December 2013, states that "if the Approval Committee concludes that the TWU

- proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."
- h. That, as noted by the Federation, "the religious freedom rights of those who might wish to attend such a faith-based institution must also be considered and it is clear from the submissions received by the Federation that there are many such students."
- i. That the offending clause of the Community Covenant needs to be considered within the context of the entire document, which includes other important clauses such as the commitment to "treat all persons with respect and dignity, and uphold their God-given worth from conception to death".
- 4. The resolution attempts to duplicate the more comprehensive process already initiated by the Law Society of BC (and other Law Societies) as they consider how to implement the decision of the Federation. The Law Society of BC has requested written submissions.

I would be pleased to discuss further at your convenience.

Yours very truly,

Kari D. Boyle Barrister & Solicitor

Cc: submissions@lsbc.org

to Bayle

Justine Clark	
From:	on behalf of Eldon and Mary Bruce
Sent: To: Subject:	Monday, March 03, 2014 2:51 PM Submissions deliberation on the status of graduates of Trinity Western University's law school.
Follow Up Flag: Flag Status:	Follow up Completed
	February 28, 2014
To the BC Law Socie	ety board of governors
Dears Sirs and Ms.	
I would like to submi University's new law	t the following in regard to your deliberation on the status of graduates of Trinity Western school.
Trinity Western Univ	ersity has always been a very stable well run university in Langley BC.
_	ms that come to students or staff are dealt with in a compassionate and logical way. The help disadvantage students such aboriginals to get a university education.
outside of marriage. I homosexuals for disc	idents who go off to university appreciate Trinity Western's stand on no sexual activity This policy does not single out homosexuals and the university has never tried to single out rimination. The policy is designed to prevent students from making bad choices that can ot a discriminatory one.
hormones and sexual a written policy that t	go away from home to university they are very vulnerable to pressures of their own invitation from others, especially pressure from older or more experienced people. Having hey have all signed saves them from having to come up with excuses or explanations of no. It frees the students from having to constantly think up defenses for why they want to resity.

Because Trinity Western was built on Christian principles, they have long been a target for groups that are
prejudiced against all Christian influence in society. Prejudice against Christian influence in society should not
be tolerated in our open minded society.

The groups who want to destroy Trinity Western's new law school are lobbying against it on the grounds that the university would discriminate against homosexuals. The university has never discriminated against individuals who declared themselves to be homosexuals. Their no sex outside of marriage applies to heterosexuals as well as homosexuals.

It would be an asset for British Columbia and for Canada to have a Law School here that emphasized integrit	y,
honesty and strong moral behavior among the young graduation lawyers.	

Thank you

Eldon Bruce

Surrey, BC

on behalf of Mary Bruce Monday, March 03, 2014 3:43 PM From:

Sent:

Submissions To:

Motion re. Trinity Western University Law School Graduates Subject: Attachments: LAW SOCIETY OF BRITISH COLUMBIA Trinity submission.docx

Follow Up Flag: Follow up Flag Status: Completed

Please find attached my submission regarding this motion

Thank you Mary Bruce LAW SOCIETY OF BRITISH COLUMBIA: SUBMISSION FROM M. BRUCE (604-589-9291)

Dear Sir or Madam:

Re: Motion to Deny Graduates from TWU from Practising Law in BC

I was perturbed to read the article on page A13 of the Vancouver Sun dated March 1, 2014 that notes the above motion is scheduled to be heard by you in April. I wish to make a submission in support of Trinity Western University.

Trinity Western got permission to create a Law School from the Canadian Federation of Law Societies and the BC Government, although there was strong opposition from Gay and Lesbian groups throughout the process. These same groups also opposed Trinity Western being granted the privilege of having a teacher training program but did not succeed. If the Canadian Federation and the BC Government have given their approval for the Law School at Trinity, I submit that it is a serious violation of the constitutional rights of graduates to deny them the right to practice the vocation for which they have trained. Canada and the Provinces have removed many of the interprovincial limitations on occupational mobility; are the Benchers in British Columbia about to deny graduates the right to practice law based on their religious beliefs?

In Canada, we have freedom of religion. We have a diverse culture with many opinions and choices. Students have the right to go to schools of their choice and there are many schools established by various religious groups. A decision by you not to permit Trinity Law School graduates to practice in BC could have far reaching, undesirable effects such as denying individual liberty, the right to practice a vocation and limiting diversity of choice.

The Gay and Lesbian community choose to take issue with a private community covenant between the University and students who desire to attend. This covenant is far reaching and asks the students to pledge not to engage in any activities that are biblically condemned; this includes drunkenness, addictions etc. Included in this is a denial of sexual intimacy that violates the sacredness of marriage between a man and a woman. This clause excludes all students who refuse to take the pledge not to engage in sexual promiscuity, not just Gays and Lesbians. I submit it is a foundation of the University to obey all the Biblical principles and I honour them for encouraging their students to live a clean lifestyle, relatively free from sexual distractions while they are at University. It is the kind of University that many parents would want for their children. No one has to attend Trinity; there are many choices of fine Universities for those who want to live differently.

I know groups such as the Gay and Lesbian society have a history of rallying many persons to speak in their favour while the majority of the public are too busy in their work day or too apathetic to become engaged, especially when the only notification is on page A13 of the Vancouver Sun. In your deliberation, I urge you to consider the interests and good of our society and dismiss this motion which appears to be so unfair in singling out TWU Law School graduates to deny them rights to practice in BC.

Respectfully submitted by: Mary Bruce B.A. LL.B. (Osgoode)

From: Lynne Knights

Sent: Tuesday, January 28, 2014 3:28 PM

To: Submissions

Cc:Debra DeGaust; Brenda Tsang; Ginan Ashcroft; Bev Gallagher; Katherine CrosbieSubject:FW: Will Lawyers In Canada Soon Face A Religious Test? The Hypersensitive Response

Over Canada's First Openly Christian Law School

Importance: High

Follow Up Flag: Follow up Flag Status: Flagged

Debra and Brenda, the Law Society is seeking input from both lawyers and the public on the proposed Trinity Western University Law School and I am therefore forwarding this on to submissions@lsbc.org as per the information about this on LEX.

Ginan and Bev, f.y.i.

From: standards

Sent: January-28-14 9:36 AM

To: Lynne Knights **Cc:** Brenda Tsang

Subject: FW: Will Lawyers In Canada Soon Face A Religious Test? The Hypersensitive Response Over Canada's First

Openly Christian Law School

Hi Lynne.

Do you record these types of emails? There is also a second one following this one that I will be sending to you shortly.

Debra

From: Barry Bussey [mailto:barry.bussey@cccc.org]

Sent: January-27-14 7:31 PM

To: standards

Subject: Will Lawyers In Canada Soon Face A Religious Test? The Hypersensitive Response Over Canada's First Openly

Christian Law School

To Whom It May Concern:

The events over TWU Law School is very disconcerting to the entire Christian community across this country. I have written a number of my initial concerns:

Will Lawyers In Canada Soon Face A Religious Test? The Hypersensitive Response Over Canada's First Openly Christian Law School

The hypersensitive response over Canada's first openly Christian law school at Trinity Western University (TWU) has led to a demand that law societies across Canada not allow TWU law graduates to practise law – because of the religious belief of TWU concerning marriage. In essence, a religious test to determine one's suitability to practise law.

...The prospect of having one Christian law school caused a level of opposition and rancour not seen in Canadian legal history—and it is not over yet.

Read more at: http://wp.me/p30X8p-4kb

--

Barry W. Bussey, MA, LL.M.

V-P Legal Affairs

Canadian Council of Christian Charities

Advancing Ministry Together

Blog | Facebook | LinkedIn | Twitter 1-43 Howard Ave Elmira ON N3B 2C9

Web:www.cccc.org Tel: 519.669.5137

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From: Sunday, March 02, 2014 11:58 PM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

I am writing because I understand that the Benchers of the Law Society are considering whether they should preemptively decide that future graduates of proposed law school at Trinity Western University shall not be qualified to join the Law Society of British Columbia, due to TWU's Community Covenant. I am concerned that on this point our Law Society is stepping beyond its fundamental oversight of lawyers' conduct and may attempt to constrain views lawyers may hold to be members of the bar.

The law does not require that people share the same values regarding all legal activity, including how people conduct their personal relationships. It is appropriate that Canadians continue to tolerate differing opinions and protect the freedom to have those opinions. Freedom of expression for individuals and private institutions, of which TWU is one, is a fundamental value of both the Charter and Canadian society of the past two generations. On this matter it appears that TWU's freedoms threaten legal no other rights; it would be incorrect to think that a balance of competing rights is required. If TWU is prepared to offer its opportunities to all applicants and does not prevent anyone from attending TWU on the basis that he or she defines himself or herself differently than TWU's community has defined itself, then it has discriminated against no one. Bear in mind that it cannot be assumed that simply because someone attends TWU that he or she shares the views expressed its Covenant.

In any event, the possibility that students training in a legal program at TWU may define themselves and their values differently than students enrolled in the many other law programs across Canada should not be relevant for subsequent admission to any provincial bar. We already welcome law students, interprovincial transfer lawyers, and foreign-trained lawyers from all walks of life to the Law Society, so long as they have met substantive requirements of legal training and practice. And, for a variety of reasons, should an individuals's views (usually based on more compelling reasons than where he or she went to law school) on particular laws differ from the status quo, that should not be assumed to necessarily be undesirable. Lawyers cannot and should not blithely consider that all laws are equally appropriate and valid, otherwise the legal profession would be impoverished, lacking advocates for necessary legal challenges and evolution of the law.

I ask the Benchers to refrain from making a decision that is prejudicial against a group of people for what they are perceived to believe, merely because of where they train before applying for membership of the bar.

Leo Caffaro Legal Counsel



Dear Mr. McGee,

I preface this letter with gratitude for the significant contribution to civil and public discourse that The Law Society of British Columbia has facilitated by inviting submissions in the matter of Trinity Western University's application for recognition of their law school. In keeping with the desire for a pluralistic and harmonious society that I know we all share, today I write to you in support of TWU's law school. In a civil and heterogeneous society, the voices of a broad and diverse range of opinions must be heard, included, and incorporated in the ways we choose to live together. This includes, but is not limited to, TWU's law school.

The Canadian Baptists of Western Canada, which began its work in the West in the 1870s, has long been known for its celebration of the diversity inherent in Canadian life. Tommy Douglas and John Diefenbaker, two members of our family of churches, promulgated the following Canadian traditions of social justice with great effectiveness: the enfranchisement of First Nations, the opposition to apartheid by a Commonwealth head of state, the Canadian Bill of Rights, and Medicare. The wider North American Baptist family includes three Nobel Laureates in the areas of civil rights, peacemaking, and the environment, in the persons of Martin Luther King Jr., President Jimmy Carter, and Vice-President Al Gore.

In his written decision for Chamberlain v. The Board of Trustees of School District #36 (Surrey), Mr. Justice Kenneth C. Mackenzie of the British Columbia Court of Appeal described pluralism "in the sense that moral positions are to be accorded standing in the public square irrespective of whether the position flows out of a conscience that is religiously informed or not." Indeed, the voices of inclusion and tolerance emanate from many places. Legal societies, community groups, and faith groups all have their contributions to make to this discussion. Former Lieutenant-Governor of



British Columbia David Lam, as a Baptist and one well versed in Confucian philosophy, stated upon the occasion of his appointment, "It is not good enough to tolerate one another; that's like holding your breath...we should celebrate diversity." Or as Mohandas Gandhi is known to have said, "The golden rule of conduct is mutual toleration, seeing that we will never all think alike..."

Thus it is ironic, possibly even tragic, that a new sense of inclusion and diversity threatens to repeat the problems of previous generational narrowness by replacing old bigotries with new ones. We only make progress as a society when we truly live out a pluralism that credits each other with the ability to share and live our own personal narratives without discrimination. We need to insist that no harm comes to others as we live our personal stories. Inconvenient as it may be, we must begin to show societal progress by applying tolerance to all and not simply shuffle around our biases.

TWU's Community Covenant applies to all and targets no one group. It frames sexual behaviour and evenly applies it to sexually attracted persons, whether attracted to the opposite sex or the same sex. Since it does not target a particular group, TWU therefore cannot reasonably be accused of discrimination.

Any commitment to diversity will ask of all parties to inconvenience themselves for others. Collective compatibility will only be achieved through small and large sacrifices, no matter how ambivalent or disagreeable it may seem. It is important that all of us decide to do the greater good for all, not just for some, as some may define it. We have, I trust, reached the developmental stage in our society where all can be heard, and each new social awareness and change need not be accompanied by "winners" and "losers." Such a mentality results in an antipluralist bifurcation of society, featuring a triumphant group on one side and a newly formed marginalized group on the other.



We as Canadian Baptists of Western Canada enjoy a long and committed history to a diverse society, which by its very nature includes the rights of all and excludes entitlement for any. TWU continues to maintain its place in a diverse and pluralistic society. It seeks no entitlement, simply a place at the table in a civil society that celebrates the diversity we find so meaningful.

If I may be afforded a personal note: as one who hails from an extended family of judges and lawyers, and counts practitioners of these professions among my friends, I have always been impressed by the broad embrace that the rule of law encourages. It is for this reason that I consider this matter to be in the good hands of the Benchers of The Law Society of British Columbia.

Sincerely,

Rev. Jeremy Bell

Executive Minister

Canadian Baptists of Western Canada



BY EMAIL: submissions@lsbc.org February 28, 2014

The Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Executive Director Timothy E. McGee, Q.C.

Dear Mr. Mcgee:

RE: Equality for All - Recognizing the Right of Religious Institutions to Believe and Practice Their Faith: The Case of Trinity Western University Law School

Who We Are And What We Do

The Canadian Council of Christian Charities (CCCC) is a member-based association of over 3300 faith-based charities and has been in existence since 1972. Our membership also includes approximately 132 umbrella charities serving districts of churches and parishes, each with twenty-five to several hundred charities in their respective membership. In our membership we also have 54 religious colleges and universities and 66 Christian elementary and primary schools from a broad cross section of the Christian community.

Our association provides two key functions to our sector. First, we provide practical, expert resources in administration, fundraising, and management to our membership organizations as they actively pursue their distinctive roles in the advancement of religion. Each year we answer thousands of calls and emails from our members on a wide range of issues including finance, charity law, governance, and human resources.

The second key function we provide is a charity certification program. Since 1983 CCCC has conferred a Seal of Accountability on charities who have met our standards. These standards include:

- Having an independent, active governing board
- Having an independent financial audit
- Being committed to public financial disclosure
- Undertaking regular evaluation of programs for effectiveness and efficiency
- Adopting a Code of Accountability dealing with Ethical Fundraising & Financial Accountability
- Pursuing integrity

As an organization we have made a strong commitment to accountability and transparency.

You may find more information about our organization at: www.cccc.org

Introduction

Religious communities rely on the guarantees in the *Charter*¹ to ensure that they will have equal opportunity to live out their beliefs and practices without state intervention, in the same way as those who espouse no religious belief. In other words, religious communities have equality rights, too, under section 15.

We understand that the Benchers of the Law Society of BC (LSBC) are considering the application of Trinity Western University (TWU) for a law school and are inviting submissions from the legal profession and the public. We understand that this review, which comes after the Federation of Law Societies of Canada (FLSC) has already decided to approve TWU's application, has been initiated as a result of concerns expressed about TWU's Community Covenant.

We are troubled by the suggestion that a faith-based university such as TWU ought not to have a law school based upon its religious beliefs and practices as it is disconcerting for the religious institutions in this pluralist country.

The suggestion that TWU is violating human rights is simply wrong. The university is exercising its human rights of religious freedom and equality. With each human right there is an obligation to support that right. TWU's views and practices are protected by the Charter as the Supreme Court of Canada made very clear in its 2001 decision involving TWU and its education program. The legal academy's umbrage against TWU's religious view of marriage has led it to be in total opposition to the current state of the law.

The LSBC's deliberations and treatment of TWU's law school will be seen by many of the faith-based community, which includes more than 33,000 religious registered charities, as a litmus test of the extent to which religious institutions are going to be treated equally going forward and whether the guarantees of the *Charter* will be sustained.

Further, we are concerned not only about the treatment of faith-based institutions, but also about lawyers who hold the same religious views as TWU, or who hold any other personal beliefs or convictions which may differ from those of a professional regulator. It is our submission that professional organizations such as the LSBC ought to be more concerned about the legal competency of TWU graduates and other lawyers rather than their religious beliefs and practices. Throughout this country lawyers are properly governed by a code of professional ethics. We respectfully suggest that is what the LSBC should regulate — not religion.

Finally, as a matter of introduction, we wish to state that our concern is not to limit any right of the LGBT community. Rather, our concern is simply that religious organizations and religious individuals who believe and operate with a religious definition of marriage ought to be treated equally and not be held at a disadvantage because professional organizations might adhere to a different set of beliefs.

¹ Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, enacted as Schedule B to the Canada Act 1982, (U.K.) 1982, c. 11, which came into force on April 17, 1982.

Violation of Religious Freedom and Equality

The LSBC's review comes within the context of a concerted campaign of those who disagree with TWU's religious beliefs and practices on marriage. It has been suggested that such a belief and practice is reason enough to deny TWU graduates the ability to practice law. However, it has not been demonstrated that the mere religious belief of marriage and personal expression of that belief will result in a deficiency of relevant legal competencies. In fact, given that throughout this country there are hundreds of practicing lawyers who espouse the same beliefs as TWU, it is reasonable to conclude that having a mere religious belief and personal practice regarding marriage does not make one any less competent to impartially practice law than one who has a secular view and practice on marriage. Thus it is hardly a sufficient reason to decline a TWU graduate from legal practice.

Such a prohibition based on religious belief and practice, rather than on legal incompetence, is reminiscent of earlier violations of religious freedom in this country such as the *Roncarelli* case of 1959.⁴ In that case, the Quebec premier of the day did not approve of the religious beliefs of the Jehovah's Witnesses and demanded the withdrawal of the liquor license of Mr. Roncarelli. That is not dissimilar to the general theme of the injustice being advocated against TWU:

- TWU's religious views and the requirement of students to abide by its teachings is protected by s. 2(a) of the *Charter*;⁵
- The preamble of the federal *Civil Marriage Act*⁶ states that though marriage was redefined for civil purposes, members of religious institutions are free to "hold and declare" their religious views of marriage and that it is not "against the public interest" for religious organizations to hold diverse views of marriage;
- TWU is proclaiming and practising the traditional Christian definition of marriage, which is clearly within its right to do so;
- Legal academics have taken offence to TWU's belief and practice and are demanding law societies across this country to deny potential TWU graduates to practice law without regard to legal competence;⁷

⁵ Trinity Western University v. College of Teachers, [2001] 1 S.C.R. 772.

² See: Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program," *Canadian Journal of Women and the Law*, Vol. 25, No. 1, 2013, and Jeff Green, "Proposed Christian law school should be denied accreditation, Clayton Ruby says," Toronto Star, March 1, 2013, online: http://www.thestar.com/news/canada/2013/03/01/proposed christian law school should be denied accreditation clayton ruby says.html.

³ John B. Laskin, "MEMORANDUM Re Trinity Western University School of Law Proposal –Applicability of Supreme Court decision in Trinity Western University v. British Columbia College of Teachers," to Gérald R. Tremblay, C.M., O.Q., Q.C., Ad. E., President, Federation of Law Societies of Canada, Jonathan G. Herman, Chief Executive Officer, Federation of Law Societies of Canada, March 21, 2013, p. 8, being Appendix C of the Special Advisory Committee On Trinity Western's Proposed School Of Law, Final Report, December 2013, online:

http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf

⁴ Roncarelli v. Duplessis, [1959] S.C.R. 121.

⁶ *Civil Marriage Act*, S.C. 2005, c. 33, Assented to 2005-07-20, online:: http://laws-lois.justice.gc.ca/eng/acts/c-31.5/FullText.html

['] Elaine Craig, "Law societies must show more courage on Trinity Western application," online: http://www.theglobeandmail.com/globe-debate/law-societies-must-show-more-courage-on-trinity-western-application/article16023053/

• Law societies have responded to the political pressure from the legal academics by holding further investigations after TWU had already been thoroughly vetted and approved by the Federation of the Law Societies of Canada.

It is highly unusual procedure for a Law Society to hold a public airing of a review of a decision of the Federation of Law Societies of Canada when it has approved a law school. In fact, our research indicates that the LSBC did not hold such a hearing for the recently approved law schools at Lakehead University and Thompson Rivers University. Yet, LSBC is holding a review of the approval for Trinity Western University's law school.

The obvious question is, "Why?"

It would be fair to suggest that the faith-based community is highly concerned by this different treatment by the law societies over the approval of a faith-based University to have a law school. We fully anticipate that the societies that are reviewing this matter will follow all of the legal requirements and protocols that are expected of an administrative body to ensure that the principles of procedural justice are followed. However, CCCC submits that since TWU has already met every requirement of the Federation to be accredited as a law school, it is inappropriate as a matter of administrative law for a Law Society to question that decision solely on the basis of the law school's religious beliefs.

Is There No Room For Diversity?

The average number of first-year law students in Canada is 2000. TWU plans an entrance class of some 60 students, which would represent only 3% of the first year law class in Canada. With TWU law school coming on stream, approximately 97% of law students in Canada will be attending secular law schools. The question we have to ask is, "With there being 97% of the law students in secular institutions, can 3% have an existence of their own? Or, paraphrasing Douglas Laycock, we ask, "Is the secular model so absolutist that it cannot tolerate a 3% minority with a different solution?"

This controversy raises questions about the ability of charities that hold the same position as TWU on the issue of the sanctity of marriage, to operate in the "public sphere." Should TWU's law graduates not be accepted to practice law in a province in Canada, it will have set a troubling precedent for other charities. The same arguments against TWU law graduates could be raised against graduates of Christian schools and universities or any institution which might hold beliefs which differ from those endorsed by the state. This would give support to the very troubling argument, as some have already raised, that such faith based institutions should not have the state's imprimatur to issue such diplomas. Those institutions will be forced to answer for their religious belief on marriage (or potentially any other issue, for that matter) and their graduates will be suspect as they enter into the various professions, such as medicine, social work, nursing, and education. In effect, their religious beliefs will be used against them rather than any ethical failures they would commit in violation of professional standards.

⁸ Dean David S Cohen, "How Many Lawyers and Law Students? The supply of lawyers in Canada," online: http://www.cba.org/dev/BC/bartalk_95_00/08_98/guest_cohen.aspx

⁹ Douglas Laycock, "The Rights of Religious Academic Communities," (1993) 20 J.C. & U.L. 15, p. 26.

¹⁰ Bruce MacDougall, "The Separation of Church and Date: Destabilizing Traditional Religion-based Legal Norms on Sexuality," (2003) 36 U.B.C.L. Rev. 1-27 at para. 37.

The message, if LSBC were to deny TWU graduates admission to the bar, would be clear: educational institutions – faith-based or otherwise – must believe and practice as those who oppose TWU demand or else lose their right to be a recognized institution of learning.

There can be no mistaking the message that will be heard by the faith-based community should LSBC deny the practice of law to TWU law graduates. In essence, such decisions would assert that faith-based communities no longer have the right to organize themselves into communities of faith to live and operate with a religious definition of marriage. They will have been denied full equality with the secular community of Canada.

Under such a circumstance the pre-amble of the Civil Marriage Act and the guarantees of the Canadian *Charter* in protecting religious practice will have been not only ignored, but expressly violated.

Clearly the Supreme Court of Canada recognized this in 2001 when it stated:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected.¹¹

Conclusion

It is our respectful submission that the LSBC re-evaluate the true purpose of reviewing the approval of TWU in light of the exhaustive treatment of TWU's law school by the Federation of Law Societies of Canada. We respectfully submit that the heart of the matter ought to be the legal competency of its graduates rather than the religious belief and practices of TWU concerning marriage. Lawyers must adhere to a robust code of ethics through rules of professional conduct. Those are the mechanisms that should be used to determine whether an individual candidate is fit to practice law, not a blanket prohibition on graduates from a particular educational institution or on those who hold certain religious or personal beliefs.

Finally, we submit that there ought to be equality for all in Canada – religious as well as secular. No lawyer and no law student should have to face a religious or irreligious test to practice law, nor – we might add – should a religious university such as TWU have to face such a test to have a law school.

CCCC is grateful for the opportunity to make this submission and would be pleased to provide further assistance in any way the LSBC believes would be appropriate.

Sincerely,

Barry W. Bussey, B.A., LL.B., M.A., LL.M.

V-P Legal Affairs

¹¹ Trinity Western University v. British Columbia College of Teachers 2001 SCC 31, at para. 33.

From:

Larry P Carter

Sent:

Saturday, March 01, 2014 12:12 PM

To: Subject:

Submissions TWU grads

Follow Up Flag:

Follow up

Flag Status:

Completed

Given that standards are clearly delineated in advance, applicants know in advance what the expectations are and can choose to apply or not. They can also freely choose to follow through on their commitment or not.

Denying the right to practise law for TWU grads will open Pandora's box and once again tarnish the profession and the Society. Such a decision represents pandering to a vocal minority rather than applying simple intuitive logic. It would perhaps bring short term gain with longer term negative consequences. You are better than that.

Sent from my iPhone Larry P. Carter

From: K-John Cheung & Assoc.

Sent: Thursday, February 27, 2014 12:42 PM

To: Submissions

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

I fully adopted the content of Mr. Dwright Newman's article titled "The desperate campaign to thwart a Christian Law School" published in the National Post (January 21, 2014 issue) as my submission. As ably demonstrated by Mr. Newman in his above article that politically correct attacks from some special interest groups centering mainly on the covenant that commits students of TWU to the sanctity of marriage between a man and a woman, carry no substance and no solid foundation in the context of our constitutional rights (e.g. freedom of conscience and religion, equality before and under the laws, etc.). Our country will be in a sorry state, particularly, the fundamental right of freedom of religion and conscience, if such basic rights could be suppressed, curtailed or deprived by such incessant and vicious attacks, especially, from a group of law deans who are supposed to be conversant with our core values as reflected in our Constitution and the Charter of Rights and Freedoms.

K-John Cheung

From: Sent:

Saturday, March 01, 2014 12:26 PM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

I am amazed that you would consider not allowing graduates from TWU to practice law.

1. There are some universities with law programs in the USA that have similar policies.

Their graduates can be found arguing both sides of gay rights issues. Some of those graduates are likely practicing law in Canada. Will you retroactively go after them even though they have fulfilled requirements to practice law here?

2. Lawyers do not all want to practice law. Some teach or work as consultants or

- in management for companies or even as politicians so their degree will not be useless. In fact my son just went to a management training course in the USA for a large Canadian company. One of the other guys in his class had a law degree but was now working in an apprentice position and moving into Management in the company.
- 3. A lawyer takes a degree, articles for a year and writes the bar before being admitted. You could require an additional ethics or bill of rights course before admitting them instead of throwing out their degree.
- 4. I think TWU teachers are doing well and proving themselves.
- 5. I think you should be careful in responding to pressure from groups in society that want their rights to trump the rights of others to believe differently. I used to think the law was about balance and freedom in our country.
- 6. Maybe we really have too many lawyers and we do not have enough jobs and articling positions for them. If that is so then that is another issue

Sent from my iPad

From: Marian Chisholm

Sent: Saturday, February 22, 2014 8:25 AM

To: Submissions

Subject: Trinity Western University's Law School

Follow Up Flag: Follow up Completed

The Law Society of BC Attention: Executive Director 845 Cambrie Street Vancouver, BC V6B 4Z9

February 22, 2014

Dear Executive Director:

This is *never* an issue of competence. Anybody graduating from the University is then obliged to write the Law Society of British Columbia's Bar exams. It is *never* a matter of competence or if they technically qualified. The presumption is:

- (a) they have a University Degree, and
- (b) they have to pass the Bar exams.

But just as somebody who believes let us say that prostitution is morally and legally wrong would be perfectly qualified and obliged if he or she worked for Legal Aid in defending a prostitute. Their personal, moral, ethical beliefs can't limit their right and obligation to practice law and defend, even though they may be laws that they do not agree with.

Respectfully submitted, Marian Chisholm Halifax, NS



February 11, 2014

Tim McGee, Executive Director The Law Society of BC 845 Cambie Street Vancouver, BC, V6B 4Z9

Dear Mr McGee:

I am writing in my capacity as Executive Director of Christian Higher Education Canada (CHEC). Let me begin by thanking you for this opportunity to contribute to the dialogue you have announced regarding how your law society should deal with graduates of the new law school that will be opening at Trinity Western University.

CHEC is an association of 35 accredited, degree-granting colleges, universities, graduate schools and seminaries from across Canada, including Trinity Western University, which represent a longstanding tradition of higher education offered in the context of the Christian faith.

We acknowledge the reality of differing views in our society related to sexual morality and community standards for institutions of higher education. However, we wish to express deep concern about addressing the issue of academic legitimacy, which has already been duly researched and decided by a national body created expressly for the purpose of such reviews, by means of an additional assessment by a provincial law society focussing on a person's institution of graduation.

Despite the balance that has been struck in human rights legislation between individual rights related to sexual orientation and institutional rights related to religious identity, the proponents of such an approach apparently believe that this balance is inappropriate and needs to be righted, possibly in light of the rights set forth in Section 15 of the Charter. However, to seek to insert provincial law societies into this issue is, we believe, to err gravely on at least three fundamental points related to national standards, due process and the rule of law.

First, the principle of national professional standards, whether in accounting, medicine, law or social work, is an important one for national integration, promoting interprovincial consistency and mobility. We believe it would be a much more appropriate approach to deal with these standards, and differences regarding such standards, in the national context in which they belong.

Second, we would maintain that imposing a kind of morality test on graduates is the wrong way to deal with a dispute about the academic legitimacy of the institution they attend. This not only infringes on the religious freedom of individual graduates but also violates due process by making a presumption about their individual views that is not based on any evidence or inappropriate behaviour or performance regarding human rights.

The link between personal religious beliefs and supposedly inappropriate professional views and performance may not be inferred, as the Supreme Court concluded in the case related to the accreditation of Trinity Western's faculty of education. However, once this area would be entered, one could argue that Christians and those of other faiths who are graduates of institutions that the law society sees as upholding appropriate standards but who might also hold differing personal views should also be reviewed.

Going down this road would result in what is tantamount to a "religious test" that an individual provincial law society would take upon itself to apply, either to some or to all law school graduates. This is a prospect that is neither desirable nor tenable as a way of dealing with the differing views that are at stake regarding institutions that have a basis in the Christian faith and morality and would undermine Canada's pluralistic diversity of higher education institutions.

As a result, we would strongly urge the law society to reject any notion of adding a provincially based discrimination test to graduates of Trinity Western's law school, or to graduates of any Christian institution of higher education that is duly accredited as a degree granting institution in its province of jurisdiction. Academic and professional accreditation is far too complex a matter to be treated in this fashion.

Third and finally, we would ask that the rule of law be respected in this matter. When disputes arise in society regarding human rights, public morality and the like, our democratic society has institutions with authority to deal with these, namely, the legislature and the courts. In this situation, the Supreme Court of Canada has already ruled in favour of Trinity Western University in an almost identical case. As well, when the definition of marriage was changed for civil purposes, specific clauses were inserted to protect religious institutions from facing discrimination on the basis of their retention of religious views of marriage. For a provincial professional society to make a decision directly opposed to these rulings offends the rule of law, something highly ironic for a law society to be considering.

We thank you for the opportunity to express these views and trust that they will be helpful in providing a broader perspective for this important dialogue that touches on fundamental rights and freedoms in our Canadian society. I look forward to receiving your response.

Sincerely,

Justin Cooper Executive Director



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February 28, 2014

Via Email to: submissions@lsbc.org

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

ATTN: Executive Director Timothy E. McGee, Q.C.

Dear Mr. McGee:

RE: Trinity Western University Consultation

The Law Society of British Columbia is reviewing the approval of the Trinity Western University (TWU) application for a law school and in so doing, has stated that the Benchers have the final say in whether any faculty of law is an approved faculty of law for the purpose of meeting the academic qualification of the Law Society's admission process. And further that the Benchers take very seriously their obligation to ensure that any decision regarding a new law school at TWU is done with the utmost attention to openness and fairness and to a process that is thorough, thoughtful, and fair.

The society has invited submissions from members of the profession and from the public. The Christian Legal Fellowship (CLF) appreciates the opportunity to make submissions to the Law Society of British Columbia in this matter.

Much of the attention surrounding Trinity Western University's (TWU) proposed school of law has to do with sensitivity to concerns about discrimination. In particular, in connection with the TWU Community Covenant Agreement, for example, the Nova Scotia Barristers' Society is reviewing the issue of whether they will permit graduates of Trinity Western University's (TWU) proposed school of law to acquire membership in their society.

It is noted that the Federation of Law Societies of Canada, to whom the power of approval was granted, has already considered this issue and approved TWU's application. TWU also received approval from the British Columbia Ministry of Advanced Education to grant the degree Juris Doctor (J.D.).

The CLF is a national charitable association that exists to serve the legal profession by deepening and strengthening the spiritual life of its members, and to encourage and facilitate among Christians in the vocation of law the integration of a biblical faith with contemporary legal, moral, social and political issues. The CLF's membership consists of nearly 600 lawyers, law students, professors, and others who support its work. It has 14 chapters in cities across Canada and student chapters in most Canadian law schools. While having no direct denominational affiliation, CLF's members represent more than 30 Christian denominations working in association together.

NGO in Special Consultative Status with the Economic & Social Council of the United Nations

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The CLF was founded out of the conviction that the practice of law is a vocation, a calling from God. As Christian lawyers, we are heirs to a tradition of legal thought that bears on many of the most pressing legal and constitutional questions facing our profession, as well as our broader community. We believe it is our responsibility as Christian lawyers to continue to develop that tradition, and to articulate what we understand to be required by justice in a free and democratic society.

As Canada's largest association of Christian lawyers, CLF is uniquely positioned to comment on some of the issues being considered by The Law Society of British Columbia (LSBC) in this matter.

Our starting point is that, in a multicultural society such as Canada, there can be no single conception of sexual morality and marriage that all must be compelled to believe. Indeed, even within CLF's own membership, there is a divergence of individual beliefs on this matter. However, our members stand united in the conviction that individuals should be free to formulate and adhere to their own understanding of the good, and live according to their individual conscience and religious beliefs. These principles are not only entrenched in the *Canadian Charter of Rights and Freedoms*, but in this particular context, they are specifically affirmed in the preamble to *the Civil Marriage Act*, which states that 'it is not against the public interest to hold and publicly express diverse views on marriage'. ¹

CLF would be concerned if TWU refused to admit gay students, but it does not. It does require that all of its students live according to an evangelical Christian code of conduct while in attendance at TWU, including an evangelical Christian understanding of marriage and sexuality.

The current campaign, although directed against TWU specifically, has implications for all those in the legal profession – Christian or otherwise - who understand marriage and sexuality in the same way as TWU, as well as for any lawyer who opposes certain laws, even while abiding by them and advising their clients to do likewise. The message is that it is not enough to accept gay and lesbian colleagues and clients as colleagues and clients and to serve them impartially. The thrust of the opposition to the TWU proposal would prohibit lawyers, judges and law professors from articulating or endorsing, either in the public square, the academy, or the marketplace, a religious understanding of marriage and sexuality which differs from what is defined by the civil law for secular purposes. TWU is not training its students to accept an erroneous understanding of the civil law or provide inaccurate legal advice about the legal impact of the *Civil Marriage Act* – if so, the LSBC would have every right to be concerned. To the contrary, Christian lawyers, like all lawyers, understand the difference between providing accurate, sound legal advice in their professional practices, and formulating personal comprehensive belief systems which may differ from the state's official position.

The implications of refusing TWU accreditation on these grounds will be felt by Christian lawyers – indeed lawyers of all faiths and those of no faith who hold similar conscientious views – throughout Canada. Law deans, law firm diversity committees, corporate counsel initiatives, law student councils, and others with power over lawyers and law students will take from such a refusal a mandate not to tolerate any dissent from their view on matters of sexual morality or marriage.

Canadian society is robust enough to live with the tension of divergent understandings of marriage and sexuality, just as it is robust enough to live with the tension of divergent understandings of the divine. Canadian society can handle disagreements about the morality of sexual practices and the nature of marriage, just as it handles disagreements about the value of religious practices.

There exist, in the courts, law faculties, and firms, Christian lawyers who accept the moral theology behind the TWU code of conduct. They have not, to this point, been viewed as unfit to practice and to teach. But if the TWU application is denied, we can expect that pressure will be brought to bear on them as well. It is intolerable that lawyers should be



required to conform their personal beliefs to someone else's view of what marriage ought to be and what its purpose is. But that will be the message if the TWU application fails.

The legal profession is one that has always promoted independence from the state, diversity of opinion, and freedom from mental and religious coercion. Its existence is predicated on the ability of its members to maintain that independence, and that starts with respecting their freedom to form their own beliefs. Law societies exist to regulate professional conduct and competence, not to police the personal beliefs and convictions of its members. To impose a blanket prohibition on all TWU graduates would be to pre-emptively judge a candidate as unworthy of the profession simply because he or she adheres to certain religious beliefs. Such a ban would violate the very principles of independence, diversity, and natural justice that the profession exists to protect, and would be egregious in the absence of any evidence that the individual candidate would actually engage in unlawful discrimination in his or her practice.

To paraphrase the findings of the Supreme Court of Canada in *BCCT v. TWU*², although members of the legal profession may have reasons to object to TWU's Community Standards, they are not sufficient to deny TWU graduates admission to the bar. Indeed, if TWU's Community Standards could be sufficient in themselves to justify such denial, it is difficult to see how the same logic would not result in the denial of admission to the bar to members of a particular church, or to any future candidate who might hold dissenting and unpopular views on a given political, social, or moral matter. The diversity of Canadian society is partly reflected in the multiple religious and other non-governmental organizations that mark the societal landscape, and this diversity of views should be respected.

As a quasi-governmental body, the LSBC must exercise its authority in a manner consistent with the values enshrined in the *Canadian Charter of Rights and Freedoms*. The LSBC must take into account the *Charter* value of freedom of religion. As the SCC concluded in its careful review of this very issue, where rights appear to be in conflict the appropriate reconciliation involves the toleration of divergent beliefs and respect for the freedom of individuals to adhere to those beliefs.

As the Supreme Court of Canada concluded in *BCCT v. TWU*, tolerance of divergent beliefs is a hallmark of a democratic society. The CLF submits that such tolerance must begin with lawyers themselves, as the guardians of the rule of law.

Please note the 175 endorsements including judicial (retired) that follow. CLF would be pleased to provide further assistance in any way the LSBC believes would be appropriate. Thank you for your attention to this matter.

Sincerely,

Ruth A.M. Ross, B.A., LL.B.

Interim Executive Director

Called to the LSBC 1983 (Ruth Ann Mix); member of the Ontario Bar

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- 1. John E. Humphries, Barrister & Solicitor, Peachland, BC
- 2. Philip J. Dougan, Lawyer, Vancouver, BC
- 3. Gerald Kent, Lawyer, Cranbrook, BC
- 4. T. Charles De Jager, Barrister & Solicitor, Surrey, BC
- 5. Donald L. Wilkinson, Partner, Porter Ramsay LLP, Kelowna, BC
- 6. Geoffrey Trotter, Lawyer, Vancouver, BC (intends to file an additional, individual submission)
- 7. Stanley Leo, Lawyer, Vancouver, BC
- 8. Oloff Beirmann, Barrister & Solicitor, Langley, BC
- 9. David Gileff, Lawyer, Vancouver, BC
- 10. Ken Volkenant, Barrister & Solicitor, Surrey, BC
- 11. Ronald J. Smith, QC, Barrister and Solicitor, Kelowna BC
- 12. Peter J. Anderson, Barrister & Solicitor, Vancouver, BC
- 13. Shawn M. Smith, Partner, Cleveland Doan LLP, Barrister and Solicitor, White Rock, BC
- 14. I. Stanley Osobik J.D., Lawyer, Victoria, B.C.
- 15. Marie-Louise Fast, Barrister & Solicitor, Richmond, BC
- 16. George Gunnink, Lawyer, Surrey, BC
- 17. Michael Dieleman, Lawyer, Richmond, BC
- 18. Carmelle Dieleman, Articling Student, Richmond, BC
- 19. Geoff Severide, Barrister & Solicitor, Penticton, BC
- 20. Candace Cho, Lawyer, Vancouver, BC
- 21. Rev. Greg Sumner, Pastor, New Life Community Baptist Church, Duncan, BC
- 22. Jeffrey S. Lowe, Lawyer, Vancouver, BC
- 23. Luke Johnson, Barrister & Solicitor, Surrey, BC
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- 25. Thomas J. Johnson, B.A., LL.B., Lawyer, Summerland, BC
- 26. Alastair Rees-Thomas, Barrister & Solicitor, Richmond, BC
- 27. Kallen Fong, Barrister & Solicitor, Vancouver, BC
- 28. Masao Morinaga, Lawyer, Richmond, BC (intends to file an additional, individual submission)
- 29. Sean Hedley, Second-year Law Student, UBC Faculty of Law, Vancouver, BC
- 30. Robert Z. Donick, Barrister & Solicitor, Kelowna, BC
- 31. Nardia Chernawsky, Articling Student, Vancouver, BC
- 32. Christopher A. Becker, Lawyer, Abbotsford, BC (intends to file an additional, individual submission)
- 33. Brad E.L. Douglas, Barrister & Solicitor, Prince George, BC
- 34. Lee Sawatzky, Lawyer, Langley, BC
- 35. Jamie A. Bleay, Lawyer, Vancouver, BC
- 36. Marie Burgoyne, J.D. (Candidate for Admission to the BC Bar), Vancouver, BC
- 37. Scott Macfarlane, Lawyer, North Vancouver, BC
- 38. Dan Draht, Student-at-law, University of British Columbia, Vancouver, BC
- 39. John B. MacDonald, B. Com., LL.B. (UBC), M.A. (Regent College), D. Min. (TWU).
- 40. J. David S. Avren, Director of Legal Services, BC Hydro, Vancouver, BC
- 41. Jeannette Savoie, Lawyer, Yellowknife, NT
- 42. Tom Schuck, Lawyer, Weyburn, SK
- 43. Thomas G. Dean, Lawyer, London, ON
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- 46. John C. Knibbe, Barrister, Solicitor, and Notary, Calgary, AB
- 47. Kathleen Pinno, Student-at-Law (University of Alberta), Edmonton, AB
- 48. Renée E. Short, Barrister & Solicitor, Calgary, AB

- 49. Daniel J. Mol, B.A., M.Sc.Econ., J.D., Barrister & Solicitor, Edmonton, AB
- 50. Ryan McConaghy, Lawyer, Toronto, ON
- 51. Waldy Derkson, Lawyer, Winnipeg, MB
- 52. Barbara F. VanBunderen, Lawyer, London, ON
- 53. Christine Lowe, Student-at-Law (Osgoode Hall Law School), Toronto, ON
- 54. Danny Gurizzan Jr., Student-at-Law, Woodbridge, ON
- 55. Rob Wildeboer, Lawyer, Toronto, ON
- 56. Grace McIntosh, Legal Counsel, Seventh-day Adventist Church of Canada, Oshawa, ON
- 57. Monick L. Grenier, Barrister & Solicitor, Ottawa, ON
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- 60. David St. Clair Bond, Barrister and Solicitor, Hubbards, NS
- 61. Kristin Debs, Lawyer, Halifax, NS
- 62. Changoo Jung, Student-at-Law (Queen's University), Kingston, ON
- 63. Fr. Evo DiPierro, Member of the N.S. Bar since 2003
- 64. Denis Grigoras, Lawyer, London, ON
- 65. Geoffrey F. Cauchi LL.B., Lawyer, Mississauga, ON
- 66. Lakin Afolabi, Lawyer, London, ON
- 67. Deborah Santema Olthof, Lawyer, Leduc, AB
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- 69. John Sikkema, Law Student, Queen's University, Kingston, ON
- 70. Murielle Harkema, Second-year Law Student, University of Alberta
- 71. Janine Van Nus, completed 2 years of law school at the University of New Brunswick
- 72. David McMath, Lawyer, Fredericton, NB
- 73. Clifford G. Pyle, Saskatoon, SK
- 74. James CS Lam, Lawyer, Markham, ON
- 75. Chantal Desloges, LL.B. (Osgoode), C.S., Lawyer, Toronto, ON (Certified by the Law Society of Upper Canada as: Specialist in Citizenship and Immigration Law & Specialist in Refugee Law)
- 76. Michael Menear, Lawyer, London, ON
- 77. Dennis Shannon, Fenelon Falls, ON
- 78. Elizabeth Swarbrick, Lawyer, Almonte, ON (Member of the NS Barristers' Society for 10 years, Attended Dalhousie University)
- 79. Catherine Duncan, Law Student, Western University, London, ON
- 80. James F. Reich, Lawyer, Calgary, AB
- 81. Richard M. Harding B.A., J.D., R.F.M, Barrister and Solicitor, Calgary, AB
- 82. Elizabeth F.C. Davis-Dagg, J.D., Deputy Mayor, Municipality of Lambton Shores, Ontario
- 83. Joel Reinhardt, Student-at-Law, Ottawa, ON
- 84. Barry W. Bussey LL.M., LL.B., Lawyer, Elmira, ON (Newfoundland 1993, Ontario 1996)
- 85. Genna A. S. Evelyn, Lawyer, New Brunswick (2007), Ontario (2009), Québec (2014)
- 86. André Schutten, LL.B., LL.M., Ottawa, ON
- 87. Paul D. Mack, Lawyer, Oshawa, ON
- 88. Derek B.M. Ross, LL.B., LL.M., Lawyer, Elmira, ON
- 89. Jonathan Ng, Lawyer, Toronto, ON, Dalhousie Law alumnus
- 90. Jessie Legaree, Second-year Law Student, University of Toronto (also submitted independently as a TWU alumnus)
- 91. Walter Thiessen, Lawyer, Winnipeg, MB
- 92. Joshua Tong, Barrister and Solicitor, Toronto, ON
- 93. Dr. Thomas M.J. Bateman, Associate Professor Political Science, St. Thomas University, Fredericton, NB

- 94. C.E. Taucar, Ph.D., LL.M., LL.B., B.A., Barrister & Solicitor, Bradford, ON
- 95. Tyler Koverko, JD, Articling Student, London Crown Attorney's Office (Ontario)
- 96. Rhoda Adetunji, Articling Student, Toronto, ON
- 97. Dr Brian D Scott. HBA; LLB; D. Min, Retired Lawyer, Pastor, Consultant, London, ON
- 98. Robert E. Reynolds, Avocat, Montreal, QC
- 99. Wayne L. Bernakevitch, Partner, Deer, McDougall Gauley LLP, Barrister and Solicitor
- 100. Daniel J. Whittal, Lawyer, Chatham, Ontario
- 101. Angie Redecopp LLB, MBA, Director of Development Prairie Region, International Justice Mission; former partner, Borden Ladner Gervais LLP
- 102. Jeffrey Wyngaarden, Master's candidate, Philosophy of Law, McMaster University
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- 104. Timothy J. Sinnott, Lawyer, Partner, Bereskin & Parr LLP
- 105. Philip Fourie, Lawyer, Partner, Kirkby Fourie Law Firm
- 106. Shawn Knights, Articling Student, Niagara Falls, Ontario
- 107. Peter Trieu, Lawyer, Calgary, AB
- 108. Roger Song, Student-at-Law AB, Member of New York Bar, JD University of Calgary, LL.M. New York University, USA, LL.B, LL.M, Peking University, China
- 109. Jessica Lo, Lawyer, Vancouver, BC
- 110. Anthony N. Schratz, Member of the Quebec Bar
- 111. Valerie Dye (PhD), Barrister, Solicitor & Notary Public, 100 Sheppard Avenue West., Toronto, ON, Adjunct Professor (Business Law) Ryerson University.
- 112. Christian Ferraro, Law Student/ MBA Student: Osgoode Hall Law School, Schulich School of Business
- 113. Nicolas Francis Osgoode Hall Law School, JD Candidate 2015, Toronto, ON
- 114. Jordan Bierkos, Law Student, University of Calgary, Calgary. AB
- 115. John S. Lockhart, Lawyer, Mississauga, ON
- 116. Nancy Bergstrom, Lawyer, Red Deer, AB
- 117. Andrea Dickinson, CPA, CA, LL.B., Lawyer, Toronto, ON
- 118. Joseph P. Hamon B.A., LL.B., C.S. (Family Law), FMC Cert. CFM, Combermere, ON
- 119. Walter Kubitz, Lawyer, Calgary, AB
- 120. Andrew Loewen, Winnipeg MB, Lawyer
- 121. Theodoric Derek Nowak, BA, BEd, LLB, Called to the Newfoundland and Labrador Bar 2009
- 122. Ted Newell, Associate Professor, Crandall University, Moncton, NB
- 123. Darren L. Richards, Barrister & Solicitor, Edmonton, AB
- 124. Terry Prockiw, B.Comm., LL.B., Barrister and Solicitor, Smoky Lake, AB
- 125. Heather Hughes, CLF Supporter and Associate Member, Fredericton, NB
- 126. Gary Hoftyzer, Lawyer, Mississauga ON
- 127. Donald Edward Lionel Hutchinson, In-House Counsel, Ottawa, ON (1990)
- 128. Albertos Polizogopoulos, Lawyer, Ottawa, ON
- 129. Faye Sonier, Legal Counsel, Centre for Faith and Public Life, The Evangelical Fellowship of Canada
- 130. David L. Campbell, Lawyer, Windsor, ON
- 131. Teanna Lobo, 2nd year Law Student, Western University, London, ON
- 132. Michael H. Murray, Lawyer, London, Ontario
- 133. Ginny Li, Law Student at Osgoode Hall Law School, J.D. Candidate 2015, Mississauga, ON
- 134. Jennifer Park, Barrister and Solicitor, BA, JD
- 135. Shayna Beeksma, Lawyer, Burlington, ON
- 136. Marcia Smith, LLB (U.K.) NCA (UNB)
- 137. Jad Debs, Law Student, Schulich School of Law, Halifax, NS
- 138. Dennis J. Reeve B.Sc., J.D., Hobson & Reeve Barristers, Newmarket, ON
- 139. Miyoun Oh, Law student, Toronto, Ontario
- 140. Chris Markou, Lawyer, Brampton, Ontario
- 141. Lesley L'Heureux, Counsel, Department of Justice, Ontario Regional Office, Tax Law Services Section

- 142. George P.L. Filliter, Arbitration and Mediation Services, Fredericton, NB
- 143. Marcus Beesley, Student- at-law, Fredericton, NB
- 144. Andrew Nicol, JD Student, Schulich School of Law, Dalhousie, Halifax, NS
- 145. Andrew Loewen, Lawyer, Winnipeg, MB
- 146. Timothy W.U. Bayly, Lawyer, Partner, KMSC Law LLP, Grande Prairie, AB
- 147. Hilery T. Hargrove, Barrister & Solicitor, Plaster Rock, New Brunswick
- 148. Dawson McKay, Law Student, Halifax, NS
- 149. Ian Mahood, J.D. Candidate 2016, Schulich School of Law, Dalhousie University, Halifax, NS
- 150. Peter Vlaar, Law student, Osgoode Hall Law School
- 151. Peter Luttmann, Dalhousie-Schulich School of Law, South Farmington, NS
- 152. Serena Singh, Student-at-Law, Toronto, ON
- 153. J. Allen Howard, Barrister & Solicitor, Calgary, AB
- 154. Ashley Gnyś, Lawyer, Partner with Sharpe, Beresh and Gnyś, Niagara Falls, ON
- 155. Calvin Beresh, Lawyer, Partner with Sharpe, Beresh and Gnyś, Niagara Falls, ON
- 156. Jeannette Klekta, Winnipeg, MB
- 157. Brian K. Worrad, Lawyer, Partner with Menear Worrad & Associates, London, ON
- 158. Charlene Thomas, Lawyer, Winnipeg, MB
- 159. Ann Seidenberg, Oakville, ON
- 160. Richard L. Wright, Barrister, Solicitor, & Notary Public, Belleville, ON
- 161. Lisa Wight, Lawyer, Plattsville, ON
- 162. Rev. Reid Cooke, Niagara, ON, Ordained by the United Baptist Churches Maritimes (1974)
- 163. Edward Choi, Law Student (JD candidate, University of New Brunswick), LLM (Arb&DR), LLB, BBA, Dip Acct
- 164. Jonathan Kulathungam, Partner, Teplitsky, Colson LLP, Toronto, ON
- 165. James S Kitchen, Law Student (University of New Brunswick), BA, Fredericton, NB
- 166. Frank de Walle, Lawyer, BA, LLB (U of T 1980), Lethbridge, AB
- 167. Gwenyth S Stadig, BSc, MA, JD (cand.) (UNB), Fredericton, NB
- 168. Nicola P. Mulima, Lawyer, Brampton, ON
- 169. Sam Ip (Articling Student), JD/MBA (Western University)
- 170. Craig Lewis, B.A., LLB., Lawyer, RZCD Law Firm LLP, Mississauga, ON
- 171. Eugene Meehan, Q.C. LL.B., LL.M., LL.B., D.C.L., Practising member of the Bar of Ontario & Alberta, all three Northern Bars (Yukon, N.W.T., Nunavut), and the U.S. State Bar of Arizona
- 172. Bradley W. Miller, DPhil (Oxon), Associate Professor, Faculty of Law, University of Western Ontario
- 173. Timothy A. Stonhouse B.A. J.D., Former presiding Justice of the Peace in Alberta, Member of Alberta bar, presently practising in BC
- 174. The Honourable Ernest A. Marshall QC
- 175. The Honourable George W. Baynton, retired Justice, Queen's Bench Court for Saskatchewan:
 - "As a recently retired Justice of the Queen's Bench Court for Saskatchewan, I strongly endorse the CLF submission for the reasons that follow.

"The constitutionally guaranteed freedom of speech and freedom of religion, which are stated by the *Charter* to be 'fundamental freedoms', have come under attack these days in a manner that could not have been anticipated a few years ago. One has no real value in the absence of the other. Traditionally the legal profession has fought hard to uphold and protect the constitutionally protected rights of Canadians even though in some cases the views of the individuals or groups in issue may not be those held by a majority of Canadians or those in the legal profession. As a former judge, I often rendered judgments to uphold the rights of litigants despite the fact that I did not endorse their views or agendas. I in turn felt secure that the courts would uphold my constitutionally protected rights, if they were ever violated, even though the court might not endorse my views or agendas. If a judge made his or her rulings

involving fundamental rights on the basis of his or her views or opinions rather than in accordance with the rights protected by the Charter, the judge would not only be seriously in error, but would also bring the administration of justice into disrepute.

"The justice system as a whole in a constitutionally protected democracy is responsible to uphold and do what it can to protect and uphold these fundamental rights. A democracy is kept healthy by the ability of its citizens to freely express their views and opinions. This stimulates debate which in turn fosters new ideas and solutions. Conversely a democracy that does not tolerate free speech on the basis that it must be confined to the views and opinions held by another segment of society, will become rigid and stagnant and will cease to remain a constitutionally protected democracy. Canadian society, with its multicultural make up, acknowledges the value of and necessity for tolerance. If I attempted to stifle or restrict the rights of others to express their views, just because those views differed from my own views which I maintained were constitutionally protected, I would be intolerant and possibly even bigoted. As long as our public institutions are not swayed by such intolerance, our freedoms will remain unscathed. But if such intolerance is supported by any segment of our justice system, including the legal profession and its governing bodies, our freedoms will be seriously undermined.

"In my respectful view, our society is at a crossroads. Either we choose to affirm the need to continue to be ever vigilant in protecting our constitutionally guaranteed fundamental rights of freedom of speech and religion, or we choose to turn a blind eye to them in our intolerant zeal to stifle all views that differ from or challenge our own. The latter choice will inevitably lead to the disintegration of our democracy and the substitution of some form of dictatorship or mob rule. For almost a half century of service in the legal profession and in the judiciary, I have attempted to uphold the rule of law and the constitutional principles that have shaped our society. I sincerely trust that we will make the right choice and preserve the unique and wonderful society and nation in which we are so fortunate to live."

FOOTNOTES:

¹Civil Marriage Act, S.C. 2005, c. 33.

² Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31.



NORTH AMERICA NORTHWEST AREA

February 25, 2014

The Law Society of British Columbia 845 Cambie Street, Vancouver, BC V6B 4Z9

Attention: Mr. Timothy McGee, Executive Director

Dear Mr. McGee:

Re: Law School at Trinity Western University

The Church of Jesus Christ of Latter-day Saints stands for freedom of religion, freedom of expression and freedom of association. Accordingly, the Church supports approval of TWU's law school and requests that the Law Society of British Columbia approve any graduate of the faculty of law of TWU to practice law in the province of British Columbia.

The TWU law school has been approved by the Federation of Law Societies of Canada and the B.C. Minister of Advanced Education. These approvals ensure that the law school has the appropriate academic standards to graduate law students with the highest standard of legal services and professional conduct. This is clearly in the public interest of all the people of British Columbia and Canada.

TWU is a private religious university. It requires its students to sign a Community Covenant Agreement to voluntarily abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." Other private schools affiliated with faith communities hold similar beliefs. Such beliefs may not accord with the majority's views on sexuality, but they are important to the religious identity and human dignity of members of many minority religions that have long enriched Canada's cultural diversity. Denying such persons the ability to practice law because of such beliefs, or because they attended a school that upholds such beliefs, would be profoundly inconsistent with Canada's tradition of tolerance. Indeed, it is difficult to see how a justification for denying TWU law students admittance to practice law in B.C. would not also justify discriminating against graduates from TWU and other religious schools in all professions, effectively excluding certain classes of religious persons from fully and equally participating in Canadian society.

Freedom of religion is a constitutionally protected human right. Any private religious institution must have the right to promote faith-based principles among its members. Individual members of the religious group are free to make decisions about whether they wish to be members of the religious faith, and they are free to decide whether they will follow these principles. In Canada, we live in a democracy, where a divergence of opinion should be respected, not eliminated.

The Supreme Court of Canada has spoken on this issue in 2001 in the case of Trinity Western University v. The British Columbia College of Teachers, 2001 SCC 31. In that case, the Supreme Court of Canada stated:

The proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society (paragraph 36).

The same reasoning applies to training lawyers. There is no evidence that teachers graduating from TWU discriminate against any group and there is no reason to suggest that a law student graduating from TWU will not treat everyone equally. We conclude therefore, in defense of freedom of religion, freedom of expression and freedom of association, and in the absence of any evidence that would give cause to limit those rights, that TWU law graduates should be admitted to practise law in B.C. To conclude otherwise would countenance an intolerable discrimination based on religion—one inconsistent with fundamental Canadian values and constitutional rights.

Respectfully yours,

Elder Paul Christensen

Area Seventy, North America Northwest

The Church of Jesus Christ of Latter-day Saints

From: Andrew Clark on behalf of Andrew Clark

Sent: Tuesday, February 18, 2014 9:03 PM

To: Submissions
Subject: TWU Law School

Follow Up Flag: Follow up Completed

I want to provide my input that I am in support of TWU being provisioned a law school. I don't think the right approach is to focus on specific aspects of TWU's policies or statement of faith with which you or some people may not be in agreement. I attended UVIC as a student and I know I didn't agree with all aspects of the school's policies and more specifically what my fees were used for. However, I don't think that is a reason to deny a school a law school, or any other type of education. At the end of the day, students make a choice as to where they will attend. Businesses, governments, law firms will make the ultimate decision in terms of who hires alumni from TWU or any other school. There will never be complete agreement when it comes to many issues, whether it be sexual orientation or any other issue. I support TWU being approved a school of law.

Regards,

Andrew Clark

From: Kim Cook [klcook@thor.ca]

Sent: Tuesday, February 11, 2014 3:39 PM

To: Submissions

Subject: TWU LAW SCHOOL

Follow Up Flag: Follow up Completed

For what it is worth, I am dismayed by the CBA's view in this matter.

TWU is not acting in a discriminatory manner. It is not excluding students based on religion. Anyone is free to attend – however those who do must sign a community covenant. In many ways it is akin to the fact that a student who opts to go to Queens or UWO for law school has to move to Ontario. If a student doesn't want to move (or sign the covenant) then the student is free to go to law school elsewhere.

The community covenant has no relevance to the issue of academic credentials upon graduation. TWU law school graduates (or the graduates of any law school) should be accepted based solely on the merits of the academic program they attend. While the issue of the covenant may be relevant for the level of government funding of TWU (or any other law school), in my view the LSBC should solely be concerned with whether the TWU program meets the academic requirements.

Regards

Kimberley Cook

Partner

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Telephone 604.689.1261 | Direct Line: 604.602.4217 | Facsimile 604.688.4711

Email klcook@thor.ca | Website: www.thor.ca

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From: Jeff Courson

Sent: Tuesday, January 28, 2014 10:47 AM

To: Submissions Subject: TWU Law

Follow Up Flag: Follow up Flag Status: Flagged

Hello,

I am a straight, white, Metis, non-religious male attending law at UBC. I wanted to write my opinion to the law society because it is not exactly the same as most of my fellow students. If TWU has been granted permission to open a law school, and their curriculum is solid, I see no reason not to admit the students to the bar association. It is not the students fault the school has a biased/discriminatory community covenant. The students who will likely attend school there are likely to be from a mix of backgrounds and faiths, and possibly even sexual orientations.

Has there been any discussion on making a slight alteration to their covenant?

TWU's covenant asks all students to abstain from intimacy violating the sanctity of marriage between a man and a woman. In my view, and in most student's circumstances (as law students are predominantly single) what the convenant is telling them is to abstain from any sexual activity regardless of the gender mix because that violates the sanctity of marriage. Where the covenant runs into a problem in most peoples eyes, including mine, is because it defines marriage as specifically between a man and a woman, so that if a LGBT couple is married, and one of them wants to attend law school at TWU then they are in violation of the covenant and can be removed from the school or not given admission to attend in the first place. But as a private institution, the school has a religious right to contract or prohibit certain behaviours from the students that agree to attend there. They don't ban LGBT students from attending – they are asked to abstain from sexual activity much the same as other unmarried couples. Again, the problem and discriminatory potential really arises with married LGBT students.

While I am not religious, I do have some mormon friends who attended Brigham Young University (BYU) down in both Idaho and Utah, and they have a similar covenant except that it basically tells students to refrain from sexual activity that violates the sanctity of marriage. As far as I know, they don't go so far as to say – between a man and woman – even though the Mormon church holds that view strongly. I met several LGBT students there (not studying law as my friends down there are undergraduate students). I would hope there is the possibility that the TWU covenant could do something similar. That way the 'sanctity of marriage' is protected and it meets the intended conduct standards for everyone.

I'm not sure if the bar association considered asking them to change it or not – if not it's something to think about. In the end, if they open a law school and the program is equivalent to the quality of legal education elsewhere in the country and it meets BCCBA and CBA standards, then I see no real justification to deny entrance to the bar from TWU law graduates. While I do not agree with TWU's community covenant as it stands, it is not my school and it is not a public school. For a Provincial bar association to deny them entry to the practice of law is to penalize the students for the unfair community covenant that the school imposes on them. I do not think that is fair or justifiable.

Best Regards,

Jeff Courson

From: Communications

Sent: Monday, March 03, 2014 1:21 PM

To: Submissions

Subject: FW: Trinity Western Law Program

Follow Up Flag: Follow up Completed

Please see below.

Jenna Kirouac | Communications Assistant Law Society of British Columbia 845 Cambie Street, Vancouver, BC V6B 4Z9 t 604.697.5838 | toll-free 1.800.903.5300 m 778.837.6468 | f 604.646.5913

From: Joan Davies

Sent: Friday, February 28, 2014 6:26 PM

To: Communications

Subject: Trinity Western Law Program

Hello,

I do support the Trinity Western Law Program.

I believe it is unprofessional and misguided for the law society to effectively veto a government decision

by proposing to dis-allow Trinity Western Law graduates from practicing law in British Columbia.

UBC has 57% female overall enrolment and therefore men have a reduced chance of enrolling in UBC Law.

The Trinity Western Law program would help level the playing field by giving men an additional opportunity to enroll in a B.C. Law School.

It should also be noted, that the request by Trinity Western, is for students, regardless of sexual orientation, to not engage in pre-marital sex.

Therefore, this request is not discriminatory against gay people.

I hope the Law Society will not destroy the opportunities of many due to the complaints of a few.

Sincerely.

Joan Davies

From:

So Yin Woo Monday, March 03, 2014 11:32 AM Submissions Sent:

To:

Submission for Bencher's Consideration in respect of proposed Trinity Western University law Subject:

School

TWU submission.pdf Attachments:

Follow Up Flag: Follow up Flag Status: Completed

Please see the attached. If you would acknowledge receipt, that will be much appreciated.

So Yin

March 3, 2014

By email: submissions@lsbc.org

Law Society of British Columbia 845 Cambie Street, Vancouver, BC, V6B 4Z9

Attention: Executive Director

Dear Benchers,

Re: Submission for Bencher's Consideration in respect of proposed Trinity Western University law School

I am a practising lawyer in BC. Several paralegals and I wish to respond to the invitation from the Law Society to provide input to assist the Benchers in deciding whether to grant TWU approval of its proposed law school program.

Much of the opposition to TWU's law school focus on the community covenant TWU students are required to sign on admission. A clause in it calls for students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." Many take this to be a form of discrimination, and therefore alleges that TWU is an unfit institution to train lawyers. Many allege that an institution that is so openly discriminatory should not be allowed to exist.

We believe that the debate has been focused too much on the fundamental rights not to be discriminated against, and not enough has been said about individuals' freedom of religion. It is important to recognize that a freedom of religion is an individual's right to choose for himself or herself, whereas a right against discrimination involves imposing requirements on others to accept an individual's characteristic or beliefs. TWU exists as an institution for the education and training of likeminded individuals. The community covenant reflects the personal beliefs of members of that organization. Much like regular societies or communities who require their members and associated persons to respect and abide by their constitution, TWU requires their students to respect and abide by the fundamentals of their beliefs. It does not seek to impose their belief requirements on others who do not share the same belief. TWU's right to exist constitutionally and legally in Canada, together with its community covenant, is without question. That issue should not cloud the decision before the Benchers under Rule 2-27(4.1).

The issue before the Benchers is whether the Benchers should declare that the law school of TWU is not or has ceased to be an approved faculty of law under Rule 2-27(4.1) of the Law Society Rules. Rule 2-27(4.1) provides that a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

The Federation of Law Societies of Canada has granted its approval of TWU's proposed law school. The BC Ministry of Advanced Education has also approved of TWU's proposed law school. The question

before the Benchers is whether it should reject TWU's law school notwithstanding the decisions of the Federation of Law Societies of Canada and BC Ministry of Advanced Education.

If the Benchers reject TWU's law school on the basis of its community covenant, it would be a rejection based on the religious belief of a community. Opposition to TWU's law school alleges that a law school with such a community covenant will:

- produce lawyers who are discriminatory and unable to uphold the laws of Canada and its Charter of Rights and Freedom;
- provide training that teaches discrimination.

These allegations are based on prejudices, stereotyping and assumptions about people who hold certain religious beliefs, the very fabric and basis for many forms of discrimination. Without proof or cause for concern with TWU's law school program, we urge the Benchers to be careful of sweeping and baseless allegations and assumptions made about TWU's law program merely by virtue of its religious belief. In fact, the steps and approach taken by the Law Society and the Benchers in respect of TWU's law program raises the question of whether Law Society review and consider the admission requirements and Code of Conduct requirements of each non-religious based law schools that it approves in the same way? Is there a basis for taking a different approach in respect of TWU?

I am a Christian and so are the other paralegals who support this submission. As lawyer and paralegals, we deal with legal issues and interact with clients and workers from all different walks of life and personal beliefs. Although we have our own religious values, we recognize and respect others' values and religious values that may be very different from ours. We are respectful of others and uphold the rules and ethics of law. There is no evidence that we are discriminatory by virtue of our religious beliefs. To the contrary, I like to think that, because of our religious beliefs, we are more respectful of others as we are all God's creation.

As I had mentioned, the issue before the Benchers is whether they should declare that the law school of TWU is not an approved faculty of law. Unless there is cogent evidence or basis to depart from the decisions of the Federation of Law Societies of Canada and the BC Ministry of Advanced Education, we urge the Benchers <u>not</u> to make such declaration. The Freedom of Religion is constitutionally enshrined and of fundamental importance to the Canadian community. Rejecting TWU's law school because of its community covenant is akin to refusing a Christian lawyer or paralegal the right to practice law or be involved in the practice of law because of their religious beliefs. There is no evidence that TWU is not able, like other non-religious based institutions, to educate and training lawyers who uphold the law and meet their ethical and legal obligations in the practice of law.

We trust that the Benchers will decide based on the facts before you, and not on the basis of unfounded fears and assumptions about a religious-based institution.

Yours truly,

So Yin Woo

Frederick Li

Marichelle Defensor-Jiloca

Reinard P. Jiloca

March 1, 2014

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Timothy E. McGee, Q.C., Executive Director

I am a member of the Law Society of British Columbia (the "LSBC"). I was called to the BC bar in 1986 and have practiced in the lower mainland since that time. I am a partner in a small firm that specializes in charity and not-for-profit law. Many of our clients are faith based organizations that are active in the community and have significantly contributed to the greater social good.

I thank the LSBC for giving me the opportunity to make representations on this important matter.

By way of background the Federation of Law Societies (the "Federation") has provided its preliminary approval of the TWU Law School proposal. I have read the Final Report of the Special Advisory Committee ("SAC") on Trinity Western's Proposed School of Law dated December 2013. The SAC reviewed and considered the key issues in this matter including the Role of the Federation and the various Law Societies it represents, the applicable law particularly the SCC decision in *TWU v BCCT*, and all issues raised by the submissions that it received. The SAC concluded that there was no public interest reason to exclude future graduates of the proposed TWU Law School from law society bar admission programs. The Federation accepted the SAC conclusion and gave preliminary approval to the TWU proposal, as noted above.

The British Columbia Ministry of Advanced Education has also provided its approval of the TWU proposal.

I am a member of the Christian Legal Fellowship ("CLF"). CLF has made a submission to the LSBC dated February 26, 2014. I endorse the CLF submission.

I am writing this letter to add a few of my own comments and observations regarding this matter.

I obtained my undergraduate degree from a faith based college. I received my law degree from the University of Victoria Law School. I received a quality legal education at UVIC Law, however, if I would have had the opportunity to attend a faith based law school in Canada, such as the proposed TWU Law School, I likely would have considered this my first choice. I believe that over many years of practice I have been able to serve my clients well, interact with my peers and advocate before the courts and tribunals in accordance with the law and my professional obligations. I am confident that a graduate of TWU Law will be able to do so as well.

The community we serve is diverse with tolerance for differing points of view on this and other significant social issues. This diversity and tolerance is characteristic of our country and is

considered by many to be positive. I believe that the legal community that we are part of should also reflect this same diversity and tolerance of differing points of view.

It appears that the core issue is finding a fair and reasonable balance between two fundamental rights, the right of LGBT persons to be free of discrimination and equal in the eyes of the law and the right of faith based educational institutions to self determine and speak and live out their faith in the community. The SCC has set this balance in $TWU \ v \ BCCT$ and this remains the law in Canada. Although law societies may be mandated to regulate the legal profession in the public interest, I do not believe that this mandate extends to re-setting this balance. As noted in the CLF submission, as quasi-government bodies and guardians of the rule of law, law societies across the county ought to uphold the balance set by the court in $TWU \ v \ BCCT$ and the tolerance of divergent views that its entails.

This matter has been the subject of considerable public debate. Significant questions have been raised regarding due process and fairness in relation to this debate. As noted above, the law societies are quasi-government bodies and guardians of the rule of law and as such ought to act in a judicious, fair and independent manner in dealing with this matter.

I thank the LSBC for considering my representations in this matter.

All of which is respectfully submitted.

Yours truly

T. Charles De Jager

De Jager Volkenant & Company #5 - 15243 - 91 Avenue Surrey, BC V3R 8P8

From:

MichaelandCarmelle Dieleman Monday, March 03, 2014 8:19 PM Submissions Sent:

To: Subject: Attachments: TWU Letter LSBC Letter.pdf

Good evening, please see attached for our submission to the LSBC.

Regards,

Michael and Carmelle

The Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9

To whom it may concern,

What does membership in the Law Society of BC (the "LSBC") mean? Does it involve confirmation that an individual agrees with every law applicable to British Columbians or does it mean that an individual promises to uphold the law?

The concern with Trinity Western is whether students who promise to abstain from certain behaviours that are otherwise perfectly legal should be allowed to become lawyers. To broaden the issue: many lawyers have politically unfavourable beliefs and may disagree with BC law as it currently stands. Should they be ousted from their profession because of this?

Satirically, the answer to the above question is that the LSBC should establish a commission to investigate and purge these individuals from the legal community. Those who may not think correctly should not be allowed to practice law with the rest. We say may, because, unless we could force all our members to tell the absolute truth, we cannot police thought perfectly. Some lawyers in BC think our environmental laws are not tough enough, criminal law mandatory minimum laws are too tough, labour laws too harsh – too soft, speeding laws are too high – too low, and liquor laws encourage debauchery. Many lawyers are members of organizations that advocate for laws at odds with current laws. None of these individuals should be allowed to practice law. The LSBC should create a rebuttable presumption that reassessment interviews are required anytime a lawyer or LSBC candidate member does anything or omits to do something that creates a reasonable suspicion such individual is dissatisfied with BC law. If they cannot rebut the presumption with concrete evidence, they should be purged the from the LSBC.

Obviously, the above suggestion is absurd. Lawyers everywhere disagree with certain laws and hold politically unfavorable views, but are still able to uphold the law. We are Christians and members of the BC bar (practicing and articled student). We believe it is possible to simultaneously be religious and uphold the administration of justice, just as so many lawyers in the province simultaneously hold varying personal opinions and remain effective and, dare we say, good lawyers.

Warm regards,

Michael and Carmelle Dieleman

From: Digby, Thomas

Sent: Friday, January 31, 2014 2:33 AM

To: Submissions Subject: Trinity Western

Follow Up Flag: Follow up Completed

Dear LSBC,

In response to your request from Members about the proposed recognition of the new Trinity Western University law school, let me add my views from the heart of Europe.

Recognition should of course be solely contingent on the provision of satisfactory quality of legal education. I would encourage the review to include not just the elements of the National Requirement, but also the reputation and background of the school leadership. Recognition would require leadership of the school to have demonstrated deep respect for the law, its traditions and its social impact. I would trust the LSBC to make a suitable evaluation of the leadership using professional standards shared by all of us.

The TWU Covenant should be a very minor factor in the above evaluation. I was shocked to see today that my former Dalhousie professor Archie Kaiser, otherwise a proponent of individual liberties, should try to leverage his professional association (Dalhousie Professors) against recognition of TWU in Nova Scotia. The terms of the TWU Covenant, for a private university, do not seem so extreme or unreasonable that it should block the normal recognition process. TWU is an outlier, a bit strange and isolated, and different from the broad traditions of Canadian legal education. But the Covenant reflects a significant minority point of view in Canada, and specifically Western Canada. It is signed voluntarily by those willing to attempt to abide by it. This counter-cultural commitment should not be held as a roadblock to recognition.

The history of religious intolerance in Europe is evident on the face of every city and every border here. This crowded continent is only at peace when differences can be reasonably accommodated. With so much room to breathe in Canada, it would be disappointing if we could not find a way to respect the limited differences presented by TWU.

The LSBC produced a fine Entre Nous piece in November defending Charter rights and freedoms in Quebec. I would encourage you to see TWU recognition in the same spirit.

Of course I am writing on my own behalf as an LSBC member, and my comments should not be taken to reflect the opinions of my employer.

Kind Regards,





DIRECT LINE: (604) 628-6441 Email: pdougan@accesslaw.ca

February 28, 2014

via email: submissions@lsbc.org

Attention: Executive Director Law Society of British Columbia 845 Cambie Street Vancouver, B.C. V6B 4Z9

Dear Benchers:

Review by the Law Society of British Columbia of Trinity Western University's application to create a Law School

I write with grave concern regarding the motion to disqualify Trinity Western University Law School graduates from eligibility for admission to the BC bar. I believe this process to be ill-founded, and that it will have the negative consequences on: future law students, the Law Society, and on individual lawyers, particularly here in BC. I say this for three reasons: jurisdiction; the Law Society's function within its jurisdiction; and the cost and losses that may follow from the Law Society stepping in to block an otherwise approved application by Trinity.

Jurisdiction: It was my understanding that the Law Society had delegated the role of reviewing and making recommendations on applications to begin law schools. The Federation of Law Societies of Canada has spent 18 months reviewing the Trinity application, and has granted preliminary approval. The concerns raised at this juncture have already been considered in the application process before the federation. It is procedurally unnecessary and unfair for the Law Society of BC to now second guess the decision of the agent appointed. If:

The principal aim of the Law Society of British Columbia is a public well-served by a competent, honourable and independent legal profession. The secondary aim is the promotion and protection of lawyers' interests provided it does not derogate from the principal aim. [Law Society of British Columbia, Mission Statement]

Where does the Law Society gain jurisdiction to stop an application duly accepted by the Federation and the Minister responsible in the British Columbia legislature?

The Law Society's function: The Law Society has a number of functions, but let me highlight two:

The legal profession is independent of government. - The Law Society is free from interference by government in the governance of the profession.

Lawyers represent the interests of all clients without fear of reprisal or expectation of favour. [Law Society of British Columbia, Mission Statement - Ends]

The Law Society is proud of these functions and rightly so. If the lawyers of this Province cannot act independently to do their jobs without fear of coercion or retribution, where will justice be?

If the Law Society steps into the Government's jurisdiction, or tries to dictate to current and future lawyers what they must believe, or which tenants of faith they may adhere to, in order to become, or to continue to be, lawyers; what happens to the concept of an independent bar? Surely, such actions, if taken by the Law Society, constitute a fear of reprisal against lawyers who have certain beliefs, from the very body constituted to ensure its members are free from such intimidation.

The Law Society should stick to its knitting: ensuring excellence in the practice of law, and leave other roles to other people, and allow lawyers the freedom to believe or not believe whatever they chose. None of the apparent issues raised by some about Trinity Western University's application affect the good function of the Law Society. Does it matter whether a lawyer is a Christian, a Sikh, a Muslim, a libertarian, a fascist, a racist, a model train enthusiast, an alcoholic, a drug addict, an environmentalist, or a compulsive adulterer, if it does not interfere with their ability to function well as a lawyer?

The Law Society stepping in: Ultimately, I believe the Law Society stepping where it should not, could have multiple, unintended consequences.

Litigation. The FLSC already received a legal opinion from John B. Laskin that the questions regarding the Community Covenant, so railed against by some loud opponents, will be upheld in law, as it was in *TWU v. BCCT*. The Law Society may be embarking on a road that may cost all lawyers in this province, many hundreds of thousands of dollars in legal expenses to fight a battle that will probably not succeed. Mr. Laskin's opinion says of the argument that, any lawyer who has religious convictions based in the Bible, is somehow stopped, by those convictions, from being competent, ethical, critical thinking lawyers, is an argument whose "logic would lead to the conclusion that no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. This conclusion cannot be tenable."

The Supreme Court balances Charter Rights. It does not hold one right over another. Religious freedom is as guaranteed today as it was in 2001. I, as a paying member of the Law Society of British Columbia, do not want my fees wasted on unnecessary and expensive litigation. The Law Society should not engage in litigation about which it has no prospect of success.

Loss of jurisdiction: If the Law Society is perceived by Government, to be stepping outside its role as a quasi-judicial administrator of the practice of law in the Province, and into the role of political advocacy, that may be sufficient for Government to conclude that the Law Society is a loose-cannon that need not be accommodated any longer. The role of the Law Society, and the independence that we cherish, separate from Government, will be lost – as it was in the UK.

I urge the Benchers to step away from this unnecessary battle. Whatever opponents of the Trinity application want, it is not for the Law Society to grant, and if it tries to do so, it may in turn lose all of the freedom we otherwise enjoy.

Yours very truly,

A member of ACCESS LAW GROUP

Per:

Philip J. Dougan

The Law Society of British Columbia 845 Cambie Street Vancouver, B.C. V6B 4Z9

Attention: Timothy E. McGee, QC Executive Director

Dear Sirs/Mesdames:

Re: Trinity Western University

I write in support of the approval of the proposed faculty of law of Trinity Western University.

Lessons from the politically correct past

I was called in 1979. Harry Rankin presided over our call as the Secretary (now President) of the Law Society of British Columbia. Harry was a colourful avowed Communist whose contributions to the bar were respected even by those who did not share his beliefs.

A fellow communist had not been so fortunate. Some years before Gordon Martin had been denied the right to practice law by the Law Society of British Columbia because of his politically incorrect views. Wesley Pue reviewed this sad account of overzealous benchers in his article entitled "Banned from Lawyering: William John Gordon Martin, Communist". He noted in his introduction that "Hindsight judges harshly":ojs.library.ubc.ca/index.php/bcstudies/article/view/268/333.

O"Halloran J.A. in *Martin v Law Society of B.C.* referred to the decision of the United States Supreme Court in *United States v Schwimmer* 279 U.S. 644. This case involved a Quaker pacifist who would not take the oath of allegiance to become a naturalized U.S. citizen. I fully appreciate that the issues are not identical but some observations are of value from a policy perspective. Oliver Wendell Holmes observed:

Some of her answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought-not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country. And recurring to the opinion that bars this applicant's way, I would suggest that the Quakers have done their share to make the country what it is, that many citizens agree with the applicant's belief and that I had not supposed hitherto that we regretted our inability to expel them because they believed more than some of us do in the teachings of the Sermon on the Mount. (emphasis added)

Persons with unpopular political and religious beliefs who pose no threat to peace and order have been the subject of subtle and serious forms of persecution in the past. No doubt some today might regret their inability to expel inconvenient Christians. Instead, they must be content to limit new opportunities for additional law school positions or for faculty members to make contributions to legal thought in Canada.

The scourge of "red haired" Christian law students

With respect, this initiative to ignore the approvals of the Federation of Law Societies and the B.C. Ministry of Advanced Education appears to be an exercise in political marginalization. Their sin is a desire to participate in a faculty at a private university; thoughtfully study the law; and reflect on their role and potential contributions in a free, democratic and diverse society.

The extraordinary scrutiny of provincial law societies at the request of law school deans and others is not based on an evidentiary foundation. There is no basis for concluding that graduates who come from a faith perspective are unlikely to understand the law or indeed not be good lawyers and good neighbours...

As observed by Lord Bingham in his well-known speech to the House of Lords on the Rule of Law in November 2006:

My third sub-rule is that the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation. I doubt if this would strike a modern audience as doubtful. While some special legislative provision can properly be made for some categories of people such as children, prisoners and the mentally ill, based on the peculiar characteristics of such categories, we would regard legislation directed to those with red hair (to adapt Warrington LJ's long-lived example) as incompatible with the rule of law. ... In much more recent times our law not only tolerated but imposed disabilities not rationally based on their religious beliefs on Roman Catholics, Dissenters and Jews, and disabilities not rationally connected with any aspect of their gender on women.

It would be comforting to treat this sub-rule as of antiquarian interest only. But it would be unrealistic... (emphasis added).

The history of the evolution of the law is replete with admonitions against singling out individuals and identifiable groups. The public interest in a tolerant and diverse country such as Canada is not served by marginalizing "red headed" Christian law students who are asked to subscribe to a community covenant based on an objective and reasoned interpretation of scripture as a guide to conduct. Boundaries are necessary for the integrity in any private institution. Boundaries are not a call to persecution.

Independence of the Bar and the slippery slope of political correctness

The Final Report of the Task Force on the Rule of Law and the Independence of the Bar was delivered to the Law Society of Upper Canada on November 23, 2006. The members of the task force included Jack Giles Q.C. The Task Force observed that:

- 3. The lawyer's role in this system is not abstract or academic. It is in the crises that affect ordinary people that the independence of the Bar takes on its clearest meaning. The case of *Roncarelli v Duplessis* is one of the high watermarks of Canada's commitment to the rule of law.Mr. Roncarelli owned a popular Montreal restaurant... With the proceeds of the restaurant, he had been posting bail for fellow adherents of the Jehovah's witnesses who had been arrested...
- 6. Roncarelli v Duplessis has become the most cited Canadian judicial decision in the field of the rule of law... An independent judiciary alone cannot preserve the rule of law. Independent lawyers are needed to bring cases forward and to represent clients with the courage of conviction. Principally, of course, cases such as Roncarelli depend on people

who feel they have been wronged being able to turn to lawyers in whom they can place their confidence....Much as all lawyers are indebted to the independent ideals of A. L. Stein, the many lawyers who declined to join him for fear of political reprisal stand as a cautionary tale. The independence of the Bar is only as strong as the belief on the part of lawyers, the judiciary and the government that it is worth preserving and promoting. (emphasis added)

With respect, the denial of Trinity Western University and its intended law students a seat at the table of learning on an unfounded theoretical concern that they might not be versed in the current law of discrimination could be characterized as uncharitable and intellectually insulting. It is also a step to stigmatizing practitioners from faith communities generally for inconvenient faiths. There is no reason to believe that the culture of stigmatization would stop here if the benchers were persuaded to commence this process. All lawyers from faith communities with independent ideals would rightly fear threats of potential disciplinary reprisals if the benchers formed the opinion that wrong belief, as opposed to intellectual or character failings or wrong conduct, was sufficient grounds for marginalization.

It is indeed a slippery slope and my hope is that the benchers will thoughtfully and cautiously defer to the Federation of Law Societies and B.C. Ministry of Advanced Education. It is not manifestly necessary in the public interest to take such an extraordinary first step.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly

Kelly R. Doyle

From: Corey Dreveny

Sent: Saturday, February 22, 2014 5:21 PM

To: Submissions

Subject: Proposed New Trinity Western University Law School

Follow Up Flag: Follow up Completed

Dear Benchers.

Thank you for inviting

from lawyers and the general public as they consider a new law school at Trinity Western University (TWU). - See more at: http://www.lawsociety.bc.ca/newsroom/highlights.cfm#c3872

from lawyers and the general public as they consider a new law school at Trinity Western University (TWU). - See more at: http://www.lawsociety.bc.ca/newsroom/highlights.cfm#c3872

input from lawyers and the general public in your consideration of the proposed new law school at Trinity Western University (TWU) in view of its approval by the Federation of Law Societies. I understand that you are doing so in view of protecting the principle of diversity in our society. Your considerations will no doubt also take into account the national mobility rights that have been achieved for our profession and the clients we serve.

Protecting the principle of diversity in our society is of course fundamental. Diversity is especially vital in thought -- not least in legal academic thought -- to ensure that varying and opposing views are rigorously debated on their merits. But true diversity must be willing to engage in this debate, not be merely a euphemism wielded to require conformity to one or another particular view of "diversity". That is why one ought to recognize a certain irony in the positions taken by some that would purport to support diversity by suppressing dissenting minority thought or opinion.

For legal and constitutional context to the TWU accreditation, I would suggest a well-written article that appeared in the September 2013 issue of *the ADVOCATE* by Iain T. Benson entitled "Law Deans, Legal Coercion and the Freedoms of Association and Religion in Canada". For a non-academic yet well-reasoned grounding, I would suggest the article that appeared in the 3 February 2014 issue of *The Globe & Mail* by John G. Stackhouse entitled "Have some faith in Christian law school". The link for the article is: http://www.theglobeandmail.com/globe-debate/have-some-faith-in-christian-law-school/article16661053/.

As Iain T. Benson's article points out, there appears to be good reason to believe that the proposed TWU law school's accreditation is constitutional. Moreover, it would be unfortunate if positions advocated by some law schools and especially some law societies were to place those hard-won mobility rights in jeopardy.

Accordingly, I would strongly suggest that, to avoid unduly politicizing the issue, the Law Society of British Columbia support a Canadian national approval system which continues to focus only on ensuring that those who enter the profession have demonstrated the relevant legal competencies.

I would support the Law Society of British Columbia in not only allowing the TWU law school but also in dialoguing with other Canadian law societies to help ensure that cooler heads ultimately prevail.

Yours truly,

Corey Dreveny

From: Michael Dupuis

Sent: Thursday, February 27, 2014 11:18 PM

To: Submissions Cc: Submissions Michael Dupuis

Subject: Submission for input on Trinity Western University Law School

Follow Up Flag: Follow up Completed

I offer the following as my comments in support of Trinity Western's proposed law school. I myself am a practicing lawyer here in Langley. Though I never attended TWU I believe TWU does not itself pose the threat perceived by its opponents and in turn, I believe a refusal to accept TWU sends a chilling message about diversity of thought and the place of religion in one's own life.

One reason to recognize TWU is the law education that is being offered would be the same as as any other program. Contracts is contracts; torts is torts etc. Chances are TWU will be using the same text books as any other law school.

Another reason is that ever grad does have to article, do the PLTC, do the the bar program and partake in the bencher interviews. The law society has this opportunity to ensure all law grads have a balanced understanding of the law and of their responsibilities as future lawyers. Issues such as human rights could be highlighted further in the bar program if there is a concern it is not highlighted enough. The point is TWU grads are not automatically lawyers, they still have to article and be accepted by the law society.

A third reason is that the practice of law and the judiciary are already full of lawyers and judges who are personally very religious and even have traditional views of sexuality and marriage. Additionally, I am sure there are many who completed their undergrad at TWU. To date I am not aware of any mass scandal surrounding religious lawyers and the misapplication of their personal views.

In my view the opposition is based not on any proof that lawyers who oppose same sex marriage are bad lawyers (or bad people) but rather the opposition is just bothered by such a view point having such a prominent position. But this is not enough to deny TWU recognition of its law school. There is such a tremendous diversity of thought on so many issues, not just the issue at hand, and the way to deal with it it not to stress over hypothetical worse case scenarios. Deal with that one bad lawyer on a case by case basis, just as the law society deals with each questionable lawyer now.

If the law society does not recognize TWU law school, then I wonder what will be the logical next steps for the law society. If a TWU law grad will be tainted with religious views on marriage, would not a TWU undergrad also be tainted, especially given that as an undergrad they would have spent more time at TWU during a more impressionable time of their life? Would the law society then begin to ban law grads who had their undergrad with TWU?

What about lawyers who partake in religious activities in their capacity as lawyers. For example, their is the Red Mass, a Catholic celebration held for lawyers. Now, the Catholic Church has similar views about same sex marriage as TWU. Should lawyers stop attending this service for fear it may worry the public these particular lawyers are tainted with religion? What direction will the law society give to lawyers and law related religious services if it gives a thumbs down to TWU?

Lastly, I wonder how the law society will deal with the current lawyers who oppose same sex marriage, or have

other traditional moral views on other issues. If a TWU law grad is unworthy of being called to the bar by reason alone that TWU opposes same sex marriage, then any lawyer now practicing who opposes same sex marriage would arguably be unworthy to remain part of the bar. Is this the law society's position? Will the law society ask religious lawyers to resign, as that is the message the law society will send.

And I know not all religious lawyers oppose same sex marriage, but I use the term religious to be all encompassing in part for what the law society does now will set a tone regarding its view on religion and set a precedent for the next time people are bothered by religious lawyers, regardless of the issue. This issue about TWU I doubt will be the last time religion in a lawyer's life is considered. For some opponents to TWU, even a belief in God is too much for them. Even the most liberal religious lawyer will eventually be singled out if the law society embarks on a path of taking issue with the personal religious values of lawyers.

One last thought is about the importance of religion in one's life. Opponents of TWU do not like the love the sinner hate the sin argument because for them the being gay and the expression of their sexuality is inseperable, and for TWU to carve it up is unacceptable. I appreciate this inseperable argument for it can be applied to religion too. The believing in God is inseperable from how that one believer lives out their beliefs, including their beliefs on God's plan for human sexuality. So, when religion is important to someone, it is not just what they believe but how they believe.

Furthermore, in this era where mental health is an increasing concern in all facets of life, including the practice of law, I hate to think that a certain segment of the practice, namely religious lawyers, will be carved out or otherwise implicitly asked to forsake their religious values. For many religious people, their faith is what comforts and guides them throughout the day. Considering that law can be at times a terribly stressful and mentally unforgiving career, I cannot believe the law society will cast aside those lawyers who need their religion (which I noted is both what they believe and how they believe) or alternatively ask those religious lawyers to stop being religious. Sometimes it's faith in God that keeps a person going; faith is their ally in their daily struggle. The law society, to address a hypothetical worry, should not condemn those TWU law grads, or religious lawyers generally, as bad lawyers or as bad people.

Thank you for reviewing my submission. I hope the law society approves and accepts the TWU law school and its grads.

Michael Dupuis Lawyer Langley, BC

From: Mark Dwor

Sent: Monday, March 03, 2014 4:21 PM

To: Submissions

Subject: TRINITY WESTERN SUBMISSION

Follow Up Flag: Follow up Completed

Dear Benchers;

I am a member in good standing of the Law Society of British Columbia I write to inform you that I am opposed to any barrier being placed on any graduate of any Law School in this country, including new law schools such as Thompson Rivers, Lakehead and Trinity Western, from becoming members of this Law Society, solely due to where the applicant was educated. I have some intertwined reasons for this position, let me explain by referring to the nexus of these reasons--my first weeks at the Faculty of Law at the University of British Columbia. All involved Dean Curtis.

1. I entered Law School, just a few weeks after the resignation of President Nixon and we were all quite knowledgeable about the Watergate scandal. In my first Legal Institutions class, Dean Curtis expressed profound dismay at how many of the Watergate conspirators and convicted felons were lawyers. He was not naive at all, but he certainly felt that this lack of ethics and character and belief in the Rule of Law in trained lawyers should be noted adversely and certainly not emulated.

Thus the criteria of ethics, character and Rule of Law arose in a most memorable fashion.

I do not share the prescience or certainty of others regarding the benefits or consequences of certain types of undergraduate and law school education. I have no way of knowing that graduates from one school or another will not conduct their careers with ethics, character or belief in the Rule of law-perhaps it is my three and one half decades of experience that lead me to this lack of prophecy or psychic accuracy.

2. In that same class with Dean Curtis I was introduced to the sordid sophistry of the Martin decision (my words not his)--in fact my dismay at that decision has only grown since my student days. The Martin case was directed at only one named individual--the decision regarding Trinity Western is directed at unknown hundreds of law school graduates.

My sense is that the more inclusive the membership of the Law Society, the better the Law Society protects the interests of the residents of British Columbia.

I am constantly amazed at the trust people put in me when they tell me their stories, their agonies, the joys and betrayals in their lives. They can chose me to be their confidante, their advisor, their protector, their interlocutor.

I wonder how those who might chose to have Trinity Western graduates to share these matters with will feel when they are denied this choice.

I remember that I had a cousin who had to fight to get into I Law School because he was Jewish; I can not think of any justification compelling enough to pre-judge who will be available to be a lawyer, based solely on a legal religious decision made last year or ten years ago. The Martin decision cannot be allowed to be repeated regardless of the flag of present popular contemporary social mores--that was indeed the rationale then--and a new set of mores do not make the rationale any more acceptable now.

3. Fiat Justistia, Ruat Coelum, this phrase was the embellishment that Dean Curtis had added to the original Faculty of Law and has since 1991 been on the Faculty's Coat of Arms.

I have read Sommersett's case many times since I was first required to do so, and like my dismay for Martin, my admiration for Lord Mansfield's decision continues to grow.

I ask you to be steadfast and to do what benefits the whole population of the Province to provide the best possible access to legal expertise; that is to be as inclusive as possible

Mark S Dwor

From: Gordon J. Dykstra [michelle@dykstralaw.com]

Sent: Monday, March 03, 2014 9:51 AM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Dear Sirs:

I have been following the public discussion about the Province of British Columbia approving the application of Trinity Western University to establish a law school with interest. I understand that the issue now is whether or not the Law Society of British Columbia will admit graduates of the TWU law school to the PTLC program and, if successful, to membership in the Law Society.

I agree with the views expressed by the British Columbia Civil Liberties Union, the editor of the Advocate, Ianin T. Benson and others. They articulate my views much better than I can.

My respectful view is that it is not the prerogative of the Law Society to deny membership to those persons who commit themselves to observing certain standards of personal conduct. I recognize that the law requires that persons cannot discriminate against other persons who prefer not to observe similar standards. However, it does not follow that persons who observe standards of personal conduct will discriminate against others who do not observe their standards.

Indeed lawyers act for persons whose beliefs they do not agree with all the time. An example would be the case of a lawyer who thinks that blood transfusions are beneficial for children and that lawyer takes on a case for parents who want to apply for a court order that medical professionals be enjoined from providing blood transfusions for their child. No one would claim that the lawyer would not represent the parents to the best of her or his skill and ability. Nor would anyone claim that the lawyer could not represent the parents to the best of her or his skill and ability.

My point is, that lawyers represent clients with whose personal code of moral conduct they do not agree with, all the time. The view of the Law Deans that lawyers need to personally believe the same as their clients before they can adequately represent them has never been a requirement for lawyers.

I am therefore in favour of accepting graduates of the proposed Trinity Western University Law School as members of the Law Society of British Columbia.

Gordon J. Dykstra GJD/mls

GORDON J. DYKSTRA, TRIAL LAWYER, #201-2692 CLEARBROOK ROAD, ABBOTSFORD, BC, CANADA V2T 2Y8

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February 27, 2014

Timothy E. McGee, QC Executive Director, Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mr. McGee:

RE: TRINITY WESTERN UNIVERSITY SCHOOL OF LAW

The Law Society of British Columbia (LSBC) has decided to review the issue of whether it will permit graduates of Trinity Western University's (TWU) proposed school of law to acquire membership in the LSBC, to practice law within the requirements of the rules of the Professional Conduct Handbook. In that regard, I have a series of questions to which I would appreciate reply.

via email: submissions@lsbc.org

To establish a framework for my questions, I will outline the context in which they are asked through a brief reflection on my understanding of the law and the status of the TWU law school proposal.

TWU's proposal for a new Canadian law school was considered under the accreditation guidelines established by the Federation of Law Societies of Canada (the Federation), which also convened a Special Advisory Committee to review TWU's Community Covenant and its application in regard to the potential new school. The Committee also received many submissions, considering them in light of Canadian law and the accreditation guidelines. The Committee and Federation approved of the proposal presented by TWU.

TWU also received approval from the British Columbia Ministry of Advanced Education to grant the degree Juris Doctor (J.D.).

Those reviews and approvals are in place, bringing us to the point where some Canadian provincial law societies have determined to conduct their own reviews to determine whether they will admit graduates of the TWU law school to the practice of law in their respective jurisdictions.

The issues now being considered by the LSBC appear already to have been settled by the Supreme Court of Canada (SCC), Parliament, the various human rights codes and acts applicable in each province and the existing practices of every Law Society in this country.

In 1994, the SCC determined what has become the definitive position of the Court on the matter of competing rights in *Dagenais v. CBC*. When two protected rights come into conflict, *Charter* principles require a balance to be achieved that fully respects the importance of both rights. A hierarchical approach to rights must be avoided.

In 2001, the SCC applied these principles in *Trinity Western University v. College of Teachers*. Among other things, the court concluded that:

- If TWU's community standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. (para. 33)
- The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. (para. 33)
- Consideration of human rights values in these circumstances encompasses consideration of the
 place of private institutions in our society and the reconciling of competing rights and
 values. Freedom of religion, conscience and association coexist with the right to be free of
 discrimination based on sexual orientation. (para. 34)
- The *Human Rights Act* ... (now the *Human Rights Code*)... provides ... that a religious institution is not considered to breach the *Act* where it prefers adherents of its religious constituency. It cannot be reasonably concluded that private institutions are protected but that their graduates are *de facto* considered unworthy of fully participating in public activities. (para. 35)
- There is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. (para. 35)
- Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. (para. 35)

There is, in fact, no evidence to suggest that these conclusions of the court have borne out to be false or that they would not be equally applicable in the instance of a law school.

The Court states at paragraph 36:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

Which, in the current context, might be considered as:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training <u>lawyers</u> at TWU fosters discrimination in the <u>practice of law (in accordance with the Professional Conduct Handbook)</u>, the freedom of individuals to adhere to

certain religious beliefs while at TWU should be respected. The <u>LSBC</u>, rightfully, does not require public universities with <u>law school</u> programs to screen out applicants who hold sexist, racist or homophobic (<u>or anti-religious</u>) beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

In the 2004 SCC decision in *Reference re Same-Sex Marriage*, the Court reinforced the principles expressed in *Dagenais* and *Trinity Western*, noting:

- The right to same-sex marriage conferred by the *Proposed Act* may conflict with the right to freedom of religion if the Act becomes law, as suggested by the hypothetical scenarios presented by several interveners. However, the jurisprudence confirms that many if not all such conflicts will be resolved within the *Charter*, by the delineation of rights prescribed by the cases relating to s. 2(a). Conflicts of rights do not imply conflict with the *Charter*; rather the resolution of such conflicts generally occurs within the ambit of the *Charter* itself by way of internal balancing and delineation.
- The protection of freedom of religion afforded by s. 2(a) of the *Charter* is broad and jealously guarded in our *Charter* jurisprudence. We note that should impermissible conflicts occur, the provision at issue will by definition fail the justification test under s. 1 of the *Charter* and will be of no force or effect under s. 52 of the *Constitution Act, 1982*. In this case the conflict will cease to exist.

Taking this advice from the Court, Parliament spelled out in the *Civil Marriage Act* that there should not be discrimination against an individual or group on the basis of holding an opinion on marriage that differs from the legal definition in the *Act*, including opinion founded in religious belief. The preamble includes:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;

And, the body of the Act further states:

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

In this context, a number of questions arise including the following:

- 1. Is the LSBC withdrawing from the agreements made with the Federation in regard to National Admissions Standards? If so, what position is the LSBC taking?
- 2. Is the LSBC withdrawing from the agreement made with the Federation in regard to National Mobility of the Legal Profession? If so, what restrictions will be placed on mobility by the LSBC?
- 3. Is the LSBC considering a position that would establish a hierarchy of rights rather than a balancing of rights? If so, please describe the intended hierarchy and how it is anticipated to comply with the decisions of the Supreme Court of Canada in regard to interpretation of the *Canadian Charter of Rights and Freedoms*.
- 4. Is the LSBC proposing to establish an admission standard that excludes those who hold a position on marriage that is contrary to whatever position is approved by the LSBC at any given time? If so, please describe the LSBC's current position on marriage.
- 5. If the LSBC is proposing to establish an admission standard based on position on marriage, what action does it propose in regard to current members who hold a position on marriage similar to that of TWU?
- 6. Is the LSBC proposing to establish an admission standard based on religious beliefs and practices? If so, please describe how that standard will align with the decisions of the Supreme Court of Canada on the right to "freedom of religion" and with the *Human Rights Code* of British Columbia.
- 7. If the LSBC is proposing to establish an admission standard based on religious beliefs and practices, what action does it propose in regard to current members who hold religious beliefs and engage in religious practices that will become new standards for non-admissibility to the practice of law in British Columbia?
- 8. If the LSBC determines it will not admit graduates of TWU's law school to the practice of law in British Columbia, will it hold a similar standard for graduates of other law schools who have previously attended faith-based universities? Faith-based high schools? Faith-based foreign law schools? Or, who share the same religious beliefs and practices of TWU students? If so, please provide details of the LSBC's position.

I look forward to your response.

Yours sincerely,

Don Hutchinson

Vice-President, General Legal Counsel

The Evangelical Fellowship of Canada is the national association of evangelical Christians, gathered together for influence, impact and identity in ministry and public witness. Since 1964 the EFC has provided a national forum for Evangelicals and a constructive voice for biblical principles in life and society. In addition to 40 evangelical denominations, the EFC affiliates include ministry organizations, educational institutions and individual congregations, who uphold a common statement of faith. The EFC is an active participant in the World Evangelical Alliance.



REES-THOMAS & COMPANY

Barristers and Solicitors

Alastair Rees-Thomas LLM (Hons.), Dio. C.S.

CONTACT DAIAID: DIRECTLINIS Alastair Roos Thomas area newthomas.com 604-279-9300

February 13, 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 5T3

Dear Sir or Madam:

Re: Proposed Law School at Trinity Western University, Langley, BC

There is immeasurable value for future lawyers and our society in establishing a law school at Trinity Western University that offers the advantages of smaller class sizes and a program that targets core competencies and the nurture of ethics, moral character, community service and leadership. It is unsound to assume that graduates of a religious university that requires certain personal behaviours from their attendees will invariably engage in discriminatory conduct towards those with differing views.

Fine lawyers and members of the bench have held personal religious views or have graduated from religious universities. They are bound by professional and legal duties to conduct themselves ethically and without unfair discrimination. In Canadian society, all persons including law students and members of the legal profession are entitled to freedom of religion and thought and to be assumed not guilty of discrimination until such conduct is found to exist.

Our collective values of tolerance and diversity ought to welcome the unique addition of a law school founded in a faith-based university to the existing landscape of Canadian legal education. We support the establishment of a law school at Trinity Western University.

Yours truly,

REES-THOMAS & COMPANY

ALASTAIR REES-THOMAS

FAST & COMPANY LAW FIRM (space sharing firm)

Per:

MARIE-LOUISE FAST

REES-THOMAS & COMPANY LAW CORPORATION 5080 - 8171 Ackroyd Road, Richmond, B.C. V6X 3K1 Tel: 604.279.9300 Fax: 604.273.2290

Reus-Thomas & Company is an association of lawyers which includes Law Corporations.

From:

Susan Ferguson Friday, February 28, 2014 11:48 AM Sent:

Submissions To: 'Mary Fus' Cc:

Trinity Western University Law School Subject: Attachments: TWU Submission - Law Society.docx

Follow up Follow Up Flag: Flag Status: Flagged

Please find attached our submission regarding approval of a new law school at Trinity Western University.

Susan Ferguson Barrister & Solicitor

Mary Fus Barrister & Solicitor



This email is free from viruses and malware because <u>avast! Antivirus</u> protection is active.

I have read the Report of the Special Committee to the Federation of Law Societies, which addresses the concerns and objections to the existence of a Law School at Trinity Western University ("TWU"), clearly, logically and impartially. Rather than repeat the answers to the objections raised during that enquiry, I will simply say that I endorse the conclusions of the Special Committee and urge the Law Society of BC to follow the recommendation of the Federation, for the following reasons:

1. Freedom of religion has to mean more than "freedom to believe what I believe".

If the objection to a TWU Law School is that the beliefs some assume a TWU graduate will hold upon graduation are not acceptable in a lawyer, why should the inquiry be limited to TWU grads? A person can graduate from TWU, having abided by the code of conduct regarding sexual activity outside heterosexual marriage, and still endorse same sex unions. A person can graduate from UBC Law School and hold beliefs of extreme prejudice towards gay people and be admitted to the bar with no question.

How far should the Law Society go in questioning personal beliefs and denying or accepting an application for admission based on the narrow issue of what a person believes about homosexuality? Does it make a difference if a person disapproves of gay marriage for reasons that have nothing to do with religion? And if a lawyer is required to hold a certain set of views about homosexuality, then what about racism or sexism? Can we deny admission to the bar for people who believe a legal education is wasted on a woman because she will only quit and have babies?

Life would be much more agreeable for me if other lawyers all believed the same things that I believe. But I don't get to decide what others believe, nor should anyone. I think back to the early 1980's when I first started to practise. No one was disbarred for believing that women had no place in the practice of law, even though my female colleagues and I encountered more than one lawyer with that opinion. And disbarment is the equivalent of refusing bar admission to a law school graduate.

It has never been the role of the Law Society to regulate what a lawyer believes, or to dictate which teachings of religion a lawyer can accept and which she cannot.

2. Lawyers' conduct is a proper concern of the Law Society; as already stated, lawyers' personal or religious beliefs are not. Unacceptable conduct, in the

area of gender equality or anything else, can and should be managed through the existing system of discipline and complaints, no matter which law school a lawyer has attended.

To illustrate: the Law Society of BC has taken the position that it is not the concern of the Law Society if a married lawyer has an affair, except if a client is involved, even though the nature of an affair requires that the lawyer is lying and cheating. It would be somewhat incongruous if the Law Society now purported to say that, no matter how ethically they might conduct themselves in the their professional life, a lawyer who believes that marriage should be an exclusive relationship between male and female is unfit to practice law in British Columbia.

3. Regarding the objection that the Community Code of Conduct prevents equal access to education: TWU does not refuse to admit gay students (an incorrect assumption by many people who are discussing this issue). TWU admission policies require a student to agree to behave in a way that respects the beliefs of the religious group that has founded the university. This hardly threatens the ethical underpinnings of the legal profession or society at large.

All of which is respectfully submitted.

Susan Ferguson
Barrister & Solicitor

I concur with the views expressed in this submission.

Mary Fus Barristers & Solicitors

From: on behalf of Ferrari Law Office [sabrina@ferrarilaw.ca]

Sent: Friday, January 31, 2014 11:11 PM

To: Submissions Cc: media@twu.ca

Subject: Trinity Western University Law School - submission of support

Follow Up Flag: Follow up Flag Status: Follow up

Attention: Executive Director

I write this submission in support of the accreditation and acceptance of Trinity Western University's Law program and JD recipients by the Law Society of BC for the purpose of admission to the Law Society of BC.

I am a 10 year call lawyer, and a proud member of the Law Society of BC. I deeply value as fundamental principles to my practice of law the Canons of Legal Ethics, The Standards Of The Legal Profession, and all aspects of The Code of Professional Conduct for British Columbia (the "Code"); all of which I pledged and took an oath to uphold upon my acceptance by the Law Society of British Columbia and to the Bar.

I am also an alumni of Trinity Western University ("Trinity Western"), obtaining my undergraduate degree from there. I personally signed Trinity Western's Community Covenant each year I attended there, agreeing to abide by certain standards and conducts during my time there.

It is of concern to me that the Law Society of BC is being requested to oppose or qualify accreditation of potential young lawyers not for lack of any academic qualifications, but purely for attending a school or signing a community value statement that required abstinence of certain sexual practices while enrolled as student at that school. While a Trinity Western student is required to sign the Community Covenant and abide by this standard during their studies at this institution, they are not denied of their right to believe in an alternative value system or faith. It is of concern that the Law Society of BC would possibly deny accreditation to Trinity Western law graduates merely for choosing to enter into a contract to uphold a certain religious value standard encapsulating the religious freedom practiced by the institution, but grant accreditation if Trinity Western were to waive or alter its religious values held as a private community so as not to offend law students who do not hold those same religious values and chose of their own volition to attend Trinity Western as opposed to another law school at a secular university.

Further, if attendance or signing of Trinity Western's Community Covenant is the reason to preclude accreditation of Trinity Western's law graduates for admission to the Law Society of BC, it concerns me how it would be possible for the Law Society of BC to allow any Trinity Western graduate, including any undergraduate degree holders, from being admitted to the British Columbia Bar - as the same principles have been followed and practiced by all Trinity Western students regardless of which degree they earned.

I fail to see how there is any difference between myself as a practicing lawyer who signed Trinity Western's Community Covenant and any future Trinity Western law student being required to sign the Community Covenant, other then the date of our degrees - we will have committed the same act(s). If future Trinity Western law students are denied the grant of accreditation by the Law Society of BC, then the principle or ratio behind the denial of accreditation must certainly be applied to me, and my membership with the Law Society of BC, along with. While I trust with utmost certainty that the Law Society of BC would not seek the result to have my license, or the license of any other Trinity Western alumni who is also a member of the Law Society of

BC, revoked on these grounds, it still begs the question whether revocation would be the required end result, barring any retroactive provisions to escape this result.

I kindly request your careful consideration to the numerous implications that denying accreditation of the Trinity Western law degree program would bring, and respectively submit my support in favour of accepting a law degree from Trinity Western University as proper qualifications for admissions to the Law Society of BC.

Should you have any questions, please do not hesitate to contact me.

Regards,

Sabrina N. Ferrari, B.A., JD (Barrister & Solicitor)

Ferrari Law Office

North Vancouver, B.C. Tel: 604.719.4840

Email: sabrina@ferrarilaw.ca

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From: Ferronato, Chris [caf@bht.com]
Sent: Tuesday, February 11, 2014 8:13 PM

To: 'ea@cbabc.org'; Submissions

Subject: CBA resolution / Consideration of TWU law school

Follow Up Flag: Follow up Completed

I support a law school at TWU.

I am not opposed to its operating under the faith-based principles of TWU.

Chris Ferronato

Lawyer

T 604.641.4989 F 604.646.2682 <u>caf@bht.com</u> **Assistant** Lori Donnelly T 604.641.4501 <u>lod@bht.com</u>

BULL HOUSSER Suite 900 - 900 Howe Street | Vancouver BC | Canada V6Z 2M4

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Bull, Housser & Tupper LLP

WE HAVE MOVED We are now located at our interim office space at Suite 900 – 900 Howe Street Vancouver, BC V6Z 2M4. Our new permanent home will be TELUS Garden, completing in Fall 2014.

From: Bob Friedland

Sent: Thursday, January 30, 2014 12:49 PM

To: Submissions

Subject: Trinity Western University Law School Submission

Follow Up Flag: Follow up Completed

Greetings:

While I do not agree with the position of Trinity Western University regarding gays lesbians and transgendered, I am concerned that the Law Society of British Columbia is teetering on the edge of a slippery slope over an abyss from which there will be no climbing back.

Will the Law Society question the credentials of graduates of famous and highly-regarded Jesuit law schools, such as Gonzaga, with whose position on abortion we may not agree?

Will the Law Society question the credentials of graduates of many Islamic law schools that inculcate racist beliefs and discrimination against Jews and other non-Muslims?

What about law schools whose faculties are obese, or are not green enough, or are not local enough for the prevailing political winds? Will the Law Society retroactively defrock lawyers who graduated from law schools at a time when they did not admit qualified non-whites and women?

The list of law schools with whose values we do not agree is long.

I suggest that we continue to concentrate instead on the qualifications of the graduate. More than one graduate of highly-regarded law schools acceptable to the Law Society happen to be deeply prejudiced and bigoted individuals.

We have a Professional Legal Training Course. We have a Bar Admission Examination. Human Rights law can be made a part of the PLTC curriculum and examined in the admission examination. Any further concerns can be addressed in the Bencher interview.

Thank you for considering this submission.

Bob Friedland

Bob Friedland

Barrister & Solicitor #1002 - 6651 Minoru Boulevard Richmond, British Columbia V6Y 1Z2 CANADA

telephone: 604-232-1204 FAX: 604-232-1294

From: Robyn Crisanti

Sent: Wednesday, February 12, 2014 10:31 AM

To: Submissions Subject: FW: CBA resolution

Follow Up Flag: Follow up Completed

Robyn Crisanti | Manager, Communications and Public Relations Law Society of British Columbia 845 Cambie Street, Vancouver, BC V6B 4Z9 t 604.697.5845 | toll-free 1.800.903.5300

From: David Freeman Lawyer [mailto:locumlawyer@shaw.ca]

Sent: Wednesday, February 12, 2014 9:02 AM

To: ea@cbabc.org

Cc: Robyn Crisanti; registrar@twu.ca

Subject: CBA resolution

In respect to the position concerning the approval by the Federation of Law Societies as it would relate to the application of Trinity Western University, I would support that position and oppose any position taken by the CBA to the contrary.

Since the "Christian charter" position of TWU is fully transparent to all applicants to be accepted by that university, and the said university being a private institution, I cannot see any reason for either the CBA nor the Law Society of British Columbia for denying recognition to graduates of a future law faculty.

Just because I am an observant Jew, whose moral and ethical teachings may be contrary to the general flow in today's society and not necessarily agreeing with certain decisions of the Supreme Court of Canada or Parliament, does that make me any less fit to practise law in this province?

Every person who gets called and admitted in this province has to take an oath before the court and thereafter, it is left up to that person's moral character as to how he/she will conduct him/herself thereafter.

I do not believe that it is up to either the CBA (which is now a *voluntary* body and to which not all BC lawyers belong!) nor the Law Society of British Columbia to rule on the ethical admission requirements for prospective students.

Yours truly,

David A. Freeman

David A. Freeman, LLB., B.L. Barrister & Solicitor

Locum Lawyer P.O. Box 415

Qualicum Beach, BC, Canada, V9K 1S9 Phone: (250) 752-4249 Fax: (250) 752-3611

email: locumlawyer@shaw.ca

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From:

Del Friday Monday, March 03, 2014 1:48 PM Sent:

Submissions To:

Trinity Western University Subject:

Follow Up Flag: Follow up Flag Status: Completed

Dear Mr. McGee,

I am a member of the Law Society of British Columbia, and I write to express my objection to the motion to find that the proposed law school at Trinity Western University does not meet the academic qualification requirement of the Law Society's admission process.

I understand that the objections to the proposed law school are based on the fact that students are required to sign and presumably follow a code of conduct based on an evangelical Christian code of conduct. Some proponents of the motion appear to find this expression of the student's religious beliefs offensive and threatening to the public.

My understanding of my friends' arguments is that they believe that the students who choose to attend Trinity Western University will have a propensity to commit acts of discrimination against the members of the public on the basis of their sexual orientation and therefore will not be ideal members of the Law Society. There is an underlying assumption that the expression of evangelical Christian faith is evidence of lack of character. I would urge the Law Society to avoid measuring character on the basis of the correctness of the candidate's religious beliefs or their membership in a religious community.

Furthermore, proponents of the motion are urging the Law Society to discriminate against the law students from Trinity Western University to protect the public. I disagree with those who argue that this discrimination is necessary. This decision should be grounded by evidence of public harm rather than perceived harm. I would respectfully ask the proponents of this motion to provide the Law Society with evidence to support the allegations that these future lawyers will be unable to act in a professional manner or will lack the moral character necessary to be a member of the Law Society.

Sincerely,

Del Friday

From:

Gregg Goodfellow Saturday, March 01, 2014 12:31 PM Sent:

Submissions To: bkuhn@kuhnco.net Cc: TWU Graduates Subject:

Follow Up Flag: Follow up Completed Flag Status:

I my opinion TWU has taken adequate steps towards inclusiveness such that their graduates should be allowed to practice in this province just as graduates of any other accredited law school may. To do otherwise is to bend to the tyranny of political correctness.

Gregg Goodfellow LL.B. UBC 1979

From: Glen Greene

Sent: Wednesday, February 12, 2014 9:59 AM

To: Submissions

Subject: Trinity Western Application

Follow Up Flag: Follow up Completed

Sir or Madam

This debate is unworthy of the Law Society. The "covenant", if you read it is mostly a "health statement", combined with a lot of common sense.

The opposition smacks of a fascist imposition of "right thinking" by a statutory body which is supposed to regulate our members, not restrict the politics of the citizens. This debate is not the business of the Law Society and is offensive to me as a member. I of course apologize for my opposition to the "politically correct" authors of the debate.

A more useful analysis might include a question about the utility of a fourth law school in the province with more need of trades than more lawyers.

Glen Greene Smithers B.C.

From: Lyle Harris [Iharris@harrisbrun.com]
Sent: Monday, March 03, 2014 12:25 PM

To: Submissions

Subject: Trinity Western University Proposed Law School

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames,

As a lawyer practicing in British Columbia for the past 37 years, I am writing to support Trinity Western University in its application to have a law school, and to have its law students deemed by the Law Society of British Columbia to be appropriate candidates for call and admission to the bar of the Province.

I am not affiliated in any way with Trinity Western University, but in attempting to understand this issue, I have researched some things that I thought might be helpful to you in your deliberations, in the event that you did not already know them. Trinity Western University advertises itself as a "faith based academic community" based on Christian teachings and principals as they understand them. It was founded in 1962 and enrolls approximately 3,500 students in its campus near Fort Langley, British Columbia.

Its courses lead to degrees in the faculty of Humanities and Social Sciences, the faculty of Natural and Applied Sciences, school of business, school of human kinetics, school of education and school of nursing.

Also according to Wikipedia, religious affiliation is not a criterion for admission. However, 80% of undergraduates self-identify as Christians, but there are Buddhist, Jewish and Muslim students attending as well. Also according to Wikipedia, it recently received an A+ rating in the Globe and Mail for its quality of education in every year since 2005.

TWU's website indicates local "outreach" projects that include street ministry in partnership with the Union Gospel Mission in downtown Vancouver, a drop-in centre for youth, reaching out to abused and sexually exploited women in inner city Vancouver in partnership with Linwood House Ministries, a visitation program with the male inmates of Fraser Regional Correctional Centre, and a downtown east side Saturday morning kids club that offers breakfasts, games, crafts, songs and stories for kids aged 5 – 12.

We should be reminded that this issue came up in 1995 when the BC College of Teachers refused the accreditation of the university over the same personal covenant that is in issue here. The Supreme Court of Canada ruled in favor of the university, (<u>Trinity Western University v. British Columbia College of Teachers</u> 2001 SCR 772). The Court stated:

"In our opinion, this is a case where any potential conflict should be resolved through the proper delineation of the rights and values involved. In essence, properly defining the scope of the rights avoids a conflict in this case. Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute."

The Court quoted the following passage from R. V. Big M. Drug Mart Ltd 1985 CanLii 69 (SCC) 1985 1 SCR 295, from Dixon J (as he then was):

"A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon <u>s. 15</u> of the <u>Charter</u>. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly

and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

"Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience."

In my opinion, a denial of TWU's request to open a law school, or to impose sanctions or conditions upon students upon graduation, that would effectively disqualify them from practising law, would amount to a "compulsion" or "restraint" upon TWU as suggested by Dickson J. in the above passage.

In spite of these cases, this issue has come around full circle for yet a further discussion. The covenant in question is that students "observe modesty, purity, and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage ..." and to "voluntarily abstain" from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

I pause to point out that the TWU covenant also requires students to refrain from drunkenness, swearing or using profane language, harassment and all forms of dishonesty. These are values that our society hold collectively in high esteem, and are values that any aspiring lawyer needs to learn.

However, the main issue some people and groups have with the covenant is its sexual expression, as outlined above. As stated, I am not associated with Trinity Western University, and I should say that during my student days, I could not have signed such a covenant. However, I understand that those who find the sexual aspects of the covenant offensive think the covenanters will not behave appropriately in legal encounters –i.e., with clients, opposing parties, or as judges—with persons who would not sign such a covenant, and who may be a member of a minority requiring the protection of section 15 the Canadian Charter of Rights and Freedoms.

In my opinion this concern is a presumption that is not based on any evidence. I ask, where is the evidence that persons who sign a faith-based covenant would not behave appropriately in legal encounters with non-covenant persons? or would treat non-covenant minority groups in a manner that violates their <u>Charter</u> rights and freedoms? It is extremely unlikely that any such evidence exists. As the SCC head-note in <u>Trinity</u> Western v. B. C. Teachers College reads;

"Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. The proper place to draw the line is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. <u>Absent concrete evidence</u> that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected" (emphasis added).

Persons who find the TWU position offensive might ask themselves, for example, whether any evidence exists that:

- 1. persons of (for example) a Muslim or Jewish faith would exhibit prejudice against non-Muslims or non-Jews:
- 2. persons who identify with the gay and lesbian community would exhibit prejudice against persons who are not members of that community:
- 3. persons who have experienced sex outside of marriage would exhibit prejudice against persons who have signed the TWU covenant;

in their legal interactions? These are analogous, and equally absurd, propositions.

Prospective applications to the TWU law school will likely be exposed to the programs of outreach to the poor and the downtrodden I referred to in my 5th paragraph above. These programs are of course very consistent with the values of the Charter.

Prospective applicants will also no doubt be aware of the controversy their admission to such a law school has stirred up throughout Canada. They must be taken to be aware of the concerns, and even prejudices, that may exist against them in some circles.

That they would be aware of these things, and still enroll in the TWU law school suggests that such persons are courageously standing up for their beliefs.

In other words, there is positive evidence that persons who enroll in the TWU Law School are likely to possess courage and good character. These are attributes of a good lawyer, and requirements of a great lawyer. The Law Society of British Columbia should encourage such attributes by sanctioning Trinity Western University's application to have its own law school.

Yours very truly,

Lyle G. Harris, Q.C.



Lyle Harris, QC - Partner | 604-608-2001 | harris@harrisbrun.com

HARRIS & BRUN - Barristers & Solicitors 500 - 555 West Georgia Vancouver BC V6B 1Z6 Phone: 604-683-2466 Fax: 604-683-4541 www.harrisbrun.com

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From: Joshua Hauser [hauserlaw@shaw.ca]
Sent: Sunday, March 02, 2014 2:06 PM

To: Submissions

Subject: Trinity Western University Faculty of Law

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames:

I urge the Benchers to accept the Federation of Law Societies of Canada's approval of Trinity Western University's faculty of law. The Federation's analysis and approval took account of all appropriate criteria.

Aspiring lawyers who wish voluntarily to associate with each other for purposes of their legal education, in the environment facilitated by Trinity Western University, ought to be allowed to do so. As a Jew, I am intimately aware of the history of discrimination against Jewish lawyers – and aspiring lawyers - on the basis of their religion. Thankfully, those days are gone.

The Law Society ought not itself discriminate against aspiring lawyers and newly trained lawyers, on the basis of their beliefs. Such discrimination by the Law Society would trample basic Canadian values, including fundamental freedoms referred to in Section 2 of the Canadian Charter of Rights and Freedoms.

Trinity Western University's faculty of law should now join the other approved faculties of law, and its graduates should be welcomed to the Law Society's admission program.

Yours truly, Joshua Hauser

hauserlaw@shaw.ca

From: Ryan Lee

Sent: Thursday, February 13, 2014 2:54 PM

To: Submissions

Subject: FW: TRU Resolution

Follow Up Flag: Follow up Completed

Hello.

This email is likely for you.

Thank you.

Ryan

From: Harmon Hayden [mailto:hhayden@bilkeylaw.ca]

Sent: Thursday, February 13, 2014 2:48 PM

To: Ryan Lee

Subject: TRU Resolution

I have read the resolution re Trinity Western. This is, in my respectful opinion, absurd and disrespectful of a free society. No one will be required or forced to go to Trinity Western. People of faith should be deserving of the same freedom as others. This is a matter of liberty and freedom.

Should the members of the CBA pass this resolution, I would have to question whether I wish, or choose, to remain a member, which is part of my freedom of choice as well. Everyone gets to choose.

I would hope that the Law Society does not support this resolution in any manner.

Regards,

BILKEY LAW Corp

Insurance I aw

HARMON C. HAYDEN

Barrister & Solicitor T 778.471.4350 x. 212

301-186 Victoria Street F 778.471.4351

Kamloops, BC V2C 5R3 E hhayden@bilkeylaw.ca

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From: Natalie L. Hebert, LL.B. [natalie@rockieslaw.com]

Sent: Thursday, January 30, 2014 11:51 AM

To: Submissions Cc: Submissions Lynal Doerksen

Subject: FW: Bencher Report - Trinity Western University

Follow Up Flag: Follow up Flag Status: Follow up

Sincerely,

Natalie L. Hebert, LL.B., Lawyer | ROCKIES LAW CORPORATION Continuing the Law Firm of Steidl Kambeitz

Fernie - Cranbrook - Kimberley

Cranbrook: 201-907 Baker Street, Cranbrook, BC, V1C 1A4 Tel. 250.426.7211 | Fax 250.426.6100 | natalie@rockieslaw.com

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From: Doerksen, Lynal JAG:EX [mailto:Lynal.Doerksen@gov.bc.ca]

Sent: January-29-14 4:09 PM **To:** 'Natalie L. Hebert, LL.B.'

Subject: RE: Bencher Report - Trinity Western University

Thanks Natalie, I hope you will make a submission to the LSBC website. Can I quote you, (anonymously if you prefer)?

Lynal

From: Natalie L. Hebert, LL.B. [mailto:natalie@rockieslaw.com]

Sent: Wednesday, January 29, 2014 4:02 PM

To: Doerksen, Lynal JAG:EX

Subject: RE: Bencher Report - Trinity Western University

Hi Lynal,

I have read the email and the information provided therein. I preface these comments with the fact that I am a graduate of Trinity Western University.

I am sincerely disappointed in the fact that we, as lawyers and leaders of our community, cannot seem to distinguish between church and state. When I attended Trinity Western University their moral stand on the issue of sexual

orientation was not a part of their teaching curriculum. I do note that while I attended school there I took a course where our professor invited an individual who had undergone the sex change process to speak to our class about the whole situation, and that individual actually spoke to that class over several different years. That always sticks out in my mind because that individual applauded the students of TWU for the respect that they provided her, even though they may not have agreed with her choice from their own moral standpoint. I believe that our society as a whole would be a better place if individuals simply learned to respect each and every person no matter their moral viewpoint. Whatever TWU's faith based standpoint is on the issues of morals has nothing to do with the law. We as lawyers work every day in situations that may be contrary to our own moral standpoint; we are supposed to be able to see past those issues.

The other issue that stands out clearly in this situation is that students choose to apply to TWU knowing the belief system and the controversy from the 2000/2001 court case; they are not forced to attend there.

The simple question is whether or not TWU has the ability to teach students the law in a scholastic fashion as to graduate students who have the knowledge and ability to practice law professionally and ethically. It is not a question of moral beliefs. Graduates of TWU's nursing and teaching programs are regarded highly in our community, why should we not welcome that regard with respect to the teaching of law. If the Benchers choose not to support a law school based on nothing but irrelevant points on moral beliefs, I believe that they would be doing a dis-service to our education system.

Sincerely,

Natalie L. Hebert, LL.B., Lawyer | ROCKIES LAW CORPORATION Continuing the Law Firm of Steidl Kambeitz Fernie - Cranbrook - Kimberley Cranbrook: 201-907 Baker Street, Cranbrook, BC, V1C 1A4 Tel. 250.426.7211 | Fax 250.426.6100 | natalie@rockieslaw.com

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From: Steidl Kambeitz (Rockies Law Corporation) [mailto:sk@rockieslaw.com]

Sent: January-29-14 3:21 PM

To: Ken R. Steidl; Marko Maryniak JD; mpickering@rockieslaw.com; Natalie L Hebert; russ@rockieslaw.com; russ@rock

Subject: FW: Bencher Report - Trinity Western University

From: Jenny Ghilarducci

Sent: Wednesday, January 29, 2014 3:11 PM

To:

From:

Melody Hilman Wednesday, February 26, 2014 1:30 PM Sent:

To: Submissions

Subject: TWU preliminary law program

Follow up Follow Up Flag: Completed Flag Status:

It's with excitement I'd like to email in support of the proposed Law program at Trinity Western University (TWU). TWU has a longstanding recognition for quality programs. Currently students in our local would require relocation to seek any legal degree. Support this programs gives local families the ability to foster students with a desire for Political and Law studies without the added stress and cost.

Melody and Kevin Hilman

From: Alan Hobkirk [ahobkirk@millerthomson.com]

Sent: Monday, March 03, 2014 4:44 PM

To: Submissions

Subject: Trinity Westen Law School Accreditation Motion

Attachments: pic25824.gif

Follow Up Flag: Follow up Completed

To whom it may concern:

I preface my comments by stating that I have no association whatsoever with Trinity Western University or its proposed law school.

I oppose the motion to deny accreditation to TWU Law School ("TWU").

I am surprised that the issue of accreditation of TWU graduates is even being raised. TWU should be permitted to establish a law school with full accreditation with all law societies across the country. To do otherwise would be an overt act of discrimination and denial of religious and educational freedom to a discrete group - viz. evangelical Christians.

Individuals come to the profession of law through a myriad of socioeconomic, educational, religious and political backgrounds.

Regardless of the upbringing and education, all lawyers are bound to uphold the laws of the jurisdictions in which they practice. Every lawyer has his or her own bias and approach to the practice of law, however, must practice within the bounds of the laws of the land, whatever his or her views and biases may be. Students graduating from TWU can no more be said to be "tainted" than can students who are brought up as high school students in private religious institutions at an age and stage when a directed learning experience is more profound and likely to have a much longer lasting effect on the individual's outlook on life. Are law societies to investigate into that background? Clearly not.

To deny accreditation to TWU graduates would, in my respectful view, be a form of discrimination, which would see law societies failing to respect and protect some fundamental rights, including freedom of religion, freedom of thought and freedom of association. Such a step would bring law societies into disrepute. Law students are not compelled to attend TWU and presumably would not do so if they were offended by the code of conduct or any other aspect of TWU. Prospective law students always have a choice whether to attend a given law school - one that is an appropriate "fit"

for them.

Certainly, as a general comment, one can surmise that the graduates of TWU may hold a different world view than graduates of other law faculties. Indeed, each law school tends to take on its own unique flavour, tempered largely by the faculty and other leaders at the law school. Some are very business oriented. Others place more emphasis on issues of LGBT rights, gender equality, aboriginal issues and so on. When we graduate from law schools and are articled, we are all thrown into one big pot of lawyers who serve the public and its many sub-communities in important ways. Surely we can be tolerant of one another's differences and get along. We should value and celebrate diversity amongst our lawyers.

TWU is a leading educational institution. I have no doubt that its graduates will receive a first class education and become fine lawyers.

Please do not stand in their way by denying accreditation.

Yours very truly,

Alan A. Hobkirk
Miller Thomson LLP
Robson Court, 1000-840 Howe Street
Vancouver, BC V6Z 2M1
Direct Line: 604.643.1218

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Email: ahobkirk@millerthomson.com

www.millerthomson.com

(Embedded image moved to file: pic25824.gif)Miller Thomson LLP

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From: Robert D. Holmes [rdholmes@mhklaw.com]

Sent: Saturday, March 01, 2014 2:41 PM

To: Submissions Cc: Submissions

Subject: Trinity Western University Law School Resolution

Attachments: 2013-BCCLA-Letter-to-Herman-Wolfe-TWU.PDF; ltr to Benchers final.pdf

Follow Up Flag: Follow up Completed

Dear Mr. McGee:

Thank you and President Jan Lindsay for the opportunity extended to members of the profession and the public to provide submissions for consideration by the Benchers concerning this matter. I have written a letter (attached), to which should be attached the letter sent by President Lindsay Lyster of the BCCLA to the Federation when this process was first getting under way (also attached to this email). I should make clear in this email, as I do in my letter, that I have written this on my own personal behalf.

I would appreciate confirmation of receipt of these in due course.

HOLMES & KING

per:

Robert D. Holmes, Q.C. 1300 - 1111 West Georgia Street Vancouver BC Canada V6E 4M3 Telephone 604-681-1310 Fax 604-681-1307

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HOLMES & KING BARRISTERS & SOLICITORS

ROBERT D. HOLMES
Law Corporation
rdholmes@mhklaw.com

1 March 2014

By email to submissions@lsbc.org

The Law Society of BC 845 Cambie Street, Vancouver, BC, V6B 4Z9

Attention: Tim McGee, Executive Director

Dear Mr. McGee:

Re: Trinity Western University School of Law Proposal

Introduction

I refer to the January 24, 2014 news posting on the Law Society of British Columbia website inviting submissions to be presented before March 3, 2014 for consideration by the Benchers at their April 2014 meeting in relation to the application of Trinity Western University ("TWU").

Executive Summary

I write this letter to encourage the Law Society of British Columbia to approve the TWU application for accreditation that the Federation of Canadian Law Societies and the Minister of Advanced Education have approved.

Doing so will add to the diversity of views in the legal academic community and enhance the ability of the legal profession to demonstrate to the public at large that it practices what it preaches about being inclusive of all groups, including faith-based groups.

Doing otherwise would, in my respectful view:

- (a) Amount to a failure to follow established law in Canada given the Supreme Court of Canada's decision in the *BCTF* case;
- (b) Constitute wrongful and unlawful discrimination against TWU, its students and graduates under human rights legislation and the Law Society's own rules; and
- (c) Constitute an infringement or denial of Charter protected rights and freedoms, including freedom of thought, religion, conscience, opinion and belief, freedom of expression, freedom of association, rights to fundamental justice and rights

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not to be unlawfully discriminated against on grounds of religious or conscientious belief and association.

I recognize that those who argue for exclusion of TWU from accreditation do so from sincere motives emanating from their own personal views and judgments about the beliefs to which TWU adheres.

But it is imperative that Benchers keep in mind that they are acting in this matter as the arm of the state, applying the law as set out in statute and binding court precedent, and doing so in relation to a private party. It would be a singular failure of responsibility for any Law Society Bencher to have their own personal views determine how they vote on this matter.

Who am I to talk?

Given the invitation in the Law Society's news release for members of the profession and the public to offer their comments, I would hope for a respectful review and consideration of my submission, but I lay no claim to any special attention. As I see it, this is an application by TWU. It is clearly an interested party. No doubt its students, staff and faculty are as well, particularly those engaged in their law school project. Others presumably have "public interest" standing, but I am not aware of anyone else with a cognizable "legal" interest, as that phrase is understood.

I have made it a significant part of my career in law to advocate publicly and work for the rights and liberties of all. I have provided pro bono legal advice and assistance to marginalized persons who likely had nowhere else to turn for an understanding of and protection of their rights. I have undertaken pro bono litigation on behalf of civil liberties groups and individuals. I have paid particular attention to cases involving freedom of expression, political participation, and ensuring fundamental justice for all.

While I am writing this in my personal capacity and not on behalf of the B.C. Civil Liberties Association, some of you may know that I have been involved with that organization for decades and from 2008-2012 was its President.

I attach, for your information, a copy of a letter that Lindsay Lyster, the current President of the BCCLA wrote in response to the position taken by various law deans and other academics with publicly funded universities in Canada when the prospect of TWU applying for its own law school arose a few years ago. It sets out, in my view, a succinct and cogent argument against their position which had, at its core, the aim of excluding certain religious groups from the legal profession.

The BCCLA has supported over the years, among other things, understanding of catastrophic rights and the necessity of accelerating distribution of new drugs to address the treatment of AIDS patients, the *Little Sisters* litigation (involving the federal government seeking to restrict or

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ban importation of gay and lesbian oriented erotic literature), *Vriend* (involving the Alberta government leaving out "sexual orientation" from its Human Rights Act), *Chamberlain* (involving the Surrey School Board opting not to include same sex relationship materials in its libraries and courses), and the same sex marriage cases. I have spoken in the media concerning those and concerning Charter protections and human rights legislation.

I have done so because of my firm belief in the fundamental freedoms spelled out in the Charter and that no one should be unlawfully discriminated against in relation to government legislation or the provision of goods and services to the public.

I recognize that much of the discussion involving this issue is animated by deeply felt convictions and emotions. That is not surprising when politics, religion and sex all converge in one conversation. I ask for my thoughts to be received respectfully and have and will continue to offer the same.

Law Society Accreditation of Law Schools

The Law Society's news release recites that the matter before the Benchers involves:

"The Law Society's rules provide that the Benchers have the final say in whether any faculty of law is an approved faculty of law <u>for the purpose of meeting the academic qualification requirement of the Law Society's admission process."</u>

The Law Society of B.C. Rules appear to provide for this in Rule 2-27:

(4.1) For the purposes of this Rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

Thus the "preliminary" decision to approve made by the Federation of Law Societies of Canada appears to apply unless a resolution to the contrary (presumably "the final say") is made by the Law Society of B.C.

The news release sets out that preliminary approval of the Federation of Law Societies of Canada has been obtained by TWU, as has approval from the Minister of Advanced Education of B.C.

"In December 2013, the Federation of Law Societies of Canada announced the Canadian Common Law Program Approval Committee had completed its work and decided to grant TWU preliminary approval of its proposed law school program. Shortly thereafter, the BC Ministry of Advanced Education authorized TWU the right to grant law degrees."

TWU thus has the legal right to offer courses in law at a law faculty as a matter of B.C. law. From December 2013, therefore, it appears that the TWU law school has been "approved" and

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that what is under consideration here is whether that approval ought to be revoked by the Law Society of B.C.

I understand that the Law Society in each of Alberta and Saskatchewan has followed the Federation of Law Societies of Canada approval and that TWU's law school is an approved law school for those provinces.

I take it then that the issue before the Law Society of B.C. for decision by the Benchers is whether to adopt a resolution declaring that TWU is not to be an approved faculty of law.

The effect of such a resolution would presumably be that graduates of a TWU law school would not fall within Rule 2-27(4)(a), as do graduates of UBC, UVic, Thompson River, and a list of other Canadian universities offering common law programs which have previously been approved by the Federation of Canadian Law Societies.

Instead, such graduates would have to apply under Rule 2-27(4)(b). The difference is that (a) applies to approved common law university degrees and receives "automatic" recognition as part of the Law Society of B.C. Credentials Committee articling admission process, while (b) requires that an applicant obtain this:

(b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada.

Certificates of Qualification issued under the authority of the Federation of Law Societies of Canada are provided after that body reviews the courses taken by an applicant for their legal education. Ordinarily, that kind of a review is done regarding foreign universities. So, for example, someone with a degree in law from Yale, Harvard, Stanford, Oxford, Cambridge or some other foreign university must present their proof of having graduated and then be screened whether and what additional Canadian law courses they have to completed before their credentials are deemed equivalent to obtaining a degree from a Canadian law school.

I am not aware of any examination being made by the Federation of Canadian Law Societies, whether in relation to approval of existing Canadian common law university programs or degrees from foreign universities, of whether those institutions are somehow unfit in character so that a blanket rejection of degrees conferred on their graduates should apply.

It is entirely unclear to me what those who oppose the TWU law school would expect the Federation of Law Societies of Canada to do in relation to the Law Society of B.C. Rule 2-27(4)(b). Given that the Federation of Law Societies of Canada has already reviewed and approved the TWU law school as meeting applicable academic and curriculum standards, it would seem more than likely that the Rule 2-27(4)(b) process would result in a Certificate of Qualification being issued by that body for all TWU law school graduates. That would lead to such graduates being able to enter the B.C. articling student program.

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That would occur, however, under a different rule and with different treatment as compared to that accorded graduates of other Canadian common law programs. The basis for that is because of the beliefs of TWU, its students, staff and faculty.

It is apparent, therefore, that efforts are being made to treat TWU and its graduates differently from others based upon religious, conscientious and political beliefs and association. Those efforts involve seeking to apply a test of acceptability of precepts or beliefs that the evangelical Christian adherents who support, work or attend TWU may hold.

That is quite exceptional as a proposition made to a body such as the Law Society. No amount of effort to cover up what is being proposed here will mask that. Nor will it mask that such efforts are wrong.

The Charter, Binding Legal Precedent and the Law Society

The Law Society of B.C. is subject to the Charter of Rights and Freedoms and the general laws of British Columbia. That is acknowledged by its motto, *Lex Liberorum Rex*, which means the law is the king [or ruler] of the free. The Law Society is also, as an administrative body, bound by the decisions made by the courts as to the interpretation and application of those laws: *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79* [2003] 3 S.C.R. 77. The fact that it holds itself out as a self-governing profession does not alter that. Its actions are governed by provincial legislation and are subject to law, not to the personal desires or views of Benchers.

Without putting too fine a point on it, the Law Society of B.C. ought not just defer to what the Supreme Court of Canada has said, it ought to follow it. That is, perhaps, a matter of some difficulty for legal practitioners whose job is to engage in critical analysis of precedents and, where the occasion calls for it, to argue against them. But if those who disagree with Supreme Court precedent want it modified or reversed, they should be the ones who carry legal proceedings to that court for that purpose.

The opinion of John Laskin and the Federation of Canadian Law Societies committee report review at length not just the *Trinity Western University v. British Columbia College of Teachers* 2001 SCC 31 case. They also review arguments that that decision should be revisited or reconsidered. Their determination is that going against the *Trinity Western University v. British Columbia College of Teachers BCTF* precedent would be inappropriate. That should be respected.

Section 3 of the Legal Profession Act reads, in part:

- 3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
- (a) preserving and protecting the rights and freedoms of all persons,

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Obviously, "the rights and freedoms of all persons", includes, as the Supreme Court of Canada has held, those who are religiously minded and includes the fundamental freedoms spelled out in section 2 of the Charter.

The Supreme Court of Canada in *R. v. N.S.* 2012 SCC 72 recently addressed the matter of accommodating religious groups and beliefs in a case concerning a witness wearing a niqab while testifying, saying this:

- Second, to remove religion from the courtroom is not in the Canadian tradition. Canadians have since the country's inception taken oaths based on holy books -- be they the Bible, the Koran or some other sacred text. The practice has been to respect religious traditions insofar as this is possible without risking trial fairness or causing undue disruption in the proceedings. The Canada Evidence Act, R.S.C. 1985, c. C-5, now permits a witness to affirm instead of taking a religious oath, but it does not remove the option of the oath from the courtroom.
- Third, the Canadian approach in the last 60 years to potential conflicts between freedom of religion and other values has been to respect the individual's religious belief and accommodate it if at all possible. Employers have been required to adapt workplace practices to accommodate employees' religious beliefs: *Ontario Human Rights Commission v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 555; *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525, at pp. 551-52; *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, at p. 982. Schools, cities, legislatures and other institutions have followed the same path: *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299, at pp. 327-29; R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, at pp. 336-37; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, at p. 782; *Amselem*, at para. 103; *Multani*, at para. 2. The need to accommodate and balance sincerely held religious beliefs against other interests is deeply entrenched in Canadian law. For over half a century this tradition has served us well. To depart from it would set the law down a new road, with unknown twists and turns.
- 55 Most recently, in *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, [2012] 1 S.C.R. 235, Justice Deschamps wrote of the ideal of "neutrality" in the law:

... following a realistic and non-absolutist approach, state neutrality is assured when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion, including that of having no religious beliefs whatsoever, while taking into account the competing constitutional rights of the individuals affected. [para. 32]

The Human Rights Code of B.C. provides protection for religious groups and associations, in section 41:

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Exemptions

- 41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.
- (2) Nothing in this Code prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation.

The Human Rights Code goes on to provide that the Law Society may not discriminate against applicants for admission based on religious, conscientious or political belief or association:

Discrimination by unions and associations

- 14 $\underline{\mathbf{A}}$ trade union, employers' organization or <u>occupational association must not</u>
- (a) exclude any person from membership,
- (b) expel or suspend any member, or
- (c) discriminate against any person or member

<u>because of the</u> race, colour, ancestry, place of origin, <u>political belief, religion</u>, marital status, family status, physical or mental disability, sex, sexual orientation or age <u>of that</u> <u>person or member</u>, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.

Section 1 of the Human Rights Code says "occupational association" means "<u>an organization</u>, other than a trade union or employers' organization, <u>in which membership is a prerequisite to carrying on a trade</u>, occupation or <u>profession.</u>" That includes the Law Society of B.C.

The B.C. Court of Appeal in *Re Mia and Medical Services Commission of British Columbia* (1985), 17 D.L.R. (4th) 385 (B.C.S.C) per McEachern, CJSC, and a five member bench in *Wilson v. Medical Services Commission of British Columbia* (1987), 9 B.C.L.R. (2d) 350 dealt with liberty and mobility rights provisions of the Charter in relation to B.C. government efforts in the 1980's to restrict which new doctors got MSP numbers and where they practiced. The

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courts were emphatic in holding that pursuing a profession was a recognized component of protected liberty rights.

Similarly, the mobility rights issue in the legal profession in the context of inter-provincial law firms was litigated to the Supreme Court of Canada in *Black v. Law Society Alberta* [1989] 1 S.C.R. 591. The *Mia* and *Wilson* decisions were approved (see para. 56 per LaForest, J.) and the court held that restrictions on inter-provincial firms interfered with liberty and mobility rights. In that and subsequent decisions, the court has recognized that law society rules, regulation and proceedings such as these engage the Charter. All of those reinforce the point that constitutional protections favor TWU's position, not that of those who oppose TWU's application.

Couple that line of thought with fundamental freedoms of association and religion and the outcome of a challenge to trying to screen out TWU because of its faith-based nature ought to be clear.

The Context of TWU's application for approval

TWU's application concerning its proposed law school must be understood in context. TWU is a private, faith-based institution. It has the **legal and constitutionally protected <u>right</u>** to define who its members are, including by reference to conduct expected of those members. That remains within the private realm that all groups are entitled to as part of protected freedoms of thought and expression, religion and conscience, and association.

The curriculum and legal education that TWU has proposed is one that has been evaluated and found to be meritorious.

The criticism of TWU focuses on the code of conduct that TWU asks its students and faculty to sign, which reflects the faith upon which it was founded. That code of conduct is taken by those outside TWU to be at odds with the conduct that others prefer for their own lives. That does not detract from the rights of TWU and its supporters, faculty, staff and students, to belong to a private institution.

It has appeared to me that frequently those who oppose TWU's application confuse issues by framing the question as whether one agrees or disagrees with TWU's Code of Conduct. With respect, that is a completely erroneous approach.

The question before the Law Society is not whether Benchers agree with the TWU Code of Conduct or with any particular moral code. One can disagree with TWU and its adherents' world view and still support TWU being accredited. Indeed, that is the essence of what a liberal, tolerant, inclusive, diverse and multi-cultural approach would do. Instead of forcing "them" to think and believe like "us", a tolerant society embraces differences and acknowledges that different beliefs and opinions are the essence of living in a free society.

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When and why should the Law Society of B.C. care about moral codes of applicants?

Law societies give blanket accreditation to Canadian law schools so as to avoid the necessity of making individual determinations of each applicant's background to articling programs. Giving a blanket accreditation to Osgoode, McGill, UBC or other law schools is a shorthand way of acknowledging that they have curriculum and teaching standards that pass muster. It is not an imprimatur of the law societies on the moral code of any particular student or faculty member.

Indeed, no one asks whether a student followed any particular moral code during their law studies. The application form for admission to articling programs includes a question about whether the applicant has been charged or convicted of any crimes or sued civilly for anything in which fraud was alleged. But that is largely the extent of the inquiry into an applicant's background and "good character."

Efforts to have the Law Society of B.C. resolve against TWU's law school degrees being recognized as automatically qualifying graduates under Rule 2-27(4)(a) ("successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university") are premised upon a faulty leap in logic that an institution with TWU's Code of Conduct must necessarily provide inappropriate education and that its graduates similarly will all fail to have requisite academic and moral attributes to be allowed to enter the articling program.

That line of thought is flawed. First, the Law Society is not in any position to judge the moral worth of the TWU Code of Conduct or any other. The lessons of history are clear that having governmental institutions weigh in on whether one or another religious belief is to be preferred is the antithesis of religious toleration. Second, the notion that requiring adherence to a Code of Conduct makes the education overall defective makes no sense. The idea that courses in Contracts, Torts, Criminal Law, Business Corporations Law, Securities Law, Secured Transactions, Commercial Transactions or the like will be tainted by the institution having a Code of Conduct is without merit. Even in Constitutional Law or Human Rights Law, teaching what Supreme Court of Canada rulings on discrimination mean is hardly precluded by having in one's own personal life or in the life of the religious group to which one belongs a particular set of views. Third, the notion that all students who graduate from such a program should be tarred with the same brush and all deemed to have inadequate legal educations is an argument of guilt by association that would fail in any court of law.

The root of each of those flaws is the call to evaluate religious beliefs and decide whether they are acceptable, or reasonable, or conforming in the judgment of whomever holds power at the moment. Doing so based on any particular standard amounts to an attack on religious and conscientious freedoms.

Those who promote such a step cannot point to it having been done with existing Canadian common law schools or with evaluations of foreign law degrees. There is no screening of those institutions to test whether they adhere to any particular moral code. Anyone wanting to impose

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such a screening process would have to spell out what that moral code was and then persuade the rest of us that it somehow managed to pass muster under the Charter of Rights and Freedoms to impose it on everyone.

The simple truth is that it could not be done. In particular, it could not be done in a "free and democratic society." Those words have to have meaning and oblige those who hold power not to lord it over minority religious or other groups, insisting they conform to state-determined beliefs. That explains why no institution that has been accredited has been subjected to any evaluation of whether its morals, or those of its students and faculty meet a particular standard.

I noted earlier that the credentials review process for applicants for admission to the articling program includes dealing with applicants who hold foreign degrees. Not all are from Oxford, Cambridge, Stanford, Harvard or Yale. Yet they are still received and given credit. One must consider whether it would really be appropriate to institute a policy where degrees granted from, say, Islamic universities, were rejected because, for example, the university espoused adherence to Islamic precepts, some of which line up with what TWU has in its Code of Conduct.

It is, however, clear enough that in many parts of the world universities – whether privately or publicly funded – have codes of conduct, including some that spell out requirements, for example, of adherence to Islamic values, or those of another religious or other group. The same could be said for private faith-based institutions adhering to the Catholic, Orthodox Jewish, Sikh, Jain faith traditions. The same could be said as well for secular institutions in countries that have laws that differ from the laws of Canada.

Many faith-based institutions have been established for decades, have good ratings for academic excellence, have codes of conduct and have received accreditation from, for example, the American Bar Association and the American Association of Law Schools: e.g., Pepperdine University School of Law, Columbus School of Law at the Catholic University of America, the J. Reuben Clark Law School at Brigham Young University and Benjamin N. Cardozo School of Law at the Yeshiva University.

Next, the precepts that TWU sets out in its code of conduct are ones that are part of what fall within the sincerely held religious beliefs of many "mainstream" religious groups – including Catholic, Muslim, Jew, Evangelical Christian, Hindu, Sikh and Jain faith groups. Note that I do not say that all members of such groups universally agree with such views or practice them in their own lives. That would be beside the point. I simply note that the "theology of the body" and "theology of the family" lines of thought that are at the heart of the TWU code of conduct have been discussed and taught as part of such faith groups for millennia. While such things are largely taboo for discussion at publicly-funded universities, no one who seriously argues for academic freedom can maintain that arguing and defending views on such topics should be excluded from discourse.

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Also, I note that such precepts may well be at odds with the views that many in modern society – including most Benchers – subscribe to, whether for their own personal lives or how they view moral issues generally. That too is irrelevant to the question of approval of TWU's application.

There are, to be sure, certain mainstream religious groups that, for example, approve of same sex marriage and have developed teachings for their adherents reflecting that. Such developments, as well as secular, agnostic, atheistic, and humanist viewpoints, interestingly enough, may be seen as an outgrowth of the thinking of Western liberal political philosophers over the past several centuries. They emanated from debates over religious toleration (which, at the time, meant toleration of different religions, not toleration of no religion). But the existence of such groups within the Christian or other faiths does not entitle anyone to suggest, "why can't TWU be more like the liberal Christian churches?" Such a thought, or any attempt to use what one Christian community has done as a justification for obliging TWU to do the same, is impermissible for a body such as the Law Society, as a matter of law.

While some may have forgotten it, it was not that long ago in history when becoming a public office holder, a lawyer or member of certain other professions, required that one certify a loyalty oath to the sovereign *and to an established church*. That had the convenience, at least, of providing a benchmark against which other views were to be measured. Gradually, such things were eroded, although even into the 19th century in the British Empire, there were disabilities that attached to being Catholic, Jewish or from other faiths or no faith.

The values of toleration and acceptance of diversity have developed in modern society and been extended to protect many groups that in previous ages would have found no protection in the law. Tom Berger's writings about Canadian legal history and the sorry treatment of Jehovah's Witnesses, Doukhobors and other sects shows that not too long ago the law failed to protect certain religious minorities. The *Roncarelli v Duplessis* case stands not just as an example of the Supreme Court's development of the implied Bill of Rights well before the Charter came along. It is also a shameful example of targeting a religious group by an abuse of statutory authority. Beyond religious minorities, many other minorities have historically suffered in Canada from discrimination. LGBTQ groups are included among those. Acknowledging all of that, however, does not mean that tolerance should be reduced to forcing agreement by one group with the views of another; it means co-existing in a peaceful and civil way.

If those who oppose TWU's Application are Right, Why Stop at University Accreditation to Articling Programs?

If those who oppose TWU's application are right, why stop at accreditation of law degree programs from faith-based institutions? If the efforts of those who oppose TWU's application are well-founded, then anyone who adheres to a religious faith that has precepts that those in power find disagreeable ought to be identified and rooted out from the legal profession.

It is not so long ago that such witch-hunts were done, including, shamefully enough, by the Law Society of B.C. In the 1950's espousing certain political viewpoints *per se* disentitled one from

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becoming a lawyer. In 1950, the B.C. Court of Appeal in *Martin v. Law Society of B.C.* [1950] 3 D.L.R. 173 (C.A.) upheld a decision of the Law Society to refuse admission to the Bar to someone who was a Communist. It accepted the Law Society finding that his beliefs were incompatible with an oath to uphold the law.

Substitute the words Catholic, Muslim, Jew, Evangelical Christian, Hindu, Sikh and Jain for Communist and the same end would be achieved. Anyone who does not see the parallel must be tone deaf insofar as religious liberty is concerned. Indeed, why not require loyalty oaths like those from the McCarthy era in 1950's America for all currently practising lawyers. That would involve asking "Are you now or have you ever been a member of the [insert Catholic, Muslim, Orthodox Jewish, Evangelical Christian, Hindu, Sikh or Jain faith] or any other group that believes in [anything similar to what the TWU Code of Conduct sets out]?" Those who responded "yes" would be eliminated from the profession.

The ludicrousness of that notion demonstrates how wrong it is to travel down the path that those who oppose TWU's law school being approved suggest. Is it any wonder that one academic noted, in an article about the use of the "good character" prerequisite to becoming a lawyer, about the *Martin* decision:

"Martin is, however, something of a stand-alone decision. There are no other reported Canadian good character decisions from any time prior to 1989, and no other reported Canadian decisions either prior to 1989 or thereafter in which the political beliefs of an applicant have resulted in her exclusion. Further, Martin has played no precedential roleit has never been cited--in subsequent good character decisions." (From Alice Wooley, Tending the Bar: The "Good Character" Requirement for Law Society Admission, (2007) 30 Dalhousie L.J. 27).

Substitute "religious" or "moral" or "conscientious" belief for "political" and one readily sees the dangers inherent in belief-based preclusionary rules.

Anti-discrimination Measures Should Not Be Used as a Tool to Discriminate

Efforts to have the Law Society reject TWU's application are usually premised upon arguments about discrimination. Yet accepting those arguments would lead to discrimination against TWU and those who adhere to the religious, conscientious and political views that it was founded upon.

The curious part of these efforts is that they would allow TWU graduates from any other program to enter any publicly funded law school in Canada and carry on to become lawyers. Similarly, anyone holding the beliefs that the TWU code of conduct sets out could obtain a law degree and become admitted to the bar.

It would seem that the Supreme Court has held that inquiries into belief-systems as a condition of entering publicly funded universities or the articling program would be wrong (see para. 36 of *Trinity Western University v. British Columbia College of Teachers* 2001 SCC 31):

The BCCT, <u>rightfully</u>, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

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Yet TWU, as a faith-based institution formed by adherents to a particular set of religious values, is singled out for discrimination by those who argue against approving its law school program. And the effects of that on the individual adherents to that faith are clear. In *Trinity Western University v. British Columbia College of Teachers* 2001 SCC 31 at para. 32, the court notes the discrimination against TWU and its students by the burdens imposed:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year. These are important considerations.

The court rejected the notion that TWU education students should go through a fifth year of studies at SFU as a sanitizing measure to ensure that the effects of any of the belief system inculcated in their TWU education would be eradicated.

In the context of legal education, if the theory is that students who are adherents to the TWU Code of Conduct will somehow have it drummed out of their heads by attending publicly funded law schools, it amounts to indoctrination and forced thought and "belief". If the theory is that TWU faculty would be incapable of teaching about the Charter and protections against discrimination in the law, it is arrogant and presumptuous.

I have found the following passages from the *Trinity Western University v. British Columbia College of Teachers* case particularly helpful and I would commend them to you as an important guide to your role here. First, the case establishes at para. 25 the private nature and rights of TWU and its students:

[TWU] is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.

Second, at para. 28 the case establishes that a tribunal applying the law, such as the Law Society or the BC College of Teachers, must afford the protection of the law to TWU and its students:

At the same time, however, the BCCT is also required to consider issues of religious freedom. Section 15 of the Charter protects equally against "discrimination based on ... religion". Similarly, s. 2(a) of the Charter guarantees that "[e]veryone has the following fundamental freedoms: ... freedom of conscience and religion". British Columbia's human rights legislation accommodates religious freedoms by allowing religious institutions to discriminate in their admissions policies on the basis of religion. The importance of

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freedom of religion in Canadian society was elegantly stated by Dickson J., as he then was, writing for the majority in Big M Drug Mart, supra, at pp. 336-37:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the Charter. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion [page810] includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of "the tyranny of the majority".

Ironically, the lines that Robert Bolt put in the mouth of St. Thomas More (a figure who lost his life for refusal to adhere to the religious supremacy of Henry VIII) in *A Man for All Seasons* come to mind here. In quoting them, I am not to be taken as suggesting that TWU or anyone else is the "Devil." The words help understand why, as Benchers, you are obliged to apply the law, even if you disapprove of and dislike what TWU adheres to and sets out in its Code of Conduct.

William Roper: So, now you give the Devil the benefit of law!

Sir Thomas More: Yes! What would you do? Cut a great road through the law to get after the Devil?

William Roper: Yes, I'd cut down every law in England to do that!

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Sir Thomas More: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!

Conclusion

I encourage you to vote to give TWU the accreditation that the Federation of Canadian Law Societies, the Minister of Advanced Education and the Law Societies in Alberta and Saskatchewan have already approved.

I hope what I have set out helps you in your deliberations.

Yours truly,

Robert D. Holmes, Q.C.

Enclosure (L. Lyster Letter to Federation of Canadian Law Societies)



BY EMAIL to jherman@flsc.ca and dwolfe@flsc.ca Jonathan Herman, Chief Executive Officer Deborah Wolfe, Director, Law School Programs Federation of Law Societies of Canada World Exchange Plaza 45 O'Connor Street Suite 1810 Ottawa ON KIP 1A4

Dear Mr. Herman and Ms. Wolfe:

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Statement by the Canadian Council of Law Deans (the "CCLD") on the Application by Trinity Western University ("TWU") for Accreditation for a Proposed Law School

We read with concern statements reported in the media and attributed to the CCLD, apparently found in a letter dated November 24, 2012 addressed to you concerning the application by TWU for Accreditation for a Proposed Law School. We are concerned as well to have heard that certain law deans have made presentations to other legal professional groups, apparently in a concerted effort to have the TWU application denied without notice to or an invitation to TWU to respond.

Our concerns are fourfold. First, we entirely reject the notion that existing law schools ought to monopolize legal education in Canada so as to exclude religious or conscience-based universities. Second, we reject the premise of the CCLD's submission that persons who adhere to religious principles ought to be excluded from legal education. Third, we reject the suggestion by the CCLD that the Association of University and College Teachers' concerns over academic freedom in religious or conscience-based universities disqualify such universities from providing an accredited legal education. Fourth, we are concerned that the process of evaluation of TWU's application may be tainted were any of the CCLD or their nominees to participate in the process or decision.

The BCCLA is a non-profit society that was formed 50 years ago to educate people about and promote civil liberties, human rights and freedoms. We have long stood for the protection of freedom of expression, freedom of association, and freedom of religion and conscience. We have long stood for the protection of all persons from unlawful discrimination. We are pleased that those protections are enshrined in our Canadian Charter of Rights and Freedoms and human rights legislation.



Our work has involved us in many court proceedings. Those have included acting as co-plaintiff in Little Sisters Book and Art Emporium v. Canada (Minister of Justice), 2000 SCC 69, to protect the rights of the GLBT community from discrimination by Canada Customs agents who sought to filter what materials could be imported to Canada. We intervened in Chamberlain v. Surrey School District No. 36, 2002 SCC 86, to support the principle of the public school system remaining secular and to ensure that respectful education of students concerning same-sex relationships was achieved. We intervened as well in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, where the issue was whether TWU as a private, religious-based university, should be denied accreditation for its educational degree program. In each of these and the many other cases we have been involved with or spoken out about, we have maintained a consistent theme of protecting the rights and freedoms of Canadians and the pluralistic and diverse nature of Canada.

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With regard to our first concern, we note that Canada is a country founded upon diversity and tolerance. It is thus startling for deans of publicly-funded university law schools to use their position to attempt to thwart the entry of another voice into academe, particularly where that voice is a religious one. We note that the Human Rights Code of British Columbia expressly provides for religious-based groups, among others, to be exempt from certain of its provisions when they grant preferences to members of those groups. Obviously, in order for such groups to survive they must be able to prescribe the conditions of membership of their group and set out their fundamental beliefs.

The CCLD appear to miss that point. That is surprising given that a decade ago the issue was explicitly and emphatically dealt with by the Supreme Court of Canada in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31. The court there rejected the attempt to deny accreditation of TWLI's educational training program based upon assumptions made about whether religiously-based beliefs that it promoted would result in discrimination if its graduates were hired as teachers in the public school system. The court's majority wrote this:

TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the



voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.

The court decided that the BC College of Teachers had inappropriately narrowed its consideration of matters. Instead of considering all rights, it focused just on discrimination. Instead of considering whether there was real evidence of misconduct, it focused on whether it regarded the beliefs of a particular religious group as acceptable. The court found that the BC College of Teachers was improperly forcing TWU to elect to abandon its beliefs in order to obtain accreditation.

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There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year. These are important considerations. What the BCCT was required to do was to determine whether the rights were in conflict in reality.

Finally, the court concluded that the BC College of Teachers should have left accreditation of TWU's program in place, and deal with any discriminatory misconduct by a TWU-educated teacher (or any other teacher, for that matter) through its usual disciplinary processes:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

The CCLD apparently were aware of that court decision, but reject its application here, calling their view a "principled" approach. With respect, their implicit derogation of the Supreme Court's decision as being



unprincipled is inappropriate. CCLD posits that "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools." If the topic were just about public law schools, we would agree. But the topic here is whether private educational institutions formed by religious or conscience-based groups are to have their constitutional rights recognized and protected. Leaving that out of the equation is unprincipled. The CCLD approach is as burdensome to fundamental freedoms and as contrary to the Charter as the BC College of Teachers' approach was.

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The second concern noted above was the CCLD's premise that those who are religiously-minded should be excluded from legal education. That would, by extension from their argument, include all professors, students and, eventually, lawyers and judges who held the religious views that the CCLD say are repugnant. Yet the same law schools that the CCLD preside over have admitted TWU undergraduates into their law school programs. There are religious adherents among the student population in existing law schools in Canada. And although no current legal scholar writing from a religious viewpoint readily comes to mind among the academics at existing public law schools, no doubt there are at least some professors who are members of religions.

Also, we note that Law Societies across Canada have not made a question about the religious beliefs of applicants part of their questionnaire for articling student program admissions. In British Columbia, we still have the stain of the Martin v. Law Society of British Columbia, [1950] 3 D.L.R. 173, decision of our Law Society and Court of Appeal on the books. There, the Law Society denied admission to the bar on grounds the applicant was a communist. The court upheld that. Such McCarthy-like tests as a condition of entering a profession are something that we would hope had long since disappeared.

The third concern was over the use by the CCLD of the CAUT criticism of TWU and other religiously-based educational institutions as somehow not being places of academic freedom. Given the absence among publicly-funded universities of encouragement for religiously-based academics to voice their perspective, one could be forgiven for questioning why CAUT would find fault elsewhere when diversity is not uniformly practiced in public universities, at least as CAUT preaches it.

The argument of CAUT adopted by CCLD reduces itself to the absurd. Secular universities preclude teaching from a religious perspective in order to maintain their secular and non-sectarian status; religious institutions require



professors to be adherents and provide instruction from the perspective of their group. Positing that academic freedom does not exist in religious educational institutions becomes a front for asserting that the religious perspective simply cannot be taught anywhere. The argument about a lack of freedom in religious educational institutions circles back as a supposed justification for suppression of religious viewpoints. That simply cannot be right.

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Fourth, we note that the Federation of Law Societies of Canada delegates functions to deans of law schools in Canada, including seeking their advice on the examination of credentials of foreign-educated students and also, more recently in the case of Thompson River University and Lakehead University, on the ad hoc committee formed to report on whether to approve accreditation of law schools there. The CCLD has, by putting forward a marker on behalf of all deans of existing accredited law schools in Canada, created a reasonable apprehension of bias were any of their number to be included in the process of evaluating and deciding upon the TWU application for accreditation.

The BCCLA encourages the Federation of Law Societies of Canada to give proper consideration to the application of TWU and to reject the anti-freedom-of-religion precepts of the CCLD's letter and public statements.

Sincerely,

Lindsay M. Lyster President

cc: The Council of Canadian Law Deans

Dean Flanagan, Dean of Law, Queen's University
 w.flanagan@queensu.ca
 Fax: (613) 533-6509



- · Dean Bobinski, Dean of Law, UBC
 - o bobinski@law.ubc.ca
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- · Dean Greschner, Dean of Law, University of Victoria
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- Premier Christy Clark
 - o premier@gov.bc.ca
 - o Fax: (250) 387-0087
- Minister of Justice and Attorney General for B.C.,
 - The Honourable Shirley Bond
 - o shirley.bond.mla@leg.bc.ca
 - o Fax: (250) 387-6411
- Minister of Advanced Education, Innovation, Technology and Multiculturalism for B.C., The Honourable John Yap
 - o john.yap.mla@leg.bc.ca
 - o Fax: (250) 952-7263
- Jonathan Raymond, President, Trinity Western University o president@twu.ca

From: John Horn [jhorn@rlr-law.com]

Sent: Thursday, January 30, 2014 12:11 PM

To: Submissions Subject: Trinity Western

Follow Up Flag: Follow up Completed

I speak as a Catholic. There have been Catholic Universities in Europe and the Americas with law schools attached to them for centuries and they still exist . They have a legitimate view of what is moral and what is not. They are not humanist institutions. I see no difference between such universities and Trinity Western. I can see no reason why the products of a law school at a "Religious" University should be any less qualified or competent to practice law than the products of a "humanist" university.

John W. Horn, Q.C. Ramsay Lampman Rhodes 111 Wallace Street PO Box 667 Nanaimo, BC V9R 5L9

Telephone: 250-754-3321 Fax: 250-754-1148

jhorn@rlr-law.com



From: Horning, Kelsey

Sent: Saturday, March 01, 2014 12:19 PM

To: Submissions

Subject: Proposed TWU Law School

Follow Up Flag: Follow up Completed

Dear Benchers of the Law Society of British Columbia,

I am writing in response to your request for input on whether to grant recognition to the proposed law school at Trinity Western University. As a law student I have heard a great deal about this issue and feel that it is important that the issue be given proper consideration. A letter has been sent from my school, the University of Saskatchewan, opposing TWU which many students supported however I want to make it clear that this view is not unanimous.

As you are surely familiar with it I will not repeat the wording of the Community Covenant provision in question however I do wish to discuss it. In treating legally married homosexual couples in a way that is different from legally married heterosexual couples through the Community Covenant the definition of discrimination is clearly met. However it is worth noting that this is not a total ban on homosexual students or a call for them to be the target of any sort of negative campaign or even a call for them to reject their homosexual identity. It is asking a certain part of the LGBT community to refrain from certain actions for the few years they are at the school. This is important in considering the relationship between this provision and the other rights and interests at play. Those who are part of TWU also have the right to express their religious beliefs and this should not be ignored either. What behavior is right and wrong is an important part of the beliefs of any religion. To allow either freedom from discrimination or freedom of religion to trump the other would undermine both. As such balancing these rights is a more appropriate approach.

I will turn to how to balance these interests in a moment but I should also mention that in the discussion around this I have heard it argued that even if the clause is narrow it has a much larger effect. Stories are told of LGBT students who did not feel comfortable at TWU. The problem is that any bigger effect is going to change and it seems to vary from person to person as there are also those who did feel they had a place in the TWU community. No school is going to be the right fit for everyone and to say that a narrow clause leads to all of these other things seems to me to be speculation based on assumptions (mainly about Christianity) with anecdotal support at best. As such it is best to consider the clause for what it actually is.

Given what the provision actually is, it does not even directly affect the entire LGBT community, refusing recognition would be an over-reaction and inappropriate. The reaction is perhaps understandable as LGBT individuals have only be recognized as worthy of protection fairly recently so that concern is on people's minds

but concern should not drive us too far the other way. Additionally allowing the law school to exist without recognition is essentially a refusal to allow existence as graduates would not be able to be accredited in their chosen field so the law school would not be able to fulfill its purpose.

I am concerned that refusal to allow recognition would undermine freedom of religion in a significant way. The message that could and I think likely would be taken from it is that religious beliefs are not legitimate, and in fact form grounds for discriminatory consideration in approval processes, unless they comply with what the majority of society thinks at a given time. That is no protection at all. As such I urge the Law Society to give deference to the provisional approval given by the Federation of Law Societies after close consideration and recognize the proposed TWU law school. Thank your for your consideration and close attention to these issues.

Sincerely,

Kelsey Horning

From: HU, ZAICHI [ZAICHI.HU@blakes.com]
Sent: Tuesday, February 18, 2014 5:11 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

I'd like to give the following personal comments on the proposed Trinity Western University (TWU) law school:

- Firstly, I don't think the TWU Community Covenant is unlawful discrimination. As a private faith-based institution, TWU is not subject to the Canadian Charter of Rights and Freedoms and certain provisions of the BC Human Rights Code, and should not be treated the same as a public-funded institution in terms of its institutional policies. In other words, TWU can legally adopt institutional policies based on its religious principles, even if they may have the effect of excluding certain groups from its community.
- Secondly, if graduates of the proposed TWU law school are denied acceptance to the BC bar admission program, that would be a much more severe and unlawful discrimination based on religion, because the BC law society is a public institution subject to the Charter. Those who cannot have access to TWU's law program because they don't accept TWU's community covenant can have access to law programs of other public universities, but future TWU law graduates can only apply for admission to the provincial law societies to become lawyers.
- Finally, the proposed TWU law school will create an alternative to traditional legal education, promoting diversity in the legal profession.

Thank you for your consideration of my above comments, which represent my personal opinion instead of that of my law firm.

Zaichi Hu

Counsel

zaichi.hu@blakes.com

Dir: 604-631-3349 Cell: 604-417-5848



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From: Oliver Hui

Sent: Friday, January 31, 2014 2:39 PM

To: Submissions

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

I wish to indicate my support for a new law school at Trinity Western University. In my opinion we need more law schools in order to ensure affordability and access to legal services, especially outside major urban centers.

I am alarmed by the tenor of an article I read online in the Globe and Mail recently about some Law Societies possibly moving to block TWU law school graduates from admission to the Bar due to controversy about the student code of conduct. If prospective applicants disagree with the code of conduct, they can apply to another law school. I expect the majority of applicants to a TWU law school will be conscientious, responsible people. In my opinion, the Law Society should not be denying or limiting somebody's entry into the legal profession because of his or her conscientious views, even if those views are not accepted by some.

Oliver Hui Associate Campbell Redmond

JOHN E. HUMPHRIES LAW CORPORATION

BARRISTER & SOLICITOR

NOTARY PUBLIC

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January 31, 2014

The Law Society of British Columbia 845 Cambie Street Vancouver, B.C. V6B 4Z9

Attn: Timothy E. McGee, Q.C. Executive Director

Dear Sir:

RE: Trinity Western University Law School

I am writing in favour of approval of a new Law School at Trinity Western University. More lawyers can only improve access to justice.

All arguments regarding Trinity Western University's code of conduct or Christian perspective were fully dealt with by the Supreme Court of Canada when Trinity Western University's application for a School of Nursing was challenged and subsequently approved by the Supreme Court of Canada, so such arguments have no valid place in this discussion. Even so, the code of conduct is fair, voluntary and applies equally to all persons. The only point that comes up, over and over again, is the voluntary prohibition against sexual activity among unmarried students and faculty. Many individuals, parents, religious and non-religious persons agree with the premise that sex should be confined to married people.

Trinity Western University continues to be awarded top marks for their programs and their graduates continue to earn respect as well trained professionals. I humbly submit that there is no juristic reason to oppose Trinity Western University's proposal to develop a law School.

Yours very truly,

From: Philip Jones [PJones@lklaw.ca]
Sent: Tuesday, February 04, 2014 1:32 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

It is my understanding that TWU does not discriminate against anyone based on sexual orientation. However, it does require that its students, whatever their orientation, conduct themselves according to the University's moral code. The Law Society of British Columbia holds its members to a higher moral standard than the societal norm. Although the moral standard of conduct required of B.C. lawyers is expressed in much more general terms than the Community Covenant of TWU, the principal is the same. Moral *laissez-faire* is not acceptable.

It is absurd to suppose that graduates of an institution that holds its students to a particular standard of conduct would be in any way less worthy than graduates of another institution that recognizes a different or no standard. This is my own opinion and is not necessarily shared by any other member of Lindsay Kenney LLP.



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From: Luke Johnson [ljohnson@dvclawyers.com]

Sent: Monday, March 03, 2014 2:17 PM

To: Submissions

Subject: Submission on TWU School of Law

Follow Up Flag: Follow up Completed

Submission to the Law Society of British Columbia regarding the accreditation of the proposed J.D. program at Trinity Western University ("TWU")

March 3, 2014

Attention: Executive Director

Dear Sir:

I write this submission in support of the acceptance of Trinity Western University's Law program by the Law Society of BC as an approved faculty of law in BC. Thank you for the opportunity to present my view on this issue.

As a graduate of TWU (BA, 2001) and UBC Law (2007), I have experienced both faith-based and secular education programs. I have been a member of the Law Society for almost six years, and practice with a firm in Surrey in the field of charity and non-profit law.

I have reviewed the Federation of Law Societies of Canada Approval Committee report on TWU, and fully support the conclusion reached by the Committee. My letter today will not repeat the extensive legal arguments in favour of approval, but highlight two personal aspects of this debate:

- 1. **Education** TWU provided me with an excellent and rigorous undergraduate education, which was of great assistance in preparing for a professional career in law. In particular, TWU helped me to understand and adopt Christian views of public service and vocation that are consistent with those shared by all lawyers. I have no doubt that the TWU law program will ensure its students are well-qualified to practice law in Canada.
- 2. **Non-Discrimination** The view that TWU-trained lawyers would be discriminatory in dealing with gay, lesbian, bi-sexual or transgendered clients is baseless. Like other TWU-graduate lawyers, I take the Barristers' and Solicitors' Oath seriously and would never turn away or discriminate against a client by reason of their sexual orientation. Many TWU graduates are currently practicing law, but to my knowledge there is no evidence that a single client has been adversely affected by their lawyers' views of marriage or sexual morality. In this regard, I adopt the comments of the majority in *TWU v. BCCT* (2001 SCC 31 at 35): "In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society."

In addition to this submission, I support the submission of the Christian Legal Fellowship of which I am a member.

Yours,

Luke Johnson

Barrister & Solicitor

From: Tom Johnston [tom@summerlandlawoffice.com]

Sent: Thursday, January 30, 2014 2:18 PM

To: Submissions

proposed Trinity Western Law School Subject:

Follow Up Flag: Follow up Flag Status: Completed

Jan 30/14

Executive Director

The proposed law school at Trinity Western is a great idea.

It will give students some choice.

Students should have more choices of law schools.

In Canada, all law schools are pretty much the same, whereas the practice of law varies widely depending on area of practice, whether the lawyer's practice is urban or rural, etc...

Canada should have more choice in law schools – like the United States – I understand there are more than 30 Christian law schools in the U.S.

The proposed law school at Trinity Western is a great idea – more diversity is needed in legal education, as there is in practice.

Respectfully submitted,

Tom Johnston

THOMAS J. JOHNSTON, B.A., LL.B.

tom@summerlandlawoffice.com

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From: John Carpay [jcarpay@jccf.ca]

Sent: Wednesday, February 26, 2014 10:18 AM

To: Submissions

Subject: Submission to Law Society re: J.D. program at Trinity Western University

Attachments: Submission re TWU - In Defence of the Free Society.pdf

Follow Up Flag: Follow up Flag Status: Flagged

Categories: Red Category

Dear Sir or Madam,

Please find attached a PDF version of our Submission to the Law Society of British Columbia in regards to the accreditation of the proposed J.D. program at Trinity Western University.

Yours truly,

John Carpay

John Carpay, B.A., LL.B.
President
Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW
Calgary, AB T2V 1K2
www.jccf.ca

[&]quot;Defending the constitutional freedoms of Canadians"



In Defence of the Free Society

A submission to the Law Society of British Columbia on Diversity, Tolerance, and Trinity Western University

by

The Justice Centre for Constitutional Freedoms

February 25, 2014

Introduction

Some Canadians have expressed their opposition to the new law school at Trinity Western University (TWU).

This opposition is based largely (if not entirely) on one section of TWU's Community Covenant, which requires students who choose to attend TWU to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

Opponents of TWU's law school argue that:

- 1) the Community Covenant discriminates against gays and lesbians;
- the TWU law school will produce lawyers who will discriminate against gays and lesbians;
- 3) the TWU law school itself, by virtue of points 1) and 2) is therefore in violation of, or incompatible with, Canadian law; and
- 4) the TWU law school, by virtue of the Community Covenant, cannot competently teach law.

Opposition to the TWU law school has been based primarily on disagreement with what TWU believes about marriage and sexuality. Opponents of the TWU law school argue that adherence to the "wrong" beliefs about sexuality and marriage should disqualify a university from teaching law, even when the Federation of Law Societies of Canada (FLSC) has determined that TWU's academic standards and professional criteria have been met.

Further, the FLSC Special Advisory Committee, formed specifically to address concerns raised by opponents of the TWU law school, concluded there was no public interest reason to exclude future graduates of the TWU law program from the bar admission program.

This submission will address these arguments as well as some of the assumptions on which they are founded.

Executive Summary

The crucial importance of voluntary associations to a free society

One of the hallmarks of a free society is authentic diversity, consisting of a broad range of robust associations with differing and conflicting beliefs. In a free society with authentic diversity, a myriad of private institutions are formed on the basis of culture, ethnicity, religion, gender, political belief, and many other factors which recognize and affirm individual and group identity.

True tolerance does not consist of using "diversity" as a slogan, or using "diversity" as a basis for censoring public disagreement. Rather, true tolerance means actually accepting the authentic diversity expressed by a wide range of different associations.

In a free society, nobody is compelled to join, or agree with the beliefs of, a voluntary association, be it TWU or any other private institution. The individual's freedom to reject the beliefs and practices of voluntary associations does not conflict with an association's freedom to develop, teach and practice its own beliefs.

Freedom of association is rendered meaningless if private institutions cannot define and live out their own mission and purpose because those in power require (as a condition of recognizing its graduates' qualifications to practice a profession) the institution to accept as members people who disagree with that mission and purpose.

If, in Canada, voluntary associations cannot develop, express and live out their own beliefs, without disqualification of their members from entry into a profession for which they are otherwise qualified, then Canada's free society will be greatly diminished.

Legal competence does not require ideological conformity

Opponents of the TWU law school argue that its graduates will discriminate against gays and lesbians.

This argument pre-supposes that lawyers are incapable of advocating resolutely and effectively on behalf of clients who hold beliefs or who engage in conduct with which a lawyer disagrees.

This, in turn, is disproven every day by tens of thousands of Canadian lawyers who competently and professionally represent clients whose values, religion, socio-economic status, sexual orientation, and political beliefs are different from those of the lawyer.

Lawyers routinely act for clients whose lifestyles, behaviour and beliefs differ from their own.

The Federation of Law Societies of Canada based its approval of TWU's law school on academic and professional criteria. This is how it should be. Opinions about sex and marriage, whether held by lawyers, judges, law professors, or law students, are irrelevant.

Lawyers and law professors can advocate for change to the law

No law society in Canada imposes an ideological standard or philosophical requirement on those seeking to join its ranks. Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or the Supreme Court of Canada' interpretation of the *Charter*) and still provide competent and professional legal services to their clients.

The Federation of Law Societies of Canada understood these principles when providing its approval of TWU's law school, based on academic standards and professional criteria. Denying TWU the right to start and operate a law school on the basis of its belief about marriage would effectively repudiate a long-standing principle that lawyers need not agree with all laws in order to be competent lawyers.

National mobility standards should exclude ideology

The Supreme Court of Canada in *Reference Re Same-Sex Marriage*, 2004 SCC 79, at paragraphs 52-59, and the *Civil Marriage Act*, SC 2005, c. 33, Section 3-3.1, specifically protect the right of religious individuals and religious institutions to adhere to their faith-based definition of marriage, to the exclusion of all other definitions.

The establishment of a philosophical or ideological standard for the creation of new law schools would effectively repudiate the hard work carried out in the past decade by the Benchers and Council Members of Canada's law societies. These lawyers, and others, have devoted thousands of hours to developing national academic standards. The resulting interprovincial mobility of lawyers benefits clients, and should not be thwarted by the imposition of an ideological requirement on new law schools.

The benefits of diversity in legal education

Our legal system is based on the idea that truth best emerges through a structured adversarial contest of two (or more) opposing viewpoints.

Yet which existing law faculty in Canada can honestly claim to provide its students with significant exposure to libertarian, conservative, and religious perspectives on the law?

Canadian law students stand to benefit from more choice in the law faculties available to them. In a free society, institutional diversity within academia is a public good, not a

threat, to society as a whole. The creation of a law school which differs from others should be welcomed by those who are truly tolerant and cherish authentic diversity.

No person is exempt from criticism

The Supreme Court of Canada has held that freedom of expression serves to protect minority beliefs which the majority regard as wrong or false. The view of the majority has no need of constitutional protection; it is tolerated in any event. To facilitate the search for truth, and to develop good public policy, democracy cannot permit the censorship or silencing, whether direct or indirect, of an opponent's expression of belief. Restricting the expression of beliefs merely because they may cause hurt or offense is entirely incompatible with the Court's jurisprudence. Individuals enjoy the freedom to claim that another person's opinions are "discriminatory" or "bigoted," but in a free society the truth of such claims is determined by citizens, not by the government.

The principles governing free expression apply similarly to freedom of association. A free society cannot endure when subjective feelings of offence are recognized as a legal criterion that can be used to undermine the *Charter*'s fundamental freedoms of expression and association.

TWU does not engage in illegal discrimination

There is no legal authority for the proposition that a private institution engages in illegal discrimination by virtue of its beliefs. It is not illegal for a voluntary association to define itself in a way that results in some people not wanting to join it, or pay for its services.

Every Canadian university has a code of student conduct, which students agree to abide by as a condition of attending that university. The codes of student conduct at other universities are different from TWU's code, and are far less demanding.

The nature and content of the Community Covenant is such that many (and perhaps most) Canadian students, whether gay or straight, would not want to attend TWU. To suggest that the Community Covenant "discriminates" against gays and lesbians is akin to suggesting that the Community Covenant "discriminates" against those wanting to practice any other lifestyle or behaviour prohibited by the Community Covenant (and there are many).

The Community Covenant is a barrier to attending TWU only for those who are unwilling to live by Evangelical Christian beliefs and teachings during their course of study. The claim that TWU unfairly discriminates against gays and lesbians is therefore unfounded.

The crucial importance of voluntary associations to a free society

Opposition to the TWU law school raises the fundamental question of whether, in Canada's free society, private institutions and other voluntary associations have the right to establish their own codes of conduct, and to develop and practice their own beliefs. Opponents of TWU assume that private institutions should not be permitted to develop their own codes of conduct, or to disagree with existing laws when exercising their *Charter* rights.

One of the hallmarks of a free society is authentic diversity, consisting of a broad range of robust associations with differing and conflicting beliefs. In a free society with authentic diversity, a myriad of private institutions are formed on the basis of culture, ethnicity, religion, gender, political belief, and many other factors which recognize and affirm individual and group identity. Authentic diversity consists of the fundamental differences which are expressed and lived out by thousands of private organizations in Canada, large and small.

True tolerance does not consist of using "diversity" as a slogan, or using "diversity" as a basis for censoring public disagreement. Rather, true tolerance means actually accepting the authentic diversity expressed by a wide range of different associations.

As William Galston explains it:

"[I]f we insist that each civil association mirror the principles of the overarching political community, meaningful differences among associations all but disappear; constitutional uniformity crushes social pluralism."

Through the exercise of freedom of association, Canada's numerous organizations protect minority rights and freedom of expression by forming a healthy and necessary barrier between the individual and the state. A free society demands that all organizations comply with the laws of the land, but does not demand of any organization that it agree with the laws of the land. In a free society, the door is always open for the expression of disagreement with existing laws, and for the peaceful advocacy of changes to existing laws.

In stark contrast, the totalitarian state pervades all aspects of social, cultural, political and religious life, demanding compliance with and adherence to the state's ideology. There are no barriers between the individual and the state, because truly independent associations are prohibited. There is no authentic diversity, and hence no need for tolerance either. Disagreement with existing laws, and peaceful advocacy of change to those laws, are forbidden both for individuals and for voluntary associations.

¹ Galston, "Expressive Liberty, Moral Pluralism, Political Pluralism: Three Sources of Liberal Theory", 40 Wm and Mary LR 869 at 875 (1999).

Opponents of TWU's law school would presumably agree with the principle that a free society depends on the robust exercise of freedom of association. Opponents of TWU's law school would presumably agree with the principle that citizens in a free society can create private institutions and form voluntary associations while expressing disagreement with some (or many, or all) of society's existing laws. Opponents of TWU's law school would, presumably, agree that true tolerance requires accepting authentic diversity.

And yet the argument is advanced that those who disagree with same-sex marriage should not be permitted to start or operate a law school, even when the Federation of Law Societies of Canada has approved TWU's academic standards and professional criteria.

In a free society, nobody is compelled to join, or agree with the beliefs of, a voluntary association, be it TWU or any other private institution. The individual's freedom to reject the beliefs and practices of voluntary associations does not conflict with an association's freedom to develop, teach and practice its own beliefs. A free society respects the freedom of the individual and the association, recognizing that they are not in conflict with each other.

The other side of this coin is that freedom ceases to exist when individuals are compelled to join associations they disagree with, or when associations are required to alter their mission, purpose, or belief system to suit the ideological preferences of individuals who disagree with the association.

Freedom of association is thus a two-way street: a voluntary association has the right to freely determine and live out its beliefs, and the individual has the freedom to refuse to join that association, and to reject its beliefs.

Opponents of TWU's law school are advocating for a one-way street. They cherish, and would rightfully assert, the individual's freedom not to attend TWU. Yet they would deny TWU its right to create and operate a law school, because they disagree with TWU's beliefs about marriage and sexuality. This is a demand for conformity, and a rejection of the authentic diversity that exists in a society which respects freedom of association.

Any person who disagrees with an Evangelical Christian teaching on a topic could call herself or himself a victim of discrimination on the part of TWU. Hence the significance of the fact that no person is compelled to attend TWU, or to fund it through taxation.

Freedom of association is rendered meaningless if private institutions cannot define and live out their own mission and purpose because those in power require (as a condition of recognizing its graduates' qualifications to practice a profession) the institution to accept as members people who disagree with that mission and purpose.

If, in Canada, voluntary associations cannot develop, express and live out their own beliefs, without disqualification of their members from entry into a profession for which they are otherwise qualified, then Canada's free society will be greatly diminished.

Legal competence does not require ideological conformity

If opposition to TWU's law school is not merely an attempt to impose ideological conformity on a private institution, then perhaps this opposition stems from a concern about the professional competence of TWU law school graduates.

Opponents of the TWU law school argue that its graduates will discriminate against gays and lesbians.

This argument pre-supposes that lawyers are incapable of advocating resolutely and effectively on behalf of clients who hold beliefs or who engage in conduct with which a lawyer disagrees.

This, in turn, is disproven every day by tens of thousands of Canadian lawyers who competently and professionally represent clients whose values, religion, socio-economic status, sexual orientation, and political beliefs are different from those of the lawyer.

Lawyers routinely act for clients whose lifestyles, behaviour and beliefs differ from their own. For example, lawyers practicing in family law may be personally opposed to divorce, or may morally disapprove of some of the conduct of some of their clients, but this does not prevent them from providing competent legal services to their clients. Criminal defence lawyers don't care about their clients' views on marriage, nor is the lawyer's personal opinion about marriage relevant to the legal representation being provided. The Canadian Civil Liberties Association, while disagreeing entirely with the pro-life view on abortion, advocates passionately and effectively for the free expression rights of pro-lifers.

To claim that a gay lawyer is incapable of providing excellent legal representation to an Evangelical Christian client would be anti-gay bigotry. And yet, opponents of the TWU law school argue that its graduates, because of their presumed disagreement with same-sex marriage, will discriminate against gay and lesbian clients. This argument, if true, would mean that if a student commits to abstain from illegal drugs and pornography while attending TWU, this commitment will cause the student to discriminate against those who use illegal drugs or pornography. There is no evidence for such causal link. To the contrary, lawyers disprove its existence every day by representing diverse clients whose beliefs and behaviours differ from those of the lawyer.

The Federation of Law Societies of Canada based its approval of TWU's law school on academic and professional criteria. This is how it should be. Opinions about sex and marriage, whether held by lawyers, judges, law professors, or law students, are irrelevant.

Lawyers and law professors can advocate for change to the law

A democracy, by its very nature, leaves the door open for all citizens, including lawyers and law professors, to advocate for what they see as improvements to the law.

It should be noted that TWU does not oppose the federal *Civil Marriage Act*, which expressly protects the freedom of religious institutions to hold and declare their own definition of marriage, and which expressly affirms the right of all people to express publicly their diverse views on marriage.

It should also be noted that the Community Covenant specifically demands of TWU students that they "submit to the laws of this country," which necessarily includes federal and provincial human rights legislation.

But even if TWU publicly advocated for changing Canada's marriage laws, a free society allows it to do so, in keeping with the long-standing principle that lawyers, law students, and law professors have the right to advocate for what they see as improvements to the law.

No law society in Canada imposes an ideological standard or philosophical requirement on those seeking to join its ranks. Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or the Supreme Court of Canada' interpretation of the *Charter*) and still provide competent and professional legal services to their clients.

The Federation of Law Societies of Canada understood these principles when providing its approval of TWU's law school, based on academic standards and professional criteria. Denying TWU the right to start and operate a law school on the basis of its belief about marriage would effectively repudiate a long-standing principle that lawyers need not agree with all laws in order to be competent lawyers.

The same principle holds true for law professors, whose teaching of the law will be informed by their personal opinions of what the law ought to be. It is not a requirement (nor should it be) that a law professor agree with all laws now in force.

Prior to the change in Canada's marriage laws, should advocates for same-sex marriage have been precluded from creating or running a law school? Should agreement with the then-existing definition of marriage have been a litmus test for those wanting to teach or practice law?

These same questions can be fairly posed today: should opponents of same-sex marriage be precluded from creating and running a law school? Should agreement with current marriage laws be a litmus test for those wanting to teach or practice law?

National mobility standards should exclude ideology

The Supreme Court of Canada in *Reference Re Same-Sex Marriage*, 2004 SCC 79, at paragraphs 52-59, and the *Civil Marriage Act*, SC 2005, c. 33, Section 3-3.1, specifically protect the right of religious individuals and religious institutions to adhere to their faith-based definition of marriage, to the exclusion of all other definitions.

Adhering to the "correct" view of sexuality and marriage (or any other topic) is not a bona fide occupational requirement for lawyers. Therefore, Canada's national standards for legal practice should not require adherence to – or rejection of – any particular religious or philosophical belief.

The establishment of a philosophical or ideological standard for the creation of new law schools would effectively repudiate the hard work carried out in the past decade by the Benchers and Council Members of Canada's law societies. These lawyers, and others, have devoted thousands of hours to developing national academic standards. The resulting interprovincial mobility of lawyers benefits clients, and should not be thwarted by the imposition of an ideological requirement on new law schools.

Canada's Law Societies cannot require lawyers who are currently practicing to adhere to any particular worldview or belief system, whether religious or non-religious, and this includes a wide range of differing beliefs about sexuality and marriage.

Opponents of the TWU law school do not suggest that current lawyers should be disbarred (or re-educated) on account of their personal beliefs about sexuality and marriage.

If those now practicing law can do so competently and professionally while disagreeing with same-sex marriage, why should new lawyers by held to an ideological standard?

The benefits of diversity in legal education

Our legal system is based on the idea that truth best emerges through a structured adversarial contest of two (or more) opposing viewpoints.

Yet which existing law faculty in Canada can honestly claim to provide its students with significant exposure to libertarian, conservative, and religious perspectives on the law?

Good advocates fully understand the position of their opponents, but today few Canadian law students are taught a full and balanced range of worldview perspectives that are important to understanding current debates. Uniformity of thought can lead to intellectual laziness, and to the academic disease of Groupthink, thereby stifling the development of better ways of thinking and doing. Some who shout the loudest for

"tolerance" and "diversity" may in fact be the most intolerant of any real diversity in opinion or ideology.

Canadian law students stand to benefit from more choice in the law faculties available to them. In a free society, institutional diversity within academia is a public good, not a threat, to society as a whole. The creation of a law school which differs from others should be welcomed by those who are truly tolerant and cherish authentic diversity.

No person is exempt from criticism

In Canada's free society, religious adherents of various faiths frequently experience criticism – sometimes expressed with hatred, contempt, or ridicule – of their most cherished beliefs. Many faith adherents, including law students, find themselves in this situation on a daily basis. True tolerance means accepting, or at least putting up with, vigorous (and even unfair) attacks against one's own sincerely held beliefs. For the individual whose beliefs are criticized or ridiculed, a free society affords the choice of ignoring the criticism or peacefully responding to it.

The Supreme Court of Canada has held that freedom of expression serves to protect minority beliefs which the majority regard as wrong or false. The view of the majority has no need of constitutional protection; it is tolerated in any event. To facilitate the search for truth, and to develop good public policy, democracy cannot permit the censorship or silencing, whether direct or indirect, of an opponent's expression of belief. Restricting the expression of beliefs merely because they may cause hurt or offense is entirely incompatible with the Court's jurisprudence. Individuals enjoy the freedom to claim that another person's opinions are "discriminatory" or "bigoted," but in a free society the truth of such claims is determined by citizens, not by the government.

The principles governing free expression apply similarly to freedom of association. A free society tolerates the authentic diversity among private institutions which results from freedom of association.

A free society cannot endure when subjective feelings of offence are recognized as a legal criterion that can be used to undermine the *Charter*'s fundamental freedoms of expression and association.

TWU does not engage in illegal discrimination

There is no legal authority for the proposition that a private institution engages in illegal discrimination by virtue of its beliefs. It is not illegal for a voluntary association to define itself in a way that results in some people not wanting to join it, or pay for its services.

For example, if a health clinic provides reiki treatments, which some religious adherents regard as an occult practice, those religious adherents do not become victims of discrimination by virtue of the clinic's health services being commonly available to the public. Those who regard reiki as morally wrong have the freedom to seek health care elsewhere, but do not enjoy the right to stop the clinic from providing it, or proclaiming its merits. In this example, illegal discrimination would only occur if the clinic refused to provide reiki treatments to religious adherents. The religious adherents' disagreement with reiki does not constitute discrimination, and does not entitle them to demand that the clinic change its beliefs or its practices.

Students choosing to attend TWU, as part of that decision, choose to adhere to the Community Covenant. The Community Covenant asks students to commit themselves to practicing Evangelical Christian teachings, including:

- cultivating Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice;
- living exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity;
- treating all persons with respect and dignity, and upholding their God-given worth from conception to death;
- being responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society;
- encouraging and supporting other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another;
- abstaining from harassment or any form of verbal or physical intimidation, including hazing;
- abstaining from the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography;
- abstaining from drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs.

Every Canadian university has a code of student conduct, which students agree to abide by as a condition of attending that university. The codes of student conduct at other universities are different from TWU's code, and are far less demanding.

The nature and content of the Community Covenant is such that many (and perhaps most) Canadian students, whether gay or straight, would not want to attend TWU. To suggest that the Community Covenant "discriminates" against gays and lesbians is akin to suggesting that the Community Covenant "discriminates" against those wanting to practice any other lifestyle or behaviour prohibited by the Community Covenant (and there are many).

There are Christians who feel attracted to the same sex and who agree with Evangelical Christian teachings about sex and marriage, for whom the Community Covenant poses no barrier to attending TWU. TWU already has gay students in attendance.

In short, the Community Covenant is a barrier to attending TWU only for those who are unwilling to live by Evangelical Christian beliefs and teachings during their course of study. The claim that TWU unfairly discriminates against gays and lesbians is therefore unfounded.

About the author

John Carpay is President of the Justice Centre for Constitutional Freedoms. He earned his B.A. in Political Science at Laval University, and his LL.B. from the University of Calgary. John has defended constitutional rights and freedoms in the Alberta Court of Queen's Bench (Boissoin v. Lund), Saskatchewan Court of Appeal (Whatcott v. Saskatchewan Human Rights Commission), Federal Court of Appeal (Benoit v. Canada), and Supreme Court of Canada (R. v. Kapp). He acts for seven students who are suing the University of Calgary in the Alberta Court of Queen's Bench (Wilson v. University of Calgary) in defence of their campus free speech rights, and for Darcy Allen in his constitutional challenge to the government's health care monopoly (Allen v. Alberta).

In 2010, John Carpay was presented with the *Pyramid Award for Ideas and Public Policy*, in recognition of John's work in constitutional advocacy and in building a non-profit legal foundation. John Carpay serves on the Board of Advisors of iJustice, an initiative of the Centre for Civil Society, India.

About the Justice Centre for Constitutional Freedoms

"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has."

The free and democratic society which the Canadian Charter of Rights and Freedoms holds out as our ideal can only be fulfilled by honouring and preserving Canada's traditions of freedom of expression, freedom of conscience and religion, freedom of association, other individual rights, constitutionally limited government, the equality of all citizens before the law, and the rule of law.

The Justice Centre for Constitutional Freedoms (JCCF) was founded for the purpose of advancing and promoting the core principles of freedom and equality through education and litigation. The JCCF is a registered charity and issues official tax receipts to donors for donations of \$50 or more. The JCCF is funded entirely by the voluntary donations of

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- Dr. Marco Navarro-Genie, President, Atlantic Institute for Market Studies (Halifax, NS)
- Dr. Dwight Newman, Professor of Law, University of Saskatchewan (Saskatoon, SK)
- Daniel Santoro, Lawyer, Doucette Boni Santoro LLP (Toronto, ON)

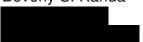
The following individuals serve on the JCCF's Advisory Council:

- Dr. Barry Cooper, Department of Political Science, University of Calgary
- Troy Lanigan, President & CEO, Canadian Taxpayers Federation
- Brad Miller, Faculty of Law, University of Western Ontario, London
- Brian Purdy, Q.C., Calgary defence counsel and retired Crown Prosecutor
- Tom Ross, Partner, McLennan Ross LLP, Calgary
- Dr. Clive Seligman, Department of Psychology, University of Western Ontario
- Michael Taube, journalist and public policy commentator

Justice Centre for Constitutional Freedoms #253, 7620 Elbow Drive SW Calgary, Alberta, T2V 1K2 www.jccf.ca

"Defending the constitutional freedoms of Canadians"

Beverly S. Kanda



March 2, 2014

Dear Law Society of British Columbia,

Re: Submission about accreditation to graduates of Trinity Western University's proposed law school

Is there any better place on earth to live than Canada? I cherish the constitutional rights and freedoms that myself, my family, and my fellow Canadians often take for granted. My father did not take these freedoms lightly. Having enlisted in the Canadian army as a teen, he fought in World War 2 for what he thought were lofty, patriotic reasons, only to be overwhelmed by the brutality of war. However, he never let his children forget the sacrifices of many, so that the country that he called home, Canada, could remain free, democratic, and accepting of many ideals, regardless of the popularity of the ideals.

My father did not share my faith when I was a young child, but he still accepted my choice, and drove me each Sunday to my place of worship. He never attended with me. Yet, he had fought for me, for my Canadian right to choose to have a faith or not. What does this have to do with the B.C. Law Society granting the right of Trinity Western's law school graduates to practice law in B.C.? Everything!

Our great country is a pluralistic nation made up of mosaic of individuals from likely every nation on earth. Its rich heritage of respecting the rights of those individuals is the envy of the world. In the same token, Trinity Western University's covenant of faith, its religious constitutional right and civil liberty, to state its position of faith, should be respected despite the fact that it may be unpopular with some.

Just because Trinity Western University's covenant states that marriage is between one man and one women, does not mean that its law school students will be unable to defend individuals who believe otherwise. Holding a belief does not equate to discriminating against someone who does not share that belief. Nor does it mean that Trinity Western's law school professors will not completely educate its law students about the entire charter and the responsibility to defend all Canadians, regardless of their religion, race, gender, or orientation. If that were the case, then how could law school graduates from the University of British Columbia, a secular school, adequately understand and defend individuals of faith? Would those UBC law school graduates be able to defend the religious rights and freedoms, granted under the charter, of its religious clients given that they themselves might embrace no religion? Perhaps this would mean there is a gap in the adequacy of this nation's present law school students to comprehend religious rights in this nation because its law professors never professed a faith. And how about if a law professor just happened to believe in euthanasia? It's not a present constitutional right, so then should that professor be dismissed from educating

because he or she might believe in something that is against a Canadian law? Ridiculous!

I fear for our nation when entities like provincial law groups try to tell segments of Canadian society how they ought to believe if they hope to educate law students. Likewise, it is repugnant to suggest that those Canadians holding certain beliefs will discriminate against others who don't hold those same beliefs. What an outrage. If one does not believe in Christianity in Canada does that mean one will sabotage a church? If one does not believe in Islam, Atheism, Judaism or Scientology, does that necessitate that one will act intolerantly towards those who share those beliefs? And do those who embrace the aforementioned beliefs make poor lawyers because they adhere to a faith or are they simply excellent and tolerant because they attended a secular law school? Holding a belief does not equate to acting against others who believe otherwise, nor does it make one an excellent lawyer or not.

In conclusion, many Canadians died on our behalf so that we would remain a nation which embraced and allowed its citizens to have the freedom to hold beliefs. Holding religious beliefs does not equate to acting in a discriminating way against those who do not hold the same beliefs. Furthermore, many fought and died so that individuals or groups could not force others to believe in certain ways or else employment would not be granted to them. What a terrible slippery slope this will be if law societies force Canadian law students to drop their personal beliefs or hold certain beliefs for them to be granted a license to practice law.

Thank you for taking the time to read my submission,

Beverly S. Kanda B.A (University of British Columbia), PDP (Simon Fraser University), M.A. (Gonzaga University)

From:

Sent:

Don Kawano Sunday, March 02, 2014 6:30 PM Submissions Lynal Doerksen To: Cc:

Subject:

Trinity Western Law School Scanned Image 140610000.pdf; ATT00001.txt Attachments:

Follow up Completed Follow Up Flag: Flag Status:

Submission to The Law Society of British Columbia

RE: Trinity Western University's application for accreditation for its proposed new law school

I have read with considerable interest the many letters and submissions published on the Federation of Law Societies of Canada website regarding the above noted matter, in particular, the letter from the B.C. Civil Liberties Association ("BCCLA") to the Federation of Law Societies of January 28, 2013. As so eloquently expressed by BCCLA:

"CCLD posits that 'Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools'. If the topic were just about public law schools, we would agree. But the topic here is whether private educational institutions formed by religious or conscience-based groups are to have their constitutional rights recognized and protected. Leaving that out of the equation is unprincipled. The CCLD approach is as burdensome to fundamental freedoms as contrary to the Charter as the BC College of Teachers' approach was".

The issue at hand is not whether one agrees or disagrees with Trinity Western's policy relating to gay or lesbian staff or students or, for that matter, relating to heterosexual sex outside the bounds of marriage or its position regarding divorce. The issue is whether such private institution should be accredited as a law school, assuming that it meets criteria that is expected of every other institution, whether private or otherwise.

The most difficult legal argument or submission to make is one in which one's own personal beliefs are at odds with those of the person who that person is representing. Voltaire said, "I don't agree with what you have to say, but will defend to the death your right to say it". In a criminal law context, the lawyer for the most heinous criminal must make submissions on behalf of that client even though she/he is personally revolted by such client's deeds. Therefore, in this particular case, while my personal beliefs and principles are directly at odds with those of Trinity Western, religious freedom in a private institution must be protected and if that institution meets standards applicable to all other institutions for creation of a law school, it is entitled to accreditation.

Upon graduation from such law school, and upon acceptance by the Law Society of B.C. and enrolment as a barrister and solicitor, all such persons are then mandated to practise law without discrimination of any nature. As stated by the majority in Trinity Western v British Columbia College of Teachers, at para. 25:

"Although the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient

to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality."

and at paragraph 36:

"...the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society."

A law school graduate of Trinity Western University will be held to the same standards as any other accredited lawyer. If that person's conduct transgresses human rights legislation or is discriminatory in any way, that lawyer will be subject to sanctions.

Therefore, I support the right of Trinity Western University to be accredited as a law school provided it meets requirements expected of any other law school, private or otherwise. In providing my support I assume and expect that Trinity Western University will support the right of any other private religious based institution, such as one that may support Muslim beliefs, to apply for accreditation, assuming that such institution meets requirements required of any other institution.

Respectfully submitted this 31st day of January, 2014

Donald N. Kawano QC Rella and Paolini

Cranbrook, B.C.

NOTE: This submission is my personal submission alone, and is not intended to reflect the views of Rella and Paolini or of any other professional organization of which I am a member.

From: Kickbush, Kathryn JAG:EX [Kathryn.Kickbush@gov.bc.ca]

Sent: Wednesday, January 29, 2014 12:59 PM

To: Submissions Subject: New law school

Follow Up Flag: Follow up Completed

I feel strongly that students should have a choice regarding these issues. Just as students attend schools which have particular preferences regarding curriculum focus ie admin law; aboriginal law etc. a school should be allowed to set rules regarding morality standards. The student has the choice whether they apply to that school or not. As long as the curriculum meets the standard for legal education it should qualify the graduating student for admission. If the student does not like the policy they don't have to attend that school. The students who do choose to attend should have the choice as well. We don't have to agree with each other. There is no 'abusive' behavior etc. kk

Kathryn Kickbush | Barrister & Solicitor | Legal Services Branch | Ministry of Justice | 4th floor – 1001 Douglas Street, Victoria, BC V8W 9J7 | Tel: 250-356-8495 | Fax: 250-356-8992

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From: Robert

Sent: Saturday, March 01, 2014 12:08 PM

To: Submissions

Subject: Trinity Western question

Follow Up Flag: Follow up Completed

I wish to express my views on the TWU issue. Bottom line: I reject utterly the need for this Law Society to stand in opposition to the accreditation of TWU as a law school in Canada. I support accreditation.

- 1) having viewed the covenant of TWU, I see that it also calls its adherents to avoid pre-marital sex and extra marital sex. In other words, it continues a very long and traditionally held view that sex is for marriage and, when outside of marriage, is wrong in the eyes of God and not good for society at large. To some degree or other, I'd suggest there is very probably a significant number of lawyers who more or less share this view in spite of their own explorations. So far, I do not see the bar as lacking the capacity to carry out its functions fully in spite of some lawyers holding or even living in accordance with similar views. Which to me is the key point: I reject the notion that the views of lawyers on questions such as these may be lawfully viewed as an impairment of their ability to serve their clients or the interests of justice. Similarly, I reject the confounding of a lawyer's personal beliefs with those of the cause counsel represents. This has always been viewed as a classic example of ignorance, and I do not expect this body to be fooled into that error.
- 2) If the Law Society holds that beliefs of the type described in the TWU covenant are legally incapacitating to the practice of law, I suggest there are a great number of practicing lawyers you will need to disbar. Not without some push-back, I should imagine.
- 3) this covenant only covers off one of the many categories of beliefs which other folk consider offensive or bigoted. My experience of the bar is that the diversity of bigoted or otherwise offensive views is very wide and can pop up in the least expected and sometime most lofty of places. Of course, most of the time those bigoted or offensive views are only revealed in quiet rooms after liquor has been consumed. But I suggest that if we are to delve into such things, we are going to have a very long and sordid inquisition. In the end, we will find that most of us have some opinions that others are offended by. And we'll also notice that we continue to make the system work in spite of our biases and bigotry. I reject there being a connection between most of the personal beliefs and foibles of lawyers and the mandate of the Law Society, except where it manifests itself in conduct unbecoming. And we deal with conduct unbecoming when it is manifest, not when it only resides in the human mind.
- 4) In the academic world, it is generally frowned upon to launch into social discourse without clearly locating one's self in the debate. Thus, not only does the academic make the argument,

but also provides the opportunity to understand whether the speaker's view is shaped (or misshaped?) by who they are. When thinking about the world of legal training, I actually think it makes a lot of sense that organizations and individual deans or professors be open and clear about their own interests and perspectives, rather than obliging students to discover hidden agendas after enrollment. I've certainly lost more than one hour I'll never regain on account of a catchy lecture title used to lure me to hear a speaker who offered nothing I cared to hear. So I do not see how a Christian-based law school is doing anything unhelpful to the world when it clearly says what it is about and what they expect of you while you attend their institution.

- 5) I note the TWU covenant says nothing requiring a student to continue to conduct themselves in accord with the covenant upon graduation. If my experience of UBC or UVic or UofA or UofC or Dal or Osgoode grads consistently supporting the views of those institutions is representative, the idea that students who obtain degrees at TWU will graduate as clones, spouting the school covenant isn't believable. Particularly after a few years of real experience.
- 6) I suggest for an informed decision this Law Society needs evidence that among practicing lawyers who happen to share TWU's views on sex and marriage, there is a disturbing trend demonstrating a failure to perform their duties as a member of the bar. Good luck with that
- 7) Further, this inquiry into the memberships and beliefs of lawyers where does it end? There are individuals in this world who hold particular views that do not permit women to have a public role in society. Some may be lawyers in B.C. I don't know; haven't met anyone in that group. Their views are offensive to me. But show me the place such views are detected in our system of training and accrediting lawyers? Show me where such individuals are screened out of the profession? Or, on the other hand, show me that by virtue of their beliefs about women, such individuals as a group have conducted themselves in a manner that demonstrates a failure to properly practice law in B.C? Likewise, though much less controversial, I know there are those who advocate capital punishment as a sentence for certain heinous categories of murder. Some are lawyers. Nonetheless they are practicing law in B.C. Their views are contrary to the law of the land. Their views pit the collective will against the rights of an individual. Their views are contrary to the dignity of those against whom they would execute. Yet I have not seen an outcry that those who hold that view are incapable of practicing law.
- 8) As far as I can tell, diversity of beliefs at the bar only facilitates proper representation and allows causes to be advanced to a proper hearing in our courts. I believe it is imperative that the bar be comprised of a representative sampling of the groups and interests that actually exist in society whether other members of the bar like it or not.
- 9) As I understand it, a like issue was decided by the Supreme Court of Canada in the previous TWU case. I'm not sure what the case for this Law Society to reject the views of the Supreme Court of Canada is. I reject the notion that in this respect there is something unique about what society is looking for from the Law Society as compared with what it looks for from the college of teachers. Further, I have yet to see compelling evidence that the teachers graduated from TWU's

faculty of Education since that judgment are, as a group, troublesome and unhelpful contributors to our society. (I reject any singular examples. Other law schools have had their bad apples too, as reported in this Law Society's own correspondence).

- 10) further, show me any of the member of the team of lawyers and academics who are involved in the creation of the TWU law school against whom there is record of misconduct demonstrating a lack of fitness for the practice of law in B.C.?
- 11) on the other side of the coin, I think this whole debate grossly exaggerates what law schools have to offer. The longer I practice, the less value I seen in what law schools teach. I expect four years articling under a dedicated, well chosen principal would do more to create the proper mindset and skill set necessary to create great lawyers. So I have trouble thinking that a few peripheral beliefs at one particular law school will make any difference whatever to the quality of the bar.

In consequence, I reject utterly the need for this Law Society to stand in opposition to the accreditation of TWU as a law school in Canada. I support accreditation.

Thank you for the opportunity of allowing me to offer my comments,

Robert Kirkham Barrister & Solicitor

From: Kleefeld, John [john.kleefeld@usask.ca]
Sent: Monday, February 03, 2014 3:33 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

Dear Benchers:

I am a non-practising (formerly practising) member of the BC bar. I see that you are seeking submissions relating to Trinity Western University's proposed law school. While I have some concerns, they all relate to the possibility of students being suspended or expelled, perhaps without sufficient due process, for violating TWU's Community Covenant. The argument currently being advanced in some quarters—that provincial law societies should refuse to admit graduates from TWU's proposed law program—seems illogical, unconnected with the question of whether an applicant for admission is fit for the practice of law, and a form of sanctioning that is arguably outside a law society's jurisdiction to impose. Such a solution sounds worse than the problem it is intended to address. It may well be reverse discrimination, and not of the beneficial kind. I hope the benchers reject the argument and continue to screen applicants based on objective criteria, such as whether applicants have received the necessary training and development for entering the legal profession.

Yours truly,

John Kleefeld
Assistant Professor, College of Law
University of Saskatchewan
15 Campus Drive
Saskatoon SK Canada S7N 5A6

tel: (+1) 306.966.1039

email: john.kleefeld@usask.ca

skype: johnkleefeld

web: http://law.usask.ca/find-people/faculty/kleefeld-john.php

ssrn: http://ssrn.com/author=1720949

video:

http://youtu.be/Z0PkJPqcuns

From: Lori Kornder

Sent: Sunday, March 02, 2014 8:34 AM

To: Submissions

Subject: TWU Law School Graduates

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames:

I am writing to you regarding a newspaper article that states you are considering banning from practising any graduates from the new law school at Trinity Western University.

I am not in any way connected to the university, nor am I a lawyer. I am a supporter of human rights and equitable treatment for all groups. From what I can see, TWU requires all students to take a vow of celibacy, not just gay students. Nor, as far as I can tell, does it forbid gay students from attending the university.

It seems to me to be quite a leap of logic to link a requirement for celibacy by all students to intolerance for equity seeking groups. That would mean that none of the currently existing law schools turn out lawyers who are intolerant. If law school student populations are representative of the population as a whole, then we know this is not true. Lawyers run the gamut from ultra left wing to ultra right wing in thinking and actions.

I feel that to ban students from TWU's law school from practising law in BC would be a violation of their human rights, and a completely intolerant action.

Thank you for your consideration.

Lori Kornder Delta, BC

From:

Alexander Kosub Monday, March 03, 2014 2:00 PM Sent:

To: Submissions TWU law school Subject:

Follow Up Flag: Follow up Flag Status: Completed

To whom it may concern,

I think the law societies got off the track> They should be welcoming TWU into the fold. TWU exists because there is a demand for its uniqueness. Every institution has a mission statement. Let's remember that until recently breastfeeding, a natural and needful activity was scorned, Many of our institutions of higher learning, in our country and around the world, originated under the auspices of religious orders.

I f you really think about it, we are all racists and sexists, I married within my race to the exclusion of others.

I married a woman, not a man. Am I sexist. Live, and let live.

Al Kosub

From: Alexander Ku

Sent: Friday, February 28, 2014 9:02 AM

To: Submissions

Subject: Trinity Western University -- Law School Application

Follow Up Flag: Follow up Completed

Dear Benchers:

I am writing this note in support of Trinity Western University's application for a Law School. I became aware of this issue through a friend. I am not a member of the law profession. I am, however, a Christian and so this note is from a person of faith's perspective.

As I understand it, the objection to TWU's application by some in this country is related to the statement of faith regarding gay and lesbian students. It is perceived as discrimination. Without first responding to their position, I must then ask how is it different in their statement of objection to TWU's application? If TWU's statement of faith is discriminatory towards the homosexual community, then it would be discrimination towards the faith community by denying TWU's application just because TWU's is a Christian university and has the conviction to put forward a statement based on its faith.

I would also like to ask you about your role as the BC Law Society in determining whether TWU should be granted a law school. What is your mandate? I urge the BC Law Society to make your decision based on your mandate, and not based on whether members personally agree with or support TWU's statements of the Christian faith, and not based on public opinion."

Sincerely,

Alex

From:

Jessie Legaree Monday, March 03, 2014 3:12 PM Sent:

Submissions To: TWU Submission Subject: Attachments: LSBC re TWU.pdf

Follow Up Flag: Follow up Flag Status: Completed

Please find attached my submission regarding the TWU law school proposal. I hope it is in time to be considered during the LSBC deliberations on this extremely important matter.

Jessie

Jessie Legaree JD Candidate, 2015 University of Toronto BY E-MAIL [submissions@lsbc.org]

March 3, 2014

The Law Society of BC -- Attention Executive Director 845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Benchers:

Re: Trinity Western University School of Law

It is with great concern that I write to you regarding the Trinity Western University'a (TWU) application for a law school. In rejecting the recommendation to approve the proposal by the Federation of Law Societies of Canada (FLSC), the Law Society of BC (LSBC) would jeopardize the mobility of lawyers and, more importantly, would send a message to people of all faiths that we are not welcome in the legal profession.

Prior to joining the Faculty of Law at the University of Toronto, I completed both my undergraduate and graduate studies at TWU. I signed the Community Covenant six times over six years. Not only does this fact not undermine my competency as a future lawyer, but my experience at TWU enhanced my competency by instilling in me a deep love for all people and desire to serve humanity through advocacy.

TWU is not seeking accommodation. It has played by the rules for accreditation. It has long been recognized for an outstanding quality of education that would surely extend to its School of Law. Rather than to harm a community, TWU is seeking to provide an alternative option for students of similar worldviews to study in a supportive environment; this option is currently available in Canada for all sorts of disciplines, yet not for law. TWU is uniquely equipped to help students navigate the integration of religious identity with law and ethics, which is an important challenge faced by law students of all faiths.

Because we live in a country that celebrates diversity and respects religious freedom, whether or not you agree with the values reflected in TWU's Community Covenant is irrelevant. As you are aware, this was the conclusion of the Supreme Court of Canada in

2001 in *TWU v BC College of Teachers*, as well as affirmed in the legal opinion sought by the FLSC by John B. Laskin. It is through toleration that the Canadian multicultural mosaic can live in harmony.

If the LSBC does not recognize the TWU law degree, it denotes the legal community's desire to impose a religious test that would exclude many able advocates and mark a prejudicial departure from precedence. My privately held convictions should not need to be sanctified through attending a public school and I can assure you that these convictions have not changed despite the school I attend. This will make no difference to my ability to uphold the law and zealously represent my clients.

My values as a future Christian lawyer compel me to respect the law, respect my clients and respect my colleagues, as well as to be a venerable advocate who is held to the highest of ethical standards. These are qualities infused in the servant leadership taught at TWU, and would benefit rather than harm the legal profession. Moreover, Canadian law has already recognized TWU's right to exist and grant degrees. It for these reasons I strongly urge you to adopt the recommendation by the FLSC to approve TWU's law school proposal.

Sincerely,

Jessie Legaree
JD Candidate, 2015
University of Toronto

From: Jim Leith [jleith@guildyule.com]
Sent: Monday, March 03, 2014 3:02 PM

To: Submissions

Subject: Trinity Western University Proposed Law School

Attachments: oath.pdf

Follow Up Flag: Follow up Completed

Dear Sirs:

I am a member of the Bar of British Columbia, having been called in 1995. I am a graduate of the law school at UBC.

I am concerned about the possible exercise of the discretion by the Benchers to decline to approve Trinity Western University's proposed faculty of law as an approved faculty of law in British Columbia.

The only basis I am aware of for the exercise of this discretion is concern arising from the covenant students apparently ascribe to while at TWU. Given it seems the SCC decision in Trinity Western University v. B.C. College of Teachers [2001] 1 S.C.R. 772 is directly on point, my first concern is that such a decision by the Benchers will inevitably ensnare the Law Society in litigation at great cost to its members, which will not likely be resolved until the matter gets back to the SCC, which would have to either overrule itself on its 2001 decision or find some basis for distinguishing teachers from lawyers so as to allow the Benchers' decision to stand.

More importantly, the idea that someone having ascribed to the covenant somehow brings into question that person's ability to fulfill their professional and ethical obligations as a lawyer is both ethically troubling and legally questionable. If the Benchers were to decide that the individuals attending the law school at TWU would by virtue of having signed on to the covenant be unfit to be lawyers in this province then what do we do with all the current lawyers who attended TWU programs other than law and signed onto that covenant – should they all be disbarred or sanctioned in some way? Has anyone even looked into how many such lawyers there may be already practising? What about lawyers who attended another faith-based law school, of which there are quite a few in the US alone? Even if no such sanction were to be sought against those lawyers, what would such a decision by the Benchers say to those lawyers about how their regulator views their beliefs? The idea that the regulator believes it may look into an individual's personal beliefs crosses the line the SCC drew in *B.C. College of Teachers* between belief and conduct – "the freedom to hold beliefs is broader than the freedom to act on them". The Law Society has never screened out individuals or groups for sexist, racist or homophobic beliefs nor do I believe it wants to start doing so now, for how many members of the bar would we have to cast out in order to fulfill that mandate?

I also think such a decision by the Benchers would have unintended consequences for the mobility agreements recently concluded with other provinces. What would the Law Society do with a lawyer who, for example, graduated from TWU law school, articled and was duly called to the bar in Alberta and then moved back to British Columbia to practise law, claiming a right to do so under the mobility agreement? Would the Law Society treat such an individual as not having been called to the Alberta bar at all?

Finally, doesn't the oath everyone takes upon becoming a member of the BC bar override whatever the covenant says anyway? Anyone who attended TWU and signed on to that covenant would have done so years before swearing the oath and it seems to me the swearing of that oath ought to be a complete answer to any concerns about the covenant: https://www.lawsociety.bc.ca/docs/publications/mm/oath.pdf Any concerns about professional and ethical obligations should be satisfied simply by the person swearing that oath, absent compelling evidence to the contrary, which with respect is simply not present in this case.

My views and concerns expressed herein do not necessarily represent the views of my firm or any of the lawyers who are members of my firm.

Best regards,

James D. Leith

Guild Yule LLP Barristers and Solicitors 2100 - 1075 West Georgia Street Vancouver BC V6E 3C9 Canada Direct Line 604 844 5504 Fax 604 688 1315

jleith@guildyule.com

www.guildyule.com

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Barristers' and Solicitors' Bath

Do you sincerely promise and swear (or affirm) that you will diligently, faithfully and to the best of your ability execute the offices of Barrister and Solicitor; that you will not promote suits upon frivolous pretences; that you will not pervert the law to favour or prejudice anyone; but in all things conduct yourselves truly and with integrity; and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia.

From: Aki Lintunen

Sent: Saturday, March 01, 2014 9:59 PM

To: Submissions

Subject: Trinity Western University - Proposed Faculty of Law - consideration by Benchers under Rule

2-27(4.1)

Follow Up Flag: Follow up Completed

To: Executive Director

Summary:

In response to an invitation by the Benchers for input from lawyers I am writing <u>against acceptance</u> of the motion proposed at the Benchers Meeting on February 28th, 2014 as Agenda Item 9 "Proposed Trinity Western University Faculty of Law", on a without prejudice basis, by David Crossin QC and Kenneth Walker QC.

The Canadian Common Law Program Approval Committee ("Approval Committee") of the Federation of Law Societies of Canada ("FLSC") has established an ongoing process to monitor compliance by the Trinity Western University School of Law ("TWU Law School) of the National Requirement (see http://www.flsc.ca/ documents/NationalRequirementENG.pdf). This should be sufficient to meet all LSBC requirements for an approved faculty of law at TWU. If at some point the Approval Committee finds that the National Requirement is not being met at the TWU Law School, the Benchers retain the discretion under Rule 2-27(4.1) to revisit the status of the faculty of law at TWU; as it does with other faculties of law in B.C.

Background and Discussion:

I graduated from the UBC Law School in 1988, was called to the bar in in B.C. in 1989, and have been a member of the LSBC in good standing since (retired status as of January 2014). I also attended Trinity Western before UBC. I have the highest respect for both UBC and TWU; both serve their markets well and both have an excellent academic reputation.

The Approval Committee of the FLSC has given the proposed TWU Law School preliminary approval. This is the only approval it can grant until the TWU Law School produces its first graduates. As noted at the FLSC website (http://www.flsc.ca/en/twu-common-law-program/) the Approval Committee raised some concerns with the TWU application and confirmed it will carry out regular reviews:

The concerns that will be monitored by the Approval Committee in these reviews relate to TWU's teaching of legal ethics and public law, as well as the budget for the proposed law school.

It appears that most of the concerns raised by outside groups against acceptance of the TWU Law School relate to the 'legal ethics' and 'public law' aspect mentioned by the Approval Committee above. The Approval Committee is alive to these issues and will be paying attention to determine whether TWU Law School graduates will meet the National Requirement. These matters cannot be determined in advance but rather relate to the content and quality of the instruction provided at TWU Law School, as well as upon the performance of the individual students graduating from there. Time will tell; as is the case with other existing law schools in Canada that the FLSC will be looking at in the future for compliance with the National Requirement.

I support the arguments and comments provided by the B.C. Civil Liberties Association in its submission to the FLSC (http://www.flsc.ca/ documents/TWUBCCivilLibertiesAssnJan282013.pdf). TWU is a private school that meets a market demand in an ever more nuanced and complex society. It will be a small player among law

schools in Canada, meeting an identified market niche (more rural practice focus and more practical approach to the study of law). Now that the Approval Committee has given its preliminary approval to the TWU Law School, let the market determine if it is financially successful, let the Approval Committee continue to monitor the TWU Law School for compliance with the National Requirements, and let the LSBC through its admission program determine if the graduates of TWU Law School are worthy of practice of law in B.C., on a case by case basis as it does with graduates of other law schools in Canada.

Rule 2-27(4.1) states:

(4.1) For the purposes of this Rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

This rule establishes a type of "reverse onus" on the Benchers if it wishes to "disallow" an approval by the FLSC of a common law faculty of law. If the Benchers take no action by default the TWU Law School will be an approved faculty of law in B.C. In my submission, there is no need for the Benchers to exercise their discretion under Rule 2-27(4.1) in this case. There is no proven risk to the practice of law in B.C. nor to the public. Rather, the evidence has shown, after a thorough review by the Approval Committee, that the TWU Law School should be able to proceed to open.

Yours sincerely, Aki Lintunen

From: Donald MacDougall [macdougall@fotlaw.com]

Sent: Tuesday, February 04, 2014 9:52 AM

To: Submissions

Cc: Randall "Randy" Taneda; Allen Olson Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

I hope that the Law Society of BC would support Trinity Western University's application to open a law school given the approvals that it has received to date and the Supreme Court of Canada majority decision in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31. I see no difference in the role of the Law Society of B.C. in these circumstances than that of the B.C. College of Teachers in that decision.

I suspect the graduates of the TWU law program, it having received approval from the Federation of Law Societies of Canada and the B.C. Ministry of Advanced Education, will be capable of meeting the requirements of practicing as lawyers in B.C. . I believe the TWU law school graduates should be given the opportunity to prove individually that they can meet the requirements of practicing as lawyers in B.C.

I certainly would not want to see the Law Society of B.C. spending my fees fighting against TWU on this issue as I believe it would be a waste of money.

Donald C. MacDougall Queen's Law grad 1991 practicing currently in Langley, BC at the law firm of Fleming Olson Taneda & MacDougall 604-533-3411 ext 105

From: g. garry macdonald

Sent: Wednesday, February 26, 2014 10:54 AM

To: Submissions Subject: Submissions

Follow Up Flag: Follow up Completed

I am very much in favour of allowing the law school at Trinity Western.

The Community Covenant demands, *inter alia*, that students (and teachers) "live exemplary lives characterized by honesty, civility, truthfulness.. and in **ALL** relationships "to reserve sexual expressions of initmacy for marriage." They don't like public expressions of sexual intimacy - does any other law school? It also emphasizes good judgment, self-control, compassion and humility. None of this was mentioned at my law school -UBC - where the emphasis was on competition and back-stabbing.

Over and over again, the emphasis at TWU is on leadership and character development. It also cites the need for specialization in charitable and non-profit law. TWU proposes a law school focused on law as a public service encouraging students to satisfy unmet needs and promote social justice.

How the LSBC can think it is more noble and overule the Federation is beyond me.

G. Garry MacDonald Barrister & Solictor

604 671-8621

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From: lan Mackie [idm@guildyule.com]
Sent: lan Mackie [idm@guildyule.com]
Friday, January 31, 2014 9:37 AM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

I see no reason not to support TWU's proposed law school.

The fact that they require students to sign a covenant not to engage in sex outside of marriage between a man and a woman has been held by the Supreme Court of Canada, in the context of teachers, to be an acceptable practice. TWU is clearly operating within the parameters of the Supreme Court of Canada decision in TWU v. B.C. College of Teachers S.C.J. No.32.

The B.C. Government and the Federation of Law Societies of Canada have already provided their approval of the TWU law school.

I for one support TWU's right to proceed with establishing a law school with the background of traditional Christian values.

Regards

Ian D. Mackie

Guild Yule LLP

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From: McHardy, Christopher M. [Cmchardy@MCCARTHY.CA]

Sent: Monday, March 03, 2014 1:45 PM

To: Submissions

Subject: New Law School at Trinity Western University - Letter to Law Society of BC (March 3, 2014)

Attachments: DOCS-#13233411-v1-Letter_to_Law_Society_of_BC_regarding_TWU_Law_School_(....pdf

Follow Up Flag: Follow up Completed

Please see the attached letter.

Sincerely,

Christopher McHardy

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March 3, 2014

Via Electronic Mail (submissions@lsbc.org)

The Law Society of British Columbia Attention: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Benchers:

Re: New Law School at Trinity Western University

I write in response to your invitation to provide submissions in connection with your deliberations on whether the new law school at Trinity Western University ("TWU") should be an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

I wish to share with you my deep concern about the opposition against TWU's Faculty of Law and its future graduates. I understand the concern that opponents have with TWU's Community Covenant; however, in speaking to many of my fellow lawyers, this issue is being looked at by most as simply an issue of discrimination on the basis of sexual preference. Whether deliberate or not, opponents are completely ignoring the other side of this issue – the well-established and equally important principles of freedom of religion and consciousness. I am troubled by the lack of balance in the debate – very few opponents address, much less consider, the right to freedom of religion. Even more troubling, when their position is examined, their opposition demonstrates intolerance and very stereotypical views of Christians.

It is with dismay that I have to write in defence of freedom of religion and an institution of higher education based on religious principles, especially in the face of obvious contempt from many of those who oppose TWU having a law school. I am becoming more keenly aware of what it is to be attacked on the basis of my faith. What empiric evidence is there, actual or alleged, that supports the notion that persons educated at TWU cannot meet the ethical and professional conduct requirements for lawyers admitted to the Law Society? I am not aware of any empirical evidence whatsoever, much less anecdotal evidence, that suggests that TWU graduates discriminate against same-sex couples or gay persons. In fact, TWU graduates are upstanding citizens, who contribute to all aspects of society in British Columbia. The idea that they should not be able to participate in all aspects of society because of their religion is dangerous and discriminatory.

It is clear that the opposition to TWU's law school intends to shut it down or impair its operations before it has launched. By doing so, the opposition, in effect, attacks freedom of religion and conscience. If successful, this opposition will preclude those of certain faiths from entering our profession. It also serves to stereotype and label persons of faith,

denouncing them as unfit to serve our society. This does not stop at persons who may be educated at TWU; it extends to all persons educated in a non-secular environment, including those who are educated abroad in religious states and at religious institutions. This is an affront to the principles of a free and democratic society, particularly here in Canada, where we take pride in our cultural pluralism and mosaic.

I note that TWU's community covenant does not appear to be causing any demonstrable harm. Gay persons have and do attend TWU. Gay persons opposed to the religious principles of TWU can and do attend university elsewhere. There certainly seems to be a place for a live-and-let-live approach. In fact, this is exactly what has happened up to this point.

I also note that heterosexual students may not have sex outside marriage while attending TWU. By the logic of TWU's opponents, this makes TWU's Community Covenant discriminatory on the basis of family and marital status under the *Human Rights Code*. Again, if a person does not agree with the Community Covenant, whatever the reason, there are many different educational options that will not create or result in any disadvantage.

The Opposition to TWU is Discriminatory

As noted above, if successful in their mission, opponents would have the Law Society tar law graduates from TWU as unfit to serve as lawyers. This blanket assessment of lack of fitness would be based entirely on the fact that they obtained their post-secondary degree from an institution founded and operated on the Christian faith, an institution that caters to Christians, albeit not exclusively. In other words, if you graduate from TWU Law School, you are unfit to practice law because your education was founded in Christian faith principles. If we proceed on this basis, surely a person educated at a non-secular institution for their entire school life prior to attending a secular law school will be equally unfit to practice law? Is there any evidence to support the implied notion that a secular law school can eliminate racist, misogynist or other intolerant behaviour? How long is it before Jews, Muslims and immigrants educated in non-secular states are also considered unfit? In effect, the Resolution, in trying to counter a perceived discrimination at one religious-based institution, would eliminate equal participation in society and law for all those who are educated in any faith that considers marriage to be a covenant between one man and one woman.

The Opposition is Contrary to Constitutional and Quasi-constitutional Legislation

The discriminatory character of this opposition, if adopted by the Law Society, would contravene sections 8, 13 and 14 and of British Columbia's *Human Rights Code* and section 15 of the *Canadian Charter of Rights and Freedoms*.

Section 8 of the *Human Rights Code* provides as follows (emphasis added):

8 (1) A person must not, without a bona fide and reasonable justification,

- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b) <u>discriminate against a person or class of persons regarding any accommodation,</u> service or facility customarily available to the public

<u>because of the</u> race, colour, ancestry, place of origin, <u>religion</u>, marital status, family status, physical or mental disability, sex, sexual orientation or age <u>of that person or class of persons</u>.

Section 13 of the *Human Rights Code* provides as follows (emphasis added):

- 13 (1) A person must not
- (a) refuse to employ or refuse to continue to employ a person, or
- (b) <u>discriminate against a person regarding employment or any term or condition of employment</u>

<u>because of the</u> race, colour, ancestry, place of origin, political belief, <u>religion</u>, marital status, family status, physical or mental disability, sex, sexual orientation or age <u>of that person</u> or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

In *Hunter v. B.C.* (*Ministry of Health*) and others (*No. 2*), 2005 BCHRT 408, the Human Rights Tribunal stated:

As frequently noted by the Tribunal, a contravention of s. 13 of the Code does not require that an employment relationship exist between the complainant and the respondent: see for example, Vetro v. Greater Vancouver Transportation Authority, 2005 BCHRT 383. Specifically, s.13(1) does not require that "a person" be "an employer" in order for its provisions to apply. The section provides that "a person" must not discriminate "regarding" employment. Several decisions by the Tribunal have contemplated a contravention of s. 13(1) in situations where there was no direct employment relationship between the complainant and the respondent, but where the respondent has the ability to interfere with or influence the employment relationship: see for example, *Middlemiss v. Norske Canada Ltd.*, 2002 BCHRT 5; and *Pettie v. Canada Safeway Limited and Gavin (No. 2)*, 2004 BCHRT 440. (para. 20).

In Kelly v. UBC (No. 3), 2012 BCHRT 32, Mans v. BC Council of Licenced Practical Nurses (1990), 14 C.H.R.R. D/221 (BCCHR), upheld in BC Council of Licensed Practical Nurses v. Mans (1993), 20 CHRR D/177 (BCCA), and Duvall v. College of Dental Surgeons of BC, 2011 BCHRT 236, the Tribunal concluded that the wording of the prohibition against discrimination in employment is broad enough to apply to a situation where a third party discriminates against the complainant concerning or in relation to the complainant's employment (or intended employment) with the actual employer. Accordingly, it is likely that the Tribunal will consider Section 13 in connection with the Law Society's ability to control an applicant's employment in the legal profession. In Kelly v. UBC (No. 3), 2012 BCHRT

32, the Tribunal also had no problem applying section 8 – prohibition against discrimination in a service customarily available to the public – in connection with medical student enrolled in UBC's residency program. Admission to, and governance in, the legal profession is a Law Society service that is available to the public. Any religious basis for excluding an applicant from applying to the Law Society for admission will constitute violations of sections 8 and 13 of the *Human Rights Code*. The Law Society could no more bar persons on the basis of their ethnicity or their sexual preference.

Section 14 of the *Human Rights Code* provides as follows (emphasis added):

Discrimination by unions and associations

- 14 A trade union, employers' organization or occupational association must not
- (a) exclude any person from membership,
- (b) expel or suspend any member, or
- (c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, <u>religion</u>, marital status, family status, physical or mental disability, sex, sexual orientation or age <u>of that person or member</u>, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.

The Tribunal, particularly under the purposive approach utilized in human rights, can be considered an association – a society that regulates lawyers – under section 14 of the *Human Rights Code*. Accordingly, the Law Society "must not...exclude any person from membership...or discriminate against any person or member" because of their religion. Thus, any refusal to accept graduates from TWU as members or any discriminatory treatment on the basis that TWU provides faith-based education or that it operates on faith-based principles, would be a clear violation of section 14 of the *Human Rights Code*. This includes refusing to accept TWU credentials.

Moreover, any refusal to accept graduates from TWU or recognize their credentials on the basis that TWU provides faith-based education or that it operates on faith-based principles, would also be a clear violation of section 15 of the *Canadian Charter of Rights and Freedoms*. The *Charter* provides as follows:

- 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In Andrews v. Law Society of British Columbia, [1989] 1 SCR 143, our highest court found that the Charter's section 15 equality provisions were violated by the decision to refuse

admittance of non-citizens into the Law Society. The Court made this point about the prohibition against discrimination:

...discrimination may be described as a distinction, whether intentional or not but based on grounds relating to the personal characteristics of the individual or group which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classified. (p. 280)

The importance of the freedom of conscience and religion as a *Charter* right is highlighted by Dickson, J. (as he then was) writing for the majority in *Big M Drug Mart*:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the Charter. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority".

The opposition to TWU's law school must believe that graduates cannot be trusted to apply the law of Canada correctly due to the fact that the Community Covenant does not recognize unions between same sex couples and/or that TWU law graduates will be bigots. If this is accepted, it will mean that those who adhere to a particular belief based on their faith or conscience should not be permitted to engage in the profession of law. This is the very blatant exercise of coercion and constraint which Dickson J. warns of, above. The

opposition would have the Law Society act without regard to the *Charter* or the *Human Rights Code*, and stereotype, marginalize and exclude those who hold religious beliefs, or who are educated on such principles. Nazi Germany, the Soviet Union, North Korea and China, all secular states, started down such roads, placing restrictions on minorities and people of faith. This is not to suggest that Canada is extremist, nor is it intended to compare or paint Canada in the same light as the aforementioned totalitarian states. Rather, it is intended to illustrate that the opposition to TWU's law school has to be considered as a serious curtailment of a cornerstone freedom that is guaranteed in our constitution.

The opposition to TWU's law school, by implication, consider that the existence of the Community Covenant and the religious beliefs on which it is based render TWU law school graduates incapable of fulfilling their professional and ethical responsibilities as lawyers. This position was considered and rejected by the Supreme Court of Canada in *Trinity Western University v. B.C. College of Teachers*, [2001] 1 S.C.R. 772. This case remains the law and its principles are equally applicable to an attempt by any law society in Canada to prevent admission to the profession of a TWU law school graduate. If not, it would mean that TWU law school graduates could teach law, but could not practice law. Such an outcome is not logical or defensible. It would also mean that other professional bodies that govern doctors, engineers, accountants, dentists and nurses could all refuse to accept graduates from faith-based institutions. This would in turn serve to devalue faith-based education in secondary schools, making second-class citizens out of those who have a faith-based education. It would also serve to stereotype as bigots all graduates of TWU, an implication for which there is absolutely no empirical evidence.

In *Trinity Western University v. B.C. College of Teachers*, the majority (which included the Chief Justice), relying on the passage of Dickson J. above, emphasized the importance of freedom of religion and conscience while noting that British Columbia human rights legislation specifically accommodates religious freedoms by allowing private institutions to discriminate in their admissions policies on the basis of religion. They further noted that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, was not sufficient to engage Section 15 of the *Charter* as it would be inconsistent with freedom of religion and conscience, which coexist with the right to equality. The court went on to state that there is nothing in the TWU community standards (which are limited to prescribing conduct of members only while attending TWU) to indicate that graduates of the school will not treat homosexuals fairly and respectfully. On this point, the court stated:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

The Court also recognized the concern I wrote of, above, namely that this is merely the next logical step toward broader-based exclusion. This is a significant threat to our freedoms and badly undermines our Charter and human rights protections, as recognized by the Court in the *Trinity Western University v. B.C. College of Teachers* case:

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools. Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. The BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU. Accordingly, this Court must.

I know graduates from TWU and I freely associate with many Christians, Jews, Buddhists, and Muslims, among other people of faith. They are kind, law abiding and caring citizens and lawyers. I have not witnessed them commit any discrimination on the basis of sexual orientation, notwithstanding that some of these faiths hold, as a fundamental tenet, that marriage is a union between one man and one woman. This is not to suggest that there are no bigots among people of faith: there are, unfortunately, bigots in all walks of life. However, assuming that TWU graduates will not be fit to meet the requirements for admission to the Bar or that they will pose a threat to gay persons or same-sex rights is very divisive, very illogical and very insulting. What is fundamental about our society, and what is protected under various of our laws, is the prohibition against stereotypical treatment of protected groups of people and the guaranteed right to practice and associate within one's chosen religion. Excluding TWU law school graduates from the practice of law would be highly prejudicial and discriminatory.

The opposition to TWU's law school and its future graduates is a direct attack on freedom of religion and must be denounced for the discrimination it promotes. The Law Society should not join this opposition. In fact, the Law Society should actively denounce it. Under its governing legislation, it is the object and duty of the Law Society to "uphold and protect the public interest in the administration of justice by: (a) preserving and protecting the rights and freedoms of all persons..."

Yours respectfully,

Christopher McHardy

Christopher McHardy - McCarthy Tetrault

From: Ruth McWilliams Hewitt [rmh@mhfamilylaw.com]

Sent: Thursday, January 30, 2014 12:29 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

Students attending law schools across Canada do not share the same cultures, religions, values or personal codes of conduct. Graduates of law schools, seeking admission to the bar in British Columbia, must promise and swear or affirm to a commitment to shared professional values, integrity and conduct, and to uphold the Sovereign's interests in accordance with the laws of Canada. Admission to the bar does not require the abandonnment of personal values.

The fact that a student is required to adhere to a code of conduct when attending Trinity Western University can not be viewed as more harmful to their future as Barrister and Solicitor than many others, attending other law schools, who, through family or religious participation, are required to conduct themselves according to a code. Catholics, in theory, marry for life yet many practising Catholics employ there skills as family lawyers, assisting others in obtaining divorces. Muslins, in theory, forsake borrowing and lending money and collecting or paying interest yet many practising Muslims employ their skills as in the commercial, banking or debtor and creditor areas of practice. Jewish lawyers may personally adhere to the precept that a divorce requires the husband to provide a "Get". The list of excellant lawyers who practise laws that seem to conflict with their personal beliefs is long indeed.

I do not recall a requirement, when attending law school or the PLTC programme. that each student where a label announcing their personal beliefs or life style choices. Neither to I recall any requirement that each and every candidate for admission to the bar share the same life style and values and religion as every other student.

I have not seen anything to indicate that Trinity Western University is refusing to admit students who are not Christian or not male or not gay or not lesbian. The requirement for admission is that one's conduct be in accord with and be grounded traditional Christian values, so-called.

The government of Canada is tring hard to distance itself from the bedrooms of its' citizenry. The governance of a professional should also distance itself from the bedrooms of its' applicants for admission.

Trinity Western University Law school needs to produce well rounded, academically sound law school graduates of integrity and commitment to the profession, and, notwithstanding a code of conduct, as long as Trinity Western is prepared to accept any student who committs to their terms of enrollment, I have no difficulty with the Benchers approving the a new law school.

Ruth McWilliams Hewitt, M.B., B.Ed., LLB.

email: rmh@mhfamilylaw.com

Please note: emails are checked periodically, not on a daily basis.

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Peter J. Mogan

Peter J. Mogan Partner, Mogan Daniels Slager LLP – M&A | Business Law

DIRECT LINE: (604) 801-6023 Email: pmogan@mdslawyers.com

February 25, 2014

Law Society of British Columbia 845 Cambie Street, Vancouver, British Columbia V6B 4Z9

Attention: Executive Director

Dear Sirs and Mesdames:

Re: Trinity Western Law School Accreditation

In December 2013, the Federation of Law Societies of Canada (FLSC) recommended approval of the proposal of Trinity Western University (TWU) to establish a new law school. Since that time, opponents of the proposal have brought a motion before the Law Society to reject the recommendation and to rule that graduates of the TWU law school not be eligible for admission to the B.C. Bar.

As a lawyer with 36 years of private practice, both here in British Columbia and in Ontario, I write to express my strong support for the proposed law school. The proposal itself was the work of a large, diverse and experienced group of lawyers and law professors from across the country. Though I am a supporter of public education—my wife is a public school teacher and both my daughters were educated in public schools and public universities - I accepted the invitation to join the TWU law school advisory committee because I liked the distinctive features of this law school program.

We worked diligently to put together plans for a law school that would be of the highest quality, combining theoretical learning with experiential learning. We were keen to have a law school with a heavy emphasis on preparing students for private practice in a small firm setting. One thing that was particularly important to me in the TWU proposal was a provision for a concentration on issues of social justice. This is much

needed and currently lacking in other law school curriculums. Increasingly, the current generation of post-secondary students are wanting to find a career where they can make a positive difference in society. We need more lawyers who will see their primary calling as serving the marginalized members of our society.

After 18 months of careful consideration, the FLSC concluded that the TWU proposal was a good one. The opponents of the proposal have based all of their arguments on one issue that does not even comprise any component of the proposal, namely that students of the new law school will be required to sign a Community Covenant which they argue is discriminatory in nature.

The reality is that these arguments were before the FLSC. So diligent was the accreditation committee to deal exhaustively with the issue raised by the opponents that they struck a special advisory committee comprised of very senior and respected practitioners from throughout Canada. They consulted with and took advice from John B. Laskin, one of the most respected constitutional lawyers in Canada. They looked carefully at the issue of whether the proposed law school was in the public interest. They concluded that there is "no public interest reason to exclude future graduates of the program from law society bar admission programs".

If the Benchers of the Law Society of British Columbia are to come to any conclusion other than to accept the recommendations of the FLSC, due process requires that every Bencher to familiarize herself/himself with the TWU proposal and the FLSC report (http://www.flsc.ca/documents/ApprovalCommitteeFINAL.pdf) and to give it the same rigorous review that the FLSC accreditation committee gave it. I would particularly ask every Bencher to carefully consider the recommendations of the FLSC Special Advisory Committee (http://www.flsc.ca/documents/SpecialAdvisoryReportFinal.pdf). I would urge you, as well, to consider the benefits mentioned above in the greater public interest.

I have one other concern. What are the implications if the only reason that the Law Society denies accreditation is because of the TWU Community Covenant? Let me state at the outset that, like some others who are proponents of the TWU proposal, I am not supportive of the Community Covenant in concept or in content. I do not believe that a code of conduct or prescribed behaviours for adult students on issues other than academic issues (such as plagiarism) are helpful or appropriate. Nor do I believe that selecting certain areas of behaviour (e.g. sexual) to the exclusion of other areas (e.g. use of financial resources and social justice) is reflective of a biblical Christian ethic. However, I strongly believe that a privately-funded school ought to have the right to have a covenant if they wish and that students ought to be free to assent to such a covenant without putting at risk the opportunity to practice law in B.C.. Moreover, the Community Covenant does not ask students to affirm a belief in its rightness, merely to agree to refrain from certain behaviours while attending TWU. That is hardly discriminatory.

My concern is that if the Law Society finds that attendance at a law school which restricts certain behaviours and holds certain beliefs about marriage on grounds of faith is reason enough to deny admission to the Bar, where will this go next? Will lawyers who belong to Islamic, Jewish, Sikh, Christian or other faith systems that do not believe in gay marriage be considered unfit to remain members of the BC Law Society? Will those who belong to clubs and societies that discriminate on the basis of gender or race also be considered unfit to be lawyers? Where will this end? The Benchers should very careful in considering whether holding a belief system – even one that is generally unpopular or repugnant to most – should ever be the basis for denying membership to our law society.

For all these reasons, I would ask the Benchers of the Law Society to affirm the recommendation of the FLSC and to permit TWU law school graduates to be eligible for B.C. law practice.

Thank you for your consideration.

Yours very truly,

Peter J. Mogan

Dear Sirs,

As a Tenured Senior Lecturer Bipartite (Associate Professor Level) at Thompson Rivers University I teach in the area of transdisciplinary psychology and have published in the area of Bio-ethics and morality. I am not surprised that even the most educated among us have a difficult time distinguishing between church and state. It is a psychological truism that the ethical and moral decisions people make are neither logical nor consistent. Thompson Rivers University, as you know, has a new Law Faculty. We also employ graduates of TWU, in the sciences, nursing, teaching programs, and more. These academics are highly regarded in our University Community. We would welcome with that same "High Regard" those teaching law that came from TWU. I do not see how logically Benchers could choose not to support a law school based on nothing but disputed points of moral beliefs. Therefore their objections must flow from visceral emotions that from a psychological perspective can be neither logical nor consistent.

Canada is a country where we pride ourselves in tolerance and acceptance. As such I was gratified to see that even the BC Civil Liberties Association stood on the side of TWU. I guess if you live long enough you do in fact see everything. Although I may not agree with some people's perspectives, in Canada, I applaud their right to hold, embrace, and cherish those beliefs in our free society. Indeed, as you know, this matter was previously decided by a Supreme Court of Canada ruling: Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31.

In an eight to one decision, the Supreme Court held that the college was wrong in rejecting Trinity Western on the basis of <u>discrimination</u>. (definition included in hyperlink) The lower courts in British Columbia and, later, the Supreme Court of Canada, ruled in favor of Trinity Western University, stating that there was no basis for the BCCT's decision, and, moreover, that "the concern that graduates of TWU will act in a detrimental fashion in the classroom is not supported by any evidence."

The final analysis of the case, as reported by the Factum of the Intervener, the B.C. Civil Liberties Association, was that "In the circumstances of this case the Council of the B.C. College of Teachers failed to conduct such an inquiry and erroneously concluded that equality of rights on the basis of sexual orientation trump freedom of religion and association. They do not."

As a psychologist I am not surprised that intellect is the poor country cousin of passion. However, I have hope in the Law, and have read that, "Law is reason passion free." In this case I hope reason prevails and TWU is granted the right to build BCs newest and best Law School.

On a final note, I can only express my professional views because I have tenure and enjoy, in a restricted sense, academic freedom. Friends and associates in related fields, who do not enjoy my various earned freedoms and idiosyncratic credits, are being summarily muzzled and/or intimidated into silence.

Fiat Lux.

Dr. Chris Montoya B.Sc., M.Sc., Ph.D. Tenured Senior Lecturer Department of Psychology TRU North Campus 1250 Western Avenue Williams Lake BC V2G 1H7 Ph. (250) 392-8132 FAX (250) 392-4984

From:

Masao Morinaga Friday, February 28, 2014 4:21 PM Sent:

Submissions To:

Subject: TWU submissions (Masao Morinaga) Attachments: TWU Submissions (Masao Morinaga).pdf

Follow Up Flag: Follow up Completed Flag Status:

Dear Sir/Madam,

Please find attached my submissions regarding the TWU issue. These are my own opinions and not those of my firm.

Yours truly,

Masao Morinaga Barrister & Solicitor Via email: submissions@lsbc.org

February 28, 2014

The Law Society of BC 845 Cambie Street Vancouver, BC, V6B 4Z9

Attention: Executive Director Timothy E. McGee, Q.C.

Dear Mr. McGee

Re: Proposed Trinity Western University Law School

I wish to provide my input on the proposed law school at Trinity Western University (TWU). The question put to us has been whether TWU's proposed law school would produce graduates fit for admission to the BC bar. With respect, I would like to begin by turning the table around and ask, "Are the other law schools of Canada doing a sufficient job of teaching the fundamentals of Canadian constitutional law and engaging in balanced political discourse?"

I do not wish to step on any toes or make sweeping generalizations of the existing Canadian law schools. However, I am disturbed by the many submissions I have seen from other jurisdictions in which there is no attempt even to treat religious freedom as a competing right on par with equality rights. I am aware that some submissions are intentionally brief and do not canvass the issue with the exhaustiveness or precision of a constitutional scholar. However, I note too many submissions against TWU making a single point about the prima facie discriminatory policy and making no attempt at reconciling equality rights with religious freedoms. There are of course gems from both sides of the issue that go beyond a surface level push for equality and deal with the complexities of the Canadian approach to balancing competing interests. I will go out on a limb and guess that the make-up of the submissions to the Law Society of BC might be similar.

How many of these submissions denouncing TWU by appealing to the BC *Human Rights Code* engage in a thoughtful discussion of section 41 providing exemptions for educational organizations? How many of these submissions make note that in *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 it was held at paragraph 122 that "sexual orientation and sexual behaviour can be differentiated for certain purposes" and that such differentiation was rejected in that case as it pertained only to hate speech – a form of expression with little value and hardly comparable to legitimate religious expression? How many of these submissions made against TWU make reference to the preamble to the *Civil Marriage Act* that "it is not against the public interest to hold and publicly express diverse views on marriage"? How many of these submissions have ignored these inconvenient thorns in the flesh of the complex Canadian approach to equality?

Religion and sexuality are perhaps two of the most controversial issues in contemporary society. The reconciliation of rights pertaining to these two sits at the forefront of our law and politics. Law school is known for alerting students to the "grey areas" of the law. From reading the

submissions, however, I seem to think that secular law schools in Canada could do better at providing more different colours of crayons to their students.

My law school never taught me about religious freedoms. The assigned constitutional law textbook had a chapter on the matter but the curriculum did not address it. Whenever religion was discussed it was only in contexts where arguments based on religious freedoms were rejected. I discovered strong points for religious freedoms in my own self-study (which I understand law students should do) but should fundamental freedoms be left to self-study?

One of the threats to peace in the world is the rise of extremist religious views which stamp out all opposing views. By "extremist views" I do not mean a view on marriage that was held by the majority of Canadians prior to just a decade ago (and still a protected view under the *Charter* and legislation). Canada can lead the way in figuring out how to resolve conflicts between equality rights and religious rights. I am cynical that people in these extremist regimes would be receptive to impoverishing their religious freedoms to make way only for LGBT rights. However, it may be possible to influence other societies for the better if we can present a model that allows all groups, whether LGBT or religious, to coexist in peace. Coexisting in peace may not mean that all groups will find their self actualization in all settings, especially in certain private settings; but we can still live meaningful lives in the same country. As long as the freedoms of thought, belief and association exist, freedom of religion will exist; and we cannot engage religion effectively if we are illiterate in the matter.

The mere prospect of TWU's law school has created this robust dialogue on balancing competing rights. Imagine what great contributions to the issue we will see from a school that must continue to grapple with and articulate the bounds of religious freedoms in order to maintain its own raison d'être. Secular law schools will also be pressured to step up its game on teaching religious freedoms. As iron sharpeneth iron, I am confident that this dialogue will strengthen all sides of the issue. For these reasons, the TWU school of law is not only permissible but has already been shown to be beneficial in Canadian society.

I recognize that the Law Society is placed in a difficult position of ensuring that it does not appear to endorse TWU's community covenant. I suggest that the Law Society can admit TWU graduates to the bar while at the same time send a clear message of promoting the Law Society's own policy on inclusiveness. The Law Society may require all prospective members to sign the Law Society's own community covenant that requires members to practice the law without discrimination. If TWU's community covenant is perceived to have such great power to shape the ethics of TWU's members, there is no basis to say that the Law Society's own community covenant cannot do the same. I submit this as a practical and fair solution. This is a departure from existing practices, but when we as a society opted for pluralism we were not asking for simplicity or the status quo. Pluralism is complicated, but if there is any profession that could make it work, it is we lawyers. I trust that we will find a way to make this work. Thank you.

Yours truly,

Masao Morinaga Barrister & Solicitor

From: JoAnne Nadeau

Sent: Sunday, March 02, 2014 10:38 PM

To: Submissions

Subject: Trinity Western University School of Law

Follow Up Flag: Follow up Completed

The Law Society of British Columbia

845 Cambie Street

Vancouver, BC V6B 4Z9 via email: submissions@lsbc.org

Attention: Timothy E. McGee, Q.C., Executive Director

Dear Mr. McGee:

RE: Trinity Western University School of Law

First of all, I wish to thank the Law Society of British Columbia for the opportunity of input from the legal profession and the public on its consideration of Trinity Western University's application to open a law school in British Columbia.

Frankly, as a member of the Bar in Ontario, I am appalled at the attempt of some to do an end-run around the clear dictum of the Supreme Court of Canada and the well-reasoned decisions which have been rendered to date in favour of the establishment of Trinity Western's Law School. It is quite illiberal and a bid to monopolize legal education in Canada.

In this regard, I endorse the arguments made by the British Columbia Civil Liberties Association¹. I urge the LSBC to support pluralism, refrain from participating in blatant religious discrimination and uphold the decision of the Federation of Law Societies of Canada.

Yours respectfully,

JoAnne Mead Nadeau, LL.B. Stittsville, ON

Footnote:

1. Http://www.flsc.ca/ documents/TWUBCCivilLibertiesAssnJan282013.pdf

From: Newman, Dwight [dwight.newman@usask.ca]

Sent: Monday, March 03, 2014 6:50 PM

To: Submissions

Subject: Trinity Western University
Attachments: SSRN-id2283782.pdf

Dear Law Society of British Columbia:

I write concerning your consideration of Trinity Western University with three points that I ask you to consider. The first refers you to my academic article on the topic, so I will not repeat my points at length here but invite you to read that article. Then, I will make two points concerning new points that have emerged in recent months.

- (1) You will have received material referring to Elaine Craig's article on TWU. As an academic piece on the other side, taking issue with some of her points, I hope you will also look at my academic article in Constitutional Forum: Dwight Newman, "On the Trinity Western University Controversy: An Argument for a Christian Law School in Canada" (2013) 22:3 Const Forum 1-14. I attach a copy to this email as a pdf, and it is also available for download from the following web address: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2283782
- (2) You will have received various petition-style and resolution-style submissions. I respect the right of everyone to make such submissions and respect any individual who takes a stance on a policy question for his or her doing so. However, I would also invite you to think further about the meaning of those petitions and their emanation from contexts in which there is not necessarily a feeling of freedom of discussion on all sides of the question. As just one example, I will mention the petition you have received from students at my own institution, the University of Saskatchewan. I heard from some students concerned about feeling pressured to sign the petition. The note they received about the petition included the following wording: "[B]ecause TWU has a covenant agreement which excludes LGBT students from attending, some law societies are considering breaking with this pattern and not recognizing degrees from TWU. Dean Anand is pushing for the Law Society of Saskatchewan to consider not accrediting TWU, and the Law Society of B.C. and Nova Scotia are currently considering whether or not to accredit them. [,,,,] [This letter] will be sent later this week to the Law Society of British Columbia, and CC'd to Dean Anand." I leave you to ponder the effects of an inaccurate representation that TWU "excludes LGBT students from attending" when it in fact has LGBT students amongst its student body. I also invite you to ponder the effects of informing students of the Dean's strongly held position and then adding that the letter would be cced to the Dean, with some students inferring (rightly) that he would know who did or did not sign. Though I cannot speak to the specifics of other processes, I leave you in general to ponder the meaning of petition-style submissions emanating from various law schools where political correctness sometimes trumps full debate.
- (3) As you may know, the Law Society of Saskatchewan benchers in fact voted in February on second reading of a motion that would have resulted in the LSS not deferring to the Federation on accreditation decisions and, on this second reading vote, they rejected that motion. They are thus deferring to the Federation of Law Societies decision. I was a co-signatory to a letter to the LSS that made the following argument: "The FLSC, in addition to its ordinary review of TWU's academic program, when considering TWU's application, took the extra-ordinary step of setting up a special advisory committee on TWU. The report was released in December 2013. It was prepared by five extraordinarily distinguished legal regulators, supported by a legal opinion from John B. Laskin of Torys LLP, and based on extensive consideration of TWU. The special advisory committee concluded that if the TWU program met the national requirement if implemented as proposed, 'there will be no public interest reason to exclude future graduates of the [TWU] program from law society bar admission programs'."

In my respectful submission, the onus needed for the LSBC to reach a conclusion different than the FLSC view, one to which other law societies are deferring, would be a substantial one. The arguments you are receiving against TWU are substantially identical to ones already made to the FLSC and opponents of TWU are essentially just using your process to mount a collateral attack on the decision of the FLSC that already considered their points carefully. There is not apparent to me any reason why others should not recognize the careful balancing the FLSC already undertook, which would properly lead law societies to follow in line with its decision.

I thank you for considering these submissions.

Sincerely

Dwight Newman

Member of the Ontario (2001 to present) and Saskatchewan (2011 to present) bars Professor of Law & Canada Research Chair in Indigenous Rights in Constitutional and International Law, University of Saskatchewan

On The Trinity Western University Controversy: An Argument for a Christian Law School in Canada

Dwight Newman*

Introduction

Over the past number of months, the proposed new law school at Trinity Western University (TWU) has come under significant attack, including by many whom I count as academic colleagues within the Canadian Association of Law Teachers and by many within the Canadian law school community more generally. These attacks have had the unique effect of subjecting TWU's law school to a different approval process than has been used for any other Canadian law school, with a dual-committee structure to apply additional scrutiny to it. Some have put their attacks explicitly in longer forms, and many others have signed petitions against TWU.

Let me say at the outset that I do take the critics of TWU to be sincere and to be operating in good faith based on their perceptions of the implications of shared human rights traditions, often building upon a deep awareness of experiences of historic discrimination against and oppression of individuals and groups. They also properly see religious beliefs as having public implications.⁵ As a result, it is important to face the critics' challenges both respectfully and seriously. There is also no doubting that the positions critical of TWU have much traction within the context of today's highly secularized legal and political culture.⁶ However, I will nonetheless be arguing against these critics and,

with respect, I consider their position erroneous and dangerous.

It is important to highlight a fact that ultimately has very significant implications: the attacks tend to be framed against the very opening of TWU's law school⁷ — based on the extraction and decontextualized presentation of fragments of the school's community covenant.8 The attacks against TWU have appeared in many for aand from various sources, but the two most commonly referenced versions of the attacks have been the brief statement put forward by the Canadian Council of Law Deans seeking a regulatory response to the school9 and the longer paper published recently by Elaine Craig in the Canadian Journal of Women and the Law. 10 The latter of these presents the most sustained and influential criticism of TWU and it will thus serve as a foil for some of my arguments here. In treating it as such, I admit that there are some uncertainties of interpretation on points in Craig's article and I attempt to read her arguments as fairly as I can.

In this article, I will challenge the reasoning employed by these critics as being — at least inadvertently — lacking in a spirit of full academic enquiry and in the values of openmindedness to which the critics themselves would generally seek to adhere. I will argue that the methodological approach of TWU's critics risks falling into — putting the point bluntly —

stereotyped conceptions of a particular group, that being Evangelical Christians. Furthermore, I contend that this approach amounts to advocacy for limitation on the rights of Evangelical Christian communities that fails to take into account the means normally employed for analyzing rights conflicts. Insofar as these problems exist in their criticisms of TWU, the criticisms should not stand.

The Potential Contribution of a Christian Law School

The argument for TWU, is not a solely defensive argument. It is important to contextualize the issue by beginning first with an affirmative case for the unique and important contribution that could be made to Canadian legal education, currently consisting only of an increasing number of secular law schools, 11 by a Christian law school. Although it has gone largely undiscussed in the public discourse around TWU, there is in fact a significant scholarly literature in the United States on the contribution offered by religious law schools. I wish to highlight three points from that literature as identifying contributions that a school like TWU has the potential to make. 12

First, religiously oriented law schools have the potential to increase the accessibility of legal education to students who may not be well served by existing, secular law schools. An example is illustrative of the point. The well-respected Cardozo Law School is based at Yeshiva University, a Jewish university, although Cardozo itself is certainly open to a diverse group of students. Unlike the undergraduate programs at Yeshiva University, Cardozo does not necessarily incorporate more Jewish law in its curriculum than many other American law schools already have. 13 However, by operating in a manner consistent with Orthodox Jewish practice — through full closure of the law school during the Jewish Shabbat/Sabbath and during all Jewish religious holy days,¹⁴ for example, as well as other steps such as the availability of kosher food — Cardozo becomes a far more comfortable place for Orthodox and/ or some other observant Jews than other law schools.15

Some of the writing on Cardozo has suggested that these ritual-related concerns may not be as significant for Christians, since they may have fewer practical ritual obligations and those that they do have may be more accepted within the general culture.16 However, I suggest that there may be more to be explored. While it is true that Christian holidays, for example, are better accommodated by the typical academic schedule than those of other religions, the questions raised by Cardozo suggest that a focus on ritual is not necessarily a focus on ritual as such. It is, in fact, a focus on particular matters of greater concern. For many Evangelical Christians, such matters of greater concern are not ritual.¹⁷ To the extent this is so, if those other elements within Evangelical Christian practice, such as religious community, are not well-accommodated at secular law schools, then the accessibility of legal education is a pertinent factor.

My question, in part, is whether there would necessarily be an application from an Evangelical Christian law school if every law school in Canada had always been fully welcoming to Evangelical Christians. How do law school classrooms treat a new student who refers to his or her faith at any point in discussions? How do law professors generally deal with a student who wants to talk about justice in a manner informed by faith traditions rather than a manner that is simply informed using a positivist analysis of cases? Is the social environment of the typical Canadian law school welcoming to those of faith such as Evangelical Christians? When Canadian law schools try to shut down an Evangelical Christian school, they might wish also to explore how their practices might have adverse effects on students of faith and on the accessibility of legal education to different communities.¹⁸

Second, the development of religiously based law schools opens the possibility of new forms of legal scholarship. Secular law schools have long patterns of devaluing religious thought and that devaluation puts significant pressures on younger scholars, particularly in their formative years that correspond to the period during which they are under subject to review for tenure and promotion.¹⁹ However, there is little doubting

that there are important scholarly contributions to be made to an understanding of law through the bringing to bear of faith-based perspectives.²⁰ Some of the scholarship that may emerge could consist of matters such as retrieval of lost cultural starting points.²¹ For example, leading secular writers on the rule of law, writing with the finest scholarly publishers, have tended to characterize the concept of the rule of law as having its earliest origins in Greek democratic practice.²² Yet Christian legal scholarship is able to point to the rule of law model embodied in scriptural texts on Israelite kingship, notably Deuteronomy 17,23 offering a simple historical corrective not available without engagement with Judeo-Christian faith traditions.24 Perhaps more broadly, Christian legal scholarship and legal education would be engaged with many of the very things that secular legal scholars and educators claim to be trying to do, whether to reconstructing the role of narrative or considering different models for dispute resolution.²⁵

Third, and building upon this point, Christian legal scholarship brings a distinctive valuesbased engagement with legal thought that is often sorely lacking.26 The lack of values-based engagement actually more broadly risks diminishing what secular educational institutions can accomplish in ways that have been the subject of recent concern by the likes of John Sommerville in The Decline of the Secular University.²⁷ Sommerville points to how Christian perspectives may have important contributions to make to the law, noting that "[t]he central problem in law is a doctrinal one, a question of how we should relate to each other."28 Interestingly, aside from its place within the law, that is a very central question within faith traditions.

To that question, those bringing faith perspectives may bring important perspectives and values not always found in the case law, at least on its surface. For example, do discussions of the values of compassion, of generosity, or of humility feature prominently in the law school lecture theatre? A religious law school may contribute to the development of graduates focused genuinely on work in the non-profit sector, an area other law schools claim to be interested in support-

ing but do surprisingly little to support. Such a school may also be able to communicate about values in ways that resonate with a larger public put off by the perceived values of lawyers and secular law schools. To mention just one example, increasing Evangelical attention to theologies of environmental stewardship may bring to bear values that resonate with a broader public in the development of environmental law.²⁹ In various ways, the legal scholarship that could be fostered at a Christian law school has very significant potential to make important contributions.

Considering Christian Thinking in an Open-Minded Manner

Having put something of a positive case for what a Christian law school can contribute, I want to face a first instance of the lack of full academic enquiry present in the critics' attacks. Elaine Craig references the priority given to Scripture in TWU's core value statements and then suggests that such a policy means that TWU is therefore incapable of teaching critical thinking skills.³⁰ There is slightly more argument on the point but there is, for instance, no evidence-based argument for the proposition that effectively amounts to a claim that Christians cannot think critically unless they are prepared to abandon their faith through the process of "critical thinking." As Craig puts the point bluntly, "to teach that all judgment must be guided by the Bible — to teach that the source of truth for all ethical decision making is the scripture — is not to teach the skill of critical thinking about ethical issues."31 Here is an academic paper about TWU that does not actually explore what such an environment might be like. Craig's argument does not explore the critical thinking of those within broad Christian scholarly traditions at many institutions scholars who would describe themselves as using faith to illuminate reason but who still engage in extensive critical reasoning.32 Furthermore, such an argument does not engage in any exploration of how scholarly Evangelicals might engage with Scripture.

I cannot claim to offer any complete analysis on these points in the scope of a short dis-

cussion of this sort, but I will make three points that challenge Craig's dismissal of Evangelicals as unengaged in critical thinking.³³ First, there is in fact scholarly literature examining the development of critical thinking skills in those educated in Evangelical Christian environments. Some evidence points toward an equal or possibly even greater acquisition of critical thinking skills than in secular environments. Admittedly, sometimes the focus on critical thinking skills in Christian education is to help in the defence of claims against non-Christian challenges, but there are also strong human developmental reasons within Christian traditions for a commitment to critical thinking.³⁴

Second, there are many important works on Christian scholarly traditions and different ways in which those traditions may be informed by Scripture as an authoritative guide. Interpreting Scripture is a matter that requires various perspectives — it is not a process of identifying simple propositions.³⁵ There are internal dialogues within these traditions on the text, with longstanding recognitions, for example, that different parts of law stated in the scriptural law may be distinguished between ceremonial law, civil law, and moral law, with some of these time-bound and others not, and sometimes debate on which is which.³⁶ There is room for serious ongoing conversations within Christian scholarly traditions, just as has been the case at many universities through the centuries.

Third, the work of scholarly Evangelicals is entirely consistent with the possibility of engaging with the Bible in a variety of ways within a faith tradition. There is a very different scholarly Evangelical tradition than many might assume,³⁷ which will generally not correspond to the stereotype of individuals plucking out random Biblical verses and then applying them all in a literalistic form. For example, a major emphasis in much recent Evangelical writing is on the scriptural text as composed of parts with different genres, making it appropriate to reflect carefully on what guidance is to be taken from what sorts of books and the genres of writing that they present.38 That sort of claim is not one derived only from recent Evangelical writing but has been at least implicitly present in prominent texts for at least decades.³⁹ An approach to interpretation that considers the genre of texts is a sophisticated approach that differs from the stereotypes and that shows critical thinking even in the interpretive exercise.

The fact that somebody commences with faith of some sort should not be a basis for excluding that individual from the realm of critical thinking. To exclude some from the realm of critical thinking works real harm against them and does not seek to understand them. The argument frankly reflects a perspective that, as I say, has not engaged fully in seeking to understand that on which it comments and the living tradition being carried on within Christian scholarly environments.

That said, I am not trying to defend freedom for religious educational institutions on the basis that they will not do anything different with it than secular institutions. Defending freedom only for those who will not do anything differently would not really be a defence of freedom. Nonetheless, it is an important starting point to notice that there has been very little sustained effort by critics to engage with what an Evangelical school might actually be like, and I think this point carries over to other dimensions of the issues.

The Community Covenant and Rights Reconciliation

The background presented in prior sections is important to understanding the value that a Christian law school has the potential to bring. This context also points to some of the ways in which critics have unfairly stereotyped and prejudged Evangelical Christian communities as being incapable of engaging in critical thinking. It offers a vital framework in which TWU's community should be recognized as having value. Understanding that point, and the rights that belong to that community, is important to answer how to deal with the conflicting rights claims associated with the sexuality-related clause of the community covenant.

4 Volume 22, Number 3, 2013

It is understandable that critics have expressed concerns about the sexuality-related component of TWU's community covenant, and I have no doubt it reflects their good faith effort to engage with questions of justice and equality. Those who are sensitized to rights and equality issues will no doubt have seen within Western societies many instances in which individuals claiming to be acting on Christian values have done very unjust and, indeed, unchristian things in their discriminatory and, sadly, even hateful interactions with, for instance, those with an LGBT identity. However, just as experience with particular individuals from a faith tradition should not drive a prejudgment of a whole faith tradition's necessary approaches, there needs to be careful thought here on the engagement with the living tradition of a faith community in terms of rights reconciliation.

If enacted by a governmental body, the community covenant would of course contain objectionable restraints of various sorts on individual freedom. A government body, however, does not enact the covenant. It is, instead, a holistic set of expectations about behaviours within a privately funded living faith community that has asked to be able to engage in legal scholarship and legal education.40 There will be many people, for a variety of reasons, who would not comply with its expectations on behaviours and will not be members of that community. By the same token, some will indeed sign on to that community covenant as members of the TWU community, and their religious association right (or collective religious freedom right)⁴¹ cannot be simply ignored. There is a rights conflict that arises because of rights claimed by those with LGBT identities who wish to attend TWU's law school while asking the living faith community at TWU to change its traditions. They seek changes so that anyone may attend while engaging in sexual activities that are legal under Canadian law but not permitted under the community covenant that reflects the living faith traditions of the community.

The leading approach to rights conflicts within Canadian law is one of attempting to reconcile conflicting rights rather than to prioritize one right over another. This sort of emphasis

appears present in the Supreme Court of Canada's past decision concerning TWU and the British Columbia College of Teachers.⁴² It is explicitly and recently present in the majority approach in N.S., 43 a case concerning a claim by a sexual assault complainant to wear a religious veil while testifying in court. In that latter case, there was a real conflict between a religious freedom right and a right to full answer and defence. Even in the context of a conflict with a basic procedural right related to trial fairness, Chief Justice McLachlin's majority judgment explicitly indicates that reconciliation of competing rights claims through mutually modificatory interpretation of those rights is the preferred option for analysis of conflicting rights, with "balancing" of rights then only a last-resort option.44

In her recent book on freedom of religion, 45 Mary Anne Waldron is somewhat more sceptical of what propositions of this sort have become already embodied in Canadian freedom of religion jurisprudence. Despite this concern, she rightly identifies a key reason for preferring reconciliation of rights over balancing of rights in the context of such conflicts. Waldron notes that when we understand the whole spectrum of human rights as interconnected, the process of 'balancing' may occur in such a manner as to have a first right eliminate a second right. In such cases, the process actually negates the underlying bases of the second right and thus the basis for all rights' existence. 46

In thinking about reconciling rights in the TWU context, one must consider a living tradition, a community carried on with private funding, up against the claims of others to join its institutions. The latter group claim a right to violate agreed moral tenets of those operating within the lived tradition and lived community.⁴⁷ Our rights reconciliations in such contexts have in fact typically drawn sharp distinctions between the decisions of state institutions to exclude individuals and the decisions of privately funded associations to exclude individuals in contexts where the exclusions are in tension with equality claims. There are reasons for this differentiation, of course, in the proper roles of the state as opposed to the proper limits on the

state in its requirement on individuals' private lives to embody the same approach to equality.⁴⁸

Stuart White, while advancing the discussion in the context of political theory, has offered a framework that I would suggest is actually descriptive of the sort of reconciliation applicable within legal contexts. He proposes a framework that considers the competing roles of integrity interests and opportunity interests. In other words, he proposes a framework more nuanced than one which claims that there is never a right to exclude in a manner that affects equality interests. A women's gym, for example, can exclude men because there is no genuine loss of opportunity by the men, who have other options. White suggests that any purpose-protecting exclusion rule receives some degree of deference, unless overruled by opportunity interests of individuals negatively affected by the exclusion, but with the possibility that these interests can in turn be overruled by individuals' integrity interests.⁴⁹

In the circumstances of TWU, it is both the case that (1) those with an LGBT identity who wish to maintain sexual practices in accordance with that identity that do not comply with the TWU community covenant have other opportunities to attend any of a number of other law schools;⁵⁰ and that (2) even if one disagrees with the interpretation of the faith tradition embodied within TWU's community covenant, that is the choice of interpretation that TWU, as a community, has made to this point in time. Both factors actually weigh in favour of TWU being able to exclude based on the community covenant provision, even if the exclusions have what would elsewhere be called adverse discrimination effects. Recognizing this point is not an easy one for those committed to equality as a central value, but all rights must be subject to reconciliation with other rights if any rights are to mean anything at all. When rights conflicts arise, it is necessary to read each right in a way that fits with other rights. Mutual modification between religious freedom rights and equality rights follows, in part, a public-private divide and, in part, an interest analysis looking to the nature of the interests affected.

Respect for the religious freedom of a faith community must, in the circumstances of TWU, allow it to carry on with its community covenant. That does not mean that there cannot be non-legal challenges put to TWU, asking it to justify its policy. Moral discourse is part of freedom. There may well even be internal challenges within the faith tradition that ask TWU to consider, for instance, whether its objectives might be met by presenting a clear Evangelical Christian viewpoint in its scholarship and teaching without regulating the conduct of students in the particular way that the community covenant does.⁵¹

A challenge that might be put within that discussion is how TWU would see its role in interacting with a potential student who subscribes to TWU's tradition and covenant in every respect but for a sincere disagreement on what Scripture implies on same-sex relationships. What if this potential student struggles to fit in as an Evangelical Christian at secular law schools but cannot attend TWU due to the conflict between a longterm committed same-sex relationship and the community covenant?⁵² Would this student be less worthy of attendance at TWU than another student who does sign the community covenant under parental pressure but is secretly ignoring the practices to which he or she has subscribed? There are serious questions to ask here, relating generally to the appropriate Christian response to those with LGBT identities who genuinely seek to live as faithful Christians but who genuinely disagree on the interpretation of Scripture on matters related to same-sex relationships. When does a loving, Christian response actually require exclusion for the maintenance of the Christian community's living tradition and when can a loving, Christian response allow inclusion even while potentially challenging the member's views?

I do not purport to have easy answers to a number of the challenging questions raised in the context of the TWU controversy. However, my point remains that discourses within the tradition may produce change over time, precisely because of the kind of view I offered earlier of the richness of Christian traditions. Any

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such changes, however, must be based on what TWU concludes is right rather than based on a state-sanctioned rights claim against it.⁵³ Given our standard reconciliation of rights model, even though some challenging results ensue, the sphere of private religious freedom is one on which the state must not intrude.

On the current interpretation of the community covenant, it is of course clear that TWU has some perspectives, presumably to be discussed in the classroom, that are not in accordance with existing positive Canadian law. However, the public gatekeeper role of the legal profession cannot properly be used to exclude from the legal profession those who have dared to discuss different perspectives on the law or even possible law reform. It may turn out that TWU's perspectives on particular points of the law do not survive. However, if professors' criticism of existing law is grounds for exclusion of a law school's graduates from the legal profession, there is a long line of law faculties at risk. Each law school must be allowed that freedom of thought and discourse, whether secular or religious, unless there is actually affirmative evidence that its graduates are committed afterward to actual non-compliance with the law.54

Craig writes near the end of her article as if the American Bar Association's rules would preclude a law school in similar circumstances as TWU, despite the relatively meaningful religious school exceptions that they contain.55 What she does not address is that subsequent to the elaboration of the latest ABA text to which she refers, and thus contrary to her suggestions, the ABA went ahead and accredited a new religious school, Faulkner's Thomas Goode Jones's School of Law, that has provisions for student expectations that are very similar to TWU's — and seemingly without the controversy that some writers had expected.⁵⁶ The American experience of religious schools reflects a profound respect for religious diversity, a living together in difference, from which Canadians can learn much.

A Christian law school has the potential to make a very significant contribution to Canadian legal scholarship and legal education. The critics who have attacked it do not engage seriously with what it might be like, instead relying on stereotyped prejudgments. They have not grappled with standard approaches to rights reconciliation, which give ample reason to respect a school like TWU's religious freedom and its rights to open and operate. With the greatest of respect for the deep-seated commitment to equality of TWU's critics, I challenge the critics to think seriously upon what is at stake in terms of freedom and to recognize the place of the new law school proposed as one school amidst the plurality and diversity of Canadian legal education.

Endnotes

Professor of Law, University of Saskatchewan; B.A. (Regina), J.D. (Saskatchewan), B.C.L., M.Phil., D.Phil. (Oxford). A prior version of this paper was presented at the Canadian Association of Law Teachers (CALT) Annual Meeting in Victoria, British Columbia, on 4 June 2013. I am grateful to Janna Promislow for organizing the panel at which the paper was presented. I am grateful for the ideas raised by Gillian Calder in a presentation on the other side of the issue within the same panel and wish to express my appreciation for the very respectful discussion at the panel. I am also grateful for other comments or interactions on the topic that have helped me with my argument prior to, during, and/or after the panel presentation from Iain Benson, Andrée Boiselle, John Carpay, Paul Clarke, Brent Cotter, Carol Crosson, Chris Donald, Neil Foster, Gwen Landolt, Robert Leckey, Janet Epp Buckingham, Paul Clarke, Robert Diab, Alvin Esau, Grant Huscroft, John Kleefeld, Sonia Lawrence, Sonya Lalli, Roderick Macdonald, Preston Manning, Carissima Mathen, Brad Miller, Richard Moon, Ken Norman, Nicole O'Byrne, Patricia Paradis, Michael Plaxton, Shauna Van Praagh, David Sandomierski, Kevin Sawatsky, John Wade, Mary Anne Waldron, Grégoire Webber, and John Whyte. I also thank Lorelle Binnion and Michelle Biddulph for reading a nearcomplete draft and providing useful comments and challenges. I must also acknowledge that the theologically oriented points within the paper would be much weaker than they are without teaching from Iain Provan and Andrew Lewis, although they have not had any discussion with me on this text or this argument more generally. On all matters, I note simply that those who have

- commented do not necessarily agree with my conclusions, and I take full responsibility for all errors and weaknesses in the argument.
- 1 Apart from law professors themselves (as well as some lawyers of similar viewpoints, such as Clayton Ruby), many public commentators who have taken a position on the issue have defended the opening of TWU's law school. See e.g. Jonathan Kay, "The Case for Trinity Western University's Christian Law School", National Post (23 January, 2013) online: National Post http://fullcomment. nationalpost.com/2013/01/23/jonathan-kay-thecase-for-trinity-western-universitys-christianlaw-school/>; Barbara Kay, "Law Deans' Position on Trinity Western Would Shut Every Law School in Canada", National Post (25 January 2013) online: National Post < http://fullcomment.nationalpost. com/2013/01/25/barbara-kay-law-deans-position-on-trinity-western-would-shut-every-lawschool-in-canada/>; John Carpay, "A Free Society Should Tolerate a Christian-Based Law School", Vancouver Sun (21 January 2013) online: Vancouver Sun http://www.vancouversun.com/life/ free+society+should+tolerate+Christian+based+ school/7851191/story.html>; Editorial, "Critics of Christian Law School Are Bigots, Too", Vancouver Province (23 October 2013) online: The Province http://www.theprovince.com/life/ Critics+Christian+school+bigots/9070458/story. html>. I have been amongst these commentators previously: Dwight Newman, "Canadian Law Deans Attack Right to Religious Diversity", Vancouver Sun (21 January 2013) online: Van-http://www.vancouversun.com/ Sun health/Canadian+deans+attack+right+religious+ diversity/7851195/story.html>. The British Columbia Civil Liberties Association also came out in support of TWU around the same time period in late January 2013, and well-known lawyer Eugene Meehan has also defended the school's right to operate: "Exercising Freedom, in Faith and in Law", Lawyers Weekly (8 March 2013) 4-5. And some legal academics have published short items in support of TWU. See e.g. Iain T Benson, "Law Deans, Legal Coercion and the Freedoms of Association and Religion in Canada" (2013) 71 The Advocate 671; Bradley Miller, "The New Article of Faith for Canadian Law Schools: Same-Sex Marriage", Public Discourse (6 August 2013), online: Public Discourse http:// www.thepublicdiscourse.com/2013/08/10197/>.
- 2 The Federation of Law Societies of Canada has constituted a Special Advisory Committee in addition to the usual Approval Committee, after

- receiving numerous submissions about TWU on issues that were outside the normal considerations of the Approval Committee, Federation of Law Societies of Canada, "National Requirement for Approving Canadian Common Law Degree Programs" (accessed 15/11/2013) online flsc.ca http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs/>
- 3 Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law School Program" (2013) 25 CJWL 148. See also Jena McGill, Angela Cameron, Elaine Craig et al, "Counterpoint: Why Trinity Western University Should Not Have A Law School", National Post (24 January 2013) online: National Post http://fullcomment.nationalpost.com/2013/01/24/counterpoint-why-trinity-western-university-should-not-have-a-law-school/.
- 4 Such petitions have circulated widely within law schools, and media reports suggest that in one week more than one thousand Canadian law students signed a petition asking for TWU to be denied standing as a law school because of its position on sexuality issues: Petti Fong, "Students Sign Petition Against Granting Law School to Christian University", *Toronto Star* (19 March 2013) online: Toronto Star < http://www.thestar.com/news/canada/2013/03/19/students_sign_petition_against_granting_law_school_to_christian_university.html>.
- 5 On this point in relation to past issues, see the argument of Richard Moon, "The Supreme Court of Canada's Attempt to Reconcile Freedom of Religion and Sexual Orientation Equality in the Public Schools", in David Rayside & Clyde Wilcox, eds, Faith, Politics and Sexual Diversity in Canada and the United States (Vancouver: UBC Press, 2011) 321 at 337.
- 6 The culture is of course more secularized at certain elite levels. Secularized elites are often highly disconnected from a much more religious public but nonetheless operate upon and implement their secularized values as the culturally effective ones. On this phenomenon, see generally Stephen L Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Basic Books, 1993). The claim that today's elite legal and political culture is highly secularized should not of course be taken to exclude the significant emergence of counterforces challenging that secularization. At the same moment when accommodation of religious

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practice is under intellectual challenge (e.g. Brian Leiter, Why Tolerate Religion? (Princeton: Princeton University Press, 2013)), as is religious belief itself (Richard Dawkins, The God Delusion (Boston: Houghton Mifflin, 2006)), there are important intellectual realizations otherwise. See e.g. Robert N Bellah, Religion in Human Evolution: From the Paleolithic to the Axial Age (Cambridge: Belknap Press, 2011) (putting an argument that the place of religion is an exogenous dimension of human history rather than an endogenous aspect determined by factors within); Jürgen Habermas et al, An Awareness of What is Missing: Faith and Reason in a Post-Secular Age (Cambridge: Polity Press, 2010) (beginning to abandon a long-standing exclusion of persons of faith from public reason within the Rawlsian-Habermasian traditions); Thomas Nagel, Mind and Cosmos: Why the Materialist Neo-Darwinian Conception of Nature is Almost Certainly False (Oxford: Oxford University Press, 2012) (leading philosopher of mind challenging inadequacies of materialist explanations of mind); Craig Calhoun, Mark Juergensmeyer & Jonathan VanAnwterpen, eds, Rethinking Secularism (Oxford: Oxford University Press, 2011) (group of leading intellectuals questioning claims to liberal public sphere as secular).

- 7 In recent years, Canadian legal academics had overwhelmingly questioned the role of the Federation of Law Societies in setting out criteria for law schools, with some law schools even threatening to defy the Federation's requirements. For an example of the attacks on the FLSC involvement in legal education, see e.g. Harry Arthurs, "Valour Rather Than Prudence': Hard Times and Hard Choices for Canada's Legal Academy" (2013) 76 Sask L Rev 73 at 81-88. This scepticism of the FLSC does not, however, appear to extend to its possible use to attempt to shutter TWU, where some of the same law professors who normally complain about the FLSC want it to come and regulate law schools some more(!).
- 8 The school's community covenant is available online at http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.
 <a href="https://https:

- and on-campus use of alcohol and tobacco. The controversies have surrounded the voluntary commitment to refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." This commitment has been rephrased compared to the phrasing at the time of *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 SCR 772 [*Trinity Western University* cited to SCC], consistently with ongoing dialogues on sexuality within Evangelical Christian communities. For the phrasing at the time of *Trinity Western University* see *ibid* at para 4.
- 9 Letter from Bill Flanagan, President, Canadian Council of Law Deans to John Hunter and Gérald Tremblay, President, Federation of Law Societies of Canada (20 November 2012) online: http://www.ccld-cdfdc.ca/images/news/CCLDnov20-2012lettertoFederation-reTWU. pdf >.
- 10 Craig, supra note 3...
- 11 The dynamics that threaten American law schools simply do not exist in the same form in Canada, and, indeed, a case could be made that there remain too few law school spots in Canada rather than too many.
- 12 The word "potential" is significant here. Obviously, the record of TWU will depend upon its actions if it is allowed to operate. Ironically, all of the extra hoops being generated for it to be allowed to operate may unwittingly put pressure on it to prove that it is a law school like all the others, when its greatest potential is precisely in offering a different approach to legal education and legal scholarship. Only time will tell how the pressures of accreditation and the potential of a Christian law school interact. Compare Lynn R Buzzard, "A Christian Law School: — Images and Vision" (1995) 78:2 Marq L Rev 267 at 270 ("[a]ccrediting associations add to the pressures to reflect a secular orthodoxy.") There are real dangers present from demands of conformity with other law schools.
- 13 See generally Michael Hertz, "The Role of One Religiously Affiliated Law School" (2009) 59:1 J Leg Educ 136 (offering an extended discussion of Cardozo).
- 14 The offices are actually locked up entirely so that one cannot even go to one's office if one attempted to do so: *ibid* at 144.
- 15 *Ibid* at 144-45.
- 16 Ibid.
- 17 Thus, many Evangelical Christian worship services are very non-ritualistic and instead focused on religious teaching and religious community.

- 18 I have obviously asserted these points in the form of rhetorical questions out of an absence of definitive empirical study on the point, but I think that those who are honest with themselves will recognize many ways in which Canada's secular law schools are significantly unwelcoming to those of different religious faiths, including Evangelical Christians. Indeed, some of the attacks on TWU surely demonstrate the point.
- 19 See David A Skeel, Jr, "The Paths of Christian Legal Scholarship" (2009) 12:2 Green Bag 2d 169 at 181 ("[y]oung scholars in secular law schools will fear significant disincentives to producing faith-oriented scholarship early in their careers.") Some have seen Skeel's other work on Christian scholarship as overly critical concerning the current state of Christian legal scholarship: e.g. David S Caudill, "On the Rhetorical Invention of a Failed Project: A Critical Response to Skeel's Assessment of Christian Legal Scholarship" (2010) 40:3 Seton Hall L Rev 971. However, this disagreement does not affect the point from Skeel that I have referenced. It is also worth noting that there is tangible evidence of the bias of secular legal academics against religious scholarship and religiously affiliated law schools: Monte N Stewart & H Dennis Tolley, "Investigating Possible Bias: The American Legal Academy's View of Religiously Affiliated Law Schools" (2004) 54:1 J Leg Educ 136. This point strikes against any counterproposal that simply introduces more religiously-based scholarship into universally secular law schools and provides a positive reason for the role of an explicitly religious school.
- 20 See generally Michael W McConnell, Robert F Cochran & Angela C Carmella, eds, *Christian Perspectives on Legal Thought* (New Haven: Yale University Press, 2001).
- 21 This point is discussed in C John Sommerville, *The* Decline of the Secular University (Oxford: Oxford University Press, 2006). He describes various ways in which common values and human rights traditions cannot be understood without their religious foundations. For an example, consider how to fully understand the American Declaration of Independence's statement that "[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" without coming to grips with the underlying Judeo-Christian creation story in which each human being is created in the image of God. Marilynne Robinson wisely references this passage, observing

- that "Jefferson has used Scripture to assert a particular form of human exceptionalism....What would a secular paraphrase of this sentence look like? In what nonreligious terms is human equality self-evident?...My point is that lacking the terms of religion, essential things cannot be said": Marilynne Robinson, *When I Was a Child I Read Books* (Toronto: HarperCollins, 2012) at 162-63.
- 22 See e.g. Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004) at 7-15.
- 23 See e.g. Deut 17: 18-20 ("[w]hen he takes the throne of the kingdom, he is to write for himself on a scroll a copy of this law, taken from that of the Levitical priests. It is to be with him, and he is to read it all the days of his life so that he may learn to revere the LORD his God and follow carefully all the words of this law and these decrees and not consider himself better than his fellow Israelites and turn from the law to the right or to the left." (NIV)). Later successions included kings alluding to this passage through references to seeking not to turn away from law "to the right or to the left". Though later scriptural texts record the failure of Israelite monarchy to achieve these aspirations, what is important is the statement, radical amidst the patterns of Ancient Near Eastern cultures, that the king must be subject to the law and not above it and not above his fellow citizens, presaging many elements of modern descriptions of the rule of law.
- 24 Cf. generally Sommerville, *supra* note 21 (discussing at various points the general corrective to historical understandings available through an engagement with Judeo-Christian traditions).
- 25 A counterargument could be made that some of these aspirations could be achieved via closer engagement of individuals at secular law schools with religious legal scholarship. However, the point at note 19 stands in that there will remain strong disincentives to scholars elsewhere, and a Christian law school has a unique contribution to make in providing a safe space for Christian scholars, even if some will engage elsewhere. For an interesting example of such engagement within a secular university, consider New York University president John Sexton's thought-provoking course and book John Sexton with Thomas Oliphant & Peter J Schwartz, Baseball as a Road to God: Seeing Beyond the Game (New York: Penguin, 2013). Those of religious faith who can find especially powerful ways of engaging with secular thought may actually play an important role by being at secular institutions: Skeel, supra note 19 at 180ff. The point that some Christian scholars can and

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- will thrive in secular environments does not mean that all will.
- 26 See the discussion of student experiences about the lack of values orientation in legal education in Jessica J Sage, "Authority of the Law? The Contribution of Secularized Legal Education to the Moral Crisis of the Profession" (2004) 31 Fla St UL Rev 707. See also Buzzard, *supra* note 12.
- 27 Sommerville, supra note 21.
- 28 Ibid at 132.
- 29 On such trends in Evangelical theology generally, see Loren Wilkinson, "Creation", in Gerald R. McDermott, ed., The Oxford Handbook of Evangelical Theology (Oxford: Oxford University Press, 2010) 116 at 126-27. For an example of a book in the Evangelical tradition on "creation care", see Steven Bouma-Prediger, For the Beauty of the Earth: A Christian Vision for Creation Care, 2nd edn (Grand Rapids: BakerAcademic, 2010). Such theologies are developing around such passages as Job 38-41, which encapsulates both an admiration of the created world in general but also includes even admiration of creatures that serve no human purpose but are simply wonderful in themselves. See also Psalm 104. For a book discussing such passages and building on the creation care tradition generally, see John C Holbert, Preaching Creation: The Environment and the Pulpit (Eugene: Cascade Books, 2011) (discussing Job 38-41 at 31-41 and several Psalms, including Psalm 104, at 20-30). On Christian legal scholarship and environmental law, see also John Copeland Nagle, "Christianity and Environmental Law", in Michael W McConnell, Robert F Cochran & Angela C Carmella, eds, Christian Perspectives on Legal Thought (New Haven: Yale University Press, 2001) 435.
- 30 Craig, *supra* note 3 at 163-65.
- 31 Ibid at 165.
- 32 Compare Bryce W Green, "Ends and Means in Legal Education: The Founding of Liberty University School of Law" (2006) 1 Liberty UL Rev 1 at 8-12.
- 33 I wish to acknowledge here that not all critics of TWU have pursued Craig's line of argument on this point, and I specifically acknowledge Gillian Calder's respectful engagement with the critical thinking offered in Christian education offered in her commentary during the same panel at which the present paper was presented.
- 34 Joe P Sutton & Paulo CM de Oliveira, "Differences in Critical Thinking Skills among Students Educated in Public Schools, Christian Schools, and Home Schools", (Paper presented at the

- Annual Meeting of the American Educational Research Association, San Francisco, 18-22 April 1995). Counter to the perceptions of many, Christian activist movements in fact engage in very democratic forms of discourse that rely upon critical thinking. For example, Jon A Shields's empirical study determined that "Christian Rights leaders in the pro-life movement overwhelmingly emphasize four important deliberative norms: promoting public civility, practicing careful listening and dialogue, avoiding theological arguments, and embracing moral reasoning," Jon A Shields, The Democratic Virtues of the Christian Right (Princeton: Princeton University Press, 2009) at 44. See also David M Smolin, "Religion, Education, and the Theoretically Liberal State: Contrasting Evangelical and Secularist Perspectives" (2005) 44 J Cath Leg Stud 99 at 113-14 (stating that "[a]s a matter of intellectual capacity, living in God's world also means acquiring a high level of intellectual skill. Thus, an overwhelming majority of American evangelicals would, like American parents generally, wish their children to acquire excellent intellectual and academic skills. Thus, contemporary theorists of Christian education emphasize the attainment of critical thinking, self-expression, and other higher-order intellectual skills, particularly in the high school years. There are several justifications common within the Christian world for pursuit of intellectual skill. First, there is recognition that life within a complex society is aided by such skills. Second, there is a view that critical thinking skills make it easier to see through the deceptive lies and temptations of an often anti-Christian popular and higher culture. Third, there is a general appreciation for the honing of intellectual skills as simply another aspect of human development. Fourth, there is the understanding of higher academic attainment as a path to vocational success. All of these view higher intellectual attainment as completely compatible with living within the world as God has made it.")
- 35 Cf. also Sommerville, *supra* note 21 at 128 ("religion may offer perspectives rather than propositions. Jesus, for example, was apparently drawn toward a Socratic mode...It is not an exercise of argumentative power over one's opponent, as in the standard model, but more a model of discovery. Jesus thought, apparently, that his hearers might discover something if they were honest with themselves"); JI Packer, *Knowing God* (Downers Grove: InterVarsity Press, 1973) at 113 (discussing Christian tradition as finding truth as

- first a quality of persons and only secondarily of propositions).
- 36 That there are such distinctions is a necessary conclusion from the scriptural text itself with, for example, changes in the ritual law as stated in Exodus 20 effected by the statement in Deuteronomy 12, showing a time-bound character to some ritual law even at different historical time points within the Bible's historical narrative.
- 37 It also bears noting that there have been very real changes in the Evangelical movement generally. Jim Daly's Focus on the Family is different in its approach than James Dobson's Focus on the Family. There have also been significant discussions within the tradition of the need to move from affective approaches to intellectual approaches in various contexts. A seminal work in this regard was Mark A Noll's *The Scandal of the Evangelical Mind* (Grand Rapids: Eerdmans Publishing, 1994). See also Bryan T McGraw, "The Doctrine of Creation and the Possibilities of an Evangelical Natural Law", in Jesse Covington, Bryan McGraw & Micah Watson, eds, *Natural Law and Evangelical Political Thought* (Lanham: Lexington Books, 2013) 57.
- 38 On the importance of genre to interpretation of the Biblical text, see e.g. Tremper Longman III, "Form Criticism, Recent Developments in Genre Theory and the Evangelical" (1985) 47:1 Westminster Theol. J. 46. See also e.g. Iain Provan, V Phillips Long, and Tremper Longman III, A Biblical History of Israel (Louisville: Westminster John Knox Press, 2003) at 110-11 (vital use of genre in interpreting object of particular Old Testament texts). For a more popularly oriented text, see also Gordon D Fee & Douglas Stuart, How to Read the Bible for All Its Worth, 3rd edn. (Grand Rapids: Zondervan, 2003) passim.
- 39 For a seminal, older work making use of a related distinction, see Packer, *supra* note 35 at 110 (distinguishing between law, promise, and testimony as different matters within Torah, requiring distinctions in interpretation).
- 40 There is a distinction to be drawn between this community covenant, related to conduct, and a hypothetical covenant that would require adherence to a particular faith and set of beliefs. I would consider the latter more problematic, as one engaging the very freedom of religion concerns that otherwise would have supported it. There could be various other distinctions drawn, where other sorts of covenants would actually be more challenging. I am indebted to Rod Macdonald for discussion on this point. This said, some others might attempt to challenge the private nature of the school once

- accreditation is at issue, considering accreditation as a sort of public dimension to a law school. With respect, I do not consider accreditation to change the school into something analogous to part of government. Accreditation simply recognizes the educational content of the programme.
- 41 See Guy Régimbald & Dwight Newman, *The Law of the Canadian Constitution* (Toronto: LexisNexis, 2013) at [22.16] (stating that "approaches to religion that focus on the claims of an individual believer risk undermining the protection of religious groups or the more collective dimension of religion, quite possible negating some of the very purposes of the right." See also Benjamin Berger, "Law's Religion: Rendering Culture" (2007) 45:2 Osgoode Hall LJ 277; Janet Epp Buckingham, "The Fundamentals of Religious Freedom: The Case for Recognizing Collective Aspects of Religion", in Graeme Mitchell, Ian Peach, David E Smith et al, eds, *A Living Tree: The Legacy of 1982 in Canada's Political Evolution* (Toronto: LexisNexis, 2007) 251.
- 42 Trinity Western University, supra note 8.
- 43 R v NS, 2012 SCC 72, [2012] 3 SCR 726.
- 44 See discussion in Régimbald & Newman, *supra* note 41 at [22.25] (noting that "[t]he middle (and majority) approach of McLachlin CJC describes an approach to dealing with freedom of religion claims that are in conflict with other rights by looking first for a reconciliation with other rights and, if necessary, to a balance in particular circumstances.")
- 45 Mary Anne Waldron, Free to Believe: Rethinking Freedom of Conscience and Religion in Canada (Toronto: University of Toronto Press, 2013).
- 46 Ibid at 140. Compare also Dwight Newman, Community and Collective Rights: A Theoretical Framework for Rights Held by Groups (Oxford: Hart Publishing, 2011) at 138 ("Any group seeking respect for its interests...speaks arbitrarily if the claims it makes are not respectful of equally weighty claims that could be made by non-members or other groups.")
- 47 Questions of communities' rights to exclude individuals from membership are challenging ones but unavoidable. For discussion of such questions in some important Canadian contexts, see Sébastien Grammond, *Identity Captured by Law: Membership in Canada's Indigenous Peoples and Linguistic Minorities* (Montreal: McGill-Queen's University Press, 2009) (entire book focused on issues of membership control). I also discuss these questions in Newman, *Community and Collective Rights, supra* note 46 at 153-83.

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- 48 It is clear that there is some boundary between the public and private spheres, whatever challenges may be put against that distinction in some contexts. To take an extreme example, nobody would seriously assert that an individual's choice of dinner guests should be subjected to analysis for whether that individual's method of choosing dinner guests had any methodologies that gave rise to adverse effects discrimination. This example instantiates a point that there is a sphere of intimate association that is beyond analysis in terms of the values that apply to state action, although there can obviously be debate on where the line lies.
- 49 Stuart White, "Freedom of Association and the Right to Exclude" (1997) 5:4 Journal of Political Philosophy 373 at 374. See also Newman, Community and Collective Rights, supra note 46 at 178-83. None of this argumentation advocates a "right to discriminate", as one objector put it, but a right to association that unfortunately sometimes has discriminatory effects when the values of association and equality run up against one another.
- 50 This point does not suggest that Canada's secular law schools have an immaculate record in their treatment of those with LGBT identities. However, there cannot be a real suggestion that TWU must modify its rules because of the problems at other law schools, as the more logical way to address problems at other law schools is to address them in reality rather than vicariously.
- 51 I am indebted to Alvin Esau and Shauna Van Praagh for discussion on this point.
- 52 I appreciate comments relating to this point from Lorelle Binnion and Gillian Calder.
- 53 For an example of a challenge to TWU framed within a Christian perspective, see Deborah Howden, "Trinity Western University's Ill-Conceived Message of Exclusion", Editorial, *Toronto Star* (20 August 2013).
- 54 This is the overriding conclusion in *Trinity Western University, supra* note 8, and I do not see any validity to claims that the law has changed in the twelve years since if one thinks about that point within the law.
- 55 Craig, supra note 3 at 170. See American Bar Association (ABA), 2012-2013 ABA Standard and Rules of Procedure for Approval of Law Schools (Chicago: ABA, 2012), Standard 211, online: American Bar <. http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_

- approval_of_law_schools_body.authcheckdam. pdf>
- 56 Controversy concerning Faulkner's application was foreseen by Kristin B Gerdy, "The Irresistible Force Meets the Immoveable Object": When Antidiscrimination Standards and Religious Belief Collide in ABA-Accredited Law Schools" (2006) 85 Or L Rev 943 at 948-49. That such controversy appears not to have materialized arguably evidences that the religious exemptions within Standard 211 do allow for religious freedom in a larger way than Craig implies.

From:

Mike Nienhuis Sunday, March 02, 2014 9:06 PM Sent:

Submissions To: Subject: TWU feedback

Follow Up Flag: Follow up Flag Status: Completed

I prefer the view of the Supreme Court of Canada to those who are practicing power politics in a crass attempt to marginalize TWU and its graduates for not subscribing to their own moral views. A lot of blood was spilled to earn the right to freedom of conscience and belief. Preventing people from practicing their profession for not agreeing with the majority view is not something the benchers should support.

Mike Nienhuis

From:

Nundal & Randall Sunday, February 02, 2014 5:46 PM Submissions Sent:

To:

Follow Up Flag: Follow up Flag Status: Completed

I think that a law school in the valley is a great idea and I know that Trinity Western is a first class university. I was happy to hear that the Federation of Law Societies is in favour of the Trinity application and think the Law Society of B.C. should support it. Donald Nundal a member.

MCKIMM & LOTT

BARRISTERS SOLICITORS NOTARIES PUBLIC

NICHOLAS W. LOTT CHRISTOPHER S. LOTT TIMOTHY F. LOTT COLL GORDON
TYBRING M.S. HEMPHILL JENNIFER BATEMAN DAMON O'BRIEN KATE FISCHER
GEORGE F. MCKIMM (2007)

THE LAW SOCIETY OF B.C.

February 12, 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Executive Director

Dear Sir:

Re: Trinity Western University

Thank you for providing this opportunity for members of the British Columbia legal community to comment upon the matter of the proposed law school at Trinity Western University.

I do not wish to dwell upon the Charter of Rights and Freedoms in this letter, although I understand that many of the arguments for and against have the Charter as their legal or moral underpinning. The Charter is all very well, but in my respectful view, does not impinge on the activities of a private school, not affiliated in any way with government. Neither is the formation of a religious school, regardless of whether it teaches law or not, contrary to the BC Human Rights Code, although a great many things are.

I wish to be recorded as stating that the present advancements in the legal and social equality of gay and lesbian British Columbians stand in no jeopardy of being reversed nor encumbered by the creation of the TWU law school, nor by the required adherence to its community charter. Gay and lesbian British Columbians, and British Columbians who dwell anywhere else within the very broad spectrum of human sexual identity and experience, enjoy acceptance and liberty in this province to a very great extent. Laws prohibit discrimination against them on the basis of their sexuality. More importantly, the public has come around to a very general acceptance of the equality of their neighbours and themselves, regardless of sexuality. For these and other blessings, we have much to be thankful for in this province.

If great change for the better has occurred, it has not been owing to the wisdom of the minds governing the legal profession. The Law Society of British Columbia has, over the decades of its vibrant life, opposed the membership of non-citizens, non-British citizens, and most shamefully, those not on the voters lists, at a time when Chinese and Indians were barred from the same.

I point to these unhappy episodes to make this point: having a legal education does not give one any special moral insight. Regrettably, it can give one that impression. I would be cautious, more cautious than some of my peers, as it seems, in making declarations that this-or-that institution or

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event is "inconsistent with Canadian values." Or, as students of Osgoode Hall recently declared by placard, for the benefit of the assembled newspapermen,

THEIR GRADS ON THE BENCH? NO THANKS!

Etc.

Canadian values are a matter of opinion, in my respectful view, and the opinion of the professor or the Queen's Counsel is no better than your opinion, or my own. As the Chief Justice of the Supreme Court of Canada said in *Quong Wing v. The King*, (1914) 49 SCR 440:

This legislation may affect the civil rights of Chinamen, but it is primarily directed to the protection of children and girls. The Chinaman is not deprived of the right to employ others, but the classes from which he may select.

which is a matter of perspective, indeed.

Humility is always the best course when pronouncing on the great moral issues of the day, and particularly so when your pronouncements may be taken to speak for a great many of your peers. I cannot say what the effect of TWU graduates practicing law will be twenty years from now, and neither can anyone else. I am, however, prepared to chance it, and trust in the general forward march of progress and civilization to carry us through.

Now that TWU has secured preliminary approval (if grudgingly) from the FCLS, there are even calls for provincial law societies to conduct their own individual review of TWU, rather than deferring to the FCLS, which may lead to a circumstance of splendid chaos.

I respectfully suggest that, if a law program satisfies the many requirements set out in the National Requirement of the Federation of Law Societies of Canada, the simple fact of having been educated at TWU should not be a sufficient basis for disqualification from the practice of law.

The argument against TWU, as I understand it, is thus:

TWU discriminates against gay and lesbian students. They are not welcome at TWU because they cannot adhere to the community covenant. In fact, their very existence may be seen to offend the covenant.

Accordingly, the culture and purpose of TWU discriminatory, and law graduates from that culture will carry that discriminatory culture into the practice of law and the legal profession, where it does not belong.

Therefore, the legal profession ought to resist the entry of TWU graduates, in order to be safe therefrom.

I accept the truth of the first premise. Indeed, it is self-evidently true.

I do not believe the second premise, however, and I doubt very much that anyone who knows TWU graduates, or who has been taught by a TWU-educated teacher (as I have been), would accept it. To accept the truth of the second premise is to apply a very odious label to many fine individuals, and is itself a prejudice. To wit:

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All persons of (X educational or religious background) possess (Y moral characteristic).

It is no better, in my respectful view, than ascribing moral characteristics to persons on the basis of their ethnicity or religious upbringing. The same argument has also been described as "patently unreasonable" by the BC Court of Appeal vis a vis TWU and the BC College of Teachers.

To deny the graduates of TWU law school the right to practice law in British Columbia or elsewhere, on the basis of the common set of religious values they share with their classmates and institution, is to advance from prejudice to discrimination, and that is an actionable matter in this province. As the resolution recently proposed by the CBA's Equality, Young Lawyers and Diversity Committee declares,

Discrimination is not a recognized protected form of freedom of expression.

I hope to be forgiven for wondering why discrimination against TWU graduates on the basis of the moral code they freely choose to share is, or appears to be, a "recognized form of freedom of expression." Perhaps the answer is this: that the value of their choices is itself insufficiently recognized.

The CBA will soon, and without a trace of irony, debate a resolution calling on the FLSC to

...require all legal education programs recognized by the law societies for admission to the bar to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion...(other prohibited grounds of discrimination follow) (emphasis mine)

which, in my respectful view, must ignore the fact that, for an institution to adopt a policy of non-discrimination with respect to religion, it must permit religious institutions to govern themselves on the basis of the moral and spiritual beliefs they share in common, i.e., their religion. TWU's community covenant is derived from their shared religious understanding that sexual intimacy belongs only in the context of heterosexual marriage. Similarly, TWU's community covenant proclaims that their mission is "formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible." This sentiment may be unpleasant to those practicing other faiths or none, but it is a central feature of their beliefs, indivisible from the "love thy neighbor" business, which causes such much less trouble. You cannot carve away from their basket of shared beliefs, even in the pursuit of your own shared beliefs, without infringing their religious liberty.

Freedom from discrimination on the basis of religion means much more than simply removing the "Christians need not apply" signs from shop windows or campus brochures. Religious students must be free to peaceably express the full spectrum of their religious beliefs, and they must be free to associate together in communities bounded by their shared beliefs. If the TWU community wishes to embody those shared beliefs in a community covenant and make it the price of admission, that choice is worthy of respect and entitled to tolerance.

Denying TWU graduates, though otherwise qualified, the opportunity to apply for membership in the Law Society, sight unseen, will be an infamous act, in my respectful view, and yet another that we

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will look back on with shame, as time and progress permit. There is a more-than-sufficient supply of similar instances already in our living memory, and we ought to remember them before we add to them in self-righteous hurry. As a certain discriminatory religious tract once declared,

When pride comes, then comes disgrace, but with the humble is wisdom2.

If I am wrong, and I suppose I that I may well be, given that so many of the leaders of my profession are against me, then I respectfully suggest that denying TWU accreditation at the FCLS level may not go far enough. Perhaps anyone who has ever taken a bachelor's degree at TWU should be barred from entering the practice of law. After all, the community covenant applies to every student, faculty member and campus employee, and to every discipline of study. How long is too long to spend studying under their eaves? Is one single term long enough to disqualify a student from ever practicing law in British Columbia, or shall we exclude only those who complete their *LL.B* or *JD*, as the case may be? Should being an employee of TWU likewise attract scold and sanction? I will say nothing of students who only audit a course at TWU, as they are not required to sign anything, and may be presumed to be free from the taint of discrimination.

Perhaps, even in defeat on the great issue, I may be permitted to offer a compromise: that graduates of TWU be permitted to enter the practice of law, but only after having completed a mandatory full semester at my own alma mater, the University of British Columbia's Curtis School of Law (as it then was). Whatever prejudices they have acquired in the course of their study at TWU will certainly be counterbalanced and more by the rich panoply of socially-acceptable prejudices there on display.

Yours with sincere admiration,

McKIMM & LOTT

Damon O'Brien

¹The Alien in Canada, The Canadian Yearbook of International Law, 1964 (Ivan L. Head) ²Proverbs 11:2

From:

Myra Ottewell Sunday, March 02, 2014 9:38 PM Sent:

To: Submissions TWU application Subject:

Follow Up Flag: Follow up Flag Status: Completed

To the Law Society of British Columbia,

I am writing in support of Trinity Western University's (TWU) proposed Law School.

The objection I hear most often is that TWU has a code of conduct that requires students to abstain from sexual relationships outside the bonds of marriage between a man and a woman. There is an assumption that TWU Law School graduates would be prejudiced against gay people or that they could not represent gay people effectively.

I see that the Law Society subscribes to a Code of Professional Conduct for British Columbia (feel free to zoom to the bottom):

> Code of Professional Conduct for British Columbia (the BC Code) – annotated

Effective January 1, 2013; updated November 2013

Introduction to the Code of Professional Conduct for British Columbia

Table of Concordance between the BC Code and the Professional

Conduct Handbook

Highlights of amendments to the BC Code

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- See more at:

https://www.lawsociety.bc.ca/page.cfm?cid=2578&t=Table-of-Contents#sthash.y5fwZDxw.dpuf My question to you is this: Are each of you able to represent people who in their personal or professional lives violate standards you hold dear - without prejudice and with a vigorous defense?

Christians, as others who hold principles dear, have the capacity to advocate for the best interests of others regardless of their differences.

Thank you for considering my point.

Yours truly,

Myra Williams Ottewell



From: Richard Overstall [Richard.overstall@burioverstall.com]

Sent: Thursday, January 30, 2014 3:09 PM

To: Submissions

Cc: Barry Zacharias; Tom Buri

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

Honourable Benchers:

I have rather quickly read through the Federation of Law Societies of Canada's Report on this matter (but not its appendices), as well as its National Requirement for new law school programs.

It would appear from my brief survey that although it is necessary for law graduates to have, and approved law schools to teach, "... awareness and understanding of the ethical requirements," it is not mandatory for either students or law schools to actually follow any such ethics. As the Federation's report states at paragraph 31, "... inquiring into TWU's teaching methods or philosophies, or its admission criteria would go beyond consideration of whether a program meets the national requirement. These questions are thus outside the mandate of the Approval Committee."

Thus, the Federation and the Law Society of British Columbia would appear to have no grounds for denying approval to a law school that, for example, effectively denied admission or restricted the practices of aboriginal, Muslim, Jewish, secular humanist, or any other persons who otherwise might be considered to be protected under the Charter and Constitution. I invite correction if I'm wrong on this assumption. If I am not, there would appear to be no forum in the approval process to consider such ethical and constitutional matters.

Richard Overstall

Richard J. Overstall Buri, Overstall - Barristers & Solicitors Box 847, 3783 Broadway Avenue Smithers, British Columbia

Phone: 250-847-3241 Fax: 250-847-2659

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Delivered by email to submissions@lsbc.org

February 27, 2014

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Sir/Madam:

Re: Trinity Western University's proposed School of Law

Although I obtained my law degree from Osgoode Hall Law School (Toronto), I am also a graduate of Brigham Young University-Idaho, a Christian school owned by The Church of Jesus Christ of Latter-day Saints. It is not in spite of my Christian values but largely due to them that I have been able to represent clients from diverse beliefs and nationalities without judgment or bias. Long before I learned of constitutions, charters and human rights legislation, I was taught to love others, to reserve judgment, to be honest and to approach difficult issues with civility (a.k.a. peacemaking). My personal experience, therefore, leads me to support the TWU School of Law proposal. I wish to comment on a few issues.

With concern I have read allegations that TWU graduates' religious beliefs would make them unfit for the bench or to represent non-gay clients. To suppose that lawyers who believe in traditional marriage between a man and woman could not represent gay clients without bias is to also suppose that gay lawyers would be similarly unfit to represent non-gay clients. I fear that precedent. Would it not then follow that Hindu lawyers couldn't represent Christians, that black lawyers couldn't represent whites and/or that Chinese-Canadian lawyers couldn't represent Mexicans without bias? I do not accept that premise.

My focus of law is immigration, therefore, I work with diversity on a daily basis. I proudly welcome new immigrants to Canada knowing that many have left countries of oppression, depravity, hostility and/or religious intolerance. I encourage their integration by advising them to make friends with neighbours of different cultures, faiths and perspectives. Canada has long been an international example of acceptance and accommodation. A refusal to license a law graduate because of his or her religious commitment to heterosexual marriage would be to restrict or deny the very accommodation and tolerance that our gay community and its supporters espouse to value.

From my study, TWU is not barring gay students from registration. Nor has TWU imposed a sexual double-standard for gay students. TWU is asserting a common sexual ethic for all who attend their school. Their covenant prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman." All students are expected to abstain from sexual intimacy outside of marriage, the very nature of which is deemed to violate the sacredness of marriage. I made a similar religious commitment many years ago. I can't think of even one instance where it has interfered with my ability to give professional advice to my clients.

I believe it *is* possible for people of different religious backgrounds and/or belief structures to respect and represent each other ethically and without bias. That has been my experience in both giving and receiving. I would welcome professional advice from a TWU law graduate in the same way I welcome advice from my gay financial advisor. I have confidence that both would uphold their professional obligations of conduct.

Yours truly,

Sandra Pallin

Piasentin, Robert [RobertPiasentin@sierrasystems.com] From:

Monday, March 03, 2014 12:13 PM Sent:

Submissions To:

New Law School at Trinity Western University Subject:

Attachments: 4779 001.pdf

Follow up Follow Up Flag: Completed Flag Status:

Please see my attached personal submission to the Benchers of the Law Society of British Columbia on this important issue.

Thanks,

Robert C. Piasentin | General Counsel Sierra Systems

(T): 604-891-6233 (F): 604-688-6482 1177 West Hastings Street, Suite 2500 Vancouver, BC V6E 2K3

Management Consulting | Project Implementation | Managed Services website: www.SierraSystems.com







Robert Piasentin 2500 – 1177 West Hastings Street Vancouver, BC V6E 2K3

March 3, 2014

VIA EMAIL (submissions@lsbc.org)

The Law Society of British Columbia Attention: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mesdames/Sirs:

Re: New Law School at Trinity Western University

I want to thank you for your invitation to provide submissions to the Benchers of the Law Society as they consider whether the new law school at Trinity Western University ("TWU") should be an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

I am personally writing to provide my support for the accreditation of TWU's law school program and the acceptance of TWU law graduates as eligible for qualification before their respective law societies, including the Law Society of BC. I also wish to express my serious concerns regarding the position taken by some members of the legal community locally and nationally that TWU law graduates should not be permitted to practice law in their local jurisdictions and that the respective law societies should not recognize their law degrees. The position taken by opponents to TWU's law school accreditation strikes at the heart of the freedoms of conscience and religion and seeks to preclude those of a particular faith or belief from entering the legal profession. As a result, I must vigorously oppose this effort and everything for which it stands.

At the root of the concern raised by those who oppose the accreditation of TWU's law school and granting qualification to its graduates within each law society is TWU's Community Covenant which requires an undertaking from students to refrain from "sexual intimacy which violates the sacredness of marriage between a man and a woman".

I am part of a BC Catholic lawyers' guild and we have made submissions to the Law Society of British Columbia under a separate letter. I will not repeat here in detail what was stated in that letter other than to say that the requirements in the Community Covenant are similar to the tenets of the Catholic faith.

I do however wish to reiterate my concern regarding any decision that law graduates from TWU law school will be prohibited from becoming qualified to practice law in British Columbia or before any other law society.

The Supreme Court of Canada has held that when two competing Charter freedoms are at issue, an equitable balance needs to be struck between the two freedoms and that it is not appropriate to simply choose one freedom to be protected, at the expense of the other. As the Supreme Court concluded in *Trinity Western University v. British Columbia Charter of Teachers ("BCCT")*, *Big M Drug Mart*, and *Whatcott*, the freedoms of religion and conscience are fundamental freedoms upon which the Charter is based and that they must always be protected. The facts in the *BCCT* case are almost identical to the facts to in the situation at hand with TWU's proposed faculty of law, and the Supreme Court of Canada ruled there that TWU education graduates could not be prevented from being qualified to teach in British Columbia. As indicated by Mr. John Laskin in his opinion submitted to the Federation of Law Societies, the *BCCT* decision is the law and there is no reason to believe that the SCC would overturn its decision given the balancing and evaluation of rights that the SCC conducted in *BCCT* and, more recently, *Whatcott*. Consequently, a conclusion that TWU law graduates would be prohibited from practising law would directly contradict the law as clarified by the Supreme Court of Canada.

Being a practising Catholic and a practising lawyer, I am very concerned that a decision to prevent graduates from TWU law school from being qualified could be seen as only the first step to disbarring those of us who hold beliefs which may appear to be unpopular. Our country and our legal system were founded on the basis of protecting the fundamental rights of every person, irrespective of beliefs, provided those beliefs do not cause harm to anyone. As the SCC concluded in both *BCCT* and *Whatcott*, there is no evidence of harm on facts similar to those at issue here, and so it is contrary to the law as clarified by the SCC to prevent a graduate from TWU's proposed law school from becoming qualified to practice law.

A very important question which I urge the Benchers to consider while evaluating this issue is the following: how will the Benchers ensure that I, as a lawyer in good standing before the Law Society of British Columbia and a practising Catholic, or in fact ensure that any of my colleagues, whether Catholic, Muslim, Jewish or any other denomination which holds views which may be unpopular at any particular point in time, will not be at risk of disbarment at some point in the future. Similarly, will lawyers from other law schools in the United States or elsewhere which require their students to sign similar covenants or hold similar beliefs also no longer be eligible to practice law in BC or face possible disbarment because of their beliefs? Obviously these scenarios seem ridiculous on their face, but if TWU graduates are prevented from practising law due to their faith and their beliefs, disbarring others because of their beliefs is, in reality, the next logical step.

My faith is an important part of who I am and it plays a significant role in my daily practice of the law. Tolerance, respect and justice are fundamental to my faith and to my role as a lawyer. Faith and law do not contradict but rather complement one another.

I am confident that the Benchers will give this issue the necessary consideration and, in the end, conclude that discriminating against particular groups of people due to their religious beliefs is not the answer to this particular issue. Consequently, I ask you to reject the

arguments made by opponents to the accreditation of TWU's law school and conclude that law graduates from whichever law school shall be eligible to practice law in British Columbia irrespective of their faith or beliefs, provided that the law school has otherwise satisfied the requirements set by the Law Society to teach a legal education.

I appreciate being given the opportunity to provide comments on this important issue and will gladly make myself available to provide further input or respond to any questions which the Benchers may have.

Yours truly,

Robert Piasentin

General Counsel, Sierra Systems Group Inc.

President, Association of Corporate Counsel, British Columbia Chapter

From: Piasentin, Robert [RobertPiasentin@sierrasystems.com]

Sent: Sunday, March 02, 2014 7:36 PM

To: Submissions

DE VITA, Bruno (bdevita@AHBL.CA); Warren Smith; cboscariol@wgmlaw.com; Cc:

rwertschek@mccarthy.ca; scustodio@fasken.com; Christine Oberti (coberti@farris.com);

Hector MacKay-Dunn, QC;

Proposed Law School at Trinity Western University Subject: Attachments: Letter to LSBC re TWU Law School 2Mar14.pdf

Follow Up Flag: Follow up Completed Flag Status:

Attached is a submission to the Benchers of the Law Society of British Columbia regarding the proposed new school at Trinity Western University.

All of the individuals whose names appear on the letter have either participated in the drafting of the letter or have read the letter and have asked to have their names included.

On behalf of all those who have participated and are included in this response, I wish to thank you for the opportunity to be heard on this very important issue.

Best regards,

Robert C. Piasentin | General Counsel Sierra Systems

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March 2, 2014

VIA EMAIL (submissions@lsbc.org)

The Law Society of British Columbia Attention: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mesdames/Sirs:

Re: New Law School at Trinity Western University

We thank you for your invitation to provide submissions to the Benchers of the Law Society as they consider whether the new law school at Trinity Western University ("TWU") should be an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

We are members of what is at present an unincorporated association of Catholic lawyers in the process of forming a society to be called The St. Thomas More Catholic Lawyers Guild of British Columbia. There are similar Guilds located in other jurisdictions in Canada and the United States. Our membership spans the spectrum of the profession and includes members from small, mid-sized and national firms, as well as corporate counsel. Our annual Red Mass is attended by lawyers, articled students, law students and members of the judiciary.

We are writing to support the accreditation of TWU's law school program and the acceptance of TWU law graduates as eligible for qualification before their respective law societies, including the Law Society of BC. We also wish to express our grave concerns regarding the position taken by some members of the legal community locally and nationally that TWU law graduates should not be permitted to practice law thereby effectively shutting down TWU's faculty of law before it is even allowed to begin. Our concerns, however, go beyond this fact. The position taken by opponents to TWU's law school accreditation strikes at the heart of the freedom of conscience and religion and seeks to preclude those of a particular faith or belief from entering our profession. As a result, we are compelled to vigorously oppose this effort and everything for which it stands.

At the root of the concern raised by those who oppose the accreditation of TWU's law school and granting qualification to its graduates within each law society is TWU's Community Covenant which requires an undertaking from students to refrain from "sexual intimacy which violates the sacredness of marriage between a man and a woman".

The Decision of the Federation of Law Societies

As you are aware, the Federation of Law Societies, through its Approval Committee, conducted a rigorous and thorough evaluation of all issues relating to TWU's application for accreditation as a law school including whether TWU satisfied all substantive educational

training requirements. The Approval Committee identified the issues around TWU's Community Covenant as outside the scope of its mandate and so established a Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee") to consider whether any "special considerations...should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of agreement and employment, respectively".

As part of its assessment, the Special Advisory Committee considered a legal opinion provided by Mr. John B. Laskin of Torys LLP to the Federation dated March 21, 2013 on the extent to which the decision of the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 ("BCCT") applies to TWU's application for accreditation of a law school and whether the BCCT decision is still good law. Mr. Laskin conducted a detailed assessment of the state of the law and evaluated a series of potential arguments both for and against the accreditation of TWU's law school. In the end, Mr. Laskin concluded that the BCCT decision is still good law and will be binding on any challenge to TWU running a law school.

The Special Advisory Committee released its Final Report in December 2013 in which it came to the following as its final conclusion: "...if the Approval Committee concluded that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from the law society bar admission program." The Federation of Law Societies, based on the Special Advisory Committee's Final Report and the recommendation of the Approval Committee, concluded that TWU's law program did in fact satisfy all national requirements to conduct a law program and that the BCCT decision is still good law meaning therefore that there is no reason to disapprove of TWU's law school accreditation application.

The Current State of the Law Relating to the Freedom of Conscience and Religion

The freedom of conscience and religion is enshrined in the *Charter*. Dickson, J. (as he then was) writing for the majority in *Big M Drug Mart* emphasized its importance in the following passage:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the Charter. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a

course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority".

The position of opponents to TWU's application for accreditation as a law school, at its root, holds that those who adhere to a particular belief based on their faith or conscience should not be permitted to engage in the profession of law. This in itself constitutes a blatant exercise of coercion and constraint which Dickson J. speaks of in the passage above. For the Law Society of British Columbia to conclude that graduates of TWU's law program should not be admitted to practice law, it would be acting contrary to the *Charter* and in a manner that discriminates against and marginalizes those who hold particular beliefs. This cannot be condoned in a free and democratic society.

Opponents to TWU's law school also appear to be suggesting that the very fact of the Covenant and the religious beliefs on which it is based render TWU law school graduates incapable of fulfilling their professional and ethical responsibilities as lawyers. This position was considered and rejected by the Supreme Court of Canada in *BCCT*. As summarized in Mr. Laskin's opinion, the court considered the very same Covenant in relation to an attempt by the BC College of Teachers to exclude graduates of TWU from the teaching profession. While it has been argued by some that this case was considered in a different societal context and has diminished binding authority today, these arguments are effectively rebuffed in Mr. Laskin's opinion. Indeed, Mr. Laskin points out correctly that the recent decision of the Supreme Court of Canada in *Whatcott* reaffirms that the fundamental freedom of religion and conscience "extends broadly" in Canada and is of equal importance today in the balancing of the rights of freedom and equality. Accordingly, the *BCCT* case remains the law of the land and its various statements and findings would be equally applicable to a decision by the Law Society of British Columbia, or in fact any law society of Canada, to prevent admission to the profession of a TWU law school graduate.

In that case, the majority (which included the Chief Justice), relying on the passage of Dickson J. above, emphasized the importance of freedom of religion and conscience while noting that British Columbia human rights legislation specifically accommodates religious freedoms by allowing private institutions to discriminate in their admissions policies on the basis of religion. They further noted that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, was not sufficient to engage

Section 15 of the *Charter* as it would be inconsistent with freedom of religion and conscience, which coexist with the right to equality. The court went on to state that there is nothing in the TWU community standards (which are limited to prescribing conduct of members only while attending TWU) to indicate that graduates of the school will not treat homosexuals fairly and respectfully. On this point, the court stated:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

Broad Consequences of Refusing to Admit TWU Law Graduates

While TWU is not a Catholic university, the Community Covenant is generally consistent with Catholic teaching and is one to which Catholics would generally ascribe. The logic for excluding TWU graduates from the practice of law would apply equally to any person, whether Catholic, Protestant, Muslim, Jewish, Sikh or non-denominational, who adheres to the same beliefs upon which the Covenant is based. This is not merely the "slippery slope" toward broader based exclusion but rather the next logical step. It is a cause of deep concern and one that was recognized by the Court in the *BCCT* case in the following passage:

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools. Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. The BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU. Accordingly, this Court must.

Recommendation to the Law Society of British Columbia

The signatories to this letter are members of and leaders in British Columbia law firms and corporate organizations. We hire, employ and work with people of differing gender, colour, creed, and sexual orientation. We treat them and in return are treated with respect and dignity. We do not discriminate within our profession or in the workplace, not in spite of but because of our beliefs. We take seriously our professional and ethical obligations both as practitioners and employers. We also happen to share the beliefs upon which the Covenant

is based. For the same reason the Law Society would not disbar us for holding these beliefs, it should not exclude TWU graduates.

The debate before the Law Society of British Columbia is an attempt by opponents to TWU's law school to convince the law societies to do what the Supreme Court of Canada has deemed unlawful. We respectfully urge the Law Society of British Columbia to comply with the law as confirmed by the Supreme Court of Canada and to follow the determination made by the Federation of Law Societies and conclude that graduates of TWU's law program will be recognized and admitted into the practice of law in British Columbia.

Yours truly,

Celso Boscariol - Watson Goepel LLP

Roger Bourbonnais - Alexander Holburn Beaudin + Lang LLP

Andrew Buddle - Teck Corporation

Leo Caffaro

Michelle Chang

Tai Y Cheng - General Counsel, Fulida Group

Jonathan Conlin - Fasken Martineau DuMoulin LLP

Sergio Custodio - Fasken Martineau DuMoulin LLP

Lauren Dattilo - Hamilton Duncan Armstrong & Stewart

Bruno De Vita - Alexander Holburn Beaudin + Lang LLP

Paul Fang - Fang and Associates

Chris Ferronato - Bull Housser & Tupper LLP

Neysa Finnie

Derek James - Quinlan Abrioux

Rudi Kischer - Maynard Kischer Stojicevic

Timothy Lack - Lunny Atmore LLP

Daniel Le Dressay

Jonathan Lim - Fasken Martineau DuMoulin LLP

Hector MacKay - Dunn, Q.C. - Farris, Vaughan, Wills & Murphy LLP

Christopher McHardy - McCarthy Tétrault LLP

Sharon Morrisroe - General Counsel, Raymond James Ltd.

Christine Oberti - Farris, Vaughan, Wills & Murphy LLP

Robert Piasentin - General Counsel, Sierra Systems

Donovan Plomp - McCarthy Tétrault LLP

Brian Poston - MacKenzie Fujisawa LLP

Christopher Rhone - Branch MacMaster LLP

Michael Roche - Alexander Holburn Beaudin + Lang LLP

John Rogers - Clark Wilson LLP

Peter Roth - Farris Vaughan Wills & Murphy LLP

Warren Smith - Managing Partner, The Counsel Network

Kenneth Tyler - Borden Ladner Gervais LLP

Michael Vaughan - Owen Bird LLP

Rosemarie Wertschek, Q.C. - McCarthy Tétrault LLP

Michelle Wingert

From:

Donovan Plomp Sunday, March 02, 2014 11:29 AM Submissions Sent:

To:

Submissions re Trinity Western University Subject:

Attachments: Submissions 001.pdf

Follow up Follow Up Flag: Flag Status: Completed

To whom it may concern,

Please find attached submissions for consideration regarding the proposed Trinity Western University law school.

Regards

Donovan Plomp

March 2, 2014

VIA EMAIL: submissions@lsbc.org

To: The Benchers of the Law Society

Re: Accreditation of Trinity Western University ("TWU") Law School

Dear Sirs/Mesdames:

I write as a member of the Law Society to express my grave concern that the Society is considering denying accreditation of a law school at TWU, and/or its graduates, based on their religious belief. This is contrary to the present law in Canada on this issue. It would also be destructive to a free and open democracy, and well beyond the scope of what the Benchers of the Law Society are mandated to do.

In any event, the Benchers do not have the requisite information and expertise to conclude that the students of TWU (and by extension, the thousands of Christian lawyers in Canada, and millions of Christians around the world) will practice in a discriminatory, bad faith and unprofessional manner if called to the bar.

Such a conclusion would offend fundamental principles of justice and procedural fairness. The Benchers would essentially be taking "judicial notice" of the alleged "fact" that anyone educated at TWU, and subject to the Community Covenant, is unfit to practice law. Such a conclusion judges the students of TWU as a class without even hearing about their individual beliefs and how they inform their respective actions. It effectively condemns the many Christian practitioners of law already called to the Bar as unfit to practice law.

The conclusion would not be based on a comprehensive and holistic assessment of the Christian belief in question, and its actual impact on the actions of individual students and practitioners of law. The persons affected would not be granted the procedural fairness and dignity of speaking to their religious beliefs and the impact (or lack thereof) of such beliefs on their ability to practice law in a non-discriminatory way.

Further, what does this open the door to? There are many countries and cultures where, for example, women are seen as little more than property; should we automatically exclude immigrants educated in those countries from our law schools, without assessing them on an individual basis? What about lawyers raised attending a Christian church or school. Are they automatically discriminatory and thus, unfit to practice law?

TWU is a private Christian institution. It is unremarkable that it would ask its students to abide by a covenant based on its beliefs while attending. Why would we deprive those students of the study of law, with all of its differing viewpoints and challenging issues? Why would we shut them out from participating in one of the foundations of a civil society?

If the Benchers do decide to scrutinize the TWU "Community Covenant" and its impact on TWU graduates as a class, without further evidence, then what about the statements that require students to, among other things:

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity
- communicate in ways that build others up, according to their needs, for the benefit of all
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society.

I am a Christian, and a Catholic. Like any thoughtful Christian, I occasionally struggle with reconciling modern life and belief with some aspects of my religion, which is informed by a bible written in a different time. One's faith is a very personal journey. And I am very thankful that I live in a country that gives me the liberty to live that struggle in a peaceful and tolerant environment, as long as I don't discriminate against others. I am baffled that, in the name of "tolerance", the Law Society is prepared to judge the students of TWU without any evidence of actual discrimination by those students or other Christian practitioners of law. These intelligent young people can't be blind to the friends and family among them who have different beliefs, lifestyles, and sexual orientation. Wouldn't introducing the richness of the law to their educational milieu only be a good thing, from any perspective?

If a lawyer practices in a discriminatory, homophobic, sexist or other improper manner, the law society can sanction or disbar them. But to judge now based on speculation is unjust. People change throughout life. Christians abandon their beliefs; atheists convert; in Canada, we let them do that without government or regulatory coercion. We don't automatically assume people are bad and unfit because of their private religious beliefs or upbringing. To go down that road is unfair, unjust, and extremely dangerous to a free and democratic society.

I respectfully urge you to allow TWU to open a law school if it wishes, and to recognize its graduates, subject to sanction if they show unfitness while articling or in the practice of law.

Yours very truly

Donovan Plomp

From: Stephen Price [stephen@stephengprice.com]

Sent: Monday, February 03, 2014 2:58 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

I do not believe that the Law Society of BC should be concerning itself with any aspects of the proposed Law School at Trinity Western other than to ensure that the courses, materials and faculty are capable of preparing a student to seek admission and to practice.

Stephen G. Price Barrister & Solicitor 20689 56th Avenue Langley BC

Please note that my email address has changed - please respond to **Stephen@stephengprice.com**

From: Nundal & Randall

Sent: Thursday, January 30, 2014 4:35 PM

To: Submissions

Subject: Trintiy Western Law School

Follow Up Flag: Follow up Completed

I am appalled at the comments from the Canadian Law schools and some lawyers on this matter. I completely support a law school at Trinity Western because I believe in our charter rights to freedom of religion. The law will obviously be taught as it is, and because Christians will be teaching it and perhaps like-minded Christian students this should be no threat to lawyers, the system or other law schools. TWU is a private institution and no one will be forced to attend it.

Vive la difference and shame on anyone trying to crush this enterprise.

Marion C. Randall Member

From: Hilary Reid [reid@cstudies.ubc.ca]
Sent: Saturday, March 01, 2014 7:33 PM

To: Submissions

Subject: TWU Law student accreditation comments

Follow Up Flag: Follow up Completed

To the BC Law Society:

I am an English language educator at the University of BC. I have been following with interest the dispute regarding allowing potential Trinity Western University Law graduates to practice law in this or any province, due to concerns about TWU's community covenant.

My comment is by all means, give them accreditation and let them practice. Being asked to abide by TWU's community covenant is asking these students to abide by a certain code of conduct only for the time they are students at this institution, out of respect for the values of this institution. Any student is welcome to study there, gay or straight; celibacy outside of marriage is being required equally of both, and only during their tenure as students.

In my view the BC Law Society itself is at risk of demonstrating intolerant behaviour if it is unable to acknowledge and respect pluralism and differing points of view on sexual conduct, reflecting the diversity of views within the province as a whole.

As Trinity Western has an excellent academic track record, I would like to see its Law graduates free to practice law in BC.

Since I understand you are seeking comment until March 4th, I am sending you this submission now so that this perspective may also be taken into account.

Sincerely,

Hilary Reid, English Language Institute, University of British Columbia

From: Chris Rhone [crhone@branmac.com]
Sent: Sunday, March 02, 2014 8:37 AM

To: Submissions

Subject: Letter to LSBC re Trinity Western University

Attachments: LT to LSBC re TWU.pdf

Follow Up Flag: Follow up Completed

Please see attached letter.

Regards,

Christopher Rhone, Partner Branch MacMaster LLP 1410 - 777 Hornby Street Vancouver, B.C. V6Z 1S4

P: 604.654.2954 | F: 604.684.3429

www.branchmacmaster.com

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March 2, 2014

VIA EMAIL (submissions@lsbc.org)

The Law Society of British Columbia Attention: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mesdames/Sirs:

Re: New Law School at Trinity Western University

Thank you for inviting submissions for consideration by the Benchers of the Law Society of British Columbia in considering whether the new law school at Trinity Western University ("TWU") should be an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

I have been a member of the Law Society of B.C. since 2001. I am also a member of the Law Society of the Northwest Territories.

I write to support accreditation of TWU's law school program and acceptance of TWU law graduates as eligible for qualification before their respective law societies, including the Law Society of B.C.

If TWU's law school is not accepted for accreditation by the LSBC, that decision must be premised upon grounds that do not contravene *Charter* rights to freedom of conscience and religion. In other words, rejecting or accepting any school's application for approval must not be based upon the religious or moral beliefs of those persons comprising the schools students, staff, and faculty, whether those beliefs be secular or religious.

Yours truly,

Christopher Rhone



—Corporation—

302-2695 Granville Street Vancouver, BC V6H 3H4 (604) 488-0203

BY EMAIL: submissions@lsbc.org

28 February 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Benchers

Dear Sirs & Mesdames:

RE: Proposed Law School at Trinity Western University (TWU)

I am a graduate of UBC Law and a member of the Law Society of British Columbia and I am writing in response to your call for submissions respecting the proposed law school at Trinity Western University.

I was profoundly disturbed last December when I received the amendments to Rule 2-27 inserting subsection (4.1). As this change was clearly targeted against only one university, it struck me as a very thinly disguised tactical attempt at administrative prejudice and bullying unworthy of our profession. It is my hope that the Benchers were unwitting dupes of those advocating the change as the decision did not appear to have had the benefit of any prior consultation with the profession or the public. This change also undermines the work of the Federation of Law Societies and threatens to wreak havoc with the professional mobility it has taken so long to achieve.

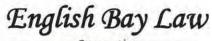
Rule 2-27(4.7), and the proposed resolution made pursuant to it, clearly intend that the Benchers abandon their position as neutral governors of the profession and abandon the principals of mutuality inherent in the idea of tolerance. If the resolution is passed, the Benchers would specifically prejudice unknown graduates of TWU, an institution duly authorized by the British Columbia legislature and duly recognized by the Federation of Law Societies for doing nothing more than attending an institution pursuing religious freedoms guaranteed under Canadian law. It asks the Benchers to be intolerant—not by asking them to adjudicate LSBC Members for specific breaches of Law Society Rules, or even to adjudicate specific applicants for behaviour unbecoming those admitted to the profession, but by categorically excluding a group of people from becoming Members in the first place by assuming that simply because a student attended a specific school (which has not yet even admitted its first class) then they "obviously" must hold certain opinions. This extremely prejudicial action is being demanded of the Benchers on the basis of unfounded fears and assumptions and without supporting evidence.

I did not attend TWU, but I have met and interacted with numerous alumni and they speak highly of TWU. TWU itself has put a great deal of thought into making its law school curriculum relevant to the study and practice of law and preparing students for articles—both reflect innovations I regularly hear lawyers wish all law schools would embrace. TWU deserves a fair chance to demonstrate that its proposed law school and its curriculum will positively contribute to the legal landscape in Canada and it should be adjudicated based on its results.

TWU seeks to establish a community in which participants endeavour to live out religious principles during their course of study. It is unique and provides diversity to an otherwise philosophically uniform landscape in Canadian post-secondary education. To try to do so within the context of a law school

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Direct Fax: 1-866-218-2120



-Corporation-

302-2695 Granville Street Vancouver, BC V6H 3H4 (604) 488-0203

would bring valuable diversity to legal education in Canada even if it challenges us to be tolerant of the religious beliefs of others.

TWU challenges its students' comfort zones by requiring them to think about the status quo, and to understand the connection between religious belief and personal conduct. To pursue this, their course of study requires students to follow a discipline of both body and mind. Discipline of body and mind is probably most familiar to students of the martial arts and, perhaps, yoga. In the case of TWU, it is not permanent, but temporary, limited to the terms of study and students who attend TWU know, before they even apply, that part of the successful completion of their study will be to undertake that sort of discipline. The exercise of the discipline does not require the student to adopt the religion or philosophy itself. It is an opportunity dependent on their own free choice; it is a choice only some will make, but if the profession impedes it, it is a choice that will be denied to all.

TWU brings diversity and choice to post-secondary and professional education in Canada. It has, and will continue to have, a diverse student body. What it offers to students and academics, compared to other universities in Canada, is intellectual diversity. I do not have to agree with a particular point of view to know that we need the diversity that TWU offers; having it strengthens our society as a whole and our profession in particular.

We are a profession of advocates. Within our ranks we routinely stand on contrary positions and celebrate our ability to do so not as a threat, but as something fundamental, necessary to maintaining the democratic freedoms bequeathed to us. Denying TWU a law school because of what they believe is, simply, an act of intolerance and a denial of the fundamental right to religious belief. Doing so by revising law society rules or policies in effect to single out TWU is a form of bullying that runs contrary to our religious freedoms. It speaks either of ignorance or power, in either case expressed against a minority based not on evidence, but on fear and assumption.

The presence of a law school at TWU, alongside UBC, UVic and Thomson Rivers U will guarantee that British Columbia will continue to offer the most diverse legal educational environment in Canada, and will remain at the cutting edge of legal thought and education. It will provide students and members of the public and the profession with a *choice*. In the academic environment, it should guarantee freshness and diversity of discussion; in the profession it should provide a diversity of graduates and opinions; for the public it will contribute to a profession that reflects the diversity of our society. It is, in short, a good thing; not because it is agreeable to all, but precisely because it is not and will therefore force us not to be complacent but to consider what the law is and should be.

As a profession, as all professions, we are faced with the challenge of how best to serve a multi-cultural milieu when each individual within the multi- represents something specific, something individual. It is the coming together of diverse individuals that gives us the diversity that we cherish. If we deny TWU a law school on the basis of their specific beliefs, we contradict the principles of diversity, impeding the diversity of the whole and suggesting that we are not interested in diversity after all. I urge you to support diversity, to maintain your neutral governance, and not to oppose the establishment of a law school at TWU.

If you have any questions or concerns, please do not hesitate to contact me.

Direct Fax: 1-866-218-2120 Email: jonathan.reilly@englishbaylaw.ca

From: Paul Scambler [pscambler@clay.bc.ca]
Sent: Sunday, March 02, 2014 10:49 PM

To: Submissions

Subject: Trinity Western University (TWU)

Follow Up Flag: Follow up Completed

Attention Benchers.

You will have received numerous submissions from parties on both sides of this debate.

From my perspective the issues are reduced to the question of balancing religious freedoms as against other human rights that our courts have articulated.

It is my respectful submission to you that the Law Society and the public of British Columbia have nothing to fear from the prospect that a lawyer may have had law school training in an institution like TWU. The Federation of Canadian Law Societies has determined that the curriculum proposed by TWU meets its basic standards. Whether the lawyer is trained from a Christian, Jewish or Muslim perspective he or she is obliged to represent the interests of the client having regard to the laws of the land to the best of the lawyer's ability.

We should not penalize an educational institution (and its graduates) whose philosophical roots do not conform to those presently followed by conventional secular institutions. Indeed a Christian, Jewish or Muslim student in our present institutions is often at a disadvantage if she or he declares their religious views. The academy is at risk of repressing religious belief and freedoms in the classroom.

I would urge you not to re-visit your previous decision. Rather the Law Society of British Columbia should receive and subject to its usual standards and credentialing, admit to the practise of law those who have received their law school education at TWU.

Paul G. Scambler, Q.C.

Clay & Company / Main Floor, 837 Burdett Avenue, Victoria, BC Canada V8W 1B3 T 250.386.2261 (ext. 231) / Toll Free 877.688.9634 / F 250.389.1336 / pscambler@clay.bc.ca

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Seventh-day Adventist Church in Canada Église Adventiste du Septième Jour au Canada

March 2, 2014

Delivered via email: submissions@lsbc.org

The Law Society of BC 845 Cambie Street Vancouver, BC, V6B 4Z9

Attention: Timothy IcGee, QC, Executive Director

Re: Law Society of B. C. consideration of Trinity Western School of Law graduates

Dear Benchers:

We recently became aware that the Law Society of B.C. is seeking input with respect to the new law school planned at Trinity Western University ("TWU"). We welcome that opportunity and respectfully make the following comments to assist the Benchers as they make a decision that will affect graduates of a TWU School of Law.

Seventh-day Adventist C nurch in Canada ("SDACC")

- 1. The Seventh-day Adv intist Church is a world-wide Christian denomination whose members rest and worship on the seventh day of the week, and who look forward to the second coming of Jesus Christ. Currently, there are over 66,000 members of Seventh-day Adventist churches throughout 'anada, worshipping in some 370 congregations. There are members in every Canadian province and territory. Some of these members are lawyers and actively involved with the law society of their jurisdiction.
- 2. The SDACC is a body corporate, federally incorporated without share cap tal, pursuant to a Special Act of Parlia ent since 1920. The SDACC is the national denominational entity within Canada. There are also Seventh-day Adventist Conferences that are separately organized within various provinces and areas within Canada. On issues o national

National Headquarters Siège Social

1148 King Street East Oshawa, Ontario L1H 1H8 Telephone: (905) 433-0011 Fax: (905) 433-0982

- importance, the SDACC usually speaks from the perspective of the Canadian Seventh-day Adventist faith community.
- 3. Seventh-day Adventist organizations operate 44 secondary schools located throughout Canada. These schools exist to provide students with a Christian education in and through which they express and live out their faith as guaranteed by the *Canadian Charter of Rights* and *Freedoms* and the rights guaranteed by human rights legislation in each province and territory.

Canadian University College

4. Canadian University College ("CUC") is a Seventh-day Adventist university college located in central Alberta with over 500 students attending from all over North America and various international locales. CUC offers over 27 major or track choices in Campus Alberta Quality Council ("CAQC") approved bachelor degree programs in Arts, Music, Science and Education. It has a professional nursing program in collaboration with the University of Alberta leading to professional nursing certification. CUC holds CAQC approval for its degree programs. CUC is an expressly Christian educational institution and teaches from a perspective consistent with the religious teachings of the Seventh-day Adventist international church movement. It maintains a broad statement for its educational community requiring behavioural compliance with doctrinal teachings of the SDA church.

SDACC Educational Functions

5. The SDACC's national Education Department team is responsible for the coordination, promotion, training, and quality of the Seventh-day Adventist educational system in Canada. However, this is only a part of the global educational system which includes 7,804 schools, colleges, and universities, with 84,997 teachers and 1,673,828 students. Working in close cooperation with the Church's Canadian educational institutions, the Education Department offers services to boards, administrators, and faculty of the same. They also provide support

to educational leaders at conference and mission levels and to teachers in Adventist elementary and secondary schools to ensure that the Adventist philosophy of education and the principles of faith-and-learning are integrated into the life of each institution. In addition, the staff cooperates with Adventist Chaplaincy Ministries and Youth Ministries Departments in nurturing the faith of Seventh-day Adventist students attending non-Adventist colleges and universities throughout Canada.

Seventh-day Adventist Church's concern for equality and religious liberty

- 6. The Seventh-day Adventist Church has a particular interest in matters pertaining to equality and religious liberty. This interest has grown over many years, in part because the Seventh-day Adventist Church is often in a religious minority position given its teachings on the seventh-day Sabbath as a day of rest.
- 7. The SDACC has on numerous occasions presented briefs to and appeared before parliamentary and other government committees addressing issues touching on religious freedom. For example, briefs have been presented to the House of Commons Special Committee on Visible Minorities in Canadian Society and appearances were made before the Parliamentary Committee on Equality rights in 1985. The SDACC has also participated as a consultant to the Helsinki Working Group of the Canadian Council of Churches in its work toward a Convention on religious liberty and elimination of all forms of religious intolerance.
- 8. In order to assist the courts of Canada in ensuring that all Canadians enjoy a full measure of religious freedom, the SDACC has intervened in a large number of cases heard by the Supreme Court of Canada involving religious freedom, including:
 - a. Trinity Western University v. British Columbia College of Teachers, [2001] 1 S.C.R.
 772 (Religious freedom of students and schools in British Columbia) ("Trinity Western");

- b. S.(L.) v. S.(C.), [1997] 3 S.C.R. 1003 (custody matter in the context of Jehovah's Witness religious activities);
- c. Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine
 (Village), [2004] 2 S.C.R. 650 (Zoning decision that prevented a Jehovah's Witness place of worship); and
- d. Loyola High School and John Zucchi v. Attorney General of Quebec, (being heard before the Supreme Court of Canada on March 24, 2014).
- 9. The SDACC is also very concerned and interested in the equality rights guaranteed by human rights legislation. It understands the necessity of treating all persons with dignity and respect and to accommodate immutable differences between citizens, both as a general legal principle and to ameliorate historical discrimination. It may be of interest to you that the litigant in *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, an important case involving equality rights under the B.C. *Human Rights Act* (as it then was), was a member of the Seventh-day Adventist Church. (The SDACC also intervened in that case).
- 10. The Seventh-day Adventist Church has always been a strong advocate of religious freedom for all individuals and faith communities, regardless of their religious beliefs. This commitment is evident from the Canadian activities set out above and also from other actions the Seventh-day Adventist Church has taken to promote religious liberty, including the publication, for over a century, of the periodical *Liberty, A Magazine of Religious Freedom* to publicly advocate for a broad understanding of freedom of religion.

The Seventh-day Adventist Church in Canada's Interest

11. Because of its interest in freedom of religion and equality rights, and also because of its educational endeavors, the SDACC has been carefully following the recent issues pertaining to TWU's School of Law. The SDACC is very concerned about any regulatory decision that may be based on religious teachings. Any decision by a law society not to recognize

- TWU School of Law graduates because of the religious teachings promulgated at that institution directly engages, and may seriously undermine, religious freedom of many Canadians.
- 12. Some of the members of the Seventh-day Adventist Church prefer to have an education presented within a Christian environment, which is the reason for the existence of our schools across Canada, including CUC. Further, some of the Seventh-day Adventist Church's members endeavoring to become lawyers may prefer the option of receiving a law school education within a Christian environment. It is very troubling if that possibility is foreclosed to them because of a particular religious teaching.
- 13. From the perspective of the SDACC, it remains important that religious organizations continue to be able to define the parameters of appropriate behavior for their communities based on their own religious beliefs, without government and regulatory agencies placing burdens on or withholding benefits from them.
- 14. In this specific circumstance, we understand the Federation of Law Societies and the B.C. Ministry of Advanced Education have both reviewed the TWU School of Law in great detail and approved it, after considering all relevant matters and also considering TWU's religiously based community covenant. We understand that they found that the education to be provided by TWU would be appropriate and adequate, with respect to both the teaching of substantive law and the teaching of ethics and professionally appropriate behavior for lawyers.
- 15. If, despite these approvals, law societies reject TWU graduates, it would be directly and inappropriately tied to TWU's Christian foundation and teachings. This would be very troubling as it is not the role of regulatory agencies to express approval or disapprobation of religious teachings or understandings, including those with respect to human sexuality.

- 16. From the perspective of the SDACC, the court in *Trinity Western* struck an appropriate balance that properly recognizes the rights and obligations of all parties in these situations. That decision must bind and govern the analysis in the present matter.
- 17. The SDACC will continue to follow this issue and urges the Law Society of British Columbia not to refuse approval of graduates of TWU based upon or related to religious beliefs in these circumstances.

SEVENTH-DAY ADVENTIST CHURCH IN CANADA

MARK ALLEN JOHNSON

President of the Seventh-day Adventist Church in Canada

From: Sfat, John [jfs@bht.com]

Sent: Tuesday, January 28, 2014 9:43 AM

To: Submissions

Cc: 'immigration.sfat@gmail.com'; 'fgs@twu.ca'

Subject: Letter in support of the proposed Trinity Western University law school

Follow Up Flag: Follow up Flag Status: Flagged

Dear Sirs/Madames,

It is my pleasure to write a letter in support of the proposed Trinity Western University law school, law school that eventually would support the growing need of legal trained individuals.

As an organization which supports Christianity and religious studies, Trinity Western University would offer a new approach of the law and would offer a new generation of practitioners that will embrace law and religious precepts at the same time.

I acknowledge specific roles and responsibilities that a Law School should have, and I want to emphasize that Trinity Western University proved to be one of the most prestigious educational institution from western Canada. In conclusion, I fully support the efforts of the Trinity Western University to open a new law school.

Yours truly,

John Sfat

Immigration Consultant

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Bull, Housser & Tupper LLP

WE HAVE MOVED We are now located at our interim office space at Suite 900 – 900 Howe Street Vancouver, BC V6Z 2M4. Our new permanent home will be TELUS Garden, completing in Fall 2014.

From: Shaw, Marion [mvs@bht.com]
Sent: Sunday, March 02, 2014 2:10 PM

To: Submissions

Subject: Law School at Trinity Western

Follow Up Flag: Follow up Completed

I write as a member of the Law Society of BC to express my support for the proposed new law school at Trinity Western University. I have read the report of the Special Advisory Committee to the Federation of Law Societies, and agree with its conclusion that if the Federation's Approval Committee determines that TWU's curriculum and program meet the national requirements, there is no public interest reason to exclude TWU's future law school graduates from the bar admission programs of the law societies.

TWU's community covenant asks students, faculty and staff who choose to attend or work at an explicitly Christian school to act in accordance with the school's expressed values. I acknowledge that its community covenant clearly indicates the school's view that marriage is reserved only for a relationship between a man and a woman. While I do not share that view, I do not require all others to agree with me.

Lawyers and judges are men and women with their own values and belief systems. Many have religious affiliations of some kind. I do not expect them to allow whatever views they may hold with respect to sexual orientation to trump their belief in the rule of law, and I see no reason to expect that lawyers educated in a Christian law school environment will be less likely to uphold the rule of law and the rights and freedoms of Canadians than lawyers educated elsewhere.

In my view, a decision to disallow TWU's graduates from bar admission on the basis of its community covenant would constitute a triumph of political correctness over sense.

Please note that the views expressed above are my own, and not those of my firm.

Yours truly,

Marion V. Shaw

Partner, Corporate Finance + Securities

T 604.641.4922 F 604.646.2510 mvs@bht.com

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WE HAVE MOVED We are now located at our interim office space at Suite 900 – 900 Howe Street Vancouver, BC V6Z 2M4. Our new permanent home will be TELUS Garden, completing in Fall 2014.

From: Rob Sider [rsider@lawsonlundell.com]
Sent: Monday, February 24, 2014 1:18 PM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

In my view, TWU's "covenant" is foolish, but, as lawyers, we should defend the right of an institution to be foolish, if it so wishes. I also question the rationale of the opposition to the proposed TWU law school. It would be fine to oppose it because we simply don't need another law school, but to oppose on the basis that the "covenant" will create lawyers who can't uphold laws against discrimination has no basis in any reality as far as I am aware. Is there any evidence of this? Shouldn't we as lawyers require some evidence? I think that the opposition is not based on any actual evidence but rather based on a view by some that some rights or more important than others and is certainly based on a view of law students that should not be countenanced – that is that they are not smart enough to make their own determination as to what is "right". These aren't children after all. I also wonder why, if the opposition is about rights, no one seems to be concerned that the covenant discriminates on the basis of marital status as well since it apparently bans sex amongst non-married people, regardless of sexual orientation. Apparently students who sign the covenant will be able to overcome that "discriminatory" element of the covenant, but not one that discriminates on the basis of sexual orientation. That makes little sense to me. Finally, has anyone looked into whether law schools at religious institutions in the USA like Georgetown or Notre Dame produce lawyers that can't uphold US laws against discrimination? Something based on some evidence might be helpful in making a final determination on this issue.



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From: Annerose Sims

Sent: Sunday, March 02, 2014 9:29 PM
To: Submissions; The Vancouver Sun

Subject: Motion re TWU

Follow Up Flag: Follow up Completed

I find it rather interesting that the Vancouver Sun article: "Motion asks to deny grads right to practice" is published on Saturday and the deadline for input is Monday, March 3rd. Would it not have been a good idea to publish the whole Community Covenant so the reader would be able to judge on the sum rather than on a small part of it?

We seem to have already forgotten how most Canadians were disgusted over the filthy initiations at UBC and St.Mary's University in Halifax last September. I also remember rumours that UBC may need to ask students to sign a code of conduct. It never happened. Let us also remember that there were several high profile cases of lawyers last year, who were violating the Law for their own gains.

Is the law society only going to check whether the student graduated from a law school at a religious institution? The community covenant at TWU is doing more than asking students to refrain from sex outside marriage: it has all the points for building a person's character. The foundation of the covenant is respect of others. A graduate from TWU would treat others with respect regardless of sexual orientation. With all this media hype over TWU one does have to wonder if good character no longer plays a role in admission to the bar.

There are many other Christian denominations and other religions who espouse very similar values. Would they also not be able to practice Law?

Yours Truly, Annerose Sims

From: Ron J. Smith, QC [ron@justfamilysolutions.ca]

Sent: Sunday, February 02, 2014 8:27 PM

To: Submissions

Cc: felhauer@pushormitchell.com

Subject: Trinity Western Law School Application

Follow Up Flag: Follow up Completed

Dear Benchers of the Law Society:

We were informed at our last Kelowna Bar Lunch that the Benchers are intending to debate whether they can unilaterally veto or revisit the decision of the Federation of Law Societies to approve Trinity Western's application for establishment of a Law School. All approval bodies having given their consents, the Law Society must see this issue as one worthy of special consideration that would require our Benchers' special knowledge of the unique circumstances that apply in British Columbia. Also, the Supreme Court of Canada having ruled in almost identical circumstances in the College of Teachers decision, the Benchers must believe that they need to revisit the same issues when it comes to legal education, as opposed to teacher education.

The only justification for a decision to review the approvals is that Christian universities are not appropriate places to train law students. Such an opinion reveals an alarming lack of knowledge of the history and quality of higher education that is offered by Trinity Western University. It also reveals a lack of understanding of the fact that many leading lawyers in Canada today are persons of faith, who practice law according to the duties imposed on us by our Code of Ethics. I am personally related to a young woman who graduated from Trinity Western, and went on to win the Gold Medalist in her graduating year at the University of Victoria Law School. She and her husband both clerked in the Court of Appeal, and both are devout Christians. They would be surprised that the Law Society would debate the issue of whether their faith should disqualify them from practicing law.

I was called to the Bar in 1975, and have practiced as a trial lawyer since that time. I have been active in pro bono and in teaching, and have served as past chair of CLE, the B.C. Hear the Child Society, and was a founding member of the board of the B.C. Mediation Roster Society (now Mediate B.C.) I am a Christian. I have never allowed my faith to do other than inform me of the importance of reaching out to those in need, and practicing in an ethical and upright manner. I am disappointed that my governing body would follow the lead of the College of Teachers to declare that Trinity Western's statement of faith should disqualify the institution from the right to train law students. Such a stance displays a prejudice that would declare that the Law Society is opposed to choice, based on faith, when it comes to where a student can receive a legal education. Charter and Human Rights Codes aside, those of us who are persons of faith, whatever that faith might be, must feel a bit "less than" by the Law Society's behavior.

I would urge the Benchers to reconsider this motion.

Respectfully submitted, Ronald J. Smith, QC Landmark 6, 11th Floor 1631 Dickson Avenue Kelowna BC V1Y 0B5 P: 778.484.8168

www.justfamilysolutions.ca

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From: Roy Sommerey [RSommerey@doakshirreff.com]

Sent: Thursday, January 30, 2014 12:33 PM

To: Submissions Cc: Thomas Fellhauer

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

I support a TWU law degree qualifying a graduate holding it for entry into the B.C. Bar as a lawyer. Law students have always had a choice where they attended law school both within Canada and outside Canada. In B.C. with this recognition, the choices would then be U Vic, UBC, UNBC, or TWU, and even a combination of them.

TWU is an accredited degree granting educational institution which has proven itself both in the real world by continuing to exist and thrive, and in our courts, receiving the blessing of the SCC to grant a teaching degree that must now be recognized by a reluctant and embarrassed BCTF. It would be with considerable irony if the Law Society denied recognition for a law degree granted by TWU, only to have the SCC deciding once again that such conduct was "illegal".

The concerns I have heard expressed about TWU's plans are focused on its faith based origins, and alleged "intolerance" in relation to sexual activity. Interestingly, the concept of a "university" is based in people holding Christian faith and the university was for decades, even centuries, a Christian, faith based organization; our legal system has most of its roots in Christian values which are usually common to most other faiths as well; and it is with considerable irony that the people who express concerns about TWU's plans often demonstrate intolerance towards TWU and its faculty, staff, and students, who may hold different beliefs and values from their own.

While law school can influence the way its students see the world or think about it in the context of the legal interaction between people, the principles taught in law school do not specifically address and teach faith in a creator or higher power. They do include that a person has a right to hold and to practice a faith, albeit within limits set by other recognized legal rights, and to choose when, how, and with whom a person may have sexual relations (outlining that which is illegal --i.e. sexual assaults, sexual acts with a minor, etc.). Unless a law professor's, law student's, or lawyer's faith, values, sexual behavior, etc. leads to conduct which qualifies as criminal or professionally unethical, a law school or a law society has no role in relation to it. There is nothing illegal or professionally unethical about a person having a faith based value system nor signing a covenant to abstain from premarital sex, just as it is not illegal to be an atheist or to be sexually promiscuous (STD's aside), or to abstain from all of it.

Every law student currently attending law school and who has ever attended law school has entered the facility with personal beliefs and values relating to sexual activity, marriage, relationships, and faith in a higher power or creator (whether a deity or just mother nature) which would not be acceptable nor agreeable to all, nor ever expected by anyone to be held by all. Nevertheless, we all attend, learn, most of us graduate from law school, and we learn to do our work in the real world, acting for clients who usually don't share those same beliefs and values, yet we are obligated both by the need to make a living and by our professional duties to do to the best we can for our clients within the legal parameters we are given. If we do run into a value conflict that prevents us from acting (i.e. we are asked to do something illegal or professionally unethical), we can properly decline to act.

There is nothing which the law society is being asked to do by TWU which would in my view justify a "no thank-you" response. I also predict that if you (we?) choose to do otherwise, it will lead to another waste of TWU's financial resources and legal energies, which would be better invested in developing a first class law school, and it would be a waste of the Law Society's financial resources and legal energies, leading to an especially embarrassing rebuke by the Court.

Thank you for considering my comments.

Roy Sommerey

Lawyer



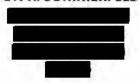
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DON R. SOMMERFELDT



Tel; (780) 423-7227 Fax: (780) 423-7276 don.sommerfeldt@dentons.com

By email (submissions@lsbc.org) and mail

March 1, 2014

The Law Society of British Columbia 845 Cambie Street Vancouver, British Columbia V6B 4Z9

Attention: Executive Director

Dear Sir/Madam:

Subject: Trinity Western University

Proposed Law School

I am sending this letter in response to your invitation for written submissions in respect of the proposed law school at Trinity Western University ("TWU"). I respectfully submit that the fundamental issue here pertains more to religious freedom than to freedom against discrimination on the basis of sexual orientation.

It is my understanding that TWU is a private institution.¹ Students apply to, and attend, TWU voluntarily. The Community Standards, which are the subject of some of the complaints currently being made against TWU, provide a faith-based moral code to which TWU students voluntarily adhere. I also understand that the Community Standards govern each student's own conduct, and do not encourage a student to discriminate against another individual on any basis, including sexual orientation.²

In a context somewhat similar to the current controversy, the Supreme Court of Canada indicated that there is a distinction between belief and conduct.³ Thus, it is my submission that, merely because a TWU student (or any other individual), for religious reasons, voluntarily chooses to refrain from homosexual activity, it does not follow that that student (or such other individual) will discriminate against another person on the basis of sexual orientation. By way of analogy, it is unlikely that a reasonable third-party observer would suggest that a priest who takes a vow of celibacy would be inclined, merely because of that vow, to discriminate against someone else who is married or who engages in sexual activity.

id., at 814, 9 36.

•

¹ British Columbia College of Teachers v. Trinity Western University et al., [2001] 1 SCR 772, at 783 and 807, ¶ 1 and 25 (SCC) (hereinafter referred to as "BCCT v. TWU").

The Community Standards require an adherent "to love, cherish, and serve the needs of one another. This command requires total respect for all people regardless of race, gender, location, status, or stage of life and of course, precludes harming another person physically or maligning another's character through gossip, slander, or careless talk. It also includes making a habit of edifying others, showing compassion, demonstrating unselfishness, and displaying patience." See BCCT v. TWU, at 797, ¶ 10.

As has been noted elsewhere, there are a number of respected law schools at US faith-based universities, including Notre Dame University ("NDU"), Baylor University ("Baylor") and Boston College ("BC"). As well, Southern Methodist University ("SMU") and Brigham Young University ("BYU"), which are religiously sponsored universities, have respected law schools. Each of those universities has a code of moral conduct to which its students are asked to adhere. I would be surprised if anyone were to suggest that a graduate of the law school at NDU, Baylor, BC, SMU or BYU, merely by reason of having followed the particular university's code of conduct, is not a suitable candidate for admission to a provincial law society (assuming that the other requirements pertaining to graduates of non-Canadian law schools are satisfied). In fact, I am aware of two graduates of BYU's law school who have been members of the Law Society of Alberta for many years.

If one were to accept the argument that a graduate of the proposed law school at TWU would, by reason of his or her adherence to TWU's Community Standards, not be a suitable candidate for admission to the Law Society of British Columbia (or any other provincial law society, for that matter), it would follow that no devout member of the Evangelical Free Church of Canada (with which TWU is associated⁵) would be a suitable candidate for admission to a provincial law society. From that premise, it would in turn follow that no member of any church which has a rigorous moral code would be suitable for admission to a provincial law society.⁶ That could, in a sense, mark a return to the intolerance of Seventeenth Century England, when members of certain religions were barred from holding public office.⁷

In conclusion, I support and applaud the decision of the Federation of Law Societies of Canada to grant preliminary approval of TWU's proposed law school program. I encourage the Law Society of British Columbia also to approve TWU's proposed law school.

Thank you for considering this submission.8

Yours truly,

Don R. Sommerfeldt

cc: Trinity Western University

Attn: Robert G. Kuhn, J.D., President (Interim)

The Law Society of Alberta

Attn: Kevin Feth, Q.C., President

Attn: Don Thompson, Q.C., Executive Director

Eugene Meehan, "Exercising Freedom, in Faith and in Law," The Lowyers Weekly (March 8, 2013), p. 5.

BCCT v. TWU, at 783, ¶ 1.

id., at 812, ¶ 33.

Frnest John Knapton: Europe: 1450 – 1815 (Charles Scribner's Sons: New York, 1958), p. 322; and Edward McNall Burns, Western Civilizations (8th ed.) (W.W. Norton & Company Inc.: New York, 1973), p. 475.

This letter represents my own views. In writing this letter, I am not speaking on behalf of the firm for which I work or the church to which I belong.

From: Mark Standerwick [mstanderwick@cfmrlaw.com]

Sent: Friday, February 28, 2014 12:05 PM

To: Submissions

Subject: Trinity Western University **Attachments:** Scan20140228120041.pdf

Follow Up Flag: Follow up Flag Status: Flagged

Please find attached my submission in respect of the Accreditation of the Proposed J.D. Program at Trinity Western University.



Mark E. Standerwick, Partner

Tel: (604) 273-8481 Fax: (604) 273-4729 mstanderwick@cfmrlaw.com 200-5611 Cooney Rd. Richmond BC V6X 3J6 Toll Free: 1 (800) 883-8288

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The Law Society of British Columbia 845 Cambie Street Vancouver, B.C. V6B 4Z9

Attention:

Executive Director

Re: Accreditation of the Proposed J.D. Program at Trinity Western University ("TWU")

As a member of the Law Society of British Columbia ("LSBC") I am writing to add my name to the list of those supporting the accreditation of the TWU law school and the acceptance of its graduates for the bar admission program in B.C.

With the Federation of Law Societies granting approval to the proposed law school program and the British Columbia Ministry of Advanced Education conferring on the university the right to grant the degree Juris Doctor (J.D.), it now falls to the LSBC to determine whether the proposed faculty of law at TWU is an approved faculty of law for the purpose of meeting the academic qualifications of the law society admission process.

I have reviewed submissions made by those within and outside the legal profession which articulate very well the legal and moral basis for approving accreditation. The Final Report dated December 2013 by the Special Committee on Trinity Western's Proposed School of Law stands, in my opinion, as the most comprehensive treatment of the issues and concludes that there is no public interest reason to exclude future graduates of TWU's program from law society bar admission programs.

Also noteworthy for a concise assessment of the legal arguments in support of the accreditation is the submission to the LSBC dated February 21, 2014 by Professor Mary Anne Waldron Q.C. which clarifies why refusing to admit graduates of the law program at TWU because of the Community Covenant of the university would be both contrary to law and the public interest, and the letter dated May 17, 2013 to the Federation of Law Societies authored by Kevin G. Sawatsky, Vice-Provost (Business) and University Legal Counsel, TWU.

The LSBC possesses the statutory authority to set policies for admission to the legal profession in this province. In exercising that authority, it is submitted the LSBC should strongly resist characterizing the decision in relation to TWU as a battlefield upon which those advocating for or against gay rights gain ground. The decision must be made in light of constitutionally protected rights and in accordance with binding law.

One argument advanced by those opposing the law program at TWU cites the university's inability to effectively teach legal ethics or think critically about ethics. This argument is based on the compatibility of the Community Covenant with training in ethics and professionalism. Implicit in the argument is the suggestion that religious beliefs inherent in the Community Covenant undermine ethics and professionalism and somehow disqualify those holding similar beliefs. If such reasoning were to prevail it would, in the words of Kevin Sawatsky, "equate to

denying accreditation to individuals on the basis of religious belief and, by extension, suggest that lawyers holding similar religious views to those outlined in the Community Covenant are unworthy to practice law or unable to uphold professional obligations." Quoting from the legal opinion of John B. Laskin of Torys LLP this argument "would lead to the conclusion that no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. This conclusion cannot be tenable."

The Special Advisory Committee was of the view the "argument that TWU's Christian worldview will have a negative impact on the quality of legal education at the proposed law school and that students will fail to acquire the necessary critical thinking skills is without merit." The Final Report went on to acknowledge that "TWU's Christian worldview is shared by many current members of the profession and the judiciary. There is no evidence that such individuals are any less capable of critical thinking or any less likely to conduct themselves ethically than any other members of the bar or the bench."

In concluding, it is respectfully submitted that a decision by the LSBC to refuse accreditation of the TWU program based on practices that are alleged to be discriminatory would be to accept an argument which the Supreme Court of Canada in the B.C. College of Teachers decision expressly rejected. The LSBC should not pre-judge as unworthy of the legal profession a graduate from TWU simply because he or she, gay or straight, committed to the Community Covenant restrictions on sexual activity.

Sincerely,

Mark E. Standerwick

February 23, 2014

BY E-MAIL (<u>submissions@lsbc.org</u>)

Attention: Executive Director

Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9

Re: Trinity Western University Law School

While I do not usually like to involve myself in political debate, as a TWU alumni who will be graduating from UBC Law School in 3 short months, I find myself compelled to contribute to the submissions regarding TWU's proposed law school and the Law Society of BC's impending decision. You will, no doubt, receive many eloquent, intelligent and passionate arguments on both sides of the debate, so I will, instead, offer a more personal view on the matter.

I graduated from Trinity Western University in 1997 with a B.A. in Religious Studies. During my time at TWU, I spent a semester in Jerusalem, Israel studying world religions and biblical archeology at a Christian institution. During each year of study at TWU, I signed the *Community Covenant* with the intention to follow it (most of the time!).

In 2006 I returned to complete my Masters degree in Christian Studies at ACTS Seminary on the TWU campus. During those years I again signed the *Community Covenant*, although I do recall some discussion about the covenant with my Mennonite professors, some of whom took issue with signing a covenant with an institution due to their personal theological beliefs.

It has been argued, following the lead of the dissent in *TWU v BCCT*, 2001 SCC 31, that through the act of signing the *Community Covenant* contract, TWU students and educators are "complicit in an overt, but not illegal, act of discrimination against homosexuals and bisexuals" (para 72). I find this to be rather alarming since my personal choice not to engage in sex outside of marriage, view pornography or get drunk should not be considered discrimination against parties who choose such actions. It is simply a personal choice either based on personal values or on the desire to study at a particular private religious institution which requires such a commitment of its community members. My act of signing it says nothing about my beliefs regarding the homosexual behaviours of others outside of the TWU community but only speaks to the freedom of a religious community to hold and practice its unique belief system.

While I may or may not agree that the *Community Covenant* should be mandated in its current form (or at all), my decision to pursue education at a private accredited religious institution which requires such a covenant should not impair my ability to work within the public sphere upon graduation.

I can attest to the fact that my educational experience at TWU included lively, engaged debate on pressing contemporary societal issues. Diversity of opinion was not squelched despite the fact that a foundational worldview was offered as the platform from which to launch academic discussion. I have little doubt that the same academic freedom would reign within TWU's proposed law school. It should be remembered that every school - every law school - reflects a set of beliefs. Currently, law schools in Canada have a secular emphasis in which religious views are in the minority and are, at times, openly derided. The legal profession in general and legal institutions in particular benefit greatly from the diverse backgrounds and beliefs held by their practitioners and academics. Expanding legal education into institutions that hold non-mainstream views should not be considered a threat, but instead should be welcomed.

Throughout this debate, graduates of the proposed TWU law school are posited as harms to society, unqualified to practice law and a tarnish on the reputation of the legal community. A legal education at an institution such as TWU is considered to be not only inadequate but destructive.

This seems to run counter to the generally accepted fact that all lawyers and judges hold varying personal beliefs with which the Law Society of BC does not interfere unless these beliefs lead to behaviour that is in opposition to a lawyer's professional ethics and obligations. One of the most offensive arguments within this debate is the idea that I, as a TWU alumni who signed the *Community Covenant*, need the "cleansing" offered by a public law school such as UBC. It is argued that while law students and lawyers may have any religious beliefs they desire, a public legal education is necessary to ensure that any discriminatory perspectives are curtailed.

First, students at TWU's law school would be taught the law and will be required to uphold the law, just as all judges and lawyers, regardless of their personal beliefs, are expected to apply the law. It is the Law Society's mandate to ensure they do so and I have faith in the Law Society's disciplinary processes if they were ever needed in relation to a TWU graduate. At this point, however, it is pure conjecture that a TWU law school graduate would do anything but fulfill his or her professional obligations.

Second, I can testify to the fact that three years of law school at a secular institution has not "cleansed" me of any minority viewpoints I may personally hold. While I may have been provided with new language with which to express my values and a new context - a legal context - in which to understand them, my personal worldview has not been altered. If anything, it has only been strengthened. I recognize that my personal views will not always be reflected in the law - nor should they be - yet they have been validated as I study concepts such as the rule of law, principles of natural justice and the protection of vulnerable groups.

Third, it has actually been beneficial during my three years at a secular law school to draw upon the depth of my faith and religious belief and practice. One of the common side effects of legal education is the tendency to dehumanize others, to quantify all

aspects of life, and to pursue one's own success. The religious beliefs that I hold, and those that were encouraged while studying at TWU, provide me with the foundation from which to offer respect and dignity to all human beings. These same religious beliefs compel me to pursue a career in law in order to practice dispute resolution, mediate challenging conflicts and empower individuals through an understanding of their legal rights and interests.

While you are deliberating the various significant issues at play within this debate, I would urge you to look past the caricatures presented of the fictional TWU law school graduate. Behind those caricatures are faces like mine. I have excelled at law school and competitive moots. I have secured articles and will be clerking for our province's Supreme Court. I have enjoyed mutually respectful and dynamic relationships with professors and fellow students at law school. These accomplishments have been made, not *in spite of* my status as a TWU alumni, but *because* of all that my education and experience has provided thus far.

Should you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Rebecca Stanley J.D. Candidate 2014 UBC Law

From: Timothy Stonhouse

Sent: Friday, February 28, 2014 7:04 AM

To: Submissions

Subject: Fwd: Submission re TWU

Attachments: RESPONSE TO LAW SOCIETY OF B C #2.docx

Follow Up Flag: Follow up Flag Status: Flagged

I was not sure if my earlier email was able to be send, so I have taken the liberty of sending my submissions via a different email. Once thank you for your careful consideration of this vital issue.

----- Forwarded message -----

From: **Timothy Stonhouse**Date: Fri, Feb 28, 2014 at 6:58 AM

Subject: Submission re TWU
To: submissions@lsbc.org
Cc: Tim & Marija Stonhouse

Please find enclosed my response to the Law Society of British Columbia's request for submissions. I am a member of the Law Society of Alberta currently practicing part-time in British Columbia under the mobility

rules. I thank you for the opportunity to make a submission and wish you well in this very important task.

Timothy A. Stonhouse Barrister & Solicitor



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Timothy A. Stonhouse Barrister & Solicitor

RESPONSE TO LAW SOCIETY OF B.C.

I have followed with great interest the ongoing narrative of the application by Trinity Western Universities (hereinafter to as TWU) to open a new common law university program in Canada. As a lawyer of twenty-two years experience in Alberta who has recently re-located to British Columbia, I have more than a passing interest in this "debate".

When I went to law school at age 38, I was introduced to a climate where honest intellectual debate was encouraged and diversity was welcomed regardless of ones viewpoint. I was a card-carrying evangelical Christian and was very vocal in my faith. In spite of that I was accepted and went on to practice criminal law (primarily Legal Aid) for over twenty years – for the most part defending individuals who lived lifestyles in stark contrast to my own. As a result of my strong Christian faith (not in spite of it) I treated each client as special and went above and beyond my defense of him or her – in the process doing untold hours of pro-bono work.

I wish to address one final point. Over the past ten years my wife and I have worked closely with Christian law students from virtually all of the Canadian Law schools. We have had them in our home, mentored them and done what we could to make their law school as meaningful as possible. Well not necessarily the rule, we have heard where many students are afraid to openly practice their faith in their law schools. In some examples they have been actually ridiculed and put down. This has happened increasingly in the context of the current debate re TWU. I personally am aware of one student at a BC law school who has seriously considered dropping out of law school. This is precisely what law school should not be about. It should be about honest open debate with the right to hold and express a view even if it is contrary to the popular view of a particular school.

Is the legal establishment really afraid of a new law school, which will amount to approximately 3% of the annual crop of graduates? I sincerely hope not. I urge you to accept the recommendation of the Federation of Law Societies of Canada and welcome the graduates of TWU. You may find that a new crop of lawyers emerge with a passion to help change the world for the better – in large part because of their strong Christian faith the looks for the best in each and every person who is created in the image of God.

From: Richard Swift [rswift@swiftdatoo.com]
Sent: Richard Swift [rswift@swiftdatoo.com]
Friday, January 31, 2014 1:59 PM

To: Submissions Cc: LAWYERS

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Sirs,

Although you have requested "input" regarding the application of TWU for approval of their Law Degrees as meeting the requirements of LSBC but I am not entirely clear on why you are requesting input: I assume that there are criteria that are applicable to any such application (such as that applied in the case of Thompson Rivers University) and it seems to me that it is only the criteria applied in that consideration that are relevant in the TWU matter.

That an institution (albeit private) should be able to practice a discriminatory admissions policy is a matter of some concern to me, as it is no doubt to others. It is particularly distressing to see that such a policy is applicable in the context of "education". Nonetheless, the Jesuits have been in the education business for a long time, as have the Mormons, and their particular view of the world does not appear to have limited their graduates from positions throughout society. Whether their admissions policies for their institutions are equally discriminatory I have no knowledge, but I expect that there is a certain expectation within them of standards of behaviour sanctioned by their faith.

The general law forbids discrimination in employment matters based on, inter alia, religion. So is the LS going down the road of potentially discriminating against people who require adherence to a code of conduct (which is, of itself, a legal model of behaviour) as a factor in determining if these people are qualified academically to practice law? That is indeed a slippery slope: the fact that we know that these people adhere to a particular code of conduct is surely no more of a factor in determing their academic fitness than it is for anyone else applying for admission. As I understand it, the Province has agreed that it is appropriate for TWU to grant the degree. The role of the Law Society is not to second guess that decision but, rather, to evaluate the quality of the degree, absent any other considerations.

While being the arbiter and/or judge of what particular religious zealotry is or is not conducive to the practice of law may be an attractive role for the Law Society, and would undoubtedly require a legion of minions and administrators to guarantee transparency (whatever that may mean), it is, in my view, a role that is inappropriate for the Law Society to engage in.

The "quality" of the degree must be determined absent any extranneous circumstances.

Of course, the next role for the Law Society will be to determine whether or not our members discriminate against any TWU grads for positions as students or associates. So the potential for hiring minions will not be lost if the Law Society restricts its considerations with respect to the quality of the degrees as set out above. I expect that I will by then be retired.

rjs.

Richard J. Swift, Q.C. Swift Datoo Law Corporation 201 - 467 Cumberland Road Courtenay, B.C. V9N 2C5 Tel: 250-334-4461 Fax: 250-334-2335

Email: rswift@swiftdatoo.com

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From: Randy Taneda

Sent: Monday, February 03, 2014 3:17 PM

To: Submissions

Subject: Trinity Western University Law School Application

Follow Up Flag: Follow up Completed

I support the TWU application to open a law school. I would hope that our Law Society will also support it. I think that the graduates will not be significantly different from law school graduates of any other institution.

I recall when the BC College of Teachers objected to the TWU students being somehow tainted by their experience at TWU, the Washington Post sent a reporter to visit the school. His article found no unfair bias and on the contrary was very impressed by the good manners and respect shown by the students on campus. The fact that the Supreme Court of Canada upheld the university makes me think that a similar result would occur if the SCC had to listen to a similar argument but dealing with law students instead of education students.

I would not want to see our Law Society spending a lot of legal fees fighting against TWU. It would be a waste of money.

L. Randall E. Taneda UBC Law grad 1979 practicing currently in Langley BC in the law firm of Fleming Olson Taneda & MacDougall 604-533-3411 ext 102

From: Taylor, Brian [bet@bht.com]
Sent: Sunday, March 02, 2014 4:11 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

Benchers

I have been a lawyer for close to thirty years and this is the first time I have felt compelled to write to the Law Society.

The thought that the Law Society would refuse to allow graduates of an accredited law school in Canada to practice in British Columbia for the sole reason that they chose to go that university over another is truly frightening. To premptively exclude a whole class without any type of due process goes against the very tenets upon which are profession is founded and endures.

In my thirty years of practice I have had the privilege of interacting with hundreds of lawyers on thousands of transactions. I was never once curious nor did I ever inquire as to what their personal belief system might be. My only concern was whether they were competently representing the interests of their client in a manner that was consistent with the rules of our profession. If lawyers, from any law school, are unable to do that there are adequate safeguards in place to address that problem.

If those that suppport the motion to exclude are truly interested in diversity one would think that they would welcome into our profession those with different views than their own. But that is not their interest. This issue is not about human rights or diversity. It is about a small minority trying to premptively exclude from our profession individuals who might have a different belief system than their own.

I urge you in the strongest possible terms to reject the motion to exclude. It would urge you to go farther than that and to reject it with a public denunciation of those who would attempt to marginalize those who do not share their views and who would try to use our profession to further such a narrow and divisive agenda.

To adopt the motion would be to put a lie to all that I have been proud of over the past thirty years...

Brian Taylor

Counsel, Local Government + Real Estate

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WE HAVE MOVED We are now located at our interim office space at Suite 900 – 900 Howe Street Vancouver, BC V6Z 2M4. Our new permanent home will be TELUS Garden, completing in Fall 2014.

From: Kim Thorpe

Sent: Thursday, February 27, 2014 3:04 PM

To: Submissions

Subject: Proposed Trinity Western Law School

Follow Up Flag: Follow up Completed

February 27, 2014

Law Society of British Columbia Attention: Executive Director

Re: Proposed Trinity Western University Law School

Dear Sir/Madam:

As a result of my interest in charitable work with the homeless and disadvantaged in the Downtown Eastside, I have had occasion to speak with several students from TWU who also volunteer there. I was inspired by their spirit of service and enthusiastic participation in outreach programs among the underprivileged. They told me of the many programs TWU offers to encourage students to work in community service initiatives throughout Greater Vancouver and abroad. It was therefore with optimism that I heard about the plans of TWU to establish a law school, recognizing the critical demand for lawyers interested in pro bono work as well as in addressing the desperate need for access to justice among the poor and marginalized in our communities. British Columbia requires many young lawyers to replace its aging bar. Although I am not an evangelical Christian, I believe their choice of sexual practices should not be a hindrance in their goal of founding a law school, and will not affect the ability of these graduates to practice law with integrity and professional standards.

Regards,

Kim N. Thorpe Barrister and Solicitor



Suite 1700 – 1185 West Georgia St. Vancouver, B.C. V6E 4E6

Fax: 604–259–2459

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GEOFFREY TROTTER 604-678-9190 gt@gtlawcorp.com

February 17, 2014

BY E-MAIL (submissions@lsbc.org)

Attention: Executive Director

Law Society of BC 845 Cambie Street Vancouver, BC, V6B 4Z9

Re: Trinity Western Law School

The issue before the benchers later this month and through the Spring is one which calls the Law Society to renew its commitment to some of its most cherished values: the independence of the bar, access to justice for all, and representativeness (diversity) within the profession. I write as a concerned member of the Law Society to ensure that these values are preserved.

The Legal Profession Act provides in section 3 that the Law Society is charged with "uphold[ing] and protect[ing] the public interest in the administration of justice." Two of the statutorily mandated ways in which this objective is to be achieved is by "(a) preserving and protecting the rights and freedoms of all persons" and "(b) ensuring the independence, integrity, honour and competence of lawyers."

The Canons of Legal Ethics are instructive, as they set out the substratum of lawyers' commitments in achieving the public interest objectives of the *LPA*. The Canons provide, in part, that lawyers have a duty to:

- uphold the state's law, and to counsel clients to do likewise;
- treat all parties, counsel, and the courts with civility and respect;
- represent "a client's interests resolutely and without fear of judicial disfavour or public unpopularity"; and
- "endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence that is authorized by law"

The question at hand is how to respond to the present motion in a way which furthers, and does not erode, the foregoing values.

The Constitutional rights of TWU and its future students in relation to the Covenant are ably argued by others, including TWU itself. They have been the subject of a protracted legal battle resulting in a leading Supreme Court of Canada precedent in TWU's favour, which the Federation of Law Societies of Canada's special committee (and the leading Constitutional lawyer whose opinion the committee commissioned) considered would apply in the present case. I do not propose to re-tread this well-worn ground, but I am generally in agreement with the cogency of these legal arguments.

My focus is instead the following: I suggest that permitting the FLSC preliminary approval to stand is consistent with the duties and values which the benchers are charged with protecting. A categorical and pre-emptive rejection of TWU Law graduates as candidates for admission would run counter to those values, and indeed would harm the independence and representativeness of the bar, and in turn access to justice for many British Columbians whose rights and freedoms would be less effectively vindicated.

The independence of the bar is at once a necessary corollary to the Constitutional principle of an independent judiciary, and a fragile status to be vigilantly guarded by all lawyers, and particularly the benchers.

Traditionally, independence of the bar has been seen as a shield to be used against state control imposed from the outside. The opposition to the TWU Law School proposal, however, represents a threat to the independence of the bar <u>from within the bar itself</u> through an abdication of lawyers' duty to vigilantly guard their independence, as lawyers themselves propose to mandate that their peers must <u>agree with</u> (and not simply obey) state policy as a condition of practice.

Independence of the bar requires that the Law Society be intentionally restrained in setting rules of entry which would exclude otherwise-fit applicants on irrelevant grounds, including political or religious belief. It is not such distant memory that non-citizens and racial minorities, for example, were excluded from the bar. As a result, entire classes of residents of this province saw no representation of their minority group within the bar; access to justice suffered, both in perception and reality.

If the Law Society begins to impose uniformity of <u>belief</u> as a condition of membership in the bar, it will turn lawyers' duty to <u>obey</u> the law and to counsel clients to do likewise, into an obligation to agree with the law.

Such an approach will restrict and narrow representation within the bar to those whose beliefs fall within the mainstream of the majority of voters generally. Potential lawyers who hold minority views on matters of substance will be prohibited from entry. In addition to being unjustified discrimination against such potential lawyers, such a policy will deny BC residents who are members of such minority groups from being able to find lawyers with whom they are comfortable; they will be forced to retain counsel in whom they do not have confidence, or to forego legal representation. It will undercut the Law Society's goal of increasing the diversity within the profession such that it reflects the population at large.

I trust that it is self-evident that no lawyer, and no bencher, is likely to agree with the wisdom of every law. Such disagreement is perfectly proper as an embodiment of freedom, and is the lifeblood of legal reform, political action, and *Charter* challenges which are viewed as progressive only in hindsight.

Surely, what is required is for graduates of the proposed TWU law school to receive a legal education which prepares them to become competent lawyers who treat all parties and counsel with respect, and to give their clients accurate legal advice and comprehensive and resolute representation. There is no reason to doubt that they will do so.

In the present case, the benchers are being invited to exclude an entire category of yet-to-be-ascertained TWU Law School graduates from entry into the Law Society on the basis only that the student was willing to sign the TWU Community Covenant, and in particular to agree, for the limited time while studying at TWU, to personally abstain from sexual relations falling outside the traditional definition of marriage.

Let us be clear: the TWU Community Covenant does <u>not</u> permit, much less require, that its signatory discriminate against gay people either while a law student or a lawyer. Indeed, on the very terms of the Covenant itself, the opposite is true – the student is simultaneously agreeing to "treat <u>all</u> persons with respect and dignity."

Marriage in Canada is defined as the union of two persons. A TWU Law School will teach this legal fact, along with the same *Charter* and Human Rights principles as are taught at other law schools. TWU law students will be taught to give accurate legal advice to all of their clients. The only difference will be that TWU graduates will have agreed not to engage in sexual intimacy outside of traditional marriage which is otherwise legal. But this no more means that TWU law graduates will give bad legal advice to gay clients than that they will give bad legal advice to social drinkers whose conduct is also perfectly legal but which the law student/future lawyer has also agreed to refrain from while attending law school, or that TWU law graduates will give bad legal advice to Muslim clients because they have different religious beliefs.

The assumption that those who refrain from same-sex sexual conduct will discriminate against those who do is flawed in both logic and in fact. Its logic makes no more sense than saying that lawyers' duty to obey the law makes them unfit to act for clients who have broken the law. It is wrong in fact as hundreds or thousands of current member of the Law Society hold beliefs on matters of sexual conduct similar to TWU (whether or not they studied there), and are exemplary lawyers who conduct themselves with the utmost in professionalism in relation to all of their clients, irrespective of sexual orientation. Are these exemplary lawyers, if they be voluntary members of religious institutions (churches or otherwise) which have similar beliefs and codes of conduct to TWU, vulnerable to being declared unfit and disbarred? And if not, then why should such a disqualification apply to students who wish to study law at TWU? It is not the Law Society's mandate to disqualify lawyers because of their membership in minority nongovernmental organizations; the Law Society's mandate is to pass judgment only on that lawyer's competence and fitness to practice.

To give effect to the flawed assumption by excluding all future TWU Law graduates from practice is to discriminate against such students on the basis of their beliefs which are protected

by the same *Charter* which guarantees the equality rights being used as a sword by those opposed to them. Ironically, such discrimination on the basis of presumed group characteristics, before the benchers have even had the opportunity to examine these candidates for admission, is precisely what equality rights are supposed to guard against. It is astonishing to suggest that not even a single graduate of a TWU law school will be fit to practice, and that such students will not even be permitted the kind of individualized competence assessment provided to graduates of foreign law schools. The Law Society made a similar mistake just a few decades ago by affirming a universal membership ban on otherwise qualified non-citizens (overruling the unanimous committee resolution to remove that requirement), which resulted in long and embarrassing litigation culminating in a finding of discrimination against the law society (*Andrews v. LSBC*, [1989] 1 S.C.R. 143). This recent experience should give our profession pause in relation to the situation before us.

The fact is, countless lawyers hold beliefs that would be offensive to many, and all of us likely hold beliefs that would be offensive to some. That is one of the faces of true diversity. Where beliefs result in unprofessional conduct by an individual lawyer, the Law Society is right and well equipped to Act. But to make the majority of lawyers' particular conception of right belief the condition precedent for practice is a grave error, and simply falls outside the Law Society's mandate to ensure that its members are fit.

That grave error would also be a great hypocrisy, for it would be for the Law Society to do to future TWU law school graduates exactly what TWU's detractors accuse TWU of doing to its students: imposing a single set of values. The difference, of course, is that if TWU graduates are permitted to apply to the Law Society for admission, aspiring lawyers who do not wish to sign the Covenant can attend other law schools; by contrast, if the Law Society refuses to even consider TWU graduates for admission, aspiring lawyers wishing to exercise their Constitutional rights to pursue their education in association with others of like faith will be prohibited from doing so, for no reason other than the false presumption that their unpopular belief will lead to unprofessional conduct.

This is a difficult issue. There are a number of loud voices. But the Law Society should be one place that does not resolve such issues according to the number of proponents of the different sides either within the membership or in the broader community. This is a matter of principle, and the principle must be: how can the Law Society best discharge its statutory mandate to uphold the public interest in the administration of justice through preserving and protecting the rights and freedoms of all persons and ensuring the independence, integrity, honour and competence of lawyers? I urge the benchers to conclude that it is by maintaining the bar as a big tent which can accommodate true difference, within the bonds of the Canons of Ethics and professional conduct, that this mandate is best discharged.

Yours truly,

Geoffrey Trotter

WILLIAM M. TROTTER, Q.C.

BARRISTER & SOLICITOR, RETIRED

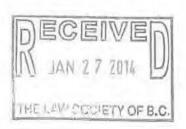
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January 22, 2014

Timothy E. McGee, Q.C. Law Society of British Columbia 845 Cambie Street Vancouver, B.C., V6B 4Z9



Dear Sir;

Certification of Trinity Western University Law School Re:

Please bring this letter to the attention to whichever Law Society body is to deal with the campaign against the certification of a TWU law school.

I suggest that our Law Society ought to resist second-guessing the decision of the Federation on this topic.

However, if the Law Society were to find itself compelled to state a position, it is my view that there cannot be any objection to accepting TWU as a qualified provider of legal education. The reasoning of the Supreme Court in the B.C. teachers case and the careful analysis of commentators, notably Prof. Dwight Newman, ought to govern the view of the Law Society.

Yours truly,

WILLIAM M. TROTTER

From: Lee Turner [lturner@doakshirreff.com]
Sent: Thursday, January 30, 2014 1:41 PM

To: Submissions Cc: Thomas Fellhauer

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

I echo Mr. Sommerey's comments below. There are many jurists and lawyers in North America, and B.C., who are christians. The late Dr. George F. Curtis, the founding Dean of UBC Law School, was a christian I am told, as was Lord Denning M.R., just to name two more well known individuals. TWU has obtained the necessary approvals to move forward with the creation of a law school, and I find it puzzling why our law society would want to enter into a debate now about whether it is appropriate to have a faith based law school. I am a christian and have been a lawyer in B.C. since May 1994. I would hope the Law Society would not stand in the way of this most exciting opportunity for TWU and the students who will have the opportunity to complete their law degree there.

Thank-you for your time and consideration.

Yours truly,

Lee C. Turner

(Professional Law Corporation)



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From: Roy Sommerey

Sent: January 30, 2014 12:33 PM **To:** 'submissions@lsbc.org'

Cc: 'fellhauer@pushormitchell.com'

Subject: Trinity Western University Law School

I support a TWU law degree qualifying a graduate holding it for entry into the B.C. Bar as a lawyer. Law students have always had a choice where they attended law school both within Canada and outside Canada. In B.C. with this recognition, the choices would then be U Vic, UBC, UNBC, or TWU, and even a combination of them.

TWU is an accredited degree granting educational institution which has proven itself both in the real world by continuing to exist and thrive, and in our courts, receiving the blessing of the SCC to grant a teaching degree that must now be recognized by a reluctant and embarrassed BCTF. It would be with considerable irony if the Law Society denied recognition for a law degree granted by TWU, only to have the SCC deciding once again that such conduct was "illegal".

The concerns I have heard expressed about TWU's plans are focused on its faith based origins, and alleged "intolerance" in relation to sexual activity. Interestingly, the concept of a "university" is based in people holding Christian faith and the university was for decades, even centuries, a Christian, faith based organization; our legal system has most of its roots in Christian values which are usually common to most other faiths as well; and it is with considerable irony that the people who express concerns about TWU's plans often demonstrate intolerance towards TWU and its faculty, staff, and students, who may hold different beliefs and values from their own.

While law school can influence the way its students see the world or think about it in the context of the legal interaction between people, the principles taught in law school do not specifically address and teach faith in a creator or higher power. They do include that a person has a right to hold and to practice a faith, albeit within limits set by other recognized legal rights, and to choose when, how, and with whom a person may have sexual relations (outlining that which is illegal --i.e. sexual assaults, sexual acts with a minor, etc.). Unless a law professor's, law student's, or lawyer's faith, values, sexual behavior, etc. leads to conduct which qualifies as criminal or professionally unethical, a law school or a law society has no role in relation to it. There is nothing illegal or professionally unethical about a person having a faith based value system nor signing a covenant to abstain from premarital sex, just as it is not illegal to be an atheist or to be sexually promiscuous (STD's aside), or to abstain from all of it.

Every law student currently attending law school and who has ever attended law school has entered the facility with personal beliefs and values relating to sexual activity, marriage, relationships, and faith in a higher power or creator (whether a deity or just mother nature) which would not be acceptable nor agreeable to all, nor ever expected by anyone to be held by all. Nevertheless, we all attend, learn, most of us graduate from law school, and we learn to do our work in the real world, acting for clients who usually don't share those same beliefs and values, yet we are obligated both by the need to make a living and by our professional duties to do to the best we can for our clients within the legal parameters we are given. If we do run into a value conflict that prevents us from acting (i.e. we are asked to do something illegal or professionally unethical), we can properly decline to act.

There is nothing which the law society is being asked to do by TWU which would in my view justify a "no thank-you" response. I also predict that if you (we?) choose to do otherwise, it will lead to another waste of TWU's financial resources and legal energies, which would be better invested in developing a first class law school, and it would be a waste of the Law Society's financial resources and legal energies, leading to an especially embarrassing rebuke by the Court.

Thank you for considering my comments.

Roy Sommerey Lawyer



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From: Heiko van Eijnsbergen

Sent: Friday, January 31, 2014 12:26 PM

To: Submissions

Subject: Trinity Western Law School accreditation

Follow Up Flag: Follow up Completed

Dear Sirs and Madams

I understand that the issue is that the school calls for students' undertakings to restrict sexual activities except as a person married to a person of a different gender. Marital status and gender are two subjects for redress in a case of discrimination. Were the school accredited, a test case might well soon arise; but then, it may also not. In any event it would be argued on its own merits and a tribunal or court may order appropriate remedies. But it seems ambitious to use the accreditation power for the purpose of manipulating the contemplated conduct of the school in the context of a non-academic issue.

The moral pendulum on the underlying issues has swung rather quickly. I am reminded of Liberia, where, I am told, despite laws in place, punishment for rape was practically unheard of until recently, at least in some regions of the country. Within a few years the pendulum has swung so that reportedly the president of that country either declared or opined that a person charged with rape does not deserve representation by counsel.

I caution against straining logic to achieve a desired end. For example, not long ago everyone knew what constituted 'marriage'. But the non-marriageable also wanted to be 'married'. To achieve this, marriage was converted from a matter of facts generated by millennia of religion and culture to a matter of rights which could be dictated at a whim. A marriage now is a marriage-like relationship ('marriage-like' is the actual definition of 'conjugal', the term which hides the otherwise obvious circularity).

More and more our mores depend less on what is and what has been; and more on what our fashions dictate, and on what we consequently 'want', whether or not we actually want it. We may want to dictate the conduct, moral or legal, of Trinity Western; and for sure it would be fashionable to do so. Even the sombre institutions of the state are pulled into the current fashion. Now fashion invites an accreditation body to arrogate to itself the right to impose on an academic institution a course of conduct in a non-academic sphere, that is to rule not only on the adequacy of what is to be taught but also (by a narrow and hypothetical margin) to whom it will be taught. Indeed some demand such manipulation as a duty; perhaps even a right due to the demanders.

What business is it of Trinity to select their students according to their own morality? Perhaps none; but, subject to human rights issues to be argued when those issues arise, they may have some range of freedom to select. It sometimes seems that our country is slowly turning from freedom to infringement. I believe it makes a difference that there are other law schools to which a non conforming student may go. This is not the case with the accreditation body since there is no other accreditation body to which the law school could turn for approval. Students choosing to refuse the undertaking about sex can go elsewhere if denied. Their freedom is restricted but their conduct is not prohibited. Trinity can not go elsewhere to get approval. Their freedom would be denied; their conduct dictated.

Yours truly,

Heiko van Eijnsbergen

From: TAKO VAN POPTA

Sent: Sunday, March 02, 2014 6:58 PM

To: Submissions Subject: TWU application

Follow Up Flag: Follow up Completed

The The Law Society of British Columbia

As a Trinity Western University grad (BA 1986) I have taken a special interest in their plans to start a law school. During my three years at UBC law school (1986 - 1989) I always felt welcome and never felt discriminated against, even though, while at TWU, I had signed a community covenant similar to the one current TWU students are required to sign. For 24 years I have practiced law and, in my opinion, have never discriminated against anyone because of their beliefs or their life style practices. My only requirement of those with whom I work is that they act honestly and lawfully. Nor during my years as an active lawyer have I ever felt discriminated against even though my evangelical Christian beliefs are generally known. Yet when I read what some people and organizations have been saying about TWU and how their grads are likely to act in the public forum I am dismayed. Surely we are all entitled to our beliefs and surely we may discuss controversial issues in public without being marginalized by those who cannot tolerate non-majoritarian views. From my observation, TWU grads are no more likely, and may even be less likely, to discriminate against people holding opposing views. But today I feel the opposite - there is now discrimination against those holding religious views on social issues. I urge the BC Law Society not to take any action to reverse the earlier decision of the federation of law societies approving TWU's law school application.

Tako van Popta (call date 1990)

From:

Submissions

To: Subject:

Trinity Western University law program Date: Friday, February 28, 2014 5:24:44 PM

The Law Society of B.C.

Re: Trinity Western University Law Program – student conduct issue

Dear Sirs/Mesdames:

In over 20 years of practising law and making countless Court appearances, no judge, nor any opposing counsel has ever asked me about my beliefs (religious or otherwise), nor about my sexual preference or views on sexual preference. My personal beliefs were never relevant to any argument I made in Court nor in any representation of any client in any matter. I doubt, furthermore, that any Judge ever made any decision based on an impression of what my personal beliefs or attitudes might have been.

I am writing this letter in support of a law school at Trinity Western University in Langley, B.C. More specifically, I write in support of the Law Society treating law graduates from Trinity Western University equally to those graduating from other law schools, without any consideration of their personal beliefs or any code of conduct that may apply to students while attending university.

My submission is based on reason, but should those who are considering this matter decide that my personal beliefs are somehow relevant, I state for the record that I consider myself to be a secular humanist.

Some appear to believe that graduates from a Trinity Western law program cannot serve the public in the same manner as lawyers who graduate from other law schools. Their opinion appears to be based on the University's conduct expectations. One fallacy in arguing that these people should be banned from the profession is that it is based on guilt by association. Furthermore, the entire argument is a red herring, considering what lawyers personally believe is their private business, and is in fact protected by our Constitution. Certainly, each student must be considered for membership on his or her own merits. Whether they attended a Jewish, Islamic, Sikh or other law school per se, really has no bearing on their ability to serve their clients.

Surely, the Law Society does not plan to canvas every single applicant for membership on their private personal beliefs and codes of conduct they have been subject to in the past. The Law Society does not want to be seen as the thought police. Ironic indeed, that lawyers historically have risked their lives to advocate for unpopular causes, and only through protection of the right to advocate for those beliefs, have eventually entrenched into Canadian law basic rights, such as "freedom of conscience and religion" and "freedom of thought, belief, opinion and expression". Remember also, that one of the most noble jobs of a lawyer is to advocate for those who need help in expressing their beliefs or in fighting persecution because of those beliefs.

There are many other arguments related to Trinity Western's law program, however, in order to

keep this short, I will not expand on those. See for instance an article by Iain T. Benson in (2013) 71 **The Advocate** pp. 671-675.

I pride myself on being a member of this noble profession, and I hope that the Law Society will make decisions only based on sound reason, without bias against any religion or belief.

Cos van Wermeskerken

From: Ingrid Reynolds

Sent: Monday, February 17, 2014 9:00 AM

To: Submissions

Subject: FW: Trinity Western Law School

Follow Up Flag: Follow up Completed

From: Cecelia von Dehn

Sent: February-16-14 12:28 PM

To: diversity

Subject: Fwd: Trinity Western Law School

Sorry had incorrect letter in e-mail.

Begin forwarded message:

From: Cecelia von Dehn

Date: February 16, 2014 12:21:44 PM PST (CA)

To: policy@lsbc.org
Cc: diversity@isbc.org

Subject: Trinity Western Law School

Feb 16,2014

To Whom It May Concern:

Law Society of BC Vancouver.B.C.

The article in The Sunday Province (Feb 16/14) re "Lawyers raise concerns over TWU "same sex "covenant", states that the Law Society of BC is accepting input from "both lawyers and the general public". Thankyou for this offer as a member of the general public. We do know that TWU's policy is for ALL students regardless of sexual orientation. In Canada we are allowed to define and affirm marriage as being between one man and one woman. We may not agree with the current expanded definition sought out via the court route, but then many of us do not accept or affirm abortion, euthanasia, religious intolerance etc etc. Somehow we have to learn to live with each others differences despite some rulings. I am amazed that lawyers, whose very trade is based on being prepared for conflicting arguments, cannot overcome this issue. It has been demoted to a political advocacy pawn and I think, the general public is losing its patience.

I am also somewhat amused by the signage shown in the article. "Their Grads on the Bench? No Thanks". or "No Anti-Gay Pledge At Law (Society?) . What about all the women lawyers , who are members of LEAF and have signed a pledge that they promote abortion on demand? I am sure I can retrieve the application form of LEAF . What about all the organizations that lawyers may have been, or are members of , which do not promote equality and do discriminate against the pre-born human as not "a person" by fractured legal language? How many are "on the Bench " now and have been? I can refer to a very good example in the BC Court where a judge after 2 days into the trial of a pro-life individual, suddenly removed (recused) herself as she had an obvious traceable conflict of interest. The trial went on with another judge. The "general public"

is not always confidant that biases are removed from court levels nevertheless we live in hope. The opponents of a TWU Law School should also live in hope that their advocacy does not impede the law.

Yours truly, Cecilia (Sissy) von Dehn (Ret. RN)

c/c
Trinity Western University.
BC Minister of Advanced Education
National Federation of Law Societies.
Other Law Societies.



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E-mail: kvolkenant@dvclawyers.com

February 28, 2014

Via Email to: submissions@lsbc.org The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

ATTN: Executive Director Timothy E. McGee, Q.C.

Dear Mr. McGee:

Re: Trinity Western University ("TWU") School of Law

I am writing to support the accreditation of TWU's law school program and the acceptance of their graduates as qualified for bar admission programs in British Columbia on the basis that TWU's proposed educational program (the "TWU Proposal") meets the required standards. Having reviewed the lengthy TWU Proposal, the detailed report and recommendations (the "FLSC Report") of the Federation of Law Schools of Canada ("FLSC"), the TWU Community Covenant (the "Covenant") as well as the recommendations of the FLSC Special Advisory Committee I can find no basis upon which our Law Society should refuse graduates of TWU an equal opportunity to practice law in our province.

If a student were to complete his or her legal education at the law school described in the TWU Proposal it would in my view be discriminatory to exclude that student from the practice of law solely on the basis that they were educated at TWU. We today have many excellent lawyers within our Lw Society and across our country holding undergraduate degrees from TWU. My understanding is that these students would have signed the Covenant while at TWU. Does the Law Society have any evidence that these graduates are engaged in actual discrimination? Are graduates of TWU the subject matter of more professional complaints? Are there more investigations of professional misconduct of graduates of TWU? Is there any evidence that more professional discipline is required for graduates of TWU?

I would respectfully suggest that having a law school at a faith based university will open rather than close opportunities for individuals to join our profession. For a student who considers his or her faith to be inseparable from his or her identity, non-faith based universities and law schools can be places of extreme intolerance, institutions where religious beliefs are ridiculed and where religious views and perspectives are completely excluded from discussion. It has been many years since I attended the University of British Columbia where I received an excellent undergraduate and legal education but I can attest personally to having my own religious convictions and beliefs dismissed

out of hand and ridiculed. It was at times intimidating to be openly Christian within a secular university setting. A law school at a faith based university may create more opportunities for a minority group to enter our profession.

Of course any law school, at a faith based university or otherwise, must meet all current standards for law schools in Canada. The FLSC Report has clearly confirmed that the TWU Proposal does meet the current standards and moreover offers some unique perspectives and opportunities in the areas of small firm practice and charity law. I was particularly encouraged to see that the TWU Proposal emphasizes legal education in the field of social justice. We most certainly need lawyers who are committed to serving the needs of the poor and needy and those who face discrimination of any kind.

I am a Christian lawyer who has served my clients, community and our great profession for almost 27 years as a member in good standing of the Law Society and a member of the Canadian Bar Association. I am concerned that the debate around the TWU Proposal has shifted from the merits of the TWU Proposal itself to whether a person with particular religious beliefs is capable of upholding our barristers and solicitors' oath, the Code of Professional Conduct and Canons of Legal Ethics, and whether someone like me who associates my own identity with my Christian faith is suitable to practice law. My faith has not in any way impaired my ability to practice law, to the contrary my faith has enhanced my awareness of needs, social injustice and my desire to serve clients of any gender, sexual orientation or religious belief with compassion and integrity to the best of my ability in the service of God and man. It is my sincere belief that graduates of TWU Law School will do the same.

In conclusion I would ask our Benchers to provide their full endorsement of the TWU Proposal in reliance upon the comprehensive review and recommendations contained in the FLSC Report.

Thank you for allowing me to share these thoughts.

Respectfully submitted

Called to the BC Bar 1987

From: Mary Anne Waldron [mwaldron@uvic.ca]
Sent: Friday, February 21, 2014 1:17 PM

To: Submissions

Subject: Trinity Western University

Attachments: Law Society submission TWU.docx

Follow Up Flag: Follow up Flag Status: Flagged

Attached please find a submission in support of the accreditation of Trinity Western University's law graduates as eligible for membership in the British Columbia bar.

As a scholar with a research interest in this area (see my recent book, *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, U of T Press, 2013), I submit that refusal to accredit the TWU program is clearly contrary both to Canadian law and to the public interest. I hope that my analysis will be helpful as the Benchers consider this issue. I further hope that my trust in the legal profession is not misplaced and that the Benchers will accept the clear legal and policy position in favour of accreditation, notwithstanding the confusion of many of the arguments raised against it. To do otherwise would be to impose a contested moral judgment on Canadian society in violation of the fundamental freedoms quaranteed by the Charter.

Sincerely, Mary Anne Waldron, Q.C.

Professor Mary Anne Waldron, Q.C. Faculty of Law University of Victoria

Submission to the Law Society of British Columbia regarding the accreditation of the proposed J.D. program at Trinity Western University

February 21, 2014

From: Professor Mary Anne Waldron, Q.C.

As noted in my email, I am writing to support the accreditation of Trinity Western University's law school program and the acceptance of their graduates as qualified for bar admission programs in Canada in general and in B.C. in particular, given that their educational program meets the required standards of the Federation of Law Societies.

I have given considerable thought to the problem involved here and have written about these matters from a scholarly perspective (see my recent book, *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, U of T press, 2013). I hope that in this memorandum, I can clarify the issues and can set out why refusing to admit graduates of a law program at TWU because of the community covenant of the school would be both contrary to the law and contrary to the public interest.

The first important point is that no court or legislature in Canada has ever found it to be discrimination to hold or to express the view that homosexual relationships are immoral or that marriage ought to be confined to one man and one woman. Over the past fifty years, our society has changed its general opinions on this topic. Homosexual relationships have been legal since the late 1960s and same-sex marriage has also been legal in Canada for many years. However, as you know, the fact that certain conduct is legal does not mean that everyone must accept it as moral. To illustrate, sexual relationships between heterosexuals outside of marriage have been legal in Canada for a very long time; however, whether such relationships are sometimes moral, always moral or never moral is still very much a matter of opinion and belief.

Trinity Western University's community covenant is a statement of belief in a moral code grounded on the Bible, and thus on a particular religious belief. Many religious organizations would agree with its propositions and also include in their moral codes condemnation as immoral of a wide range of sexual behaviour, including homosexual relationships. While what we often refer to as "mainline" Protestant churches have tended to change their minds on this moral issue, many other religious bodies (and not only Christian groups, but Jewish and Muslim as well) have not.

Trinity Western University's covenant may appear to go a step further, perhaps, than do the similar moral codes of many religious groups in that it requires a promise from students attending the university to refrain from such conduct. That, however, only makes explicit what is already implicit in the moral codes of many

other voluntary associations of believers. It is clear from TWU's covenant that its primary purpose is to provide an education to those who believe in the same religious set of moral principles as does its organization. This is not uncommon in our society where freedom of religion and freedom of association are fundamental freedoms guaranteed by our Charter.

What then are the arguments to suggest that law students who take their training at TWU ought not to be admitted to the profession? The first argument, that the community covenant is in itself discriminatory, must be rejected. As just discussed, there is no legal authority for that proposition. Indeed, our experience of everyday life illustrates that statements such as are contained in the covenant are not themselves discrimination in the legal sense. Otherwise, a great many organizations such as synagogues, churches, mosques, religious study groups and many private schools would need to be prosecuted and closed.

Under the Human Rights Code of B.C. and, indeed, under similar legislation across the country, illegal discrimination requires that in one of a series of specified transactions (employment, housing, providing services commonly available to the public, etc.), one person must treat a member of a group protected by the Code in a different and prejudicial way. It is thus argued that TWU provides a service commonly available to the pubic (education) and the community covenant in fact makes that service unavailable to members of the GLBTQ community. That argument also cannot be supported.

Nothing in the community covenant prevents a member of the GLBTQ community from attending TWU. This statement is often lightly dismissed as irrelevant. No, it is said, the fact that (for example) a gay man could theoretically be admitted to TWU is irrelevant; he would be effectively barred because he would feel unwelcome. knowing that the sexual conduct that is natural to him is considered a sin and that he could be censured unless he chose to remain celibate. But the question that this argument raises is this: Is it discriminatory for a group to define itself in a way that would make some other groups, and in particular protected groups under human rights legislation, likely to avoid membership? I think that the answer has to be negative. For example, an evangelical Christian would likely feel very uncomfortable and excluded by an organization that practiced the occult. Would this mean, assuming that the occult group was quite ready to provide its services to anyone, that the Christian was a victim of discrimination? I think it would not. One can think of numerous similar examples. In fact, to decide otherwise would seriously impair freedom of association by prohibiting organizations that adopted principles or agendas that were disliked or found offensive by others.

A second method of prohibited discrimination under the Human Rights Code is the publication of discriminatory material. Indeed, this is one of the few situations in which words, without some action, can be illegal discrimination. But I mention this only in passing because it is very clear that statements about the morality of homosexual conduct and same-sex marriage do not cross the line into statements

exciting hatred, as recently held by the Supreme Court of Canada in the *Whatcott* decision. Again, the community covenant cannot be held to discriminate illegally on this basis.

Based on the foregoing, it is difficult to make the argument that the community covenant constitutes illegal discrimination. But it is sometimes argued that even if the community covenant is not illegal, lawyers trained at TWU should not be admitted to the provincial bar because they would not be able to uphold that legal system which makes it unlawful in Canada to discriminate in many situations against persons based on their sexual orientation and provides for same-sex marriage is a legal right. As I have already noted, that a law exists and is valid is not determinative of its moral status. Nor, I suggest, is it essential to be admitted to the bar that a lawyer regard as good, moral or wise every law of the land. In fact, were this to be a requirement, no lawyer would be allowed to take a case challenging a law as unconstitutional; nor would she be able to hold a personal opinion as to how the law should be changed; or believe that certain laws are immoral. Canadian law currently permits abortions up until the moment of birth, without regard to the reason. If a lawyer must believe that to be a moral state of affairs, there are many who ought in good conscience to resign from the Law Society tomorrow. But, in reality, adoption of this argument would seriously damage the legal profession that has had a long tradition of opposition to tyranny and as a defender of unpopular causes.

Additionally, judging homosexual conduct to be immoral does not imply that one would illegally discriminate against persons with differing sexual orientation, unless, of course, the moral judgment itself constituted illegal discrimination which it does not. There is no evidence that those who hold such moral beliefs would exclude people, on the basis of their sexual orientation, from participation in our society contrary to the Human Rights Code. There is also no evidence therefore that lawyers with this belief do or would deny to persons with differing sexual orientation proper representation for their legal rights.

A further argument is sometimes also raised that because it is unlikely that members of the GLBTQ community would attend TWU, this in some way limits the spaces in our legal profession for those with differing sexual orientation. This argument ignores several facts. First, TWU is a private institution. Not being state supported, TWU's choice to found a law school has no effect on the number of places available for law students at state-run universities. Without TWU's program, there will simply be fewer spaces for law students. Second, although TWU's graduates will presumably compete with those from secular universities, it is impossible to say that this will have a negative effect on spaces available to GLBTQ students. Law firms, presumably, will continue to pick from a pool of students that includes not only B.C. students, but from across Canada, without regard to sexual orientation. Given the numbers and the mobility of law graduates, it is impossible to say that this will have any effect at all on spaces for GLBTQ students.

If the community covenant is not illegal and if it is not necessary to be a lawyer that one should believe that morality and the law always coincide, what then is the situation with Trinity Western University and the Law Society? First, as you will be aware, the Law Society, in exercising its statutory functions, is bound by the Charter of Rights and Freedoms. Freedom of religion and freedom of association are two fundamental freedoms guaranteed by the Charter. Their importance is that, like freedom of expression and freedom of the media, they protect the free exchange of ideas and debate and are thus fundamental pillars essential to a democratic society.

What you, as benchers of the Law Society are being asked to do by those who would have you deny access to the profession to properly trained graduates of Trinity Western University is to deny those students their freedom to be trained in an institution that reflects their religious beliefs and their right to associate with one another in the expression and pursuit of those beliefs. You are not, in this case, being asked to strike a balance between the rights of two groups. The GLBTQ community has, in fact, no legal right that TWUs community covenant violates. The covenant is not discriminatory under the law. Further, while it no doubt does cause feelings of exclusion to be told that a particular group finds conduct that many regard as normal and even crucial to well-being to be a sin, no one has a right to have their conduct accepted by another person or by a private organization as moral. To create such a right would be to destroy freedom of conscience and religion and freedom of association.

You are, in fact, being asked to set aside the freedom of conscience and religion and the freedom of association of staff and students at TWU and to impose upon them one side of a contested moral issue: the morality of same-sex relationships. That is not the business of the Law Society of British Columbia, whatever the personal positions of the Benchers on the issue might be. Rather, the business of the Law Society is to have regard to the broader interests of the public. Under the Charter, the public interest includes the defense of the fundamental freedoms, even if fundamental freedoms may be used to promote ideas or positions with which one may personally disagree. Society is not served by a system of justice in which only one side is heard. As lawyers, we accept this when we accept the utility of the adversarial system. Society is also not served by having imposed upon it moral and religious uniformity. Democracy requires the free exchange of ideas and the ability to choose one's faith.

It strikes me that there is a confusion of ideas in the arguments of those who would urge you to deny TWU graduates the right to enter the legal profession. Illegal discrimination is not the same thing as difference in moral belief. Avoidance of discomfort with those who believe in a moral code that differs from one's own, even protection from feelings of exclusion that may come from knowing that others hold differing moral beliefs are not rights protected by the law.

With the change in moral codes that has occurred in Canadian society over the past 60 years, there has emerged a great sympathy for the GLBTQ community and a great

sense of moral wrongdoing for the hurtful and often violent repression that those belonging to this group have suffered in the past. That is no doubt often at the root of arguments that any harm to the feelings of persons with differing sexual orientations must be prevented. But taking an action such as refusing to accredit graduates of an institution committed to a particular moral perspective that differs from that of many in today's society is not the solution to past wrongs. Indeed, it merely perpetuates such wrongs by, in turn, repressing difference when the moral code changes. Breaking the cycle of repression means a commitment to our fundamental freedoms even when that is difficult. Only by recognizing all our freedoms – those of the traditionally religious and those of the secular – can we find a peaceful solution. We must accept and respect difference to be truly free and, in this case, it is clear that respect for difference means that it is in the public interest to recognize graduates of TWU as qualified for admission to the bar.

In my opinion, the Law Society would be acting illegally were it to refuse to accredit TWU's graduates. It would be impairing the freedom of religion and of association of TWU students and staff. Moreover, the impairment cannot be justified under the *Oakes* test. It cannot be justifiable as a limit imposed by law in a free and democratic society because there is no law prohibiting the community covenant of TWU in the context of a private university. Further, imposing a moral position not required by law upon a religious group cannot be in the public interest. The Law Society is not in the position of a moral and religious arbiter of our society; rather, it is to uphold the best traditions of a diverse profession in defense of our constitutional rights. Thus, both public policy and the legal framework of human rights legislation and Charter impel recognition of TWU's graduates.

From: Washington, Penny [paw@bht.com]
Sent: Sunday, March 02, 2014 2:57 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

Although I object to the requirement for anyone to sign such a Declaration in order to attend a post-secondary institution that describes itself as a university, which should be a model of tolerance and open-mindedness, I am concerned that any decision to deny the right to practise to graduates who have presumably in good faith signed the Declaration because they in fact hold a particular religious belief will be successfully challenged as discriminatory. I trust that the Law Society has taken advice on this aspect of the case.

Penny A. Washington

Partner, Health Care

T 604.641.4876 F 604.646.2513 paw@bht.com **Assistant** Danielle Gibbons T 604.641.4551 dma@bht.com

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Bull, Housser & Tupper LLP

WE HAVE MOVED We are now located at our interim office space at Suite 900 – 900 Howe Street Vancouver, BC V6Z 2M4. Our new permanent home will be TELUS Garden, completing in Fall 2014.

From: Mike Weiler [mweiler@HTLN.com]
Sent: Tuesday, February 11, 2014 3:52 PM

To: ea@cbabc.org; Submissions

Cc: Mike Weiler CBA resolution

Follow Up Flag: Follow up Completed

Please record my opposition to the proposal which it appears is intended to discriminate against law students who chose (voluntarily I might add) to gain their law degree from TWU. It would in my opinion be a travesty to have graduates of TWU discriminated against and not allowed to be called to the BC bar. Quite frankly I am appalled that the resolution gained sufficient support to even be placed on the agenda.

Michael Weiler

Michael Weiler* Michael Weiler Employment + Labour Law | Hungerford Tomyn Lawrenson and Nichols 1100 Cathedral Place, 925 West Georgia Street | Vancouver, BC V6C 3L2 T 604 408-5628 | F 604 408-5633 | E mweiler@HTLN.com | W www.weilerlaw.ca and www.htln.com *Michael J Weiler Personal Law Corporation Legal services provided by separate and independent law corporations.

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From:

Lauren Witten Sunday, March 02, 2014 6:47 PM Sent:

Submissions To: Subject: TWU Submissions Attachments: TWU Submission.doc

Follow Up Flag: Follow up Completed Flag Status:

To Whom it May Concern:

Please find attached my submission in response to the Benchers' invitation for input on the Law Society's consideration of TWU's proposed law school.

Kindly advise if there are any issues with the attachment.

Sincerely,

Lauren Witten, J.D.

The Law Society of BC Attn: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Re: Trinity Western School of Law

I write in response to the Benchers' invitation for input in their consideration of the proposed Trinity Western University (TWU) law school. I had the great privilege of attending both TWU for my undergraduate studies in political science and the University of Victoria (UVIC) for my law degree. Each of those educational experiences was integral in shaping me as a lawyer. At TWU, I learned invaluable critical thinking skills and the ability to scrutinize problems from myriad angles. At UVIC, I learned law, advocacy and principles of legal analysis.

I am been blessed to have had some success in the legal realm. I graduated valedictorian from TWU and was the gold medalist at the University of Victoria. I clerked at the British Columbia Court of Appeal, articled with the Ministry of Justice (Criminal Justice Branch) for Criminal Appeals and Special Prosecutions, and am currently a Crown prosecutor with the British Columbia Attorney General.

It would be a mistake to assume that I somehow had to divest myself of my TWU experience in order to succeed in law; quite the opposite. My TWU education has been foundational to my understanding of legal practice. At TWU, I was imprinted with a profound respect for others' views that is rooted in recognition of the contingency of my own. My time at TWU made me more sensitive to diversity of belief and as a result, has made me a better lawyer.

Respectfully, greater danger for prejudice inheres in the assumption of a monolithic worldview than in the articulation of a perspective. Only the latter is conscious of its contingency and thus able to subject itself to scrutiny. This kind of awareness is ultimately a prerequisite for tolerance, not an enemy. Without an awareness of the fact that our values are culturally, temporally and socially located, we are prone to presume the singularity of our views and judge others'. Recognizing contingency facilitates greater respect for divergent perspectives and enables us to appreciate the passion, commitment, and sincerity with which others hold disparate beliefs.

TWU's Community Covenant articulates one such perspective. It asks students to adhere to a conservative sexual ethic during their tenure at TWU. This ethic is explicitly premised on a Christian worldview. It is one component of a larger theological perspective that many segments of Canadian society do not share, but it is one that recognizes its own contingency and is thus capable of self-scrutiny.

The argument that graduates from a TWU law school would be prejudiced in their

practice overlooks the reality that deep-seated and often unspoken views and values are inherent to human experience. Those in the legal profession are not immune, nor does public secular education inure students against the inevitability of perspective. All of us come to the study and practice of law indelibly laden with perspective, be it from a theistic worldview, life experience or a political orientation. Lawyers are adept at seeing multiple sides to problems and arguments. By trade, they are able to set aside personal feelings or preferences for the sake of effective advocacy. Lawyers routinely advance positions they may not personally embrace or condone. Government lawyers may be tasked with defending policies they would not enact. Criminal lawyers may defend individuals who have acted in ways that defy their personal morality. Family lawyers may advocate for persons who have conducted their familial affairs in a manner that is contrary to the lawyer's own relational ethic. The legal profession has never demanded that its members purport to embrace a defined moral worldview and should not. Rather, it should ask that its members act impartially and with integrity, defend the weak and value justice above personal gain. I credit TWU for instilling these very principles in me, all of which I endeavor to apply in my daily practice.

There is unsettling irony in using the banner of law as a blunt mechanism to bar the establishment of an educational institute that subscribes to a divergent perspective, when legal training—and the permanence of the legal profession as a whole—is premised on an assurance that people will perpetually disagree. Law is tasked with sketching the boundaries and rules of engagement for these disputes, not eliminating them.

This is exactly what the Supreme Court of Canada did when it grappled with TWU's community covenant in its 2001 decision: *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31. There, the Majority struck a delicate balance between competing values, recognizing that the meaningful exercise and protection of conflicting rights requires their mutual tailoring and circumscribing. The TWU decision effected this equilibrium by delineating between conduct and belief. It was a principled, if imperfect, means of reconciling equality and freedom of religion in a pluralistic democratic society.

Respectfully, attempts to distinguish the legal profession from the realm of public education—the context of the 2001 TWU decision—are ill conceived. Public education plays an integral role in the moral formation of children and helps prepare them for civic and social participation. Surely the teacher's ability and responsibility to propagate these values at least approximates that of the lawyer's.

I urge the Benchers to consider this issue in view of the Supreme Court's decision, and to give meaningful effect to the established balancing of rights in Canadian society by approving TWU's proposed school of law.

Sincerely,

Lauren Witten, J.D.

From: Mark W

Sent: Sunday, March 02, 2014 6:50 PM

To: Submissions

Subject: TWU Law School Submission

Attachments: Mark Witten Letter re TWU Law School.pdf

Follow Up Flag: Follow up Completed

Please find attached my submission regarding the proposed Trinity Western Law School. Kindly acknowledge receipt and inform me if there are any problems with the attachment.

Thank you,

Mark Witten

The Law Society of BC Attn: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Re: Trinity Western School of Law

I am a lawyer and member of the British Columbia bar. I graduated with a biological science degree from Trinity Western University and a law degree from the University of Victoria. I also attended Medical School at the University of British Columbia, though I chose not to complete that degree. Following law school, I clerked at the British Columbia Court of Appeal and currently practice with the BC Ministry of Justice.

It is with some trepidation that I sit down to write this letter in support of the proposed TWU law school. I have seen the placards stating, "Their grads on the bench? No thanks." As the closest thing to a TWU law grad that currently exists, I cannot help but interpret the anti-TWU rhetoric as an attack on my right to fully participate in my chosen profession as a person of faith. I fear that making my support public could have career implications. It saddens me that Christians should feel this way in a country like Canada.

To start, I can unequivocally say that TWU provided the highest quality education I have ever received. I found it to be an intellectually vibrant campus where students were encouraged to think freely and question their worldview and presuppositions. The classes were small, the professors passionate, and the community unlike anything I have ever experienced. TWU students and professors bear no resemblance to the caricatured religious fundamentalists I have seen described in newspapers and online comment sections over the past several months. The TWU students I knew were passionate about making a difference in the world and deeply committed to social justice. I never met students or professors who exhibited discriminatory or prejudicial views towards the gay community. By contrast, I remember gay rights being a subject that was handled with enormous sensitivity and circumspection.

One of the main arguments I have heard against TWU is that law students who sign the Community Covenant may discriminate against or refuse to accept gay clients. The problem with this argument is that all lawyers have beliefs that sometimes conflict with those of their clients. There is no basis to assume that lawyers who hold religious beliefs will abandon objectivity or fail to satisfy their professional responsibilities when engaged by clients whose views and lifestyles differ from their own. Christian lawyers currently in the profession already conduct themselves in this way; to presume that graduates of a TWU law school would, by virtue of

having agreed to adhere to the Community Covenant while attending TWU, conduct themselves differently, defies logic and inheres a prejudicial attitude towards people of faith.

To give a personal example, during the time I attended TWU (2002-2006) I did not feel at all conflicted in both supporting same sex marriage and signing the Community Covenant. Making an individual choice to abide by a conservative set of community standards does not mean one will discriminate against people that do not hold those values. The guiding principle of the Christian faith is to treat everyone as you would want to be treated.

The TWU law school will be a private Christian school that receives no public funding. Even if the Community Covenant did not exist, I suspect most potential law students would be more interested in attending one of Canada's eighteen public common law schools or six civil law schools. I understand that TWU's intention is to offer an alternative to public, secular institutions that presently have a monopoly on legal education.

I do not know if I would have chosen to attend TWU law school, but I certainly would have appreciated the option. I had several great professors at UVIC, and I would not characterize the experience as a negative one. However, I did often feel marginalized as a result of my religious beliefs and, at times, the classroom environment felt hostile towards Christianity. While most UVIC students openly expressed their sincerely held beliefs and opinions, my Christian colleagues generally kept their heads down and their mouths shut for fear of ridicule. I do not say this to criticize UVIC, but to illustrate that secular legal education is far from neutral. I experienced my legal education as being taught from a distinct ideological perspective. There is nothing inherently wrong with this perspective, but similarly, there is nothing wrong with teaching from a religious perspective. We are a tolerant and diverse enough nation to accommodate both.

To exclude graduates of a private religious law school from the bar on the basis of religious beliefs, however, *is* antithetical to Canadian values of tolerance and pluralism. It would permit the majority to silence and exclude the minority, and runs contrary to guarantees of freedom of religion. During the Law Society bencher interview that is required before being called to the bar, I was told that the interviews were once used to screen communists. Ironically, the only substantive question I was asked in my own interview was whether I thought TWU should be allowed to have a law school. If the Law Society were to find that religious beliefs are a proper basis for excluding people from the bar, it is only natural for Christians to wonder what these bencher interviews could look like in the future.

Consider another example. What if I were to attend TWU for a masters program and sign the Community Covenant as a member of the BC bar. Would that be a proper basis for disbarment? I should hope not. But the difference is tenuous. The quality of the TWU legal education is not at

issue; only TWU's religious covenant is being put forward as the reason why its graduates are unfit for the bar. If the religious covenant is a proper basis for exclusion, why shouldn't current members of the bar that subscribe to that same covenant also be excluded? That questions like these are even engaged is beyond startling to me.

At the end of the day, there is no question that the religious beliefs TWU upholds represent a minority position within Canadian society. The test of tolerance, however, is not whether to tolerate easily palatable beliefs, but rather what to do with distasteful, divergent beliefs that conflict with the dominant worldview. Should we tolerate, or silence and exclude? Fortunately, we live in a country that cherishes freedom and tolerates divergent viewpoints. Indeed, as the Supreme Court of Canada held in the course of affirming TWU's teacher education program, "tolerance of divergent beliefs is a hallmark of democratic society". I trust that the Law Society's decision will ultimately reflect this quintessential aspect of Canadian law and culture.

Sincerely,

Mark Witten

From: Philip Wouda

Sent: Monday, March 03, 2014 10:43 PM
To: Submissions; jvarro@lsuc.on.ca;

Subject: Thoughts on the TWU Accreditation from a gay alum

Good day,

I am a TWU alum, I identify with Christianity, I'm gay, and I will apply for TWU's law school program.

I am a proud TWU alum from the class of 2006 with a Bachelor of Arts. I was privileged to serve the university community for three years as an employed student leader, and will toot my own horn claiming creative license behind the tradition now titled, "Fort Week" - probably the most, highly anticipated and fun week of TWU campus life.

I am a gay man and this may be qualified if you ask Paul, Guillaume, Étienne, Mike, or Marvin and all our witnesses.

I identify with Christianity, and with Christians. I was raised in Christian community in my hometown of Agassiz, BC near Vancouver. I was employed as an evangelical missionary for two years throughout Canada and started a "house church" at SFU, as well as incorporating a church here in Ottawa.

I am not a fan of the Community Covenant's interpretation of biblical scriptures regarding "healthy sexuality," however, I adhered to it once and I can do it again.

I will put in an application to be one of TWU's first law school graduates. If successful, I expect Canadian law societies will recognize this achievement and allow me to practice common law in my country.

But this is a single man writing, could TWU kick me out if they discovered I was a married man?

Thanks for your consideration,

Philip Wouda Gatineau, QC

From: Wright, Jonathan [jjw@bht.com]
Sent: Saturday, March 01, 2014 4:58 PM

To: Submissions Subject: Re: Trinity Western

Follow Up Flag: Follow up Completed

To whom it may concern,

My name is Jonathan Wright. I'm an associate in my first year of call at Bull, Housser and Tupper.

Though I do not believe that Trinity Western's statement of values is fully appropriate, even for a Christian university, I also fail to see how this statement of values would in any way prevent potential lawyers from adhering to the same standards as are currently required of lawyers in British Columbia. If the standard of education at the school would be lacking, this would be grounds for not approving the faculty. But rejecting a school (and its potential graduates) because of the personal beliefs of the school administrators, irrespective of the beliefs of the students, would be wrong.

I know a few TWU graduates, one of whom is homosexual, and each have good and bad things to say about the school (as with any school)--but none has anything but good to say about its standard of education. Lawyers are taught to think critically, and I'm sure this will also be taught at TWU. You would be surprised at the diversity of opinion amongst TWU graduates. The students will come to beliefs on their own, as they may in any school, religious or otherwise. If those beliefs make them unfit for the practice of law (whatever that standard may be) it is the individual who should be sanctioned. At TWU the student ascribes to a code of conduct, but is necessarily free to choose his or her own beliefs for him- or herself.

In sum, I am in favour of the TWU law faculty being approved.

Best regards,

Jonathan Wright

From: Wright, Kevin [KWRIGHT@MCCARTHY.CA]

Sent: Monday, March 03, 2014 7:40 AM

To: Submissions RE: TWU Proposal

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames:

There is no apparent legal basis to deny accreditation to the proposed Trinity Western University law school and I oppose the current efforts to do so.



Kevin Wright

Partner | Associé Financial Services | Services financiers T: 604-643-7983 C: 604-657-3796

F: 604-622-5683 E: <u>kwright@mccarthy.ca</u>

McCarthy Tétrault LLP

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From:

Guy Whitman Wednesday, February 26, 2014 8:18 PM Sent:

To: Submissions

Proposed new Trinity Western University Law School Subject:

Follow Up Flag: Follow up Flag Status: Completed

I write in response to the Benchers' request for input regarding whether Trinity Western University's proposed law program should be accepted by the Law Society as an adequate academic qualification for bar admission. For the reasons outlined below I urge the Benchers to confirm acceptance without unreasonable delay.

I have read the submission of Professor Mary Anne Waldron, Q.C, and endorse all the points she has so ably made without qualification, but would like to add a few comments of my own.

First, I understand that opposition to TWU is based on objections to the statement of beliefs and code of moral conduct which all faculty and students must subscribe to. These objections are basically the same as those rejected by the SCC in its *Trinity Western* decision. As Professor Waldron has shown, no part of this code constitutes legally prohibited discrimination. Otherwise, the Courts in the *Trinity Western* case would have so found, and the result in the SCC would have been quite different.

From all the statements of belief and promises of conduct contained in this code, opponents of TWU have focused only on those dealing with sexual behaviour, in particular the promise to abstain from sexual relations outside marriage, and the belief that marriage must be between two persons of opposite sexes (that must of necessity be a religious belief, and be limited to a "Christian" marriage as defined by TWU's particular religious beliefs, since it is so clearly inaccurate under Canadian law). Opponents of TWU say this is discriminatory, and in consequence it is against the public interest for the Law Society to recognize a TWU law degree.

Now it is clear that this code, whether or not you find it objectionable, is not legally discriminatory. So, however the opposition may be framed, it amounts only to this: I disagree with the moral and religious views of this institution, and for that reason the Law Society should not recognize its program. With all due respect, that is outrageous. The legal profession has always included persons having a wide range of moral and religious beliefs; this is both healthy and necessary simply because none of us has a monopoly on truth. It is in the public interest and the duty of the Law Society to ensure that this continues. The alternatives are frightening.

To illustrate, if the Law Society were to conclude that TWU's code of conduct is so horrendous that persons holding those beliefs are not suitable to be lawyers, it must also begin to question all applicants to determine if they hold those beliefs, so that they can be refused admission. Presumably, to be consistent it must also begin to question its existing members and disbar those who offend this new standard. Clearly this is absurd, not to mention just a bit illegal. In short, just as the state has no business in the bedrooms of the nation, the Law Society has no legal or moral right to control the moral and religious beliefs of its members or of those who wish to be members.

Secondly, TWU's code of conduct is not discriminatory in the sense that its opponents assert. Opponents have targeted TWU because, they say, its code discriminates against gays and lesbians. That is true, but misleading. The code obviously discriminates against all persons who disagree with its precepts. All those potential students and staff who believe, for example, that extramarital sexual relations are acceptable (not a small fraction of our population) are excluded, as are all those whose moral or religious beliefs and practices conflict with other provisions of the code. TWU is discriminatory only in the sense that Kiwanis or the Roman Catholic Church, or any political party, is discriminatory: membership is limited to those who agree with certain principles and accept certain limits on their conduct. This is lawful throughout Canada, and the country would be a much less desirable place to live if it were not.

The fact that this point is so obvious leads one to suspect that the stated reason for opposition is not the true reason, or perhaps not the whole of the true reason. I have no evidence of that, but it is logical, and it would be naïve to assume that proponents of a particular political or ideological position are always completely candid about their motivations. Possibilities which come to mind are, an antipathy to religion in general or for some, a desire to limit competition. Whatever the true motivation, the basic objective is the suppression of dissent and forced conformity. This is neither in the public interest nor within the mandate of the Law Society. To paraphrase Noam Chomsky: "Freedom means nothing if it does not mean the freedom to disagree with me."

Thirdly, the proposed TWU law program will only be of interest to those whose beliefs are compatible with the code. Those who disagree will not apply. If an insufficient number of those people exist, the program will fail and this entire process will be irrelevant. Otherwise, at least some of those who would otherwise attend TWU's law school will instead attend other schools and presumably in due course enter the profession. It is not in the public interest nor does the Law Society have the legal authority to prevent that. To some extent this renders this controversy irrelevant, but the point is more fundamental. If it is acceptable for lawyers to hold different beliefs, as it undoubtedly is, then it must be acceptable for lawyers to express those beliefs. It is illusory to suggest that freedom consists of the right to hold beliefs without the right to express them. Belief is always free, because it is not yet entirely possible to control what people think (although some regimes such as North Korea are working on that). Freedom can only be manifest in conduct, including the free and public expression of those beliefs. It is not in the public interest, nor would it be lawful, for the Law Society to attempt to suppress the lawful expression of opinion by its members. If it cannot do so, then neither can it suppress such opinion indirectly by refusing accreditation to any educational institution on the sole basis that a majority of the lawyers who at any particular time happen to hold the position of bencher, may disagree with them. That is, of course, what the opponents seek to do, and what they are asking the benchers to do; it would be a travesty of justice to accede.

Fourthly, the positions taken by the opponents of TWU seem to a large extent to be those already rejected by the SCC in the *Trinity Western* case. The Court there determined that there was no evidence teachers (mainly) educated at TWU discriminated against gay or lesbian students. The Court further held that if any of them ever did, that person could be disciplined under existing systems. If this is true of teachers who have great influence over the most vulnerable of our society, surely it must also be true of the legal profession. There is no doubt that some present members of our profession would agree with TWU's code, yet they carry out their professional responsibilities impeccably. In the event of failure, I believe the Law Society has sufficient disciplinary procedures at its disposal.

There is one last point I would like to mention. I do so hesitantly because I am not a constitutional lawyer and not particularly knowledgeable in those matters. However, it seems abundantly obvious to me that refusal by the Law Society to grant accreditation to a TWU law program on the basis that its code was discriminatory, would constitute a breach of the Charter rights of freedom of religion, freedom of expression and freedom of association. It cannot be in the public interest for the Law Society to act, well, unlawfully.

Many years ago I was taught, and I still believe, that ours is a great and honourable profession. One of the principal foundations on which our profession rests is our ability to tolerate, and even encourage, dissent among ourselves. In the same way that two barristers can vigorously advocate opposite positions in court yet remain on friendly terms, so we can violently disagree among ourselves on matters of principle without damaging our professional comity. Indeed, out of these disagreements a consensus often emerges which advances the development of the law and the cause of justice. If we all had to hold the same opinions, nothing would change and the law would become moribund. Let us not now diminish what our predecessors have achieved.

Guy Whitman



Attention of the Executive Director Law Society of BC

Vancouver BC Re: Appropriate response to future TWU law graduates

Dear Sir:

Given that the Society is accepting input from the public in the above matter, may I take this opportunity to express my gratitude for being able to respond accordingly.

I am 69 years of age, recently retired and have no connection whatsoever with TWU. I have observed political and legal trends in Canada over the last 50 years or so and believe that the law profession should strive to reflect the diversity we see in the population at large so that all Canadians may have access to legal counsel understanding of their concerns.

With respect to TWU seeking to open a law school, a number of interconnected issues present.

It is axiomatic that law schools do not seek admission to the bar; only individual graduates do. Accordingly, a blanket policy ostensibly directed against a school by reason of an in-house moral covenant unrelated to academic ability or performance, ultimately results not in direct discrimination against the institution, but rather against the students graduating from it. That alone should give us pause to reflect on the wisdom of pre-rejecting potential unknown students graduating from a school as yet not in operation. Even if there was in the minds of some, perceived "guilt" so to speak with respect to an institution, were we to reject out of hand all students graduating from it, this would seemingly exemplify the long-rejected premise of guilt by association.

A) CHOICE AND DIVERSITY

A law school by nature deals with mature students, given the entrance requirements. There are numerous law schools in Canada competing for students, including TWU, and who provide full disclosure of all necessary information to enable prospective students to make an informed choice. Students are intelligent enough to make inquiry of any school they wish, evaluate all relevant information and make such a choice. The question at this point, is whether or not aspiring law students in Canada should have the option to choose a school such as TWU without penalty for doing so. Or do we seek to block their choice by seeking either to challenge the school's status or block graduates' right to enter practice?

At present, TWU has approximately a 4,000 student annual enrolment, about 72% Canadian, the remainder from the US and overseas. The school has some of the highest academic ratings in the country. To my knowledge, no student is required to enroll in TWU; they do so voluntarily and with full awareness of the school's standards with respect to student and staff behaviour

and how that will affect them. It is the same as taking a job; you know the conditions and requirements and either accept them or go elsewhere.

There are many post secondary schools in Canada - in fact most - whose standards differ from those of TWU. And most of these schools profess to support diversity of opinion and expression in this country. And yet a surprising number of Canadian universities and colleges have been found to have intentionally, as a matter of policy, suppressed the rights of some students' freedom of speech based on student viewpoint, where other student viewpoints are not censored. Some of these instances have been taken to court and in a majority of cases the courts have found for the students' right to free speech in the face of clearly proven censorship on the part of the University or college in violation of both their stated principles and Charter right of freedom of speech.

So when we see an environment where some schools of higher learning feel free to act against the free speech of certain of their own students, it is not surprising that we might see similar intolerance towards the rights of other schools that take a different approach to learning. If you would like documentation on censorship among Canadian Universities and Colleges, go to www.jccf.ca Justice Centre for Constitutional Freedoms. They have also defended successfully students' free speech in Canadian courts.

The existence of TWU is but one example of diversity within Canadian higher learning. The question here is, do we really want diversity in Canada as we claim, or do we support censorship, essentially affirming that a school like TWU should not have the right to exist, that students should not have such an option, and if they should so opt, that they should be barred from entrance to the professions? Despite all the expressions of concern about TWU, there are same sex oriented students who have opted to go to there, a school which does not discriminate against them nor bar them entry. And yet, it is being suggested to the law societies that they should discriminate against and reject TWU graduates where the school itself does not do so. The school is inclusive in its admission policies.

B) THE RIPPLES WIDEN

A proposed policy such as this, if ultimately upheld, appears to have the potential for a tsunamigenerating social upheaval, so to speak, giving rise to a wave of intolerance and discrimination across the landscape such as we have never seen in this country.

As we know, decisions in one area of law are regularly cited as precedent to influence significant change in other areas, for good or ill. For example, historically, religious primary, elementary and secondary education is recognized by the Canadian Constitution and especially the Bill of Rights which is more strongly worded in this regard than the Charter. And the Charter expressly disclaims the power to abrogate or derogate from previously existing rights.

In Canada, immature children may be educated in a religious environment during a time when they are less equipped to make mature judgments. If mature students should not have the choice or be penalized for exercising the choice to attend a school like TWU with the standards

they hold and which students agree to voluntarily - then this opens the question whether any religious - affiliated school should have the right to exist in Canada, given that children are even less capable of making mature judgments than are mature students entering law school.

If it is inappropriate to accept at bar a graduate of TWU, based on the in-house covenant of the school, then there is a case to say that a graduate of any Christian or other religious high school could and should, on similar grounds, be barred from entering teaching, medicine, law or most any profession requiring university-level training. After all, if such an in-house moral policy is to be deemed an automatic disqualifier to be a lawyer, what about a doctor, engineer or any other profession? Are we entitled to prejudge that a moral base makes one a less capable teacher, mechanic, architect, judge, public servant and so on?

My member of Parliament is Tim Uppal and who is of Sihk background and whom I resepct. He is a federal cabinet minister. While we may have different religious backgrounds, I have found when speaking with him that we have a lot of common ground when it comes to family values and the like. And this is also true of many people coming here from Asia, Latin America, Africa and elsewhere. As a matter of public voting record, Mr. Uppal voted against the bill to add transgenderism to the Canadian Human Rights Act. So clearly, people of a broad spectrum of religious traditions have serious concerns about how our governments are proceeding in these areas.

In a democratic society such as ours, our elected representatives make the laws while the law profession works within that legislated framework. If it is upheld that it is appropriate to bar people of faith such as TWU graduates and others of similar understandings from working with the laws, then that clearly opens the question as to whether we should further move to bar such people from running for public office and forbid them from taking their seat in the Legislature of a Province or the House of Commons, even if elected. After all, making the law is of greater significance than working within it.

C) INNOCENT UNTIL PROVEN GUILTY

Another matter is the history of opposition to TWU. The BC College of Teachers some years ago launched a complaint against TWU that their graduates would treat people unfairly and discriminate inappropriately. This was pursued to the level of the Supreme Court of Canada. The SCC found for Trinity Western University on the grounds that the concerns raised by the BCCT regarding TWU in the area of potential discrimination against people by reason of sexual orientation were not substantiated.

In December of 2013, the federal Law Society of Canada approved the TWU application to establish a law school, based on evidence submitted with the application and also considering the Supreme Court of Canada ruling in their favour in response to the concerns raised by the BCCT. And since the Supreme Court has already ruled on a virtually identical concern with respect to TWU, it is possible that that decision could be used as precedent in future if TWU law graduates are refused entry to the bar and then proceed to seek damages against a law society by reason of unjustifiable discrimination.

Under Canadian law, people are presumed innocent until proven guilty beyond reasonable doubt. And even in civil law, there has to be a balance of probabilities where the evidence leans more to one side. And even by that standard, the BCCT was unable to substantiate its concerns about TWU. It is one thing to proceed against someone or an entity on the basis of concrete evidence of what has or has not been done. It is quite another to establish a policy of class discrimination against a class of persons in the areas of employment or profession based upon what we think they might or might not do due to their religious beliefs. This is a serious matter and certain to be challenged should it be pursued.

D) ABSTINENCE OUTSIDE OF MARRIAGE

In a nutshell, across the board sexual abstinence outside of marriage seems to be the core policy upheld by TWU and considered objectionable by some law societies. It is well known that there is a certain level of sexual activity among university students in Canada. Some students applying to a school like TWU may have a background supporting abstinence outside of marriage as a value received from their family upbringing. Understandably, they may well seek a school that supports that standard, and accordingly enjoy a more secure environment where they are less likely to encounter unwanted sexual advances. This provides a lot of protection and security, especially for more vulnerable female students who are the most targeted group when it comes to sexual aggression. Whatever their reasons for agreeing to this policy, it provides students and staff a greater level of freedom from threat of unwanted sexual advances or agression.

Is a student to be rejected at the bar because he or she agrees with and has abided by a policy that encourages his or her keeping sexual activity for marriage?

Further, there is another group seemingly overlooked by this initiative. At TWU there are also students and staff who are already married. They also willingly agree to the policy that there shall be no sexual activity outside of marriage - and in their case referring to their own marriage.

If a married man or woman should graduate from TWU and subsequently apply to be accepted to the bar, shall a law society therefore reject him or her for embracing and abiding by a policy where, as it applies to them, they have simply agreed not to commit adultery against their own marriage partner? Have some of our law societies come to the place where they are now prepared, in effect, to stand in opposition to a commitment to marital fidelity? In the case of a TWU married student, this would almost certainly be the logical implication of this proposed policy, if followed.

There is virtually no case evidence to support what is being recommended with respect to future TWU law graduates - to reject them when the school has not opened yet and we don't even know who they are. And is this how we apply being presumed innocent until proven guilty - and to be acted upon by law society in violation of the very principles of law the country is based on? To judge before the fact is literally prejudice and contrary to the very basis of British Common law on which our system is based.

It should be noted that the moral standards of the school apply to the students and staff, not to the outside world they may deal with.

E FREEDOM OF RELIGION AND EXPRESSION

It is not a crime in this country to have a moral belief system and uphold it, whether individually or collectively, although Canadians of late have been harassed and punished for such things as writing a letter of dissenting opinion to the editor of their newspaper. The Federal Human Rights Act s 13, now repealed, made it an offence essentially to say anything that might hurt the feelings of certain groups even if one's opinions were proven true. When a society takes the road of suppressing and penalizing expression of dissenting opinion, that road leads to totalitarianism.

Quebec is a prime example in Canada of escalating official contempt for religious values, forcing their own state faith, so to speak, on religious schools and now seeking to ban religious symbols in various venues. To date, TWU has not even come close to expressing the kind or level of intolerance and discrimination that is coming from some of our public institutions.

F CHOOSE YOUR CARE GIVER

There are numerous instances of suppression of parental rights in education. People are also charged for what is nothing more than expressing an opinion, as is also common under communist and other totalitarian regimes. There are many in his country who will need legal services to defend them from the infringement of such fundamental freedoms as conscience, religion, speech, association and the like.

There are many lawyers in Canada in successful practice and who hold to a value system quite similar to that espoused by TWU. And there are graduates from other law schools who hold to such values. If the law societies wish to be consistent in their desire to exclude such people from the profession, it may be asked: Will their opposition to such people of faith entering the profession (as demonstrated by this initiative) also lead to an internal inquisition to identify and purge from their ranks any and all lawyers among them who hold to faith based principles such as upheld by TWU?

We need to look well before we leap because the potential implications for our fundamental freedoms are significant and profound. In politics, there is an understanding that a seemingly benign and desirable policy objective may not, on closer scutiny, be so benign after all. Hence, the expression "the devil is in the details." And, I respectfully submit, most evidently so in this proposed policy.

I understand that law societies of Alberta and Saskatchewan have responded favourably to having future TWU law graduates enter the profession in those provinces.

I thank you for taking the time to consider this and welcome any comment or question you may

have.

Sincerely Mr. Robin D Wilcox From:
To: Submissions
Subject: TWU Law School

Date: Tuesday, February 25, 2014 8:38:48 PM

To Whom it may concern:

We fully support a Law School at TWU. Thank you.

Rod and Merle Wilson

From: Julianne Yeager

Sent: Friday, February 14, 2014 5:19 PM

To: Submissions Subject: TWU law school

Follow Up Flag: Follow up Completed

Dear Benchers,

I'd like to lend my support to TWU's bid to found a law school.

It seems to me that there have been no complaints from the public regarding the ability of any TWU alumni to conduct their affairs in accordance with the standards and norms of Canadian society. As you'll be aware, the opening of TWU's faculty of education was contested up to the SCC, which held in favour of TWU. There's no reason to believe that TWU lawyers will be any more dangerous to Canadian society than TWU teachers.

Many lawyers in BC hold personal beliefs that are countercultural or may even seem objectionable in today's culture, but successfully keep those beliefs separate from their practice of law. There's no guarantee that a lawyer graduating from UBC law doesn't hold comparable personal standards and beliefs to those who may graduate from TWU in the future (and there is similarly nothing preventing TWU undergrads from attending other BC law schools, graduating with the very beliefs that may be thought to offend, and successfully practicing in BC). There is also nothing proving that those students who do attend TWU ascribe to every tenet of the school's constitution, and in fact many TWU students are not religious at all. The TWU code of ethics contains nothing that is not taught in many churches, mosques and other respected religious institutions throughout Canada - and no lawyer is prevented from attending church, even while in law school! To prevent TWU law school from opening on the basis of its code of ethics, when the LSBC has never objected to the ethics of the churches, mosques, synagogues, temples and gurudwaras attended by thousands of BC lawyers, seems arbitrary.

However I think the most pressing argument in favour of permitting the TWU law school to operate is this: let the law firms and clients decide. If TWU churns out lawyers who are unsuited for the practice of law due to their beliefs or morals (or to academic training that is somehow inferior), the market system will quickly cause the faculty to shut down for lack of interested students.

TWU's education faculty was good enough for the Supreme Court of Canada - why should we assume their law faculty would fall short of the standards of Canada's highest judicial authority? The proper course is to use the existing channels of the LSBC to discipline those lawyers who prove by their actions to be unsuitable for the BC bar - not to prevent an entire class of students from entering, or to censure an institution that has so far not generated particularly offensive students. I pause here to note the excellent reputation within Ottawa's political circles of TWU's Laurentian Leadership Centre and its students and alumni, and the willingness of various federal departments and ministries, including the PMO, to accept interns from the Centre - notwithstanding that they have all signed the university's code of ethics.

Thank you for your consideration. I do hope the LSBC will follow in the footsteps of the FLSC, Ministry of Advanced Education and Supreme Court of Canada and allow the accreditation of TWU law school.

Yours faithfully,

Julianne Yeager, BC articled student

From: Colin Yip

Sent: Saturday, March 01, 2014 2:04 PM

To: Submissions

Subject: Trinity western law school

Follow Up Flag: Follow up Completed

Dear Benchers,

The Canadian Charter of Rights and Freedoms begins with Fundamental Freedoms stating that

Everyone has the following fundamental freedoms of:

- 2.a freedom of conscience and religion
- 2b. Freedom of thought, belief, opinion and expression....

By denying the TWU grads the right to practice law in BC because they graduated from a religious university which believes in traditional marriage, you are discriminating against its students due to the school's religious beliefs and all TWU law grads, even those who may NOT agree with the Community Covenant, will have their Charter fundamental freedoms denied.

If you decide to deny a TWU law grad who has met all the educational requirements to practice law, you will also violated his/her right to gaining a livelihood. I cannot believe a court of law would allow your law society to deny a law student the right make a living because the school he/she graduated from had certain traditional religious beliefs, beliefs that are guaranteed in the Charter, that some people may not agree with. Didn't the supreme court in BC set the precedent in the BC Teacher's Federation case?

What if a TWU law student was in fact gay? Remember TWU does not prevent LBGT students from attending the school and in fact I have read many gay students have graduated from there over the years. How ironic would that be if a gay law student from TWU was denied the ability to gain a livelihood because of your decision. Perhaps your law society will then revise the rule and allow gay TWU law students to practice but not heterosexual? Would this not be blatant discrimination and intolerance against religious people and institutions.

This becomes a slippery slope if you deny the fundamental rights of a graduate from a recognized, fully certified university to make a living. What will be the next attack on religious thought, belief and opinion? Will universities deny accepting grads from all Catholic and Muslim high schools because these religions and the schools promote traditional marriage? Will the law society deny a Muslim person who has taken the BC law exam and required course the right to practice law in BC because this person did an undergraduate degree in Iraq or Iran where

same sex marriage is against the law? How far do you go to be consistent in your principle used to try to deny TWU law students the right to work?

This review is targeted towards a Christian university. I doubt that the law society would target a Muslim university on the same basis. Denying the right of TWU law students shows intolerance and discrimination of a Christian who MAY have traditional views. You could be denying the rights of a TWU grad who is pro same sex marriage but went to TWU for the small class sizes, proximity to their home, special emphasis on a certain type of law, etc.

Lastly, I emphasize three things:

- 1. I have never been a student a TWU, nor has any of my family members. I am Christian and see my religious rights, as guaranteed in the Charter, being eroded by your current threat.
- 2. The CFLS and the BC government has done their due diligence and approved the TWU law school. Your law society is potentially doing an end around to their approvals to try to prevent this law school because some people are intolerant of people's religious beliefs.
- 3. TWU does not discriminate against accepting LBGT students and in fact many have gone TWU.

I hope the law society carefully considers the far reaching legal and other consequences in making it's decision.

Thank you,

Colin C. Yip, Chartered Accountant

Sent from my iPad

Opposed to TWU Law School Application

Re: Consideration of proposed Trinity Western University (TWU) Law School

I am forwarding this submission regarding the proposed TWU law school as a concerned (professional) member of the public. The Law Society of B.C should *not* approve the proposed TWU law school, in my opinion.

My concerns are two fold: discrimination towards a minority group and the granting of a professional law degree from an institution that limits academic freedom.

Given that I have neither legal background nor training, the discrimination inherent in the required signing of TWU's "community covenant pledging not to engage in same-sex intimacy" seems blatantly obvious and explicit to me. Students, as well as all hired staff (ie their instructors) are required to commit to this policy and face expulsion if it is not adhered to. This is contrary to both the Canadian Charter of Rights and Freedoms and to provincial human rights regimes. While there are likely legal arguments/aspects to this of which I am not well informed, this argument against TWU's proposed law school is a clear reason that the Law Society of B.C should not approve the school. I would agree with Elaine Craig's statement: "Institutions with discriminatory policies that are antithetical to fundamental legal values are not competent providers of legal education."

My second concern lies with the granting of a law degree from an institution that violates academic freedom, according to the Canadian Association of University Teachers (CAUT). Finding this concept intriguing, I have explored it and found it to be the foundation of my concept of a "higher education". An institution providing higher education should provide exposure to a wide variety of individuals, both teachers and students with differing viewpoints and life experience. It is clear to me that given the community covenant of TWU that such an environment cannot be provided. This seems particularly important in the education of lawyers - professionals with a duty to, and significant importance to, society at large.

I would like to quote several statements from the Association of American Colleges and Universities (AAC&U) Board of Directors' statement on "Academic Freedom and Educational Responsibility" ². These contributors to higher education are likely to be missing in the TWU environment, given the required community covenant.

¹ Craig, Elaine. "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program." *Canadian Journal of Women and the Law*, 25, no. 1 (2013) pp. 148-170

² Association of American Colleges and Universities: Academic Freedom and Educational Responsibility. Accessed February 23, 2014. Retrieved from http://www.aacu.org/about/statements/academic freedom.cfm

- "In any education of quality, students encounter an abundance of intellectual diversity—new knowledge, different perspectives, competing ideas, and alternative claims of truth."
- "A college or university is a dedicated social place where a variety of competing claims to truth can be explored and tested, free from political interference."
- "In order to contribute to knowledge, scholars require the freedom to pursue their ideas wherever they lead, unconstrained by political, religious, or other dictums."
- "To develop their own critical judgment, students also need the freedom to express their ideas publicly as well as repeated opportunities to explore a wide range of insights and perspectives. The diversity of the educational community is an important resource to this process; research shows that students are more likely to develop cognitive complexity when they frequently interact with people, views, and experiences that are different from their own."

Given the discrimination inherent in the TWU community covenant and my concerns regarding the academic environment as outlined above, I sincerely hope that the Law Society of B.C. does *not* approve the proposed TWU law school.

Respectfully submitted,

Maureen Adamson, BSc (hons), M.D., C.C.F.P., F.C.F.P.

Dr. Maureen Adamson

Medical Coordinator
Hospice Palliative Care
Langley Health Services
22051 Fraser Highway, Langley, B.C. V3A 4H4
PH:604 514 6144 FAX: 604 533 6524

Kirsten K. Anderson

Law Society of British Columbia 845 Cambie Street Vancouver, B.C. V6B 4Z9

Sent by email: submissions@lsbc.org

February 28, 2014

Dear Sirs and Mesdames:

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. As a Charter-affirming lawyer, I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

As you are aware, TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Students who do not comply with the agreement may be removed from the university without readmission. The Community Covenant Agreement is inconsistent with the Charter of Rights and Freedoms and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

I am certain that each one of you has received a myriad of letters concerning the legal arguments that laws schools should not be allowed to discriminate on a constitutionally protected ground. I am writing to ask each of you, particularly any of you who are heterosexual, to consider how you would have felt if when you had been accepted to law school, you would not be admitted unless you signed an agreement that you would not be "sexually intimate" with your legal spouse. This is one potential situation presented by the proposed accreditation of TWU given that the Charter of Rights and Freedoms grants same-sex couples the right to marry. If TWU is accredited, the Law Society of British Columbia will be condoning a school that discriminates against lesbian and gay individuals and sets itself as the arbiter of what constitutes marriage. TWU's Community Covenant Agreement mocks valid legal marriages between homosexual couples and creates an inequality between the marriages of homosexual couples and heterosexual couples. It is incongruous for the Law Society of British Columbia to accredit a law school that openly discriminates against lesbian and gay people. I strongly recommend that you oppose or place conditions on TWU's British Columbia Law Society accreditation. I look forward to a properly balanced and progressive decision from the law society on this important issue.

Sincerely

Kirsten K. Anderson

From: Dain Leguerrier

Sent: Thursday, February 13, 2014 1:13 PM

To: Submissions

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Completed

Dear Sirs:

My name is Dain Antalik. I am a student in the legal administrative assistant program at Douglas College in New Westminster. I aspire to attend the UBC Faculty of Law in the near future.

I write to you today to express my opinion and concerns regarding Trinity Western University's wishes to open a Law School.

As a member of the gay community I have real world experience with exclusion and discrimination. As you are well aware, Trinity Western University requires all students and staff to sign a "Community Covenant" which bars any student from having sexual relation outside of heterosexual marriage. Breach of the Community Covenant is grounds for expulsion.

To be very frank, I don't see it fit that an institution that discriminates on grounds which are beyond the control of students be approved to grant law degrees. Religious beliefs do not have a place in our judicial system. Lawyers are supposed to uphold constitutional rights. It is extremely negligent to produce Barristers and Solicitors who are not concerned about the interests of ALL individuals.

The last thing I would want is to stand in front of a Judge who looks down upon me because of my sexual orientation (which again, is beyond my control).

Yours very truly,

Dain Jozef Antalik

Mia Bacic

BY EMAIL

February 28, 2014

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Benchers of the Law Society

Re: Proposed Law School at Trinity Western University

We are writing, as practicing members of the Law Society of British Columbia (the "LSBC"), to respectfully request that the Benchers deny an application from Trinity Western University ("TWU") requesting that graduates of a proposed TWU law school be accepted to enter the LSBC admission program to practice law in British Columbia. At issue is the Community Covenant that is required of all TWU students, which includes an undertaking to refrain from "sexual intimacy which violates the sacredness of marriage between a man and a woman".

As the Benchers are undoubtedly aware, marriage between same-sex individuals has been legal in Canada since July 2005 with the enactment of the Civil Marriages Act. With the enactment of that legislation, a marriage between same-sex individuals was legally recognized as having the same status as a marriage between two individuals of the opposite sex. The TWU Community Covenant refuses to acknowledge or accept that legal status and is nothing more than blatant discrimination against same-sex couples generally and legally married same-sex couples in particular. As such, it must be seen as being in direct violation of the equality rights guaranteed by the Canadian Charter of Rights and Freedoms.

It is a fallacy to suggest that a legal education can be provided in a vacuum - that the morals, ethics and beliefs of the institution do not necessarily mould and influence the morals, ethics and beliefs of its graduates. By imposing the Community Charter on its students, including its proposed law school graduates, it is suggesting that discriminating against, in this case, same-sex couples and blatantly flaunting the laws of Canada, all in the name of religious freedom, is acceptable. How can it be acceptable that students of the TWU law school are required to enter into an undertaking that is contrary to the Canadian Charter of Rights and Freedoms, in order to study and apply for admission to a profession whose purpose is to uphold that same Charter? Is

it a classic example of "don't do what I do, do what I tell you to do"? The graduates of a TWU law program are, unfortunately, likely to adopt and promote the same discriminatory practices as the TWU itself. As such, they should not be considered to be eligible to practice law in British Columbia.

We suspect that we would not be having this debate if the Community Charter referred to the sacredness of marriage between "men and women of the same race". Religious freedom would not be an acceptable argument to support discrimination against inter-racial couples. Same-sex couples deserve the same rights and protections.

Of course, TWU's faculty and staff are entitled to their own religious beliefs. It can even be argued (although the recent passage of Resolution 14-04-M by the Canadian Bar Association would suggest otherwise) that they are entitled to require that their students give the undertaking required by the Community Charter (so long as they are not, simultaneously, using public money to fund their education programs, or benefitting from any government subsidies or grants). We understand that the proposed TWU legal program will have the academic structure and learning resources that law schools are required to have. However, this should not be the determining factor. Given that graduates of TWU's proposed law program will have been trained in an environment of discrimination and disregard for the law, they should not be eligible to enter the LSBC's admission program or to practice law in British Columbia.

Accordingly, we strongly encourage Benchers to deny the TWU application.

Yours truly,

Kevin Hisko

Mia Bacic

From: Mike Baker

Sent: Thursday, January 30, 2014 1:06 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

Sir/Madam,

Further to the solicitation in today's Law Society E-Brief, I am writing to offer my opinion on the question of the proposed TWU Law School. In my view, TWU's *Community Covenant* is an insult to the progressive values that we as British Columbians and Canadians cherish. They are an institution which, whether they are willing to admit to it or not, discriminates against people on the basis of their sexual orientation. The *Canons of Legal Ethics* refer to serving the interests of justice and acting with honour and integrity, and I fail to see how admitting graduates of TWU - all of whom must sign and abide by (and therefore at least tacitly agree with) the *Covenant* - would contribute to that. On that basis, I feel that I must voice my strong opposition to the Benchers recognizing any TWU Law School as an "approved faculty of law" for the purposes of admission to the Society.

For your consideration,

Michael A. Baker

From: James Ball [JBall@wt.ca]

Sent: Monday, February 03, 2014 6:57 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Thank you for the opportunity to provide a submission with regard to the Law Society's consideration of a law school at Trinity Western University.

Diversity is a key facet of the Canadian identity. While I am in favour of encouraging members from diverse faiths and religions from entering the profession, I am opposed to a law school opening at Trinity Western if the school requires all students to agree and/or sign the Community Covenant as it currently reads.

According to TWU's website, the requirement to sign the Community Covenant Agreement is outlined as:

The Community Covenant is included within the application process, and those applying for community membership should read the statement carefully. Maintenance of one's integrity with regard to the Community Covenant is essential for continued membership in the community. Once a commitment has been indicated through signature, failure to respect the Community Covenant is a breach of personal integrity, a matter which may, in some cases, be of greater concern than the violation itself.

As I understand this, potential students' enrollment is dependant upon signing this Covenant. According to TWU's website, the Community Covenant Agreement requires students to agree to "voluntarily" abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

While I disagree with many of the covenants that are required of students enrolling at TWU, I respect an institution's ability to require students to agree to a certain code of conduct as a precondition of admission. However, with the way the covenant is worded, it is directly discriminatory against gay & lesbian persons who are married.

Canada recognizes that limiting the definition of marriage to that of only between a man and a woman is discriminatory. Requiring, in theory, a gay married couple to refrain from sexual relations while permitting heterosexual married couples to have sexual relations is explicitly discriminatory. This puts gay students in a precarious position of either directly being discriminated against or breaching an agreement in order to obtain a legal education.

The covenant, in my opinion, does not discriminate against non-married gay persons as both heterosexual and gay persons could agree not to have sexual relations outside of marriage. However, once TWU has included a provision that permits heterosexual married persons to engage in sexual relations within marriage, but does not grant same sex couples the same benefit, this is discriminatory and should not be permitted to be a requirement to obtain a legal education at any law school in Canada.

A Charter violation should not be a prerequisite for any student obtaining a legal education in Canada.

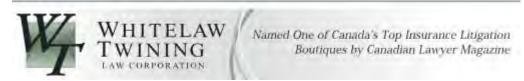
If TWU were to amend the covenant to permit sexual relations between two married persons (regardless of sex), I would not have a problem with the Law Society granting status to the proposed law school. However, as the

covenant contains blatant discrimination against same sex married couples, I do not support the Law Society recognizing a law school at Trinity Western University.

James G. E. Ball

Associate | Whitelaw Twining

Direct: 604-891-7260 | jball@wt.ca | www.whitelawtwining.com



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http://www.whitelawtwining.com/email-policy.aspx

From: Jennifer Ball

Sent: Tuesday, January 28, 2014 2:21 PM

To: Submissions

Subject: TWU Law School Approval Opinion

Follow Up Flag: Follow up Flag Status: Flagged

Hello,

I appreciate having the opportunity to be able to speak out on my opinion on the potential for TWU to become a law school. As a second year student swept into the tide of the legal profession, it seems that there is little that I can have a say over the existing framework, but, as a fierce ally for the LGBTQ community, I am glad for the chance to speak about a matter that is so close to my heart. I have two major complaints about accrediting TWU.

1) The TWU Covenant: I applied for law school, like many, to become a force for change. The legal profession, while generally adverse to change, has been making motions to become more progressive. Law firms have been implementing projects to support diversity within the workplaces. It is this diversity that has been touted as the cure for more fair, accessible and representative justice, which is exactly what Canada should be aiming for. In looking at the evolution of jurisprudence on equality, this is what Canada has stood for. Progression. Inclusion. Equality. To accredit TWU would be a large step backwards for the legal profession and Canadian equality.

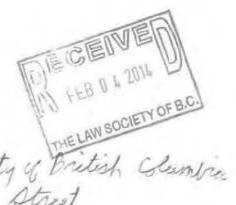
Many opinions will likely be filled with earlier cases surrounding TWU's covenant and subsequent declarations that prohibiting homosexual relations is, in fact, a violation of homosexuals s.15 rights under the Charter. By prohibiting students from engaging in homosexual behaviour, TWU is effectively denying any members from the LGBTQ community safety, security or - quite simply - room to be themselves. This exclusionary practice may work to deter potential LGBTQ applicants from looking to TWU's program. To go to school with the fear that who you are could be the reason you're expelled would be a violating and terrifying experience. In turn, this prevents these individuals from becoming lawyers; thusly continuing to support the already grossly homogenized legal field. TWU would be creating more spaces but only for cisgendered, heterosexual counterparts. This type of discrimination does not belong in Canada and it is precisely this equality and mosaic that Canada has fought for. As a profession that stands for justice, it is completely acceptable to show apathy towards these practices by accrediting TWU.

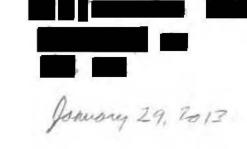
2) The Over-saturation of the BC Market & Legal Field As a Whole

Despite the claim that the opening of new law schools will create access to justice as more lawyers will be working for legal aid and that the competition will drive down costs is a shockingly unrealistic ideal. Law students are generally required to amass thousands of dollars in debt simply to fund their education; as a result they are looking for jobs that will allow them to work towards paying this debt off. If paying jobs no longer exist within the law, they won't turn to legal aid, they will leave the field. Ultimately, having a negligible affect on legal access. Additionally, simply by looking to the east and the current crisis in Ontario because of the inability for law students to find articles gives us a chance to see the terrible consequences of this process. By adding more law schools in Canada and specifically BC will do nothing more than ensure law students are without jobs.

Best,

Jennifer Ball
Second Year J.D. Candidate
University of Victoria
Faculty of Law





The how Docuty of British Clumbres 845 Cambrie Street Danwover, B. (. V6B-429

atty. Executive Priestor

Dear Modern or Der

I write concerning the law setrol that TWV proposes to establish in your province, as a Christian and a lawyer here in Ontain

l'cannot Tolerate intolerance of gay and lestrate peggle et goes against my united Church beliefs and

also the Charter.

low sectors are supposed to test respect for the low, and they are portly government punched I surge your members to step up to the plate on issues that both the Delevation of low societies and the Bi ministry of advanced Education has ducked.

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From: Alisha Bell

Sent: Monday, February 24, 2014 10:37 AM

To: Submissions

Subject: Attention: Executive Director Re: Submissions on proposed Trinity Western law school

Attachments: Letter to Law Society from A Bell Feb 24, 2014.pdf

Follow Up Flag: Follow up Flag Status: Flagged

Mr. McGee,

Please accept the attached submissions expressing my opposition to the proposed law school at Trinity Western University.

Regards,

Alisha M. Bell, B.A.(Hons.), LL.B.

February 24, 2014

Law Society of British Columbia

845 Cambie Street

Vancouver, BC V6B 4Z9

Attention: Mr. Timothy E. McGee, QC, Executive Director

Dear Mr. McGee,

Re: Submissions on proposed Trinity Western University law school

I write in my capacity as a lawyer to express my opposition to the proposed law school at Trinity

Western University. The following submissions are made for the purpose of demonstrating that the

socially harmful aspects of Trinity Western University's policies significantly outweigh any positive

benefits that would flow from the creation of this new law school.

I understand that the proposed law school at Trinity Western University would be partially governed by

a policy which prohibits homosexual activity.

Not only is this policy draconian and offensive, it runs counter to the very purpose of a university law

school: a space for freedom of thought and expression.

I have been a member of the Law Society of British Columbia since 2010. I am a graduate of both Simon

Fraser University and Dalhousie University Law School (now the Schulich School of Law at Dalhousie

University). Holding two university degrees and currently "non-practicing" in an alternative-type legal

career, I have come to understand that one attains a university education in Canada, in law or any

discipline, for one singular purpose: to learn to think freely, without limits. In Canada, a university

education does not give a student job training, nor solidify a career direction. Rather, university

institutions in Canada give students a space to learn, think and express ideas.

The creation of a space to learn, think and express ideas is even more important at a university-level law

school. It is there that students learn about our laws, our moral norms and social policies that shape our

1

society- and not simply in observation, but to dynamically debate and discuss the "pith and substance", value and purpose, of such laws, norms and policies.

A restrictive policy banning forms of sexual "intimacy" (and essentially banning gays, lesbians, bisexuals

and transgendered persons from participating at this law school), would create an exclusive,

homogeneous environment where true diversity could not exist. In effect, this would destroy the forum

required for a law school: a place where students and faculty can be free and speak freely.

I understand that Trinity Western University is a private Institution where religion is paramount.

However, promoting religious views at the expense of a student or faculty member's right to equality is

illogical, and in my opinion, unlawful. I highly doubt that that Law Society of British Columbia would

entertain a proposal from a private institution wanting to create a law school banning "blacks" for the

purpose of protecting its Eurocentric views.

On a final practical note, there are enough law schools in Canada, and especially in British Columbia

(boasting two law schools), such that admission, graduation, articling and call to the bar has become an

extremely competitive process in almost all urban centers. There is little need for another law school;

even less for a law school that fails to respect equality and freedom of thought.

Respectfully,

Alisha M. Bell, B.A.(Hons.), LL.B.

2

Richard J. Berrow [rberrow@fasken.com] From: Sent:

Sunday, March 02, 2014 3:08 PM

To: Submissions TWU Submission Subject:

Follow Up Flag: Follow up Flag Status: Completed

In my opinion we would do well to adopt the same rule as the ABA has adopted to govern the accreditation of law schools in the United States, in the ABA Standards and Rules of Procedure for Approval of Law Schools:

Standard 211. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

(a) A law school shall foster and maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standar ds and rules.authcheckdam.pdf

Although discrimination against members of protected minorities might have to be tolerated in some entirely private settings, as a profession we should not tolerate it in legal education.

Richard J. Berrow | Partner | Law Corporation

T. +1 604 631 3184 | F. +1 604 632 3184 rberrow@fasken.com | http://www.fasken.com/en/richard-berrow

Fasken Martineau DuMoulin LLP

2900 - 550 Burrard Street, Vancouver, British Columbia V6C 0A3

VANCOUVER CALGARY TORONTO OTTAWA MONTRÉAL QUÉBEC CITY LONDON PARIS JOHANNESBURG

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From: Chris Bettencourt

Sent: Friday, January 31, 2014 4:55 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

Dear Executive Director of the Law Society,

I am writing with respect to the Bencher's upcoming decision as to whether Trinity Western University's proposed law school would meed the academic qualification requirements of the Law Society's admissions process.

I strongly believe that all lawyers are entitled to their religious beliefs, and that the bar is strengthened through the diversity of voices, beliefs, and ideologies of its members. It is crucial that the bar reflect the province we serve.

Accordingly, the only issue I have with TWU's proposed law school is TWU's requirement that students, faculty and staff sign an agreement in which they covenant to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." This is clearly discriminatory against the LGBTQ community.

Section 6.3-5 of the BC Code of Professional Conduct states that a lawyer must not discriminate against any person. I appreciate that a lawyer trained in an institution with discriminatory rules will not necessarily discriminate against a person in their practice as a lawyer. I do think, however, that it is very important to consider whether a school with discriminatory practices is itself capable of properly educating law students of their professional obligations under that section. The commentary under section 6.3 provides clear guidance:

"A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws."

I respectfully submit to the Benchers that the above noted commentary must guide them in their decision on this matter. Having a law school in BC that excludes the LGBTQ community will make entering the legal profession more accessible for those who do not identify as LGBTQ.

Law students should be free to attend a school in line with their values, but a school that requires students to sign a pledge that directly conflicts with the BC Code of Professional Conduct is not an institution that should be allowed to educate lawyers. Finally, joining the legal profession has been one of the most rewarding events in my life. Knowing that a young person who identifies as LGBTQ will have less of a chance of attaining this goal than anyone else is deeply disturbing to me.

Respectfully,

Christopher Bettencourt, B.A., LL.B.

From: Jill Bishop [jill@hlaw.ca]

Sent: Tuesday, February 11, 2014 5:32 PM

To: 'scott.campbell@twu.ca'

Cc: Thomas Fellhauer; Submissions; 'ea@cbabc.org'; 'president@cbabc.org'

Subject: LGBT Alumnus Response to TWU's Proposed Law School

Attachments: Jill Bishop - TWU Alumnus Letter.pdf

Follow Up Flag: Follow up Flag Status: Flagged

Dear Mr. Campbell,

I appreciate your desire to hear the stories of LGBT Trinity Western University alumni. I am a lesbian, a wife in a same-sex marriage, a soon-to-be lawyer, and a TWU alumnus. The story of my experience as a lesbian student at TWU is attached.

In the interest of transparency, I have cc'd this email to the British Columbia Law Society, Tom Fellhauer (my Bencher), the Canadian Bar Association, and Dean A. Crawford (President of the BC Branch of the CBA). I look forward to your response and would welcome the opportunity to discuss this important issue.

Sincerely,

Jill Bishop Articled Student



105 - 1195 Industrial Road Kelowna, BC V1Z 1G4 **Phone:** 250.769.7444 ext 113

Fax: 250.769.7124

E-mail: jill@hlaw.ca http://www.hergottlaw.ca

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Scott Campbell Vice President, Alumni & Executive Director TWU Alumni Association

Dear Mr. Campbell,

Re: LGBT Alumnus Response to Trinity Western University's Proposed Law School

I applaud your apparent desire to engage in meaningful dialogue about the important issue of whether Trinity Western University ("TWU") is a suitable place to educate future officers of our court.

I am in a unique position to comment on TWU's proposed law school. I am a lesbian, a wife in a same-sex marriage, a soon-to-be lawyer, and a TWU alumnus. I was a TWU student from 2006 to 2009. I was fortunate to receive early acceptance to law school after completing three years of undergraduate studies. I completed law school in April 2013 and am currently articling.

I found the quality of education at TWU to be phenomenal. I greatly appreciate the small class sizes and accessible professors who are passionate about teaching. Nonetheless, I do not support TWU's proposed law school.

I was in a same-sex relationship when I attended TWU. I had to sign the community covenant on my first day of school. Some would argue that I should have attended at a different university – one where my sexual orientation would be accepted. However, I found myself at TWU for the same reason many law students will (if the proposal is approved). It was where I was admitted. You see, I was raised in a religious home and I was homeschooled. At that time, public universities required that I write an entrance exam because I had not completed the provincial achievement exams. TWU accepted homeschooled students without requiring the entrance exam.

My observations at TWU suggested to me that the community covenant was doing more harm than good. It was apparent that other students were very guarded – not just with me, but with everyone. I found that very few (if any) students were willing to engage difficult issues or share opinions that might deviate from what was expected of a Christian. I also observed professors to tread lightly and avoid voicing opinions that contradicted the covenant. I recall being taught condemnation of homosexuality and although some professors did not condemn it – none condoned homosexual "practice".

I admit that I was also very guarded. I kept my relationship and sexual orientation a secret and I was careful to avoid voicing opinions that might suggest that I was in violation of the covenant. I suspect that other students shared my fear of expulsion, and were careful to conform. We all signed an agreement that we would conform, so the conformity was unsurprising. What is surprising is that TWU now claims to be a place that welcomes diversity. A school that welcomes diversity would not require students to sign away their right to be diverse.

When I compare my experience at TWU to my experience at public universities, the contrast is stark. It was apparent to me that at TWU discussion was filtered, and opinions stifled. Voiced perspectives were incredibly homogeneous and did not foster vibrant dialogue. Unlike students at TWU, I discovered that students and faculty at public universities were open and willing to share opinions that weren't popular.

The diversity of opinion inspired appreciation for the stories and perspectives of others, and challenged pre-conceptions.

In law school, much of the learning occurs through dialogue among students and faculty. The goal is to develop critical thinking and analysis that considers all perspectives. Accordingly, diversity of opinion is essential to the study of law. My law school colleagues provided perspectives from a variety of origins, religions, sexualities, and genders. I am grateful that the forum for our discussions and learning was not hindered by a community covenant. I believe that teaching law in an environment where diversity is condemned would be detrimental to the profession.

I excelled academically at TWU, but hiding my sexuality and relationship had a negative impact on my personal life and my friendships with other TWU students. I perceived a real threat of expulsion if my "deviance" was discovered. The requisite separation between my personal life and my campus life was not conducive to developing friendships with my classmates, as I was forced to maintain secrecy about a significant portion of my life. The covenant added a stressful complexity to my experience at TWU. The effect of the covenant would be magnified in the demanding context of law school, and I am concerned about the impact it would have on students.

I understand that the covenant has evolved since my time at TWU, but some of its shortcomings remain. The prohibition against sexual intimacy that "violates the sacredness of marriage between a man and a woman" is particularly problematic. TWU representatives assure us that this clause has never been enforced. This begs the question: why does it exist at all?

My marriage violates this definition of marriage. The covenant prohibits me from returning to complete my degree unless I am willing to lie. It will prohibit some potential law students from attending, unless they are willing to lie. Is dishonesty the way we wish to begin the education of our future officers of the court? In my opinion, this is contrary to the integrity of the legal profession.

This policy is discriminatory. Heterosexual students are permitted to practice sexual intimacy within marriage, but same-sex married couples cannot. The covenant singles out non-heterosexual married couples, barring them from sexual intimacy that married heterosexuals are permitted to enjoy. This is the exact definition of discrimination as described by our courts.

Whether or not TWU is entitled to discriminate is a hotly contested debate. However, the fact that this debate is necessary should, in itself, disqualify TWU from training the future officers of our courts. A school that contravenes a value of Canadian law should not be permitted to teach the law. Both diversity AND religious freedom should be upheld in all law schools. Any student who attends any law school across Canada is free to practice their religion. Accordingly, any student who attends any law school across Canada should be treated equally despite their sexuality.

Some proponents of the law school cite the *Trinity Western* case to support their position. However, the facts of the law school issue can be distinguished. Denial of the law school's accreditation will not prevent TWU-alumni or Christians from full participation in the marketplace of the legal profession. Both (myself included) are well-represented at current law schools and within the legal profession.

All law schools should not only uphold the *Charter* values of our country, but all law schools should be bound by the *Charter*. A law school is unique: serving as the gateway to the judiciary branch of government. Therefore, regardless of the public or private nature of the institution, all law schools serve a vital public function and should be subject to the standards of a public institution. TWU's covenant violates the *Charter* and fails to uphold the standards of a public institution.

It is beyond dispute that the covenant discriminates against members of the LGBT community. Regardless of whether or not the school is entitled to discriminate, TWU ironically claims to be a welcoming environment for LGBT students, and reassures us that the heterosexual marriage clause has never been enforced. The school claims that this "welcoming environment" is a suitable place for the instruction of our country's law in spite of its own blatant contravention of a value of Canadian law. I hope that the school will demonstrate its commitment to upholding all our country's values (not just freedom of religion) by abolishing its own discriminatory policies. Only then will I consider it a suitable place for the training of future officers of our courts.

You cite I Corinthians 16:13-14 in your email to alumni. Verse fourteen instructs to "do everything in love". The loving thing for TWU to do in these circumstances is to delete the harmful heterosexual marriage clause of the covenant and follow Jesus' example to embrace the outcast. I encourage you to heed his teaching and avoid his description of the Pharisees in Matthew 23:2. Let your actions comply with your claim to be a welcoming school to all.

Sincerely,

Jill Bishop

From: SUZANNE BIZON

Sent: Saturday, February 01, 2014 1:02 PM

To: Submissions

Subject: Approval of Trinity Western University Law School

Follow Up Flag: Follow up Completed

Attn: Executive Director

Dear Madam/Sir:

I am writing to voice my opposition to the approval of a Law School at Trinity Western University ("TWU").

I am now a retired (non-practicing) lawyer, however the education of law students in British Columbia, who will be our future lawyers and judges, remains a very important issue to me.

Our laws currently do not allow discrimination against the LGBTQ community. The legislation which has provided this protection is in my view beneficial for all members of society. In spite of such legislation, LGBT people still experience significant discrimination and violence. The role of the legal profession and the courts is to protect our citizens from discrimination, not to inflict further harm. Yet how can we expect graduates from TWU to do anything but discriminate? It is their belief that such discrimination is acceptable.

I oppose approval of any law school who will educate their students to reject our laws, laws which are in place to protect citizens from harm. I therefore request that you deny TWU's application for the creation of a law school.

Thank you for giving me the opportunity to provide my input.

Suzanne Bizon
(called 1990)

From: Alex Blondin [ablondin@bcli.org]
Sent: Monday, February 17, 2014 11:55 AM

To: ea@cbabc.org; Submissions

Subject: TWU Law School Proposal - Submission

Attachments: TWU Submission.pdf

Follow Up Flag: Follow up Flag Status: Flagged

Dear Law Society Benchers and CBABC National Council delegates.

Please find attached my submission in response to the call for public input on the TWU law school proposal.

Please note that these comments are submitted in my personal capacity, and are not representative of the views of my employer - which has chosen to abstain from making comments on the matter.

Thank you.

- -

Alexandre Blondin Research Lawyer British Columbia Law Institute | Canadian Centre for Elder Law 1822 East Mall, University of British Columbia Vancouver, BC V6T 1Z4

t: 604-822-0981 f: 604-822-0144

e: ablondin@bcli.org

Memorandum

To: The Benchers of the LSBC and CBABC National Council delegates

Re: Recognizing Trinity Western Law Graduates for Admission to the Bar in BC

The following submission will address three issues: (1) the discrimination exemption under s.41(1) of the BC *Human Rights Code*, (2) the likely obstacles which will be faced by the Law Society of British Columbia should they proceed with challenging Trinity Western's graduates' admission to the bar, and (3) other issues worth exploring aside from discrimination.

(1) Trinity Western on Discriminatory Hiring and Admission Practices:

In *Ontario Human Rights Commission v. Christian Horizons*, 2010 ONSC 2105 ("Christian Horizons"), upholding the *Heintz v. Christian* Horizons, 2008 HRTO 22 decision from the Ontario Human Rights Commission, the Ontario Supreme Court examined religious morality clauses by employers towards employees. Essentially, a Christian counselling service for the developmentally disabled fired one of their counsellors when she came out as a lesbian, because her same-sex relationship violated the business' morality covenant. The Court wrote, regarding the argument by the employer that it was exempt from the Ontario Human Rights Code because it is a religious institution primarily serving adherents of its religion:

[14] The main issue before the Tribunal was whether Christian Horizons could benefit from the protection given by s. 24(1)(a) of the Code. A secondary and discrete issue was whether Christian Horizons permitted a poisoned work environment that fostered discrimination against Ms. Heintz because of her sexual orientation.

[15] Christian Horizons conceded that it was discriminating against Ms. Heintz contrary to the Code unless it came within s. 24(1)(a). In dealing with the primary issue, the Tribunal held that in order for Christian Horizons to claim the benefit of s. 24(1)(a) of the Code, it had the onus to prove that (1) it is a religious organization; (2) it is primarily engaged in serving the interests of people identified by their creed and employs only people similarly identified; and (3) the restriction in employment to persons similarly identified by creed is a reasonable and bona fide qualification because of the nature of the employment (the "BFOQ requirement").

[16] The Tribunal found that the first requirement was satisfied. In dealing with the second requirement, the Tribunal found that while Christian Horizons provides opportunities for Evangelical Christians to live out a religious calling, the totality of the evidence and a plain reading of s. 24(1)(a) led to the conclusion that it was not primarily engaged in serving the interests of Evangelical Christians. Rather, it was serving the interests of people with developmental disabilities (reasons, at para. 160). Therefore, it could not claim the exemption in s. 24(1)(a). [emphasis added]

The exemption it refers to in the Ontario *Human Rights Code* is worded as follows:

24(1) The right under section 5 to equal treatment with respect to employment is not infringed where.

(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or

gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment

The exemption is a reasonable one: a local Chinese Immigrants Society branch can exercise a preference to hiring Chinese employees, because it primarily serves the interests of Chinese immigrants. A French immersion school can give preference to hiring French teachers because it is a reasonable and *bona fide* qualification that they actually speak French.

However, the Court found that religious beliefs and counselling are not similarly linked: Christian Horizons was not primarily engaged in serving the interests of evangelical Christians in the same way that an immigration society example – it just happens to be a Christianity-oriented counselling service for the developmentally disabled. In the alternative, the Court found that being an evangelical Christian is not a *bona fide* occupational requirement to give counselling in the same vein as the French teacher example (paragraph 17 of the judgement explains this).

The parallel to Trinity Western University is clear. The BC Human Rights Code contains a similar version of the Ontario exemption:

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has <u>as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons</u> characterized by a physical or mental disability or by a common race, <u>religion</u>, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons. [emphasis mine]

The primary issue with the application for the section 41(1) exception, as illustrated by the *Christian Horizons* case, is the analysis of the primary purpose of Trinity Western. As with *Christian Horizons*, the primary purpose of Trinity Western University is not to promote the interests or welfare of evangelical Christians – but to be an otherwise typical university with a Christian focus.

In his report to the Federation of Law Societies of Canada, Mr. John B. Laskin argued that section 41(1) would protect Trinity Western University, as it did in *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R ("BCCT"). I respectfully disagree. BCCT mentions section 41(1) in its judgement, but does not base its decision on an application of the exception as the issue was not whether or not Trinity Western University is justified in hiring or admitting only Christian staff or students, but rather whether the BC College of Teachers is justified in refusing certification to Trinity Western University graduates. This is an important fact: a **Supreme Court of Canada decision as to whether or not Trinity Western University is exempt under the Human Rights Code has not been made.**

The issue, however, is that the situation faced by the Law Society of British Columbia is not necessarily whether or not Trinity Western is discriminating against gay students – that is something for the BC Human Rights Tribunal to decide once a student gets expelled or denied admission for beaching the morality covenant by being gay, a single parent, a divorcé(e), etc. The morality covenant not only requires students to be heterosexual, but also abstain from premarital sex, extra-marital sex, and divorce – thereby triggering multiple grounds (sexual orientation, family status, marital status) of the *Human Rights Code*. It is within the context of this

issue that Trinity Western University's possible section 41(1) exemption will be examined.

(2) Law Society of BC v. Trinity Western on Admission of Graduates to the LSBC:

At paragraphs 35 and 36 of BCCT, the Supreme Court of Canada offered its opinion on the BC College of Teachers' position that it would not certify Trinity Western University graduates, as they come from a school which requires adherence to a discriminatory morality covenant, and professional regulatory statutes required teachers to not discriminate against students:

In this particular case, it can reasonably be inferred that the B.C. legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. [...]

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society. [emphasis mine]

The Supreme Court of Canada held that the BCCT cannot not prevent Trinity Western University graduates from becoming teachers because they may or may not have discriminatory beliefs along with their religious beliefs. The court drew a line between **belief** and **act** – one can have and/or think discriminatory beliefs, but unless they act upon those beliefs, they may not be targeted for them by others. In this case, since the discriminatory beliefs are entirely wrapped-up in religious affiliation, BCCT's refusal to certify Trinity Western University graduates on the basis of the school's Christian beliefs (as embodied in the morality covenant) is in itself a discriminatory *act* that overshadows any *belief* of discrimination held by the graduates themselves, since there is no evidence that the graduates have/will act on their discriminatory beliefs towards students.

If the Law Society of British Columbia refuses to admit Trinity Western University law graduates to the bar in British Columbia, due to its rules of professional conduct which prohibit lawyers from discriminating against clients, it will find itself in precisely the same situation as the BCCT was in 2001. Should it proceed, Trinity Western University will pursue a suit against the Law Society of British Columbia, relying on the *BCCT* decision which supports its position.

However, if this issue were revisited by the Supreme Court, the discussion about Trinity Western University's morality covenant may be different, as well as the findings of whether or not the BCCT was justified in refusing graduates' accreditation on the basis of their adherence to the morality covenant. The decision pre-dates same-sex marriage in Canada (2005), and the general shift in public perception that has come with 12 years of social progress.

Reading the above-cited paragraphs 35 and 36 today, it is shocking to see the Supreme Court of Canada saying that there is no discrimination against gay students at Trinity Western University,

because gay students can still attend the university (though, according to the Court, they 'may' be discouraged from attending a school whose mandatory morality covenant demonizes them), that nothing will stop them from becoming teachers (unless they are expelled when someone finds out their sexuality, or refused accommodations in the married students dormitories because of their same-sex spouse), and that there is no proof that graduates will not treat gay people fairly and respectfully (after graduating from an institution which requires students to demonize gay students).

Also, as mentioned in a previous previously, this is not exclusive to sexual orientation. The covenant also discriminates on the basis of family status and marital status by requiring students and staff to not engage in pre-marital sex, to not have divorces, to not have children outside of marriage, and so on.

Once again, this is not necessarily an issue of whether or not Trinity Western is discriminating against gay students – that is something for the Human Rights Tribunal to decide. Instead, the Law Society of British Columbia will find itself the same position as the BCCT was in 2001 if they refuse to recognize Trinity Western University graduates as being eligible for admission to the bar. The Law Society of British Columbia must examine whether it is in the position to refuse admission to Trinity Western University graduates on the basis of their Christian education. This will be an *act* of discrimination as defined by the Supreme Court in 2001.

If it chooses to do so, the Law Society of British Columbia will have to justify its decision in some manner, likely using a *bona fide* requirement test; since the law society rules require lawyers to not discriminate against clients, so it is a *bona fide* occupational requirement is to not have discriminatory beliefs. The Law Society of British Columbia's arguments will likely raise the same issues as BCCT, only this time about lawyers with clients rather than teachers with students. The counter-argument by Trinity Western Unviersity will remain the same: graduates may have discriminatory beliefs as a basis of their religious ideology, but so long as they do not act upon them, they cannot be discriminated against. They have the Supreme Court Canada supporting this position.

It is entirely unpredictable whether courts will uphold of the 2001 Supreme Court of Canada decision, or accept the argument that the discriminatory provisions of the Trinity Western University morality covenant are so egregious as to permanently taint the graduates as inadmissible to the legal profession. Should it proceed with barring Trinity Western University graduates from admission to the bar, the Law Society of British Columbia will face this inevitable challenge.

(3) An Alternate Argument - Pragmatism Instead of Discrimination

The Law Society of British Columbia may be better served by advancing arguments opposing Trinity Western University graduates on a more practical level, given that: (1) the current legal market in BC is already over-saturated with new lawyers, and accepting graduates from a fourth BC law school would only aggravate the situation, and (2) graduates from Trinity Western University Law will be at a serious disadvantage in BC due to a perception of inferiority, leading to an influx of stigmatized graduates.

The first issue is surely a taboo subject for law societies across the country. As a new call, I have

experienced first-hand the difficulty involved in getting one's foot in the door in the legal market, and I have also seen my law school colleagues continue to struggle to find articles nearly two years after graduation.

This is not a new issue. I have been told by well-travelled senior lawyers that this same argument was raised when the University of Victoria Faculty of Law was founded in 1975, and was likely raised recently when the Thomson Rivers University Faculty of Law was founded in 2011. However, this is the first time that a new law faculty in BC has been opened so soon after a previous institution (TRU) without allowing the market to adjust accordingly. The University of Victoria Faculty of Law opened nearly a half-decade after UBC Law, and TRU nearly another half-decade after that. The legal community in British Columbia may not be ready yet to adapt to the influx of new graduates from Trinity Western University.

The second issue is also not a new or novel concept. In fact, anecdotal sources have told me that with the opening of TRU, "tiering" has already began in BC – with UBC Law and University of Victoria Law Faculty graduates being seen as superior to TRU graduates. While this may be the case, once graduates from Trinity Western University begin entering the legal market, this tiering will be significantly worsened. TRU Law is new, but it is nonetheless perceived as a 'traditional' law school. By contrast, Trinity Western University graduates will be immediately and irrevocably tainted by the stigma of attending Trinity Western University Law, given the institution's reputation on issues such as this discrimination question, but also its curious goal of providing a Christian-based approach to law, and its outspoken focus on having a "transformational impact" on society by perpetuating their ideology onto others in their later professional practices.

Attending Trinity Western University Law will only result in a disservice for graduates. The only party who will profit from students attending the law faculty will be Trinity Western University itself – as it will demand a high tuition, knowing fully that its graduates will be stigmatized, less employable than their colleagues from UBC, University of Victoria, and TRU, and going out into a very hostile legal market.

The Law Society of British Columbia should oppose admission of Trinity Western University Law graduates to the bar not only for the sake of the graduates themselves, but to send a firm message to the institution that the creation of a law school should be well-planned, well-executed, and well-needed by the community, and not merely a scheme to line one's pockets at the expense of others.

Alexandre J. Blondin Barrister and Solicitor

From: Ellen Bond

Sent: Sunday, February 23, 2014 2:30 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

I urge the benchers not to permit graduates of TWU's proposed law school to enter the lawyer admission program. TWU's policy regarding "sexual intimacy that violates the sacredness of marriage between a man and a woman" not only discriminates against gays, lesbians and others, but is an unjustifiable intrusion into the private life of all students.

Religious freedom entered our constitution as a right for historical reasons, because in the past, members of certain religions were not accorded the same civil rights as other citizens. The concept that "religious freedom" should now be used as a weapon against the equality of all citizens, in a manner that imposes religious behaviour on non-believers, goes completely against the rationale on which the notion of religious freedom was based.

The fact that TWU is a private school (at the moment) and privately financed, should not be a rationale to permit an institution to avoid the principles that now guide our publicly funded law schools.

Yours truly

Ellen Bond Rankin & Bond Barristers & Solicitors 255 1651 Commercial Drive Vancouver, BC V5L 3Y3

Tel: 604 682 3621 Fax: 604 682 3919

From: Graeme

Sent: Saturday, March 01, 2014 12:46 PM

To: Submissions

Subject: re: Trinity Western University Law School

Follow Up Flag: Follow up Completed

To members of the Law Society of BC

As a new Canadian, I came to this country almost 4 years ago and embraced the freedoms and rights that Canadians enjoy.

I am most perturbed to see that an educational institution, Trinity Western University, that blatantly discriminates against a sector of our community could be producing future lawyers who are required to swear or affirm an oath containing the requirement to "uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada..".

I accept that individuals and organisation have a right to religious freedom, but that doesn not mean that all their views and practices are morally or legally justifiable.

In living memory the Dutch Reformed Church in South Africa was a vocal proponent of apartheid. Further back the Southern Baptist Church supported slavery in the USA. Those views of Christian churches are universally abhorrent to us today. More positively, there are Christian denominations that recognize, bless and otherwise respect same-sex marriage.

Trinity Western University's discrimination does not represent the whole Christian religion. Their discriminatory "community covenant" stems from the beliefs of a sect, based and their particular interpretation of the Bible, just as the Dutch reformed Church and the Southern Baptist Church used biblical passages to justify their own vile views.

I urge the Law Society of British Columbia to use it's powers to prohibit any law graduate of Trinity Western University from practising in this Province.

Graeme Boyd Vancouver, BC

From:

Jim Braunagel Sunday, March 02, 2014 11:12 AM Sent:

To: Submissions

TWU Subject:

Follow Up Flag: Follow up Flag Status: Completed

The covenant is discriminatory

Equality rights trump religious freedom

If race were substituted for sexuality, this process wouldn't have made it this far.

In spite of previous decisions, the institution should not be able to practice this discrimination, much less receive accreditation from the state.

I am not sure which is more disappointing, the discrimination of the covenant or the fact that students sign on to a covenant the language of which sounds oddly ancient and crazy. This institution can be faulted for delusional thinking as well as for discriminatory practices.

Finally, no Charter or Human Rights legislation is relevant to this issue. Perhaps of interest to lawyers and from an historical perspective, but not sufficient to be worth injecting into the discussion.

Jim Braunagel

From: Brechtel, Mat [mdb@bht.com]

Sent: Wednesday, February 12, 2014 8:14 AM

To: Submissions

Subject: Proposal - TWU Law school

Follow Up Flag: Follow up Completed

Good morning,

As a member of the LSBC, I write to lend my voice in opposition to the proposed law school at Trinity Western University.

This school has chosen to actively discriminate against individuals in a manner that oppresses their individual liberties and rights. It also links itself to a specific religious denomination, to the exclusion of others. I find it difficult to believe that this school is capable of separating such discriminatory policies, and underlying discriminatory doctrine, from the education they will provide.

Moreover, in light of the existing barriers that exist for historically disadvantaged groups to entering the profession, permitting this school's imposition of an additional barrier on the basis of orientation, and on faith, will exacerbate existing imbalances and send a terrible message to the public about our profession.

I urge the LSBC delegates to oppose the approval of Trinity Western University as a school of law. Access to the law, including to the bar, is a right that should be shared equally, and without discrimination on the basis of orientation or faith.

Mat Brechtel

Mat Brechtel

Associate, Intellectual Property Litigation

T 604.641.4815 F 604.646.2596 mdb@bht.com **Assistant** Tess Lawrence T 604.641.4564 tal@bht.com

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Bull, Housser & Tupper LLP

WE HAVE MOVED We are now located at our interim office space at Suite 900 – 900 Howe Street Vancouver, BC V6Z 2M4. Our new permanent home will be TELUS Garden, completing in Fall 2014.



JANES FREEDMAN KYLE

March 3, 2014

VIA EMAIL submissions@lsbc.org Law Society of BC 845 Cambie Street Vancouver, BC, V6B 4Z9

Attention: Timothy McGee, QC

Suite 340 – 1122 Mainland Street Vancouver, BC V6B 5L1 Phone: 604.687.0549 Fax: 604.687.2696 www.jfklaw.ca

Karey M. Brooks Direct Line: 604.687.0549, ext. 102 E-mail: kbrooks@jfklaw.ca

File No. 9999.004

Dear Mr. McGee:

Re: Accreditation of a Proposed Law School at Trinity Western University

We write on behalf of Janes Freedman Kyle Law Corporation (JFK Law) in response to your request for public input into the Law Society of British Columbia's (LSBC) consideration of Trinity Western University's (TWU) proposed law degree program.

JFK Law submits that the LSBC should not accept the proposed law degree program from TWU law school on the basis that to do so would effect discrimination against LGBT people and would be inconsistent with the values and principles the LSBC is charged with upholding as the regulatory body for the legal profession in British Columbia.

About JFK Law and the Legal Profession's Responsibility to End Discrimination

JFK Law was founded in 2009. Our practice is almost exclusively dedicated to aboriginal law. We provide litigation, regulatory and negotiation services focused on aboriginal people and their issues. We have 14 lawyers and articled students.

As a firm that represents individuals and groups that have suffered grievous current and historic discrimination in Canada, JFK Law has a special concern about ending all forms of discrimination in the law, the legal profession, and legal education. Indeed, given that, in the past, people have been excluded from the practice of law based on their gender, race, or

Women were barred from entering the legal profession until 1912: W Wesley Pue, *The Story of Legal Education in British Columbia*, online: University of British Columbia http://faculty.law.ubc.ca/Pue/historybook/school09c.html>.

religion, JFK Law submits the legal profession as a whole has a special responsibility to ensure that such practices are a thing of the past. This is particularly so given the ongoing underrepresentation and discrimination against these groups within the legal profession, as recognized by this Law Society and others.³

The Covenant is Discriminatory

TWU requires that all students, staff, and faculty of TWU agree to abide by a Community Covenant as a condition of admission and employment. The Covenant requires that "...students and faculty must abstain from sexual intimacy that violates the sacredness of marriage between a man and a woman."

The TWU covenant prohibits members of the Lesbian, Gay, Bisexual and Transgendered (LGBT) community from attending at TWU, or if they do attend, only at considerable personal cost. It is no comfort to LBGT students to say they can attend TWU but only if they forsake a core aspect of their identity. Thus to ban same-sex intimacy is to ban LGBT students. Further, all law students are required to sign the Covenant. Aside from discriminating against LBGT people directly, TWU requires all law students to sanction the discrimination.

The LSBC should take the position that the covenant is discriminatory on its face and discriminatory in its effect.

Religion is No Excuse to Discriminate

TWU claims the right to discriminate based on religious objections by relying on passages from the Bible in support of its Covenant. The Law Society should not approve of any law school that discriminates against LGBT students, even when religious freedom is the rationale. It would be intolerable for any law school to discriminate against women or people of colour or to prohibit inter-racial marriages, on the basis of religious freedom or otherwise. Religious freedom in Canada means we have the right to our religious beliefs, but the right to hold and practice religious beliefs without undue interference from the state must not support a right to discriminate against others, especially in an important area of public life.

² Japanese and First Nations people were barred from entering the legal profession until 1949: *Ibid* http://faculty.law.ubc.ca/Pue/historybook/school09a.html#c9p2.

³ Discrimination and Harassment Counsel, "Ten Year Report," in Equity and Aboriginal Issues Committee, "Report to Convocation" (September 25, 2013), online: Law Society of Upper Canada:

http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2013/convsep2013_equity.pdf; FM Kay, C Masuch, P Curry, "Diversity and Change: The Contemporary Legal Profession in Ontario" (September 2004), online: Law Society of Upper Canada

http://rc.lsuc.on.ca/pdf/equity/diversityChange.pdf; "Towards a More Representative Legal Profession: Better Practices, Better Workplaces, Better Results," online: The Law Society of British Columbia https://www.lawsociety.bc.ca/docs/publications/reports/Diversity 2012.pdf>.

It is Contrary to the Public Interest to Tolerate Any Form of Discrimination in the Legal System

In making its decision about whether to accept TWU's law degree program, the LSBC should consider that non-discrimination is a fundamental Canadian value and should not be sanctioned in *any part* of the legal system, including legal education. Other values such as the basic rights of personal autonomy, freedom of expression and association, as well as the freedom of religion, should be enjoyed by everyone including LGBT people.

Discrimination of any form in any part of the legal system is contrary to the public interest. JFK Law urges the Law Society not to accept the proposed law degree program from TWU.

Sincerely,

Janes Freedman Kyle Law Corporation

Per:

Karey Brooks KMB/dml

From: Adam Brosgall [adam@brosgall.com]
Sent: Thursday, January 30, 2014 11:15 AM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

Dear Sirs/Madams,

I am in agreement with the March 14th letter written by the UBC Coalition of law students and alumni. What TWU is trying to do is simply wrong, and it should not be condoned by the Law Society of B.C. If the Law Society has the power to stop this, it should.

Adam Brosgall | Lawyer | Brosgall Legal

716 – 938 Howe Street, Vancouver, BC V6Z 1N9 Tel: 604-685-2326 Email: adam@brosgall.com

From: George Bryce

Sent: Tuesday, February 11, 2014 11:05 PM

To: Submissions

Subject: A new law school at Trinity Western University

Follow Up Flag: Follow up Completed

The Law Society of BC Attention: Executive Director

845 Cambie Street

Vancouver, BC, V6B 4Z9

I find it stunningly insensitive and blatantly discriminatory that any Canadian law school might make it a precondition for admission or employment that its students or faculty must agree in writing to adhere to an outdated religious dogma, be it a conservative Christian commitment to refrain from so-called non-traditional sexual relationships or a Muslim dictate that women must wear prescribed headgear. There is absolutely NO ROOM for any religious teaching or influence in the study of law, be it Christian or otherwise.

Unless Trinity Western University renounces its *Community Covenant*, I urge the Law Society of BC *not* to approve this educational institution as a law school for students seeking admission to the BC bar. If the LSBC recognizes TWU without this change to its policy undermines the essential non-sectarian nature of the practice of law in this province.

GKB

George K. Bryce

BA, BSc, MHA, LLB



W: www.brycelaw.ca

From: Jake Cabott [jcabott@fasken.com]
Sent: Tuesday, February 11, 2014 4:21 PM

To: Submissions

Subject: Submission regarding new law school at Trinity Western University

Follow Up Flag: Follow up Completed

The Law Society ought to refuse to recognize Trinity Western University as an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

I do not intend to set out the many reasons at length as they have been laid out in detail by others.

It is simply a case of equality. If TWU law school is approved, 60 opportunities to receive an approved legal education will be withheld from a significant portion of the public on the basis of sexual orientation. This is entirely unacceptable given: 1) the scarcity of opportunities to receive an approved legal education; and 2) the necessity that an approved legal education instils in those who receive it an understanding that equality is our Nation's most fundament value.

Jake Cabott | Associate

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From:
Sent: Tuesday, February 11, 2014 6:26 PM

To: Submissions Cc: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

The Law Society of B.C., and all Canadian law societies, ought to refuse to recognize Trinity Western University as an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

The Law Society should NOT accept TWU's law school graduates into their bar admission programs on the basis of its Community Covenant, which requires an undertaking from students to refrain from "sexual intimacy which violates the sacredness of marriage between a man and a woman."

To do so would be un-Canadian. To do so would be contrary to the country's laws and basic social values. Canadians have worked hard and sacrificed much to ensure equality and inclusion is real in our country.

By recognizing TWU as a law school, numerous opportunities to receive an approved legal education would be withheld from a significant portion of the public on the basis of sexual orientation. This is wrong and unacceptable in Canada in 2014.

Laura Cabott

Member of the B.C., Yukon, NWT and NU law societies. Sent wirelessly from my BlackBerry device on the Bell network. Envoyé sans fil par mon terminal mobile BlackBerry sur le réseau de Bell. March 3, 2014

VIA EMAIL: submissions@lsbc.org

The Law Society of BC Attention: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Executive Director:

Re: Trinity Western University School of Law Proposal

As a second year law student at the University of Victoria, I oppose the accreditation of Trinity Western's proposed law school program's graduates on the basis that its Community Covenant, which all students must sign upon admission, constitutes discrimination against lesbian, gay, bisexual, transgender and queer (LBGTQ) individuals. Though there are real and important concerns on both sides of this debate, I urge the Law Society to consider the implications that such a covenant has on the students who attend the school and the public in general. No law faculty will ever be perfect for all students. There will always be challenges and changes necessary for advancements and progress in law. However, I urge the Law Society to take a rigorously contextual approach to the analysis of the accreditation of Trinity Western law graduates.

Lawyers protect and uphold the integrity of justice and equality under the rule of law in Canada. Law students are an integral to such a vision of the law insofar as law schools are the gateway to the profession and, indeed, the judiciary. If a law school is allowed to openly discriminate against LGBTQ students, the profession runs the risk of perpetuating systemic marginalization and discursive violence of LGBTQ individuals under the guise of religious accommodation. Certainly, there is a line between holding a reasonable belief and acting in a discriminatory manner. Yet, surely it is possible to would prevent institutionally-authorized discriminatory conduct being perpetuated and perpetrated against LGBTQ students without compromising a belief system.

Obviously the evidence of the impact of such a covenant on the practice of law has yet to be seen. While I cannot speak to the actions of specific graduates, I can tell you that my experience as a transgender man and mother of two has been that the

pillars of justice, access, and equality suffer when discrimination against LGBTQ people goes unrecognized and unchallenged in the legal system. Two years ago, when my children were taken from me on the basis of my transgender status, I struggled to find counsel that understood my situation. Moreover, the rampant assumptions and stereotypes about transgender and transsexual individuals were hurdles that I needed to overcome even when I was most vulnerable before a judge. Transphobia and homophobia within the current legal regime require, more than ever, a paradigmatic shift. Such a shift will be slow, if not impossible, when legal training includes homophobic and transphobic vows and community policing.

After my experience in the legal system as a trans person, I applied to law school in order to make a difference for queer individuals. I was a mature student with a family of five and a significant undergraduate debt load, and was limited to apply to schools where it was within my financial means to relocate. Had Trinity Western been an option at the time, I likely would have considered that school. As the faculty claims, a law degree from Trinity Western would be as comprehensive as any other law school, a significant factor indeed. However, by virtue of its covenant, Trinity Western essentially puts a quota on the amount of student seats for LGBTQ law students in Canada. I would have had to make the choice to obtain a degree from a school that was reasonable for me to attend and be at risk every day, or maybe to not go at all. Thankfully, I was not faced with that choice, but many other queer individuals will be, particularly those with family, financial barriers, or other marginalizing factors. Access to justice and equality in law demands better.

Thank you for the opportunity to give feedback on this very important issue.

Most Sincerely,

Cole Caljouw

From: Canzer, Matthew [Matthew.Canzer@justice.gc.ca]

Sent: Thursday, February 27, 2014 6:15 PM

To: Submissions

Subject: Trinity Western University - opposed

Follow Up Flag: Follow up Completed

Good afternoon,

These submissions are made on my own behalf and do not represent the views of the Government of Canada.

I am strongly opposed to the approval of TWU being recognized as a qualifying law school for lawyers in British Columbia for two reasons. Either TWU is a discriminatory institution that categorically excludes gay individuals, or it is a hypocritical institution that includes gay individuals as long as they lie about their identities and about their activities. Either way, this institution has demonstrated that it is ill-prepared to train the next generation of lawyers.

TWU's Community Covenant Agreement asks its students, faculty and staff to promise to abstain from sex outside of the marriage of a man and woman. While reasonable people may disagree over whether such abstention is advisable, straight people may resolve to abstain while pursuing relationships that might eventually become sanctioned marriages, allowing for eventual sexual expression. Gay people are offered no such light at the end of the tunnel. The policy discriminates against gay individuals by relying on the false premise that anyone is capable of heterosexual sex, if only gay people would choose it. This is the same false premise that has lead to "pray away the gay" programs that have proven harmful to children, and that have been rejected by the medical and psychological communities. The implicit message is clear: only straights need apply.

Alternatively, if all are welcome at TWU, then gay and straight people are equally being asked to sign an agreement that they will almost certainly violate unless they are married. Very few modern institutions demand sexual abstinence of adults. The catholic priesthood is an exception, and serves as a warning. Children were, and are, routinely sexually abused because adult men were asked to keep celibate; to repress a core human function. The ability to successfully repress sexual activity, while remaining emotionally and psychologically healthy, is not a common one. The vast majority of those who sign the Agreement will break it, even if they do not intend to when they first signed it. The implicit message is clear: promises were meant to be broken.

A law school should be a place where all are welcome without discrimination, and where personal integrity is fostered. TWU's Agreement is antithetical to both of those ideals. I urge you to reject TWU's bid.

Regards,

Matthew Canzer

Counsel | Avocat
Department of Justice | Ministère de la Justice
Public Safety, Defence and Immigration Portfolio |
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Government of Canada / Gouvernement du Canada

Document protected by solicitor-client or litigation privilege: Do not disclose

From: James Carpick [jcarpick@owenbird.com]
Sent: Monday, February 17, 2014 2:14 PM

To: Submissions

Subject: Comments on Trinity Western University's proposed law school

Follow Up Flag: Follow up Completed

The Law Society solicited views from its members as to whether it should approve the opening of a new law school at TWU. These are my views.

I read the Federation of Law Societies of Canada Canadian Common Law Program Approval Committee "Report on Trinity Western University's Proposed School of Law Program" and the Federation's Special Advisory Committee on Trinity Western's Proposed School of Law Final Report.

In my respectful view, the Law Society should refuse to approve TWU opening a new law school.

TWU is a private university. As such, it is exempt from the application of the *Human Rights Code* (BC). It is also unabashedly a religious institution. It thus enjoys the privilege, in the name of religious freedom, of adopting policies that any public institution could not adopt.

There is some suggestion that TWU is not a private institution because it does benefit from receipt of some public funding. That may be true, but my comments are not based on that point.

We must proceed to consider this matter from the fundamental perspective that the Law Society owes TWU no duty to approve its request to sanction the opening of its proposed law school. The Law Society may grant or withhold such sanction as it sees fit.

Naturally, its members would expect the Law Society to respond to TWU's request in good faith, but the Law Society carries no brief for TWU; it should make its decision solely on the basis of what it considers is best for its interests.

Thus, the Law Society should make its decision based on criteria relevant only to its own mandate and interests. To put it another way, it would be inappropriate for the Law Society to approve TWU's proposed new law school on the basis of other criteria.

Section 3 of the *Legal Profession Act* stipulates the Law Society's fundamental mandate:

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

This mandate goes beyond simply applying due process. It is concerned with the merit of any matter in issue as it affects the "public interest in the administration of justice".

The Law Society thus has an interest in how law students are educated. Its mandate does not include operating law schools; but the Law Society can at least approve a new law school, or refuse to recognize the credentials of a candidate for call to the bar whose legal education was at a law school of which the Law Society disapproves, for whatever reason. No one has a right to a legal education or a right to be allowed to become a lawyer, absent at least compliance with the requirements established by the Law Society in the exercise of its discretion.

Before going on, I want to comment on the reports by the Federation and its SAC.

Both reports were narrowly focused. The Federation's report merely determined that TWU's application met the current national standards. It was because it was aware of the narrowness of its report's focus, and the controversial nature of TWU's application, that the Federation struck the SAC, to consider the issues more broadly.

However, even then, the SAC's mandate was still fairly restrictive. The SAC concluded that "...none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies" (para. 65). This sounds broad enough, but the SAC was given the relatively discrete task of advising in effect whether the fact that TWU faculty and students must agree to abide by TWU's faith based values should be an impediment in allowing TWU law school graduates to be called to a provincial bar.

So, the Law Society appears to be the only professional body with the ability or willingness to consider the public interest in the broadest sense of that term. Section 3 of the *Legal Profession Act* defines the scope of that consideration, but is so broad in concept that it imposes no practical constraint on the analysis.

What the Law Society must decide is whether it is in fact a good thing that we have in British Columbia a law school taught at an evangelically theological university.

In my view, TWU is not an appropriate university at which law students should be educated who, upon graduation (and fulfillment of other requirements), would qualify for admission to the bar of British Columbia.

I have two concerns, one general, one more specific.

As a general concern, TWU's reason for being is to educate students from a Christian perspective. From its web site: "Trinity Western is a Christian University [sic].... lives are changed at TWU through its whole-person, Christ-centred approach to education." With respect, there can be no valid "Christ-centred approach" to legal education.

If that's not clear enough, here is TWU's main mission statement:

As an arm of the Church, to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life.

Certainly, as a general proposition, there can be no objection to members of any faith (or no faith) establishing institutions for educating students from that perspective. But I submit that law students must *not* be educated from any such perspective. Lawyers must be independent, competent, and act with honour and integrity. These values are undermined by an education that is biased to one perspective. (What legal analysis can be expected from a lawyer with a "thoroughly Christian mind?") The "Great Commission" refers among others to the Bible passage in Matthew 28:18-20; basically, admonishing all Christians to proselytize and convert all non-Christians to the faith. Given that British Columbia is increasingly secular and non-Christian, it would be surprising and offensive to many people if the Law Society endorsed such a commission.

I am not saying that a Christian, or a Jew, or a Hindu, or a Sikh, or a person of any faith, or no faith, cannot be as unbiased as humanly possible as a practicing lawyer. We all have our own perspectives and we cannot entirely change who we are. But we British Columbia lawyers do (or should) acknowledge that the dictates of the law, and our *Code of Professional Conduct*, govern us and must take precedence over whatever personal inclinations we have. Religious legal education gnaws away at that principle.

For example, one of TWU's core values states, "Both individually and corporately Trinity Western wholeheartedly embraces all the Bible teaches in regard to faith, ethical commitments, and way of life, believing it to be the ultimate standard of truth and hope." This conflicts with s. 3 of the *Legal Profession Act*. Another TWU core value states, "God calls His followers to influence both individuals and the culture in which they live and ultimately draw people to Him. Trinity Western's programs encourage thought, word and deed that affect the dynamics and institutions of our society on the basis of biblical principles such as justice, mercy and hope." Ditto.

If that's not enough, TWU further states this as a core value: "We believe the Scriptures, both Old and New Testaments, to be the inspired Word of God, without error in the original writings, the complete revelation of His will for the salvation of men, and the Divine and final authority for all Christian faith and life." TWU goes on to make this interesting assertion: "We live in a world that increasingly asserts and promotes pluralism not plurality in the sense of an increased demographic and cultural diversity in the nation which we embrace and welcome because all people are created in God's image but a philosophical pluralism that denies ultimate truth." It's a little hard to understand what is meant here because it's a run-on sentence, but from the context what is meant is that multiculturalism (plurality) is OK as long as Christian principles (i.e., the infallible word of the Bible) govern – a big no to pluralism (which is recognition of more than one ultimate principle).

I could go on and on but I trust these examples suffice to at least cause the Law Society to cast a critical eye on what it is exactly that TWU is really planning to do if given the power of operating a law school. I cannot imagine that TWU actually intends to educate law students in all respects in a way that our pluralistic society would desire. To educate students as our pluralistic society would wish would be contrary to the very ethos TWU explicitly embraces.

I note that TWU responded to inquiries along these lines by advising the Federation in effect that it will teach constitutional and human rights law, and legal ethics, as is, and not from any skewed perspective. That's only reassuring if we can assume that the study of law at TWU will be exempt from its general pedagogical principles, examples of which are set out above. In reality, we should expect that however technically correct the teaching of existing legal principles may be at its law school, TWU's pedagogy will affect how law students will be taught there, and this is not a good thing.

The SAC disagrees with me on that point, asserting in effect that there's no reason law can't be taught by a religious law school, as if teaching law is no different than teaching history or any other subject. I part company with the SAC here, for the reasons expressed above. For reasons too numerous to mention here, the study of law is not like the study of any other subject; it is one thing to have each professor bring his or her

perspective to a law school; but it is another thing entirely to have a law school wholly dedicated to one perspective.

My more specific concern has to do with TWU's notorious anti-gay policies, and one related point.

All students who seek to enroll at TWU must sign a "Community Covenant Agreement". It sets out much of what is noted above and other things as well.

One specific requirement is: "observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce." One specific admonition is to refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." Later, this is stated: "...according to the Bible, sexual intimacy is reserved for marriage between one man and one woman...." Of course, according to TWU, the Bible is the word of infallible God.

While TWU cannot be made to stop enforcing these policies because it is a private institution, the fact is that the policies are discriminatory. A gay couple, lawfully married under Canadian law, cannot attend TWU without pledging to remain celibate. A heterosexual couple attending TWU would face no such offensive intrusion into their personal lives. Perhaps no rational gay person would attend TWU, but that creates a problem when TWU controls some of the limited resource of law school places. If more places are needed – I'm not aware of any evidence to demonstrate that's so – they can surely be found at other, existing law schools. It is also no valid answer to the criticism to say that, if gay people don't like TWU's policies, they should go to law school elsewhere. The proper point of view is to say that if TWU wants to have such policies, it cannot have a law school.

By allowing TWU to operate a law school, we as a Law Society would be saying to gay persons that we consider them to be lesser human beings, and deserving of less from the law and the Law Society, than heterosexual persons. We would be saying this by sanctioning a religious university to operate a law school generally according to doctrines that exclude and demean such persons, in a way that would be illegal if the university were not private.

This attitude is contrary to the principle that the Law Society must preserve and protect the rights and freedoms of all persons. It is thus contrary to the public interest in the administration of justice.

Of course, anyone who wishes to attend TWU also has to sign a "statement of faith" certifying that Jesus Christ is their Lord, and related matters, so TWU law school is effectively also closed to any non-Christian. This is equally objectionable, for the same reasons.

So, in my respectful view, the Law Society should decline to sanction a new law school at TWU.

The views expressed herein are my own, personal views, not those of my firm or any of my colleagues, and I am solely responsible for them.

James L. Carpick

My contact details at my firm are:

James L. Carpick*
Barrister & Solicitor

(604) 691-7560 | Mobile (604) 787-6200 Direct Fax (604) 632-4439 jcarpick@owenbird.com

From: Jessica Campbell

Sent: Friday, February 28, 2014 10:07 PM

To: Submissions Subject: Submophobia

Follow Up Flag: Follow up Completed

To whom it may concern,

I do not support the Trinity Western University Law programme that excludes LGBTQ people unless they are celibate.

This kind of philosophy is harmful because it is homophobic, and violates people's human rights. It also legitimizes the view that LGBTQ people are inferior or damaged.

Anti-gay beliefs deserve no authority in an educational institution or anywhere else.

Thank you for your time, Jessica Campbell

From: Shelley chapelski

Sent: Sunday, March 02, 2014 10:27 PM

To: Submissions
Cc: Shelley Chapelski
Subject: Accreditation of TWU

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames;

The web page for Trinity Western University states:

"What makes TWU different from other universities is that we are a "faith based academic community". This is a fancy phrase that means that TWU exists so that our students, professors, and alumni, can share the truth, hope, and reconciliation of Christ's love with the world."

As a member of the International Bar Association, I am regularly reminded of the immense importance of the rule of law. The rule of law underpins successful international trade and commerce, and most importantly, the protection of human rights and freedoms.

If Law Societies are critical institutions supporting the rule of law, they, and the schools which educate their members, must be free from intentional secular bias. (I appreciate that many institutions of higher learning suffer from unintended biases). While Canada does not formally recognize the separation of church and state, the Courts have held that the Charter includes the right to be free from religion which is part of the rule of law in Canada.

While lawyers' individual values and personal beliefs will naturally be affected by their religious views, their legal education should not be shaped by an institution whose stated purpose is to promote "the truth" of Christ.

I appreciate that it is entirely possible that a faith based law school could provide a legal education free from any religious bias, let alone any religious views which could be contrary to the Canadian constitution. However, once such schools are accredited, then it becomes necessary to burden an organization with the task of auditing the courses and deciding how much religion is too much religion in a country which has no official religion.

After all, unless the Law Society is prepared to equally recognize the students of law schools that are based on any and every faith of the world, it is inappropriate to do so with a Christian university just because Christianity is the more common religion in Canada.

While it is understandable that a law school may include courses about religious law such as sharia law or Islamic law as part of a broad slate of courses in a

multi-cultural society, would the Law Society of BC accredit the graduates of a law school which existed so that its students, professors and alumni could share the truth about sharia law with the world, even if the school also taught the courses necessary to pass the bar exam?

In my view, it is not the role of the Law Society to take on the burden of ensuring that legal education is taught are without religious bias and the simple way to achieve this objective is to not accredit secular based law schools.

Shelley Chapelski (Law Society Member)

From: Warren Chapman Law [chapmanlaw@telus.net]

Sent: Monday, February 03, 2014 2:09 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

I am concerned that Trinity Western Law School might receive accreditation.

My concern is that Trinity Western University is not tolerant of gays and lesbians. Even if the proposed Law School does not follow TWU's guidelines, which is most improbable, it may be assumed that many of the persons accepted for TWU Law School will be TWU graduates.

Eventually, a government that has the backing of a religious group likely will appoint some of these TWU law school graduates as judges, whether at the Provincial Court level or the Supreme Court or Court of Appeal levels.

The judges of our courts must be beyond any apprehension of basis, and must reflect the values of all Canadians.

Appointing TWU Law School graduates as judges would not achieve this at all.

Warren Chapman BA LLB
Barrister & Solicitor
343 Yellowhead Highway 16
Box 258 Burns Lake, B.C. V0J 1E0
Phone 250-692-3339
Fax 250-692-3342
Member of the Law Society of British Columbia

From:

Thomas Ciz Monday, March 03, 2014 10:27 AM Sent:

To: Submissions

Subject: Trinity Western University

Follow up Follow Up Flag: Completed Flag Status:

I refer to the News Release dated 30 January 2014 issued by the Law Society of British Columbia inviting comment on the proposed law school at Trinity Western University.

I have had the opportunity of reading the submission which Mr. James Carpick made to the Law Society of British Columbia on this matter and I confirm my complete support for every aspect of that submission. Thank you.

Regards,

Thomas Ciz **Barrister & Solicitor**



In Omnia Paratus Law Corporation

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From: Cooke, Evan [ECooke@blg.com]
Sent: Tuesday, February 11, 2014 3:47 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

To the LSBC:

I support the resolution under consideration by the CBA titled: "Non-Discrimination in Legal Education".

http://www.cba.org/CBA/resolutions/pdf/14-04-M.pdf

I hope that the CBA and the LSBC will adopt the resolution or similar resolutions.

Thank you.

Evan



Evan A. Cooke

Partner, Litigation & Dispute Resolution
T 604.640-4107 | F 604.622-5858 | ecooke@blg.com

1200 Waterfront Centre, 200 Burrard Street, P.O. Box 48600, Vancouver, BC, Canada V7X 1T2

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March 1, 2014

Mr. Timothy McGee, Q.C. Executive Director, Law Society of British Columbia 845 Cambie Street, Vancouver, BC, V6B 479

Dear Mr. McGee,

Re Trinity Western University's Proposed Law School

I write in response to your request for public input into the Law Society of British Columbia's consideration of Trinity Western University's (TWU) proposed law degree program.

I am an Assistant Professor at Schulich School of Law where I teach and research in the area of constitutional law, among other subjects. Last year I published an article that advanced an analysis opposing preliminary approval of TWU's proposal by the Federation of Law Societies of Canada (the Federation). The legal opinion provided to the Federation by Mr. John Laskin specifically addressed some of the arguments I made in that article. The Report of the Federation's Special Advisory Committee (SAC) on the TWU proposal also referenced my paper. I would like to take your request for public input as an opportunity to respond to the SAC's review of the arguments I advanced in that paper.

Given that the SAC Report and the legal opinion obtained by the Federation specifically address my arguments, I would ask members of the Law Society of British Columbia, in deliberating on these Federation documents, to also consider reading my position in full. I have attached a copy of the article as an appendix to this letter. In this letter I will limit my comments to four problematic aspects of the SAC report as they relate to the arguments I advanced in my paper.

A. Introduction: The SAC's Report

In response to concerns about TWU's proposed law school, the Federation established a Special Advisory Committee to examine and provide the Federation with advice about TWU's requirement that all students, staff, and faculty of TWU agree to abide by a Community

¹ Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25(1) Canadian Journal of Women and the Law available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2202408

Covenant as a condition of admission and employment. The SAC issued a final report to the Federation in December 2013 advising that in its estimation there would be no public interest reasons for the law societies to exclude future graduates of the program if the Federation's Approval Committee were to conclude that TWU's proposal complies with the National Requirement. The SAC Report revealed significant deficiencies in the reasoning relied upon to arrive at this recommendation. I have summarized four of these deficiencies in the paragraphs below. Following this summary I have included a discussion explaining in further detail these four fatal errors in the reasoning relied upon by the SAC.

In deciding whether to accredit TWU, the LSBC should not give weight to the report of the SAC for the following four reasons:

1. TWU discriminates on the basis of sexual orientation. The SAC mischaracterized the conclusion of the Supreme Court of Canada in BCCT on this point.

In BCCT the Supreme Court of Canada found that TWU's Covenant perpetuates unfavourable differential treatment on the basis of sexual orientation and that a gay or lesbian student could only attend there at considerable personal cost.² These are the very phrases that the Supreme Court of Canada has used to define discrimination on the basis of sexual orientation in other decisions.

2. In concluding that TWU does not ban LGBT individuals, the SAC improperly relies on a distinction between sexual identity and sexual activity that has been rejected by the Supreme Court of Canada.

The SAC concludes that to its knowledge TWU does not limit or ban LGBT individuals. ³ This conclusion is inaccurate. The SAC's reasoning relies on a distinction between prohibiting same sex sexual activity and banning LGBT students⁴ that has been explicitly rejected by the Supreme Court of Canada. To ban same sex sexual intimacy (as TWU clearly does) is to ban LGBT students. The LSBC should not accept the formalistic and impoverished view of equality taken by the SAC and rejected by the Supreme Court of Canada.

² Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772, 199 DLR (4th) 1; ("BCCT"). It is true that the Supreme Court of Canada found that the Covenant did not amount to unlawful discrimination, primarily because of the Human Rights Code exemption. However, it is not accurate to conclude that the Court found that TWU does not discriminate.

³ Federation of Law Societies of Canada, Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report (December 2013), online: < http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf> at

⁴ Federation of Law Societies of Canada, Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report (December 2013), online: < http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf> at 36. ⁵ Whatcott v Saskatchewan, 2013 SCC 11, [2013] 1 SCR 467.



3. The SAC report does not adequately respond to the argument that the legal context has changed since 2001.

The Law Society of British Columbia, in deciding whether approval of TWU's program is in the public interest, must balance freedom of religion and equality for gays and lesbians based on 2014 legal norms and social values not those of nearly 15 years ago.

4. The SAC wrongly concluded that opposition to TWU is premised on the assertion that Christian universities are incompetent to deliver an accredited legal education.

The deficiencies with TWU's proposed program do not flow from its Christian worldview or intention to teach from that perspective. The specific institutional policies of this particular university, as articulated in its Community Covenant and Statement of Faith, are inconsistent with some components of the National Requirement. It obscures the institutionalized deficiency in TWU's proposed program to cast these arguments as anti-Christian.

C. Discussion of Response to the Report of the Special Advisory Committee

The reasons why the LSBC should reject the SAC's Report, summarized in the previous section, are discussed in further detail in the paragraphs to follow.

I. TWU discriminates on the basis of sexual orientation. The SAC mischaracterized the conclusion of the Supreme Court of Canada in *BCCT* on this point.

TWU requires its students and staff to sign a contract committing not to engage in same sex sexual intimacy because it is - in the words the university has chosen - "vile" and "shameful".

TWU's mandatory Community Covenant requires perpetuates unfavourable differential treatment on the basis of sexual orientation. It is true that in *BCCT* the Court concluded that the exclusion of gays and lesbians from TWU was not unlawful. Section 15 of the *Charter of Rights and Freedoms* does not apply to TWU in the context of the accreditation of teachers and the protections under the *Human Rights Code* of British Columbia are not granted to TWU students

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⁶ Trinity Western University will not hire you nor will it admit you as a student unless you sign a covenant (http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html) promising not to engage in "sexual intimacy that violates the sacredness of marriage between a man and a woman." In support of this covenant TWU cites the following:

Romans 1:26: For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature.

Romans 1:27: In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error.

and staff. However, the SAC Report misconstrues the Court's conclusions. The Court held that because section 15 of the *Charter* is not triggered and because the *Human Rights Code* does not apply, TWU's policy does not constitute discrimination for the purposes of these provisions. The Court also held that TWU's policy perpetuates unfavourable differential treatment on the basis of sexual orientation and that gay and lesbian students could only attend TWU at considerable personal cost. These are the very phrases that the Supreme Court of Canada has used to identify and define discrimination on the basis of sexual orientation in other decisions.

The SAC report makes no mention of the Court's holding that TWU's policy perpetuates unfavourable differential treatment on the basis of sexual orientation. The SAC report does not include reference to the Court's finding that it would only be at considerable personal cost that a gay or lesbian student could attend TWU. Instead the SAC report asserts that there is nothing to suggest that TWU's covenant limits access to the university by LGBT individuals. The SAC did not recognize the "considerable personal cost" and the "unfavourable differential treatment" imposed on LGBT individuals as a limit on admission. Rather than recognizing this limit and the considerable dignity interest that underpins it, the SAC significantly understates the Covenant's impact on LGBT individuals by concluding that gay and lesbians students would merely "feel unwelcome" at TWU.

The SAC's incomplete treatment of the Court's findings in *BCCT* gives the misperception that the Court in *BCCT* held that TWU's policies do not discriminate. This is an inaccurate characterization of the Court's reasoning. A proper interpretation of the majority reasoning in *BCCT* is that the Court concluded that TWU's policies do not constitute *unlawful* discrimination in the province of British Columbia.

While representatives of TWU, to my knowledge, have not explicitly denied that TWU discriminates on the basis of sexual orientation, they have implied that they do not discriminate and they have asserted in their correspondence to the Federation a commitment to principles of equality and non-discrimination with respect to gays and lesbians. In addition to being contrary to the prohibition in its Community Covenant, these assertions are inconsistent with both TWU's non-discrimination policy and with its current and historic approach to the issue of discrimination on the basis of sexual orientation.

 $^{^7}$ See for example $Egan\ v\ Canada,\ [1995]\ 2$ SCR 513 at 528, 124 DLR (4th) 609. 8 $Egan\ v\ Canada,\ ibid.$

⁹Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at para 36.

Robert G Kuhn, "TWU Has Played By The Rules" *National Magazine* (28 January 2014), online: The Canadian Bar Association http://www.nationalmagazine.ca/Articles/January-2014/TWU-has-played-by-the-rules.aspx.
 Letter from TWU President Raymond to Federation of Law Societies (17 May 2013) appendixed to the SAC Report.



First, sexual orientation is conspicuously absent from the lengthy list of grounds upon which TWU declares itself not to discriminate. Other than religion, sexual orientation is the only prohibited ground of discrimination under British Columbia's human rights legislation that is not protected by TWU's anti-discrimination policy. ¹²

Second, consider TWU's response both in the 1990s when the British Columbia College of Teachers raised concerns and again in the current context when the Federation decided that considering the issue of discrimination by a proposed law school was indeed required by its mandate to regulate in the public interest. TWU's response, in both instances, was to argue vociferously that the teaching profession and the legal profession should not be permitted to *even consider* whether TWU's policy raises concerns regarding discrimination against gays and lesbians. Taking the position that those charged with stewarding the profession of public school teachers or licensing and regulating lawyers should not be allowed to *even consider* issues of discrimination in fulfilling their responsibilities does not reveal a commitment to non-discrimination. The Supreme Court of Canada rightly rejected TWU's position on this issue. ¹⁴

The most recent example of TWU's resistance to equality protections can be found in its vocal (and unsuccessful) opposition to the recent anti-discrimination resolution passed by the membership of the Canadian Bar Association. ¹⁵

It is easy to write a letter proclaiming one's commitment to the principle of non-discrimination.¹⁶ What matters is what this institution does. TWU has a Community Covenant that only permits gays and lesbians to attend at "considerable personal cost"¹⁷ to their dignity and sense of self worth. TWU has a non-discrimination policy that covers race, colour, national or ethnic origin, age, sex, marital or family status, pardoned convictions, and physical or mental disabilities but does **not** cover sexual orientation.

The LSBC should consider whether it would approve TWU's law degree if the policy prohibited sexual intimacy except that which occurs within the sanctity of marriage between a man and

¹² This is not to suggest that TWU does not discriminate on grounds such as marital status or sex. Rather it is to note the significance of adopting a non-discrimination policy with an extensive list of prohibited grounds that does not include sexual orientation.

¹³ See *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772; Letter from TWU President Raymond to Federation of Law Societies of Canada (24 April 2013); Letter from TWU Interim President Bob Kuhn to NSBS (7 January 2014) in http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-01-07_Kuhn_TWU.pdf.

¹⁴ Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772, 199 DLR (4th) 1.

¹⁵ Open Letter to the Canadian Bar Association (February 18, 2014) at http://www.twu.ca/academics/school-of-law/news/2014/075-open-letter-cba-bc.html.

¹⁶ Letter from TWU President Raymond to Federation of Law Societies of Canada (17 May 2013) appendixed to the SAC Report.

¹⁷ Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772 at 25, 199 DLR (4th) 1.

woman of the same race. In other words, would the LSBC give the stamp of approval to a law school that prohibited inter-racial couples?

The analogy is direct and apt. There are examples of American schools, such as Bob Jones University, that have done precisely this and have done so on the basis of religious belief. The Internal Revenue Service had the courage to revoke Bob Jones University's tax-exempt status on the basis that such a policy was contrary to public interest – a decision that was upheld by the Supreme Court of the United States. 18 Bob Jones University attempted (unsuccessfully) to justify its prohibition of interracial sex on many of the same grounds that TWU justifies its prohibition on gay sex: we are a private university; we have the right to our religious beliefs; we permit racialized students to attend, we just require that they comply with a code of conduct consistent with our religious beliefs. There is no principled basis upon which you could say yes to a covenant that says no gay sex but no to a covenant that says no interracial sex.

If you, as benchers of the LSBC, approve this law school you will have to accept that you would either also approve a law school with an anti-miscegenation policy or accept that you do not consider gays and lesbians entitled to the same degree of respect, dignity and equality that you would grant to others.

II. In concluding that TWU does not ban LGBT individuals, the SAC improperly relies on a distinction between sexual identity and sexual activity that has been rejected by the Supreme Court of Canada.

The SAC concludes that to its knowledge TWU does not limit or ban LGBT individuals. 19 Presumably, the SAC's reasoning relies on drawing a distinction between prohibiting same sex sexual activity (which it says would make LGBT students feel "unwelcome") and prohibiting LGBT students.²⁰ In Whatcott in 2012, the Supreme Court of Canada specifically rejected TWU's argument that there is a distinction between prohibiting same sex conduct and prohibiting gays and lesbians. The Court concluded that it is not possible to condemn same sex intimacy "without thereby discriminating against gays and lesbians and affronting their human dignity and personhood."21

In rejecting the specious argument that a legally significant distinction can be drawn between discriminating against homosexual behavior and discriminating against homosexuals, the Court

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¹⁸ Bob Jones University v United States, 461 US 574 (1983).

¹⁹ Federation of Law Societies of Canada, Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report (December 2013), online: < http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf> at

Federation of Law Societies of Canada, Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report (December 2013), online: < http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf> at 36. ²¹ Whatcott v Saskatchewan, 2013 SCC 11, [2013] 1 SCR 467 citing L'Heureux-Dubé J with approval.



in *Whatcott* stated: "Courts have recognized a strong connection between sexual orientation and sexual conduct and where the conduct targeted by speech is a crucial aspect of the identity of a vulnerable group, attacks on this conduct stand as proxy for attacks on the group itself."

It could not be clearer that the Supreme Court of Canada today rejects exactly the kind of distinction between act and identity that TWU and the SAC suggests bears some legal significance. Indeed, on this issue, the Court in *Whatcott* draws its authority from Justice L'Heureux-Dube's dissenting decision in *BCCT* (finding that TWU's covenant was discriminatory and that it was acceptable for the College of Teacher's to modify its accreditation of the TWU program as a result). The Court in *Whatcott* states with approval:

L'Heureux-Dubé J. in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, [2001] 1 S.C.R. 772, in dissent (though not on this point), emphasized this linkage, at para. 69:

I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. ... The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as per Madam Justice Rowles: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person" (para. 228). She added that "the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people" (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood. ²²

Despite his reliance on *Whatcott*, Mr. Laskin's opinion is silent on this important aspect of the decision. Not only is the SAC report silent on this aspect of *Whatcott*, but also, and even more problematically, the committee invokes exactly the love the sinner, hate the sin reasoning rejected by the Court in *Whatcott*.

One final note on this point - any suggestion that TWU's Community Covenant is voluntary and non-binding is without foundation. TWU's Community Covenant is not a guideline or invitation to abstain from same sex intimacy. It is a covenant – a solemn, formal agreement that all staff

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²² Whatcott v Saskatchewan, 2013 SCC 11 at 123, [2013] 1 SCR 467.

and students must sign in order to work at or attend this university. TWU describes it as a "contractual agreement" that all members of the TWU community must enter into before joining the "TWU community."²³

To summarize, according to the Supreme Court of Canada a policy that requires students to promise not to engage in same sex intimacy is an attack on the "human dignity and personhood" of gays and lesbians.²⁴ The council of the LSBC should do better than to accept the formalistic and impoverished view of equality taken by the SAC and rejected by the Supreme Court of Canada.

III. The SAC report does not adequately respond to the argument that the legal context has changed since 2001.

In my paper I concluded that the legal analysis engaged in today to reconcile *Charter* rights would differ from that of the BCCT decision in 2001. This is not because the Court has rejected an internal balancing approach to resolving tensions between *Charter* rights and values. This is what the SAC suggests was my argument in support of the assertion that the Court's approach in 2014 will have shifted from that taken in 2001. Rather, my argument is that the legal and social context in which this balancing would be done has changed. Legal recognition of the equality interests of sexual minorities is more thorough today than it was in 2001. The SAC report does not address these changes in the Court's jurisprudence. The SAC report rejects the proposition that the legal context has changed since 2001 without offering any significant analysis or support for this conclusion.

Mr. Laskin's legal opinion did address my argument, although I do not agree with his conclusions. My argument was that as social values have evolved since 2001 legal recognition of equality for same sex couples has also evolved. I discussed a number of cases that support this assertion. Mr. Laskin dismisses my argument by stating that in his view, "it is doubtful ...that this evolution of social values would lead to a different outcome today from that in BCCT." He does not address the important claim that, as a result of evolving social values, legal recognition of equality on the basis of sexual orientation has increased since 2001 and that this increased legal recognition of what constitutes equality for gays and lesbians shifts the

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²³ Trinity Western University Student Handbook, *Community Covenant Agreement*, online: Trinity Western University http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>.

²⁴ Whatcott v Saskatchewan, 2013 SCC 11, [2013] 1 SCR 467.

²⁵ Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at paragraphs 27-29.

²⁶ Canada (Attorney General) v Hislop, 2007 SCC 10, 278 DLR (4th) 385; R v Tran, 2010 SCC 58, 326 DLR (4th) 1.
²⁷ Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report (December 2013), online: Federation of Law Societies of Canada http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf Letter from John Laskin at Appendix C.



balancing process. Instead, he argues that the recognition of freedom of religion is as deeply embedded today as it was in 2001. With respect, I did not suggest otherwise. While the values of freedom of religion continue to be recognized today, just as they were in 2001, the point is that recognition (both social *and* legal) of the value of equality for gays and lesbians has increased since 2001. An increased legal understanding of what constitutes equality on the basis of sexual orientation is likely to produce different conclusions regarding what constitutes a reasonable balance between equality for gays and lesbians and freedom of religion. In 2001 the Court concluded that an appropriate balance was struck because gays and lesbians could go elsewhere to become teachers (an argument Mr. Laskin also makes today regarding prospective gay law students). In 2014 it would likely not be sufficiently cognizant of gay and lesbian equality simply to say "TWU is not for everybody". and in the interests of religious liberty the gays can go elsewhere to become lawyers.

In my paper I noted several cases in which the Supreme Court of Canada has increased the degree of protection against discrimination on the basis of sexual orientation recognized under the *Charter. Whatcott*, which was released after the paper was published, offers an additional example. As noted above, *Whatcott's* reliance on Justice L'Heuruex-Dube's dissent in *BCCT* established that when balancing freedom of religion with the impact on equality interests perpetuated by TWU's covenant, the fact that the Covenant bans gay sex rather than gay individuals is not relevant. This is a notable shift from the majority's approach in *BCCT*. In characterizing the implications of TWU's covenant in *BCCT* the majority, unlike L'Heureux-Dube J in dissent, appear to note some significance regarding the distinction between condemning sexual practices and condemning gay individuals.²⁹ This reasoning is no longer good law. In *Whatcott* the Court clearly rejected the majority position in *BCCT* and adopted Justice L'Heureux-Dubé's approach on this issue.

Mr. Laskin also concludes that the grounds I suggested for refusing TWU's application should be rejected because "Professor Craig provides no evidence to support the contention that" TWU law graduates would discriminate against gays and lesbians. First, I did not offer evidence of this contention because the grounds for rejecting TWU that I advanced were not based on the assumption or suggestion that hypothetical TWU law graduates would discriminate. Rejection of this proposed law school should be based on the fact that this university *does* discriminate. Second, it is of course impossible to offer evidence of whether hypothetical law graduates from a law school that does not exist would discriminate, even if that were my argument. Third, the Supreme Court of Canada in *Whatcott*, albeit in the context of considering the constitutionality

²⁸ Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772 at 22, 199 DLR (4th) 1.

²⁹ Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772 at 22, 199 DLR (4th) 1.

³⁰ Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report (December 2013), online: Federation of Law Societies of Canada http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf>Letter from John Laskin at Appendix C.

of prohibitions on hate speech, concluded that in assessing the reasonableness of a limit on section 2 of the *Charter*, proof of actual harm may not be either possible or required:

The fact that s. 14(1)(b) of the Code does not require intent by the publisher or proof of harm, or provide for any defences does not make it overbroad. Systemic discrimination is more widespread than intentional discrimination and the preventive measures found in human rights legislation reasonably centre on effects, rather than intent. The difficulty of establishing causality and the seriousness of the harm to vulnerable groups justifies the imposition of preventive measures that do not require proof of actual harm. The discriminatory effects of hate speech are part of the everyday knowledge and experience of Canadians. As such, the legislature is entitled to a reasonable apprehension of societal harm as a result of hate speech.³¹

While not definitive, given that the Court was considering the constitutionality of hate speech, the reasoning in *Whatcott* suggests the Court **now recognizes** the inherent difficulty of proving the harmful effects of discriminatory practices and will take this into account when balancing competing *Charter* values.

In addition, I would encourage the LSBC to consider the legal opinion on the applicability of *BCCT* to this situation offered by constitutional law and equality scholar Dianne Pothier. Professor Pothier concludes that even if the legal context has not changed the earlier TWU decision is distinguishable in any event:

BCCT v. TWU involved an application by TWU for certification of its teacher training program. The BCCT rejected the certification application, a decision that was held invalid by the majority of the Supreme Court of Canada. The SCC recognized that the TWU Community Covenant raised serious concerns, but concluded it was improper to deny certification in the absence of specific evidence that TWU graduates as a group would actually discriminate against students. To avoid a conflict between religious freedom and equality, the majority of the SCC drew a "line ... between belief and conduct" (para. 36), leaving individual discriminatory teacher conduct liable to disciplinary proceedings (para. 37). It is important to note the context of TWU's application. The status quo ante, which already had certification, was four years of education at TWU followed by a final year at Simon Fraser. TWU's new proposal was to replace the final year at Simon Fraser with one at TWU. The majority of the SCC relied on the nature of that fifth year at Simon Fraser, where "[o]n the evidence, it is clear that the participation of Simon Fraser University never had anything to do with the apprehended intolerance from its inception to the present" (para. 38), questioning: "[a]fter finding that TWU students hold fundamental biases, based on their religious

³¹ Whatcott v Saskatchewan, 2013 SCC 11 at 123, [2013] 1 SCR 467.



beliefs, how could the BCCT ever have believed that the last year's program being under the aegis of Simon Fraser University would ever correct the situation?" (para. 38).

The Simon Fraser teacher training curriculum did not have any anti-discrimination component. In contrast, Law Schools are mandated to teach legal principles of equality, in the constitutional and statutory context. Furthermore, while public school teachers carry only the obligation of all members of the community not to discriminate in the provision of public services, lawyers have an extra level of responsibility. Lawyers are potentially involved in the administration of constitutional and statutory equality and anti-discrimination provisions. Thus there is good reason to impose a higher bar than in BCCT v. TWU, i.e. good reason for going beyond looking for specific evidence that TWU Law School graduates will, as a group, engage in discriminatory conduct.

The extra step of a year at Simon Fraser was neither designed for, nor effective in, addressing the discrimination issues raised by the TWU Community Covenant. In contrast, Law Societies are in a position to address those issues by adding an extra step to the bar admission process. If a law degree from TWU were treated as in the same category as those from foreign law schools, the National Committee on Accreditation requirements, or some provincial counterpart, could be used to fill the gap in requirements for admission to a Canadian bar.³²

The Council of the Law Society of British Columbia, in deciding whether approval of TWU's program is in the public interest, must balance freedom of religion and equality for gays and lesbians based on 2014 legal norms and social values, **not** those of nearly 15 years ago.

IV. The SAC wrongly concluded that opposition to TWU is premised on the assertion that Christian universities are incompetent to deliver an accredited legal education.

The SAC mischaracterizes the opposition to TWU as, in part, based on an assertion that "TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law."³³

The SAC report states that "the inability to effectively teach legal ethics, particularly to teach students to think critically about ethics, is also one of the central arguments advanced by

Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf> at para 31.

³² Letter from Dianne Pothier to NSBS (18 January 2014) at http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-01-24_Pothier_TWU.pdf.

Professor Elaine Craig."³⁴ This sentence is included in the paragraph following a heading that reads:

"Whether TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law"

The SAC report goes on to conclude that the argument that TWU's Christian worldview means that students will fail to acquire the necessary critical thinking skills is without merit. The Report then notes that many current members of the profession and the judiciary share this Christian worldview and there is no evidence that they are unable to think critically or act ethically.

This characterization of the concerns I raised with respect to TWU's capacity to meet the Federation's National Requirement is inaccurate. In fact, this aspect of the SAC's report, and its characterization of the arguments I advanced, is either disingenuous or obtuse. Of course many ethical members of the profession share with TWU a Christian worldview. Of course faith based universities are not, simply by virtue of their Christian mandate, incapable of teaching critical thinking skills or equality and human rights. I did not argue otherwise.

The concern that I raised was with TWU's institutional policies as mandated by its Community Covenant and Statement of Faith. For example, TWU's deficiency with respect to the National Requirement on legal ethics stems from a TWU university policy mandating that all faculty members sign a statement of faith in which they pledge, on pain of dismissal, to "agree with ... and agree to support ... at all times" the position that the Bible is "the ultimate authority by which every realm of human knowledge and endeavor should be judged." Academic staff are required to teach students that the Bible is the ultimate, final, and authoritative guide by which all ethical decisions must be made. To teach that ethical issues must be perceived of, assessed with, and resolved by a pre-ordained, prescribed, and singularly authoritative religious doctrine is not to teach the skill of critical thinking about these issues. An institutional policy that requires all faculty to teach from this perspective, and only this perspective, is inconsistent with a requirement that the program teach the skill of critical thinking.

To be as clear as possible, the argument is not that Christian institutions are incapable of providing a legal education worthy of accreditation. The argument is not that those holding a Christian worldview are incapable of upholding their ethical duty not to discriminate. The argument is not that a Christian worldview is antithetical to critical thinking. Rather, the argument is that the **specific institutional policies** of this particular university, as articulated in its Community Covenant and Statement of Faith, are inconsistent with the ethical duty not to

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³⁴ Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf at 41.



discriminate and the requirement that a law school teach the skill of critical thinking about ethical issues. With respect, this distinction should have been obvious to the members of the Special Advisory Committee and those of the Federation's Approval Committee. To be sure, many worthy and highly esteemed educational institutions, such as St Francis Xavier, Trinity College at the University of Toronto, and Notre Dame in the United States, have a faith-based tradition. The distinction, and it is an important one, is that these institutions do not impose policies that discriminate on the basis of sexual orientation or mandate a statement of faith that is inconsistent with creating an institutional environment consistent with some aspects the requirements that the law societies have arrived at in accrediting Canadian common law degrees.

It is true that TWU, in its submissions to the Federation, espouses a commitment to critical thinking. However this assertion, easily made in letters to the Federation and the various law societies, is simply inconsistent with the school's institutional policy. The deficiency in its program on the legal ethics requirement does not flow from the institution's commitment to Christianity or even its mandate to teach law from a Christian perspective. It flows from the wording of its mandatory Statement of Faith and mandatory Community Covenant. I did not suggest that TWU's proposed program deficiencies flow from its Christian worldview or intention to teach from that perspective. It obscures the institutionalized deficiency in TWU's proposed program to cast these arguments as anti-Christian.

Conclusion

Given the shortcomings in its reasoning, I would encourage the LSBC to give very little weight to the conclusions drawn by the Special Advisory Committee on TWU's proposed school of law. As I suggested above, the purpose of this correspondence is to respond to specific deficiencies in the SAC's treatment of the arguments I advanced in "The Case for the Federation of Law Societies Rejecting Trinity Western's Proposed Law Degree". My argument in full with respect to the reasons why the law societies should not approve a TWU law school, as it is currently proposed, can be found in the attached article. Thank-you again for seeking public input in your consideration of TWU's application.

Sincerely,

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Commentary/Commentaire

The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program

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L'Université Trinity Western (l'UTW), une école chrétienne privée en Colombie-Britannique, pourrait devenir la première faculté de droit chrétienne du Canada. Trinity Western pratique la discrimination fondée sur l'orientation sexuelle tant dans sa politique d'embauche que dans sa politique d'admission. On a aussi constaté qu'elle entrave la liberté académique. Les établissements dont les politiques discriminatoires vont à l'encontre des valeurs juridiques fondamentales ne sont pas compétents pour procurer une formation juridique. La Fédération des ordres professionnels de juristes du Canada, l'organisme national qui coordonne les 14 ordres professionnels du Canada, ne devrait pas approuver des programmes d'établissements qui ont des politiques discriminatoires. La décision de ne pas approuver la demande de l'UTW résisterait à une contestation judiciaire de celle-ci. Le contexte juridique dans lequel une décision de la Fédération ferait l'objet d'un examen judiciaire a changé depuis que la Cour suprême du Canada a tranché en faveur de Trinity Western dans l'arrêt Université Trinity Western c B.C. College of Teachers. La décision de la Fédération serait examinée selon la norme de la décision raisonnable plutôt que de la décision correcte. Considérant la mission, le mandat et les exigences académiques actuelles de la Fédération, une décision de rejeter la demande de l'UTW serait confirmée par les tribunaux parce qu'elle est raisonnable. L'UTW devrait être libre de faire de la recherche et de l'enseignement conformément à ses engagements religieux. L'UTW ne devrait cependant pas être autorisée à imposer au public un programme fondé sur la religion qui ne peut pas être en mesure de fournir une formation juridique conforme à ce que les organismes de réglementation de

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la profession juridique au Canada ont reconnu comme nécessaire pour protéger le public.

Trinity Western University (TWU), a private Christian school in British Columbia is posed to become Canada's first Christian law school. Trinity Western discriminates on the basis of sexual orientation in both its hiring and admissions policies. It has also been found to violate academic freedom. Institutions with discriminatory policies that are antithetical to fundamental legal values are not competent providers of legal education. The Federation of Law Societies of Canada, the national coordinating body for Canada's fourteen law societies, should not approve programs from institutions with discriminatory policies. A decision not to approve TWU's application would survive a court challenge by TWU. The legal framework within which a decision of the Federation would be judicially reviewed has changed since the Supreme Court of Canada ruled in favour of Trinity Western in Trinity Western v B.C. College of Teachers. The Federation's decision would be reviewed on a standard of reasonableness rather than correctness. Based on the Federation's mission, mandate, and current academic requirements, a decision to deny TWU's application would be upheld as reasonable by the courts. TWU should be free to pursue research and education in a manner in keeping with its religious commitments. TWU should not be permitted to impose upon the public a religiously grounded program that is incompetent to deliver a legal education consistent with what the regulators of the law profession in Canada have identified as necessary to protect the public.

"Never admit more than five Jews, take only two Italian Catholics, and take no blacks at all."

Trinity Western University Applies for Law School

Should a self-regulating legal profession require that the institutions that educate its members not discriminate on the basis of irrelevant personal characteristics in their hiring and admissions policies? Should the organization charged with protecting the public interest by serving as the gatekeeper to the profession of law concern itself with whether the institutions that it accredits are consistent with the fundamental tenets of Canada's legal system? In regulating the law schools that produce this country's next generation of lawyers, should the governing bodies of the legal profession require that the policies of these institutions respect equality? The Federation of Law Societies of Canada (the Federation), the national coordinating body for Canada's fourteen law societies, will provide its answers to these

These were the dean of medicine's instructions to the admissions committee at Yale Medical School in 1935. David M Oshinsky, *Polio: An American Story* (New York: Oxford University Press, 2005) at 98.

important questions when it decides whether to approve a law degree program proposed by Trinity Western University (TWU).

The Canadian Charter of Rights and Freedoms and the human rights regimes in every province of Canada prohibit discrimination on the basis of sexual orientation. Respect for, and protection of, vulnerable minorities is a fundamental principle of constitutional law in Canada. Embedded in this aspect of supreme Canadian law is respect for equality and the rejection of discrimination on the basis of factors such as sexual orientation (or race or physical disability). In short, equality is one of the fundamental legal values on which Canada's system of law and governance is based. TWU, which has announced its intention to launch a law school pending approval by the government of British Columbia and the Federation, discriminates on the basis of sexual orientation. Hiring and admissions policies at TWU require all student and staff applicants to sign a community code of conduct pledging not to engage in same-sex sexual intimacy. According to the Supreme Court of Canada, these hiring and admissions policies discriminate against gays and lesbians.

The Court in *Trinity Western v British Columbia College of Teachers* suggested that TWU's discriminatory policies were not unlawful because of the exemption provided to religious organizations under section 41 of British Columbia's human rights legislation. However, the Court recognized that if a government

^{2.} Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 15. See, for example, Human Rights Code, RSBC 1996, c 210; Human Rights Code, RSO 1990, c H 19.

^{3.} Reference re Secession of Quebec, [1998] 2 SCR 217, 161 DLR (4th) 385.

^{4.} Vriend v Alberta, [1998] 1 SCR 493 at para 67, 156 DLR (4th) 385.

^{5.} Trinity Western University (TWU), "Proposed School of Law at Trinity Western University" (18 June 2012), online: TWU http://twu.ca/academics/proposed-school-of-law/default.html.

TWU community members are required to pledge that they will abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." TWU, Community Covenant Agreement: Our Pledge to One Another (nd) at 3, online: TWU http://twu.ca/ studenthandbook/twu-community-covenant-agreement.pdf> [Covenant Agreement]. covenant's bar on same-sex sexual activity was revised in 2009. In its earlier version, the version at issue in Trinity Western University, infra note 7, the community standards document specifically named "homosexual behavior" as a biblically condemned practice (at 4). In its current version, the covenant bars "homosexual behavior" by requiring members of the TWU community to promise that sexual intimacy will be limited to marital relationships between a man and a woman. It then cites scripture biblically condemning same-sex sexual intimacy in support of this covenant. TWU's community covenant today, just as it did in its previous incarnation, imposes unfavourable differential treatment on the basis of sexual orientation. TWU is neither apologetic about, nor (despite the re-wording of its covenant) does it try to conceal, this discrimination. The university has a non-discrimination policy that purports to protect against discrimination based on every protected ground of discrimination except sexual orientation (and, of course, religion). TWU, "Employment Opportunities," online: TWU ["Employment Opportunities"].

^{7.} Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772, 199 DLR (4th) 1 [Trinity Western University]. The Court found that TWU policies create "unfavourable differential treatment" on the basis of sexual orientation (at para 34). Section 41(1) of British Columbia's Human Rights Code, supra note 2, reads: "If a charitable, philanthropic,

actor adopted TWU's policies it would violate section 15 of the *Charter* and that if a public university adopted TWU's policies it would violate human rights legislation. By requiring as a condition of admission or employment that students and staff pledge not to engage in same-sex sexual behaviour that would be acceptable for opposite-sex couples, TWU policies create "unfavourable differential treatment" on the basis of sexual orientation. Applicants who refuse to make this pledge will not be hired by, nor admitted to, the university. According to TWU's policies, a breach of this covenant can result in dismissal from the university. As the Supreme Court of Canada found, the impact of TWU's mandatory code of conduct excludes applicants to the university on the basis of sexual orientation. 11

In addition to its discriminatory practices, according to the Canadian Association of University Teachers (CAUT), TWU also violates academic freedom. An ad hoc investigatory committee established by the CAUT to inquire into TWU's policies and practices concluded that "there is no question that Trinity Western University violates the commitment to academic freedom that is the foundational bedrock of the university community in Canada and internationally." The committee based its findings on a review of TWU's mandate, policies, and core values as reflected in the university calendar and human resource documents such as TWU's mandatory statement of faith. The committee found that "unwarranted and unacceptable constraints on academic freedom" were revealed by TWU's own statement of academic freedom, the requirement that all academic staff members annually sign TWU's statement of faith, and the institution's articulated mandate and core

educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons." The applicability of section 41 to TWU was not directly at issue in this case nor was it examined in any great detail.

^{8.} Trinity Western University, supra note 7 at para 34.

^{9.} Covenant Agreement, supra note 6.

^{10.} Trinity Western University, 2012 2013 Student Handbook (nd) at 23, online: TWU http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf [Student Handbook]. Whether a student has yet been expelled from TWU on this basis is not relevant. The handbook makes clear that students who cannot or will not comply with this covenant are not welcome at TWU. As the Supreme Court of Canada determined in Vriend v Alberta, [1988] 1 SCR 493, fear of discrimination itself constitutes harmful and unfavourable treatment. (I am grateful to Mathieu Bouchard and Amy Sakalaskous for drawing this point to my attention.)

^{11.} Trinity Western University, supra note 7 at paras 25, 34.

^{12.} In 2009, the Canadian Association of University Teachers (CAUT) placed TWU on a list of institutions in Canada that violate academic freedom. "Trinity Western Added to CAUT's Faith Test List," CAUT Bulletin (8 September 2009), online: Canadian Association of University Teachers http://www.cautbulletin.ca/en article.asp?ArticleID=2926>.

^{13.} Ibid

^{14.} William Bruneau and Thomas Friedman, *Report of an Inquiry Regarding Trinity Western University* (October 2009) at 4, online: CAUT http://www.caut.ca/uploads/TWU Report. pdf>.

values.¹⁵ In sum, the Federation has been asked to give approval to a new law degree program at an institution with policies that discriminate on the basis of sexual orientation (according to the Supreme Court of Canada) and that violate academic freedom (according to the CAUT).

The purpose of this article is threefold. First, it discusses the Federation's authority to approve new law schools and argues that it should not approve programs from institutions with discriminatory policies. Institutions with discriminatory policies that are antithetical to fundamental legal values are not competent providers of legal education.

Second, it demonstrates that a law program delivered by TWU would not comply with the Federation's academic requirements for Canadian law schools. TWU's violation of academic freedom and its discriminatory policies make it incapable of delivering a law program in compliance with the Federation's academic requirements on ethics and professionalism. The impact of TWU's discriminatory admission and hiring practices jeopardizes its ability to competently deliver a program that develops an appreciation of the ethical duty not to discriminate. The impact of TWU's requirement that all teaching and research occur from a stated religious perspective jeopardizes its ability to competently deliver a program that teaches critical thinking about ethical issues in law.

Third, the article explains why a decision not to approve TWU's application would likely survive a court challenge by TWU (despite TWU's successful challenge of the denial of an application by TWU for approval of a fully accredited teacher education program in 1996). The legal framework within which a decision of the Federation would be judicially reviewed has changed since the Supreme Court of Canada ruled in *Trinity Western v B.C. College of Teachers*. The Federation's decision would be reviewed on a standard of reasonableness rather than correctness. Based on the Federation's mission, mandate, and current academic requirements, a decision to deny TWU's application would be upheld as reasonable by the courts. In fact, given TWU's policies, it would be unreasonable for the Federation to approve a law degree program from TWU.

The teaching and study of law within religious institutions and universities has a long history. The arguments advanced in this article do not seek to limit or oppose religiously based teaching and study of law in a private religious institution. The Federation's mandate concerns the professional attributes required of a program of legal study. The learning environment and intellectual commitments at TWU are incompatible with preparation in the competencies required by the Federation for the practice of law. TWU should be free to pursue research and education in a manner in keeping with its religious commitments. TWU should not be permitted to impose upon the public a religiously grounded program that is incompetent to deliver a legal education consistent with what

^{15.} Ibid at 10.

^{16.} Trinity Western University, supra note 7.

the regulators of the law profession in Canada have identified as necessary to protect the public.

The Federation Has the Authority to (Dis)Approve New Law Degree Programs

In response to concerns about a possible TWU law school raised by the Canadian Council of Law Deans, the Federation implied that it lacked the authority to approve new law programs: "[L]aw societies have no jurisdiction to approve law schools, which is within provincial government authority and responsibility." It is true that provincial governments have the authority and responsibility to decide whether to allow a university to confer a bachelor of laws degree. However, each of the fourteen law societies in Canada is authorized by statute to determine the licencing criteria for lawyers in its province or territory. This includes the authority to decide whether to accept applicants to the bar with law degrees from a particular program. In other words, provincial governments decide whether their universities can offer a law degree program. Law societies decide whether graduates of a particular law degree program will be eligible for admission to the practice of law.

The fourteen law societies have delegated authority to the Federation to review and make recommendations to them with respect to whether they should accept applicants to the bar from new Canadian law schools. The Federation is the coordinating body for the fourteen law societies in Canada. In a sense, the Federation is the fourteen law societies. Perhaps another way to think of it is as a committee comprised of each of the fourteen law societies. It is a committee with delegated authority including the authority to make recommendations (which will be treated as determinative on whether the law societies should accept applicants to the bar from new Canadian law degree programs. The ultimate responsibility for the

^{17.} Letter from President of the Federation Gérald Tremblay to William Flanagan, President of the Council of Canadian Law Deans (3 December 2012) [Letter from President] [on file with author].

^{18.} This article does not take a position on whether the BC government should allow TWU to grant law degrees. That is a separate issue requiring a different analysis, different parties, and different considerations.

^{19.} See, for example, Legal Profession Act, SBC 1998, c 9, ss 19, 20(1)(a), and 21(1)(b).

^{20.} *Ibid.* See, for example, section 21(1)(b): "The benchers may make rules to do any of the following: (b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court."

^{21.} Federation of Law Schools of Canada (FLS), Report of the Ad Hoc Committee on Approval of New Canadian Law Degree Programs on Applications by Lakehead University and Thompson Rivers University (January 2011) at 2, online: FLS http://www.flsc.ca/ documents/Task-Force-Report-new-law-schools.pdf>.

^{22.} Letter from President, *supra* note 17, confirming that the Approval Committee is to make the final determination on compliance with the FLS's academic requirements. Whether, as a matter of administrative law, this delegation is legitimate is a separate issue. Regardless, the ultimate responsibility for these decisions falls to the member law societies.

decision to approve a new law degree program resides with each individual law society. Each law society could, at any time, change its approval process such that it no longer delegates responsibility for this decision to the Federation.

In this sense, each of the member law societies in Canada is responsible for a decision by the Federation to approve a TWU law degree. If the Federation fails to live up to the expectations of its member law societies by not exercising its delegated authority in a manner that protects the public interest and reflects the academic requirements that the law societies have agreed upon, then its authority to approve new programs should be withdrawn. Given that the ultimate responsibility for approval falls on them, an individual law society that does not want to be attributed with approving a law school that discriminates on the basis of sexual orientation will need to withdraw authority from the Federation if it accepts the TWU's proposal. However, at this point, it is the Federation (through delegation from its member law societies) that is charged with approving new law degree programs in Canada for the purposes of admission to the bar. The Federation has in turn created a Canadian Common Law Program Approval Committee (Approval Committee). The Approval Committee has a mandate to make recommendations to the Council of the Federation in respect of applications by Canadian universities for approval by the Federation of new academic programs.²

In addition to its assertion to the Canadian Council of Law Deans that the law societies do not have jurisdiction to approve new law schools, the Federation also stated that it has not been given a mandate by the law societies to consider a proposed law school's hiring and admissions policies. In its response to the law deans, the Federation has asserted that the scope of its inquiry is limited to determining a law school program's compliance with the current national requirement. The national requirement is the Federation's newly adopted national standard for academic requirements of a Canadian law degree. The standards are expressed in terms of "competencies in basic skills, awareness of appropriate ethical values and core legal knowledge." According to the Federation, "[t]he national requirement ... does not contemplate or authorize an inquiry into the admission philosophy of a law school program ... or an investigation into whether the admissions policies of an educational institution are consistent with federal or provincial law." The Federation has suggested that "the Approval Committee has no authority to go beyond the specific provisions of its mandate. It is not a policy-

^{23.} FLS, National Requirement for Approving Canadian Common Law Degree Programs (nd), online: FLS http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs.

^{24.} Letter from President, *supra* note 17.

^{25.} FLS, *Task Force on the Canadian Common Law Degree: Final Report* (October 2009) at 4, online: FLS http://www.flsc.ca/ documents/Common-Law-Degree-Report-C(1).pdf> [*Task Force*].

^{26.} Letter from President, *supra* note 17.

making committee. Its primary stated function is to 'determine law school program compliance with the national requirement'."²⁷

These responses by the Federation are insufficient. First, there is no legal impediment to the Federation, through its member law societies, changing the mandate of the Approval Committee. This reality is discussed in the paragraphs to follow. Second, as discussed in the third part of this article, even under this purportedly limited authority described by the Federation, the TWU's application should be denied. The TWU's proposed program would not meet the national requirement as currently articulated by the Federation.

In *Trinity Western University*, the majority found that section 4 of the *Teaching Profession Act*, in giving the British Columbia College of Teachers jurisdiction to set standards for admission to the profession of teaching, authorizes the college to consider discriminatory practices in assessing a teacher education program.²⁸ The Court found that "[s]chools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance. It would not be correct ... to limit the scope of s. 4 to a determination of skills and knowledge."²⁹ The law societies would be given at least as broad an authority under their enabling statutes to inquire into discriminatory practices by the law schools that they (through the Federation) regulate.

The Federation is the gatekeeper to the profession of law in Canada. As the Federation notes, the responsibility for determining who is admitted to the profession of law is enormously significant: "[E]ach decision to admit an applicant tells the public that the newly licensed lawyer has met high standards of learning, competence and professional ethics." In order to determine the appropriate authority for its Approval Committee, the Federation need only look to its own vision, mission, and value statements. The Federation describes its mission as acting in the public interest by, in part, "[p]romoting the cause of justice and the Rule of Law." It purports to pursue this mission in a manner that is "[f]ocused on the public interest," "[r]esponsive and accountable," and "[c]onsistent with the highest standards of professionalism, excellence, ethics and good governance." The Federation takes this mandate from the statutes governing the law societies in each province.

To abdicate its gatekeeping responsibility respecting admission to the profession by hiding behind the self-imposed limits it describes in its response to the Council of Canadian Law Deans is inconsistent with the Federation's own mission to act in

^{27.} *Ibid*.

^{28.} *Teaching Profession Act*, RSBC 1996, c 449 (as replaced by the *Teachers Act*, SBC 2011, c 19, s 99(2) (effective 9 January 2012).

^{29.} Trinity Western University, supra note 7 at para 13.

^{30.} Task Force, supra note 25 at 15-16.

^{31.} FLS, Mission Statement, online: FLS http://www.flsc.ca/en/our-mission/ [Mission Statement].

^{32.} FLS, *Values Statement*, online: FLS http://www.flsc.ca/en/our-mission/>.

^{33.} See, for example, Legal Profession Act, supra note 19.

the public interest in a responsive and accountable fashion. It is not in the public interest to train lawyers in an institution with discriminatory policies. It is true that TWU, as a privately funded, religious institution, may be exempted from certain of the protections against discrimination created by British Columbia's Human Rights Code. 34 Without this exemption, its policies would certainly violate human rights law protections. More importantly, the wording of the religious exemption granted to TWU under section 41 of British Columbia's human rights legislation is particular to that province.³⁵ The Supreme Court of Canada found that TWU's discrimination is not unlawful in British Columbia. However, it may be unlawful in other Canadian jurisdictions. The majority of provinces do not have religious exemption clauses parallel to the one found in the British Columbia legislation. The human rights legislation in provinces such as Alberta and Manitoba do not include an exemption provision analagous to the BC provision. In other provinces, such as Saskatchewan and Nova Scotia, the exemption that is included is limited to employment.³⁶ Presumably, an exemption limited to employment contracts would not apply to student admission policies such as the one found in TWU's covenant. Given the variance in human rights codes and the scaricity of case law interpreting exemption clauses, it would be ill-advised for the Federation to assume that TWU's discriminatory policies are exempted under legislation such as the Alberta Human Rights Act, the Saskatchewan Human Rights Code, or the Nova Scotia Human Rights Act. Presumably, none of these law societies would accept a Federation decision to approve a law degree from an institution whose policies would be unlawful if it were situated in any of their provinces. Responsive and accountable service in protection of the public interest requires the Federation to examine whether TWU's discrimination would be exempted in the province of every law society it represents. This is particularly true given its role in stewarding the national mobility agreement between law societies in Canada. Before accepting a decision by the Federation to approve a TWU law degree, each of the member law societies in Canada would certainly want to ascertain whether TWU's discriminatory policies violate human rights legislation in their jurisdictions.

The law societies should also consider the possibility that a decision by them to approve a program from an institution that discriminates in its admissions policies would violate section 15 of the *Charter*. The *Charter* applies to a law society's policies and regulations regarding eligibility for admission to the bar.³⁷ A law society that adopted criteria for admission to the bar that precluded eligibility for gays and lesbians would violate the *Charter*. By adopting a Canadian common law degree as

^{34.} Human Rights Code, supra note 2.

^{35.} *Ibid*, s 41. See also *Trinity Western University*, supra note 7.

^{36.} Human Rights Act, RSNS 1989, c 214, Alberta Human Rights Act, RSA 2000, c A-25.5, Saskatchewan Human Rights Code, SS 1979, c s-24.1, Human rights Code, CCSM, c H175.

^{37.} Black v Law Society of Alberta, [1989] 1 SCR 591.

a criteria for eligibility, the law societies have delegated part of their gatekeeping authority to Canada's law schools. The admissions process at approved law schools serves a gatekeeping function for the law societies. In this sense, the law societies have downloaded to the law schools part of their statutorily authorized discretion to establish criteria for admission to the practice of law. Law societies, as is the case with government actors, cannot avoid their *Charter* obligations by doing indirectly (through delegation) what they are not permitted to do directly. Think of it this way. The government of Canada is not permitted to discriminate on the basis of sexual orientation in its hiring policies. Assume a particular government department outsourced its hiring process to a private human resource firm. The exercise of hiring discretion by that private firm would be subject to Charter scrutiny. The government cannot avoid the application of the *Charter* by using private third party entities to carry out some of its activities.³⁸ The same is true for law societies. When a law society approves a law degree program from an institution, it uses the admissions process of that institution to serve as a preliminary gatekeeper to the practice of law. It has in essence adopted the institution's admissions process. A law society that approves a law degree program from an institution that discriminates on the basis of sexual orientation in its admissions policies has adopted for itself a criteria for eligibility that violates section 15 of the *Charter*. Presumably, the member law societies would be disinclined to accept a Federation decision to approve it if it could result in a *Charter* violation on their part.

The Federation should also consider the fact that if any of Canada's current law schools, which are neither private nor religiously based, adopted the policies employed by TWU they would violate the human rights legislation in their respective provinces. To approve a new law school with policies that would violate human rights legislation if adopted by any of the current Canadian law schools is not to "promote the cause of justice and the Rule of Law."

There is much controversy within the legal academy regarding the decision of Canada's law societies to articulate the academic criteria required of Canadian law degree programs. The advisability of the Federation's decision to impose upon Canadian law schools program requirements for eligibility to the bar is not at issue in this article. The fact is that the law societies have stepped into a regulatory capacity in relation to Canadian legal education. Given this decision, it is incumbent upon them to conduct this regulation in a principled and coherent manner. Nor do the arguments advanced in this article advocate for an expanded intrusion by the Federation into the delivery of legal education in Canada. First, the Federation could justifiably be more rigorous in approving new law degree

^{38.} Eldridge v British Columbia (Attorney General), [1997] 2 SCR 624.

^{39.} Mission Statement, supra note 31.

^{40.} See, for example, Canadian Association of Law Teachers and Canadian Law and Society Association, "Response to the Consultation Paper of the Task Force on the Canadian Common Law Degree of the Federation of Law Societies of Canada, December 15, 2008" (2009) Canadian Legal Education Annual Review 151.

programs than in its review of Canadian law schools with decades or centuries of experience and reputation educating law students. Second, if any of Canada's current law schools were to adopt policies that violate human rights legislation, then they too should be considered non-compliant with the Federation's requirements for approval. Third, rejecting a law degree program on the basis that it is offered by an institution with discriminatory policies does not demand significant, substantive scrutiny of a law school's curriculum or pedagogical approaches. The Federation is not well positioned, nor would it be desirable for it, to inquire into the particular pedagogical practices of a specific course or law teacher. The arguments advanced here relate specifically to institutional policies. Within an institutional environment that protects academic freedom and that rejects discriminatory policies, all manner of diversity of perspective, background, and pedagogical approach should be permitted to flourish or not, based on its own merits. However, it is reasonable to conclude that concepts of justice, equality, non-discrimination, inclusivity, and anti-oppression foundational tenets of Canada's legal system⁴¹ cannot properly be taught, from whatever pedagogical approach, in a learning environment created by an institution with policies that are explicitly (and unapologetically) discriminatory.

For the Federation's purposes, the issue is not only whether TWU's discriminatory practices contravene human rights code regimes. The concern, from the Federation's perspective, should also be with the impact TWU's policy will have on TWU's ability to competently deliver a program that develops an appreciation and understanding of fundamental legal principles and values such as the concept of non-discrimination. The untenable nature of the Federation's initial response to this question can be illustrated by reference to a plausible hypothetical. What if instead of a policy prohibiting same-sex sexual intimacy TWU required its members to refrain from mixed-race sexual intimacy? Would the Federation approve a law degree from an institution with an anti-miscegenation policy that excluded applicants to its law school on the basis of race? Imagine that the Approval Committee was presented with an application to approve a law school program from an institution with a covenant identical in all respects to that of TWU except that wherever the TWU's text reads "the sacredness of marriage between a man and a woman," the institution's text instead read "the sacredness of marriage between a man and a woman of the same race." And wherever references to Bible text are made with respect to homosexuality, additional references to Biblical passages are made with respect to interracial sexual relationships. 42 If the Council of

41. Reference re Secession of Quebec, supra note 3.

^{42.} The analogy here is apt. It is not an implausible analogy. Bob Jones University, a private Christian university in South Carolina, ended its ban on interracial dating as recently as 2000. (I am grateful to Jocelyn Downie for bringing this analogy to my attention.) See "Bob Jones University Ends Ban on Interracial Dating," *CNN US* (30 March 2000), online: CNN http://articles.cnn.com/2000-03-04/us/bob.jones 1 racist-school-ends-ban-bushs-visit? s=PM:US>. See Serena Mayeri, *Reasoning from Race: Feminism, Law and the Civil Rights Revolution* (Cambridge, MA:

Canadian Law Deans wrote to the Federation to raise concerns about the discriminatory nature of an anti-miscegenation covenant, would the Federation respond that it cannot refuse to approve the program because to consider the covenant lies outside the Approval Committee's authority? A religiously based anti-miscegenation policy is analogous to TWU's anti-gay policy. Discrimination based on racist religious beliefs would also be exempted under section 41 of British Columbia's *Human Rights Code*. There is no principled foundation upon which to approve a law school program delivered by a private institution with religiously based homophobic policies and practices but not one delivered by a private institution with religiously based racist policies and practices.

Similarly, the Federation should ask itself what it would do if TWU's covenant discriminated on the basis of sex. Would a faculty with religious opposition to women's participation in public life be able to competently train men for entry into the legal profession? If the Federation is of the opinion that its current mandate to approve new law schools does not allow for an inquiry into an institution's admissions and human resource policies for the purposes of identifying discrimination, then it should seek approval from the law societies to change its mandate. Again, there is no legal impediment to the law societies making this change. Rather, it is their responsibility, as the gatekeepers to the profession, to ensure that the process they adopt for approving new law degrees is sufficiently rigorous and reflects, protects, and promotes the core values of the profession and the legal system, most notably, in this instance, anti-discrimination.

A TWU Law Degree Would Not Comply with the National Requirement

As described earlier, as a second line of defence in responding to the Council of Canadian Law Deans' expressions of concern about the TWU application, the Federation made reference to the national requirement. However, contrary to the implication of the Federation's letter, TWU's policies are highly relevant to the assessment of capacity to meet the national requirement. It is precisely on this requirement that the TWU proposal fails. In particular, because it has policies that discriminate on the basis of sexual orientation and that violate academic freedom, a TWU law school program would not meet the Federation's national requirement on ethics and professionalism.

The Federation has articulated a greater concern with ensuring competency on ethics and professionalism than with any other subject matter addressed by law schools: "Ethics and professionalism lie at the core of the legal profession."

Harvard University Press, 2011), for a discussion of the challenges with relying on race-based analogies to advance sexual minority rights arguments.

^{43.} *Task Force, supra* note 25 at 4. The Federation concluded that the emphasis and focus of the national requirement should be on learning outcomes—that a focus on learning outcomes

As such, the Federation "places particular emphasis on the need for law school graduates who seek entry to law society admission programs to have an understanding of ethics and professionalism." According to the Federation, "the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better."

The ethics and professionalism competency requirement established by the Federation stipulates that an "applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context."46 In addition to knowledge and understanding of the ethical dimensions of practising law (such as the duty not to discriminate), the national requirement also establishes skills-based competencies in the area of ethics and professionalism. One of the skills required by the Federation is the ability to "identify and engage in critical thinking about ethical issues in legal practice." The statement of faith and community covenant required of its faculty, staff, and students reveal that TWU would be unable to provide a learning environment that could satisfy the ethics and professionalism competency required by the Federation. There are at least two reasons why this is the case. First, it is reasonable to conclude that an academic institution with policies that create "unfavourable differential treatment" on the basis of sexual orientation⁴⁸ is not a learning environment capable of developing an adequate understanding of the ethical duty not to discriminate. Second, TWU's statement of faith violates academic freedom and is incommensurate with a program aimed at developing the skill to think critically about ethical issues.

TWU Is Not a Learning Environment Capable of Developing an Adequate Understanding of the Ethical Duty Not to Discriminate

One vital aspect of ethics and professionalism relates to the ethical duty not to discriminate and to the importance of human rights principles. Rule 6.3-5 of the Federation's *Model Code of Professional Conduct* stipulates that "[a] lawyer must not discriminate against any person." The *Model Code of Professional Conduct*

[&]quot;represents the appropriate regulatory approach" (*ibid* at 4). In keeping with this conclusion, the task force recommended that the Federation leave it to law schools to determine how graduates accomplish the competencies identified in their report. However, they made one exception to this approach for competencies related to professionalism and ethics.

^{44.} FLS, Common Law Degree Implementation Committee: Final Report (August 2011) at 15, online: FLS http://www.flsc.ca/ documents/Implementation-Report-ECC-Aug-2011-R.pdf> [Implementation Committee Report].

^{45.} Task Force, supra note 25 at 35.

^{46.} Implementation Committee Report, supra note 44 at 17.

^{47.} *Ibid* [emphasis added].

^{48.} Trinity Western University, supra note 7 at 34.

^{49.} FLS, *Model Code of Professional Conduct* (as amended 12 December 2012), Commentary Rule 6.3-5 at 100, online: FLS http://www.flsc.ca/ documents/ModelCodeRevDec2012TDBL. pdf>.

emphasizes that "[a] lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws." A key question in relation to an institution's capacity to meet the national requirement with respect to ethics and professionalism is whether the institution is capable of developing students' understanding of the ethical duty not to discriminate. To answer this question with respect to TWU's application, the Federation should consider some of the scriptural passages that TWU compels all members of its community to comply with. 51 Particularly noteworthy are those scriptural passages cited to support the covenant that TWU students, staff, and faculty not engage in same-sex sexual intimacv. 52 These include the following: Romans 1:26: "For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature"; Romans 1:27: "In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error."53

As discussed earlier, the requirement that members of the TWU community not engage in same-sex sexual intimacy either on or off campus was found by the Supreme Court of Canada to create "unfavourable differential treatment" on the basis of sexual orientation. The Court recognized that such treatment, if engaged in by a public institution, would violate the human rights of gays and lesbians under section 15 of the *Charter* (if the *Charter* applied) and under Canadian human rights code regimes. The Court rejected the formalistic argument that the covenant does not constitute discrimination because it prohibits sexual acts between people of the same sex rather than gay and lesbian people themselves. The Court agreed that instead the question is whether TWU's community standards mean

^{50.} Ibid, Commentary Rule 6.3 at 100.

^{51.} All TWU programs are established and implemented according to the edict that scripture "must be the final and ultimate standard of truth, the reference point by which every other claim to truthfulness is measured." TWU, *Core Values Statement Series No. 1: Obeying the Authority of Scripture* (5 January 1999) at 3, online: TWU http://twu.ca/divisions/hr/about/twu-core-values.html [Core Values Statement].

^{52. &}quot;[C]ommunity members voluntarily abstain from ... sexual intimacy that violates the sacredness of marriage between a man and a woman." Covenant Agreement, supra note 6 at 3. As discussed later in this article, it misrepresents the implications of the commitment required of members to insert the word voluntarily into the agreement. The agreement itself is not optional, and a breach of the agreement can result in suspension or expulsion. To argue that it is voluntary because sexual minorities can simply choose not to apply to TWU is to engage in the most obvious and objectionable formal equality reasoning. Women can choose not to become pregnant. Sikhs can choose to abandon their headwear. For a discussion of the inequality of formal equality reasoning, see Dianne Pothier, "Equality as a Comparative Concept: Mirror, Mirror, on the Wall, What's the Fairest of Them All?" (2006) 33 Supreme Court Law Review (2d) 135.

^{53.} Covenant Agreement, supra note 6 at n 16.

^{54.} Trinity Western University, supra note 7 at para 34.

^{55.} *Ibid* at para 25.

that a gay or lesbian student who signed the covenant would consider themselves accepted by the TWU community on an equal basis.⁵⁶ The majority concluded that "a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost."⁵⁷ The majority confirmed that the same would be true for gay and lesbian job applicants.⁵⁸

Sexual orientation is conspicuously absent from the lengthy list of grounds upon which TWU declares itself not to discriminate. Other than religion, sexual orientation is the only prohibited ground of discrimination under British Columbia's human rights legislation that is not protected by TWU's anti-discrimination policy. The fact that the discrimination perpetuated by TWU's policies may not be unlawful in British Columbia should not be relevant to a decision as to whether a TWU law school would be in compliance with the Federation's national requirement on ethics. In the context of this assessment, the Federation's concern should be with the impact that TWU's policies will have on TWU's ability to competently deliver a program that develops students' understanding of the ethical duty not to discriminate.

While the Federation ought not to inquire into specific course content and pedagogical approach, it should (given the regulatory role it has assumed) apply the national requirement to an institution's policies in a manner that is cognizant of the fact that a proper legal education is multi-dimensional, textured, and contextual. It is so much more than the rote learning of doctrine and legal text. It includes relationships, role modelling, critical discussion, and experiential learning. Knowledge and understanding of an ethical rule are not the same. The Federation's national requirement stipulates that students demonstrate a competency in both awareness and understanding of the ethical dimensions of practice.⁶¹ By including both knowledge and understanding, the national requirement must intend something more than just a competent knowledge of the actual rules of professional conduct. An understanding of the ethical dimensions of lawyering is broader than just a knowledge of the professional rules of conduct. Understanding the ethical dimensions of the practice of law must mean something like grasping the significance, implications, and importance of ethical duties such as the duty not to discriminate.

Consider then the learning environment in which TWU proposes to deliver a law program with the capacity to develop a competent understanding of a lawyer's duty

^{56.} Ibid at para 23.

^{57.} Ibid at para 25; see also para 23.

^{58.} *Ibid* at para 34.

^{59. &}quot;We do not discriminate on the basis of race, colour, national or ethnic origin, age, sex, marital or family status, pardoned conviction, nor physical or mental disabilities." "Employment Opportunities," *supra* note 6.

^{60.} Ibid; Human Rights Code, supra note 2.

^{61.} Implementation Committee Report, supra note 44 at 17.

not to discriminate. TWU discriminates against gays and lesbians in its hiring policy by stipulating that compliance with the covenant not to engage in same-sex sexual intimacy serves as a condition of employment. TWU discriminates against gays and lesbians in its admissions policy by requiring that applicants sign the community covenant and by advising applicants that those "who find themselves unable to maintain the integrity of their commitment should seek a living-learning situation more acceptable to them." TWU policies require students to be complicit in acts of discrimination against gays and lesbians by requiring that they sign the covenant in order to attain membership in the community and by encouraging them to "challenge one another and hold each other accountable to the *Community Covenant*." Again, TWU's admissions and hiring policies would constitute unlawful discrimination if adopted by any of the universities currently offering law degrees in Canada.

An institution with policies that discriminate on the basis of sexual orientation does not have the competency to deliver a law program consistent with the national requirement on ethics and professionalism. The institutional setting at TWU, because of TWU's community covenant, is simply not consistent with the national requirement that law programs have the capacity to develop an understanding of the ethical duty not to discriminate. The Federation should conclude that the proposed TWU law degree program does not meet the national requirement because of the institution's discriminatory policies. This conclusion does not require the Federation to request information about, or scrutinize, the substance of any proposed course or pedagogical approach. The failure to comply with the national requirement is at an institutional level.

TWU's Policies Violate Academic Freedom and Are Incommensurate with a Program Aimed at Developing the Skill to Think Critically about Ethical Issues

Academic criteria for approval of a law degree program under the Federation's current national requirement includes the "skills to . . . identify and engage in critical thinking about ethical issues in legal practice." TWU's policies are incommensurate with this requirement. TWU describes itself "as an arm of the church" and identifies its primary mandate as "first and foremost, a community of people passionately

^{62.} Covenant Agreement, supra note 6.

^{63.} Student Handbook, supra note 10 at 24.

^{64.} *Ibid* at 25.

^{65.} Human rights code regimes do apply to public universities and do prohibit discrimination on the basis of sexual orientation. See, for example, the *Canadian Human Rights Act*, RSC 1985, c H-6; Ontario's *Human Rights Code, supra* note 2.

^{66.} Implementation Committee Report, supra note 44 at 17.

committed to Jesus Christ and to God's purposes."⁶⁷ It is a disciple-making community. The university confirms that "[d]iscipleship for members of the TWU community is not an option."⁶⁸ It is mandatory. TWU's core value statements stipulate that scripture must be the "final authority for all Christian faith and life."⁶⁹ TWU's programs are established and implemented according to the edict that scripture "must be the final and ultimate standard of truth, the reference point by which every other claim to truthfulness is measured. In other words, Scripture must be our lens by which we view and evaluate our lives and the world."⁷⁰ Core to its mission, the university maintains that "[a]ll that Scripture teaches in regard to . . . ethical commitments must be wholeheartedly embraced."⁷¹

These commitments are not voluntary for members of the TWU community. The university requires that this assertion of scriptural doctrine as the final and authoritative source of truth be expressed in all teaching.⁷² Compliance with teaching from this perspective is obligatory. 73 Academic staff at TWU are required annually to sign a statement of faith. The statement of faith requires faculty to "agree with ... and agree to support ... at all times" the position that the Bible is "the ultimate authority by which every realm of human knowledge and endeavor should be judged. Therefore, it is to be believed in all that it teaches, obeyed in all that it requires, and trusted in all that it promises."⁷⁵ All students, faculty, and staff are required to pledge "acceptance of the Bible as the divinely inspired, authoritative guide for personal and community life." In other words, academic staff are required to teach students that the Bible is the ultimate, final, and authoritative guide by which ethical decisions are to be made. Students are required to pledge acceptance of the scripture as the ultimate source of authority by which to judge every aspect of their lives, including ethical decision making.

To teach that ethical issues must be perceived of, assessed with, and resolved by a pre-ordained, prescribed, and singularly authoritative religious doctrine is not to teach the skill of critical thinking about these issues. In fact, to limit ethical inquiry in this manner is hostile to the process of critical thinking. Critical thinking

^{67.} TWU, Introductory Statement to TWU Core Values Series: Trinity Western University as an "Arm of the Church" (4 October 1997) at 2, online: TWU http://twu.ca/divisions/hr/about/twu-core-values.html.

^{68.} TWU, Core Values Statement Series No 6: Growing as Disciples in Community (12 July 2001) at 1, online: TWU http://twu.ca/divisions/hr/about/twu-core-values.html.

^{69.} Core Values Statement, supra note 51 at 3.

^{70.} *Ibid*.

^{71.} *Ibid* at 4.

^{72.} TWU, *Statement of Faith* (6 November 2009), online: TWU http://twu.ca/divisions/hr/employee/documents/default.html [Statement of Faith].

^{73.} *Ibid*; see also Bruneau and Friedman, *supra* note 14.

^{74.} Statement of Faith, supra note 72; see also Bruneau and Friedman, supra note 14 at 7.

^{75.} Statement of Faith, supra note 72 [emphasis added].

^{76.} Covenant Agreement, supra note 6 at 1.

involves deliberation, reasoning, reflection, and logic in order to decide what to believe or what to do. It requires the ability to discern hidden values and unstated assumptions, to consider and evaluate the reason and logic of competing statements of truth, to observe and evaluate evidence, and to assess context and the reliability of sources of information in order to arrive at a finding of truth. Critical thinking does not start with a conclusion of truth. Certainly, one might, through critical-thinking processes, arrive at the conclusion that an ethical decision should be guided by, or based on, religious doctrine. However, to teach that all judgment must be guided by the Bible to teach that the source of truth for all ethical decision making is the scripture is not to teach the skill of critical thinking about ethical issues.

As the CAUT has concluded, a guarantee of academic freedom from a stated religious perspective is inconsistent with a commitment to academic freedom: "[T]he right, without restriction by prescribed doctrine, to freedom of teaching and discussion." So too, it is antithetical to the development of the skill of critical thinking about ethical issues in law to require that it be taught from one particular, and purported to be singularly authoritative, perspective. It would be unreasonable for the Federation to conclude that TWU, given its current policies, could offer a learning environment competent to develop critical thinking skills about ethical issues in law. Based on the national requirement for ethics and professionalism established by the Federation, TWU's application for approval of a new common law degree should be denied.

A Decision Not to Approve TWU's Application Would Be Upheld

In 1996, the British Columbia College of Teachers (BCCT) denied an application by TWU for approval of a fully accredited teacher education program. The college denied the application on the basis that it would not be in the public interest because of the discriminatory practices enagaged in by the institution. The BCCT found that TWU did not meet its criteria for accreditation because of its prohibition of same-sex sexual activity. TWU sought judicial review of this decision, and, ultimately, the BCCT was ordered to fully accredit TWU's teacher education program.

There are two interrelated reasons why a decision by the Federation not to approve a TWU application would be treated differently by the courts than was the decision of the BCCT. First, the legal context has changed. Second, the Federation's justifications for denying an application differ from the arguments made on behalf of the BCCT.

^{77.} Bruneau and Friedman, *supra* note 14 at 10 [emphasis in the original].

^{78.} Trinity Western University, supra note 7.

The Legal Context Has Changed since Trinity Western University Was Decided

The legal context has changed in two ways since Trinity Western University was decided. First, the legal standard by which a decision of the Federation would be judicially reviewed has changed. The Federation's decision would be treated with deference by the courts.⁷⁹ The BCCT's decision did not receive deference. It was reviewed by the Court on a standard of correctness. The BCCT argued that it could not accredit TWU because of a concern that its graduates could have a detrimental effect on the learning environment in public schools. Having no evidence before them to demonstrate that the public school system would be harmed by teachers who received all of their training at TWU, the Supreme Court of Canada concluded that the BCCT's decision was not correct. According to the majority, the BCCT did not properly take into account the impact of its decision on the right to freedom of religion of TWU members. 80 In making its decision, the Federation will be required to balance freedom of religion and equality (as was the BCCT). However, unlike in Trinity Western, the balance struck by the Federation would be reviewed on a standard of reasonableness. Provided the Federation achieves a reasonable balance between protecting freedom of religion and protecting equality, its decision will be upheld.

As was just suggested, in deciding whether to approve a new law degree program, the Federation must strike a reasonable balance between freedom of religion, equality, and its mandate to protect the public interest. The Federation's decision on whether to approve a law degree from TWU must be consistent with *Charter* values. In making its decision, the Federation must ask how to pursue its objectives in a way that will best protect the *Charter* values at issue. If the decision is judicially reviewed, the question will be whether "in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing" of the *Charter* rights and values at play. Again, this question will be approached with deference. The Federation's decision will be unreasonable if, in pursuing its objectives, it disproportionately impairs a *Charter* guarantee in this case, either freedom of religion or equality.

^{79.} *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 [*Doré*]. I am grateful to my colleague Sheila Wildeman for originally bringing this point to my attention.

^{80.} Trinity Western University, supra note 7 at para 33.

^{81.} Doré, supra note 79.

^{82.} In *Doré*, *supra* note 79, the Supreme Court of Canada determined that the exercise of individualized administrative discretion—like a decision by a professional regulator as to whether to approve a program—are to reflect *Charter* values.

^{83.} *Ibid*.

^{84.} *Ibid* at para 57.

^{85.} *Ibid* at para 7.

A decision by the Federation not to approve a law degree from TWU would affect the interests of TWU law graduates (presuming the government of British Columbia decides to accredit a TWU law degree). Unlike graduates from other Canadian law schools, TWU law graduates would not be eligible for licensure to practise law in Canada immediately following graduation and completion of a provincial bar exam and articles. Instead, like foreign-trained lawyers, TWU graduates would presumably have to meet certain entrance requirements determined by the National Committee on Accreditation. 86

The question is whether this impact on freedom of religion is unreasonable in light of the Federation's mandate. The answer is no. The Federation must take into consideration the impact of its decision on freedom of religion. However, it must do so in a way that balances the impact on freedom of religion with both its mandate to protect the public interest and competing *Charter* values such as equality. A proper balance of the Federation's mandate with all of the *Charter* rights and values at issue requires that the Federation not approve a law degree from TWU. Not only is it reasonable for the Federation to reject TWU's application, but it would actually be unreasonably dismissive of equality protections for them to do otherwise.

The Federation is charged with protecting the public interest by ensuring that those who are licensed to practise law in Canada have received an education that will position them to protect and promote the fundamental legal principles upon which Canada's systems of law and governance are to operate. It is not in the public interest to train lawyers in an institution with policies that are inconsistent with core professional values and fundamental legal principles. TWU, given its discriminatory policies and violation of academic freedom, is not equipped to provide the kind of legal education that Canadians expect of their practising lawyers. Lawyers enjoy a uniquely independent system of self-regulation. With this privilege comes a heightened need to empower the profession's regulating bodies to protect the public interest. The intrusion on freedom of religion imposed by a decision not to approve TWU's application is necessary and drives at the core of the Federation's

^{86.} The National Committee on Accreditation (NCA) is a standing committee of the Federation. It assesses the legal education and professional experience of individuals who obtained their credentials outside of Canada. Based on its assessment of the applicant's education and experience, the NCA requires individuals to meet particular requirements before they can apply for admission to a law society in Canada. Federation, "About the NCA," online: FLS http://www.flsc.ca/en/nca/about-the-nca/. A regulator's decision not to approve an educational program is separate from a provincial government's decision on whether to accredit a university's degree. If the government of British Columbia gives TWU permission to confer law degrees, the Federation could adopt a process for TWU law graduates similar to what it currently requires of foreign trained lawyers. Of course, much would need to be done by the Federation to ensure that an alternative process of accreditation for TWU-trained lawyers was sufficiently rigorous, thorough, and substantive to compensate for the deficiencies in a TWU law program.

^{87.} Doré, supra note 79.

^{88.} *Ibid*.

mandate. In arriving at a reasonable balance, it is important to remember that a decision by the Federation not to approve TWU's proposed program is distinct from the institution's ability to offer its students the opportunity to study law in its specifically Christian environment. A different matter still, one in the hands of the BC government, is whether such study leads to the conferral of a law degree.

When viewed in light of the Federation's overarching objectives, the competing equality interests, the lack of impact on the university's ability to offer a law degree, and the potential for accommodation of TWU law graduates through the NCA process, the limit on religious freedom imposed by a refusal to approve TWU's law degree is proportionate and therefore reasonable.

The second and related change to the legal context since *Trinity Western University* was decided involves the relationship between evolving societal values and evolving *Charter* jurisprudence. As societal values change, what constitutes a reasonable balance between protecting freedom of religion and protecting against discrimination on the basis of sexual orientation also changes. The Court's evolving jurisprudence on gay and lesbian equality clearly reflects this position. For example, in *R. v Tran*, the Court rejected the same gay panic defence it had accepted for decades on the basis that "the ordinary person standard must be informed by contemporary norms of behaviour, including fundamental values such as the commitment to equality provided for in the *Canadian Charter of Rights and Freedoms*." In *Canada (Attorney General) v Hislop*, the Court explicitly recognized that despite constitutional recognition in 1995, equal protection under the law has been achieved gradually for gays and lesbians as social, legal, and political norms have become more tolerant of sexual minorities.

Today's decision makers are expected to be much more protective of gay and lesbian equality than were the decision makers of ten, fifteen, or twenty years ago. ⁹² *Trinity Western University* was decided twelve years ago. The majority in that case found that the equality interests of gays and lesbians were not sufficiently jeopardized by a public school system with teachers educated in a university that discriminates on the basis of sexual orientation: "While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers." Societal values have evolved. The Court in *Trinity Western University* addressed the inequality towards sexual minorities by concluding that the discriminatory policy was okay

^{89.} Consider also the evolving recognition of equality protection for same-sex couples under section 15 of the *Charter* revealed by the Court's decisions in *Canada (Attorney General) v Mossop*, [1993] 1 SCR 554, 100 DLR (4th) 658; *Egan v Canada*, [1995] 2 SCR 513, 124 DLR (4th) 609; *Reference re Same Sex Marriage*, [2004] 3 SCR 698, 246 DLR (4th) 193.

^{90.} R v Tran, 2010 SCC 58 at para 34, [2010] 3 SCR 350.

^{91.} Canada (Attorney General) v Hislop, 2007 SCC 10, [2007] 1 SCR 429.

^{92.} *Ibid*

^{93.} Trinity Western University, supra note 7 at para 35.

because "TWU is not for everybody." A reasonable balance between freedom of religion and equality for gays and lesbians based on contemporary standards requires ascribing more weight to the equality interest than what is attributed to it by resolving the tension with the conclusion that no one is saying that gays cannot be teachers. 95

The Federation's Basis for Denying Approval Is Different

In addition, the justification for denial relied on by the Federation would be different than the argument made by the BCCT. The BCCT argued that teachers trained in an institution that discriminates on the basis of sexual orientation might perpetuate discriminatory attitudes in the public school classroom. The Court concluded that the BCCT decision was incorrect because there was no concrete evidence that this scenario would occur. The Federation's decision not to approve would be justified on a different basis. First, it is reasonable to conclude that principles of equality, non-discrimination, and the duty not to discriminate requirements of the Federation's accreditation framework cannot competently be taught in a learning environment with discriminatory policies. Second, it is reasonable to conclude that the skill of critical thinking about ethical issues cannot adequately be taught by an institution that violates academic freedom and requires that all teaching be done from the perspective that the Bible is the sole, ultimate, and authoritative source of truth for all ethical decision making. This is a different argument than the one made by the BCCT. It is not a prediction that in the future TWU law graduates would discriminate. It is not a conclusion that requires empirical evidence of discrimination by TWU graduates. Nor, as noted earlier, is it a conclusion that would be reviewed on a correctness standard.

Conclusion

June 2003 was a triumphant month for the equality interests of gays and lesbians in North America. Two landmark court decisions were released that month. On 26 June 2003, the Supreme Court of the United States finally declared antisodomy laws to be an unconstitutional violation of the rights of gay men in America. Sixteen days earlier, the Ontario Court of Appeal had concluded that a legal definition of marriage that excluded same-sex couples violated the equality guarantees under the *Charter*. This decision was a watershed moment in the successful bid to achieve same-sex marriage rights across Canada. Anti-sodomy laws were repealed in Canada more than thirty years earlier on 27 June 1969 without a

^{94.} Ibid at para 25.

^{95.} *Ibid* at para 35.

^{96.} Lawrence v Texas, 539 US 558 (2003), 123 S Ct 2472.

^{97.} Halpern v Canada (Attorney General) (2003), 65 OR (3d) 161, 225 DLR (4th) 529.

court battle and before equality guarantees were even constitutionally entrenched in this country. ⁹⁸ Interestingly, the legislation repealing anti-sodomy laws in Canada came into force one day before gay, lesbian, and transgender men and women in New York City were pushed to the point of uprising during the famous Stonewall Riots, which are often credited with kicking off the sexual minority rights movement in America.

It has always seemed striking that in the same month that Canada was granting same-sex marriage, the United States was finally rejecting criminal law prohibitions aimed at gay sex something Canada had done thirty-four years prior. Canada has often been at the vanguard of ensuring constitutional and human rights protection for the equality interests of gays and lesbians. Given our legal tradition in this regard, it seems all the more striking that the Federation might abdicate its gatekeeping responsibilities by approving a law school with discriminatory policies, when its American counterpart, despite a legal culture much less protective of sexual minority rights, has recognized in its standards of approval for law schools that the distinction between lawful and unlawful discrimination against sexual minorities based on religious justification is not relevant. 99 Under the American Bar Association's standards, law schools with a religious affiliation can prefer persons who adhere to the religious affiliation or purpose of the school, provided such preference is "protected by the United States Constitution" and provided the institution does "not use admission policies or take other action to preclude admission of applicants ... on the basis of ... sexual orientation." In deciding whether to approve a law degree from TWU, the Federation and its member law societies will need to choose on which side of legal history they wish to stand.

100. *Ibid*.

^{98.} Criminal Law Amendment Act, SC 1968-9, c 38.

^{99.} American Bar Association (ABA), 2012–2013 ABA Standards and Rules of Procedure for Approval of Law Schools (Chicago: ABA, 2012), Standard 211 at 12-13, online: ABA http://www.americanbar.org/content/dam/aba/publications/misc/legal education/Standards/2012 2013 aba standards and rules.authcheckdam.pdf. See, in particular, the Interpretation to Standard 211 at 13. For the purposes of law degree program approval, the ABA does not distinguish between lawful and unlawful discrimination on the basis of sexual orientation. Conversations with the ABA reveal that there has not yet been controversy regarding this section of the ABA standards. It remains to be seen how the ABA will apply this section in its assessment of religiously affiliated American law schools with homophobic policies. Nevertheless, just by revising its standards in this way, the ABA has demonstrated a commitment to equality for sexual minorities that far exceeds the FLS's initial response to this issue.

From: Jeremy R Costin [Jeremy@metrolaw.ca]
Sent: Tuesday, February 11, 2014 4:25 PM

To: Submissions

Cc: Jeremy Costin (CostinMedia)

Subject: CBA resolution and TWU Law School

Follow Up Flag: Follow up Completed

Dear Law Society,

I am in favour of the CBA resolution opposing accreditation of law programs by religious institutions that do not fully endorse the Charter (14-04-M). I believe that the pursuit of justice by lawyers, judges, and all law school graduates must not be hampered by an educational environment that eschews principles of the Canadian Charter of Rights and Freedoms by virtue of being a private institution. A private institution that uses such a shelter from the Charter cannot expect the weight of the diplomas and degrees it grants to be accepted as equal or equivalent to those granted by institutions that are fully compliant with public policy, especially in a discipline as fundamental to the pursuit of a just society, consistent with the Canadian concept of such a society, as the study of law in preparation for a career as a jurist. Just as a degree in herbology, even if named a degree in naturopathic medicine, is not sufficient to be admitted to any Canadian college of physicians as a medical doctor, a degree in law that by deliberately colouring the student body obfuscates the most fundamental legal principles of our society is not sufficient to be admitted to any bar or bench as a jurist. Debating the principles of the Charter is not objectionable; it is to be encouraged. Closeting them is objectionable, as it prevents the open and complete debate to which our Charter and law must be subjected. Any law school that tucks the Charter in the closet for religious reasons is not a law school; it is a seminary, its polemic fundamental to and inextricable from its teachings.

Jeremy R. Costin

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From: Allison Crane [acrane@intermarklaw.com] Tuesday, February 11, 2014 8:38 PM Sent:

Submissions To: Subject: Trinity Law School

Follow Up Flag: Follow up Completed Flag Status:

Dear Law Society,

I support the position of the CBA that is against discrimination. I think that discrimination in legal education undermines the ethical underpinnings of the profession.

Allison Crane

Allison Crane* Legal Counsel Intermark Law Suite 960-1111 Melville Street Vancouver, B.C. V6E 3V6

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^{*}Practicing under a law corporation

From: VJD

Sent: Friday, February 28, 2014 7:19 AM

To: Submissions

Subject: Proposed Trinity Western Law School

Follow Up Flag: Follow up Completed

Due to Trinity Western University's incredibly homophobic charter, the first thing prospective students at their proposed law school would be taught is that it is just fine to discriminate against people in legally recognized same-sex marriages, blatantly and cruelly refusing them admission to that institution on the basis of to whom they are married.

How then could such a religiously-biased law school ever be entrusted with the sacred duty of formation of lawyers, some of whom will become legislators and judges, entrusted with upholding our Charter of Rights and Freedoms? The very first principle they teach their students contradicts Canadian law!

If we erode separation of church and state incrementally in ways like this, in time we will resemble nations like Iran and Russia more closely than many of us would like.

Sincerely, V. Dartnell & H. Lawson Vancouver, BC

From: Dale Darychuk [daled@pocolawyers.com]
Sent: Tuesday, February 11, 2014 4:23 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

An institution that wishes to educate future lawyers and judges must at a minimum respect the laws of the country. Over the course of my legal career, there has been a concerted effort to change legislation to acknowledge the equality of same sex partnerships. To have an institution that does not acknowledge this basic equality is a big step backwards. TWU can set whatever policies they believe are congruent with their Christian values but they cannot expect to thwart the laws of the land as they stand regarding same sex unions.

Regards,

Dale W. Darychuk, Q.C.

Darychuk Deane-Cloutier

Trial Lawyers

310-2755 Lougheed Highway

Port Coquitlam, BC

Phone: 604-464-2644

Fax: 604-464-2533

pocolawyers.com

From: Diana Davidson

Sent: Monday, February 03, 2014 10:01 PM

To: Submissions

Subject: Trinity Western University application

Follow Up Flag: Follow up Completed

Dear Executive Director,

I am writing in response to your invitation for comments on the application by Trinity Western University (TWU) for Law Society approval of its law school program so that its graduates could apply to the Society to become articled students in B.C.

I wish to register my VERY STRENUOUS objection to this application on the basis, inter alia, that the Trinity Western University Community Covenant Agreement (CCA) which MUST be signed by ALL faculty will make it IMPOSSIBLE for the law school curriculum to be taught in keeping with the fundamental values of Canadian society as enshrined in the Canadian Charter of Rights and Freedoms (the Charter). It is both an essential and very important responsibility of all law schools in Canada to ensure that all of their graduates are not only well versed in the law surrounding the Charter but also that they embrace its values as they become lawyers and advocates for their fellow Canadians.

Trinity Western University (TWU) prides itself on being a Christian community whose members "accept the Bible as the divinely inspired, authoritative guide for personal and community life" (see page 1, section 2, sentence 1 of the CCA). Section 3 of the CCA requires that both faculty and students abstain from sexual intimacy that violates the sacredness of marriage between a man and a woman. Clearly, ALL analysis of case law involving the rights of groups such as gays, lesbians and transgendered persons will be made through the lens of this covenant which will put the teaching into direct conflict with the Charter.

I have practised law in three Canadian provinces over four decades and am both saddened by and furious over the possibility that TWU might receive approval of its program from the Law Society of British Columbia. As a quote from Sir Norman Birkett reproduced in a recent issue of the Advocate reminds us, "The purpose of the community of lawyers is that ordinary citizens shall always have at their disposal the man who can protect them, who can stand up before arbitrary power from whatever quarter it may come and assert the inalienable rights of the individual to the eternal freedoms". Given the explicit position of TWU on homosexuality, it would be impossible for any graduates of its law school program to fulfill their responsibilities to protect persons with a homosexual orientation "from arbitrary power".

Yours truly,

Diana L.Davidson, B.A., J.D. Queen's University

*

Click here to Reply, Reply to all or Forward

CDI College - Paralegal

Dear Executive Director,

I am writing in response to your invitation for comments on the application by Trinity Western University (TWU) for Law Society approval of its law school program so that its graduates could apply to the Society to become articled students in B.C.

I wish to register my VERY STRENUOUS objection to this application on the basis, inter alia, that the Trinity Western University Community Covenant Agreement (CCA) which MUST be signed by ALL faculty will make it IMPOSSIBLE for the law school curriculum to be taught in keeping with the fundamental values of Canadian society as enshrined in the Canadian Charter of Rights and Freedoms (the Charter). It is both an essential and very important responsibility of all law schools in Canada to ensure that all of their graduates are not only well versed in the law surrounding the Charter but also that they embrace its values as they become lawyers and advocates for their fellow Canadians.

Trinity Western University (TWU) prides itself on being a Christian community whose members "accept the Bible as the divinely inspired, authoritative guide for personal and community life" (see page 1, section 2, sentence 1 of the CCA). Section 3 of the CCA requires that both faculty and students abstain from sexual intimacy that violates the sacredness of marriage between a man and a woman. Clearly, ALL analysis of case law involving the rights of groups such as gays, lesbians and transgendered persons will be made through the lens of this covenant which will put the teaching into direct conflict with the Charter.

**** to be deleted by any other person sending these comments on *****I have practised law in three Canadian provinces over four decades***** and am both saddened by and furious over the possibility that TWU might receive approval of its program from the Law Society of British Columbia. law.unh.edu As a quote from Sir Norman Birkett reproduced in a recent issue of the Advocate reminds us, "The purpose of the community of lawyers is that ordinary citizens shall always have at their disposal the man who can protect them, who can stand up before arbitrary power from whatever quarter it may come and assert the inalienable rights of the individual to the eternal freedoms". Given the explicit position of TWU on homosexuality, it would be impossible for any graduates of its law school program to fulfill their responsibilities to protect persons with a homosexual orientation "from arbitrary power".

*****Yours truly,

Diana L.Davidson, B.A., J.D. Queen's University *****

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February 27, 2014

The Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Executive Director

Re: proposed law school for Trinity Western University

Dear Mr. McGee:

Thank you to the Law Society for the opportunity to comment upon whether the proposed Trinity Western University law school should be an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

In our view, Trinity Western University engages in discriminatory practices that may be acceptable among those choosing to privately associate but that should be unacceptable for those offering to sell a service to members of the general public. In particular, those discriminatory practices should disqualify Trinity Western University from being authorized to provide education in law that is deemed to meet the requirements for an approved faculty of law.

The situation as we see it could be summed up simply as follows. Trinity Western University allows its married heterosexual students to have sex. It would only allow the admission of married gay and lesbian students if they pledged to not have sex. If an institution were to similarly discriminate on other grounds – allowing married white students, for example, to have sex but forbidding sex to married black students, or allowing married Christian students to have sex but forbidding married Jewish students to have sex – most people could perceive that it was so out of touch with those fundamental values that are entrenched in the Canadian constitution and protected by federal and provincial laws as to be unable to properly educate students about our constitution and laws. The fact that the discrimination in the current case is based upon sexual orientation rather than race or religion should make no difference in this regard.

Even if the commodity that were on offer were one for which there was no shortage of competing vendors – a cup of coffee, for example – no one today would seriously argue that it would be acceptable to refuse a prospective purchaser on grounds of race or religion or gender and to say that they should just buy their coffee from some other, more welcoming supplier. This is all the more true with regard to legal education, something for which there is intense competition among prospective students and that qualifies them for a prestigious and lucrative career.

Accordingly, we urge the Law Society to make a determination that a law school at Trinity Western University would not be an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

Sincerely,

Michael P. Doherty Barrister & Solicitor 900 – 840 Howe Street Vancouver, BC V6Z 2S9

Susan Dauson

Susan Dawson Barrister & Solicitor 900 – 840 Howe Street Vancouver, BC V6Z 2S9

Judi Hoffman Barrister & Solicitor 900 – 840 Howe Street Vancouver, BC

V6Z 2S9

From: Ryan Lee

Sent: Wednesday, February 26, 2014 9:13 AM

To: Submissions

Subject: FW: Trinity Western University Law School application

Attachments: Adriaan de Vries.vcf

Follow Up Flag: Follow up Flag Status: Flagged

Hello.

Please see below.

Thank you.

Ryan

From: Adriaan de Vries

Sent: Tuesday, February 25, 2014 10:26 PM

To: Ryan Lee; Robyn Crisanti

Subject: FW: Trinity Western University Law School application

I used spell check on my letter and when I checked after sending it I saw that it had self cancelled that. My apologies

Adriaan de Vries

"Change yourself — change the world! **Meditation changes everything."**

From: Adriaan de Vries

Sent: February 25, 2014 10:18 PM **To:** 'rlee@lsbc.org'; 'rcrisanti@lsbc.org'

Subject: Trinity Western University Law School application

People

Please consider the laws enacted or being proposed in Uganda and Arizona which discriminate against Gay people based on the alleged protection of religious belief. Would those discriminations be considered a right if Blacks or Jews were the target of this hate disguised as religion? The other countries to consider are Gambia, Nigeria and Russia where the pogrom has started just days after the Sochi Games were completed and the haters no longer think they need internationals turning a blind eye to their egregious inhuman hate.

Where in the Bible does Christ exclude anyone from service? He let a Whore wash his feet with her hair and fraternized with tax collectors who were the quislings of the day. Get Trinity to prove beyond a shadow of a doubt that this is founded in the Bible. They will not be able to as the New Testament is the fulfullment of the Old Testament and superscedes it. Christ said:" Love the Lord they God above all and thy neighbour as thyself. There on hangs the Law and the Prophets."

Thank you

Adriaan de Vries

Vancouver, BC

"Change yourself — change the world! Meditation changes everything."

From: Kerry Deane-Cloutier [kerrydc@pocolawyers.com]

Sent: Wednesday, February 12, 2014 9:12 AM

To: Submissions Subject: TWU law school

Follow Up Flag: Follow up Completed

I am disturbed by the prospect of a law school that requires an undertaking that students refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." The law in Canada enshrines equality among all people, including the LGTBQ community. That includes the ability to marry, among other rights. The undertaking requires gay and lesbian married couples to abstain from sexual intimacy during the three years of law school. This is discriminatory, and will act as a bar to entry into the TWU law school.

However, the problem is deeper than simply that the undertaking discriminates against an identifiable group and presents a barrier to them. Law school produces lawyers, and some of them will become judges. Both are required to uphold the rule of law. To teach law students that they must uphold the rule of law, except in some places, is wrong. To expect that this fundamental violation of equality, which they must accept in order to achieve their goal of becoming lawyers, will have no effect on these students, is naïve. At some level they will carry with them the idea that the rule of law is not absolute.

I urge the BC Law Society to not accept TWU graduates into the bar admission program on the basis of the Community Covenant.

Kerry Deane-Cloutier



310-2755 Lougheed Highway Port Coquitlam, BC V3B 5Y9

www.pocolawyers.com

Tel.: 604 464 2644

Fax: 604 464 2533

kerrydc@pocolawyers.com

From: Kathryn Deo [Kathryn@arbutuslaw.ca]
Sent: Wednesday, February 12, 2014 8:28 AM

To: 'ea@cbabc.org'; Submissions
Cc: 'president@cbabc.org'

Subject: TWU and CBA resolution 14-04-M

Follow Up Flag: Follow up Completed

To Whom it May Concern,

I am in support of CBA resolution 14-04-M regarding "Non-Discrimination in Legal Education" (http://www.cba.org/CBA/resolutions/pdf/14-04-M.pdf), which will be considered by the national council at the CBA mid-winter meeting later this month.

Regards,

Kathryn Deo*, Managing Partner

Co-Chair CBA 2014 National Aboriginal Law Conference Arbutus Law Group LLP 301-1321 Blanshard Street Victoria, BC V8W 0B6

Main: 778-410-5188

Direct: 250-298-8178

kathryn@arbutuslaw.ca

www.arbutuslaw.ca

LinkedIn: http://www.linkedin.com/pub/kathryn-deo/55/179/b97

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DHAHAN LAW Jordana Dhahan, LL.B., Barrister & Solicitor

6312 Elm Street, Vancouver, BC V6N 1B3; Tel. 604-375-9976; Email: Jordana@dhahanlaw.com

Via Email: submissions@lsbc.org

The Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9 March 3, 2014

Attention: Executive Director

RE: Qualification of Trinity Western University's law program

I write as a member of the bar and as a former student of Trinity Western University ("Trinity") to respond to the question of whether Trinity's faculty of law should be qualified under the Law Society's rules for academic qualifications.

Most of the concerns raised with respect to previous approvals focused on the university's discriminatory policies affecting gay and lesbian students, which were concluded to be discriminatory by the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31. My submissions consider the underlying reason for the discriminatory policies and whether it has more general implications for the program's approval.

Trinity's policies stem from its assumption that the Bible is "inerrant" and "infallible" and the ultimate standard of truth. In Core Values found at https://twu.c/about/values/ Trinity states:

However, insofar as Scripture speaks, it speaks truthfully on whatever point it addresses, and its principles faithfully undergird all true knowledge. Scripture is the final and ultimate standard for all truth, the reference point by which every other claim to truthfulness is measured. Scripture must be the lens we use to evaluate our lives and the world."

In the section of Core Values titled Obeying the Authority of Scripture, TWU elaborates on its position that the Bible is the ultimate authority on truth as follows:

• • •

Therefore, the faculty and staff of Trinity Western University strive to encourage confidence in the authority of the Bible and respect for its beauty, truth, and unique and divine character. We deplore an indoctrination approach that discourages authentic investigation, but we are satisfied that the truth of the Scriptures can meet any challenge. Therefore, we teach and encourage understanding of and appreciation for the Scriptures among students, within the church, and even in the larger culture wherever possible.

. . .

We believe that the 66 books that make up the Old and New Testaments are uniquely inspired of God and by virtue of their inspiration are set apart from other writings. Although we recognize that many other writings from antiquity may be useful and informative, the Scriptures alone are inspired and authoritative.

. . .

Inspiration refers to being sourced in God in a unique way that cannot be said of other literature. We believe that Gods Spirit worked together with the various human writers to

produce inspired writings that are an accurate and trustworthy record of divine revelation. We attribute inspiration to the canonical Scriptures, the finished product. It is these that are inspired rather than the various human writers and editors. We believe in verbal inspiration of the whole of Scripture. The influence of the Holy Spirit extended beyond the thoughts of the biblical authors to their selection of specific words to convey Gods message. However, we reject what is sometimes called the "dictation theory" which views the human writers as stenographers, as well as the notion that the Scriptures are "inspired" in the sense that classic literature, poetry, and music may be said to be inspired.

. . .

The phrase "without error in the original writings" refers to the final, finished product, not to the various sources or preliminary drafts that an author or editors may have produced; nor does it refer to copies and translations of biblical books. Nevertheless, inerrancy is important. Inerrant originals guarantee that Gods written word is authoritative. Inerrant "originals" make possible accurate copies and reliable translations that faithfully convey Gods message. Scribal errors in individual manuscripts do not invalidate our confidence in the inspiration and inerrancy of Scripture any more than do translation errors in particular versions. We also promote the word "infallibility," which implies that the Scriptures infallibly disclose Gods revelation.

. . .

We need a verbal divine utterance by which God not only supplements our knowledge of the created order, but by which he also corrects our interpretation of it. Thankfully, God has given us such an authoritative Word in Scripture, the "complete revelation of his will for the salvation of human beings."

. . .

... Scripture... also gives to us a view of the world and our place in it by which we are "to bring every thought captive to Christ" (2 Cor 10:5)

. . .

We live in a world that increasingly asserts and promotes pluralism not plurality in the sense of an increased demographic and cultural diversity in the nation which we embrace and welcome because all people are created in Gods image but a philosophical pluralism that denies ultimate truth. Needless to say, this denial of truth has had a profound impact on our society. Increasingly we are facing a "crisis of authority" in every area of society which has resulted in a breakdown in such areas as government, business, educational institutions, the family, and even in the church. In contrast to this approach, our loyalty to Scripture requires us to reject the assumption that there is no absolute truth to which human beings must submit.

Staff are required to sign a Statement of Faith, which reiterates that the Bible is the ultimate authority, full of truth and without error. The Statement of Faith states, "I agree with the above Statement of Faith and agree to support that position at all times before the students and friends of Trinity Western University."

As a hallmark of academia is the unbiased searching for truth, it is unclear how a university can fully engage in the "academic" pursuit of knowledge, while requiring staff to maintain such a position. Canada is founded upon principles that recognize that our democracy is founded on the "rule of law", which has always involved and is increasingly meaning the application of reason to decision-making whether at the law making or adjudication level. Therefore, the ability to think logically and apply logic to facts is of utmost importance to the rule of law. As lawyer participation is at the core of our democracy, then their ability to reason is a necessary skill.

Law requires that evidence and logic be the basis for finding truth and in a just society, using logic and evidence should be the only way to find and establish truth. Trinity rejects this view by placing the Bible as the ultimate standard of truth. In essence, it is saying that truth can be established by a written statement, which is nothing other than accepting a human being's assertions of truth.

Where logic and evidence conflict with the Bible and the espoused doctrines of Trinity, the latter must triumph as Trinity has stated that the Bible is the final authority on truth. A student trained to overlook valid evidence and arguments in favour of faith and Bible based ones is ill equipped for the work of a lawyer and the rigour demanded by the Courts. Such a lawyer puts his clients at risk and ultimately society, should the quality of lawyers and potentially the bench be watered down by a continued influx of such.

Beliefs, being assertions of truth in the absence of evidence and logic, are the antithesis of reason. In the case of Trinity's beliefs, the Bible's mutually contradictory statements are all taught to be true alongside other unfalsifiable, unfounded and even irrational beliefs lacking convincing evidentiary and logical bases such as the following:

- a) That the universe was created by God;
- b) That the Bible is the inspired "Word of God" "without error"; and
- c) That the devil exists as Trinity states, "Even though our faithfulness will stimulate Satan to promote other ideologies, God has not given up on this world and neither should we. God restrains the full power of Satan so that our thought, word and deed may still glorify His name."

Trinity states that it is an "[i]nstitution that adapts to new knowledge, marketplace opportunities and global need", but by maintaining a belief in creationism and that every statement in the Bible is true, it shows that it is clearly not adapting to new knowledge or even old knowledge like the scientific theories of Charles Darwin, Albert Einstein and modern cosmologists (which are only held to be true because of the fact that they meet scientific tests, which are also refined as needed, and which will be abandoned if proven to be false).

It seems that Trinity's teachers may be limited in their ability to teach, let alone understand, the importance of logic and evidence in the searching for truth in the academic sense because where logic and evidence conflict with the Bible, the latter must triumph.

By insisting on particular beliefs and that they ought to form the foundation of students' assessment of truth and behaviour in the world and, therefore, their practice of law, Trinity is placing a cap on how far logic and evidence can be used. It says, essentially, that a fact can be established simply on the grounds of it being said by someone to be true.

It is one thing to hold one's mind open to the possibility of a god, a devil, creationism and ever-lasting life, but it is quite another feat to believe those facts in the absence of strongly supporting evidence. There is something limited about the mind that can hold such beliefs. It suggests one that has not questioned the origins of its beliefs, such as whether one came to believe them only because of the time and place they lived in. It betrays an inability to really grasp what thinking is and why academia relies on observation and reason to come to conclusions on truth.

Trinity's teachers must continually affirm the incredible beliefs that they hold. What affect must this activity have on the vivacity of one's intellect? What else is one capable of accepting as true? How will the practice of law be affected by lawyers taught that it is reasonable to accept such incredible statements of fact? And what about those that go on to be appointed judges? How can they interpret the Charter of Rights and Freedoms if the Bible trumps all? How can they uphold the Charter if or when it conflicts with the Bible?

In the section entitled Having a Transformational impact on Culture of the Core Values, Trinity states that it teaches its students to reshape the world, which presumably includes changing its laws in light of the Bible's rules. The list of atrocious rules and prescriptions in the Bible need not be set out here as they are certainly well known and are set out in many books on the subject. It seems that Trinity's students will be taught that being a lawyer includes trying to change laws to conform with the Bible, which has implications for lawyers and judges. With law, whether it be adjudicating or law-making, one must put evidence and logic above Biblical teachings, not the other way around.

In addressing whether the Law Society should approve Trinity's law program, Trinity's foundational concepts should be considered. It may be that the atmosphere created by an institution asserting the infallibility and ultimate authority of one set of writings, in this case, the Bible, is hardly the type of academic environment that promotes the academic freedom and rigour necessary for qualification to the bar and the privilege of acting as a guardian of the law.

Thank you for the opportunity to contribute.

Sincerely,

Jordana Dhahan

Jordana Dhahan, LL.B. Barrister & Solicitor

From: Communications

Sent: Friday, January 31, 2014 9:35 AM

To: Submissions

Subject: FW: Law Society E-Brief, January 2014

Follow Up Flag: Follow up Completed

Robyn Crisanti | Manager, Communications and Public Relations Law Society of British Columbia 845 Cambie Street, Vancouver, BC V6B 4Z9 t 604.697.5845 | toll-free 1.800.903.5300

From: John Douglas

Sent: Thursday, January 30, 2014 6:06 PM

To: The Law Society of BC

Subject: Re: Law Society E-Brief, January 2014

We have far too many lawyers now last thing we need is another Lawschool

Sent from my iPhone

On Jan 30, 2014, at 11:15 AM, lawsociety@lsbc.org wrote:

****Please do not reply to this message. If you cannot properly receive HTML e-mails, go to: http://www.lawsociety.bc.ca/apps/broadcast/ntp.cfm?msg_id=808&capvalue=idiqc to view this message. Please add lawsociety@lsbc.org to your address book or to your safe list in your mail settings to ensure delivery to your Inbox.







2014 President and other Benchers sworn in

At the first Benchers meeting of 2014 on January 24, Chief Justice of British Columbia Robert J. Bauman administered the oath of office, swearing in the Law Society's new president, Jan Lindsay, QC, first vice-president, Ken Walker, QC and second vice-president, David Crossin, QC, along with the rest of the Benchers for

From: John Emmerton

Sent: Wednesday, February 05, 2014 12:30 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Law Society of British Columbia,

Please do not enable Trinity Western University to create an accredited law school.

The role of lawyers and judges in our society is to dispassionately and without personal bias interpret the law equally for all citizens. This is an extremely difficult task to ask of any individual, as it plays against the natural predisposition that we all share to identify ideologically with our in-group, and in an equal and opposite way to dissociate with those we personally see as other.

In order to create an environment that fosters this kind of rational, pro-social behaviour in Canada's lawyers, law has been taught in higher education institutions which hold academic freedom, the advancement of knowledge, integrity and mutual respect as their highest values.

Such institutions work hard to instil a respect for the complexity of the world and an attachment to methodologies which lead towards objectively verifiable truth rather than adherence to a particular worldview. In fact students are encouraged to hold their beliefs up to rigorous standards and to have the fortitude of character to throw out one's strongly held beliefs in light of contradictory evidence.

From the UBC website under Vision and Values:

Academic Freedom

The University is independent and cherishes and defends free inquiry and scholarly responsibility.

Advancing and Sharing Knowledge

The University supports scholarly pursuits that contribute to knowledge and understanding within and across disciplines, and seeks every opportunity to share them broadly.

Excellence

The University, through its students, faculty, staff, and alumni, strives for excellence and educates students to the highest standards.

Integrity

The University acts with integrity, fulfilling promises and ensuring open, respectful relationships.

Mutual Respect and Equity

The University values and respects all members of its communities, each of whom individually and collaboratively makes a contribution to create, strengthen, and enrich our learning environment.

Public Interest

The University embodies the highest standards of service and stewardship of resources and works within the wider community to enhance societal good.

Over time this has led to a Canada that is a world leader in civil liberties. For example, it was a Supreme Court Decision that resulted in the legalization of same sex marriage in Canada.

Trinity Western is a school which at its core is diametrically opposed to instilling these skills. Rather it is an institution designed to perpetuate a particular worldview. The following is from the TWU page on Core Values:

Obeying the Authority of Scripture:

Both individually and corporately Trinity Western wholeheartedly embraces all the Bible teaches in regard to faith, ethical commitments, and way of life, believing it to be the ultimate standard of truth and hope.

Pursuing Faith-Based and Faith-Affirming Learning:

Trinity Western's starting point for learning is that God calls humans to be stewards of His creation, doers of good toward all people, and agents of His reconciliation.

Having a Transformational Impact on Culture:

God calls His followers to influence both individuals and the culture in which they live and ultimately draw people to Him. Trinity Western's programs encourage thought, word and deed that affect the dynamics and institutions of our society on the basis of biblical principles such as justice, mercy and hope.

Servant Leadership as a Way of Life:

Trinity Western strives to teach and to embody the pattern of servant leadership exemplified by Jesus Christ. Professors, administrators and students seek to motivate and mobilize each other to think and act with creativity, integrity, and skill for the benefit of all concerned.

Striving for Excellence in University Education:

Trinity Western promotes not only academic and intellectual excellence, but integrates these with high standards of personal, moral, and spiritual integrity.

Discipling in Community:

At Trinity Western, students, staff, faculty and administrators are all invited and encouraged to deepen their understanding of what it means to be disciples of Jesus Christ, to practice such discipleship, and to sustain and help others to be and become disciples. They strive to act justly, love mercy, and walk humbly with our God.

Most egregiously Trinity Western's Core Values Include:

- 1. Obeying authority (The primary value of the school is the belief that an ancient religious text is the ultimate standard of truth.)
- 2. The pursuit of faith-affirming learning (This is the opposite of teaching students to hold up their beliefs to rigour. This does not teach intellectual humility in the face of a complex world. This teaches students to seek out confirming evidence of the beliefs one already holds.)
- 3. Transforming culture based on biblical values (This is the most concerning issue. It is a core value of this school to push a theological worldview on students and to encourage them to use their influence later in life to transform the "dynamics and institutions of our society on the basis of biblical principals.")

These values are antithetical to the role of Lawyers and judges in our society. Lawyers need to be unswayed by arguments from authority and true to logic, reason and an unbiased interpretation of the law.

Allowing Trinity Western to create an accredited law school would have significant negative long term consequences for Canada:

- 1. TWU graduates will be less able and less motivated to think critically and in an abstract dispassionate way about their cases. As such rulings in which they are involved may become inappropriately biased.
- 2. TWU graduates will have been taught that their role in society is to reshape it to fit biblical principals. As more TWU graduates become active in the Canadian legal system, this could lead to theocratic and discriminatory laws.
- 3. Allowing TWU to have an accredited law school in spite of its academic failings could pave the way for other similar schools to seek accreditation, which would then speed up the damage done to the Canadian legal system from points 1 and 2.

John Emmerton

From: Fehr, Jacqueline (KPMG Law / cabinet juridique) [jacquelinefehr@kpmglaw.ca]

Sent: Tuesday, February 18, 2014 1:15 PM

To: ea@cbabc.org; Submissions

Subject: Proposed Trinity Western University Law School

Follow Up Flag: Follow up Completed

To whom it may concern:

My name is Jacqueline Fehr, I was called to the bar of British Columbia in 2011 and I currently practice in the area of taxation law at KPMG Law LLP. The views expressed in the following are my own. I do not write as a representative of my firm or any members thereof.

The proposed CBA resolution "Non-Discrimination in Legal Education" (the "CBA Resolution") was recently brought to my attention. I wish to provide my views on the conclusion in the resolution that the provincial law societies not accept Trinity Western University ("TWU") law graduates into their bar admission programs.

"A lawyer is a minister of justice, an officer of the courts, a client's advocate and a member of an ancient, honourable and learned profession." [1]

My dreams of being a lawyer started when I was 7 years old. I am the first lawyer in my family and am so very proud of my accomplishments and my admission to the bar of British Columbia. I have struggled very deeply with what I would do if graduates of TWU law were admitted to that same bar. It would be the first time that I would be embarrassed to call myself a lawyer because it would be the first time that I would be embarrassed that the Law Society of British Columbia (the "LSBC") set the ethical standard by which I was governed.

I think it would be easy to turn this debate into one where freedom of religion is at the forefront. However, I think that misses the point. Religion should not be a barrier to education and that is not what I am advocating herein. TWU has the right to teach law courses and its students have the right to learn about our profession; however, I ask the LSBC not to consider graduates of TWU law for entrance into the profession on the basis that they simply will not be able to meet the rigorous duties expected of us as outlined in the Canons of Legal Ethics as outlined in the Code of Professional Conduct (the "Code"). I believe that TWU law graduates will be unfit for admission to the bar.

The LSBC has had no trouble denying admission to the bar to students in the past in respect of mental health. On our admission forms law students have been required to list certain mental health issues which might render them unfit to practice law. This was acknowledged by members of the LSBC as seemingly discriminatory on its face, but entirely within the purview of the LSBC's mandate to protect the public. I do not see why the choice to deny admission to persons who, as an integral part of their legal education, stand up and make statements (whether willingly or under duress, it does not matter) that support discriminatory and hateful views and whose legal education cannot have provided them exposure to different people or opinions is any different. However, for ease of reference, below I have outlined some of the Canons of Legal Ethics which I do not believe TWU law students could uphold. (These are just examples. I am sure that with more time or manpower the Law Societies and the CBA could come up with a stronger and longer list).

A lawyer owes a duty to the state, to maintain its integrity and its law...

Article 2.1-1(a) of the Code outlines a lawyer's duty to the state. This is the first listed duty and is commensurate with a lawyer's duty not to bring the administration of justice into disrepute.

My concern in respect of students of TWU law is that, at the very least, as an integral part of their legal education they will have made and supported statements of discrimination and hate. At worst, TWU law graduates will have fundamental, deeply-held beliefs which discriminate on the basis of sexuality. Regardless, I believe that these foundational building-blocks will make them unable to meet a lawyer's primary responsibility to the state.

I have compiled a few examples of laws and jurisprudence which graduates of TWU law would be required to uphold notwithstanding their personal beliefs. This list is not exhaustive (and I am sure there are numerous other examples out there). My intention herein is only to raise the question: "could a graduate of a faith-based educational program which has a covenant prohibiting sexual relations other than those between a married man and woman maintain and uphold the laws as outlined below?"

- Section 15 equality rights under the Canadian Charter of Rights and Freedoms;
- An Act respecting certain aspects of legal capacity for marriage for civil purposes, S.C. 2005, c. 33;
- R. v. Morgentaler. [1988] 1 SCR 30;
- Canada (Attorney General) v. Bedford, 2013 SCC 72; and
- Section 2 of the Canadian Charter of Rights and Freedoms as it applies to non-religious beliefs.

Is such deeply entrenched, institutional discrimination against persons on the basis of their sexuality an indication that graduates of TWU law would not be able to uphold their duty to the state above all else (including their personal opinions)? I believe that the answer is yes and that this is evidenced fully by the self-selection bias which arises when a student chooses a program knowing that such discrimination will be a building-block of their education (rather than one where all views are welcome and debated).

To Courts and Tribunals

Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint.

Article 2.1-2(b) of the Code imposes a duty on lawyers to courts and tribunals. Again, I think the law society has a duty to question whether deeply entrenched, institutional discrimination against persons on the basis of their sexuality is an indication that graduates of TWU law would not be able to uphold their duty to Courts and Tribunals – either because this would militate towards criticism of persons (including judges) who did not fall within their narrow view of acceptable behaviour or persons (including judges) because of decisions made which did not fall within their narrow view of the acceptable.

It may be argued that this sort of criticism would never take place but I think one has to understand first and foremost how deeply entrenched this discrimination against persons on the basis of their sexuality is. The belief that someone's sexuality is wrong is not simply an opinion (even a strongly-held one), it is a fundamental building block on which and from which students of TWU law will operate. Is it realistic (or even fair) to assume that one can put this aside and behind any other duty?

To the Client

...The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. At the same time, the lawyer should represent the client's interests resolutely and without fear or judicial disfavour or public unpopularity.

Article 2.1-3(d) of the Code outlines a lawyer's duty to his or her client. It is not explicitly stated but it is clear that a lawyer's "personal feelings and prejudices [should not] detract from the lawyer's professional duties" any more than the lawyer should allow the client's to.

For the same reasons outlined above, I wonder if graduates of TWU law would be able to separate their education such that the discrimination and hate that they will be taught is acceptable (and to be promoted) will not detract from their professional duties to clients. I also question whether graduates of TWU law would be able to adequately represent and discharge their duties to clients who do not have the same personally-held beliefs. Clients should never be afraid to approach lawyers for fear of judgment instead of aid. Moreover, I question whether graduates of TWU law would be able to ensure that a client's personal feelings and prejudices did not detract from their professional duties (whether those feelings were diametrically opposed to those of the graduates or supported the opinions of the graduate).

There may also be situations in a lawyer's career where they might be asked to advocate for a client in respect of an issue that is contrary to that lawyer's personal opinions. I am not speaking about an ethical quandary, just a situation where a client's opinions and life choices might differ from those of the lawyer. TWU graduates might not find themselves in an obvious quandary - like litigation support in respect of ensuring rights for gay marriage, prostitution or abortion – the quandary could be as simple as setting up a trust for a gay couple for the benefit of their child. I do not know if this would possible for TWU law graduates.

So the questions must be asked: Would TWU graduates be able to represent their client's interests resolutely without fear of unpopularity within their religious communities? Would they be able to separate their personal opinions from their foremost duties to their client? Would they even be able to take that client in the first place? Would they have a right to refuse or discharge a client on "religious grounds" leaving a client without representation?

To other lawyers

A lawyer's conduct towards other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour towards each other or the parties....

Again I question whether this TWU law graduates can live up to their responsibilities to other lawyers as outlined in article 2.1-4(a) of the Code.

The legal profession has spent decades moving towards a more inclusive environment for persons of all genders and sexual orientations; something which is outlined in CBA Resolution. We are still a profession moving towards greater equality and opportunities for all but unfortunately we are still a profession that needs task forces (like the Retention of Women in Law Task Force). As a positive, however, we are a profession that sets up task forces to focus on and advocate for changes when necessary to engender greater inclusivity and equality. I worry that TWU law graduates will not be able to treat all of their colleagues and

peers with the courtesy and respect that should be expected of a member of the profession in this day and age. Worse, I worry that they will in fact take us back to an era (not so long ago) where the profession was much more marked by discrimination.

Again this is not about religion. This is, however, about discrimination which is taught on an institutional level, and the mob mentality that this would inevitably engender in students who have never seen people who are different humanized or respected. Perhaps it seems to be an extreme leap for me to make from the covenant to the dehumanization of persons identifying as LGBTQ but it is, very unfortunately, not.

The reality for many LGBTQ persons was actually very eloquently described by Ellen Page very recently and I quote it here because I could not say it better:

I know there are people in this room who go to school every day and get treated like shit for no reason. Or you go home and you feel like you can't tell your parents the whole truth about yourself. Beyond putting yourself in one box or another, you worry about the future. About college or work or even your physical safety. Trying to create that mental picture of your life – of what on earth is going to happen to you – can crush you a little bit every day. It is toxic and painful and deeply unfair.

Lawyers should not have to worry about discrimination from our colleagues or whether that is going to affect our professional successes. The law society should not open its doors and deliberately make our profession one which is not a "safe space".

To Oneself

It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.

First, it merits mention that a duty to oneself is the last listed at article 2.1-5 of the Code. I have always taken this to mean that this duty came second to my duties to the state, court, clients and other lawyers.

I have written this letter to you today, in part, because I know it is my duty to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission. I believe very strongly that the admission of persons who, as an integral part of their legal education, have supported (whether willingly or under duress) such narrow-minded, fundamental, discriminatory views bring the legal profession into disrepute. This has the very real potential to make lawyers "unsafe" for certain clients and professional colleagues and that would be an embarrassment for all of us who, to date, have taken such pride in our professional designation.

Thank you for taking the time to read this and considering my opinion. If you have any questions, I would be more than happy to discuss them at your convenience. While I assume that you have all the assistance you require working on this project, I feel strongly enough about it that I would also like to volunteer my time should you think I might be able to help any further.

Yours very truly,

Jacqueline Fehr

Associate

KPMG Law LLP Barristers + Solicitors a tax and immigration law firm affiliated with KPMG LLP

777 Dunsmuir Street Vancouver, BC V7Y 1K3 T 604 257-4246 F 604 257-4242 jacquelinefehr@kpmglaw.ca

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 $^{^{\}left[1\right]}$ Code of Professional Conduct for BC, Chapter 2, at 2.1.

^[2] Code of Professional Conduct for BC, Chapter 2, at 2.1-1.

From: Kristen Frederick

Sent: Friday, February 28, 2014 6:40 PM

To: Submissions

Cc:letters@globeandmail.caSubject:re: Trinity Western law school

Follow Up Flag: Follow up Completed

Hello,

I am very concerned to hear that the Law Society of BC is contemplating admitting Trinity Western graduates to the bar. As a student in a professional program (and the daughter of two lawyers), I feel strongly that professionals should be trained in a rigorous and unbiased manner. Trinity Western is a school with an openly fundamentalist christian agenda. While the curriculum at Trinity Western may well meet the standards for accreditation, it is a school that codifies discrimination and micromanages students' personal lives. We rely on lawyers to defend our basic human rights, and I question whether a lawyer that is trained in such an environment would be able to do this.

Like many professional programs, law programs are competitive. This law school would effectively set up a quota for straight, right-wing students, and exclude many talented and capable applicants. It excludes not only gay people, but their families, friends and all LGBT allies. Why should christian heterosexuals have one extra option? I fear that the eventual consequence would be to bias the population of lawyers in this country - which, generally speaking, ought to be representative of Canada as a whole (especially since so many politicians are drawn from this population). Trinity Western upholds principles that directly contradict the Charter of Rights and Freedoms. Canada is not a theocracy and we cannot train our future leaders as though it is.

Regards,

Kristen Frederick, H.BSc Animal Care Representative, Ontario Veterinary College '17

From: Erin Frew

Sent: Sunday, March 02, 2014 6:13 PM

To: Submissions

Subject: Invite for Written Submissions re TWU Approval

Follow Up Flag: Follow up Completed

Dear Sir or Madam:

Thank you for your invitation to provide comments in regards to the Law Society of British Columbia's consideration of the proposed law faculty at Trinity Western University ("TWU").

I am of the view that the public interest is not served by the LSBC recognizing TWU law degrees while law students are subject to the community covenant as it relates to homosexual activity. It is improper for a school to prevent students from accessing a legal education on the basis of their sexual orientation. I dismiss any argument that relies on a distinction between homosexuals and homosexual acts as specious. I suggest that it would be proper to require, as a condition of recognition by the LSBC, that TWU cease its discrimination against homosexual students by altering its community covenant.

I urge the LSBC only to accept TWU law degrees in the event that TWU cease its active discrimination against members of minority sexualities.

Regards,

Erin Frew

From: Mark Gervin

Sent: Friday, January 31, 2014 2:38 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Thank you for this opportunity for me to speak on the subject of Trinity Western University's (TWU) accreditation as a law school.

I am a member of the BC Law Society and the idea of a college which discriminates against any human is and aught to be repugnant to society at large, but as counsel we have a special place in society to stand up to discrimination.

As I understand it, amongst other problems with the school is their requirement to adhere to biblically correct activities.

No matter how the school phrases their discrimination, discrimination by any other name is still discrimination.

We as members of the Law Society have a higher calling as well and that calling is for us to act on behalf of all Canadians and not just those Canadians we happen to like.

I urge you to not accredit TWU,

thank you for your time,

Mark Gervin

From: Amir Ghahreman [aag@twlaw.ca]
Sent: Thursday, January 30, 2014 11:42 AM

To: Submissions Subject: Submissions Trinity Western

Follow Up Flag: Follow up Flag Status: Follow up

I think it would be absurd to accredit a law school that openly has a policy/credo/rule so blatantly inconsistent with the Charter of Rights and Freedoms.

Amir Ghahreman
Taylor & Company, Business Lawyers*
#218 - 470 Granville Street
Vancouver, B.C. V6C 1V5
Tel: (604) 662-8373 Fax: (604) 662-8321

aag@twlaw.ca

^{*}T.W. Business Law Corp.

Ms. Tiffany Glover Ms. Margot Liechti

February 28, 2014

Law Society of British Columbia 845 Cambie St Vancouver, BC V6B 4Z9

To the Benchers of the Law Society of British Columbia,

We are writing in response to the Law Society of BC's invitation for comment on whether the proposed law school at Trinity Western University (TWU) should be recognized as a school capable of conferring a common law Canadian law degree for the purposes of admission to the Law Society of British Columbia (LSBC). We attended UBC Law and are writing as future members of the LSBC and the profession. The focus of our letter will be on two main concerns. Firstly, we believe that approving TWU's law school would cause harm to and discriminate against those wishing to enter into the law profession. Secondly, we are concerned that TWU would not be able to offer the diverse perspective that Canadian law students have come to expect during their legal education primarily because of the Community Covenant, its contents and its expectations on staff, students and faculty at TWU.

Our concerns with the Community Covenant ("Covenant") relate primarily to the clause that requires TWU faculty, staff and student to commit to abstaining from "sexual intimacy that violates the sacredness of marriage between a man and a woman" (Community Covenant, s. 3). We understand that incoming law students will be required to sign this Covenant in order to register for classes. The Covenant also requires signatories to not only act in accordance with its terms but also assume accountability for the conduct of others within the TWU Community (Community Covenant, s. 5); signatories must also pledge that they "understand that...I have also become an ambassador of this community and the ideals it represents" (Community Covenant, penultimate paragraph). We are concerned that this Covenant proscribes a mandatory value system for students, something that is not required of students at other Canadian law schools. Moreover, we worry that this agreement discriminates on the basis of sexual orientation and marital status. It promotes a value system and a code of conduct that reinforces a message of "otherness" or "lack of belonging" to students, staff and faculty who do not conform to TWU's definition of "acceptable." In R v Kapp, the SCC reaffirmed the approach in Andrews, stating that "the impact of the law on the individual or group concerned" must be the main consideration when considering the ideal of full equality before and under the law (R v Kapp, para. 15). The exclusionary nature of the Covenant based on sexual orientation and marital status appears discordant with the SCC's current interpretation of s. 15(1) and its approach to substantive equality.

We are particularly concerned with the negative impact this exclusionary Covenant could have on gay, lesbian, bisexual and transgendered (LGBT) law students. The promotion of heteronormativity, as embodied by marriage between a man and a woman, has been demonstrated to have serious adverse harm on BC students. A 1999 report in BC observed that 37% of gay and lesbian youth questioned feel like outsiders at school, 40% have dramatically low self esteem and 46% of gay and lesbian youth have attempted suicide at

least once (BC Report, Being Out: Lesbian, Gay, Bisexual and Transgender Youth in BC, An Adolescent Health Survey 1999). Surely TWU's Covenant would have a negative impact on LGBT students, whether they feel they must hide their sexual orientation from the outset or whether they realize after signing the Covenant that they cannot abide by its terms. We are also concerned with the potential situation that, upon learning of a student's LGBT status, the student would be required to deregister from TWU's law school. That is, would the TWU have the power to force LGBT students out of their program for non-compliance with the Covenant?

The legal profession and Canada's law schools are stronger for having embraced diversity and the Charter's s. 15 equality provisions. In approving TWU's law school, the LSBC will be creating a situation where, through self-selection, applicants to TWU's law school would not reflect the diversity and plethora of viewpoints and cultures that exist in our province. In our experience, the diversity of viewpoints and ideas in our classrooms at UBC created a safe, open environment for debating and challenging our ideas and values. We strongly feel debates are richer because students from a broad spectrum of backgrounds, cultures and religions participate. We are concerned that law students at TWU would not have this same opportunity to express this breadth of perspectives we believe is fundamental to legal education. TWU believes it can help the province address access to justice issues by producing an increased number of law school graduates annually without relying on the public purse. While we applaud this sentiment, our concern is that, as a result of the absence of diversity in the student, staff and faculty population at the law school and in the accompanying debate and exchange of ideas, TWU law graduates, with their imposed value system via the Community Covenant, may not be properly prepared to work with those vulnerable populations most in need of legal assistance.

As TWU is likely to cater primarily to British Columbian residents, we are concerned that a TWU law school will have an overall negative effect on our legal community and our province as a whole. We worry that the LSBC would convey an anti-equality message recognizing TWU's law school and would undermine the profession's and province's messages of welcome and inclusion. As future members of the profession, we ask the Benchers of the LSBC to show leadership and vote to deny TWU's law school accreditation, particularly because TWU is located within the province.

Sincerely,

Tiffany Glover

Margot Liechti

Mirech

From: Art Grant [agrant@gkn.ca]

Sent: Monday, March 03, 2014 4:46 PM

To: Submissions

Subject: Trinity Western University's application for accreditation

Follow Up Flag: Follow up Completed

Dear Mesdames and Sirs

I only learned of the request to make submissions on this subject very recently (yesterday evening and then again today at noon) and learned that the deadline to make submissions closes today at 5 PM. So I apologize in advance for the fact that my submissions are not more detailed or carefully crafted.

By way of introduction, I am one of the Co-Chairs of the Constitutional Law and Civil Liberties Section of the CBA-BC and the Vice Chair of the national Constitutional Law and Human Rights Section of the CBA. I have a Masters of Law from University of Ottawa focussed on constitutional law and I am the author of a blog called "Constitutionally Canadian" (http://constitutionalcanadian.com). The views that I express in this email are my own views and are not the views of the CBA, the CBA-BC or any of their sections.

I am of the view that the Law Society should be loathe to approve as an accredited law school one that imposes limits on their students' abilities to engage in consensual relationships, of whatever type or nature that they may be, because of a religious requirement when the failure to comply with that religious requirement may result in expulsion or discipline by the school.

Trinity Western's application brings into a classic conflict two of the principal and fundamental tenets of Canadian constitutional law. One is freedom of religion, now protected by s. 2(a) of the *Charter of Rights and Freedoms*. That is the principle that Trinity Western University points to in support of its application. The other is equality before and under the law and the right not to be discriminated against on the basis of a number of characteristics, including sexual orientation. Trinity Western University obliges its students to comply with a religious-based requirement that only marriage between a man and a woman is permitted. This, of course, flies in the face of one of the central constitutional values and norms, the right to be free from discrimination.

In my respectful opinion, it is one thing to be a school that requires students of a like religious background to comply with a religious tenet. One might study the arts, the sciences, or business administration in such a school without undermining any constitutional law or norm. It is another one to be a *law school accredited by the provincial organization that is charged with the accreditation of academic standards for admission to the legal profession for the province.* That provincial agency and its members are, in my submission, bound to uphold the constitutional law, fabric and principles of Canada. By accrediting such a school, the provincial agency (here the Law Society) becomes complicit in the school's discrimination against gays and lesbians. It is a direct undermining of s. 15 of the *Charter*. This is a key difference between schools, generally, and law schools, specifically.

I do not consider that the decision of the Supreme Court of Canada in *Trinity Western University v. BC College of Teachers*, 2001 SCC 31 is determinative of the issue. The teaching profession and the legal profession are not the same thing. The legal profession has a constitutional role to play: an independent bar with members prepared to stand up for the law and to fight for the rights of their clients is an inherent aspect of our constitutional structure. The law society's members must seek to uphold the law, including and most importantly, the fundamental law: the Constitution. The teaching profession, as important as it may be, does not have that role. The fact that the legal profession be educated in schools that fulfill and fully respect the constitutional principles and values and that only those schools be accredited by the provincial law societies charged by law with that task is of fundamental importance.

I apologize again for not being attentive enough to the request for submissions. I would have prepared a more detailed and thoughtful paper but, given the shortness of time, I thought that a short submission would be better than none at all. If I can be of any assistance, please do not hesitate to contact me.

Respectfully yours,

Arthur M. Grant*

Direct line: 604-642-6361 email: agrant@gkn.ca

grant kovacs norell litigation counsel

Suite 400 - 900 Howe Street, Vancouver, B.C. V6Z 2M4 Canada Telephone: 604-609-6699 | Facsimile: 604-609-6688 | www.gkn.ca

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^{*}personal law corporation

The Law Society of BC - Attention: Executive Director

845 Cambie Street Vancouver, BC, V6B 4Z9

Via email: submissions@lsbc.org

Dear Benchers of the Law Society of BC,

I hope to add my voice to the many individuals and organisations that are deeply concerned by the potential accreditation of Trinity Western University's proposed school of law. To accredit the school while its discriminatory and homophobic policies remained in place would be a violation of public interest and your mandate, not to mention section 15 of the Canadian Charter of Rights and Freedoms and sexual orientation's analogous status within.

I have been looking forward to attending law school for a long time, and as an applicant this year, I had much work to do. The University of Victoria accepted me because of my high marks and LSAT score. Yet had I applied to TWU's school of law, I would not be "accepted" due to something totally irrelevant: my love, which is both beautiful and legal, is "wrong" in their eyes because it does not conform with "the sacredness of marriage between a man and a woman." I would face discrimination because of my lesbian identity and partnership. This freedom is protected by law and no one should have to sign away their way of being into oppression or be turned away. Any student who may realise and/or express their identity could be "disciplined or dismissed" (Student Accountability Process, TWU).

TWU's religious freedom does not grant them ability to discriminate and deny access to legal education to an entire group of people, nor create a culture within "legal education" where all non-heterosexual sexual activity is openly shamed and excluded. No other law school discriminates against Christians, and it is not fair for a Christian school to discriminate against others.

It further concerns me about the quality and content of the education they offer. How can they teach about honourably representing the diversity of citizens in the BC public or about equality law when they believe that discrimination and homophobia is acceptable? How can they teach and allow critical perspectives in jurisprudence when they exclude voices of diversity?

In "setting and enforcing standards of professional conduct that ensure the public is well served by a competent, honourable legal profession," it is necessary to look at how indeed the public would be served by its graduates. How would practising graduates from TWU handle representing and respecting queer clients? **Keeping law schools public serves the public, as they do not exclude any group of the public, and indeed often encourage the participation of members of minority groups.** Allowing private entities to selectively discriminate and allow expression does not serve the public.

While subscribing to a religion such as Christianity does not mean one is homophobic or holds discriminatory views, the policies at TWU are both, and the concern is that these policies at TWU could produce professionals that discriminate too. You are the last body by which TWU must pass. I urge you to consider the impacts on queer/LGBTQ applicants, the legal community, and the community at large. An approval would make a message that is backwards to public service and set a dangerous precedent.

I	For	9	future	Λf	law	onen	and	eanal	for	all

Sincerely,

Gabrielle Grant

From: George Gregory [george@gregorylaw.ca]
Sent: Tuesday, February 11, 2014 3:55 PM

To: Submissions

Subject: It is Law Society's' duty to protect our society from homophobes, not to facilitate them.

Follow Up Flag: Follow up Completed

It should not need saying that the notion that some institution could train lawyers not to be discriminatory when it discriminates against the candidates who seek that training is absurd.

I do not know whether to feel disgusted or disheartened when I think that the Law Society of British Columbia may permit TWU to train future lawyers while blatantly indulging its homophobic intolerance.

If this were an Islamic University proposing to start a law school that did not allow women to join, there would be no discussion.

The only reason TWU's proposal is even being considered is our culture's inherent bias in favour of Christianity and its fear of a well-organized political minority coupled with the lingering strain of homophobia that lurks between the surface of so many of those who claim to be tolerant.

The Canadian law embraces the traditions of fighting intolerance and protecting the victims of it. The Law Society of British Columbia should embrace those traditions too.

George F. Gregory GREGORY & GREGORY 1801 - 808 Nelson Street Vancouver, BC V6Z 2H2 604-737-1980

Sharon D. Matthews [SMatthews@cfmlawyers.ca] From:

Sent: Tuesday, February 11, 2014 5:31 PM

To: Submissions

TWU Subject:

Follow Up Flag: Follow up Flag Status: Completed

See below for an email I received from a Member about the TWU Law School Application.

Sharon D. Matthews, Q.C. **Partner**

Camp Fiorante Matthews Mogerman 400-856 Homer Street Vancouver, BC V6B 2W5

Direct: 604-331-9522 / Main: 604-689-7555

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From: Lisa Hamilton [mailto:Lisa@hamiltonfabbro.com]

Sent: Tuesday, February 11, 2014 4:50 PM

To: Sharon D. Matthews

Subject: RE: Update on Law Society Issues

Hi Sharon,

Thank-you for being a Bencher for all of us. I am glad you are.

I emailed the CBA email re my strong support of the CBA Proposal to prevent discrimination by Trinity Western or any other law school. I sent the following:

To whom it may concern:

I wholeheartedly support the CBA resolution put forward by the Young Lawyers and SOGIC.

In my opinion, CBA needs to urge the Federation and all provincial and territorial law societies to require all legal education programs recognized by the law societies for admission to the bar to provide equal opportunity without discrimination on the basis of, amongst other things, religion and sexual orientation or conduct that is integral to and inseparable from identity, for all persons involved in legal education.

I hope that others will see how fundamentally unfair it would be to say nothing. CBA can and should take a strong stand against ALL forms of discrimination.

Sincerely. Lisa Hamilton I also forwarded it to all my associates and partner and told them to write in as well. I find it hard to believe that such blatant attempts to discriminate exist in our society in this day and age. We are lawyers and we have to stand up for what's fair. We have to stand up for equality regardless of who we are or our own beliefs. It is wrong to stand idly.

Thanks for forwarding all the information to us Sharon. Let me know if you need more from me.

Lisa



Hamilton Fabbro 1400-1030 W. Georgia St. Vancouver, BC V6E 2Y3

D: 604-687-1193 **M**: 604-687-1133 **F**: 604-687-1125

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From:

Mark Hamilton
Thursday, January 30, 2014 8:58 PM
Submissions Sent:

To:

Trinity Western Law School Subject:

Follow Up Flag: Follow up Completed Flag Status:

My thought on the subject is, would the Law Society recognize a law degree from a school that prohibited interracial relationships?

From: Richard Hamilton

Sent: Monday, February 03, 2014 12:46 PM

To: Submissions

Subject: Trinity Western Law School Application

Follow Up Flag: Follow up Completed

My name is Richard Hamilton and I am a retired Member.

Thank you for this opportunity to make this submission.

It is my opinion that Trinity Western should be permitted to operate a law school, BUT ONLY IF it ends its discriminatory practices against certain minorities and agrees to conform to Human Rights Legislation. If it is not prepared to do this, then permission should not be granted. I believe that it will agree, as it has amended various of its discriminatory practices in the past.

I personally am not concerned about whether graduates from such a law school are going to be fit to practice law. I suspect that the percentage which are fit to practice law will be about the same as from most law schools. I also suspect that many graduates of other law schools, which do not discriminate in this way, will also harbor opinions regarding various minorities which might be at odds with the precepts of various human rights legislation. While I disagree with them, that is their right.

I have read the decision of the SCC in the BCTF case. While I think that case is wrongly decided, and would not be decided the same way today for a variety of reasons, I also think that it should have little or no bearing on the question which our Law Society faces. The question in BCTF had to do with the Federation's failure to prove that a graduate from the teaching program would be unfit to teach. I don't think that should be your issue.

I have a niece in Alberta who is gay and may one day wish to attend law school. If she were married, she would not be able to attend this law school like the rest of the public unless she agreed not to have sex with her spouse.

I have a step-cousin in California who practices law and is married to his gay partner. He would not be able to attend such a school.

I noticed last week in the Globe and Mail a letter to the editor which stated that while Kathleen Wynne is entitle to be the Premier of Ontario, she would not be able to attend this law school.

There is something very wrong about this.

I don't think we would be having this debate if Trinity, based on religious tenets, were excluding blacks or women from attending.

In my view the issue is whether this "private" institution, which is offering education to the "public", can exclude some members of the public on grounds which offend human rights legislation.

Thank you for giving me the opportunity to provide these comments.

Richard H. Hamilton, Q.C. Retired Member

From: Judy

Sent: Friday, February 28, 2014 11:31 PM

To: Submissions

Subject: TWU grads should not be allowed to practice law here

Follow Up Flag: Follow up Completed

I find it outrageous that TWU is even being allowed to operate with core policies that violate the equal rights of gay and lesbian people. I am a married, straight woman almost 60 years old and I will be sorely disappointed in the legal profession if you do not take a stand and prevent TWU grads from practicing law here. Someone has to stand up for what's right and support equality. I hope you have the courage and integrity to do so.

If Arizona's governor Brewer can veto a bill discriminating against gay and lesbian people in a state that is known for its conservatism, I hope to God our Canadian law societies can step up as well. Shame on you if you don't.

- Judy Hancock

[&]quot;The shore thirsts, but does not own the ocean that keeps it soft. So, too, the heart and all it loves." - Mark Nepo

From: Jane Harris

Sent: Sunday, March 02, 2014 8:33 PM

To: Submissions

Subject: Fwd: Delivery Status Notification (Failure)

Follow Up Flag: Follow up Completed

----- Forwarded message -----

From: **Mail Delivery Subsystem**Date: Sun, Mar 2, 2014 at 5:21 PM

Subject: Delivery Status Notification (Failure)

To:

Delivery to the following recipient failed permanently:

submission@lsbc.org

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain <u>lsbc.org</u> by mail1.lsbc.org. [204.244.61.226].

The error that the other server returned was:

550 5.1.1 <submission@lsbc.org>: Recipient address rejected: User unknown in relay recipient table

---- Original message -----

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;

d=gmail.com; s=20120113;

h=mime-version:date:message-id:subject:from:to:content-type;

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b=YVQqlZPU393Fnn5cBvVA+BrA3u02U5jglH3dLl8+ZK7RqdTt0UmXzUNsfvb6PY50aQ e6EaOLWx1SU/4harE/pqRcIWA16+yPDV8+2OFUIX+9FsohQpeDSDqpbDyq6T2Uffdowh 5d3NNsd5pftDj7u7P+jcPC2sT1LRo3PYza5yCd8QcFkEcUpHu9GQxrSWmqDY0wmXpgvI rwgUinUKLRdadbzQ5IPgNErrdtTvwlgxF4IUUWNR4Xn+bsIs7V5HAPtDxFJL0DV+QKeX 0UTerNHtbJxykU2bSZiipvNkBXBWEpyq2o+8fCC9rG1H2dvrOKBfh0JS7F6DeYbVqyjs xqGA==

MIME-Version: 1.0

X-Received: by 10.220.161.8 with SMTP id p8mr7799042vcx.4.1393809710892; Sun,

02 Mar 2014 17:21:50 -0800 (PST)

Received: by 10.52.28.8 with HTTP; Sun, 2 Mar 2014 17:21:50 -0800 (PST)

Date: Sun, 2 Mar 2014 17:21:50 -0800

Message-ID: <CAHiAdsUyC0hLV7nG8xbkOzvCkbvjudDysOQPix3sPgiCRJo-aQ@mail.gmail.com>

Subject: Trinity Western University Law School

From: Jane Harris

To: submission@lsbc.org

Content-Type: multipart/alternative; boundary=001a11c20810b3cc9904f3a99cdf

I am writing to add my voice to those supporting the motion to prevent graduates from Trinity Western University Law School from practicing law in BC. I am not a lawyer and this is likely not considered a 'submission' per se but I do hope the law society will approve this motion and thereby send a clear message to the law school that discrimination based on sexual orientation isn't acceptable here. I find it odd that the Province and the Canadian Federation of Law Societies approved the creation of this school in the first place thus placing you in this odd position. However the school is not scheduled to open until the Fall so, with luck and your good judgment, the Administration will think twice about doing so. I also hope your decision will serve as a precedent for other provinces should the law school persist with its bigoted position and actual graduate lawyers.

It has been a long time since law schools denied admission to women and visible minorities. I would not be alone in thinking that this kind of discrimination was a thing of the past. Please take whatever actions you can to make it so.

Thank you.

Jane Harris

From: Alan Treleaven

Sent: Tuesday, February 18, 2014 4:22 PM

To: Submissions

Subject: Trinity Western University, Patrick Harrison

Follow Up Flag: Follow up Completed

From: Patrick Harrison
Sent: February-18-14 3:28 PM

To: Group memberinfo

Subject: Trinity Western University

The Law Society of BC should <u>not</u> sanction TWU for a law school. I have gay people in my family (not me) who might possibly be impacted by a graduate of this Law School. Under the Canadian Charter of Rights, everyone is supposed to have equal rights. Having a university that does not recognize the rights of gay people to have a loving relationship called marriage is just plain wrong and as future lawyers and judges, I do not think they could look at a gay couple in an unbiased manner. Just say no to this idea.

Sincerely,

Pat Harrison

From: Melissa Harrison

Sent: Monday, March 03, 2014 3:22 PM

To: Submissions

Subject: Re: TWU law school

Follow Up Flag: Follow up Completed

To Whom It May Concern:

My principle concern with this proposal lies not with the repugnant discrimination implied by that college's conduct covenant, though I object to that as well. My greatest worry concerns the quality of a law education based on these skewed principles. A deliberately prejudiced pedagogy seems unlikely to give students the space to develop their thinking sufficiently, such that, for example, they could do a good job in identifying a human rights issue in a criminal, family, or labour law case. This is not, as suggested by Prof Kuhn, a question of whether holding particular views makes one a poor lawyer, but rather whether a law education *based* on those views would be likely to make one a poor lawyer. I believe it would.

Further, Prof Kuhn argues that this is an issue of religious freedom. I cannot see a basis for that position, since the question is not whether students are free to hold certain beliefs, but rather whether pedagogy based on those belief impairs the quality of law education.

Yours faithfully,

Melissa Harrison

From: Hastings, Tara L EAB:EX [Tara.Hastings@gov.bc.ca]

Sent: Wednesday, February 26, 2014 11:30 AM

To: Submissions

Subject: proposed law school at TWU

Follow Up Flag: Follow up Completed

Dear Benchers,

I am a member of the BC Bar. I support for the resolution regarding discrimination in legal education that was recently passed at the CBA National Council. I also agree with the delegates at the CBA National Council who questioned whether the 2001 Supreme Court of Canada decision involving TWU's teachers' program would be applied today in relation to TWU's proposed law school, given subsequent developments in the law regarding the rights of GLBT persons and same sex marriage in Canada.

I have reviewed the report on this matter by the Special Advisory Committee of the Federation of Law Societies. At para. 36 of its report, the Special Advisory Committee recognized that TWU's "Community Covenant may result in differential treatment of LGBT individuals. Faced with a requirement to commit to a code of behaviour that prohibits sexual activity outside of marriage between a man and a woman, LGBT students would legitimately feel unwelcome at a TWU law school." Indeed, although TWU has indicated that homosexual students are 'welcome', TWU's website on the proposed law school states, under frequently asked questions, that persons who can't or won't accept the Community Covenant should "seek one of many other living/learning situations that would be more acceptable to them." Given that sexual orientation is a protected ground under our *Charter* and that same sex marriage is legally recognized in Canada, and given the role of the legal profession in protecting the rule of law, the Special Advisory Committee's remarks at para. 36 of its report seem to be somewhat at odds with the Special Advisory Committee's conclusion at para. 66 that "there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."

Applying the Community Covenant results in a situation where a law student or faculty member at TWU who is legally married to a same sex spouse would receive differential treatment compared to a student or faculty member who was legally married to a spouse of the opposite sex. Should religious rights trump other legally recognized Charter rights where the result, in effect, prohibits one group in our society from equal access to a legal education? There may well be married homosexual people who identify as Christians and would like to attend TWU, but would receive "differential treatment" and "would legitimately feel unwelcome" there (in the words of the Special Advisory Committee) due to TWU's Community Covenant. While TWU's answer is for persons who are legally married to a same sex spouse (and will not abstain from sexual relations with their spouse) to go elsewhere, this does result is fewer opportunities for such persons to obtain a legal education.

I have to wonder whether there would be such a debate if we were talking about a different protected ground under the *Charter*, such as race. Imagine if TWU's Community Covenant prohibited sexual relations outside of marriage between persons of the same race. This may seem far-fetched today, but 50 years ago racial segregation in educational institutions was a very controversial issue in North America. Look how far our society has come on that issue. Our society has made great strides in accepting social diversity and protecting human rights, but it appears that there is more work to be done.

Tara Hastings
Legal Counsel/Manager of Research and Mediation
Environmental Appeal Board

Forest Appeals Commission Oil and Gas Appeal Tribunal

From: Tuula & Chris

Sent: Sunday, March 02, 2014 11:19 AM

To: Submissions

Subject: Proposed Law School at Trinity Western

Importance: High

Follow Up Flag: Follow up Completed

Dear sirs:

I think that the proposed law school at Trinity Western University should not be approved by the Law Society of BC.

In my opinion, the university discriminates against its LGBT students. Although I'm sure the university would deny it, they create an atmosphere that cannot help but discriminate as they promulgate the belief that homosexuality is s choice. While it is true that no student – gay or otherwise – is required to attend Trinity Western University, the school's code of conduct creates an environment where it is acceptable to shame and exclude members of the queer community. This environment is incompatible with the right to equal benefit and protection enshrined in the Canadian legal system. Tolerance of sexual diversity is not a matter of "values," but an irrefutable aspect of Canadian law. Any university that pretends otherwise should not be allowed to grant law degrees.

From the Globe and Mail:

"I personally read the King James Version [of the Bible]," the classmate said. "It's hard for me to see how homosexuality is the right choice. How do you expect to get into heaven?" http://www.theglobeandmail.com/news/british-columbia/inside-trinity-westerns-struggle-between-faith-and-equality/article17185258/?page=all

Homosexuality isn't a choice. It is true that other law schools accept the LGBT community: however, separate but equal wasn't an acceptable option for black Americans! We also didn't settle upon civil unions as a separate but equal option for marriage in Canada. Why would we do so for la aw school?

Furthermore, should I require a lawyer in the future, am I going to have to ask where they attended law school to ensure I get a lawyer who won't discriminate against me? However unconsciously? Are Trinity trained lawyers going to work to overturn same sex marriage in the future if this law school is approved? Or labour to overturn the right to adopt or retain one's job?

Respectfully, Tuula Helin

From: michael Henricksen

Sent: Monday, January 27, 2014 4:15 PM

To: Submissions

Subject: TWU Law School Review

Follow Up Flag: Follow up Flag Status: Flagged

To whomever reading this,

It is my belief that a allowing those who graduate from TWU Law School to practice in BC will undermine the high standard that the Law Society of British Columbia has sought to upheld. As many other will already touch on the moral issues surround a school that requires its students to either fit their definition of how people should act or undermine who they are themselves in order to attend, I intend to make a standards argument.

The problem with the community covenant is that it will most certainly reduce the number of people who want to practice law considering TWU as a viable option. It may be that they themselves come in conflict with the covenant or that the disagree with it on a human rights basis. Therefore the result is that TWU will draw upon a smaller pool of applicants. The result is that less qualified people will be attending the university. A student who may be borderline at other university law schools and does not get in while an even less qualified applicant got into TWU university and has a chance at become a lawyer. If the first student had a complete and equal access to all university without unnecessary restrictions, since when did practicing wills and estate law or natural resource law for example require you be straight or refrain from premarital sex, that better qualified student would have filled that spot.

TWU may argue though that is not how a student starts but how they finish law school and how knowledgeable they are at that point. my rebuttal would be that the more qualified student would likely have done even better then the less qualified one upon graduating, if TWU's program will be as good as they claim it to be. My conclusion here is that we would have an even better lawyer practicing in British Columbia than the student who got into law school because unnecessary restrictions let his weaker grades and LSAT do so.

If we are to upon more Law Schools and to provide accreditation let it be done so that we produce an even better degree of lawyers in the province and country, not in order to allow those who are less qualified become practicing lawyers. Therefore, I would recommend to the LSBC to not accredit TWU Law School.

-Sincerely Michael Henricksen

From: Sean Hern [SHern@farris.com]
Sent: Seaturday, March 01, 2014 7:18 PM

To: Submissions

Subject: TWU

Attachments: Submission re TWU.pdf

Follow Up Flag: Follow up Completed

Please see the attached correspondence, which I am sending personally, not on behalf of my firm.

Regards,

Sean

Sean Hern

Farris, Vaughan, Wills & Murphy LLP 25th Floor, 700 W Georgia St Vancouver, BC V7Y 1B3 Tel 604 661 9366 Fax 604 661 9349

www.farris.com

^{*}This email may contain confidential and/or privileged information. If you are not the intended recipient, please inform me of the error by return email and delete this email. Thank you.*

Sean Hern 2500-700 West Georgia St. Vancouver BC 604 661 9366 shern@farris.com

March 1, 2014

By Email (submissions@lsbc.org)

Law Society of BC 845 Cambie Street, Vancouver, BC, V6B 4Z9

Attention: Executive Director

Re: Accreditation of a Proposed Law School at Trinity Western University

I am a litigation partner at Farris, Vaughan, Wills & Murphy LLP and a member of the Law Society of British Columbia. I write in response to the call for submissions about whether the Law Society should support the accreditation of a law school at Trinity Western University.

The Covenant is discriminatory

The Student Handbook for Trinity Western sets out the institution's "Community Covenant". It states that, "...students and faculty must abstain from sexual intimacy that violates the sacredness of marriage between a man and a woman". In the discussion part of the covenant, under the heading "Healthy Sexuality", the Student Handbook advises that "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". These dictates apply to "administrators, faculty and staff employed by TWU and its affiliates, and students enrolled at TWU or any affiliate program" and "unless specifically stated otherwise, expectations of this covenant apply to both on and off TWU's campus and extension sites". The Covenant seems to be enforceable by both administrators and by community members by way of certain procedures to "hold one another accountable" and there are "formal accountability procedures to address actions by community members that represent a disregard for this covenant".

The Community Covenant runs contrary to our societal acceptance of the fact that people's gender and sexuality are not "lifestyle choices". To assert that marriage, and consequently sexual intimacy, must be reserved for heterosexual relationships is to discriminate on the basis of characteristics that people cannot change. By denying admission to people who live in non-heterosexual marriages or intimate relationships, the Trinity Western admissions policy will force some people who would like to go to its law school to, among other things, hide their true identities, separate from their spouses and be shamed, or be denied entry. That kind of discrimination is harmful. Within our public institutions, it is constitutionally impermissible.

Trinity Western will say that it should be allowed to discriminate this way because it is a private university and because the discriminatory conduct is part of its exercise of freedom of religion. The latter argument is of little force, in my view. No one's freedom to practice their religion turns on the discriminatory admissions policy. Freedom of religion does not include a right to a law school education without being around non-heterosexual Christians. The real issue in my view, is whether Trinity Western's admissions policy is protected by virtue of being a private institution or whether there is a public aspect to law school accreditation that gives the Law Society a role in approving the admissions practices of the proposed law school.

Degree granting powers as public powers

My understanding is that Trinity Western argues that it is a private institution and because of that, should be allowed to assemble like-minded individuals and discriminate in the way that they want to. The difficulty I have with that position is that while Trinity Western wants to enjoy discriminating in private, it also wants the public benefits of degree granting and accreditation bestowed on their graduates. Without those public benefits, it would be difficult for them to attract students. My understanding is that the degree granting powers for Trinity Western arise from the Degree Authorization Act, S.B.C. 2002, c. 24. Notwithstanding Trinity Western University v. College of Teachers, [2001] 1 S.C.R. 772, I think there is a legitimate and unanswered question as to whether an institution which enjoys degree granting powers from the province can engage in discriminatory admissions practices, or conversely, whether the province can bestow degree granting powers on such an institution. But while that is a related issue that may need to be the subject of a court challenge, that is not the question before you.

Do the law school spots engage the public interest because they are limited in number?

I see the issue before you this way. If law school spots are scarce, such that the provincial government, by some means or other, limits their number to ensure our universities are not graduating far more lawyers than the profession can accommodate, then the number of law school spots itself is a public benefit. If so, there is no basis to allow Trinity Western to reserve some of those precious spots for only those people who conform with its irrelevant, discriminatory admissions criteria. That would effectively provide heterosexuals more opportunity to obtain a law degree than non-heterosexuals, and that is simply wrong. The Law Society cannot support denying people opportunities to enter our profession on a discriminatory basis.

If the scarcity of law school spots in our province's universities is a function of the Law Society itself, such that the Law Society considers supply and demand issues in granting accreditation, then again, the Law Society cannot allow a discriminatory institution to be accredited – the effect will be to give greater opportunity to some people, based on criteria that is discriminatory and irrelevant to the practice of law.

If Law School spots are not limited, can the Law Society nevertheless interfere?

If, on the other hand, there is no limitation on the number of law school spots that universities can offer and the number of degrees they can hand out, such that any private institution that meets the various criteria for providing a sound legal education will be given the power to grant as many law degrees as it wants, the analysis changes. In that case, there would seem to be nothing preventing an otherwise qualified private university to allow admission to its law school, for example, only to non-heterosexuals. If this is the state of things, then I think you face a more difficult question. The question becomes, notwithstanding that there is no limit on the number of law degrees that can be handed by universities in this province, should the Law Society nevertheless exercise its accreditation powers to force law schools within private institutions not to have discriminatory admissions policies? Many would say, "what business it is of the Law Society's to dictate how we run our private institution?" Some would respond that an institution which discriminates will graduate students who discriminate, and this will affect the profession. This was one of the arguments advanced by the College of Teachers in the 2001 case that went before the Supreme Court of Canada. I haven't seen any evidence on the subject of how lawyers from discriminatory Christian universities behave, but on the face of it, I am sceptical that this would be a sound basis to interfere with the admissions policies. The distinction between belief and conduct that was made in the 2001 decision of Justices Iaccobucci and Bastrache is an evidentiary hurdle that I doubt can be met.

In my view, the better argument is that the law schools of this province are both part of their universities and integrally part of the profession. A law school is different than the general undergraduate and graduate programs within a university. In our profession, many practitioners teach courses or serve as guest lecturers at the law schools. The law firms hire the universities' summer students and co-op students. The practitioners are routinely citing the work of the law schools' faculty, and their professors often assist, sometimes enormously, in complex litigation and public interest matters. Professors are appointed as judges and judges leave the bench to teach. The role of the Law Society in accrediting law schools reflects the relationship and integration of the schools with the profession and for this reason, I believe it is entirely appropriate for the Law Society to consider a discriminatory admissions practice and if appropriate, to withhold accreditation on that basis.

Should the Law Society interfere in this instance?

Turning to the substance of the issue – whether accreditation should be denied in this case - I think the Law Society should not accredit Trinity Western as a law school so long as it maintains its discriminatory admissions criteria. As professionals we stand at the bar side by side with colleagues of all races, genders and religions and we represent clients of all races, genders and religions in their struggles for dignity, freedom and justice. To bestow a benefit on, and associate the profession with, a law school that harbours discriminatory admissions policies would

undermine the integrity of our profession in this province and in this country. I say as one of your members, it would be a deeply disappointing development.

I therefore submit that accreditation for Trinity Western should be rejected. Thank you for your consideration of the above.

Yours Truly,

Sean Hern

From: Maria Holman [mholman@boughtonlaw.com]

Sent: Tuesday, February 11, 2014 4:49 PM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

Dear Sirs

I wish to express my concern with Trinity Western University's requirement that its students sign a religion-based covenant which excludes certain members of society. While I agree (with some reluctance) that people should be allowed to practice their religious beliefs (after all, it is in our Canadian Charter) provide such practices do not harm others, I wonder how people would react to a law school that required men and women to study separately because of religious requirements (as some sections of Islam mandate). Institutionally sanctioned prejudice of any kind, with whatever basis, should never be tolerated.

The idea that it may be sanctioned in the name of religion is abhorrent and people who openly subscribe to such prejudice should not be admitted to the Bar of this, or any other province or territory of Canada, where they will be expected to defend and uphold the rights of all Canadian citizens.

Maria T. Holman

Direct 604 605 8337

Profile vCard

boughtonlaw

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From: Trudy Hopman [hopman@mhmlaw.org]
Sent: Friday, February 14, 2014 12:53 PM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

I do not support a law school that is prepared to discriminate when it comes to admission. We have a Charter of Rights for good reason.

TRUDY H. HOPMAN
MAXWELL HOPMAN MENNIE
Barristers & Solicitors
310 - 1152 Mainland Street
Vancouver BC V6B 4X2
Tel: 604.669.1106 Ext. 222

Fax: 604.669.1107

Email: hopman@mhmlaw.org

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From: Hyndman, Kyle [Kyle.Hyndman@bakermckenzie.com]

Sent: Thursday, January 30, 2014 6:14 PM

To: Submissions

Subject: Trinity Western Law School

Follow Up Flag: Follow up Completed

Dear Benchers of the Law Society,

I am a BC lawyer presently practicing in Ontario, but I believe this issue has national import. I am writing in response to your call for submissions on the possibility of approving TWU as a law school. I welcome the opportunity to provide input and commend you for conducting this process openly.

I wish to categorically oppose any move to allow anyone to practice law on the basis of a law degree issued by TWU. There are several reasons for this:

1. Legal education should be public

Canada has a long and strong tradition of public education, and in particular of legal education. A public legal education is one of the key tools of our society to pass on collective civic values, including those of diversity, inclusiveness, division of religion from public life, and protection of both individual and minority group rights. Lawyers are not like other professionals; they are according special powers and privileges and a special role in ensuring our legal system functions as intended, including the protection of rights. Lawyers are both a fundamental part of the legal system and, indirectly, an independent arm of the state. Allowing private entities with parochial interests to educate lawyers profoundly undermines this public interest – even when the private entities are well-intentioned.

2. Legal education should be secular

Canada has a strong tradition of protection, and even promotion, of religious rights. However, it has an equally strong tradition of separating religion from public decision-making. As guardians of the legal system, lawyers must be taught to uphold this separation, regardless of their personal convictions. A legal education grounded firmly in any one religious tradition will likely be in a conflict of interest trying to teach a secular approach to the law. Religious schools should teach religion; public law schools should teach public law.

3. The Law Society has a duty to promote respect for the law and for individual rights

The previous two points are in opposition to allowing any private or religious entity to provide accredited legal education in BC. This point relates specifically to TWU. Our law, including our Constitution, guarantees minority rights, including the rights of sexual and gender minorities. TWU has explicitly taken positions in opposition to these rights. There are two distinct problems with this. First, it is offensive to me as a human being and to many British Columbians that this institution teaches intolerance towards marginalized groups such as sexual and gender minorities, and such teachings should absolutely not be given official sanction by the Law Society. Let them teach hate in private if they wish, but no public body should afford them any credibility or approval, least of all one so central to the administration of justice as the Law Society. The second problem is that an institution that doesn't take the constitutionally guaranteed rights of sexual minorities seriously does not take the law seriously, and has no place teaching law.

4. The Law Society has a duty to promote diversity in the legal profession

Allowing an institution that deliberately marginalizes sexual and gender minorities, as well as anyone who doesn't follow its chosen religion, will not likely produce graduates from those groups. As one of only four law schools in BC (if approved), TWU would contribute to a less diverse profession. Only schools which not only admit but welcome students of all faiths, sexual orientation and identity should be permitted to graduate accredited law students.

I urge you to exercise your discretion to refuse to accept TWU graduates for admission to the Law Society.

Thank you for your consideration,

Kyle Hyndman

BC: August 2000 Ontario: September 2013

Kyle C. Hyndman Lawyer Baker & McKenzie LLP Brookfield Place, Suite 2100 181 Bay Street, P.O. Box 874 Toronto, Ontario, Canada M5J 2T3

Tel: +1 416 865 2341 Fax: +1 416 863 6275

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From: Sameer Ismail

Sent: Monday, March 03, 2014 4:14 PM

To: Submissions

Subject: Re: Application of Trinity Western University

Follow Up Flag: Follow up Completed

To the Benchers of the Law Society of British Columbia:

As someone who is preparing to embark in a career in law, I am writing you out of a deep concern for the profession to whose well-being I hope to devote my future. As you embark on your consideration of the application of Trinity Western University (TWU) to have its academic qualification approved as a law school by the Law Society of British Columbia, I must add my voice to the discussion. I respectfully oppose TWU's application, and urge the Benchers of the Society to reject it for the reasons stated below.

Many of those who support TWU's application suggest that this process represents a battle between the s. 2 Charter rights of the Christian community and the s. 15 Charter rights of those whose sexual orientation or behaviour that TWU disapproves of. This characterization is overly simplistic and patently false. Canadian lawyers from coast to coast to coast reconcile on a daily basis their faith with their professional responsibility. Neither I, nor any individual opposing TWU's application, seek to establish Christianity, or any faith (or no faith) as a bar to the practice of law in British Columbia.

The crux of my objection is entirely straightforward: TWU and its servants have, through their words and conduct, evoked a series of serious questions as to their ability to provide a legal education that will continue to ensure that broadly accepted norms of ethics and behaviour will be respected and taught in their classrooms. Far from seeking to reassure the legal community that they will act in accordance with those norms, they have suggested the opposite: that it is their right to provide whatever legal education they deem fit, without limitation, and presumably without oversight by any entity, including the Benchers.

In support of their claims, TWU cites the Supreme Court's 2001 decision in Trinity Western University v British Columbia College of Teachers. TWU claims that the decision enables them to continue to interfere in the private lives of its students, and trample their s. 15 Charter rights, all the while enjoying accreditation without an ounce of oversight from elected representatives, the Courts, and the Benchers of the Law Society.

However, this argument fundamentally mischaracterizes both the nature of the 2001 decision, and the current situation. In the teaching case, the issue was one of accreditation for the purpose of degree-granting authority. That authority has already been granted. The FLSC and the Minister of Advanced Education opted to act, and while I would submit that their decision was made hastily and incorrectly, it has been made. The issue before the Benchers is whether or not TWU's law graduates will be recognized by the Law Society as competent to article and enrol in the Professional Legal Training Course (PLTC) in British Columbia, both requisites to entry into the legal profession.

Further, to draw a direct line between the 2001 case and the current situation displays a remarkable lack of understanding of the nature of the legal profession. There is no profession that has the sweeping powers of self-regulation held by the legal profession. It is perfectly legitimate to suggest that when it comes to teachers, the ultimate decision on qualification ought to be based on classroom conduct, as the majority held. However, in matters of law, perceptions matter. For the system to work, the public must have faith that members of the profession will abide by the highest ethical standards. There can be no doubt that when a lawyer has a conflict

between her duty to her client and her duty to her faith, that her professional duty will prevail.

TWU has not sought to provide any meaningful assurances that they will provide legal education on the basis of accepted norms of the profession. In fact, their representatives have stated repeatedly that the current state of Canadian legal education is monolithic, hostile to Christian values, and generally lacking. However, much of what unites Canadian law schools is their devotion to existing ethical codes and canons, and education based on a balanced examination on the state of the law in Canada. On Charter matters, the current state of education provides balanced insight into all of the rights and freedoms contained in that document.

Reading between the lines of TWU's statements, it seems as though they wish to teach the law against the backdrop of their Christian values. In many situations, this has the potential to distort perceptions of the state of Canadian law, especially on matters concerning the Charter. In fact, this distortion is precisely illustrated with regards to what TWU has done with their flawed interpretation of Trinity Western University v British Columbia College of Teachers: a view that any decision affirming s. 2 freedoms is to be viewed expansively, and without regard to salient distinguishing factors. If their conduct thus far is any indication of things to come, one can only expect more of the same - an expansive view of the freedoms prioritized by TWU at the expense of any freedoms in conflict with their priorities, coupled with the elevation of their own particular legal and theological ethos over the norms of legal professional regulation. TWU may well claim that these concerns are not substantiated, but this dismissive attitude is not enough to conceal the clear fact that when the first act of their students before they set foot in the classroom, is to acknowledge that as a condition of their education, their s. 15 rights will be subordinate to TWU's s. 2 rights, there is a clear risk of a serious crisis of confidence in the ability of the legal system to perform its role adequately.

It is small wonder then, that so many have raised concerns with TWU's proposal. Against such a backdrop, how can the public have confidence that a TWU law graduate, educated in an environment with a finger pressed firmly on one side of the scale of Charter rights, will be able to provide a dispassionate view of the law and adequately advocate for the interests of his client? TWU has not answered that question; in fact, their position is that they are not required to. Their position is not that the practice of law benefits from a multitude of views. Instead, it is that the current state of legal education somehow fails to provide validation for the preconceived notions of a particular group of students. However, the reality is that while individuals are free to believe as they wish, Canada's legal system is a secular one. The tenets of Christianity that TWU seeks to infuse with its legal instruction is to be welcomed in the private lives of those who seek it out. Making it the backdrop of legal education has the intolerable effect of moving what is properly a private matter into the public sphere.

For foregoing reasons, I respectfully request that the Benchers decline to approve TWU's faculty of law as regards the academic qualification requirement of the Law Society's admissions process.

Kind regards,

Sameer N Ismail, BA LL.B (Hons)

From: Jess L

Sent: Sunday, March 02, 2014 11:59 PM

To: Submissions

Subject: RE: Trinity Western University Law

Follow Up Flag: Follow up Completed

Attention: Executive Director

845 Cambie Street

Vancouver, BC, V6B 4Z9

Dear Executive Director,

While I do not doubt that Trinity Western can offer a quality Canadian legal education, I have strong reservations on its covenant that discriminates against the LGBTQ community, which under our Charter of Rights, should be treated equally, as should any other person. Placing such a covenant undermines Canadian law. There should be no practice in Canada that goes over the rules everyone should operate within.

It has been argued that it is a struggle between freedom of religion and LGBTQ rights. In regards to freedom of religion, taking out a clause that discriminates against a minority does not harm another's religious practices. There has not been another Canadian institution that discriminates against those with religious beliefs. There is however a double standard in the covenant when it comes to rights married heterosexual couples have over rights married homosexual couples have. Freedom of religion does not mean imposing one's religious beliefs on another individual.

In regards to the fact that those who disagree with the covenant can attend school elsewhere, this creates an unfair advantage, opening more spots to individuals who agree or are indifferent to the covenant, than to those who would be adversely affected by it. In a country that trumpets equality, supporting a school that gives an advantage over a matter of opinion is backwards, especially for a program that is supposed to educate students on the law.

Finally, I have realized that this would be the first private institution to offer a legal education in Canada. Even so this should not be reason to discriminate. Institutions are businesses; They offer services for a fee and profit from these operations. Like other businesses, it should not discriminate on the behaviours of others outside of the services it is providing. An example comes from the United Kingdom, where a Christian owner loses their appeal from turning away a gay couple to their bed and breakfast on the grounds that the couple's lifestyle was against the home owner's religious belief.

http://www.doughtystreet.co.uk/news/article/bb-owner-who-turned-away-gay-coupleloses-appeal While this is in the UK, the law there has a similar system to Canadian law, and rights that are similar as well and shares similarities in equality rights. Much has changed in the decades since Trinity Western was approved and the law should reflect that.

There is no public interest that cannot be served by the other Canadian institutions that offer law programs. Just as Trinity Western University argues that Christian lawyers can serve clients with actions they do not agree with, so can all lawyers serve the community whether or not they agree with their actions.

Sincerely,

Jessica

From: Chris Johnson [chris@jddlaw.ca]
Sent: Friday, January 31, 2014 1:05 PM

To: Submissions T.W.U. Law School

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames:

I write as a Member of the Law Society of B.C. to urge the Benchers not to approve T.W.U. as an accredited law school in British Columbia. My argument is simple: I do not see how any person who has signed a pledge, which is clearly discriminatory against a certain segment of our society, could ever uphold the legal tradition of being unbiased. Moreover, I do not see how such a person could uphold the Charter values of Canadians. In my view the Federation of Law Societies of Canada clearly dropped the ball on this issue, and as a result it is now up to the Benchers and the Law Society of B.C. to remedy this untenable situation.

Yours Truly, Chris S Johnson

Johnson Doyle Sugarman Trial Lawyers 2nd Floor - 195 Alexander St., Vancouver, B.C. V6A 1B8

Sent from my BlackBerry 10 smartphone on the TELUS network.

From: Anna Johnston [Anna_Johnston@wcel.org]
Sent: Tuesday, February 18, 2014 3:04 PM

To: Submissions

Subject: Submissions to Benchers re Trinity Western University Law School Application

Follow Up Flag: Follow up Completed

Dear Sirs and Mesdames.

Thank you for this opportunity to comment on your consideration of whether to approve a new faculty of law at TWU.

A practicing member of the Law Society of British Columbia, I strongly oppose the approval of a law school at TWU. I believe it be contrary to the profession's Codes and Canada's constitution, as well as disreputable for the profession to endorse an institution that not only supports, but requires adherence to values directly contradictory to Canada's constitution.

There has been much thoughtful debate on either side of the TWU issue. The nutshell as I see it (and as I've discerned from those debates) is whether the Law Society should uphold freedom of religion at the expense of equality. In my view, it would be antithetical to the Law Society's values, its Code of Professional Conduct, the CBA Code of Professional Conduct and contrary to the very constitutional laws we are required to maintain and respect to not oppose discriminatory legal education programs.

The Code of Professional Conduct imposes on us members to maintain the integrity and laws of the state (section 2.1-1). As the Law Society recognizes, discriminatory behaviour by lawyers may be professional misconduct (section 2.2). The CBA code similarly requires us to "respect the requirements of human rights and constitutional laws in force in Canada" and prohibits discrimination with respect to the professional employment of other lawyers, articled students or any other person (chapter XX).

To employ students or lawyers who have been accredited by a discriminatory institution is in effect discriminatory itself. Similarly, to allow an institution to have a discriminatory effect in its admissions (the prohibition of homosexual intimacy is an effective bar to LGBTQ students) would be to authorize a an unequal process for admission to the bar. Law schools are a gatekeeper to the legal profession. Fewer law school placements that are effectively available to LGBTQ students would result in fewer opportunities for LGBTQ students to enter the profession and, accordingly, likely fewer LGBTQ lawyers. Supporting this result would be discriminatory, contrary to section 15(1) of the *Charter*.

Moreover, approving a TWU law faculty would be a public discredit to the Law Society. To admit students educated by a discriminatory institution would be in effect to endorse the discrimination done by that institution. Doing so would bring our esteemed professional body into disrepute both nationally and internationally.

Thank you for this opportunity to share my views, and for considering those views.

Regards,

Anna Johnston Staff Lawyer

West Coast Environmental Law

200-2006 West 10th Avenue

Vancouver BC V6J 2B3

Tel: 604.601.2508

Toll-free: 1.800.330.WCEL ext 208

ajohnston@wcel.org

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Andrea Kastanis [akastanis@farris.com] Monday, March 03, 2014 9:36 AM Submissions From: Sent:

To:

Subject: TWU law school proposal

Follow Up Flag: Flag Status: Follow up Completed

Reply Attention of: Andrea H & Direct Dial Number: (604) 661-1724 Andrea H Kastanis Email Address: akastanis@farris com

March 3, 2014

VIA ELECTRONIC MAIL

The Law Society of BC 845 Cambie Street Vancouver, British Columbia Canada V6B 4Z9

Attention: The Executive Director

Dear Mr. McGee:

Re: Law School at Trinity Western University ("TWU")

I write in response to the Law Society's call for input from the legal community about the Society's upcoming decision about the proposed law school at TWU.

I am strongly opposed to TWU's proposal. As a soon-to-be member of the bar, it is my view that an institution that openly practices discrimination and inequality should not have the privilege of educating students who will later be asked to take the Barristers' and Solicitors' oath.

We are often reminded as lawyers of our privileged position as members of a self-regulating profession; I say that this decision presents an opportunity for the Law Society to breathe life into that responsibility. Neither the profession nor the community it serves will be well-served by permitting TWU to open a law school. I understand that the focus of this debate is centered around the covenant imposed on students by the university, but in my view, it is obvious that the real challenge lies in Law Society's inability to ensure that the curriculum requirements in certain areas of substantive law will not be met with lip service by TWU faculty.

In considering this proposal, I urge you to remember that law school is the breeding ground for many of our beliefs and points of view as we move forward with our legal education and, later, our careers. I do not see how TWU will be able to meet the task of educating students in a manner that will foster a respect for the *Charter* or its all important values.

Thank you for considering my concerns.

Yours truly,

Andrea H. Kastanis Articling Student

From: Michael Kader

Sent: Monday, March 03, 2014 7:27 AM

To: Submissions

Subject: Trinity and Western University

Follow Up Flag: Follow up Completed

As a member of the Law Society of B.C. I hope the Law Society will not legitimize Trinity and Western University Law School grads by recognizing their degrees. TWU policies on same sex relationships is out of touch with mainstream attitudes towards the LGB communities, and contrary to the Canadian Charter of Rights and Freedoms, and should not encouraged. By legitimizing TWU degrees I believe the Law Society of BC will be condoning TWU discriminatory policies where it should instead be taking up the fight against such small mindedness.

Michael Kader



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From: Paulina Kam [PKam@lando.ca]
Sent: Tuesday, February 11, 2014 6:17 PM

To: Submissions

Subject: admission of law graduates from TWU

Follow Up Flag: Follow up Completed

I normally never have such a strong opinion on this kind of topic, but I felt the need to at least send you my thoughts on this very important matter that will change the landscape of the British Columbia legal landscape. I will keep this short, as my sentiments are quite simple.

I absolutely do not agree to allowing TWU to produce law graduates, and for those graduates to practice in British Columbia. While I'm sure it's a great school and it is well established, the admission process is limited to a certain segment of the population based on religion. This ends up discriminating against those that do not have the same belief system, and this discrimination should not be accepted by the wider profession.

For the very fact that admission to TWU is based on religion, I do not agree to the Law Society allowing law graduates of TWU enter our esteemed profession based on fairness and equality.

Thank you for your work on this matter.

Paulina Kam Barrister & Solicitor

Tel: 604.682.6821 | Fax: 604.662.8293 | Profile | pkam@lando.ca

Lando & Company LLP P.O. Box 11140 2010 – 1055 West Georgia St. Vancouver BC, V6E 3P3



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From: Kerr, A. Brent [Brent.Kerr@gowlings.com]
Sent: Monday, February 03, 2014 11:04 AM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Dear Sirs:

I am concerned about the covenant which Trinity Western University intends to use in connection with its law school. In particular, the reference in the covenant to marriage being between a man and a woman appears to be an obvious attempt to exclude gay students and faculty. This would be contrary to Canadian values and discriminatory. A law firm would never be able to impose such a covenant and I don't believe the Law Society should support a law school using such a covenant or anything with a similar purpose.

Regards, Brent

A Brent Kerr, QC 604-891-2788 brent.kerr@gowlings.com

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From:

Sent:

To:

Subject:

pat kerwin Monday, February 24, 2014 10:49 AM Submissions Re: Trinity Western University Letter to Law Society from P Kerwin Feb 24 2014.pdf Attachments:

Follow up Follow Up Flag: Flag Status: Flagged

Please see attached letter.

Regards,

Patrick Kerwin

Letter to Law Society of BC

Re: Trinity Western University

Both as a member of the public and as a member of the law society of BC I am more than a little disappointed at the prospect that Trinity Western University might soon join the ranks of law schools in Canada. Without detailing the numerous ways in which the university's ban on same-sex relationships is completely out of step with modern Canadian societal values, it's decision to marginalize homosexuals in the name of religious freedom is certainly all the more troubling within the institution of "the law" and the promotion of a just and equal society.

One needn't look further than the Vancouver Law Courts and the blindfolded lady justice statue with her balance scales to see the hypocrisy of this discriminatory rule. The fact that this statue is prominently displayed in a location chosen to welcome new lawyers to the provincial bar only underscores the importance of its message – justice is blind. The statue is a powerful reminder of the objectivity and impartiality of justice and the moral force with which the judicial system operates.

In the face of the current furor surrounding Russia's hosting of the 2014 Winter Olympic games and it's position toward homosexuals, I am deeply saddened to find an institution in British Columbia – home of the previous winter games no less - attempting to perpetuate similarly bigoted views within the very institution tasked with upholding people's "Equality Rights" (section 15 of the Canadian Charter of Rights and Freedoms). Accepting Trinity Western University's right to freedom of religion, I have no faith in this institution's ability to effectively and impartially promote the principle of equality to their students and thus promote the balance required by the law.

As I trust the above comments make clear, I am joining the many who have already voiced their disapproval of Trinity Western University's desire to open a law school. Until such a time as they wish to revisit and amend their discriminatory policies towards homosexuals, my opinion will remain unchanged.

Respectfully,

Patrick Kerwin, Barrister & Solicitor

Law Society of British Columbia member since 2011

From: Kingwell, Brian G. [Brian.Kingwell@gowlings.com]

Sent: Monday, February 03, 2014 10:41 AM

To: Submissions

Subject: Proposed Trinity Western University Law School

Follow Up Flag: Follow up Completed

Dear Colleagues,

This is in response to the invitation in the January 2014 eBrief to comment on the proposed new law school at Trinity Western University. My understanding is that the school requires a signed agreement from prospective students and staff that, among other things, includes language requiring abstinence from "sexual intimacy that violates the sacredness of marriage between a man and a woman." My view is that this exclusionary language is completely incompatible with the ethical principles that should guide the Law Society of BC in making any decisions about the propriety of supporting the proposed law school. The Society cannot promote diversity by accommodating discrimination.

Best regards, Brian

Brian Kingwell

Partner T 604-891-2258 brian.kingwell@gowlings.com Assistant: Alexandra Mcpherson T 604-891-2707 alexandra.mcpherson@gowlings.com



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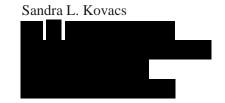


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February 25, 2014

The Law Society of BC 845 Cambie Street Vancouver, BC, V6B 4Z9

Attention: Executive Director

Re: Trinity Western University's proposed law school

A member of the Law Society of British Columbia in good standing, I write with my submissions regarding Trinity Western University's proposed law school. Respectfully, I encourage the Benchers to reject accreditation of the Trinity Western University proposal for a law school.

The Supreme Court of Canada's decision in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, is distinguishable, for three reasons.

First, admission to law school is far more competitive than admission to a teachers' program and, therefore, non-Christians and persons in same-sex unions will be at a significant disadvantage if 60 seats are effectively inaccessible to them. Homosexuals and non-Christians who wish to become teachers, if they are discouraged from attending TWU, can still become teachers, as acknowledged by the Supreme Court of Canada. This cannot necessarily be said for those who wish to become lawyers. Permitting a limited number of law school seats across Canada to be reserved only for those in society who are prepared to abide by fundamentalist Christian ideals effectively restricts those who do not believe in those same ideals from accessing a legal career.

Second, it is my view that accrediting TWU's proposed law school will have the effect of bringing the administration of justice into disrepute. The statutory object and duty of the Law Society, as a gatekeeper, is to uphold and protect the public interest in and perception of the administration of justice. One of the ways it can do so, as set out at s. 3 of the *Legal Profession Act*, is by preserving and protecting the rights and freedoms of all persons.

The public interest in and perception of the administration of justice is not served by permitting the education and training of lawyers in a fundamentalist religious school that openly discriminates against persons who have legal same-sex marriages, and states its mission is to:

...develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life.

This stated mission is wholly adverse to a lawyers' obligation to a client under the Law Society's *Code of Professional Conduct for BC*:

7.3-2 A lawyer must not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

The lawyer's role is to present evidence and make legal argument that his or her client would have made if he or she had the knowledge, skills, and experience to do so. The lawyer must carry out this task without any pre-existing moral bias or pre-judgment of his or her client, as this may compromise the lawyer's ability to effectively advocate on behalf of the client.

Is a "thoroughly Christian mind", a "disciple of Christ", able to abide by Rule 7.3-2? We may never know. Like in the *BCCT v. TWU* case, there is no evidence – yet – that a TWU grad is incapable of separating his personal belief system from his professional obligations.

However, the public may *perceive* that a TWU law student is incapable of exercising impartiality and, unlike for teachers, this perception should be of significant concern to the Law Society.

Our judiciary – one of the branches of our democratic government – is dependent upon a pipeline of lawyers to create a pool from which to select appropriate candidates to the bench. A judicial candidate must be, and appear to be, impartial. As stated on the Canadian Superior Courts Judges' Association's website:

It is not enough for the judiciary, as an institution, to be independent - individual judges must be seen to be objective and impartial. In their personal lives, judges must avoid words, actions or situations that might make them appear to be biased or disrespectful of the laws they are sworn to uphold.

It is critical to society and the administration of our justice system that our judiciary be, and be perceived by the public to be, absolutely impartial to those matters coming before it.

The new lawyers that will graduate from TWU annually will later contribute to the pool of lawyers from which our judiciary is selected. Accrediting these lawyers from a law school that expressly encourages its graduates to have "thoroughly Christian minds", and to refuse to acknowledge the rights of persons of homosexual orientation to marry and be full members of our pluralistic society, will bring the administration of justice into disrepute.

Lastly, to allow organized religion – particularly an intolerant religious organization – to participate in the education and training of lawyers in Canada sets a dangerous precedent.

In considering the long-standing conflict between freedom of religion and freedom from discrimination on a prohibited ground under the *Code* and the *Charter*, in preparation for writing these submissions, I found it helpful to start with a basic question: what is religion? The Merriam-Webster dictionary offers several definitions, including "a cause, principle, or system

of beliefs held to with ardor and faith." This definition suggests any organized belief system can be defined as a religion.

This led me to consider other religions, fundamentalist religions, known to discriminate against certain persons in society. The Taliban in Pakistan and Afghanistan are one organized religious group that fits this description. Western Society denounces the Taliban for their fundamentalist views which result in violence and systematic discriminatory treatment of women.

Hypothetically, what if the Taliban created a privately-funded university in Canada that had the resources to establish a law school program? The stated aim of the Taliban is to create a "secure environment where the chasteness and dignity of women may once again be sacrosanct." In order to remain consistent with its "core values", hypothetically, the Taliban requires its students and staff to abide by a strict code of conduct, a code that is inherently discriminatory of, and excludes, women.

Would the Law Society consider accrediting such a law school? To my mind, this hypothetical Taliban law school is no different than the TWU's proposed Christian law school. The only reason some of us are less offended by the idea of a Christian law school is because Christianity is a majoritarian religious group in Canadian society, and the Taliban is not.

We may also be less offended by the discrimination exacted by the former because a woman's right to an education and to participate in society has been uncontroversial in recent decades, while gay rights have only more recently been recognized in modern society. But why are homosexuals treated differently than women or other identifiable minorities in western society?

While lawyers should be free as any other Canadian citizens are to have and to hold their own religious beliefs, fundamentalist beliefs that are openly and harmfully discriminatory of an identifiable minority in Canadian society have no place in the formal education and training of lawyers. To permit otherwise, it is respectfully submitted, will have the effect of bringing our justice system into disrepute.

Times have changed since the first TWU decision before the Supreme Court of Canada in 2001. Religious freedom can no longer be permitted to prevail over the rights of all members of our society to be free from discrimination. Intolerance directed to a minority group in our society – a minority group that is not going to disappear, no matter how much the religious right wishes it would – cannot be condoned, no matter the group discriminated against under the guise of religious belief.

Yours truly,

Sandra L. Kovacs Barrister & Solicitor

¹ http://www.merriam-webster.com/dictionary/religion

² Nancy Hatch Dupree. 'Afghan Women under the Taliban' in William Maley (2001) *Fundamentalism Reborn? Afghanistan and the Taliban*. London: Hurst and Company, pp. 145-166.

From:

Subject:

Sent: Saturday, March 01, 2014 11:05 AM

To:

Statement regarding TWU Law School

Follow Up Flag: Flag Status:

Follow up Completed

Submissions

I am writing to express my profound opposition to Trinity Western University's proposal to create a faith-based law school in British Columbia. My spouse and I, legally married by MY faith community in the Commonwealth of Massachusetts in 2005, would expect that any lawyer admitted to the bar in British Columbia would be able to represent our interests fairly and honestly. If the Law Society of BC agrees to admit lawyers professionally trained at TWU, under its Community Covenant, we would be hesitant, if not opposed, to hire anyone trained at TWU. Your admission of lawyers trained in this program would substantially alter our trust in the legal profession in BC.

Is it really worth supporting TWU in its obstinate refusal to grapple with the real world and its social diversity, simply in order that it might create a "Christian Disneyland" for its students? As a Christian myself, I feel ashamed that TWU brandishes its narrow minded version of our faith as a defence against social progress and the development of a more open and caring society.

Sincerely,

Eric Kristensen

From: on behalf of Ada Lam [alam@lamlegal.ca]

Sent: Thursday, January 30, 2014 4:42 PM

To: Submissions

Subject: Trinity Western University Input

Follow Up Flag: Follow up Completed

Dear Benchers:

In my humble opinion, I believe it is unwise to open another law school in British Columbia.

I am often peppered with requests from articled students-to-be for informational interviews or coffees. Some are several years post-graduation. I believe these students are strong candidates and will do well in our profession. They are however, having an exceedingly difficult time obtaining articles (or even junior lawyer positions).

Some are willing to work for practically nothing. Others are asking for a chance at even a two-month secondment, so they can build nine months worth of articling experience. While this is anecdotal, I believe another law school in British Columbia will exacerbate the situation.

Additionally, Thompson Rivers has yet to graduate its first class of law students. Thompson Rivers adds 20% more students into the BC market (75 TRU - 200 UBC - 100 UVic). The impact of these additional students on the article/junior lawyer market should be evaluated first.

On a visceral level - and I don't mean to say this is happening now - I feel it would be unjust for a school or schools to admit candidates, take three years of their time and tuition, knowing a decent number of students will likely never article - or will be forced to leave their family, friends, and support networks for the interior.

Now I understand the province outside of the lower mainland may benefit from additional lawyers. However, I think the vast majority of students seek, and expect to stay in the lower mainland post-graduation.

Further, Trinity Western is located in Langley. Lower mainland students seeking to stay in the lower mainland would be attracted by its close locale.

I would be more likely to support a law program at say, the University of Northern British Columbia. At UNBC, more of the graduates are likely from northern or interior BC. I would also assume they would relish the opportunity to stay in those areas. This will serve the under-serviced population in BC better than a university in Langley.

Anyway, I know I don't have the statistics or data to substantiate these broad generalizations. I firmly believe the Law Society should closely monitor the article and junior lawyer market before another law school is opened though.

Best regards,

Ada Lam Ada P. Lam

Lam Legal | Trial Lawyers

Direct Phone: 604.259.2588 | Fax: 604.259.2582

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Nelson Square, Box 12148, Vancouver, B.C. V6Z 2H2 Email: alam@lamlegal.ca | Web: www.lamlegal.ca

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BY EMAIL(submission@lsbc.org; tmcgee@lsbc.org)

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Timothy E. McGee, CEO and Executive Director

Dear Sirs/Mesdames:

Re: Trinity Western University – Covenant and a Law School

We write pursuant to the invitation of the Law Society of British Columbia (Law Society) posted January 24, 2014 inviting submissions to assist Benchers as they consider a proposal for a new law school at Trinity Western University (TWU).

It is commendable that the Law Society has invited submissions "in the interests of transparency and openness" with a view to "procedural fairness" and a "thorough, thoughtful, and fair process" notwithstanding the prior Final Report of the Special Advisory Committee to the Federation of Law Societies and the prior decision on accreditation by the BC Government shortly thereafter.

Lawyers' Rights Watch Canada

LRWC is a committee of lawyers and students who promote human rights and the rule of law internationally through education, legal research and advocacy for lawyers and other human rights defenders in danger because of their advocacy. LRWC has special consultative status with the Economic and Social Council of the United Nations. . More information about the work of LRWC is available at http://www.lrwc.org.

LRWC hopes these submissions assist the Benchers in their consideration of the complex and difficult issues posed by the TWU proposal.

Facts

LRWC assumes the reader will have had the benefit of numerous other summaries of the facts set out in earlier submissions and publications such as:

- a) The submissions of the office of the President of the Canadian Bar Association covering the submissions of the Sexual Orientation and Gender Identity Conference and Equality Committee of the CBA, both dated March 18, 2013.
- b) The memorandum of law by John B. Laskin of Torys LLP directed to the Federation of Law Societies of Canada dated March 21, 2013.
- c) The submission of Kevin G. Sawatsky, Vice-Provost and University Legal Counsel for Trinity Western University dated April 24, 2013 and submitted to the Federation of Law Societies.
- d) The published paper, *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program*, by Elaine Craig, and published by the Canadian Journal of Women in the Law, Volume 25, No. 1 (2013) pp.148-170
- e) The Final Report of the Federation of Law Societies' Special Advisory Committee on Trinity Western's Proposed School of Law, dated December 2013 (but published on December 16, 2013).
- f) Various submissions of the British Columbia Civil Liberties Association.
- g) Submissions of the Deans of Law dated November 20, 2012, and
- h) Numerous other submissions and reports.

We are not aware of any significant disagreement in respect of any significant fact.

The Benchers will be aware that, as a condition of employment with the University or admission into one of its programs, TWU requires students, faculty and staff to sign its Community Covenant Agreement. The Covenant requires those who sign to limit "sexual intimacy" to the context of marriage between opposite genders. The Covenant applies both on and off campus and violations may lead to disciplinary sanctions including dismissal in the case of faculty and staff and removal in the case of students. The precise wording is "If a student, in the opinion of the University, is unable, refuses, or fails to live up to their commitment, the University reserves the right to discipline, dismiss or refuse the students' readmission to the University' (at page 23). Community available online The Covenant Agreement is http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf.

Result Being Sought by LRWC

LRWC takes no position in respect of TWU's proposal for a new law school other than in respect of the Covenant. As a result of TWU's ambition to impose the Covenant, LRWC urges that the Law Society deny TWU support and that the Law Society actively pursue reversal of the

accreditation granted allowing TWU to issue Juris Doctorate (JD) degrees. For clarity, if TWU were to withdraw its requirement that faculty, staff and students sign the Community Covenant Agreement, then LRWC would take no position in respect of TWU's proposed law school.

The fact that the Federation of Law Societies has issued a Final Report, and the fact that it was rapidly followed by a decision of the BC Provincial Government poses special challenges for the Law Society.

In the event that TWU does not withdraw its requirements in respect of the Covenant, it is submitted that it is appropriate for the Law Society to invite the British Columbia Government to rescind its accreditation in order to allow for appropriate consultation with, among others, the Law Society, the body responsible for the qualifications of lawyers. Rescinding the BC Government's grant of accreditation will avoid the circumstance that now prevails, that students might and probably will enroll in the law school for the purpose of being called to the Bar but find themselves in limbo if the Law Society should decide, as it is invited to do, that TWU's discriminatory intentions and practices are inconsistent with accreditation. Given that the process leading to the Final Report of the Special Advisory Committee of the Federation of Law Societies was both secretive and otherwise flawed, it is submitted the Law Society should, in the first instance, make its own decision without taking the Final Report into account. Then, if the Law Society denies TWU's application, it is submitted the Law Society should seek withdrawal of the requirements respecting the Covenant from TWU. If that is not forthcoming, the Law Society should invite the British Columbia Government to rescind its accreditation of TWU's program. If that is not forthcoming, the Law Society, likely in concert with others, should seek judicial review of the decision by the BC Government to grant TWU the authority to issue JDs.

Argument

Application of the Charter

The difficulty with this case stems primarily from the fact that an earlier decision failed, as have advocates and decision-makers, for various reasons, to apply the *Canadian Charter of Rights and Freedoms* (Charter) to the question of suitable criteria for admission to law school in all of the circumstances. Strangely, neither advocates nor decision-makers appear to have recognized that the Charter must apply. For example, page 3 of the submission to the Federation of Law Societies of Canada by the Sexual Orientation and Gender Identity Community (SOGIC) states:

"As a private institution, Trinity Western is not subject to the *Charter*."

It is absolutely correct to state that TWU is a private institution. However, that is not the end of the matter. There is a line of Supreme Court of Canada decision in respect of matters to which the Charter applies, interpreting Section 32 of the Charter: starting with the decision in *R.W.D.S.U. v. Dolphin Delivery Ltd.*, [1986] 2 SCR 573 (Dolphin Delivery) and including the decision in *McKinney v. University of Guelph* [1990] 3 SCR 229 (McKinney) and the decision in *Douglas/Kwantlen Faculty Association v. Douglas College* [1990] 3 SCR 570 (Douglas College). Those three decisions, which are all good law, serve to support the appropriate analysis. The Supreme Court of Canada in Douglas College decided, after reviewing the

governance of Douglas College in detail, that Douglas College was an arm of Government such that Douglas College was subject to the Charter in all it does. Effectively, Douglas College was found to be part of the fabric of Government and the Charter was held to apply to it. In contrast, on the same day, McKinney decided that the University of Guelph, was not sufficiently governmental to warrant application of the Charter to all the activities of the University. However, that said, the University of Guelph was still subject to the Charter in respect of its governmental functions. Similar issues have arisen with hospitals and transit authorities. The Supreme Court of Canada decided that the Charter applies to a Law Society in *Black v. Law Society of Alberta* [1989] 1 SCR 591. In that case, mobility rights were at issue and the constitutional questions were whether rules limiting partnerships serving to restrict national firms infringed mobility rights guaranteed under Section 6(2)(b) of the Charter and secondly, whether those rules could be justified under Section 1 of the Charter. The Law Society's decisions respecting who could or should be a member of the Law Society of Alberta (whether they were disqualified if they formed partnerships with Toronto law firms) was an issue that was subject to the Charter and the Court applied the Charter to the Law Society's decision.

Here, the Law Society has, as an integral part of its duty to protect the public interest, the authority and duty to determine who is qualified to practice law and who is not, as set out in Part 2 of the *Legal Professions Act* R.S.B.C. 1998, c. 9. Clearly, in exercising that jurisdiction, the Law Society must consider and apply the *Charter*.

For practical purposes, the question of who will be admitted to the practice of law depends on who graduates from an accredited law school. For practical purposes, "the gate" to becoming a member of the bar in BC is admission to law school. As a practical matter, very few students admitted to law school fail to graduate and very few graduates from BC law schools who seek admission to the Bar in BC are ultimately denied admission. The small percentage of students who fail the Professional Legal Training Course (PLTC) are permitted to reapply. For practical purposes, the Law Society has delegated its jurisdiction in respect of the suitability of candidates for admission to the Bar, and has entirely delegated it to the law schools almost as much as the Courts have delegated their gate-keeping role which is now vestigial. To our knowledge, no judge presiding over a "Call to the Bar" ceremony in British Columbia has actually exercised any criterion or discretion whatsoever for many many decades. The question of qualifications to practice law, as a matter of statutory authority resides with the Law Society, but, as a matter of practical convenience resides with the law schools on any functional analysis. As a result of the foregoing, when exercising the delegated statutory power of decision that is a practical matter, resides with law schools, the question arises whether the law schools are subject to the Charter. It is not an answer to say the party to whom the statutory power of decision has been delegated, the law school, is a private entity. Neither Government nor the Law Society can escape Charter scrutiny by the simple expedient of delegating its authority to a private entity. That entity to which the statutory duty is delegated remains subject to the Charter, whether or not it is private, if that entity is performing a governmental function.

As a result of the foregoing, the Benchers must consider whether the decision to admit some candidates to law school and deny others admission is a sufficiently governmental function to attract Charter scrutiny. If the answer is yes then the question becomes whether requiring compliance with the Community Covenant is a breach of the Charter and it plainly is a breach of

Section 15 and others. The question is then whether the breach is a "limit prescribed by law that is demonstrably justified in a free and democratic society" so as to be "saved" i.e., qualify as an exception under Section 1 of the Charter.

The Benchers are aware of the vital importance of adequately qualified lawyers in the operation of a legal system. Equally, the Benchers are aware of the crucial importance of suitably qualified lawyers to the existence and operation of the Rule of Law. It is submitted that a suitably qualified independent Bar is absolutely necessary to the Rule of Law. Such a Bar is as important, it is submitted, as suitable qualified independent judiciary, not least because the judiciary is made up of candidates selected from the Bar. The importance of a suitable and independent Bar cannot be overemphasized. The question of suitability is a matter entirely delegated (because of the necessity of independence) by the government to the Law Society. The Law Society cannot, by further delegating that responsibility, shirk or avoid Charter scrutiny. It is hard to imagine a more quintessentially "governmental" function than "quality control" respecting the necessary elements to the Rule of Law to which our profession is and must be entirely dedicated.

Breach of the Charter

Once it is established that the Charter applies to the gatekeeper function proposed to be shouldered by TWU, and assuming TWU persists in requiring adherence to the Covenant, the question arises whether the TWU bar preventing admission or graduation of applicants unable to adhere to the Covenant constitutes a breach of the Charter, in particular Section 15. In *Law v. Canada (Ministry of employment and Immigration)* [1999] 1 SCR 497, Iacobucci J. speaking for the Court held that determination of discrimination under Sub-Section 15(1) should involve the following three broad inquiries:

- 1) Does the impugned law draw distinction between the claimant and others on the basis of one or more personal characteristics or fail to take into account the claimant's already disadvantaged position resulting in substantively differential treatment on the basis of one or more personal characteristics?
- 2) Is the claimant subject to differential treatment based on one or more enumerated and analogous grounds?
- 3) Does the differential treatment discriminate by imposing a burden upon or withholding a benefit from the claimant in a manner that reflects the stereotypical application of presumed group or personal characteristic or that otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration?

Sexual orientation is such a characteristic and that the effect, if not the purpose, of the Covenant is the very sort of discrimination identified by Mr. Justice Iacobucci's three inquiries.

LRWC adopts the SOGIC submission of March 18, 2013 in the following terms:

The fact that no student may ever be expelled for breaching the Covenant's sexual intimacy rules is not determinative. As acknowledged by the Supreme Court of Court in *Vriend v. Alberta* [1998] 1 SCR 493 ("Vriend"), the mere fear of discrimination may in and of itself cause serious psychological harm: "Fear of discrimination will logically lead to concealment of true identity and this must be harmful to personal confidence and selfesteem [...] The potential harm to the dignity and the perceived worth of gay and lesbian individuals constitutes a particularly cruel form of discrimination" [*Vriend* paragraph 102 emphasis added by SOGIC]

The same may be said of the fact that the Covenant reportedly targets sexual behaviour as opposed to sexual orientation as Justice L'Heureux-Dubé wrote in her dissenting opinions in *TWU* which was just endorsed by the unanimous court in the *Saskatchewan* (*Human Rights Commission*) v. Whatcott 2013 SCC 31 ("Whatcott").

'I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the 'sexual sin' of 'homosexual behaviour' from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin [...] The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected' [...] [emphasis added] [Whatcott paragraph 123]"

To bar entry to, or graduation from, law school on the basis of sexual orientation is a breach of Section 15 of the Charter as that section has been interpreted by the Supreme Court of Canada.

Are the Breaches Saved Under Section 1?

Section 1 of the Charter provides:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The first requirement that comes to be considered is whether the imposition of the Covenant can be seen to be a "limit prescribed by law." Here there would be a host of serious problems for TWU seeking to save their Covenant from the consequences of a Charter breach by invoking Section 1. A "limit prescribed by law" must be a definite and defined pre-existing "law". Imposition of the Covenant would be vulnerable to the argument that it is not a "law" but rather a contract, at best, hopelessly vague. Further, the proponent of such a "limit" would have to be a great deal more specific about what is meant by "sexual intimacy" to have the restriction qualify as a written "limit prescribed by law". It is not clear exactly what is meant. Sexual intimacy takes many forms. The appropriate scrutiny will not allow vagueness or generalizations, out of shyness or some perverse decency. What exactly is prohibited? The proponent can't raise the subject and then fail to be clear, as has been required by the Courts in their construction of the term "limit."

Even if the Benchers were to give the stipulation the benefit of the doubt in respect of being a "limit prescribed by law", the limit must also meet the criteria of being "demonstrably justified in a free and democratic society," established by the Supreme Court of Canada in *R. V. Oakes*, [1986] 1 S.C.R. 103 (the Oakes test).

The *Oakes* test has four branches and it is submitted that, to the extent we can determine, they are not met. The first branch is the requirement that the limit on the Charter right serve a "real and substantial need". Law schools admit homosexuals, lesbians, bisexuals and transgendered individuals and accept such persons as staff and teachers without any difficulty whatsoever. The Covenant clearly cannot be said to fill a real and substantial need or a public interest in limiting such people from graduation and practice.

It does not seem that the "need" arises from the operation of a law school. If the "need" were argued to arise from the desire of persons adhering to Evangelical Christian doctrine to associate only with adherents to their religion, why would the law school welcome Hindus and Buddhists and even Christians and Jews who do not share TWU's interpretation of religious beliefs? It is submitted that there is no "real and substantial need."

The second branch is that there be a rational connection between the limit and the objective, i.e., the real and substantial need. It is difficult to imagine how a rational connection could be argued but it will depend on the "real and substantial need" identified as the objective by the proponent of the Covenant. Under the third branch, the "law" must impair the Charter freedoms to the minimum extent consistent with pursuit of the real and substantial objective. This branch fails for lack of such an objective. The final branch is the proportionality branch whereby the benefits of the limit are weighed against the deleterious effects of abridgement of the fundamental freedom. It is submitted that the imposition of the Covenant does not pass the Oakes test.

Failure to Apply the Charter

Since this argument departs from other advocacy by relying directly on the Charter, we pause in our argument to explain why other advocates' arguments have not relied on the Charter breaches. Much of the discussion leading to the "Final Report" of the Special Advisory Committee of the Federation of Law Society has focused on the decision in *TWU v. B.C. College of Teachers* [2001] 1 SCR 772 (Teachers'). While the Supreme Court of Canada considered Charter values in that case, the case was not directly a Charter case. This is apparent from paragraphs 26 to 27 of the Reasons. There, Charter values came into play but it is noted that the B.C. College of Teachers "...was not directly applying either the *Charter* or the province's Human Rights legislation when making its decision,..." [paragraph 27, page 808]

As a result, there was no Constitutional Question defined by the Supreme Court of Canada, in accordance with its practice in Charter cases. Presumably, notice to Attorneys General under the *Constitutional Questions Act* was not provided. Here, we apply for an order, by the Law Society, foreshortening to non-existence the notice requirements under the *Constitutional Questions Act* and ruling this submission constitutes the required notice to the Attorney's General/Minister of Justice of Canada and B.C. as required under the *Constitutional Questions Act*. Copies of this submission are being forwarded to both Attorneys General. It is submitted that it is appropriate to

treat this present submission as appropriate notice under the *Constitutional Questions Act* and we invite Benchers to entertain any input from Federal or Provincial Attorneys General that may be forthcoming.

It is submitted it is precisely because the matter was not considered as a Charter case by the Supreme Court of Canada that an appropriate Charter analysis was not conducted in the Teachers' case. Further, it is submitted the opinion prepared for the Federation of Law Societies by John Laskin of Torys LLP in the form of a memorandum was explicitly only addressing the application of the Teachers' decision to TWU's application for the Federations' "blessing".. The opening words of his memorandum make it clear he is limited by his instruction to an assessment of the effect of the Teachers' decision. His opening paragraph reads as follows:

You have asked for my advice on the extent to which the decision of the Supreme Court of Canada in Trinity Western University v. British Columbia College of Teachers, rendered in 2001, applies to consideration of the Trinity Western University School of Law proposal, which TWU has submitted to the Canadian Common Law Approval Committee.

And this limitation carries through to the Final Report of the Special Advisory Committee of the Federation of Law Societies, perhaps based upon the Laskin Memorandum.

Balancing Charter Rights and Freedoms

The finding that TWU's Covenant creates a discriminatory bar to one route through the "gate" to become a member of the Bar is a breach of Section 15 equality rights that is not saved by Section 1 of the *Charter*, is not the end of the matter. TWU claims that disallowing the Covenant as a prerequisite would also be a "governmental action" attracting Charter scrutiny under Section 2(a) of the Charter, "freedom of conscience and religion".

The nature of the Charter right and freedom under Section 2(a) of the Charter will be discussed in the next section. For present purposes, LRWC acknowledges that TWU raises a separate Charter section and that, if more than one Charter section applies and might superficially be seen to mandate or direct different or opposite outcomes, then the Charter rights must be balanced and reconciled.

Various commentaries have pointed out that the leading Supreme Court of Canada case on reconciling separate Charter rights arose in *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835 (Dagenais). In that case, the fair trial rights of Mr. Dagenais and three other Christian Brothers under Sections 7-11 of the Charter came into collision with the freedom of expression rights of CBC wishing to broadcast the *Boys of St. Vincent* fictional drama, which rights were under Section 2(b) of the Charter. Lamer CJC for the majority, under heading "Rejecting a Clash Model", set out, in detail, numerous considerations raised by a publication ban on fair trial rights, and freedom of expression (at page 882-4).

On the authority of Dagenais, it is submitted that the Benchers should seek to reconcile and balance the dictates of any apparently competing Charter rights, in a manner similar to that undertaken by Chief Justice Lamer.

Freedom of Religion

The essence of Freedom of Religion is the right to entertain such religious beliefs as a person chooses the right to declare religious beliefs openly and without fear of hindrance or reprisal and the right to manifest religious belief by worship and practice or by teaching and dissemination. This section also affords protection against governmental coercion in matters of conscience and religion. Whatever else freedom of conscience and religion may mean, it means at the very least that the government may not coerce individuals to affirm a specific religious belief or to manifest a specific religious practice for a sectarian purpose. The Charter protects not only the right to hold and manifest beliefs, but also the right to express and manifest religious non-belief and to refuse to participate in religious practice (*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295).

In his paper *Freedom of Religion Under the Charter of Rights: The Limits of State Neutrality*, (2012) vol. 45:2 U.B.C. L. Rev. 497, Richard Moon addresses freedom of religion under the Charter.

At the outset of his paper, Professor Moon discusses change in the course of dealing with freedom of religion over time. He states:

Freedom of religion, understood as a liberty, precludes the state from compelling an individual to engage in a religious practice and from restricting his or her religious practice without a legitimate public reason. In later judgments, however, there has been a shift in the courts' description of the interest protected by the freedom – from liberty to equality. According to the courts, the freedom does not simply prohibit state coercion in matters of religion or conscience; it also requires that the state treat religious belief systems or communities in an equal or even-handed manner. The state must not support or prefer the religious practices of one group over those of another 9religion or at least religious contest should be excluded from politics), and it must not restrict the practices of a religious group, unless this is necessary to protect a compelling public interest (religion should be insulated from politics). (pgs. 497-8) [Footnotes omitted]

However, Professor Moon finds that the state cannot be neutral in respect of some items of belief. He says:

The state's commitment to sexual-orientation equality, even though framed in secular or civic terms, must be understood as a rejection of the belief that homosexuality is wrong.

The problem is that the state cannot remain neutral on important issues of values. While the state may avoid passing direct judgment on the truth of a particular religious belief (as religious truth), it cannot avoid doing so indirectly when determining public policy. When the legislature decides that corporal punishment is wrongful and should be prohibited, it does not frame its judgment in terms of what God has or has not

commanded. But unless we maintain an entirely artificial separation of law and religion, or of public and religious morality, the legislature's judgment must be understood as a rejection of the religious view that corporal punishment is right or moral. To use another example, if the state is committed to gender equality and affirms this value in anti-discrimination and other laws, it must be understood as rejecting the view, religious or otherwise, that women are not equal to men or should be treated differently from men in contexts such as employment. As noted in the previous section, laws sometimes include exemptions from their ordinary application for the practices of religious institutions or communities – for example, when a religious school is permitted to engage in a practice that would ordinarily breach anti-discrimination laws, such as dismissing a teacher who is divorced or gay; but even when the law exempts the "internal" operations of a religious community from the application of a public norm, it is not adopting a stance of neutrality towards the particular religious belief, but is simply creating space for private judgment or creating a zone for autonomous action by the community.

The second problem with the courts' formal commitment to neutrality is that they may sometimes try to avoid finding a conflict between a religious value or practice and a public value or practice by adopting a narrow or distorted interpretation of one or the other. The courts have sought to avoid finding that a widely accepted religious practice is contrary to public policy, in some cases by interpreting narrowly the religious value or practice so that it does not conflict with the law, and in other cases (or at the same time) by narrowing the scope of the law or public value so that it does not interfere with the religious value or practice. Notably, both approaches have been used to deal with the tension in public or publicly funded schools between the commitment to sexual-orientation equality and respect of deeply held religious beliefs. (at pg. 542) [Footnotes omitted]

In respect of the decision in TWU v. B.C. College of Teachers, Professor Moon states:

The Court in the *TWU* case seemed to rely on a narrow conception of sexual-orientation equality and a limited view of the role and impact of teachers.

. . .

The Court in *TWU* appeared to be unwilling to confront the anti-homosexual content of the TWU program. The most obvious explanation for this is that the Court wanted to avoid rejecting, directly, the religious view that homosexuality is sinful, or at least to avoid excluding from the schools teachers who held this view. But even if the general community must tolerate the expression of a wide range of views, including some that are sexist, racist, or homophobic, it does not follow that the schools should remain neutral on these issues, or that all individuals, regardless of their religious beliefs, can effectively perform the role of teacher, and even more obviously, that a teacher-training program that affirms anti-gay views should be accredited. The Court downplays the teacher's role and describes sexual-orientation equality in narrow terms (narrower than that relied on in other judgments), as a matter of toleration rather than affirmation, to avoid the conclusion that a particular religious teaching program does not adequately prepare its graduates to serve as teachers in the public school system. They do this, I

suspect, because they think that the state fails to treat religious believers with equal respect when it explicitly rejects their beliefs. (pgs. 546-547) [Footnotes omitted]

LRWC adopts the arguments of Professor Moon. LRWC proposes that the Benchers consider:

- (a) that they cannot be neutral in respect of the issue of whether homosexuality is wrong;
- (b) that the *TWU v. College of Teachers* decision relied on a narrow conception of sexual-orientation equality; and
- (c) the Supreme Court of Canada appeared, in that case, to be unwilling to confront the antihomosexual content of the Covenant

The academic papers of Richard Moon have repeatedly been acknowledged to have influenced the Supreme Court of Canada's Charter jurisprudence.

Balancing

The classic reconciliation of competing rights, in our culture, was well expressed by John Stuart Mill. Essentially, the individual should have liberty up to the point at which his or her liberty impinges on the rights and interests of others in the society. The Covenant is intended to limit sexual intimacy as the price for admission to TWU's proposed law school. The effect of imposition of the Covenant is to limit the liberty. It deserves repetition that there is no necessary connection between operation of a law school and a limitation of sexual intimacy to opposite genders during marriage.

It is instructive to see how the question of balancing, on one hand, discrimination with respect to sexual orientation, with, on the other hand, freedom of association and of religion, is addressed in 2012-2013 ABA Standards and Rules of Procedure for Approval of Law Schools. Standard 211 prohibits discrimination with respect to sexual orientation, but it also raises the possibility that private religious-based institutions may be exempt from this requirement. One of the best analyses of this section is contained in a somewhat dated but incisive paper, Gerdy, Kristin B. Irresistible Force Meets the Immovable Object: When Antidiscrimination Standards and Religious Belief Collide in ABA-Accredited Law Schools, OR. L. Rev. 85 (2006): 943. Gerdy poses the question whether religious-based law schools in the U.S. qualify for an exemption to anti-discrimination standards, where the criteria for exemption are those in the Boy Scouts of America case. Of special note is the discussion of the third criterion where the test is whether objection to discrimination based on sexual orientation has reached a "compelling level":

But in the end, rightly or wrongly, an interest in eliminating discrimination based on sexual orientation and homosexual conduct has not yet reached the compelling level that the elimination of racial discrimination had reached at the time of the *Bob Jones University* decision – the level sufficient to overcome the religious expressive association rights. Although the majority of Americans likely believe that discrimination based on sexual orientation is wrong and even morally reprehensible, such discrimination has not yet been recognized by the Supreme Court as the type that "violates deeply and widely

accepted view of elementary justice." And it is not the case that there is "a firm national policy to prohibit...discrimination [based on sexual orientation] in public education." As a result, the interest in eliminating discrimination based on sexual orientation and homosexual conduct is not sufficiently compelling to overcome religiously based expressive association rights. [Footnotes omitted]

Accordingly, the question resolves to whether, now, in Canada, the interest in eliminating discrimination based on sexual orientation is <u>sufficiently compelling</u> to overcome <u>religiously</u>-based expressive association rights.

It is submitted this is a moving target. As recently as 1967, in *Klippert v. The Queen*, [1967] S.C.R. 822, the Supreme Court of Canada dismissed an appeal by Mr. Klippert from a finding that he was a dangerous sexual offender worthy of indefinite incarceration where there was no violence or coercion, but simply admittedly consistent homosexuality. The Canadian interest in eliminating discrimination has radically increased at an accelerating rate since then.

Application of Human Rights Legislation

While the principal argument of LRWC is based upon the Charter, that does not detract from the argument that the proposed imposition of the Covenant constitutes a breach of *Human Rights Code* (R.S.B.C. 1996) ch. 210. The breach is of Section 8 of that act. It reads as follows:

- 8 (1) A person must not, without a bona fide and reasonable justification,
- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the ... sexual orientation ... of that person or class of persons.

Some commentators have suggested that the Covenant is saved from contravention of Section 8(1) by Section 41(1) of the *Human Rights Code*. That section reads:

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

LRWC stresses two aspects of Section 41. Firstly, the "primary" purposes of TWU cannot reasonably be said to be the promotion of married heterosexuals. The primary purpose is education in general. The primary purposes of the law school are to teach law and to advance law reform and the academic study of law and to prepare students to practice law. TWU does not discriminate among religions or among denominations within religions, notwithstanding that the impetus for discrimination against persons on the basis of sexual orientation or gender

identity would seem to be an interpretation of bible passages, which interpretation is apparently shared by the evangelical founders of the university.

The second basis for asserting that Section 41 does not rescue TWU's proposed Covenant is that "sexual orientation" is not listed in Section 41 as an analogous ground from which the section might save the Covenant, whereas that very analogous ground, "sexual orientation", is a prohibited as a basis on which to withhold any service ordinarily available to the public under Section 8(1).

It is a standard method of statutory interpretation to assume that the legislative drafter who "gives and then takes away" lists of items is aware of the difference between the lists. So, for example, in *Zanetti v. Bonniehon Enterprizes Ltd.*, 2003 BCCA 507, the B.C. Court of Appeal dealt with the *Limitation Act* then in force which listed causes of actions subject to a two year limitation including "defamation", but then went on to list causes of action subject to postponement under Section 6 of the then *Limitation Act* for a list of causes of action which did not include defamation with a result that defamation was held statute barred after two years irrespective of the postponement section which would have applied to discovery principles.

The answer to this argument, based on discrepancies of listed analogous grounds, cannot be that the decision maker (in this case the Law Society) should read-in "sexual orientation" into Section 41. Under *Vriend v. Alberta*, [1998] 1 S.C.R. 493, the rational for "reading-in" sexual orientation into Alberta's *Human Rights Act* in that case would not be made out in the present circumstances so as to afford TWU the immunity suggested by some commentators. The "serious discriminatory effects of exclusion of sexual orientation" in the *Vriend* case would simply not apply to under-inclusion of those wishing to discriminate on the basis of sexual orientation under Section 41 of the Code.

Conclusion

The Benchers should decide that imposition of the Covenant as a condition of admission to the proposed law school would constitute a breach of the applicants' Charter rights to equality. Embedded in that declaration is a finding that the gatekeeper role is governmental, sufficiently to attract Charter scrutiny. The Benchers should also declare that the breach is not saved by Section 1. Rejecting the clash model, the Benchers should reconcile and balance TWU's unchallenged right to exist and its unchallenged freedom of religion, but require that TWU not impose the Covenant on admissions to law school. If TWU will not withdraw insistence on the Covenant, then the Law Society should request the British Columbia government to rescind the accreditation. If that accreditation is not rescinded, then the Law Society should initiate judicial review of that decision.

The president of TWU, Bob Kuhn, very recently posted an open letter regarding the issues. Below are two of his statements (numbered by us) and our indented responses.

1. In short, asking law societies to reject graduates of a TWU law school because of its religious nature is discriminatory on the basis of religion.

This is not what is being asked of Law Societies. What is being asked is that the

organizations delegated by government to regulate the legal profession not permit discrimination based on sexual orientation to be built into the system, even when that discrimination is based on some religious views and is practiced by a private, sectarian institution.

2. There is no question of TWU's constitutional and legal right to exist as a religious educational community. It is regrettable that much of the public debate and dialogue within the bar about discrimination at TWU has completely ignored any balancing of rights or even considered the religious freedom issues that were so critical to the Supreme Court of Canada's decision.

TWU certainly has a right to exist and the balance of equality and religious (association) rights needs to be respected and addressed. In Canada today, national concern against SGOI discrimination is compellingly strong and overrides the right of private institutions to discriminate when that discrimination operates within the government mandated process of entering the legal profession.

LRWC is willing to assist the benchers with any aspect of this issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

LAWYERS RIGHTS WATCH CANADA Per:

David F. Sutherland

Dr. Ed Levy

DFS/vc

cc: Attorney General, Ottawacc: Attorney General, Victoria

cc: Kevin G. Sawatsky

cc: Bob Kuhn

From: Clint Lee [clee@nexuslaw.ca]
Sent: Thursday, January 30, 2014 4:57 PM

To: Submissions Subject: Trinity Western Law

Follow Up Flag: Follow up Completed

Dear Sirs/Madams:

The separation of church and state is a cornerstone of our democracy. What we do as lawyers is intricately tied to the state and the foundation of our practice is access and equality. I therefore question the reasonableness of approving Trinity Western's application for a faculty of law given their Covenant so clearly runs counter to our profession's own creedo.

As a practicing lawyer, I have sworn to diligently and to the best of my ability uphold the rule of law and the rights and freedoms **of all persons** according to the laws of Canada and of the Province of British Columbia. How then can a graduate of TWU's proposed faculty swear to this while staying true to the school's Covenant?

As a full member of the bar, I strongly encourage my Law Society to look fully at the conflict between TWU's Community Covenant Agreement and a lawyer's obligation of non-discrimination and to deny TWU's application for a faculty of law.

Regards,

Clinton Lee

BSc.M.E., B.Com., J.D. Lawyer, Patent & Trade-mark Agent Partner

Tel: 604.689.1622 ext 104

Dir: 604.637.6464 Fax: 604.689.8300

Nexus Intellectual Property Law

Suite 1930, 777 Hornby Street Vancouver, British Columbia Canada V6Z 1S4

website: www.nexuslaw.ca

CV: Clinton Lee



March 3, 2014

The Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Executive Director

Dear Sirs/Mesdames:

Re: Trinity Western University Law School

The Legal Leaders for Diversity and Inclusion (LLD) is a group of over 70 General Counsel representing companies and organizations from across Canada. Our goal is to create a more inclusive legal profession, and through our leadership roles within our organizations, more inclusive work places in Canada.

We have attached a letter we forwarded to the Federation of Law Societies of Canada in August in which we urged the Federation to carefully consider whether Trinity Western University's application and, in particular, the covenant it intends to impose on its students, violates the spirit of the legal profession and Canadian law, because it requires its students sign a covenant which would, among other things, require them to abstain "from sexual intimacy that violates the sacredness of marriage between a man and a woman" and if "a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's re-admission to the University".

Despite several other submissions of objection, the law school has received accreditation from the Federation and has applied for and is awaiting accreditation from the provincial law societies in Canada.

The LLD is extremely concerned with what Trinity Western is proposing and we urge the provincial law societies to weigh in against the proposal which clearly excludes students based on their sexual orientation.

We have reviewed submissions from other organizations including FACL and the Toronto Lawyers Association, and we agree with their submissions. As before we object very strongly with a Canadian law school which takes such an exclusive approach both to the students it accepts and to the approach it will take to the teaching of law. We have also attached the Oath from the Law Society of Upper Canada and question how a graduate from the Trinty Western Law School will be able to take this Oath.



As senior leaders in the legal profession in Canada, we want there to be now doubt on where we stand with respect to this matter. Should anything further be required from us or should you have questions, please either President Melissa contact our Ms Kennedy (Melissa Kennedy@otpp.com) or Secretary Mr. Kenneth J. Fredeen (kfredeen@deloitte.ca).

Sincerely,

Executive Committee, Legal Leaders for Diversity

Melissa Kennedy General Counsel

Ontario Teachers' Pension Plan

Kenneth Fredeen General Counsel Deloitte Canada

Terrie-Lynn Devonish General Counsel AON Canada

Simon Fish General Counsel BMO Financial Group

Av Maharaj General Counsel Kellogg Canada Inc. David Allgood General Counsel **RBC Financial Group**

Dorothy Quann General Counsel Xerox Canada



VIA FAX TO: 613-236-7233

August 16, 2013

Mr. Gerald Tremblay
National Committee of Accreditation
c/o Federation of Law Societies of Canada
World Exchange Plaza
45 O'Connor Street
Suite 1810
Ottawa, Ontario, K1P 1A4

Dear Mr. Tremblay:

We welcome the opportunity to provide this submission on behalf of Legal Leaders for Diversity ("LLD"). LLD is an organization of over 70 general counsel from Canadian corporations across Canada. We are responding to Trinity Western University's application for an assessment of whether its proposed common law program meets the Federation's national requirements. The LLD is dedicated to encouraging diversity and inclusion in our own businesses and co-operating to foster these values throughout the legal profession and the larger Canadian business community. ¹

The LLD supports the role of the Federation in determining whether new law degree programs meet national standards for entry to law society licensing programs across Canada and commends the Special Advisory Committee for its consultation with interested members of the public on this matter.

We understand that Trinity Western University would request that its students sign a covenant which would, among other things, require them to abstain "from sexual intimacy that violates the sacredness of marriage between a man and a woman" and if "a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's re-admission to the University." The LLD's view is that, such an open exclusion of gay, lesbian and bi-sexual law students is discriminatory. Furthermore, the establishment of a law school that would reduce the opportunity for entry for gay, lesbian and bi-sexual students would impose a quota system on these students, which is unacceptable.

Cont/d ...

¹ See Mission Statement, Diversity Renewal, Legal Leaders for Diversity, online: http://legalleadersfordiversity.com/about-us/.

² See the Student Handbook (Sept. 2011 - Sept. 2012), Trinity Western University, online: http://tww.co/studenthandbook/university-policies/student-accountability-process.html.

Page 2/... Mr. Gerald Trembley National Committee of Accreditation

As part of the LLD's ongoing commitment to diversity in the workplace we launched "Be an Advocate" initiatives, a key priority of which is to hiro from a diverse pool.³ A quota system for any law school would not be aligned with the LLD's core values and, we respectfully submit, the Federation's Vision Statement of "acting in the public interest by strengthening Canada's system of governance of an independent legal profession, reinforcing public confidence in it and making it a leading example for justice systems around the world."

In light of the foregoing, we urge the Federation to carefully consider whether Trinity Western University's application and, in particular, the covenant it intends to impose on its students, violates the spirit of the legal profession and Canadian law, including the protections afforded by the Canadian Charter of Rights and Freedoms and human rights legislation in all provinces and territories.

Yours truly, Executive Committee, Legal Leaders for Diversity

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Terrie Lyen Deverden General Comsel NON Canada Staton Fight General Country BMO Processed Group

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See Be an Advocate Initiatives, Legal Leaders for Diversity, online: http://legalleadersfordiversity.com/about-us/.

⁴ See Our Vision Statement, Federation of Law Societies of Canada, online: http://www.fisc.cn/en/our-mission/.

From:

Michael Lines Wednesday, February 19, 2014 12:31 PM Sent:

To: Submissions TWU law school Subject:

Follow Up Flag: Follow up Flag Status: Completed

Hi,

In my opinion, based on 10 years as an academic law librarian and personal experience of lawyers and courts following on a divorce and ongoing parenting time disputes, the TWU application should have been denied on the ground that it will bring further disrepute to the profession.

Comparing the performance of lawyers in the resolution of routine legal issues such as the ones I have encountered in family law with the performance of other self-regulated professionals such as engineers and doctors, the lawyers fare very poorly.

Legal professional lack detailed, evidence-based, standardized courses of action to address routine issues. Unlike doctors and nurses, who follow standard treatment routines and take careful note of emerging issues to address them with further standard routines, lawyers are all over the map and the result is, as in my case, prolonged ineffectual conflict resolution that ultimately damages children by alienating parents from one another and depleting parental financial resources.

The lack of standard DR procedures is a profession-wide issue, and should be the focus of educational reform. Approving an ideologically committed school to train lawyers will further undermine public confidence in the competence of lawyers. Lawyers need more, not less, evidence-based best practices.

-Michael Lines

From: Leung, Henry [henry.leung@hoganlovells.com]

Sent: Monday, March 03, 2014 11:30 PM

To: Submissions

Subject: TWU proposed law faculty

Follow Up Flag: Follow up Completed

Dear Sir/Madam:

I would recommend that the Benchers not approve TWU's proposed faculty of law for the purposes of the Law Society's admission process.

There are now three law schools in British Columbia (at the University of British Columbia, University of Victoria, and Thompson Rivers University). Over most of the last decade, the legal job market (in BC and elsewhere) has not had sufficient capacity to provide articling positions to many BC law graduates, even before TRU's JD program commenced in 2011. For those law graduates fortunate enough to have secured an articling position (and subsequently qualify as a lawyer), the breadth and depth of mentoring and training experiences that articling students and junior lawyers have received in recent years is often much less than that received by previous generations. Having participated in recruiting, supervising and mentoring articling students and junior lawyers myself, I say this out of concern for future law graduates. It is respectfully submitted that at this time we do not need a fourth law school in a legal job market that has been saturated for many years and where law graduates are struggling to gain the necessary training and mentoring to become good lawyers in the future.

Henry Leung

Associate

Hogan Lovells

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www.hoganlovells.com



Top 5 Global Arbitration Practice, GAR 30, Global Arbitration Review 2014

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From: Paul Longden

Sent: Saturday, March 01, 2014 8:36 PM

To: Submissions

Subject: TWU as a Law School

Follow Up Flag: Follow up Completed

To Whomever it may concern

Please do not allow Trinity Western University to become an accredited law school. Their stance on marriage goes in the face of current Canadian law and as a brother of someone who is gay, I could not sit idle and let my objections be unknown. If you want me to state more, I will happily do so.

Yours sincerely

Paul Longden

From:

MacFarlane, Craig Monday, March 03, 2014 2:45 PM Sent:

To: Submissions Trinity Western Subject:

Follow Up Flag: Follow up Flag Status: Completed

I strongly oppose the approval of a faculty of law at TWU. TWU has institutionalised discrimination based on its interpretation of a religious philosophy. It is the same type of discrimination that Republican law makers recently tried to legislate in Arizona.

Canadian society thrives because of cultural diversity and tolerance for all parts of society. Lawyers in their capacity as officers of the court and judges must maintain this high standard of non-discrimination, and separation of church and

that our Charter of Rights and Freedoms demands. Their training requires a faculty and setting that is respectful and accepting of all members of our society.

What kind of law faculty will an institution that practises discrimination attract? This is one of the strongest reasons for rejecting approval of a law school at TWU.

CRAIG MACFARLANE

Member LSBC



City Hall has moved! Please update your records. As of February 17, 2014 City Hall will be:

Surrey City Hall 13450 104 Ave, Surrey, BC, Canada V3T IV8 . PHONE AND EMAIL WILL NOT BE CHANGING .

From: Chad McCarthy

Sent: Friday, January 31, 2014 11:09 AM

To: Submissions

Subject: TWU "approved faculty" submission

Follow Up Flag: Follow up Completed

Hello, I am writing re: the Law Society's request for input regarding the consideration of Trinity Western University law school's ("TWU Law") status as an "approved faculty" for the purposes of bar admission and recognition by the LSBC.

In the present circumstances, TWU Law should most definitely NOT be an "approved faculty."

Nothing less than the solemn mandate of lawyers as stewards of the *Charter* and human rights, the perceived fairness of the judicial system, and indeed the rule of law itself, is at stake.

It is simply fact that TWU discriminates among student applicants on the basis of, *inter alia*, religious beliefs, sexual orientation and private relationship beliefs. This discrimination is cloaked, in part, by preventing TWU's population from engaging in certain *behaviours* (e.g. homosexual activity, intimacy outside of a heterosexual marriage), but the effect is to deny access to whole identifiable communities of Canadians. This flows in part from the mandatory TWU "Community Covenant Agreement" (http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf). Indeed this appears to be a selling point of the university - that it is among the most conservative and restrictive institutions in North America - which attracts a student body with similar values. TWU is only able to adopt such discriminatory policies because of the private nature of the institution, as such policies among public schools could amount to Charter or human rights contraventions.

I question the need to recognize another law school in BC at all, which already has three approved faculties (UVic, UBC, TRU), and does not appear to be suffering from a general shortage of lawyers. (Perhaps some universities see law schools as cash cows, given their high tuition fees.)

Certainly I do not feel that TWU law alumni will necessarily possess the merit and viability required of LSBC and expected by Canadian citizens. By design, the entire TWU community is exposed to, indoctrinated in, and through attendance or employment implicitly appears to endorse, discrimination as noted above. While TWU claims to recognize a "diversity of viewpoints," clearly this diversity is only within the viewpoints held by its uniformly Christian and heterosexual student body, faculty and administration. In such an environment, I would expect any discussion of sexual orientation, gay marriage, other religions, related human rights, etc. to be pro forma and imperfectly-informed. Even if TWU Law produced a number of graduates who fully understood and recognized the rights of all Canadians and the protections afforded under the law, I believe the existence of such discrimination would give rise to the *appearance* of bias among all TWU Law graduates, thereby bringing the bar and the administration of justice into disrepute, and would foment a serious lack of confidence among Canadians in the effectiveness and impartiality of lawyers (except perhaps among some evangelical Christian heterosexuals).

Indeed, I believe that attendance and training at an institution such as TWU Law could give rise to a prima facie assumption among the public that its alumni are endorsers and perhaps advocates of certain discriminatory practices and beliefs. A law society could never admit members who demonstrate or appear to demonstrate a lack of commitment to defending the *Charter* and human rights of all Canadians.

Further, diversity in the profession is an important and ongoing concern of LSBC. As the entire student body at TWU Law would be Christian and heterosexual, an approved TWU Law faculty would have the effect of assisting those groups, and of discriminating against non-Christian, non-heterosexual groups who wish to attend law school and become lawyers. To my knowledge, diversity within the legal profession is not served by giving favoured access to devout Christian heterosexuals.

The voluntary nature of attendance at TWU Law and the private nature of the university are immaterial to the privileged access and systemic, implicit endorsement of discrimination that is applied to its student life. But the nature or resulting appearance of TWU Law's graduates produced in this environment is very material.

Furthermore, I believe there is a fundamental difference between the LSBC approval of TWU Law and the decision in *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31, and that the *TWU vs. College* decision is not applicable in this instance. First, it appears the legal landscape has changed since 2001, as have the considerations applicable to decisions rendered by bodies such as the LSBC. More importantly, the conduct of lawyers and the role of the LSBC is absolutely fundamental to Canadian society as a whole, and includes protection of the public, maintenance of the *Charter* and of human rights protections, upholding the judicial systems and the rule of law, and a host of other considerations that are beyond the purview of the College Of Teachers. Furthermore, the question is not solely if a TWU Law graduate *could* be a good lawyer in every respect, or if a graduate *will* be a good lawyer with any degree of confidence (though those are important questions), but also will the admission of a TWU Law graduate, by reason of graduating from a school with discriminatory practices, give rise to an apprehension of bias, a lack of confidence in lawyers, or a lack of trust and a reduced reputation of the judicial system, among certain groups of citizens? I believe the response to the latter question is "yes."

I believe that not approving TWU Law is not a restriction on religious freedom, since students of any faith may attend any other approved law school in Canada while continuing to engage in whatever private or sexual preferences they choose and without constant reference to any particular religion. And students could still attend a non-approved TWU Law school, but without the expectation that this was sufficient for admission to the bar. Notwithstanding that opinion, I must reiterate that disapproval of TWU Law is not simply a consideration of the suitability and capability of graduates, but also the *appearance* of a lack of suitability and capability.

Given the above, and for a variety of other reasons that have been and will be better-articulated than I could state here, I am very strongly opposed to TWU Law becoming an approved faculty in British Columbia, or indeed anywhere in Canada.

C. Chad McCarthy Member, Law Society Of British Columbia

From: Dennis McCrea [dennis@mccrealaw.ca]
Sent: Thursday, January 30, 2014 11:29 AM

To: Submissions

Subject: opposed to Trinity Western law school

Follow Up Flag: Follow up Completed

I would prefer that there be no law school authorized at institutions that do not reflect secular values of Canadian society. Cults that promote hatred would find it difficult to teach the inclusive values that are becoming the hallmark of Canada today.

The other matter which does not seem to be the subject of much debate is whether we need another law school at all. I understand that it is very difficult for new graduates to obtain articles. Articles are, in my opinion, an essential part of learning to become a lawyer. By having another law school graduating more students who would not be able to find articles will inevitably put pressure on the law society to abandon the concept of mandatory articles which I think would be a great detriment to the profession.

Yours truly
Dennis McCrea

Dennis G. McCrea LL.B. LL.M. Barrister and Solicitor **McCrea & Associates** | 102 - 1012 Beach Avenue, Vancouver, BC V6E 1T7

Past Chair CBA National Immigration Law Section

P: 604.662.8200 Ext. 102 | F: 604.662.8225 | <u>dennis@mccrealaw.ca</u> | <u>www.mccrealaw.ca</u>

From: McLean, John I. [John.McLean@gowlings.com]

Sent: Friday, January 31, 2014 2:34 PM

To: Submissions

Subject: Trinity Western University (TWU)

Follow Up Flag: Follow up Completed

I am strongly opposed to the LSBC recognizing degrees in law from TWU.

Fundamentally, the beliefs that are embedded in the document that TWU requires both faculty and students adhere to serves to promote discrimination and intolerance towards minority groups and is the antithesis of what lawyers and their societies and institutions should promote and protect.

In particular, while society as a whole is moving in a more tolerant direction, gay people, and young gay people especially, continue to suffer from prejudice and discrimination. We still have instances of suicides among young people attempting to deal with their sexuality. Providing our approval to an institution that promotes this discrimination just throws the coals of intolerance onto the existing fire that we should be dousing.

One might be able to argue that if all of the faculty and students were "volunteers" who harboured these same beliefs, this might be acceptable. The fact is that there are many more prospective law students seeking seats at law schools than there are seats. I expect that many students apply at multiple law schools hoping to get in somewhere. There is no reason to think that TWU will be any exception. Thus for many students the choice will be to attend TWU and agree to their "charter" or not get into any law school. We should not allow this to happen.

Law schools and their faculties should reflect the full diversity of people and beliefs that exist in our society. The full range of ideas and beliefs should be represented and debated in our law schools and we should require that law students be able to debate these issues and views in a respectful way, as we require counsel to deal with each other.

John McLean, Q.C.

Partner T 604-891-2285 F 604-443-5641 john.mclean@gowlings.com



Gowling Lafleur Henderson LLP Lawyers • Patent and Trade-mark Agents 550 Burrard Street, Suite 2300, Bentall 5 Vancouver, BC V6C 2B5 Canada T 604-683-6498 F 604-683-3558 gowlings.com

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From: Harvey Meller [harvey@krlb.com]
Sent: Tuesday, February 11, 2014 3:36 PM

To: ea@cbabc.org; Submissions
Subject: CBA resolution re TWU

Follow Up Flag: Follow up Completed

To the CBA and the LSBC,

I do not have time to compose a lengthy response to this resolution or this issue, or to provide my opinion to the CBA or the LSBC. I do however, want to record by email, my support for the resolution as stated and for the underlying principals behind the resolution and the implied opposition to the accreditation of TWU graduates, for inclusion in the law society admission process.

Regards, Harvey

Harvey Meller Law Corporation

in association with Kerr Redekop Leinburd & Boswell Barristers & Solicitors #410 – 1333 West Broadway Vancouver, BC, V6H 4C1 Direct Line: (604) 484-0293

Fax: (604) 734-5182

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From: Meredith, Mark (KPMG Law / cabinet juridique) [mmeredith@kpmglaw.ca]

Sent: Tuesday, February 18, 2014 2:30 PM

To: 'submissions@lsbc.org'

Subject: FW: CBA resolution - Non-discrimination in Legal Education

Follow Up Flag: Follow up Completed

Please find below a copy of my recent submission to the CBA in this matter, now provided to you for the same purpose.

From: Meredith, Mark (KPMG Law / cabinet juridique)

Sent: Sunday, February 16, 2014 12:45 PM

To: 'ea@cbabc.org' **Subject:** CBA resolution

I am a partner in KPMG Law LLP; while I would guess that most if not all of the members of our firm share my views, I have not canvassed them. I write only on my own behalf, and not as a representative of my firm or any members thereof.

I am a graduate of the University of Toronto Faculty of Law (LLB 1983), was previously a member of the Ontario Bar (called 1985, withdrawn 2013), and am a current member of the British Columbia Bar (called 1998). I am also a spouse and parent.

I write to support in the strongest possible terms Resolution 14-04-M, "Non-Discrimination in Legal Education". In a sense, I find it difficult to say more – but I will. It seems to me staggering that an institution proposing to teach young (and not so young) people in Canada to become lawyers could at the same time seek to impose on its prospective students a requirement so in conflict with civil society generally and the ethical principles that we as a profession in Canada have adopted in Chapter XX of our Code of Professional Conduct and elsewhere.

The only tenable position that I can imagine being put forward against the adoption of the Resolution would be that it is not required – that it is instead already covered by our Code. In sitting down to write this message, I of course turned to the Code – only to find that while it governs us as lawyers, it does not govern institutions such as law schools! (That does of course invite an observation: Should the appropriate provincial law societies take action to sanction, and indeed perhaps move to disbar, members who serve on the administration and faculty of a law school seeking to impose such a requirement on its students? Perhaps that is a question for a different audience, such as the Disciplinary Committee and the Benchers of the Law Society of British Columbia in the fullness of time.)

The counter-argument typically made is that TWU and its members should equally be protected by principles of "freedom of religion" (also expressed in the Chapter XX Rule). That is in my view a position at best misguided, if not disingenuous or worse. Freedom of religion is not an absolute, and certainly is not a principle that extends beyond individual belief and practice to allow the imposition of such beliefs on others. We have seen the result of imposing religious beliefs on others in the recent past, notably in the Middle East and in Africa and in our own awful history of aboriginal residential schools. Clearly that is not a road down which our profession should go!

The freedom of religion arguments are of course not new to the TWU debate. By coincidence, I ran across an interesting article in Slate.com the very morning of writing this message. (See

http://www.slate.com/articles/news and politics/frame game/2014/02/homosexuality religious freedom and interracial sex is bobby jindal the.html.) The Slate.com article cites arguments made by Bob Jones University (only fourteen years ago!) in support of the University's policy against "inter-racial dating". The argument made by BJU is quoted by Slate.com as follows.

[E]very effort man has made, or will make, to bring the world together in unity plays into the hand of Antichrist. This first began at the Tower of Babel, and it will culminate at Armageddon when the Lord returns to establish His rule of peace and harmony for a thousand years. Bob Jones University opposes one world, one church, one economy, one military, one race, and unisex. God made racial differences as He made sexual differences.

Chilling as the position then espoused by BJU is, it seems to me that the position taken by TWU is little different with respect to sex and sexual orientation. Even BJU dropped its inter-racial dating policy in 2000; perhaps, in the face of public light, TWU might do the same with its condemnation of same-sex relationships.

In the absence of action by the CBA, and by provincial law societies, to reject the qualification of a TWU and to refuse admission of its graduates to membership in provincial bars, one can hope that the marketplaces for ideas and for jobs will effectively impose a similar sanction. That said, I urge you not to leave the matter to the marketplace, but to act on behalf of the profession and stand up for our ethical principles.

I don't know if your intention is to publish submissions made in this matter. If relevant to you, I have absolutely no objection to your doing so with mine.

Yours very truly,

Mark Meredith

From: Mike Mathers [mike.mathers@lacroixmathers.com]

Sent: Thursday, January 30, 2014 1:05 PM

To: Submissions

Subject: Trinity Western University - Law School

Follow Up Flag: Follow up Completed

It would appear the provisions in the Community Covenant Agreement regarding prohibition of sex outside of a marriage between a man a women run contrary to the support of freedoms that lawyers should be committed too. The Law Society should definitely not sanction the School as long as these provisions remain in effect.

MIKE MATHERS

LACROIX MATHERS

AUTO INJURY LAWYERS

140 - 8700 200th Street, LANGLEY, BC V2Y 0G4

Tel: 604-882-0001 / Fax: 604-882-0050

Toll Free: 1-877-767-0001 www.lacroixmathers.com

From: Jennifer Metcalfe [jmetcalfe@pls-bc.ca]
Sent: Monday, January 27, 2014 9:55 AM

To: Submissions

Subject: Trinity Western University Law School

Follow Up Flag: Follow up Flag Status: Flagged

Dear Benchers of the Law Society of BC,

I write to express my concern regarding the proposed accreditation of a law school at Trinity Western University. I understand that Trinity Western students are required to sign an agreement that in effect bars gay and lesbian students from admission. These policies are contrary to quasi-constitutional human rights law and s. 15 equality values of the Charter. It would not be in the public interest to accredit a law school that is discriminatory in its admission criteria.

Yours truly,

Jennifer Metcalfe

Executive Director Barrister & Solicitor

Prisoners' Legal Services

201-33241 Walsh Avenue Abbotsford, BC V2S 1Z9 Tel: 604-853-3114

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From: on behalf of Dia Montgomery [dm@atticuslegal.ca]

Sent: Thursday, January 30, 2014 11:28 AM

To: Submissions

Subject: Proposed Trinity Law School

Follow Up Flag: Follow up Completed

Dear Benchers:

I am a three year Call who practices family law in New Westminster. I attended UBC Law and articled at a union-side labour law firm in Vancouver.

I am opposed to Trinity Law School as students and faculty will be forced to sign a pledge that they would abstain from same-sex relations. I have heard the argument from Trinity that signing such a pledge does not discriminate against students as LGBT students would be able to attend Trinity by simply abstaining from sexual relations during their enrollment at Trinity. I point out that a pledge which allows the dominant group to engage in an activity (sexual relations) that a minority group is prohibited from engaging in is discriminatory on its face.

Further, although my legal career is in its infancy, I believe being educated in the law in an environment that welcomes diversity has had an effect in my own practice of family law. I deal with clients who are in same-sex relationships and couples in opposite-sex relationships. I do not believe anyone engaged in same-sex relations who seeks legal advice in the province of British Columbia should have to worry about whether they will be treated fairly by their counsel. Even should Trinity Law School graduates assure their LGBT clients that they will not discriminate against them in any way while representing their legal interests, the question of equal representation would rightly remain in a client's mind and, should matters go badly, the result could be an increase in complains to the Law Society against Trinity Law grads by LGBT clients. Should such complaints occur with frequency, the integrity of the entire Bar may some day be called into question.

Should Trinity Law School open its doors, I believe clients would start to seek out retainers with lawyers who are <u>not</u> taught the law under the auspices of Trinity's pledge, resulting in a lack of business for Trinity Law grads. Alternatively, clients with bigoted views towards LGBT people may attempt to seek out Trinity Law grads in particular in order to "make a point" that they do not support LGBT rights in our society. Such a result would be a detriment to the integrity of the legal profession.

In conclusion, I believe it is detrimental to clients, to future Trinity Law grads and to the BC Bar in general to allow Trinity Law School to open in B,C.

--

Dia Montgomery Barrister & Solicitor Atticus Legal

Tel: (604) 219-9205 Fax: (604) 909-2873

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From:

Jack Montpellier Monday, March 03, 2014 12:31 PM Sent:

Submissions To:

Submission - TWU Proposal Subject:

Attachments: Jack_Montpellier_TWU_Submission.pdf

Follow Up Flag: Follow up Completed Flag Status:

Hello,

Please accept the following submission regarding the recognition of degrees by Trinity Western University.

Best regards,

Jack Montpellier

Law Society of British Columbia 845 Cambie Street Vancouver, BC, V6B 4Z9

March 3, 2014

Attention: Executive Director

<u>Injury to Justice, Education, and the Honour of the Legal Profession:</u> Arguments Against Recognition of Trinity Western University's Law Degrees

By Jack Montpellier

I completed my Juris Doctor degree from the University of Ottawa's Faculty of Common Law in May, 2013, and am currently an articling student at Goodwin & Mark LLP in New Westminster, British Columbia. The views expressed in this article reflect my own.

For most British Columbians, the lawyer exists as the primary interface with the legal system. While a diversity of beliefs and backgrounds are found among the lawyers of the Bar Association of British Columbia, virtually all have received a secular legal education, the overwhelming majority at Canadian public universities. Though the personal beliefs of these lawyers vary, the quality and content of their education, together with the admissions standards that gained them entry into some of the country's most competitive and sought-after educational programs, remains virtually uniform. A clear distinction is therefore established early in the careers of these lawyers that their personal faith is irrelevant to their legal educations and to their practice of law in general. If Trinity Western University (TWU) is able to confer law degrees that are recognized by the Law Society of British Columbia, however, this tradition of uniformal secularity will be damaged, along with the general public's faith in the impartiality of the justice system. Further, we live in an era of unparalleled human rights recognition of nonheteronormative Canadians (GLBT). Though sexual orientation has come to be comparable to race and gender in almost all aspects of Canadian life, our province is home to a university that continues to employ a Covenant prejudicial to this group of Canadians. It is therefore deeply against the interests of the Law Society of British Columbia for the sake of reputation also to permit the law degrees from TWU to be recognized.

This submission breaks down arguments against the recognition of law degrees from TWU into a four categories, considers counter-arguments, followed by a conclusion.

A Matter of Public Policy: Preserving Secularity Among Lawyers

In recent decades, Canadian society has made enormous strides in the recognition of GLBT rights, a hallmark of our generation comparable to the struggles for racial and gender equality in the generations before. Unfortunately, TWU has retained a clause in its Community Covenant that implicitly discriminates against non-heteronormative individuals by prohibiting them from pursuing relationships or marrying. The language of the Covenant has removed the explicit prohibition against "sexual sins...including homosexual behaviour" cited in the 2001 case *Trinity Western University v British Columbia College of Teachers*. However, it instead includes a prohibition against "sexual intimacy that violates the sacredness of marriage between a man and a woman," effectively threatening any student who engages in a non-heteronormative relationship with expulsion, while further creating an atmosphere of hostility and prejudice at the school.

That a Canadian university is able to employ such a clause in its Covenant in the 21st century is nothing short of appalling. In *R v Big M Drug Mart Ltd*, the following was articulated in the ruling on the interplay between religion and freedom in Canadian society:

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.³

While the *Charter* is not operational on a non-state entity like TWU, it remains the foundational document of human rights in Canada, and its spirit should factor into the policy decisions made by our Law Society. That TWU clothes its discriminatory Community Covenant in the blanket of religious freedom is unfortunate, enforcing a scriptural interpretation that offends the tolerant, inclusive nature of our society. As

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¹ Trinity Western University v British Columbia College of Teachers, 2001 SCC 31, at para 1.

² Trinity Western University Community Covenant, available online at:

http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html>.

³ R v Big M Drug Mart Ltd, [1985] 1 SCR 295.

Canada becomes increasingly multicultural and multireligious, conflicts of this sort are certain to arise, underpinning the importance maintaining a secular system of legal education as a matter of policy and principle.

Creating a Perception of Bias

Beyond the concerns of TWU's offensive Covenant, there remains the issue of discrimination being perceived as existent by the general public, specifically with respect to the views of TWU's graduates and to how the admission of these graduates to the BC Bar Association will affect the operation of justice in our province. By allowing a university that effectively bars admission to GLBT individuals to grant law degrees that are recognized by the Law Society, these policies will characterize the graduates of TWU as the holders of these beliefs, regardless of their actual stance. In turn, they will be seen as prejudicial against a particular class of Canadians by both personally and educationally, and thus less likely to be responsible counsel.

It is accepted that all people hold personal biases. Though troubling, our legal system mitigates these biases by recognizing law degrees from inclusive, secular institutions that admit students based on academic and personal achievements, irrespective of religious belief or sexual orientation. The result of this is twofold: first, one's personal beliefs are obscured beneath a uniform, inclusive system of legal education. That a particular lawyer might have bigoted views against a particular race, gender, orientation, or religion is not articulated in his or her choice of law school, as none employ admissions policies that require the espousal of these prejudices; the choice of institution is voiceless on the matter. Second, the character of the education itself received by lawyers who attended secular universities is given is of an inclusive, secular nature. Even if the law program at Trinity Western University did not reflect the values of the university's Community Covenant, it is foreseeable that British Columbians, unfamiliar with the pedagogy of TWU's law program, would associate the university's bigoted Covenant with its academic teachings in general. The degree hanging on the wall behind a called lawyer who graduated from TWU's school of law would therefore represent the prejudices of TWU to many entering that lawyer's office, injuring public's faith in the impartiality and honour of the British Columbian legal system.

That lawyers who obtain their degrees from TWU are to be saddled with the prejudicial Covenant becomes increasingly problematic in circumstances where obtaining counsel is already difficult. In British Columbia, access to justice has become impossible for many due to financial constraints and the unavailability of lawyers in rural areas.⁴ In the rural context, British Columbians are often forced to accept the counsel of whomever they are

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⁴ Jamie Maclean, "Access to Justice in Rural and Remote Communities" *Slaw* (6 May 2011), online: Slaw http://www.slaw.ca/2011/05/06/access-to-justice-in-rural-and-remote-communities-where-to-from-here/.

able to retain, having little ability to find one who suits them personally.⁵ Where that lawyer holds a degree from a law school perceived as being bigoted against those of non-majoritarian sexual orientations, the perception of a hopeful client receiving fair and diligent counsel becomes unnecessarily compromised, in turn diminishing faith in the justice system at large.

Affect on Prospective Law Students

Also, the prejudicial nature of the Community Covenant will affect prospective law school attendees. Law faculties are some of the most competitive academic programs in Canada, receiving far more applications than there are spots available. It is not uncommon for prospective students to apply to every law school in the country simply with the hope of obtaining admission, while others are willing to incur hundreds of thousands of dollars worth of debt to acquire their degrees in Australia or the United Kingdom and take their chances in the British Columbian job market with a foreign degree. With respect to this zeal, those students applying a "shotgun approach" to law school admission by applying to each and every Canadian school will be faced with the question of whether to apply to TWU. On one hand, these students will be maximizing their chances of gaining admission to a recognized Canadian law school, yet on the other, agreeing to respect a Covenant that discriminates on the basis of sexual orientation. For those who are GLBT, the result will be the requirement to obfuscate their identities, pushing these students back into the same closet human rights campaigners have fought for decades to allow GLBT Canadians to emerge from. For others who merely find the Covenant ethically repugnant, attendance at TWU will beg a rationalization, whereby one's deeply-held moral convictions, otherwise according with the fundamental principles of human rights protected and celebrated in Canada, must be suspended for the acquisition of a law degree.

Public-Private Divide

Canada has a long tradition of having its educational landscape dominated by public research universities. This history is also a proud one, insofar as public universities provide subsidized tuition that in turn facilitates excellent post-secondary educations being financially obtainable for the middle and lower classes. In contrast to the United States where costly, private universities overshadow their state-run counterparts in terms of learning and reputation, the ubiquity of public education in Canada encourages class mobility and allows a large number of Canadians to have access to some of the best post-secondary educations in the world. In the legal realm, all current Canadian law schools are associated with public universities, the costs of tuition being subsidized in varying degrees by the federal and provincial governments. By recognizing the degrees granted

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⁵ Dean Jobb, "Rural areas losing lawyers, reducing access to justice", The Lawyers Weekly (12 March 2010) online: LawyersWeekly.ca

by TWU, the Law Society would be setting an unfortunate precedent, whereby other private universities could seek to establish law schools and grant recognized degrees.

The problem with private institutions granting degrees is twofold: first, it would result in a tiered system of education, and second, it has the potential to unfairly preventing students from lower socioeconomic backgrounds from becoming lawyers. Unlike the Untied States, Canada retains relative uniformity of quality across its law schools. While some excel in specific areas of practice, all are recognized as excellent in terms of educational quality and reputation. If degrees from private institutions were to become recognized, however, this could change: a lower quality of education may well be associated with the private universities, restricting the career possibilities for those with law degrees from schools recognized as inferior. Secondly, admission standards at private universities could potentially be slackened in lieu of high tuition, allowing wealthy students who might not possess the academic achievements required of other Canadian law schools to "purchase" their way into the programs, a luxury not afforded by those without the wealth to do so.

Counter-Arguments

One might counter that lawyers will often find their morals in conflict with their practice, and that the matter of law degrees from TWU being recognized by the Law Society is a comparable instance where prospective lawyers interested in attending TWU must suspend their personal ethics as a matter of course. Further, one might assert that prospective applicants who do not share the values of TWU, established to be within the scope of freedom of religion, need not apply.

These arguments ignore that the discrimination employed by the university strikes at a fundamental aspect of Canadian equality that symbolizes the progress our society has made in an area of human rights that remains fiercely unjust in most of the world. Acceptance of non-heteronormative lifestyles has grown enormously in recent decades, especially in the wake of Reference re Same-Sex Marriage in 2004, 6 followed by the introduction of Bill C-38 soon after, legalizing same sex marriage in Canada. Sexual orientation has become comparable to gender or race in virtually every aspect of Canadian human rights. It cannot and must not be confused with a minority ethical value held by a particular student, such as his moral opposition to females in a classroom, or her refusal to work alongside someone from a particular ethnic group. Here, all students of the university must sign a Covenant that undermines the rights of gay and lesbian Canadians. That such a Covenant is able to exist at a Canadian university in 2014 is deplorable in and of itself, and if the Law Society is to recognize the law degrees TWU grants, a fundamental injustice will be dealt against our honoured profession.

⁶ Reference re Same-Sex Marriage, [2004] 3 SCR 698.

To the second potential argument, further issues of injustice emerge whereby students, either through their sexual orientation or commitment to the fundamental human rights of all Canadians, refuse to apply to TWU. In turn, this would unfairly restrict the educational possibilities of these students. Again with respect to the progress made in the area of GLBT rights in recent decades, allowing this arrangement would be akin to the Law Society recognizing the degrees from an institution that effectively barred female attendees by requiring that any seeking admission obscure their female identities pursuant to the belief that the appearance of the female gender's presence at the university would offend its fundamentalist religious values. Trinity Western University's admissions standards are comparably ridiculous and unjust, being unwelcome in contemporary Canadian society.

Conclusion

That Trinity Western University continues to employ a policy discriminatory towards gay and lesbian Canadians is deplorable. By recognize law degrees from TWU, the Law Society would be admitting the notoriety of this prejudice into the British Columbian justice system at large, injuring its reputation and the perception that the lawyers it represents hail from secular, inclusive institutions. Further, the recognition of TWU's law degrees would unfairly restrict the educational opportunities of prospective students for reasons of sexual orientation, personal ethics, and financial capacity. Finally, it would set an unfortunate precedent by ending the long era of legal education being dominated by high quality, subsidized public universities, allowing their private counterparts to charge high tuition for degrees of questionable value and quality. For these reasons it is against the interests of the Law Society, the justice system, and the general public for Trinity Western University to have its degrees recognized in British Columbia.

From: Scott Morishita

Sent: Sunday, March 02, 2014 10:58 PM

To: Submissions

Cc: Joseph Arvay QC; Jamie Maclaren; A. Cameron Ward

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Dear Benchers,

(Mr. Arvay, Mr. Maclaren and Mr. Ward - I've CCed you three because you three have committed your careers to fighting for equality rights and social justice. I think it is incredibly refreshing that the three of you were elected. I believe your election reflects the fact that so many lawyers - and younger ones in particular -- are committed to these principles).

Thank you very much for inviting input before making your decision on whether to approve Trinity Western University's (TWU) application to be recognized by the Law Society as an approved faculty of law.

I was called in May 2007. I attended law school at the University of Victoria. I feel very fortunate to have attended UVic. UVic prides itself as a school that values and in fact treasures diversity. The diversity at UVic (be it racial, gender, political, or sexual orientation) heavily shaped and influenced the legal education I received. I believe it has made me a better lawyer and a better person.

The legal education I received at UVic helped me appreciate and understand what it means to be a lawyer. Being a lawyer is not about billing as many hours as you can possibly bill, it is about ensuring the proper administration of justice. It is about ensuring that regardless of background, or education, or gender, or physical ability, or sexual orientation, or class, or financial ability, everyone has the right to equal treatment under the law. The law is the ultimate equalizing force in society.

When I was called to the bar, I swore an oath to uphold the rule of law and the rights and freedoms of ALL persons according to the laws of Canada and the laws of British Columbia. These rights include the right to not be discriminated against on the basis of sexual orientation.

In keeping with that oath I strongly urge you to not recognize TWU's proposed law school.

TWU's covenant represents clear discrimination based on sexual orientation. Simply put straight students who are married can have sex while attending TWU. Homosexual, bisexual, or transgendered students cannot. The TWU covenant reflects that institution's failure to recognize a person's right to be treated equally under the law. Although TWU is a private institution, and thus on its face not subject to the Charter, that line becomes blurred when their law school is regulated by a public institution. And the Law Society is not just any public institution. As lawyers we effectively have a monopoly on the administration of justice. The Law Society serves as the gatekeeper to that monopoly.

I have significant concerns about the students that would graduate from such a law school. How can these law students swear to uphold the rights and freedoms of ALL PERSONS (including, gays, lesbians, bisexuals and transgendered people) when they chose to attend a school where the rights of those same people were infringed on and where they were complicit in the infringement of those rights. I feel that as a lawyer, I have a professional, legal, and ethical duty to oppose the accreditation of a law school that perpetuates discrimination.

Thank you for reading my submissions.

Scott Morishita

From: Jack Morrison [JMorrison@bmklaw.com]
Sent: Tuesday, February 11, 2014 4:12 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

I understand that the Community Covenant of Trinity Western University (TWU") contains a statement of commitment to the Christian faith that includes an undertaking to refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

Given the discriminatory language of the TWU Community Covenant, in my view it is rather obvious that the Benchers should not approve the TRW faculty of law as an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

BAILEY MORRISON LAWYERS

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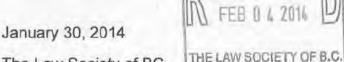
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MULLIGAN TAM PEARSON

DEFENCE LAWYERS



The Law Society of BC Attention: Executive Director 845 Cambie St. Vancouver, BC V6B 4Z9

Dear Sir:

Proposed Trinity Western University law school

Pursuant to section 28 of the Legal Profession Act the benchers of the Law Society have authority to take steps they consider advisable to promote and improve the standard of practice of lawyers including the establishment and maintenance of a system of legal education.

It is within this statutory mandate that the benchers ought to consider whether it is advisable for Trinity Western University to be approved for the purpose of the academic qualification of the Law Society's admission process.

The task for the benchers, in this regard, is not to assess the merits of a particular application for membership in the Law Society but rather to assess the system of legal education in the province.

Trinity Western University's mission statement is "As an arm of the Church, to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life."

In furtherance of these objectives, Trinity Western University requires students and staff to enter into a covenant that, amongst other things, requires a commitment to abstain from actions including "sexual intimacy that violates the sacredness of marriage between a man and a woman."

Apparently, a failure to abide by this covenant can result in discipline or expulsion from the university.

ROBERT A. MULLIGAN, Q.C. MICHAEL T. MULLIGAN ANDREW TAM PAUL E. PEARSON

Trinity Western University's covenant discriminates on the basis of sexual orientation.

The mission of the university is an exercise in religious discrimination.

While this sort of overtly discriminatory activity may be exempt from scrutiny pursuant to British Columbia's human right legislation, accrediting an institution premised on this sort of intolerance would not serve to promote or improve the standard of practice of lawyers in British Columbia.

The benchers ought to decline Trinity Western University's application for accreditation until such time as its policies and procedures accord with constitutional principles of equality.

Sincerely,

Mulligan Tam Pearson

Law Corporation

Michael T. Mulligan Barrister & Solicitor National Association of Women and the Law / L'association Nationale Femmes et Droit

www.nawl.ca / www.anfd.ca rue 2339 Ogilvie Road - PO Box 46008 Gloucester, ON K1J 9M7

March 3, 2014

The Law Society of BC Attention: Executive Director 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Sir/Madam:

Re: Trinity Western University School of Law

The National Association of Women and the Law ("NAWL") is an incorporated not-for-profit feminist organization that promotes the equality rights of Canadian women through legal education, research and law reform advocacy. We write in relation to the Law Society of British Columbia's consideration of whether Trinity Western University ("TWU")'s School of Law should be deemed an approved faculty of law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

NAWL shares the concern expressed by the Canadian Council of Law Deans and others regarding the intentionally discriminatory impact of TWU's "community covenant agreement" on gay, lesbian and bisexual students. As you are aware, all TWU students, faculty and staff are required to sign this covenant, which requires, among other things, abstinence "from sexual intimacy that violates the sacredness of marriage between a man or a woman." As noted in an editorial in the *Globe and Mail*: "[t]his covenant is not simply an expression of belief or a request for certain behaviour...[but] is in effect a bar to gay and lesbian students who are married."

Since the introduction of the *Canadian Charter of Rights and Freedoms*, equality has come to be recognized, not only as a fundamental constitutional right, but as an overarching value in Canadian society. The meaningful realization of this value is something that we continue to struggle to achieve. As the Honourable Justice L'Heureux-Dubé observed close to fifteen years ago: "The task of rooting out inequality and injustice from our society is now advancing to a higher stage...[which

¹ "No gay free law school should stand in Canada" *The Globe and Mail*, 7 February 2013, online: http://www.theglobeandmail.com/commentary/editorials/no-gay-free-law-school-should-stand-in-canada/article8356107/.



requires] that we understand equality and make it part of our thinking, rather than treading heavily on it with the well-worn shoes of unquestioned, and often stereotypical assumptions."²

Lawyers have unique powers and obligations in relation to our ongoing struggle to achieve meaningful substantive equality in Canada. The *Code of Professional Conduct for British Columbia* emphasizes that lawyers have "a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws" as well as an obligation not to "discriminate against any person."

A proposal for a "gay free" law school is clearly discriminatory. It is also antithetical to training the next generation of lawyers to live up to their role as guardians of the public interest, which includes protecting and respecting the equality rights of Canadians. It is not sufficient that lawyers simply know where to locate equality protection in various constitutional and statutory instruments; it is necessary, to borrow Justice L'Heureux-Dubé's words, that they "understand equality and make it part of [their] thinking." An educational institution that not only perpetuates discriminatory attitudes towards, but effectively bans, members of an equality-seeking group from attendance cannot be trusted to promote this constitutionally mandated understanding.

For these reasons, NAWL urges the Benchers of the Law Society of British Columbia to deny approval to TWU's School of Law for the purpose of meeting the academic qualification requirement of the Law Society's admission process.

The Law Society of British Columbia has a clear statutory mandate under the *Legal Profession Act* to uphold and protect the public interest. We believe that taking a forceful and pro-active stance against accrediting TWU's School of Law is not only consistent with this mandate, but also is required.

Yours truly,

Julie Shugarman Executive Director

Juli Shugarma

² Honourable Claire L'Heureux-Dubé, "Conversations on Equality" (1999) 26 Man L J 273 at 278-279.

³ Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, rule 6.3, online: https://www.lawsociety.bc.ca/docs/publications/mm/BC-Code_2013-12.pdf.



March 18, 2013

Via email: grtremblay@mccarthy.ca

Mr. Gérald R. Tremblay, C.M., O.Q., Q.C., Ad.E. President
Federation of the Law Societies of Canada
World Exchange Plaza
1810-45 O'Connor Street
Ottawa. ON K1P 1A4

Dear Mr. Tremblay:

Re: Trinity Western University School of Law Proposal

I write on behalf of the Canadian Bar Association concerning the application of Trinity Western University for an assessment of whether its proposed law degree meets the Federation's national standards for approving new law degree programs.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students across Canada, with a mandate that includes seeking improvements in the law and the administration of justice, and promoting equality in the law and in the legal profession.

We support the role of the Federation in determining whether new law degree programs meet national standards for entry to law society licensing programs across Canada. With the increased mobility of lawyers in this country, the development and application of national requirements is critical for cross-border consistency in knowledge, skills, abilities and ethics.

We commend the Federation for its consultations and deliberations in establishing the national standards. In assessing an applicant's compliance with these standards, the Federation is able to:

- a) In its discretion, entertain submissions from persons, organizations, or institutions other than applicants;
- b) Make additional inquiries with the applicant and request such additional written information as it sees fit; and
- c) Control its own process in considering applications for new law degree programs.1

500-865 Carling Avenue, Ottawa, ON, Canada K1S 5S8

See the *Final Report of the Task Force on the Canadian Common Law Degree*, Federation of Law Societies of Canada (October 2009), online: http://www.flsc.ca/documents/Common-Law-Degree-

We have had an opportunity to review the letter from the Council of Canadian Law Deans and your response. We question the perceived limitations on the Federation's role in applying the national standards, and urge you to reconsider your stance in pursuit of the law societies' duty to regulate the legal profession in the public interest.

In our view, the Federation and the Committee charged with approving new Canadian law degree programs must strike a balance between freedom of religion and equality, and give full consideration to its public interest mandate and to the values embodied in Canadian human rights laws.

Based on the delegations of power from its constituent law societies, the Federation has a duty to go beyond a strict determination of a proposed law school's compliance with the national standards. It must assess whether the institution and its program complies with Canadian law, including the protections afforded by the *Canadian Charter of Rights and Freedoms* and the human rights legislation in B.C., and in every province and territory where a proposed law degree may be recognized by the law societies for admission to bar.

We ask the Federation and the Committee to give due consideration to these concerns when assessing Trinity Western's application.

These are complex issues. Indeed, CBA members hold a range of views on the question of the approval of this particular law school. The CBA's Sexual Orientation and Gender Identity Conference (SOGIC) and Equality Committee have articulated one perspective in the attached letter.

The CBA would be pleased to assist in whatever way you believe would be appropriate.

Yours truly,

Robert C. Brun, Q.C.

cc : See Appendix A

Choen CKS



March 18, 2013

Via email: grtremblay@mccarthy.ca

Mr. Gérald R. Tremblay, C.M., O.Q., Q.C., Ad.E. President Federation of the Law Societies of Canada World Exchange Plaza 1810-45 O'Connor Street Ottawa. ON K1P 1A4

Dear Mr. Tremblay:

Re: Trinity Western University School of Law Proposal

We write on behalf of the Sexual Orientation and Gender Identity Conference (SOGIC) and the Equality Committee of the Canadian Bar Association concerning the application of Trinity Western University for an assessment of whether its proposed law degree meets the Federation's National Standards for Approving New Law Degree Programs.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students across Canada, with a mandate that includes seeking improvements in the law and the administration of justice, and promoting equality in the law and the legal profession. SOGIC provides a forum for the exchange of information, ideas and action on legal issues relating to sexual orientation and gender identity. The Equality Committee is dedicated to achieving equality in the legal profession.

We support the role of the Federation in determining whether new law degree programs meet national standards for entry to law society licensing programs across Canada. With the increased mobility of lawyers in this country, the development and application of national requirements is critical for cross-border consistency in knowledge, skills, abilities and ethics.

A. SOGIC and the Equality Committee's Concerns

We have reviewed your December 4, 2012 response to a November 20, 2012 letter from the Council of Canadian Law Deans on Trinity Western's application and the university's discriminatory treatment of lesbian, gay, bisexual, transsexual and transgender (**LGBTT**) students. We question the perceived limitations on the Federation's role in enforcing the National Standards and approving new law degrees.

Even on a strict reading of the National Standards, Trinity Western's application raises concerns, in particular for the National Standards' ethical, constitutional and human rights components, as will be explained in greater detail below.

Moreover, as determined by the Supreme Court of Canada in *Trinity Western University v. College of Teachers*,¹ the Federation's assessment of Trinity Western's application must go beyond "a determination of skills and knowledge" and take into account a broader range of factors.² Indeed, just a year ago, the Supreme Court reiterated in *Doré v. Barreau du Québec*³ that law societies "must act consistently with the values underlying the grant of discretion, including *Charter* values," like other administrative decision-makers exercising delegated authority,

Based on the delegations of power from its constituent law societies, the Federation has not only the power, but the duty to go beyond a strict determination of a proposed law school's compliance with the National Standards. It must assess whether the institution and its program complies with Canadian law, including the protections afforded by the *Canadian Charter of Rights and Freedoms* and the human rights legislation in B.C., and in every province and territory where a proposed law degree may be recognized by the law societies for the purpose of admission to the local bar.

We therefore ask the Federation and its members to give due consideration to these concerns when assessing Trinity Western's application.

One word at the outset on the 2001 Supreme Court decision in *TWU*, which Trinity Western appears to rely on to justify discriminatory treatment of LGBTT students. Although a majority of the judges in that case found in Trinity Western's favour, their analysis was limited to B.C. law. In the present case, given the national scope of its mandate, the Federation must consider the proposed program's compliance with other provincial and territorial human rights legislation. Further, the B.C. College of Teachers "was not directly applying either the *Charter* or the province's human rights legislation when making its decision," *Doré* now imposes that obligation on law societies. Finally, recent Supreme Court jurisprudence demonstrates a higher degree of deference to administrative decision-makers when dealing with *Charter* and human rights issues.

As a result, were the Federation to follow the proposals found in our letter's conclusions, its decision would most likely be subject to a lower level of scrutiny than was that of the B.C. College of Teachers at the time. Coupled with the increased recognition of same-sex relationships in Canadian law and society, and the fact that teaching future lawyers may call for the application of different norms in terms of ethics and basic respect for human rights, we submit that a another result could be expected in the present case.

B. Trinity Western's Discriminatory Rules and Practices

As a condition of employment with the university as well as admission into one of its programs, Trinity Western requires students, faculty and staff to sign its Community Covenant Agreement.⁷ The Covenant notably proscribes "sexual intimacy", except between married, opposite-sex spouses,

¹ [2001] 1 S.C.R. 772 (*TWU*). In that case, the Supreme Court weighed in on the B.C. College of Teachers' refusal to recognize Trinity Western's teacher education program.

Ibid., at para 13. For a detailed legal analysis of this question, see: Professor Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Application for Approval of a New Law School Program", Canadian Journal of Women and the Law, vol. 25(1) (2013).

³ [2012] 1 S.C.R. 395 (*Doré*).

⁴ *Ibid.*, at para 24.

⁵ TWU, supra note 2, at para 27.

⁶ See in particular *Doré*, *supra* note 4.

See Trinity Western's Student Handbook, online: http://twu.ca/studenthandbook/university-policies/community-covenant.html.

and numerous footnotes to the Covenant's rules on sexual intimacy refer to biblical passages interpreted by some as prohibiting sexual intercourse between members of the same gender.⁸

The Covenant is meant to apply on and off campus and violations may lead to disciplinary sanctions, including dismissal in the case of faculty and staff and removal in the case of students.⁹

The fact that no student may ever be expelled for breaching the Covenant's sexual intimacy rules is not determinative. As acknowledged by the Supreme Court of Canada in *Vriend v. Alberta*, ¹⁰ the mere fear of discrimination may in and of itself cause serious psychological harm: "Fear of discrimination will logically lead to concealment of true identity and this must be harmful to personal confidence and self-esteem. [...] The potential harm to the dignity and perceived worth of gay and lesbian individuals constitutes a particularly cruel form of discrimination." ¹¹

The same may be said of the fact that the Covenant purportedly targets sexual behaviour as opposed to sexual orientation. As Justice L'Heureux-Dubé wrote in her dissenting opinion in *TWU*, which was just endorsed by a unanimous Court in *Saskatchewan (Human Rights Commission) v. Whatcott*: 12

I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. ... <u>The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected</u> [...] [Emphasis added]¹³

C. Trinity Western Covenant Incompatible with Human Rights Legislation

As a private institution, Trinity Western is not subject to the *Charter*. Trinity Western's President Dr. Jonathan S. Raymond claimed in a recent interview that the issue of the Covenant's conformity with the B.C. *Human Rights Code*¹⁴ has been resolved since the 2001 Supreme Court of Canada decision of TWU, 15 based on s. 41(1) of the *BCHRC*. That provision reads as follows:

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons. [Emphasis added]

⁸ Community Covenant Agreement, online: http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf, pp. 19-23.

Id. As outlined in the Student Handbook, "[i]f a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's readmission to the University" (p. 23).

¹⁰ [1998] 1 S.C.R. 493 (*Vriend*).

¹¹ *Ibid.*, at para 102 [emphasis added].

¹² 2013 SCC 11 (*Whatcott*).

¹³ *Ibid.*, at para 123, citing *TWU*, *supra* note 2, para 69.

¹⁴ RSBC 1996, c. 210 (*BCHRC*). See *TWU*, *supra* note 2, at paras 13 and 35.

See Sarah Boesveld, "Canadian deans accused of 'anti-religious bias' over attempt to block Christian law school", in *National Post*, January 18, 2013 edition, online: http://life.nationalpost.com/2013/01/18/canadian-deans-accused-of-anti-religious-bias-over-attempt-to-block-christian-law-school/.

The legality of Trinity Western's Covenant in light of the *BCHRC*'s prohibition of discrimination based on sexual orientation was not directly at issue in *TWU*, nor was it analyzed at any length by the lower courts and the Supreme Court of Canada. The Covenant's compliance with the *BCHRC* remains an open question, especially in light of evolving notions of human rights and the increased legal and societal recognition afforded to LGBTT individuals and their relationships.

Given the national scope of the Federation's mandate and the increased mobility of lawyers between Canadian jurisdictions, any analysis of these issues cannot be limited to Trinity Western's compliance with B.C. legislation. Since the Federation's recommendation will be applied in every Canadian common law jurisdiction, consideration must be given to the Covenant's compatibility with other provincial and territorial human rights laws.

Provisions analogous to s. 41(1) of the *BCHRC* are found in 10 of 13 provincial and territorial human rights statutes, with great variations in language and scope. For instance, the religious organization's "exemption" applies, subject to conditions, to all types of services and contracts in four provinces and one territory. It is limited to employment contracts in five other jurisdictions. As such, there appears to be no legal justification for Trinity Western's discriminatory rules and practices in at least eight out of thirteen Canadian jurisdictions.

As for the five jurisdictions where human rights laws include a more general exemption for religious organizations, jurisprudence interpreting the clauses is scarce and, in some respects, dated, at least at the Supreme Court of Canada level. The predecessor to s. 41 of the *BCHRC* was considered by the Supreme Court in the 1984 case of *Caldwell v. Stuart*, while *Brossard v. Québec (Comm. des droits de la personne)*, at issued in 1988, dealt with s. 20 of the Quebec *Charter of Human Rights and Freedoms*.

In both judgments, the last to substantially consider the scope of exemptions for religious organizations at the Supreme Court level, the Court outlined their close connection to the protection of freedom of association. In *Brossard*, the Court held that in order to qualify for the exemption, a non-profit organization "must have, as a primary purpose, the promotion of the interests and welfare of an identifiable group of persons characterized by a common [enumerated] ground..."²³ The Court then added that "the distinction, exclusion or preference practised by the non-profit institution to which the second branch applies must be justified in an *objective* sense by the particular nature of the institution

The relevant provisions of provincial and territorial statutes are reproduced in Schedule A.

Namely British Columbia, Ontario, Quebec, Prince Edward Island and Yukon.

Namely Saskatchewan, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut. In the case of Newfoundland and Labrador, the exemption also covers membership in a religious organization; see s. 11(3)(d) of the *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1.

Namely Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut.

²⁰ [1984] 2 S.C.R. 603 ("*Caldwell*").

²¹ [1988] 2 S.C.R. 279 ("*Brossard*").

R.S.Q., c. C-12. That provision reads: "A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory."

²³ Supra note 23, at para 130.

<u>in question</u>."²⁴ We submit that Trinity Western's ban on sexual intimacy outside of marriage between a man and a woman is not so *objectively* justified.

Pursuant to the *Trinity Western University Act*,²⁵ it is recognized as a Christian institution affiliated with the Evangelical Free Church of Canada. Yet the university does not purport to have "as a primary purpose, the promotion of the interests and welfare of an identifiable group of persons", nor to exclude individuals who do not share its religious beliefs. On the contrary, under its legislative mandate, it must welcome students of all faiths. Subsection 3(2) of the Act, as amended, provides:

(2) The objects of the University shall be to provide for young people <u>of any race</u>, <u>colour</u>, <u>or creed</u> university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian. [Emphasis added]

It appears that the B.C. legislature has *not* authorized the institution to grant "a preference to members" of any particular church or religion, or to individuals who hold beliefs similar to those of the Evangelical Free Church of Canada, but rather has specified that its public mandate must be exercised to be inclusive of people of *all* races and creeds. This should include individuals who do *not* share Trinity Western's views on sexual intimacy, notably members of the LGBTT communities. One is hard pressed to see how purporting to exclude LGBTT students, or force them to conceal their true identity, could amount to an objectively justifiable purpose rationally connected to Trinity Western's educative mandate, irrespective of that school's worldview.

D. Following these recommendations would not hamper freedom of religion

Some, including the British Columbia Civil Liberties Association, have argued that denying Trinity Western's application would violate the freedom of religion and freedom of association of the school's community. We respectfully disagree.

As recently noted by the Supreme Court of Canada in *Whatcott*, relying on its jurisprudence post-*TWU*, freedom of religion is only infringed where: "(1) the claimant sincerely holds a belief or practice that has a nexus with religion; and (2) the provision at issue interferes with the claimant's ability to act in accordance with his or her religious beliefs." The interference must be so serious as to "[threaten] actual religious beliefs or conduct." ²⁸

Although we do not question the sincerity of the religious beliefs of those forming the Trinity Western community on sexual mores, removing or modifying the school's Covenant and other rules, practices and policies, as we suggest in the conclusion to this letter, would fall short of threatening the beliefs or conduct of these individuals. Trinity Western's Christian character and affiliation to the Evangelical Free Church of Canada could be maintained. Those who share the school's views on sexual intimacy would still be welcomed as faculty and students, the same way they are at every other university in Canada, and they would be free to express their beliefs and to try to convince others to abide by the same moral standards. What would be forbidden is the creation of a "LGBTT-

Letter from BCCLA to the Federation, January 31, 2013, online: http://bccla.org/wp-content/uploads/2013/01/2013-BCCLA-Letter-to-Herman-Wolfe-TWU.pdf.

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Ibid., at para 138. According to the B.C. Court of Appeal in Vancouver Rape Relief Society v. Nixon, 2005 BCCA 601 (CanLII) (leave application denied, February 1, 2007, S.C.C. No. 31633), at paras 52-53, the BCHRC is not so limitative. Be that as it may, the Court, based on Caldwell, accepted that there had to be a "rational connection" between the discriminatory practice and the institution's objects: "All of this is to say that, in my view, the reviewing judge was correct in following the guidance of Caldwell and concluding that a group can prefer a subgroup of those whose interests it was created to serve, given good faith and provided there is a rational connection between the preference and the entity's work, or purpose" (para. 58).

S.B.C. 1969, c. 44,

Whatcott, supra note 13, at para 155.

²⁸ *Ibid.* [emphasis added].

free" school environment, which is no more of a right guaranteed by freedom of religion than a "women-free" or "Jew-free" campus would be.

Even if a violation of freedom of religion could be demonstrated, s. 1 of the *Charter* would require that it be reconciled with the right to equality accorded to all Canadians.²⁹ One would have to account for the fact that the exercise of freedom of religion by Trinity Western's members denies LGBTT's faculty and students respect for their dignity and equality, as protected by s. 15(1) of the *Charter*. As the Supreme Court held in *Ross v. New Brunswick School District No. 15*,³⁰ "[w]here the manifestations of an individual's right or freedom are incompatible with the very values sought to be upheld in the process of undertaking a s. 1 analysis, then, an attenuated level of s. 1 justification is appropriate."³¹ For these reasons, we believe that Trinity Western's exclusion of LGBTT individuals would not meet this test.

To sum up, we believe that freedom of religion does not allow one group of individuals to exclude another group of identifiable individuals from access to a public service, such as a university education, on the ground of race, colour, religion, national origin, gender, sexual orientation, gender identity, age or disability, except of course when academically justified based on admission and eligibility criteria.³² In our view, institutional rules that discriminate against identifiable groups of people, which for too long restricted or denied access to some professions to certain racial and religious minorities,³³ have no place in today's Canada.

E. The U.S. Experience

These issues may be informed by the U.S. experience and approach.

In *Bob Jones University v. United States*,³⁴ the U.S. Supreme Court was called on to determine whether the Internal Revenue Services (IRS) could deny tax-exempt status to two non-profit private schools that prescribed and enforced racially discriminatory admission standards on the basis of religious doctrine.³⁵ The IRS had removed the schools' charitable status on the ground that their admission policies and rules of conduct violated federal anti-discrimination laws.

The Court confirmed the IRS's decision, holding that it was justified under the circumstances. The Chief Justice noted that "racial discrimination in education violates deeply and widely accepted views of elementary justice" and the "governmental interest [in eradicating racial discrimination in education] substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs." 37

Whatcott, supra note 13, at para 161.

³⁰ [1996] 1 S.C.R. 825.

Ibid., para 94, cited in *Whatcott*, *supra* note 13, at para 162.

University of British Columbia v. Berg, [1993] 2 S.C.R. 353.

For example, up to the 1960s, McGill University and U of Toronto imposed "quotas" on the admission of Jewish students to medical school and restrictions on hiring Jewish faculty members; see Gerald Tulchinsky, *Canada's Jews: A People's Journey*, Toronto: University of Toronto Press (2008), pp. 132-133, 319-321, 410 and 415.

³⁴ 461 U.S. 574 (1983) ("Bob Jones University").

Bob Jones University was dedicated to the teaching and propagation of fundamentalist Christian religious beliefs, requiring its teachers to be devout Christians, with all courses being taught according to the Bible. Entering students were screened on their religious beliefs and their public and private conduct was regulated by standards promulgated by university authorities, including a complete ban on interracial dating and marriage, which was genuinely believed to be forbidden by scriptures. Goldsboro Christian Schools also gave special emphasis to the Christian religion and the ethics revealed in the Bible. The school maintained a racially discriminatory admission policy based upon its interpretation of scripture. It accepted mostly Caucasians and, on occasion, children from racially mixed marriages in which one of the parents was Caucasian.

Bob Jones University, supra note 42, at p. 592.

³⁷ *Ibid.*, at p. 604.

The same may be said of discrimination on the basis of sexual orientation in Canada, which is prohibited under the *Charter* as well as federal, provincial and territorial human rights laws. That was the question at issue in *Christian Legal Society of University of California, Hastings College of Law v. Martinez*³⁸, where the U.S. Supreme Court had to determine whether a public law school, part of the state government's network of universities, could refuse to officially recognize a student group that denied membership to students who did not share the organization's core beliefs about religion and sexual orientation, but instead require that it open its membership to all students irrespective of their religious beliefs or sexual orientation.³⁹

The Court found that although the group's core beliefs enjoyed protection under the First Amendment of the U.S. Constitution, (which guarantees freedom of speech, association and religion) the university's refusal to recognize organizations that practiced discrimination fulfilled "reasonable educational purposes." The group had argued that the university held no legitimate interest in urging "religious groups not to favor coreligionists for purposes of their religious activities." The Court's response was:

[...] CLS's analytical error lies in focusing on the benefits it must forgo while ignoring the interests of those it seeks to fence out: Exclusion, after all, has two sides. Hastings, caught in the crossfire between a group's desire to exclude and students' demand for equal access, may reasonably draw a line in the sand permitting all organizations to express what they wish but no group to discriminate in membership. [Footnote omitted] [Emphasis added]⁴¹

In concurring reasons, Stevens J. noted that the constitutional protection afforded to freedom of religion and speech does not impose on a government agency the obligation to officially recognize every religious organization, irrespective of their discriminatory beliefs and conduct:

[...] Other groups may exclude or mistreat Jews, blacks, and women—or those who do not share their contempt for Jews, blacks, and women. A free society must tolerate such groups. It need not subsidize them, give them its official imprimatur, or grant them equal access to law school facilities. [Emphasis added]⁴²

In August 2012, the American Bar Association adopted new *Standards and Rules of Procedure for Approval of Law Schools*.⁴³ Standard 211, "Non-discrimination and Equality of Opportunity", stipulates that "[a] law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability."⁴⁴ Although law schools may have a religious affiliation or purpose, adopt and apply admission and employment policies that directly relate to their affiliation or purpose, and prefer persons adhering to same, the policies must not interfere with academic freedom and "shall not be applied to use admission policies or take other action to

Christian Legal Society's chapters had to adopt bylaws that required members and officers to sign a "Statement of Faith" and to conduct their lives in accord with prescribed principles. Among those tenets was the belief that sexual activity should not occur outside of marriage between a man and a woman, thereby excluding LGBTT students and those who did not share the group's religious views on such issues.

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³⁸ 561 U.S. ___ (2010) ("*CLS*").

 $^{^{40}}$ *CLS, supra* note 46, at p. 2 of the Court's opinion, written by Ginsburg J.

Ibid., at p. 28 of the Court's opinion, written by Ginsburg J.

Ibid., at p. 6 of Steven J.'s concurring opinion.

Available online at:
http://www.americanbar.org/content/dam/aba/publications/misc/legal-education/Standards/2012-2013-ab-a-standards-and-rules-authcheckdam.pdf.

⁴⁴ *Ibid.*, at p. 12.

preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability."45

F. Conclusions

Lawyers are viewed as leaders in their communities. Lawyers rely on law societies to offer leadership and regulation in the public interest, including on issues relating to equality. SOGIC and the Equality Committee believe that the Federation must consider the educational philosophy and environment of a law school and how that impacts the institution's ability to teach law, to properly perform its function of assessing compliance with the National Standards. As the U.S. Supreme Court held in *Norwood v. Harrison*, ⁴⁶ "a private school—even one that discriminates—fulfills an important educational function; however, [...] [that] legitimate educational function cannot be isolated from discriminatory practices. [...] [D]iscriminatory treatment exerts a pervasive influence on the entire educational process."⁴⁷

Our members are your members. They have voiced concerns about Trinity Western's proposal to us, and we agree. We have seen Canadian law societies work to protect and encourage diversity in law and in the practice of law and we view them as allies in this regard. Whether via an Equity Office or Officer, Equity Ombudsman, or a like representative, our law societies have done our members proud. We are asking them, and the Federation, to honour and continue that tradition. We urge you to reconsider your stance in pursuance of the law societies' duty to regulate the legal profession in the public interest.

The Federation must strike a balance between freedom of religion and equality, and give full consideration to its public interest mandate and to the values embodied in our human rights instruments. In that respect, we invite the Federation to seek inspiration from the ABA's August 2012 *Standards and Rules of Procedure for Approval of Law Schools*.

Finally, Trinity Western's application does not necessarily call for an "all or nothing" response. For example, short of rejecting it, the Federation could ask Trinity Western to remove or modify its Covenant and other rules, practices and policies which detract from its ability to meet the National Standards and to comply with human rights laws across the country as well as minimum norms guaranteeing academic freedom. This could be achieved while maintaining the Christian character of the school, yet ensuring that it is truly open to "young people of any race, colour, or creed," in accordance with its statutory mandate.

We hope this letter is the beginning of an open dialogue on this very important issue. SOGIC and the Equality Committee would be pleased to assist in whatever way you believe would be appropriate.

Yours truly,

(signed by Rebecca Bromwich for Amy Sakalauskas, Robert Peterson and Level Chan)

Amy SakalauskasRobert PetersonLevel ChanCo-chair, CBA SexualCo-chair, CBA SexualChair, CBA EqualityOrientation and GenderOrientation and GenderCommitteeIdentity ConferenceIdentity Conference

cc: See Appendix A

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Ibid., at pp. 12-13 [emphasis added].

^{46 413} U.S. 455 (1973). The Court held in that case that a state could not constitutionally give or lend textbooks to students who attended a private school that discriminated on the basis of race.

Ibid., at pp. 468-469 [emphasis added].

R. Glen Nicholson Barrister & Solicitor 614-1488 Fourth Avenue Prince George, BC, V2L 4Y2

February 22, 2014

The Law Society of British Columbia 845 Cambie Street Vancouver, BC, V6B 4Z9

Via email - submissions@lsbc.org

Attention: Executive Director

Re Trinity Western University - Proposed Law School

Please accept this submission in opposition to the Trinity Western University law school.

Discrimination

Laws typically lag behind social norms. However, human rights laws should lead by preventing majorities from tyrannizing oppressed minorities. The Law Society should help lead society out of the dark ages.

TWU is entitled to promote mythology under the banner of religious freedom. However TWU crosses the threshold from thought into action by threatening expulsion for non-compliance with is Community Covenant Agreement, which translates questionable morality into full-blown discrimination on the basis of marital status and sexual orientation. Any honest person engaged in normal sexual relations outside of traditional marriage cannot enter TWU. Conversely, any TWU student (or faculty member) engaged in such normal sexual relations is dishonest.

- Fraudulently signing or breaching the Covenant should disqualify candidates for admission to the Law Society.
- By admitting TWU graduates to the bar, the Law Society necessarily participates in TWU's discrimination. TWU may discriminate in its admission policy, but the Law Society should not do so.

Rights and Freedoms

Europeans immigrated to the New World to escape religious persecution. Freedom of religion is legitimately enshrined in our laws. In a free and democratic society, it is repugnant to restrict thought and debate, especially among potential lawyers. However, society is legitimately concerned when ideas are translated into harmful actions such as promoting discrimination. There are reasonable limits to rights and freedoms, including restraints on defamatory free speech and hate crimes, and human rights laws limiting discrimination.

Why is there tension between religious freedom and other human rights? The answer is revealed in the main categories of prohibited discrimination. No one chooses their race, colour, ancestry, place of origin, age, disability, sex, or sexual orientation. However, we voluntarily choose our religion.

Humans rights laws should be used as a shield, not a sword. It is one thing to use human rights laws to defend religious groups from persecution. It is quite another when a religious group uses human rights laws as a sword against another group. We would not tolerate brown people discriminating against black people, and we should not condone TWU attacking common law and homosexual couples.

Authority, Evidence, & Morality

By allowing TWU's application, the Law Society will indirectly undermine understanding of evidence, discourage critical thinking, and promote questionable morality.

TWU would purport to teach prospective lawyers about evidence while promoting a world view that is not supported by evidence. Faith in supernatural creators is equivalent to faith in unicorns, leprechauns, and fairies. Courts require scientific evidence, not superstitious speculation.

TWU would purport to teach prospective lawyers critical thinking about legal authorities while accepting the Bible as its foundational authority. Yet the Bible was written by ignorant authors who thought the Sun revolved around the Earth.

TWU would purport to teach prospective lawyers about morality and law while accepting the Bible as its foundational moral authority. Yet the Bible promotes moral views that are out of step with modern society on issues ranging from slavery and murder to the treatment of women and gay people.

The Law Society should not admit lawyers who subordinate evidence and legal authorities to the authority of the Bible.

Canadian Bar Association Submission

I have reviewed many other submissions and none are better than that of the Canadian Bar Association attached hereto. I urge you to consider it carefully.

Yours Truly,

R. Glen Nicholson



March 18, 2013

Via email: grtremblay@mccarthy.ca

Mr. Gérald R. Tremblay, C.M., O.Q., Q.C., Ad.E. President Federation of the Law Societies of Canada World Exchange Plaza 1810-45 O'Connor Street Ottawa, ON K1P 1A4

Dear Mr. Tremblay:

Re: Trinity Western University School of Law Proposal

I write on behalf of the Canadian Bar Association concerning the application of Trinity Western University for an assessment of whether its proposed law degree meets the Federation's national standards for approving new law degree programs.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students across Canada, with a mandate that includes seeking improvements in the law and the administration of justice, and promoting equality in the law and in the legal profession.

We support the role of the Federation in determining whether new law degree programs meet national standards for entry to law society licensing programs across Canada. With the increased mobility of lawyers in this country, the development and application of national requirements is critical for cross-border consistency in knowledge, skills, abilities and ethics.

We commend the Federation for its consultations and deliberations in establishing the national standards. In assessing an applicant's compliance with these standards, the Federation is able to:

- a) In its discretion, entertain submissions from persons, organizations, or institutions other than applicants;
- b) Make additional inquiries with the applicant and request such additional written information as it sees fit; and
- c) Control its own process in considering applications for new law degree programs.1

See the Final Report of the Task Force on the Canadian Common Law Degree, Federation of Law Societies of Canada (October 2009), online: http://www.flsc.ca/documents/Common-Law-Degree-

We have had an opportunity to review the letter from the Council of Canadian Law Deans and your response. We question the perceived limitations on the Federation's role in applying the national standards, and urge you to reconsider your stance in pursuit of the law societies' duty to regulate the legal profession in the public interest.

In our view, the Federation and the Committee charged with approving new Canadian law degree programs must strike a balance between freedom of religion and equality, and give full consideration to its public interest mandate and to the values embodied in Canadian human rights laws.

Based on the delegations of power from its constituent law societies, the Federation has a duty to go beyond a strict determination of a proposed law school's compliance with the national standards. It must assess whether the institution and its program complies with Canadian law, including the protections afforded by the *Canadian Charter of Rights and Freedoms* and the human rights legislation in B.C., and in every province and territory where a proposed law degree may be recognized by the law societies for admission to bar.

We ask the Federation and the Committee to give due consideration to these concerns when assessing Trinity Western's application.

These are complex issues. Indeed, CBA members hold a range of views on the question of the approval of this particular law school. The CBA's Sexual Orientation and Gender Identity Conference (SOGIC) and Equality Committee have articulated one perspective in the attached letter.

The CBA would be pleased to assist in whatever way you believe would be appropriate.

Yours truly,

Robert C. Brun, O.C.

cc: See Appendix A

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March 18, 2013

Via email: grtremblay@mccarthy.ca

Mr. Gérald R. Tremblay, C.M., O.Q., Q.C., Ad.E. President
Federation of the Law Societies of Canada
World Exchange Plaza
1810-45 O'Connor Street
Ottawa, ON K1P 1A4

Dear Mr. Tremblay:

Re: Trinity Western University School of Law Proposal

We write on behalf of the Sexual Orientation and Gender Identity Conference (SOGIC) and the Equality Committee of the Canadian Bar Association concerning the application of Trinity Western University for an assessment of whether its proposed law degree meets the Federation's National Standards for Approving New Law Degree Programs.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students across Canada, with a mandate that includes seeking improvements in the law and the administration of justice, and promoting equality in the law and the legal profession. SOGIC provides a forum for the exchange of information, ideas and action on legal issues relating to sexual orientation and gender identity. The Equality Committee is dedicated to achieving equality in the legal profession.

We support the role of the Federation in determining whether new law degree programs meet national standards for entry to law society licensing programs across Canada. With the increased mobility of lawyers in this country, the development and application of national requirements is critical for cross-border consistency in knowledge, skills, abilities and ethics.

A. SOGIC and the Equality Committee's Concerns

We have reviewed your December 4, 2012 response to a November 20, 2012 letter from the Council of Canadian Law Deans on Trinity Western's application and the university's discriminatory treatment of lesbian, gay, bisexual, transsexual and transgender (**LGBTT**) students. We question the perceived limitations on the Federation's role in enforcing the National Standards and approving new law degrees.

Even on a strict reading of the National Standards, Trinity Western's application raises concerns, in particular for the National Standards' ethical, constitutional and human rights components, as will be explained in greater detail below.

Moreover, as determined by the Supreme Court of Canada in *Trinity Western University v. College of Teachers*, ¹ the Federation's assessment of Trinity Western's application must go beyond "a determination of skills and knowledge" and take into account a broader range of factors. ² Indeed, just a year ago, the Supreme Court reiterated in *Doré v. Barreau du Québec* ³ that law societies "<u>must act consistently with the values underlying the grant of discretion, including *Charter* values." ⁴ like other administrative decision-makers exercising delegated authority,</u>

Based on the delegations of power from its constituent law societies, the Federation has not only the power, but the duty to go beyond a strict determination of a proposed law school's compliance with the National Standards. It must assess whether the institution and its program complies with Canadian law, including the protections afforded by the *Canadian Charter of Rights and Freedoms* and the human rights legislation in B.C., and in every province and territory where a proposed law degree may be recognized by the law societies for the purpose of admission to the local bar.

We therefore ask the Federation and its members to give due consideration to these concerns when assessing Trinity Western's application.

One word at the outset on the 2001 Supreme Court decision in *TWU*, which Trinity Western appears to rely on to justify discriminatory treatment of LGBTT students. Although a majority of the judges in that case found in Trinity Western's favour, their analysis was limited to B.C. law. In the present case, given the national scope of its mandate, the Federation must consider the proposed program's compliance with other provincial and territorial human rights legislation. Further, the B.C. College of Teachers "was not directly applying either the *Charter* or the province's human rights legislation when making its decision," *Doré* now imposes that obligation on law societies. Finally, recent Supreme Court jurisprudence demonstrates a higher degree of deference to administrative decision-makers when dealing with *Charter* and human rights issues.

As a result, were the Federation to follow the proposals found in our letter's conclusions, its decision would most likely be subject to a lower level of scrutiny than was that of the B.C. College of Teachers at the time. Coupled with the increased recognition of same-sex relationships in Canadian law and society, and the fact that teaching future lawyers may call for the application of different norms in terms of ethics and basic respect for human rights, we submit that a another result could be expected in the present case.

B. Trinity Western's Discriminatory Rules and Practices

As a condition of employment with the university as well as admission into one of its programs, Trinity Western requires students, faculty and staff to sign its Community Covenant Agreement.⁷ The Covenant notably proscribes "sexual intimacy", except between married, opposite-sex spouses,

¹ [2001] 1 S.C.R. 772 (*TWU*). In that case, the Supreme Court weighed in on the B.C. College of Teachers' refusal to recognize Trinity Western's teacher education program.

Ibid., at para 13. For a detailed legal analysis of this question, see: Professor Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Application for Approval of a New Law School Program", Canadian Journal of Women and the Law, vol. 25(1) (2013).

³ [2012] 1 S.C.R. 395 (*Doré*).

⁴ Ibid., at para 24.

⁵ TWU, supra note 2, at para 27.

⁶ See in particular *Doré*, supra note 4.

⁷ See Trinity Western's Student Handbook, online: http://twu.ca/studenthandbook/university-policies/community-covenant.html.

and numerous footnotes to the Covenant's rules on sexual intimacy refer to biblical passages interpreted by some as prohibiting sexual intercourse between members of the same gender.8

The Covenant is meant to apply on and off campus and violations may lead to disciplinary sanctions, including dismissal in the case of faculty and staff and removal in the case of students.

The fact that no student may ever be expelled for breaching the Covenant's sexual intimacy rules is not determinative. As acknowledged by the Supreme Court of Canada in *Vriend v. Alberta*, ¹⁰ the mere fear of discrimination may in and of itself cause serious psychological harm: "Fear of discrimination will logically lead to concealment of true identity and this must be harmful to personal confidence and self-esteem. [...] The potential harm to the dignity and perceived worth of gay and lesbian individuals constitutes a particularly cruel form of discrimination." ¹¹

The same may be said of the fact that the Covenant purportedly targets sexual behaviour as opposed to sexual orientation. As Justice L'Heureux-Dubé wrote in her dissenting opinion in TWU, which was just endorsed by a unanimous Court in Saskatchewan (Human Rights Commission) v. Whatcott: 12

I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. ... The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected [...] [Emphasis added]¹³

C. Trinity Western Covenant Incompatible with Human Rights Legislation

As a private institution, Trinity Western is not subject to the *Charter*. Trinity Western's President Dr. Jonathan S. Raymond claimed in a recent interview that the issue of the Covenant's conformity with the B.C. *Human Rights Code*¹⁴ has been resolved since the 2001 Supreme Court of Canada decision of *TWU*, ¹⁵ based on s. 41(1) of the *BCHRC*. That provision reads as follows:

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons. [Emphasis added]

⁶ Community Covenant Agreement, online: http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf, pp. 19-23.

Id. As outlined in the Student Handbook, "[i]f a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's readmission to the University" (p. 23).

^{10 [1998] 1} S.C.R. 493 (Vriend).

¹¹ *lbid.*, at para 102 [emphasis added].

¹² 2013 SCC 11 (Whatcott).

¹³ Ibid., at para 123, citing TWU, supra note 2, para 69.

RSBC 1996, c. 210 (*BCHRC*). See *TWU*, supra note 2, at paras 13 and 35.

See Sarah Boesveld, "Canadian deans accused of 'anti-religious bias' over attempt to block Christian law school", in *National Post*, January 18, 2013 edition, online: http://life.nationalpost.com/2013/01/18/canadian-deans-accused-of-anti-religious-bias-over-attempt-to-block-christian-law-school/.

The legality of Trinity Western's Covenant in light of the *BCHRC*'s prohibition of discrimination based on sexual orientation was not directly at issue in *TWU*, nor was it analyzed at any length by the lower courts and the Supreme Court of Canada. The Covenant's compliance with the *BCHRC* remains an open question, especially in light of evolving notions of human rights and the increased legal and societal recognition afforded to LGBTT individuals and their relationships.

Given the national scope of the Federation's mandate and the increased mobility of lawyers between Canadian jurisdictions, any analysis of these issues cannot be limited to Trinity Western's compliance with B.C. legislation. Since the Federation's recommendation will be applied in every Canadian common law jurisdiction, consideration must be given to the Covenant's compatibility with other provincial and territorial human rights laws.

Provisions analogous to s. 41(1) of the *BCHRC* are found in 10 of 13 provincial and territorial human rights statutes, with great variations in language and scope. For instance, the religious organization's "exemption" applies, subject to conditions, to all types of services and contracts in four provinces and one territory. It is limited to employment contracts in five other jurisdictions. As such, there appears to be no legal justification for Trinity Western's discriminatory rules and practices in at least eight out of thirteen Canadian jurisdictions.

As for the five jurisdictions where human rights laws include a more general exemption for religious organizations, jurisprudence interpreting the clauses is scarce and, in some respects, dated, at least at the Supreme Court of Canada level. The predecessor to s. 41 of the BCHRC was considered by the Supreme Court in the 1984 case of Caldwell v. Stuart, 20 while Brossard v. Québec (Comm. des droits de la personne), 21 issued in 1988, dealt with s. 20 of the Quebec Charter of Human Rights and Freedoms. 22

In both judgments, the last to substantially consider the scope of exemptions for religious organizations at the Supreme Court level, the Court outlined their close connection to the protection of freedom of association. In *Brossard*, the Court held that in order to qualify for the exemption, a non-profit organization "must have, as a primary purpose, the promotion of the interests and welfare of an identifiable group of persons characterized by a common [enumerated] ground..."²³ The Court then added that "the distinction, exclusion or preference practised by the non-profit institution to which the second branch applies must be justified in an *objective* sense by the particular nature of the institution

¹⁶ The relevant provisions of provincial and territorial statutes are reproduced in Schedule A.

Namely British Columbia, Ontario, Quebec, Prince Edward Island and Yukon.

Namely Saskatchewan, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut. In the case of Newfoundland and Labrador, the exemption also covers membership in a religious organization; see s. 11(3)(d) of the *Human Rights Act, 2010, S.N.L.* 2010, c. H-13.1.

Namely Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut.

²⁰ [1984] 2 S.C.R. 603 ("Caldwell").

²¹ [1988] 2 S.C.R. 279 ("Brossard").

R.S.Q., c. C-12. That provision reads: "A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory."

²³ Supra note 23, at para 130.

<u>in question</u>."²⁴ We submit that Trinity Western's ban on sexual intimacy outside of marriage between a man and a woman is not so *objectively* justified.

Pursuant to the *Trinity Western University Act*, ²⁵ it is recognized as a Christian institution affiliated with the Evangelical Free Church of Canada. Yet the university does not purport to have "as a primary purpose, the promotion of the interests and welfare of an identifiable group of persons", nor to exclude individuals who do not share its religious beliefs. On the contrary, under its legislative mandate, it must welcome students of all faiths. Subsection 3(2) of the Act, as amended, provides:

(2) The objects of the University shall be to provide for young people of any race, colour, or creed university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian. [Emphasis added]

It appears that the B.C. legislature has *not* authorized the institution to grant "a preference to members" of any particular church or religion, or to individuals who hold beliefs similar to those of the Evangelical Free Church of Canada, but rather has specified that its public mandate must be exercised to be inclusive of people of *all* races and creeds. This should include individuals who do *not* share Trinity Western's views on sexual intimacy, notably members of the LGBTT communities. One is hard pressed to see how purporting to exclude LGBTT students, or force them to conceal their true identity, could amount to an objectively justifiable purpose rationally connected to Trinity Western's educative mandate, irrespective of that school's worldview.

D. Following these recommendations would not hamper freedom of religion

Some, including the British Columbia Civil Liberties Association, have argued that denying Trinity Western's application would violate the freedom of religion and freedom of association of the school's community.²⁶ We respectfully disagree.

As recently noted by the Supreme Court of Canada in *Whatcott*, relying on its jurisprudence post-*TWU*, freedom of religion is only infringed where: "(1) the claimant sincerely holds a belief or practice that has a nexus with religion; and (2) the provision at issue interferes with the claimant's ability to act in accordance with his or her religious beliefs." The interference must be so serious as to "[threaten] actual religious beliefs or conduct." ²⁸

Although we do not question the sincerity of the religious beliefs of those forming the Trinity Western community on sexual mores, removing or modifying the school's Covenant and other rules, practices and policies, as we suggest in the conclusion to this letter, would fall short of threatening the beliefs or conduct of these individuals. Trinity Western's Christian character and affiliation to the Evangelical Free Church of Canada could be maintained. Those who share the school's views on sexual intimacy would still be welcomed as faculty and students, the same way they are at every other university in Canada, and they would be free to express their beliefs and to try to convince others to abide by the same moral standards. What would be forbidden is the creation of a "LGBTT-

²⁴ Ibid., at para 138. According to the B.C. Court of Appeal in Vancouver Rape Relief Society v. Nixon, 2005 BCCA 601 (CanLII) (leave application denied, February 1, 2007, S.C.C. No. 31633), at paras 52-53, the BCHRC is not so limitative. Be that as it may, the Court, based on Caldwell, accepted that there had to be a "rational connection" between the discriminatory practice and the institution's objects: "All of this is to say that, in my view, the reviewing judge was correct in following the guidance of Caldwell and concluding that a group can prefer a subgroup of those whose interests it was created to serve, given good faith and provided there is a rational connection between the preference and the entity's work, or purpose" (para. 58).

²⁵ S.B.C. 1969, c. 44,

Letter from BCCLA to the Federation, January 31, 2013, online: http://bccla.org/wp-content/uploads/2013/01/2013-BCCLA-Letter-to-Herman-Wolfe-TWU.pdf.

Whatcott, supra note 13, at para 155.

²⁸ *Ibid.* [emphasis added].

free" school environment, which is no more of a right guaranteed by freedom of religion than a "women-free" or "Jew-free" campus would be.

Even if a violation of freedom of religion could be demonstrated, s. 1 of the *Charter* would require that it be reconciled with the right to equality accorded to all Canadians.²⁹ One would have to account for the fact that the exercise of freedom of religion by Trinity Western's members denies LGBTT's faculty and students respect for their dignity and equality, as protected by s. 15(1) of the *Charter*. As the Supreme Court held in *Ross v. New Brunswick School District No. 15*,³⁰ "[w]here the manifestations of an individual's right or freedom are incompatible with the very values sought to be upheld in the process of undertaking a s. 1 analysis, then, an attenuated level of s. 1 justification is appropriate."³¹ For these reasons, we believe that Trinity Western's exclusion of LGBTT individuals would not meet this test.

To sum up, we believe that freedom of religion does not allow one group of individuals to exclude another group of identifiable individuals from access to a public service, such as a university education, on the ground of race, colour, religion, national origin, gender, sexual orientation, gender identity, age or disability, except of course when academically justified based on admission and eligibility criteria.³² In our view, institutional rules that discriminate against identifiable groups of people, which for too long restricted or denied access to some professions to certain racial and religious minorities,³³ have no place in today's Canada.

E. The U.S. Experience

These issues may be informed by the U.S. experience and approach.

In Bob Jones University v. United States,³⁴ the U.S. Supreme Court was called on to determine whether the Internal Revenue Services (IRS) could deny tax-exempt status to two non-profit private schools that prescribed and enforced racially discriminatory admission standards on the basis of religious doctrine.³⁵ The IRS had removed the schools' charitable status on the ground that their admission policies and rules of conduct violated federal anti-discrimination laws.

The Court confirmed the IRS's decision, holding that it was justified under the circumstances. The Chief Justice noted that "racial discrimination in education violates deeply and widely accepted views of elementary justice" 36 and the "governmental interest [in eradicating racial discrimination in education] substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs." 37

Whatcott, supra note 13, at para 161.

^{30 [1996] 1} S.C.R. 825.

lbid., para 94, cited in Whatcott, supra note 13, at para 162.

University of British Columbia v. Berg, [1993] 2 S.C.R. 353.

For example, up to the 1960s, McGill University and U of Toronto imposed "quotas" on the admission of Jewish students to medical school and restrictions on hiring Jewish faculty members; see Gerald Tulchinsky, Canada's Jews: A People's Journey, Toronto: University of Toronto Press (2008), pp. 132-133, 319-321, 410 and 415.

³⁴ 461 U.S. 574 (1983) ("Bob Jones University").

Bob Jones University was dedicated to the teaching and propagation of fundamentalist Christian religious beliefs, requiring its teachers to be devout Christians, with all courses being taught according to the Bible. Entering students were screened on their religious beliefs and their public and private conduct was regulated by standards promulgated by university authorities, including a complete ban on interracial dating and marriage, which was genuinely believed to be forbidden by scriptures. Goldsboro Christian Schools also gave special emphasis to the Christian religion and the ethics revealed in the Bible. The school maintained a racially discriminatory admission policy based upon its interpretation of scripture. It accepted mostly Caucasians and, on occasion, children from racially mixed marriages in which one of the parents was Caucasian.

Bob Jones University, supra note 42, at p. 592.

³⁷ *Ibid.*, at p. 604.

The same may be said of discrimination on the basis of sexual orientation in Canada, which is prohibited under the *Charter* as well as federal, provincial and territorial human rights laws. That was the question at issue in *Christian Legal Society of University of California, Hastings College of Law v. Martinez*³⁸, where the U.S. Supreme Court had to determine whether a public law school, part of the state government's network of universities, could refuse to officially recognize a student group that denied membership to students who did not share the organization's core beliefs about religion and sexual orientation, but instead require that it open its membership to all students irrespective of their religious beliefs or sexual orientation.³⁹

The Court found that although the group's core beliefs enjoyed protection under the First Amendment of the U.S. Constitution, (which guarantees freedom of speech, association and religion) the university's refusal to recognize organizations that practiced discrimination fulfilled "reasonable educational purposes." The group had argued that the university held no legitimate interest in urging "religious groups not to favor coreligionists for purposes of their religious activities." The Court's response was:

[...] CLS's analytical error lies in focusing on the benefits it must forgo while ignoring the interests of those it seeks to fence out: Exclusion, after all, has two sides. Hastings, caught in the crossfire between a group's desire to exclude and students' demand for equal access, may reasonably draw a line in the sand permitting all organizations to express what they wish but no group to discriminate in membership. [Footnote omitted] [Emphasis added]⁴¹

In concurring reasons, Stevens J. noted that the constitutional protection afforded to freedom of religion and speech does not impose on a government agency the obligation to officially recognize every religious organization, irrespective of their discriminatory beliefs and conduct:

[...] Other groups may exclude or mistreat Jews, blacks, and women—or those who do not share their contempt for Jews, blacks, and women. A free society must tolerate such groups. It need not subsidize them, give them its official imprimatur, or grant them equal access to law school facilities. [Emphasis added]⁴²

In August 2012, the American Bar Association adopted new *Standards and Rules of Procedure for Approval of Law Schools.*⁴³ Standard 211, "Non-discrimination and Equality of Opportunity", stipulates that "[a] law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability."⁴⁴ Although law schools may have a religious affiliation or purpose, adopt and apply admission and employment policies that directly relate to their affiliation or purpose, and prefer persons adhering to same, the policies must not interfere with academic freedom and "shall not be applied to use admission policies or take other action to

³⁶ 561 U.S. ___ (2010) ("CLS").

Christian Legal Society's chapters had to adopt bylaws that required members and officers to sign a "Statement of Faith" and to conduct their lives in accord with prescribed principles. Among those tenets was the belief that sexual activity should not occur outside of marriage between a man and a woman, thereby excluding LGBTT students and those who did not share the group's religious views on such issues.

⁴⁰ CLS, supra note 46, at p. 2 of the Court's opinion, written by Ginsburg J.

Ibid., at p. 28 of the Court's opinion, written by Ginsburg J.

¹² Ibid., at p. 6 of Steven J.'s concurring opinion.

Available online at:
http://www.americanbar.org/content/dam/aba/publications/misc/legal-education/Standards/2012-2013-ab-a-standards-and-rules.authcheckdam.pdf.

⁴⁴ *lbid.*, at p. 12.

preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability."45

F. Conclusions

Lawyers are viewed as leaders in their communities. Lawyers rely on law societies to offer leadership and regulation in the public interest, including on issues relating to equality. SOGIC and the Equality Committee believe that the Federation must consider the educational philosophy and environment of a law school and how that impacts the institution's ability to teach law, to properly perform its function of assessing compliance with the National Standards. As the U.S. Supreme Court held in *Norwood v. Harrison*, 46 "a private school—even one that discriminates—fulfills an important educational function; however. [...] [that] legitimate educational function cannot be isolated from discriminatory practices. [...] [D]iscriminatory treatment exerts a pervasive influence on the entire educational process."47

Our members are your members. They have voiced concerns about Trinity Western's proposal to us, and we agree. We have seen Canadian law societies work to protect and encourage diversity in law and in the practice of law and we view them as allies in this regard. Whether via an Equity Office or Officer, Equity Ombudsman, or a like representative, our law societies have done our members proud. We are asking them, and the Federation, to honour and continue that tradition. We urge you to reconsider your stance in pursuance of the law societies' duty to regulate the legal profession in the public interest.

The Federation must strike a balance between freedom of religion and equality, and give full consideration to its public interest mandate and to the values embodied in our human rights instruments. In that respect, we invite the Federation to seek inspiration from the ABA's August 2012 Standards and Rules of Procedure for Approval of Law Schools.

Finally, Trinity Western's application does not necessarily call for an "all or nothing" response. For example, short of rejecting it, the Federation could ask Trinity Western to remove or modify its Covenant and other rules, practices and policies which detract from its ability to meet the National Standards and to comply with human rights laws across the country as well as minimum norms guaranteeing academic freedom. This could be achieved while maintaining the Christian character of the school, yet ensuring that it is truly open to "young people of any race, colour, or creed," in accordance with its statutory mandate.

We hope this letter is the beginning of an open dialogue on this very important issue. SOGIC and the Equality Committee would be pleased to assist in whatever way you believe would be appropriate.

Yours truly,

(signed by Rebecca Bromwich for Amy Sakalauskas, Robert Peterson and Level Chan)

Amy Sakalauskas Co-chair, CBA Sexual Orientation and Gender Identity Conference Robert Peterson Co-chair, CBA Sexual Orientation and Gender Identity Conference Level Chan
Chair, CBA Equality
Committee

cc: See Appendix A

⁴⁵ Ibid., at pp. 12-13 [emphasis added].

^{46 413} U.S. 455 (1973). The Court held in that case that a state could not constitutionally give or lend textbooks to students who attended a private school that discriminated on the basis of race.

⁴⁷ *Ibid.*, at pp. 468-469 [emphasis added].

Justine Clark

From: Roy A. Nieuwenburg [RAN@cwilson.com]
Sent: Monday, February 17, 2014 10:56 AM

To: Submissions

Subject: The Law Society of B.C. is accepting input - Controversy over Trinity Western's 'community

covenant' [CWILSON-C.FID334039]

Attachments: id=9513590&sponsor=.pdf

Follow Up Flag: Follow up Flag Status: Flagged

The Law Society of BC Attention: Executive Director, 845 Cambie Street, Vancouver, BC, V6B 4Z9

I want to offer my view on this issue.

In the Vancouver Province article attached, Thomas J. Schonhoffer, Executive Director of the Law Society of Saskatchewan is quoted as saying:

"This is an issue that very reasonable people can differ on,"

I don't agree. I believe it is unreasonable for the legal profession to tolerate this intolerance by Trinity Western University. I perceive the policy of Trinity Western University as repugnant discrimination, thinly disguised. It should not be shielded by religious protection. In my opinion such discrimination under the guise of a "community covenant" has no place in the legal profession.

Roy Nieuwenburg

Roy Nieuwenburg | Clark Wilson LLP

Roy A. Nieuwenburg Law Corporation 900-885 West Georgia Street | Vancouver, BC | V6C 3H1 Tel: 604.643.3112 | Fax: 604.687.6314 | Email: ran@cwilson.com www.cwilson.com | Contact Information | Profile

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Controversy over Trinity Western's 'community covenant' could threaten mobility of its law graduates

BY GLENDA LUYMES, THE PROVINCE FEBRUARY 15, 2014





Oct. 21, 2013 - Toronto-based protesters opposed to Trinity Western Universitys application to open a law school in B.C. About 30 people protested in front of a courthouse at Osgoode Hall in Toronto on Oct. 18. Photo by Mark Smith. For story by Kent Spencer.

Photograph by: PROVINCE

A proposed law school at Trinity Western University in Langley is creating controversy across the country, with some saying it could threaten the system that allows Canadian lawyers to practice in any province.

Lawyers and law professors have been putting pressure on their provincial law societies, asking them to consider not recognizing future law graduates of TWU, a faith-based school that requires students to sign a "community covenant" forbidding same-sex intimacy.

As a result, several law societies, including B.C., Ontario and Nova Scotia, have initiated processes to decide whether to grant accreditation to the TWU law school.

If they decide not to, law degrees from the school could be worthless in those provinces.

Other law societies, such as Alberta and Saskatchewan, have stated they will go along with the recommendation of the national Federation of Law Societies to approve the school in hopes of preserving national mobility agreements.

"We have worked tirelessly to ensure that Canadian lawyers have full mobility rights within Canada, as that is a real benefit for clients and their lawyers," wrote former Law Society of Alberta president Carsten Jensen in a letter to the Calgary Herald explaining the society's decision to follow the federation's lead.

He pointed out that the national mobility regime was only recently finalized in fall with Quebec's full participation.

"Mobility is a huge achievement for the profession, for our clients, and for internal trade in Canada," he said.

Nonetheless, the society would welcome a review of the federation's decision, said Jensen, adding "our position is that the review should take place at the national level to preserve mobility."

The Law Society of Saskatchewan has taken a similar approach, with its executive director telling The Province the society delegates accreditation decisions to the federation and will abide by its decision.

"This is an issue that very reasonable people can differ on," said Tom Schonhoffer. "We're talking about reconciling freedom of religion and equality rights."

Opponents of the TWU law school, including lawyers, law professors and members of the LGBT community, say the school's policy requiring students and staff to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman" is discriminatory and would impact the ability of the school to teach law.

In an earlier statements on the controversy surrounding the school's approval, TWU president Bob Kuhn said that within the 2005 legislation that changed the definition of marriage in Canada, "religious communities, such as TWU, retain the right to define marriage according to their religious precepts."

He said gay students are welcome to attend the TWU law school "providing they meet our academic requirements and agree to respect our community values. Like most religious communities, we have established a set of values and principles to guide our daily lives."

But while B.C.'s Ministry of Advanced Education has given the law school the green light, Canada's law societies have the final say on what they define as approved faculties of law.

The Law Society of B.C. is accepting input from both lawyers and the general public until March 3 as it decides on the TWU school's accreditation.

In January, the University of B.C. Law Faculty Council announced it had passed a motion urging the society to carefully consider the effect of a law program at TWU, while the University of Victoria Law Faculty Council is also considering its position, with members set to meet Feb. 26.

Meanwhile, the Nova Scotia Barristers' Society heard submissions on the TWU school last week, with the majority of speakers, including faculty from the law school at Dalhousie University, saying it should not be accredited in the Maritimes province.

In Ontario, the Law Society of Upper Canada will define a process for input on TWU accreditation at its next meeting Feb. 27, spokesman Roy Thomas told The Province.

Like most legal matters, the fate of the TWU law school, and the differing positions of Canada's law societies, could eventually end up in court, possibly putting the school's anticipated opening in 2016 out of reach.

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Oct. 21, 2013 - Toronto-based protesters opposed to Trinity Western Universitys application to open a law school in B.C. About 30 people protested in front of a courthouse at Osgoode Hall in Toronto on Oct. 18. Photo by Mark Smith. For story by Kent Spencer.

Photograph by: PROVINCE





Vincent R.K. Orchard, Q.C. T 604.640.4126 F 604.622.5826 vorchard@blg.com

File No. 525945/000182

March 3, 2014

BY E-MAIL

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention:

Mr. Tim McGee, Q.C.

CEO

Dear Sir:

Re: Trinity Western University Proposed Law School

I write to urge the Benchers to refuse to accredit a new law school which mandates a discriminatory code of conduct. I do not oppose approval by the Benchers of the proposed curriculum of the new law school without the discriminatory code of conduct.

I cannot say strongly enough that I support the fundamental constitutional guarantees of freedom of thought and freedom of religion. However, the University's code of conduct is not about freedom of belief but rather about institutional conduct and coerced action. Just as the Governor of Arizona has recently vetoed a legislative bill that would allow those with "sincerely held" religious beliefs to refuse service to others, the Benchers should have the courage to take a stand for what is right. In my opinion, if the Benchers approve the law school's curriculum with the code of conduct the Benchers are allowing freedom of religion to excuse bigotry and institutional homophobia.

To approve the proposed law school's curriculum but to oppose the mandatory discriminatory code of conduct would balance freedom of religious belief and thought and the protection of minority groups against discriminatory conduct.

VAN01: 3477583: v1

With recent developments in Uganda and in Russia, this is an important historical moment for the Benchers to stand against a discriminatory code which is offensive to the LGBT community. I urge the Benchers not to "rubber-stamp" the decision of the Federation.

Yours truly,

By:

Vincent R.K. Orchard, Q.C.

VRO:tc

Justine Clark

From: Louise [louise@orrislawcorp.com]
Sent: Monday, February 17, 2014 1:13 PM

To: Submissions

Subject: Trinity Western University

Attachments: DOC021714-02172014130027.pdf

Follow Up Flag: Follow up Flag Status: Flagged

See attached.

Louise Young,
Secretary
Glen Orris, Q.C.
Barrister
500 - 815 Hornby Street
Vancouver, B.C. V6Z 2E6
Telephone: 604-669-6711

----Original Message----

From: Orris Law [mailto:louise@orrislawcorp.com]

Sent: February 17, 2014 1:01 PM

To: Louise

Subject: Send data from e2830c 02/17/2014 13:00

Scanned from e2830c. Date: 02/17/2014 13:00

Pages:6

Resolution:200x200 DPI

SUBMISSION BY GLEN ORRIS, Q.C. TO THE LAW SOCIETY OF BRITISH COLUMBIA RE TRINITY WESTERN UNIVERSITY AND ITS PROPOSED FACULTY OF LAW

It would be embarrassing to me and I am sure the majority of members of the Law Society of British Columbia should the Society sanction a law degree issued by Trinity Western University. The embarrassment arises out of the University's "Community Covenant Agreement" ("the Covenant"). This is a contract that the University requires all of its students to sign before they will be admitted. The Covenant requires any prospective student to affirm that:

- I have accepted the invitation to be a member of the TWU community with all the mutual benefits and responsibilities that are involved;
- I understand that by becoming a member of the TWU community I have also become an ambassador of this community and the ideals it represents;
- I have carefully read and considered TWU's Community Covenant and will join
 in fulfilling the responsibilities while I am a member of the TWU community.

As I see it, there are three distinct criticisms of the Covenant. These are:

- Provisions of the Covenant are contrary to the equality provisions of the Charter of Rights and Freedoms;
- The Covenant contains a definition of "freedom" which is not one that should be adopted or sanctioned by the Law Society.
- The Covenant takes away from all students the common law freedom of choosing not to be an informant.

In the discussion below I do not concern myself with Christian principles. I acknowledge that the *Charter of Rights and Freedoms* allows anyone freedom of religion. Specifically within the Christian religion, one has the freedom to choose to live by those Christian principles one accepts. I do not discuss interpretations of the Bible. The Bible can be interpreted any way an individual sees fit.

I am aware, of course, that organizations, companies, corporations, clubs or even universities that are private and not funded by any government monies, are not obliged to

comply with the *Charter of Rights and Freedoms*. I would hope, though perhaps naively, that all such organizations would strive to do so.

Community Covenant Agreement

1. <u>Inequality</u>

The Covenant does not recognize a marriage other than between a man and a woman. Under the heading within the Covenant "Community Life at TWU", the Covenant states that members of the TWU community are, *inter alia*, <u>committed to</u>:

- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society
- observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, ..."

There is nothing objectionable with respect to these above bullet points. However, under the same heading the Covenant states:

"In keeping with biblical and TWU ideals, community members <u>voluntarily</u> <u>abstain</u> from the following actions: (emphasis added)

• sexual intimacy that violates the sacredness of marriage between a man and a woman"

Under the heading "Healthy Sexuality" the Community Covenant states:

"Further, 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."

I do not claim to be qualified to speak of "God's intention", but these statements clearly are a violation of the equality sections of the *Charter of Rights and Freedoms*.

Although the TWU community does not acknowledge marriages other than between a man and a woman, the community does not expressly reject or prohibit gay and lesbian people from attending the University. The clear prohibition, however, is the requirement of such persons to "voluntarily abstain" from sexual intimacy during the time that they attend the University.

As I understand the University's Covenant, if you are a gay or lesbian student and are married, you may still be able to attend the University as long as you agree not to engage in sexual intimacy.

This is clearly not a statement of principles but, in fact, is a statement of inequality. It is clearly contrary to the *Charter of Rights and Freedoms*. This is something the Law Society should find intolerable. The Society must accept the rule of law and the application of the *Charter of Rights and Freedoms* at a minimum. By sanctioning or recognizing degrees from TWU, the Society is agreeing with and condoning the so-called Christian principles of that University. These so-called principles clearly lead to what would in a public institution be considered a violation of the *Charter of Rights and Freedoms*.

2. <u>Unacceptable Definition of "Freedom"</u>

The Covenant under the heading "Areas for Careful Discernment and Sensitivity" states the following:

"A heightened level of discernment and sensitivity is appropriate within a Christian educational community such as TWU. In order to foster the kind of campus atmosphere most conducive to university ends, this covenant both identifies particular Christian standards and recognizes degrees of latitude for individual freedom. True freedom is not the freedom to do as one pleases, but rather empowerment to do what is best." (emphasis added)

The Covenant does not specify what is "best". Nor does it specify who at TWU determines what is "best". Undoubtedly that person or those persons who have drafted the Covenant will be the persons who decide which "Christian principles" are appropriate and what is "best".

This is not a definition of "freedom" that the Law Society should condone. By sanctioning or accepting TWU's degrees, the Law Society by implication clearly accepts this definition of "freedom". Acceptance of such a definition of "freedom" in this context cannot be rationalized by the Law Society.

The Freedom Not To Inform

The Covenant under the heading "Commitment and Accountability" states, *inter alia*, as follows:

"Students sign this covenant with the commitment to abide by the expectations contained within the Community Covenant, and by campus policies published in the Academic Calendar and Student Handbook.

Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility."

It is clear from this part of the Covenant that it requires each student or member of the community to report to the appropriate authorities any breach or, I assume, anticipated breach of the Covenant. There is in our everyday life a freedom not to report something which is obviously a crime or criminal activity. We all have the right to choose not to get involved even if we witness a criminal act or become aware of information that supports a criminal charge. This may be morally difficult for some people as it relates to criminal activity.

This Covenant does away with that basic freedom and compels all members or students to inform on their fellow students if they believe or are suspicious that the Covenant has been violated. These are not criminal acts that we are talking about but simple violations of the so-called "Christian principles".

Surely this is not a form of agreement that the Law Society wants to be seen to be approving or sanctioning by recognizing this University's degrees.

Conclusion

TWU, the Society would be sanctioning those portions of the Covenant that are obviously violations of the *Charter of Rights and Freedoms*. The Society would be sanctioning the definition of "freedom" and the requirements of the members that are unacceptable and embarrassing to the Society as a whole. By sanctioning a degree from TWU, the Law Society would be stating that such a degree had the same weight and authority and prestige as a law degree from the University of British Columbia, University of Toronto or any other recognized law schools in Canada. None of these schools restrict rights or define "freedom" as TWU does. To treat the TWU degree in the same way as the degrees from other universities would be an embarrassment to those universities and I strongly suggest an embarrassment to the Law Society of British Columbia.

It is hypocritical on the part of TWU on the one hand to claim to submit to the laws of this country and to claim to be able to teach the laws of this country, of which the

Charter of Rights and Freedoms is the ultimate law, and then to practice the inequalities and to expound requirements set out in the Covenant which are in conflict with those laws.

Finally, in considering whether a graduate of TWU would be an appropriate person to be called to the bar and to practice law, one would have to take into account the fact that person has signed the Covenant. Assuming that they have complied with that Covenant, they have agreed to concepts contained therein which, in my view, are contrary to the law.

On the other hand, if a prospective member of the bar coming from TWU says "I signed the Agreement but did not comply with its terms", then it could be argued that he has breached the contract or lied by signing it. Again, this reflects on his or her character and whether he or she would be a person appropriate to be called to the bar and practice in British Columbia.

For all of these reasons the Law Society should reject any recognition of law degrees from Trinity Western University.

All of which is respectfully submitted.

February 17, 2014

UVic OUTlaws University of Victoria Faculty of Law
UBC OUTlaws University of British Columbia Faculty of Law
TRU OUTlaws Thompson Rivers University Faculty of Law
OUTlaw Alberta University of Alberta Faculty of Law
USask OUTlaws University of Saskatchewan College of Law
Manitoba OUTlaws University of Manitoba Faculty of Law
Windsor OUTlaws University of Windsor Faculty of Law
Western OUTlaws Western University Faculty of Law



Out In Law University of Toronto Faculty of Law
Osgoode OUTlaws Osgoode Hall Law School, York University
Queen's OUTlaw Queen's University Faculty of Law
uOttawa OUTlaw University of Ottawa Faculty of Law
OUTlaw at McGill McGill University Faculty of Law
UNB OUTlaw University of New Brunswick Faculty of Law
OUTlaw Society Schulich School of Law, Dalhousie University

February 24, 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Dear President Lindsay and Benchers:

We are writing in our capacities as leaders of LGBTQ affinity groups and organizations at Canadian law schools regarding Trinity Western University's (TWU's) proposed law school. TWU's program is currently seeking the approval of the provincial law societies for admission to the bar of each jurisdiction. In B.C., this accreditation process falls within the authority of the Law Society of British Columbia (LSBC). We have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. We urge you to refuse or qualify TWU's accreditation. We also encourage you to advance an accreditation requirement in your province that prevents any accredited law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to our concerns is the fact that TWU forces its students to sign a 'Community Covenant Agreement' requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Students who do not comply with the agreement may be removed from the university without readmission. The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,³ the Canadian Bar Association,⁴ the Canadian Federation of Students,⁵ numerous prominent lawyers and academics, law school faculty councils,⁶ editorial boards,⁷ and over one thousand law students.⁸ They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing

¹ Trinity Western University Community Covenant Agreement at page 3, available online: < http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

² Trinity Western University Student Handbook, Student Accountability Process, available online:

http://twu.ca/studenthandbook/university-policies/student-accountability-process.html

³ Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC

⁴ Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC

⁵ Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/

⁶ Four law school faculty councils have passed motions condemning the Community Covenant Agreement: Osgoode (http://bit.ly/1ICEL16), Queen's (http://bit.ly/1e7xLri), UBC (http://bit.ly/1flQgX2). Faculty from Alberta's 2 law schools have also expressed their concerns in an open letter (http://bit.ly/1flYkL6).

⁷ The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/

⁸ Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC; Media Release from Canadian Law Students, March 18, 2013, available online: http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC;

legal ethics, or promoting academic freedom. Our agreement with these views is underscored by the fact that many of our LGBTQ peers have been subjected to systemic discrimination, exclusion, and hatred related to their sexual orientation. It would be tremendously disheartening to see the profession's leadership support policies which perpetuate these unfortunate experiences and constrain access to legal education for LGBTQ individuals. Institutionalizing the targeted humiliation of LGBTQ individuals is unacceptable.

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see some law societies remain silent on this issue - deferring to Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that we learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade.

Further, the FLSC's protracted and closed-door process was patently not in the public interest – contrary to the mandate of the LSBC. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key finding on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

In 2014, the FLSC's decision offends more than contemporary Canadian sensibilities. Our understanding is that it is also legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers. Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of Whatcott departs from the 2001 Trinity Western decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.
- Second, the 2012 SCC decision in *Doré*¹¹ now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt LSBC to heavily scrutinize the FLSC recommendation.

The law schools we attend have made a priority of making legal education more accessible, practical, and representative of Canadian society. The leadership of the B.C. profession should demonstrate the same interests in rendering their decision on TWU's accreditation. As future lawyers, we are committed to equality and promoting the values of the *Charter* within our practices. Our experiences have taught us that such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. We strongly recommend that you oppose or place conditions on TWU's

¹⁰ Saskatchewan (Human Rights Commission) v Whatcott, 2013 SCC 11, available online: http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

¹¹ Doré v Barreau du Québec, 2012 SCC 12, available online: http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf

LSBC accreditation. We look forward to a properly balanced and progressive decision from the law society on this important issue, and appreciate this opportunity to provide input to the process. Should you wish to correspond with us as a group, please email outlawscanada@gmail.com.

Sincerely,

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Robert A. Peterson, Co-Chair, Sexual Orientation & Gender Identity Conference, Canadian Bar Association, 500-865 Carling Avenue, Ottawa, ON, K1S 5S8; robert.peterson@govlaw.ca

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The Honourable Amrik Virk, Minister of Advanced Education (British Columbia), Room 133, Parliament Buildings, Victoria, BC, V8V 1X4; aved.minister@gov.bc.ca

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Danielle R. Jarvis, Chair, Sexual Orientation & Gender Identity Conference, CBA British Columbia, 300-1090 Homer Street, Vancouver, BC, V6B 2W9, B3H 1Y6; danielle@jarvislegal.ca

Maria Morellato, QC, Chair, Equality and Diversity Advisory Committee, Law Society of British Columbia, Mandell Pinder LLP, Suite 422, 1080 Mainland Street, Vancouver, BC, V6B 2T4; maria@mandellpinder.com

From:

Joe Page [joe@adrianlaw.ca] Thursday, January 30, 2014 1:40 PM Sent:

Submissions To:

Trinity Western proposed lawschool Subject:

Follow up Follow Up Flag: Completed Flag Status:

Dear Benchers,

No need for another law school in BC or in Canada for that matter; our 2 dozen or so law schools are pumping out enough lawyers.

J.

Joseph Pagé

Adrian & Co. Barristers & Solicitors 5660 Yew Street, Vancouver, BC V6M 3Y3

Phone: 604-266-7811 604-266-5869 Fax: joe@adrianlaw.ca

From: Elizabeth Pan

Sent: Friday, February 28, 2014 11:46 PM

To: Submissions

Subject: Submissions on TWU's Proposed Law School

Attachments: Submissions .pdf

Follow Up Flag: Follow up Completed

Hello,

Please see the attached document for my submissions in response to the Law Society's invitation to provide input for its consideration of TWU's proposed law school.

Many thanks for your consideration.

Liz

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Elizabeth Pan, B Mgt Vice President of Academic Issues, UBC Law Students' Society

e: academic@ubclss.com w: www.ubclss.com I am a third year law student at the University of British Columbia Faculty of Law. This document is my response to the Law Society's request for input on the question of accrediting a proposed law school at Trinity Western University ("TWU").

As a future member of the legal profession, I am committed to the values of equality, inclusiveness, and diversity to best reflect the high standard of conduct demanded by my unique position in the community to uphold the rule of law and protect minimum ethical standards. I expect the same commitment of my peers and future colleagues, including those members of the Law Society entrusted with the public interest mandate of regulating the practice of law for the benefit of society.

The Code of Professional Conduct evinces these fundamental values in a number of provisions of particular salience to the current circumstances. These provisions impose ethical imperatives binding upon each member of the legal profession operating under the Law Society's auspices, including the following:

A lawyer must not discriminate against any person...

A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.

I acknowledge, recognize, and celebrate diversity and refuse to perpetuate inequality in any form. Until all of us are free from discrimination, none of us are free. This is why TWU's Community Covenant, which discriminates against potential members of the legal profession on a ground that strikes at the core of their very identity – at their true *selves* – is not only offensive, but repugnant, and harmful to our collective reputation as a pillar of society tasked with a vital role in the administration of justice.

Justice knows no differences based on distinctions lacking any moral relevance. Neither should the Law Society. I am proud to have persons who identify as LGBT as my colleagues, as my teachers, and as my friends, and I am accordingly compelled to stand up and speak out against the intolerance reified by TWU's Community Covenant in order to protest what I know is an injustice that undermines the inherent value of individuals, based merely on their sexual orientation.

The Law Society's public interest mandate demands leadership on its part on matters of ethics and values. Your words and actions carry significant public import and I believe that you are consequently obliged to challenge the pernicious policies of the proposed law school at TWU in a way that is consistent with your mandate and your role in the community, for the sake of the legal community, as well as the general public.

I accept that TWU is entitled to deference in setting those values it wishes to uphold as an evangelical Christian institution. Such deference is however limited, and must be curtailed when it comes to the exclusion or discipline of students, faculty, or staff on indefensible grounds. I urge the Law Society to reject TWU's application as it stands as far as its policy that discriminates against LGBT people is inextricable from the proposed institution. Religious freedom must be protected, but only to the extent that it does not sacrifice or compromise the inherent value of each person, regardless of sexual orientation, and the opportunities that a legal education affords.

It is not enough to say that LGBT people can simply go elsewhere. The Law Society has as a duty to preserve, protect, and promote the values of equality, inclusiveness, and diversity embedded within our profession, and I implore you to uphold that duty in making your decision by rejecting TWU's proposal.

Elizabeth Pan 3L student, UBC Faculty of Law

From: Tony and Tris Pargeter

Sent: Saturday, March 01, 2014 6:17 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

I strongly believe that the practice of law and the justice system in Canada and British Columbia must be based on our laws, Constitution and Charter of Rights and Freedoms. The philosophy of Trinity Western University is clearly based on a different set of priorities – those set out in the scriptural doctrines of one particular religion, founded in the mores and limited knowledge of a desert society many centuries ago. TWU requires students and faculty to declare adherence to significant elements of that belief system which are in blatant opposition to human rights as our modern Canadian society has defined them.

I therefore do not believe it is appropriate for the Law Society to accept this prejudiced institution as qualified to train lawyers who would practice in our justice system, which is and should always be based on secular, not religious, values and precedents.

Thank you for considering my submission.

Tony Pargeter

Victoria, BC

From: Preston I. Parsons [Preston@overholtlawyers.com]

Sent: Monday, March 03, 2014 11:29 AM

To: Submissions

Subject: TWU Law Submission

Attachments: LT to LSBC dated March 3 2014 re Accreditation of TWU Law (00041579).docx

(00044242).pdf

Follow Up Flag: Follow up Flag Status: Follow up

Good Day,

Please see the attached submission with respect to the accreditation of TWU Law. We hope that the LSBC remains open to considering our views on this important topic.

Warm regards,

Preston I.A.D. Parsons



Barristers & Solicitors

600 – 889 West Pender Street Vancouver, BC V6C 3B2

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in LinkedIn

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BY EMAIL (submissions@lsbc.org)

March 3, 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Executive Director

Dear Sirs/Mesdames,

Re: Accreditation of Trinity Western University's Law School ("TWU Law")

We, the undersigned, write with respect to the call for submissions made by the Law Society of British Columbia (the "LSBC") in relation to the accreditation of TWU Law. We recognize that the Benchers of the LSBC are faced with making a difficult decision and we hope that our submission may be of assistance.

There have been academic papers and submissions written on the topic and provided to the LSBC. One submission is that drafted by the Canadian Bar Association Equality Committee and Sexual Orientation and Gender Identity Conference. We entirely adopt and endorse this submission.

This letter serves to highlight our views on some of the issues raised in accrediting TWU Law. Together, these practical points illustrate why TWU Law is problematic for the legal profession and for Canadians.

- 1. To start with, it must be emphasized that this is not simply a matter of LGBTQ Rights vs. Religious Rights, although much media attention has been directed at the two. The mandatory Community Covenant (the "Covenant") touches on much more than just differential and discriminatory treatment for LGBTQ persons.
- 2. As you are aware, there are a substantial number of voices both in support of and in opposition to TWU's law school proposal. Many of these voices appear to be aimed at confusing the dialogue surrounding this issue. Many supporters of TWU Law have attempted to characterize those opposed to TWU Law as running rampant over freedom of religion, carelessly sacrificing it in the name of enhanced freedom of equality.
- 3. In our view, opposing TWU Law does <u>not</u> constitute an attack on:
 - (a) religion;
 - (b) lawyers, law students, or members of the public with sincerely held religious beliefs; or
 - (c) religious teachings.

¹ http://www.cba.org/CBA/submissions/pdf/13-18-02-eng.pdf

- 4. What opposing TWU's Law School does mean is:
 - (a) the recognition that as a basic requirement, the most diverse public legal spaces possible are needed to stimulate full dialogue in Canada's law schools;
 - (b) a stance against a law school with admission policies which perpetuate the historically disadvantaged status and stigma faced by LGTBQ persons, among others; and
 - (c) the exploration of an issue that has not been explored in Canada until TWU's proposal: What is the appropriate training ground for (Canadian) legal minds?
- 5. The practical consequences of approving TWU Law are difficult to know with certainty. To say that all graduates of TWU Law would be inevitably homophobic is not an argument that can succeed. The Covenant however creates problems which should be concerning to the LSBC in one of two ways:
 - (a) Fully believing in and agreeing to adhere to the terms of the Covenant when one signs it is evidence of a restricted viewpoint. It is difficult to develop an appreciation for all aspects of law within a dogmatic environment. This calls into question TWU's ability to properly provide an appropriate learning environment for the full appreciation of Canadian law, legal ethics² and professionalism.³
 - (b) If one decides to attend TWU Law and signs the Covenant without any regard for its contents, then TWU is training law students who begin law school learning that when faced with important documents, they can sign them without examining their contents or without care for abiding by their terms. This calls into question the character and integrity of the individuals who sign the Covenant in these circumstances.
- 6. Those who have characterized this as a debate between freedom of religion vs. freedom of equality believe that these freedoms are two sides to the same coin; in other words that after the coin toss, there can only be one side that wins.
- 7. This characterization however is misleading. Freedom of religion and freedom of equality are not two sides of the same coin here but rather, two different coins. Historically, the freedom of equality coin has had to fight hard to achieve parity with the freedom of religion coin. TWU's law school is another example of this.

² We digress on the point of "legal ethics" for a moment. Legal ethics, are a particular set of rigid standards that may often conflict with personal or religious morals that may otherwise suggest a different personal set of ethics. It is certainly not our position that graduates of TWU or future graduates of TWU are unethical or immoral human beings. The inquiry into whether or not TWU Law could meet the "ethics and professionalism" criteria for legal education however recognizes that it does not automatically flow that attendees of a religious institution are automatically deemed to be ethical, particularly when the institution in which they are trained is an exclusionary one.

³ In its December 2013 Report on Trinity Western University's Proposed School of Law Program, the Federation of Law Societies of Canada's Canadian Common Law Program Approval Committee demonstrated their "concern" in this area as a result of a tension between TWU Law's proposed program on Ethics, Professionalism and Constitutional Law and the Community Covenant: "the issue of whether students will acquire the necessary competencies in both Ethics and Professionalism, and Public Law is, at this stage, a concern..." [emphasis in original] (para 52). A "concern" is defined in the report as an instance "where an element of the national requirement is currently met, but compliance is at a minimum level that could deteriorate to a deficiency".

- To put if frankly, there are no law schools in Canada which restrict the religious beliefs of attendees. Any such law school would rightfully be condemned. While there are some who have argued that law students with religious beliefs feel "silenced" at Canada's public law schools, there are no such policies in place. No law student in Canada has to sign an agreement before registering for classes that says "I disavow all of my religious beliefs in order to attend this institution."
- 9. Law schools however, are not seminaries. Whether or not the peers of religious law students who raise theology in classroom discussions are receptive to religious teachings being debated in law classes, such students are free to hold those beliefs and speak of them. No one is constraining their freedom of religion, or freedom of expression. Furthermore, if law students with religious beliefs are experiencing marginalization in Canada's public law schools, then this is a problem that should be addressed within those schools to maintain the pluralism and diversity of the conversation amongst their student populations. The solution does not come from segregation by creating a separate "protected" space at TWU Law for those with religious beliefs.
- 10. Law schools, whether private or public, graduate students who often will engage in serving the public in broad ways. It is unlikely that graduates of TWU Law would only interact with other TWU Law graduates but will rather have careers that bring them and their professional duties into contact with all manner of people and roles in Canadian public life. If TWU Law grads aspire to the judicial bench, this is undoubtedly a public function of great importance to which they may one day ascend.
- Unfortunately, TWU seeks to create an exclusionary legal training environment with less diversity, and TWU is happy with that. The fact that TWU requires students to sign the Covenant is irrefutable evidence that TWU seeks to limit the diversity of its students and faculty. This is bolstered by the fact that TWU considers the Covenant to be more than a mere formality and threatens discipline and expulsion for breach of the Covenant.4
- 12. TWU states that students have the free choice of whether to attend the institution or not. This point is irrefutable. Students who object to signing the Covenant can of course apply to the other law schools in Canada. However, if a gay male married to his partner applies to several Canadian law schools and is only admitted at TWU, he may well think he has no choice but to suffer the indignity of attending and signing the Covenant in knowing breach of its terms, or be forced to not attend law school. TWU also arguably excludes legally married LGBTQ students and faculty who otherwise agree to the tenets of the Christian faith that TWU advocates for.
- The choice faced by these students is not one that a Canadian law school should force upon students, particularly those in historically disadvantaged groups. If law schools in Canada are permitted to discriminate against their student bodies, even under the guise of religious freedom, what kind of a statement does that say about our profession? The symbolic consequences for the legal profession and for the LSBC of approving TWU Law without conditions are dire.
- 14. The fact that British Columbia's Human Rights Code contains an exemption clause in section 41 is not determinative of this matter either. TWU is arguably not simply granting a preference to an

⁴ See the TWU Student Accountability Policy, Conduct Expectations: "It is the responsibility of each student to clarify any misunderstanding that may arise in their mind before committing their signature to this contract. The University does not view a student's agreement to comply with these standards and guidelines as a mere formality". Disciplinary actions are also included within the Student Accountability Policy: http://twu.ca/studenthandbook/university-policies/student-accountability-policy.html.

identifiable group in this instance. It is one thing for a law school to say "Come one and all, but we would especially like to assist students from Christian backgrounds in finding law school spots." It is quite another to say, effectively "Come one and all, except anyone who refuses to agree to adhere to and believe the things we do by signing this Covenant before registering for classes." If TWU did not have the Covenant in place, section 41 would arguably fit more neatly. But then again, if TWU did not have the Covenant in place, many of the points raised in opposition to TWU Law would be moot.

- 15. In the context of considering the applicability of section 41, the LSBC must also consider the national mobility of lawyers, and the fact that not all Canadian provinces have exemptions in their human rights legislation similar to section 41 in the BC *Human Rights Code*.
- 16. Viewing TWU's Law School application through a freedom of equality lens from both sides indicates the correct answer for the LSBC. From TWU's perspective, freedom of equality for their religion means that they should be permitted to open a law school. As secular schools are able to open a law school, it would be unfair to deny a religious school the ability to open one.
- 17. This, unfortunately, oversimplifies the issue. Truly considered, freedom of equality means that TWU should not be permitted to open a law school without conditions:
 - (a) The Covenant at TWU's Law School does not promote freedom of equality, or freedom of expression;
 - (b) TWU Law is not an affirmative action program. It does not have an ameliorative goal, but rather, a privileged and exclusionary goal. Allowing TWU to open a law school does not preserve and protect the rights and freedoms of people, but rather condones the blatant trampling of them; and
 - (c) There is no principled reason for a law school in Canada to require students to sign a Covenant to attend class and graduate.
- 18. The LSBC has in recent years taken a leadership position in advancing the interests and diversity of the legal profession by advocating for and developing initiatives on behalf of lawyers who traditionally face barriers including women, aboriginal persons, and persons with disabilities. We remain hopeful that the LSBC will take this same initiative to protect LGBTQ rights and the rights of others who are excluded by TWU's Covenant.
- 19. Rule 2-27(4.1(d)) of the Law Society Rules provides that the Benchers may adopt a resolution declaring a common law faculty of law has ceased to be an approved faculty of law.
- 20. In our view, the Benchers of the LSBC are entitled to, and in fact have an obligation to, assess the approval of a faculty of law based on the self-proclaimed fundamental values and principles of the LSBC, those being "the principles of equity, diversity, accessibility and inclusiveness." A determination that TWU Law is not an "approved faculty of law" accords with the LSBC's role to monitor "developments involving... access to justice, and equity and diversity in the legal profession."

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⁵ http://www.lawsociety.bc.ca/page.cfm?cid=5&t=Equity-and-Diversity

⁶ http://www.lawsociety.bc.ca/page.cfm?cid=2166&t=Access,-Equity-and-the-Rule-of-Law

- 21. We submit that an "approved faculty of law" must be one that welcomes the full range of human rights diversity in Canada. This view aligns with the recent "Non-Discrimination in Legal Education" Resolution passed by the Canadian Bar Association.⁷ A law school which purports to be within a private⁸ institution is still interwoven into the fabric of Canada and is no exemption to this rule. There cannot be "approved private faculties of law" as opposed to "approved public faculties of law". It is not enough that a law school purports to have a curriculum that would teach substantive law while doing so in an environment where students must agree not to be different to attend.
- 22. To be clear, no one is advocating that graduates of TWU Law would be terrible, unethical, or immoral people. That is not at issue. The issue is what effect having a law school with questionably and in some jurisdictions, blatantly discriminatory and exclusionary policies has on the legal landscape in Canada, the perception of the legal profession and the administration of justice. That answer cannot be a positive effect.
- 23. The crux of the problem is magnified when viewed in juxtaposition to the LSBC's *Code of Professional Conduct for BC*, Chapter 6, Rule 6.3-5: a lawyer must not "discriminate against any person." It is hard to reconcile this Rule (and human rights laws generally) with how TWU Law would operate wherein students and faculty are at risk of expulsion, discipline, or termination for breach of the Covenant for instance, for being legally married to a same-sex spouse. TWU wants a law school which, quite literally, does not have to play by the Rules, while purporting to graduate students capable of playing by the Rules later. TWU Law exists as an exception to the Rule and to the privilege of those who seek to exclude others with differing views. This goes beyond belief, to conduct.
- 24. We often speak of the role of lawyers and the public perception of what we do. Failing to take a principled stance against TWU Law will not enhance the perception of lawyers in the eyes of Canadians. In reviewing history, the trampling of minorities is never viewed favourably.
- 25. By declining to accredit TWU's Law School, or placing conditions on its accreditation, the LSBC would show true courage and leadership. For our part, one such condition would be to ask TWU to "Walk the Talk" by eliminating their Covenant. If TWU truly does welcome LGBTQ students to join their campus⁹ and such students do not risk expulsion for being who they are, then there is surely no need to hypocritically require students to sign a document such as the Covenant for entry to a legal education.

We thank you for taking the time to consider this submission and are grateful that the LSBC has allowed these submissions to be made.

Yours Truly,

Preston Parsons, Overholt Law

⁷ http://www.cba.org/CBA/resolutions/pdf/14-04-M-ct.pdf

Though we do not intend to explore this concept in depth, whether or not TWU Law can truly be considered "private" is an open question and TWU Law may indeed attract scrutiny under the *Canadian Charter of Rights and Freedoms*. Regardless, the LSBC needs to consider the *Charter* in making its decision.

⁹ See TWU Law Fact Sheet under Admission Policies: https://www.twu.ca/academics/school-of-law/twu-law-school-fact-sheet.pdf.

Danielle Jarvis, JarvisLegal Law Corporation
Matt Ostrow, MacLean Family Law
Janis Ko, Onyx Law Group
Cassidy Thomson, UVic Law Student
Sasa Pudar, UBC Law Student
Brent Ryan, TRU Law Student
Kerri Fisher, Counsel, BC Teacher's Federation

^{*}The views contained in this letter are personal to the individuals whose names are hereupon listed and such views are not necessarily the views of the firms or other members of the firms for which they work. Firm/Organization names have been listed to assist in identification purposes only.

From: Lorna Pawluk

Sent: Tuesday, February 11, 2014 4:00 PM

To: Submissions

Subject: TWU

Follow Up Flag: Follow up Completed

As a practitioner with more years experience than I would like to admit, I urge the Benchers to refuse to recognize any university that does not honour all aspects of human rights, including the rights of LGBT community. As a law school, TWU will presumably teach its students about the law of the land which recognizes the equality of all people; however recognizing Trinity Western University degrees is tantamount to accepting that a school does not have to practice what it preaches.

Thank you.

Lorna Pawluk



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From: Mike Preston

Sent: Sunday, March 02, 2014 10:22 PM

To: Submissions

Subject: Consideration of New Law School at TWU

Follow Up Flag: Follow up Completed

Dear Sirs/Mesdames:

The Law Society of British Columbia should not recognize the proposed TWU law school as an approved law school

The law in Canada recognizes that there is no hierarchy of equality rights. Barring someone on the grounds of their sexual orientation is no different than barring someone because of the colour of their skin.

The law in Canada also recognizes then when it comes to discrimination against homosexuals, it is no defence to say you discriminate against the act and not the person. The act is so innately connected to the person that such a distinction cannot be permitted.

If the TWU law school restricted access to their program based on race, I cannot seriously imagine we would be having this discussion. Discrimination on the basis of sexual orientation should be no different.

Religious institutions are free to follow their religious beliefs. In private or at private institutions, the state has very little basis for interference. However, when those same religious institutions come to the state asking that public institutions recognize and accommodate their intolerance of minorities, that is an entirely different question.

Public institutions cannot condone the intolerance of minorities. Public institutions (particularly an institution devoted to fighting for justice) cannot recognize and accommodate religious based homophobia any more than it can recognize and accommodate religious based racism or sexism.

Thank you for your time and your efforts to deliberate this meaningful issue.

Sincerely, Mike Preston

From: Gayle Raphanel [gayle@gayleraphanel.com]

Sent: Monday, March 03, 2014 12:28 PM

To: Submissions

Subject: Re: Accreditation for Trinity Western University Law School

Follow Up Flag: Follow up Completed

It is highly unusual for me to take a position on a policy issue, however the international groundswell of protest against the anti-gay policies around the Sochi Olympics have made me feel that this is an issue we all need to speak up about.

I believe that the covenant which Trinity Western University requires its students and staff to be bound by is not in step with democracy. It promotes intolerance of homosexuality in a world where progress towards acceptance of alternative lifestyles is gaining momentum all the time. To my mind, the attitude promulgated by this covenant is just one point on a continuum which ends in hate crimes. We should not condone this thinking, even by standing idly by.

I hope that the LSBC will take a strong stand against accreditation of the proposed TWU Law School.

Regards,

Gayle Raphanel
Raphanel & Courtenay
Lawyers & Mediators
1160 - 777 Hornby Street
Vancouver, BC, V6Z 1S4

Tel: 604-682-2200 (Ext. 3)

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gayle@gayleraphanel.com

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From: Paul Schachter

Sent: Sunday, March 02, 2014 2:23 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

This comment is submitted by Denise Reinhardt

Dear Benchers of the BC Law Society:

I urge you not to approve the application of Trinity Western University for accreditation of a new law school, because the law school fails to provide the basics of academic freedom.

The 1940 Statement of Principles endorsed by the American Association of University Professors (AAUP) and the Association of American Colleges (AAC) is internationally recognized as the authoritative statement on the requirements of academic freedom. The 1940 Statement mandates that:

The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

The AAUP's 1970 Interpretation of the 1940 Statement of Principles noted with respect to religious limitations:

Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.

The Canadian Association of University Teachers (CAUT) includes the freedom to teach and discuss as part of the array of academic freedom in its November 2011 policies:

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss

Regardless of whether one follows the letter of the 1940 Statement or includes the 1970 Interpretation, when a religious institution chooses to impose a religious orthodoxy on teaching, it is a limitation on academic freedom.

The Association of Universities and Colleges of Canada (AAUC) has adopted a Statement on Academic Freedom in October 2011 that does not include the freedom to teach and discuss. Regardless of why that organization (which represents university and college administrations, not faculty members) chose to remove the freedom to teach and discuss from its policy on academic freedom, that organization's actions cannot do away with the long recognized freedom to teach and discuss from the requirements of an accredited law program.

The Special Advisory Committee of the Federation of law Societies of Canada, relying on the omission of the freedom to teach and discuss from the AAUC statement, refused to conclude that academic freedom will not be respected at the proposed law school, even though it is uncontested that TWU requires adherence to its prescribed religious orthodoxy. This position is plainly wrong and not supported by the facts. TWU's requirements for its faculty restrict the freedom to teach and discuss the subjects of a law school curriculum.

Because of the restriction of academic freedom and its deleterious effects on the preparation of law students to become part of the profession, the Law Society of BC should deny the application of TWU for a new law school.

Sincerely,

Denise Reinhardt, JD

2832 D'Angio Rd

Powell River, BC V8A 0G3

From: Naomi Rozenberg [nrr@lmlaw.ca]
Sent: Naomi Rozenberg [nrr@lmlaw.ca]
Thursday, February 13, 2014 4:54 PM

To: 'ea@cbabc.org'; Submissions

Subject: Proposed Trinity Western University law school and CBA (BC Branch) resolution

Follow Up Flag: Follow up Completed

Good afternoon.

I agree with the CBABC's "Non-Discrimination in Legal Education" resolution.

I am strongly opposed to the Law Society of BC accepting graduates of TWU's proposed law school to enter into its admission program to practice law in BC.

As stated by a friend and colleague:

I have sworn an oath to uphold the rule of law and the rights and freedoms of all persons according to the law of Canada and the laws of British Columbia. These rights include the right to not be discriminated against on the basis of sexual orientation.

I will vehemently oppose the opening of a law school at a university where the students are required to sign a contract to voluntarily abstain from same-sex sex. This is clear discrimination based on sexual orientation.

As a lawyer, I have a professional, legal, and ethical duty to oppose the accreditation of a law school at a school that perpetuates discrimination. I have significant concerns about the students that would graduate from such a law school. How can these law students swear to uphold the rights and freedoms of <u>all persons</u> (including, gays, lesbians, bisexuals and transgendered people) when they chose to attend a school where the rights of those same people were infringed on and where they were complicit in the infringement of those rights.

Please contact me should you have any questions.

Regards Naomi

Naomi R. Rozenberg

Associate



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e <u>nrr@lmlaw.ca</u> w <u>lmlaw.ca</u>

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From: Gisela Ruckert

Sent: Sunday, March 02, 2014 2:23 PM

To: Submissions Subject: TWU Law School

Follow Up Flag: Follow up Completed

I am writing to urge the "Benchers" to recommend against the establishment of a law school at Trinity Western University. A school that does not afford the same opportunities to openly gay students as it does to heterosexual students is discriminating against a minority. Asking them to repress a part of their nature is cruel and unjustified.

A law school should be a model that upholds the law of the land. By asking gay students to refrain from engaging in behaviours that heterosexual students may engage in with impunity, Trinity Western is discriminating against homosexuals. These policies would not be allowed in a law office – why on earth should they be acceptable in a place that trains lawyers?

Discrimination based on sexual orientation is illegal in Canada. Until TWU embraces the full spectrum of human sexuality equally, it is not worthy of the honour of training new lawyers to uphold the laws of our country.

Please make the right choice.

Gisela Ruckert Kamloops, BC

From: Joan Rush

Sent: Saturday, February 01, 2014 6:12 PM

To: Submissions

Subject: Submission on proposed Trinity Western University Law School

Follow Up Flag: Follow up Completed

Law Society of BC Attention: Executive Director, 845 Cambie Street, Vancouver, BC, V6B 4Z9

Dear Benchers and Members of the Law Society of B.C.,

I am writing to recommend that the Benchers <u>not</u> approve Trinity Western University (TWU) faculty of law for the purpose of meeting the academic qualifications requirement of the Law Society's admission process. In my opinion, in view of the requirements imposed by TWU on its students, it will be impossible for the students to acquire a legal education that is consistent with the *Canadian Charter of Rights and Freedoms*. In addition, the philosophy of TWU will constrain its law students from learning the necessary components of a modern Canadian legal education.

Under the <u>Code of Professional Conduct for BC</u>, a lawyer owes a duty to the state to maintain its integrity and its law. (S. 2.1-1(a)). Under Canadian law, people who are gay, lesbian, transgendered, and bisexual have the freedom and right to marry persons of the same gender. Students of TWU will be taught not to accept that these people are entitled to the same legal marriage rights as straight members of society. It is not clear that TWU trained lawyers would be willing or properly trained to act on behalf of same-sex marriage partners, or a person who is, or was, in a same sex-marriage.

The Object and Duty of the Society is, inter alia, to preserve and protect the rights and freedoms of all persons (*Legal Profession Act*, S. 3(a)). In view of the deficiencies of a TWU law program regarding acceptance of same-sex marriage, it is not clear that graduates will act to preserve and protect the rights and freedoms of all persons.

Students of TWU will not be able to knowledgeably assist people who are gay, lesbian, transgendered, and bisexual who are married to, or wish to marry, a person of the same sex with any matter that pertains to matrimonial issues, as well as matters concerning wills for same-sex spouses, real estate transactions for a marital home between same-sex spouses, pension issues for the surviving spouse of a same-sex marriage, and child support and custody issues for children of same-sex marriages. Students at the current law faculties in Canada are taught to research legal issues arising from divorce of same-sex spouses, rights of former same-sex spouses to embryos that have been cryogenically frozen, and similarly complex matters that have arisen because of Canada's acknowledgement that people in same-sex marriages have the same legal rights and freedoms as all others members of society. Students trained at TWU will not receive this modern liberal education.

If the requirements of TWU stipulated that students acknowledge that Jewish people or Muslim people are not legally married, I think the community would be outraged. I believe the Law Society would be unwilling to even consider acceptance of such an education as suitable for meeting the academic qualifications requirement of the Law Society's admission process. A stipulation that students agree that only opposite-sex marriage is legal also discriminates against a large sector of society. I think it would be very sad if the Benchers of the Law Society, who are elected to preserve and protect the rights and freedoms of all persons, were to accept that an education that incorporates discrimination against a part of society is suitable for meeting the BCLS admission process.

Sincerely,

Joan L. Rush LLB, LLM, (retired member)

From: Jenny Claire

Sent: Wednesday, February 12, 2014 6:07 PM

To: ea@cbabc.org; Submissions

Subject: Feedback re: TWU's proposed law school

Follow Up Flag: Follow up Completed

To Whom It May Concern:

Students who have worked hard to earn the grades and LSAT scores to make them competitive to attend law school in Canada have earned the right to compete within a merit-based system.

TWU will change that. Suddenly applicants will not be judged on what they do, but also on who they are. It's an ironic perversion of the "holistic" criteria: GPA, LSAT, and now, Sexual Orientation. Straight students will have an immediate advantage over gay students. There will be more law school seats open to the former.

TWU probably wants to claim it judges the sin and not the sinner, so that it can claim gay students are just as welcome - supposedly as long as they don't *act* gay. This separation of act and identity is a spurious argument.

But - even if a gay student made the decision to attend TWU and to refrain from acting on any desires or engaging in sexual activity the school deemed improper, that student would do so at an enormous personal cost. It is not fair and it is not a free decision - a student who could not gain entry anywhere else in Canada or who could not afford to attend school in another province would have to extinguish their dream of becoming a lawyer, or they would have to repress an essential aspect of their identity for years due to the edict of an institution that has no business in their bedroom.

This is a terrible decision to thrust upon any person hoping to become a member of the Bar. With either option, the damage to the individual would flow on to the system as a whole. If TWU is approved, we will lose likely candidates who choose to remain true to themselves and unapologetic about their sexual identity and expression, or we will welcome into the fold persons who have had to conceal, repress, or apologize for who they are and who they love just to join our ranks, all with our tacit approval.

There is no shirking the responsibility we bear as members of a self-regulating profession to ensure that this kind of discrimination is not passively condoned and that it is instead actively opposed.

Law school is already expensive. TWU carries a cost too high for any of us to bear
Regards,
Jenny Rutherford Trial Lawyer

From: Sakalauskas, Amy [SAKALAAM@gov.ns.ca]

Sent: Sunday, March 02, 2014 2:01 PM

To: Submissions

Cc: elaine.craig@dal.ca; MacDonald, Ronald J
Subject: Request for Public Input - TWU Law Degree

Attachments: 14-04-M.pdf

Follow Up Flag: Follow up Completed

Dear Mr. McGee:

I write, on behalf of myself, Elaine Craig, and Ron MacDonald, to provide you with details of a significant development in relation to the question of the accreditation of the Trinity Western University law degree. Mr. MacDonald and I are practicing members of the Nova Scotia Barristers' Society. Dr. Craig is a faculty member at the Schulich School of Law at Dalhousie University and has written extensively on this issue. Mr. MacDonald is a past President of the Federation of Law Societies of Canada and I am Past Chair of the Canadian Bar Association's Sexual Orientation and Gender Identity Conference (SOGIC). We are writing to you in our personal capacities.

As you have no doubt heard, the national Council of the Canadian Bar Association passed a Resolution calling for absolute Non-Discrimination in Legal Education. The CBA is a voluntary organization that represents more than 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practicing lawyers in Canada belong to the CBA.

A copy of the Resolution is attached. It was presented by the CBA's Sexual Orientation & Gender Identity Committee (SOGIC), Equality Committee, Young Lawyers Conference, and the Canadian Corporate Council Association's (CCCA) Diversity Committee. Its passing followed a February 22, 2014 debate that centered on the question of accreditation of the TWU law degree. The Resolution was passed despite an active campaign by TWU representatives to prevent it.

The Resolution came about organically, drawing on earlier advocacy of CBA groups. In March, 2013, SOGIC and the Equality Committee wrote a submission to the Federation of Law Societies of Canada, urging them to deny accreditation of the TWU law degree. You were provided a copy of this writing. Above and beyond the accreditation, we urged the Federation to draw inspiration from the American Bar Association, where non-discrimination criteria exist for legal education. No such formal criteria exist in Canada; a clear deficiency.

The passing of this Resolution is very significant. The position of SOGIC and the Equality for non-discrimination in legal education has been adopted as CBA policy. The Resolution calls upon both the Federation and the Law Societies to require any accredited legal education program to be without discrimination based on race, national or ethnic origin, colour, religion, sex, sexual orientation, gender identity, gender expression, age or mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education. The way we see it, if you allow discrimination based on sexual orientation, you open the door for discrimination on other grounds. A principled analysis must address this argument.

While the Resolution wording was broad (in keeping with the broader issues here), the discussion was squarely focused on TWU. As the first Canadian law school that would so discriminate, this Resolution put TWU front and centre. CBA members did not shy away from that reality, nor did TWU.

The discussion on the Council floor was engaged, passionate, and heartening to those of us advocating for equality and dignity. Someone suggested changing the wording to call for no "unlawful discrimination" in legal education. Seeing this as a watering down of the Resolution, the suggestion was loudly rejected. People pointed out the history of "lawful" discrimination in this country, such as racial segregation and the denial of benefits to Aboriginal and LGBT communities. Council members also refused the suggestion that this question could be answered with simple reference to the British Columbia *Human Rights Code*. They also took notice of the societal context of this discussion.

Lawyer being lawyers, legal positions were advanced and positions were argued. We have all read about this issue over the past year and wanted to make our positions clear. Representatives from both TWU and the Federation were there to hear us do so. As we have been offering since December, 2013, CBA members again offered to work with the Federation and the law societies in developing non-discrimination criteria. We have been calling for dialogue on this issue. Although the Federation has not taken up the offer, it is positive to see law societies such as the LSBC doing so.

TWU representatives had phoned CBA Council members this past month to advocate against the Resolution. The CBA-BC had asked for input from its members on the issue. Bob Kuhn, TWU President, distributed a lengthy open letter to CBA-BC Council members in advance of the meeting, and hard copies of it were on the tables for every Council member the morning of the debate. It can be found here: http://www.twu.ca/academics/school-of-law/news/2014/075-open-letter-cba-bc.html. Mr. Kuhn attended the Council meeting and twice addressed Council, urging members to recognize TWU's position that religious freedom permits them to impose their institution's rules against same sex sexual intimacy. Several other TWU supporters spoke, but their numbers were small in comparison to those who spoke in favor of the Resolution. When the vote was called, their arguments had minimal impact on the end result.

CBA Council sent a crystal clear message that NO discrimination in legal education is acceptable. They called for accreditation criteria that recognize this. They noted that religious lawyers and faith based legal education are welcome in Canada, but freedom of religion is not a license to discriminate.

There were 135 voting Council members present for the meeting. Council is comprised of lawyers from every province and territory, every law society in Canada, every type of practice, every age, and a diversity of backgrounds. The overwhelming majority of them voted "no" to TWU and to any school that might try the same thing. I estimate less than 12 people voted against the Resolution.

This significant result strongly reinforces what you have heard from so many legal professionals, that to accredit TWU is contrary to the public interest. Indeed, these combined voices certainly call into question the decision made by the Federation's Special Advisory Committee. Those five people reached one conclusion. Now, literally hundreds of well-informed lawyers have loudly proclaimed that decision should be rejected. Simply put, the Federation Committee got it wrong.

The passing of this motion by the CBA should be a call to action for the Federation and for law societies across the country. The LSBC is in a position to be a true leader. I thank you for the opportunity to write on this issue.

Yours truly, Amy Sakalauskas

Non-Discrimination in Legal Education

WHEREAS discrimination continues in the legal profession in Canada despite significant progress toward its elimination;

WHEREAS ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice;

WHEREAS discrimination in legal education undermines the ethical underpinnings of the legal profession;

WHEREAS the existence of discrimination may contribute to an educational environment in which freedom of expression is inhibited;

WHEREAS the formation of values in law school has a long-term impact on Canada's future lawyers;

WHEREAS discrimination is not a recognized protected form of freedom of expression;

WHEREAS any conflict between enumerated freedoms must consider the potential impact on the legal profession, the justice system and our society as a whole;

Non-discrimination dans la formation juridique

ATTENDU QU'il y a encore de la discrimination dans la profession juridique au Canada, malgré les importants progrès réalisés en vue de l'éliminer;

ATTENDU QUE l'élimination de la discrimination dans la profession juridique est avantageuse pour la profession parce qu'elle lui permet de se présenter légitimement comme défenseur de la justice;

ATTENDU QUE la discrimination dans la formation juridique mine les fondements éthiques de la profession juridique;

ATTENDU QUE la présence de discrimination peut contribuer à un environnement éducatif dans lequel la liberté d'expression est entravée;

ATTENDU QUE l'acquisition de valeurs dans les écoles de droit a une incidence à long terme sur les futurs avocats au Canada;

ATTENDU QUE la discrimination n'est pas reconnue comme une forme de liberté d'expression protégée;

ATTENDU QUE tout conflit entre des libertés protégées doit être réglé en tenant compte de l'incidence possible sur la profession juridique, le système de justice et notre société dans son ensemble;

BE IT RESOLVED THAT the Canadian Bar Association urge the Federation of Law Societies of Canada and the provincial and territorial law societies to require all legal education programs recognized by the law societies for admission to the bar to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education – including faculty, administrators and employees (in hiring, continuation, promotion and continuing faculty status), applicants for admission, enrolled students and graduates of those educational programs.

OU'IL SOIT RÉSOLU QUE L'Association du Barreau canadien exhorte la Fédération des ordres professionnels de juristes du Canada et les barreaux provinciaux et territoriaux à exiger que tous les programmes de formation juridique reconnus par les barreaux en vue de l'admission au barreau assurent l'égalité des chances indépendamment de toute discrimination fondée sur la race, l'origine ethnique, l'origine nationale, la couleur, la religion, le sexe, l'orientation sexuelle, l'expression sexuelle, l'identité sexuelle, l'âge ou la déficience mentale ou physique, ou un comportement qui fait partie intégrante de l'identité et en est indissociable pour tous dans la formation juridique, y compris pour les enseignants, les administrateurs et les employés (dans l'embauche, le maintien en poste, la promotion et le maintien de l'affiliation à une faculté), pour les candidats à l'admission à ces programmes de formation, pour les étudiants qui y sont inscrits, et pour les étudiants qui en sont diplômés.

Moved by SOGIC, Equality Committee, Young Lawyers – CBA and CCCA Diversity Committee

Proposée par la Conférence sur l'orientation et l'identité sexuelles, le Comité sur l'égalité, les Jeunes avocats et avocates de l'ABC et le Comité de l'ACCJE sur la diversité

From: Sakalauskas, Amy [SAKALAAM@gov.ns.ca]

Sent: Sunday, March 02, 2014 2:09 PM

To: Submissions

Cc: MacDonald, Ronald J

Subject: Public Input - TWU Law Degree

Attachments: 2014-02-10_MacDonaldSakalauskas_TWU.pdf

Follow Up Flag: Follow up Completed

Dear Mr. McGee:

We write in response to your call for input on the issue of accreditation of the TWU law degree. Attached is a writing that Ronald MacDonald, QC, and I provided to the NSBS on the same issue, dated February 10, 2014. In it, we raise concerns with the process followed by the Federation of Law Societies of Canada and highlight the issues for consideration by law societies, with particular reference to your public interest mandates. We encourage you to conduct your own thorough and transparent inquiry on the question of accreditation.

Thank you for the opportunity to provide input.

Yours Truly,

Amy Sakalauskas

February 10, 2014

Via email: rene.gallant@emera.com

Dear Mr. President:

RE: Accreditation of Trinity Western University

Thank you very much for the opportunity to share our thoughts as part of the Nova Scotia Barristers' Society (NSBS) public consultations on the crucial issue of whether the NSBS should accredit Trinity Western University (TWU) as a university which grants an approved law degree for the purpose of enrollment as an articled clerk in the Society.

These joint submissions are prepared by Amy Sakalauskas and Ronald J. MacDonald, QC, and are delivered in conjunction with written submissions forwarded by Professor Elaine Craig. We will be making oral submissions at the public meeting called to address this issue on February 13, 2014.

In our view, the issue of TWU's accreditation is perhaps the most critical issue to face Council in the last 30 years. This is about fundamental human rights, as critical to the protection of the public's interest as any issue can be.

This submission will address the following points:

- 1. What this debate is NOT about.
 - a. "Those opposed to TWU's accreditation are against teaching law from a faith based or Christian perspective"
 - b. "TWU prohibits pre-marital sex for everyone, not just gays and lesbians."
 - c. "TWU is a private institution"
 - d. "TWU accepts gays and lesbians"/ "Everyone has a choice whether they attend TWU"
 - e. "Law Societies are not playing by the rules"
 - f. "TWU has a separate definition of marriage"
- 2. The TWU Community Covenant is Discriminatory
- 3. The Federation Process was flawed
 - a. Why was a second committee appointed?

- b. There was insufficient public consultation and transparency.
- c. The SAC did not have the mandate to determine these questions.
- d. The general Federation process.
- 4. The Federation's Special Advisory Committee expressed and relied on significant errors of law and reasoning.
- 5. BCCT does not decide this issue
- 6. The Public Interest requires a refusal to accredit
- 7. The NSBS Strategic Plan and The Equity Office: Putting Theory Into Practice
- 8. The Result

1. WHAT THIS DEBATE IS NOT ABOUT

Proponents of TWU have often framed the position of those opposing accreditation in certain ways. At the outset, it is important to dispel these comments and positions.

A. "Those opposed to TWU's accreditation are against teaching law from a faith based or Christian perspective."

It is not our position that a school cannot teach from a Christian point of view. Likewise, it is not our position that Christians who share beliefs with TWU cannot practice law.

Canada's *Charter* protection of religious freedom protects an individual's and an institution's right to preach, talk, and teach about their religious beliefs. An institution should be able to teach that in their view sexual relations between a same sex couple are, to use the words of the Biblical references in TWU's Community Covenant (Romans 1:26-27) "vile" and "shameful".

It is one thing to hold, preach and teach certain **beliefs**, another to exercise **discriminatory actions** based on those beliefs, and yet another for a professional regulator to sanction such discriminatory actions. The NSBS is being asked to accredit a law school that, at an institutional level, discriminates on the basis of sexual orientation. Framing this as an attack on Christians or on freedom of religion is inaccurate and disingenuous.

B. "TWU prohibits pre-marital sex for everyone, not just gays and lesbians."

It has been said that "TWU prohibits pre-marital sex for everyone, not just gays and lesbians." The logic of this comment relies on a concept of equality that has no legal currency and even less

moral weight. TWU's Community Covenant draws a formal distinction between heterosexual couples and same sex couples that perpetuates unfavourable treatment against the latter. All unmarried couples are treated the same way by the Covenant, all married couples are not. To ask an LGBT student or staff to make this kind of covenant or commitment is to ask them to tolerate precisely the kind of humiliation and degradation that equality and human rights protections are intended to prohibit.

C. "TWU is a private institution"

To a large extent the question of whether TWU is a private institution is irrelevant. In deciding what constitutes the public interest in this case, the NSBS, as an administrative decision-maker, is required to balance *Charter* values in its decision-making, which would of course include freedom of religion *and* the equality rights of gays and lesbians. Any decision taken by the NSBS in this matter must, in the final analysis, comply with the *Charter*. Unquestionably, the regulators of the legal profession are public actors.

Moreover, questions can be raised with respect to the assertion that TWU is a "private institution". TWU has received millions in infrastructure funding in recent years¹. In addition, as a university, TWU indirectly receives a variety of public funds by way of interest free student loans, tax credits, and tax free scholarships.

D. "TWU accepts gays and lesbians"/ "Everyone has a choice whether they attend TWU"

It is true that if you are gay, you can go to TWU, but only at considerable personal cost to your dignity and sense of self. At law, to say, "we will accept a gay person, so long as they do not engage in same sex sexual relations", is the same as saying we do not accept gay persons. The Supreme Court of Canada has answered this clearly in *Whatcott v Saskatchewan*². Elaine Craig's submission to the NSBS, dated February 5, 2014 also deals with this argument in detail³.

A related argument being advanced by those supporting a TWU accreditation is that everyone has a choice as to whether they attend TWU. The suggestion appears to be that because of this choice the institution should be able to impose discriminatory rules and policies. In *Whatcott* the Supreme Court of Canada held that you cannot separate the person from the behaviour. If you forbid the behaviour, you forbid the person. At TWU, a gay or lesbian cannot "choose" to attend

¹ "TWU receives over 2.9 million in support from the Knowledge Infrastructure Program Funding": https://twu.ca/about/news/general/2009/what-is-kip-funding.html

² Whatcott v Saskatchewan, 2013 SCC 11 at 123, [2013] 1 SCR 467.

³ http://www.nsbs.org/sites/default/files/ftp/TWU Submissions/2014-02-05 Craig TWU.pdf

without entering a contractual arrangement that condemns their sexual identity as shameful and vile. That is not a choice. That some LGBT students might acquiesce to a discriminatory practice does not justify the discrimination.

E. "Law Societies are not Playing by the Rules"

In a January 28, 2014, article published in National Magazine⁴, and in other recent media reports, President Kuhn states that TWU played by all the rules and that by now independently considering whether to accredit TWU the law societies are breaking those rules. Mr. Kuhn states:

"It is factually and legally significant that Trinity Western's law school proposal has received endorsement by strong precedent from the Supreme Court of Canada, as well as thorough reviews from the Federation and Ministry of Advanced Education. Trinity Western has played by the rules. Proposed attempts to now change those rules, or to circumvent them, not only show disrespect for the rule of law, but diminish the importance of the Federation and ignore the stringent process of approval applied to TWU. It would be counterproductive for a law society in Canada to now disregard that stringent process by the Ministry of Advanced Education and the Federation. In addition, ex post facto changing the rules or applying new criteria will undoubtedly result in many concluding that the guarantee of freedom of religion in Canada is, at best, nominal."

President Kuhn appears to be arguing that we, the Nova Scotia Barristers' Society, do not have the right to consider TWU's accreditation separately. This statement is made in spite of the following facts:

- a. The Federation process was always known to be a **recommendation** to the Law Societies. It was always understood that the Law Societies have the final say in the matter.
- b. The Federation's Special Advisory Committee itself recognizes this fact. It states⁵:

"The consideration of public interest issues is one aspect of the overall responsibility of law societies for determining whether an applicant should be admitted to the legal profession. **Assisting the law societies with the exercise of this responsibility** is entirely consistent with the mandate of the Federation. The decision to establish the Special Advisory Committee was made by the Council of

⁴ "TWU Has Played By the Rules": http://www.nationalmagazine.ca/Articles/January-2014/TWU-has-played-by-the-rules.aspx

⁵ http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf , at Paragraph 15

the Federation, a body comprised of representatives from every law society in Canada. The advice to be provided by the Special Advisory Committee is intended to assist the law societies, the bodies ultimately charged with determining whether graduates from the proposed TWU school of law should be admitted to the profession."(emphasis added)

c. The British Columbia government announcement was very clear that their review did **not** consider the Community Covenant. At the press conference to announce approval, the Minister of Advanced Education stated:

"I am aware of the opposition by some individuals and organizations to the law program at Trinity Western University, however, they do not fall within the scope of the quality of the law degree or academic programming [inaudible] is outside the purview of [inaudible] government. The Ministry of Advanced Education and the Degree Quality Assessment Board based their view solely on the assessment of the quality of the program. Again, and I stress, the review was within the confines of the *Degree Authorization Act*."

Not only were no rules broken, the current process is just as always anticipated. The Law Societies are the bodies statutorily authorized to decide this issue in their respective provinces.

F. "TWU has a separate definition of marriage"

TWU and its supporters defend the terms of their Covenant by stating that their faith holds a definition of marriage that limits it to a union between one man and one woman. In a January 24, 2014 letter to Rene Gallant, Bob Kuhn, TWU President, asserts that in allowing same sex marriage, Canadian law "only changes the definition of marriage for civil purposes". On that we agree. However, in the same way in which we would not say that the Persons Case *only* changed the definition of "person" for civil purposes, the use of "only" for the expansion of marriage to same sex couples is a gross understatement of the legal recognition of same sex marriage.

Mr. Kuhn references the Preamble and Section 3.1 of the *Civil Marriage Act*. These are interpretive provisions, offered to confirm that the *Civil Marriage Act* is consistent with the *Charter of Rights and Freedoms* and individuals and organizations are free to hold and voice their own beliefs about marriage. The language was meant to be declarative, in response to those religious affiliated officials (i.e., Priests, Rabbis) who may not want to perform same sex marriages.

⁶ http://www.nsbs.org/sites/default/files/ftp/TWU Submissions/2014-01-24 Kuhn TWU.pdf

At its base, marriage is a legal relationship. A secular relationship. For those who choose to get married by way of a religious ceremony, it is also a rite. There may be separate (additional) requirements for a marriage to qualify as a rite (i.e., the Catholic sacrament of marriage). The preamble to the *Civil Marriage Act* confirms that adherents to a particular religion remain free to establish those requirements.

In the January, 2011, *Marriage Commissioners Appointed Under The Marriage Act (Re)*⁷ case, the Saskatchewan Court of Appeal ruled that provincial marriage commissioners could not refuse to perform same sex marriages on account of their religious beliefs. The Court explained that forcing the couple looking to be married to go to another, willing, commissioner was contrary to fundamental principles of equality in a democratic society. The Court also reasoned that by allowing commissioners to opt out because they did not want to marry people of the same sex, the door was opened to allowing them to opt out because they did not want to marry people from different races.

In this recent example of a balancing of freedom of religion and equality, the Appeal Court decidedly followed the Supreme Court of Canada's holding that religious freedom is not absolute, and wrote, "This is clearly one of those situations where religious freedom must yield to the larger public interest". This is in keeping with the continually growing interpretations of equality for gays and lesbians, including when faced with discrimination purportedly justified by freedom of religion. It is disappointing that the Federation's Special Advisory Committee did not consider the recent case law in its considerations.

In the end, the only real assistance to the Society (in performing a contextual balancing of freedom of religion and equality) offered by the *Civil Marriage Act* is its affirmation of the need to protect the equality interests of gays and lesbians. The *Civil Marriage Act* did <u>not</u> create any new right or freestanding recognition to religious groups, including in relation to their views on marriage.

2. THE TWU COMMUNITY COVENANT IS DISCRIMINATORY

In the recent letter from TWU President Robert G. Kuhn, published in the National Magazine, he stated: "The University welcomes students without discrimination." We touched on our disagreement with this statement above.

⁷ Marriage Commissioners Appointed Under The Marriage Act (Re), 2011 SKCA 3

⁸ Saskatchewan Marriage Commissioners Reference, at 100.

TWU proponents ignore the reality of their Community Covenant. In *Trinity Western University v British Columbia College of Teachers*⁹, the Supreme Court of Canada held that TWU's policy perpetuates unfavourable differential treatment on the basis of sexual orientation and that gay and lesbian students could only attend TWU at considerable personal cost. These are the very phrases that the Supreme Court of Canada has used to identify and define discrimination on the basis of sexual orientation in other decisions.¹⁰

Indeed, the British Columbia Civil Liberties Association, which supports TWU's Community Covenant, has nevertheless stated as follows on January 31, 2013¹¹:

"This Community Covenant clearly discriminates against lesbian, gay and bisexual students. BCCLA does not endorse the practice of TWU in this respect and it is not our place to do so."

TWU and its Community Covenant discriminate. While an exemption in BC legislation may mean it is not unlawful discrimination in British Columbia, it is still discrimination¹². Whether it would be unlawful discrimination were TWU situated in our province remains an open question. Nova Scotia does not offer religious educational institutions the same exemption granted under the British Columbia *Human Rights Code*.

Some argue that because TWU's discrimination is legal in British Columbia the analysis should not consider whether TWU's policies would be unlawful in other provinces, such as Nova Scotia. With respect, this argument ignores the responsibility of the Society to consider this question from the perspective of our Nova Scotian society, including our *Human Rights Act*. It also mistakenly hangs too much weight on but one aspect of the many considerations that have to be made in deciding this question.

First, a common sense approach to the issue demonstrates discrimination. The Community Covenant draws a distinction between straight individuals and LGBT individuals. Of course, legal minds will parse such situations, and may argue that it is not discriminatory if you accept

⁹ Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772, 199 DLR (4th) 1; ("BCCT").

¹⁰Egan v. Canada, [1995] 2 S.C.R. 513

¹¹ http://bccla.org/2013/01/note-on-twu-law-school-issue/

¹²In the letter from the CBA Sexual Orientation & Gender Identity Conference and Equality Committee to the Federation of Law Societies of Canada, at http://www.cba.org/cba/submissions/pdf/13-18-02-eng.pdf, an argument is advanced that the TWU Community Covenant is actually incompatible with the British Columbia *Human Rights Code*. Notably, this question has never been judicially decided.

the person, but reject only their actions. But even that strained argument does not stand up to legal analysis.

We borrow greatly from Elaine's Craig's letter to demonstrate why this is the case. In *Whatcott* in 2012, the Supreme Court of Canada specifically rejected the argument that there is a distinction between prohibiting same sex conduct and prohibiting gays and lesbians. The Court concluded that it is not possible to condemn same sex intimacy "without thereby discriminating against gays and lesbians and affronting their human dignity and personhood." ¹³

In rejecting the specious argument that a legally significant distinction can be drawn between discriminating against homosexual behavior and discriminating against homosexuals, the Court in *Whatcott* stated: "Courts have recognized a strong connection between sexual orientation and sexual conduct and where the conduct targeted by speech is a crucial aspect of the identity of a vulnerable group, attacks on this conduct stand as proxy for attacks on the group itself."

It could not be clearer that the Supreme Court of Canada today rejects exactly the kind of distinction between act and identity that some suggest carries a legal significance. Indeed, on this issue, the Court in *Whatcott* draws its authority from Justice L'Heureux-Dube's dissenting decision in *BCCT* (finding that TWU's covenant was discriminatory and that it was acceptable for the College of Teacher's to modify its accreditation of the TWU program as a result). The Court in *Whatcott* states with approval:

L'Heureux-Dubé J. in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, [2001] 1 S.C.R. 772, in dissent (though not on this point), emphasized this linkage, at para. 69:

I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. ... The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as per Madam Justice Rowles: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person" (para. 228). She added that "the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people" (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea

¹³ Whatcott v Saskatchewan, 2013 SCC 11, [2013] 1 SCR 467.

that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood. ¹⁴

One final note on this point: any suggestion that TWU's Community Covenant is voluntary and non-binding is without foundation. TWU's Community Covenant is not a guideline or invitation to abstain from same sex intimacy. It is a covenant – a solemn, formal agreement that all staff and students must sign in order to work at or attend this university. TWU describes it as a "contractual agreement" that all members of the TWU community must enter into before joining the "TWU community."¹⁵

To summarize, according to the Supreme Court of Canada, a policy that requires students to promise not to engage in same sex intimacy is an attack on the "human dignity and personhood" of gays and lesbians. ¹⁶ The council of the NSBS should do better than to accept the formalistic and impoverished view of equality taken by TWU and rejected by the Supreme Court of Canada.

3. THE FEDERATION PROCESS WAS FLAWED

A. Why was a second committee appointed?

The Federation's Special Advisory Committee's ("SAC") Report, dated December, 2013, provides background to the formation of the SAC. In paragraphs 1 to 7, the SAC Report notes that there were submissions received respecting the approval of TWU that were outside the mandate of the Approval Committee. The Approval Committee was the Federation Committee established to address the issue of approval of new law school accreditation applications.

The President and the CEO of the Federation received an opinion from John B. Laskin on the issue (Appendix C to the report). Mr. Laskin addressed a variety of issues. Implicit in his opinion is that the Federation could consider public interest issues when considering TWU's application. Although he held that the Approval Committee did not then have that mandate, his opinion clearly anticipated the Committee could be given the mandate by the Federation Council.

¹⁴ Whatcott v Saskatchewan, 2013 SCC 11 at 123, [2013] 1 SCR 467.

¹⁵ Trinity Western University Student Handbook, *Community Covenant Agreement*, online: Trinity Western University http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>.

¹⁶ Whatcott v Saskatchewan, 2013 SCC 11, [2013] 1 SCR 467.

Instead, the Federation appointed a different committee. To an outsider, this raises the following question: why wouldn't the Federation simply give the authority to the very committee established to deal with these approvals? Were they not the ones with the expertise in the area? By taking that task away from them, it creates a perception of bias in the minds of the public. It as if there was a concern with how the Approval Committee would decide the issue. And, we are left to wonder: How were the members of the Special Committee chosen? What was the process? The criteria?

The Approval Committee is effectively an adjudicative committee. It receives submissions and makes decisions. To be mid process, and have a part of a matter taken from their consideration, cannot do anything but raise concern in the mind of the informed public.

This perception is heightened when one observes the results of the two committees. The Approval Committee obviously had significant concerns about the TWU Community Covenant, as their approval was given on the academic abilities of TWU with a caveat - an expressed concern about TWU's ability to teach ethics and public law. This suggests that the committee's view of the Covenant was quite different from the SAC's view, which dismissed concern about the Covenant on a public interest basis, a much stronger ground for concern.

To an informed, objective observer, the question remains: Why was the SAC appointed, when a perfectly good committee was already in existence to deal with the issues of TWU's application?

B. There was insufficient public consultation and transparency.

The SAC gave its opinion on several matters, clearly matters falling within the definition of the "Public Interest".

While that committee proclaims that it considered "many written submissions", its process for seeking opinion and engaging in dialogue seemed to be non-existent. Unlike the process now being followed by the NSBS, which is public and transparent, the Federation did not actively seek public input into the matter, and gave no notice of the committee's process to the public or the profession.

This is a critical error. If this committee is purporting to make a decision on behalf of the law societies, it must follow a process that at least approximates the public processes of those societies.

It is only by seeking and welcoming a wide variety of submissions and opinions that a body is truly able to assess the public interest. It does no good to say "we were aware of that argument". One needs to know how an issue affects the public at large. That is the very essence of determining the public interest. One cannot do that when the process does not seek that opinion; when it operates in a vacuum.

C. The SAC did not have the mandate to determine these questions.

This is a potentially fatal flaw in the Federation process.

The SAC considered and answered the following questions:

- Whether approving TWU's proposed law school would be contrary to the public interest;
- Whether TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law;
- Whether TWU respects academic freedom;
- Whether approving TWU's proposed law school would result in LGBT students having fewer opportunities and choices than others.

The problem, however, is that this was not the committee's task. The SAC mandate reads as follows:

- "1. The specific mandate of the Special Advisory Committee is to provide advice to the Council of the Federation on the following question:
 What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?
- 2. In its consideration of the question, the Special Advisory Committee shall take into account:
- (a) all representations received by the Federation to date including any responses to those representations by TWU;
- (b) applicable law, including the Canadian Charter of Rights and Freedoms, human rights legislation, and the Supreme Court of Canada decision in Trinity Western University v. British Columbia College of Teachers (2001 SCC 31); and
- (c) any other information that the Special Advisory Committee determines is relevant to the question.

This mandate was clear: to figure out whether there were other considerations and then come back to Council and provide advice on what those considerations should be. Nowhere was that committee given the mandate to answer those questions, or even give advice on them. The Federation Council was only to be advised, and then would be expected to determine what should happen next. Thus, the conclusions made by the SAC were made without authority, and should be disregarded.

D. The General Federation process.

We elect Society Council members to conduct the work of Council transparently and accountably. Society members benefit from an open process at the Council table and have come to expect nothing less. In contrast, the Federation lacks in both process and accountability. It is a registered non-profit, not a statutory body. It does not have the legal obligations of the Society in its decision-making.

The Federation is making important decisions that impact the Society, its members, and the public. They do not allow observers at their meetings. They do not advise as to when such meetings take place, where they take place, or what the Federation representatives are discussing (even when they are asked for such information). Society members cannot access Minutes. The Society Council does not receive detailed reports, nor do Society members. All of this undermines the efforts of the Society to open up its processes and decision-making. Perhaps this was a more acceptable way of Federation functioning in the past, before law societies vested it with core tasks born of a statutory mandate. Today, the Federation is in desperate need of change.

We are asking Council to act in the public interest and do your own assessment of this question. Given the numerous concerns with the Federation process, the faulty legal reasoning upon which it reached conclusions, and what we see as a highly questionable delegation in statutory decision-making, it would be inappropriate for the Society to merely create an Addendum to the Federation decision, as opposed to conducting a fulsome analysis of the questions the Application of TWU raises.

4. THE FEDERATION'S SPECIAL ADVISORY COMMITTEE EXPRESSED AND RELIED UPON SIGNIFICANT ERRORS OF LAW AND REASONING

Even if one were to ignore the fatal process issue associated with the SAC, it opinions and legal conclusions are in error. Elaine Craig's letter, submitted jointly with this submission, covers this issue in detail.

5. <u>BCCT DOES NOT DECIDE THIS ISSUE</u>

TWU continually places a great reliance on the decision of the Supreme Court of Canada in the BCCT case. Elaine Craig, in her submission, and paper attached, deals with this issue and points out how the legal landscape has changed greatly since that decision. Professor Dianne Pothier, in her submission to council, advised that even if BCCT continued to be good law, it would not apply in this circumstance. According to Professor Pothier the context and facts are

too different. We join a large chorus of others who assert that it is very likely the matter would be decided differently now.

This is particularly so given that that BCCT case decided a completely different issue. In the Laskin legal opinion, he summarizes, at page 3, the central issue in BCCT:

"The central issue in the case, therefore, was how to reconcile the religious freedom of individuals wishing to attend TWU with the equality concerns of public school students, their parents, and society generally. The Court held that the potential conflict between the two sets of rights and values should be resolved though their proper delineation."

The issue in BCCT was whether teachers who graduated from TWU would discriminate. That is not the issue before the Society. The issue here is whether it is contrary to the public interest for a law society to accredit a school that discriminates against those who are able to enter their law school on the basis of sexual orientation. Moreover, and as was eloquently argued by Rev Dr Yates in her submission to council on behalf of the United Church, law schools and legal profession regulators bear a special and unique responsibility for protecting human rights and equality.

This case is different. The Supreme Court of Canada recently demonstrated that they will change law based on a different argument, even when considering the same Criminal Code section. For example, in *Reference re ss. 193 & 195.1(1)(c) of Criminal Code (Canada)* ¹⁷, the Supreme Court upheld Criminal Code prostitution provisions against a Charter challenge that they violated a person's freedom of expression. However, that law has now changed: in *Canada (Attorney General) v. Bedford* ¹⁸ the Court struck down the prostitution provisions, which on this occasion were argued on the basis the several provisions breached the accused's rights to security of the person under s. 7 of the Charter.

No one should decide this case based on BCCT. It is not binding on these facts and it is not clear that the BCCT reasoning remains good law. In any event, TWU's discrimination is wrong. This Society should be prepared to take a stand and change the law if necessary.

6. THE PUBLIC INTEREST REQUIRES A REFUSAL TO ACCREDIT

The purposes of the NSBS are clearly set out within Section 4 of the Legal Profession Act¹⁹:

¹⁷ [1990] 1 S.C.R. 1123

¹⁸ 2013 SCC 72

¹⁹ S.N.S., 2004, c. 28

- 4 (1) The purpose of the Society is to uphold and protect the public interest in the practice of law.
- (2) In pursuing its purpose, the Society shall
- (a) establish standards for the qualifications of those seeking the privilege of membership in the Society;
- (b) establish standards for the professional responsibility and competence of members in the Society;
- (c) regulate the practice of law in the Province. 2004, c. 28, s. 4; and
- (d) seek to improve the administration of justice in the Province by
 - (i) regularly consulting with organizations and communities in the Province having an interest in the Society's purpose, including, but not limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province, and
 - (ii) engaging in such other relevant activities as approved by the Council.

The fundamental purpose is simple and straightforward: to uphold and protect the public interest in the practice of law. One of the primary ways to protect that public interest is to: "establish standards for the qualifications of those seeking the privilege of membership in the Society". Simply put, it is up to the Society to act as the all-important gatekeeper on who may seek the privilege of membership.

It is very telling that one of the stated functions of the Society is to consult with organizations that reflect sexual diversity. It is no accident that the legislature highlighted that factor. These sections, and the long history of our Society, emphasize the critical importance protecting the public interest has in all decisions of Bar Council. The decision to accredit TWU puts that obligation into sharp perspective.

TWU says that it has a right, particularly in British Columbia, to maintain its Community Covenant. Its position is that it has the right to have an organization that chooses, based on their religious beliefs, who can enroll and work at their school. They argue they have the right to discriminate, in their "private" university. That may or may not be true today. Regardless, there is only one body that chooses what law degree qualifies a person to join this Society. Bar Council's responsibility is to regulate in the public interest in this province. Coucil's decision should not be dictated by a decision of the British Columbia government to exempt TWU from that province's human rights protections.

In Canada, law societies have given responsibility for academic training in the law to law schools. However, it remains the law societies' responsibility to monitor those degrees to ensure the public interest is met. By accrediting a school, the NSBS gives its stamp of approval to a law school, and effectively says we accept you as part of our process in ensuring the qualification of new lawyers. This process must consider more than just academic knowledge. Section 4 of our

Act does not say we must govern to ensure qualified lawyers. It says we must govern in the public interest, a much broader concept.

Our processes must not be seen to adopt and thus encourage a discriminatory organization. For example, it is impossible to imagine that we would ever accredit an institution that prohibited Blacks, or Jews, or women. Nor should we accredit, as part of our admission process, a school that prohibits gays and lesbians. If the NSBS were to accredit TWU, the following is unavoidable:

- Some religious groups believe that woman should not be educated. Should they form a private law school in Canada and wish to be accredited, there would be no principled basis for the NSBS to deny accreditation.
- The Bible has been interpreted to suggest that inter-racial marriage is wrong. Should a private law school in Canada prohibit inter-racially married persons, again there would be no principled basis for the NSBS to deny accreditation.

Accrediting TWU sends a message to the public that discrimination on the basis of sexual orientation is okay, and accepted. There can be nothing more fundamentally destructive to the interest of the public than that.

Imagine this headline: "Nova Scotia Barristers' Society says Law School that bans gays is okay."

7. THE NSBS STRATEGIC PLAN AND THE EQUITY OFFICE: PUTTING THEORY INTO PRACTICE

It is clear to us that the Society recognizes the key role equality plays in regulation in the public interest. The Society has made commitments through its new Strategic Framework and its long-standing Equity Office. It is now being called upon to honour its duties and commitments.

As affirmed by Council in May, 2013, the mandate of the Equity Office is to "promote the interests of equity-seeking groups in Nova Scotia by seeking to improve the administration of justice; addressing issues of racism, sexism and other forms of discrimination in the legal profession; and ensuring that the legal profession adequately reflects the public it serves"²⁰. Furthermore, the Equity Office promotes the interests of equity-seeking groups²¹ in Nova Scotia by:

²⁰ http://www.nsbs.org/improving justice/the equity program

²¹ Persons seeking equality on the basis of their sexual orientation and gender identity are specifically included in the definition of "equity seeking groups" for purposes of the Equity Office mandate.

- Seeking to improve the administration of justice;
- Addressing issues of racism, sexism and other forms of discrimination in the legal profession; and
- Ensuring that the legal profession adequately reflects the public it serves²²

Since its 1994 creation in response to the Royal Commission on Donald Marshall, Jr., our Equity Office has been a model for what true public interest regulation entails. The Society Council reconfirmed its commitment in its thorough 2013 review of the Equity Office. And, we see fundamental principles of the Equity Office front and centre in every aspect of the Society's 2013-2016 Strategic Framework²³. A few simple examples illustrate the Society's duty to promote equity, and in particular, for those seeking it on the basis of their sexual orientation:

- The strategic direction of "Excellence in Regulation and Governance" compels the Society to examine its purported delegation of authority to the Federation and act to correct any deficiencies. The Strategic Priority of "Transforming regulation and governance in the public interest" undoubtedly highlights the same duty;
- The Strategic Direction of "Improving the Administration of Justice" includes using all avenues entrusted to the Society to ensure access to the justice system and trust in it, both of which are core elements of the decision facing the Society on this issue;
- The Strategic Priority of "Enhancing access to legal services and the justice system for all Nova Scotians" undoubtedly requires a consideration of how sanctioning TWU's Community Covenant runs contrary to achieving this priority and.
- The Strategic Initiative to "Advocate for enhanced access to legal services and to the justice system for equity-seeking and economically disadvantaged groups²⁴," is a clear direction for the Society to consider the potential effect that limiting access to the legal profession has on access to legal services and the justice system for members of the LGBT community.

The Society has never been called upon to put theory into action in the way it is being called upon now. If the Equity Office and the Strategic Framework are to be more than laudable goals and enviable statements of intent, the Society must be true to them as they consider this historical issue that will have great impact on marginalized and historically disadvantaged groups. With respect, anything less than a refusal to accredit the TWU school of law would be hypocritical in the truest sense of the word.

²⁴ Equity Seeking groups is defined to include persons seeking equality on the basis of their sexual orientation.

²² http://nsbs.org/sites/default/files/cms/menu-pdf/2013-05-24 eq mandate.pdf

²³ http://nsbs.org/sites/default/files/cms/menu-pdf/strategicframework.pdf

8. THE RESULT

Council has to act on the question before it, first and foremost. We have heard concerns from Council members that the Society might get involved in litigation, or that the National Mobility Agreement might be threatened. With respect, these considerations are not the question presently before Council. Furthermore, bringing those potential issues into consideration is an exercise in conjecture that serves only to detract from the current accreditation question. We are at step one. Should TWU's school of law degree be accredited in Nova Scotia? Canadian law societies might answer this question differently. So be it. The National Mobility Agreement and/or TWU's school of law would have to respond to that reality. As for litigation, it might happen whatever decision Council makes. The key is for Council to be on the right side of the argument – the right side of the public interest. We believe this means the side denying accreditation.

The relevant regulation under the Legal Profession Act is the definition of "Law Degree" under Section 3.1:

In this Part ...

(b) "law degree" means i) a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree, or an equivalent qualification..."

This Regulation, as it is currently written, attempts to delegate to the Federation the responsibility for accrediting a law school. While we have comments on the general propriety of such a delegation, we will leave them aside for this discussion.

Council has its own regulatory authority. Regulations are frequently changed, updated, and amended, especially with changing circumstances. Council does not need a change in circumstances, as Council has the ultimate authority to change regulations as it sees fit. It may be sensible to have a Federation committee make decisions regarding bare academic standards. However, issues which relate to fundamental public interest factors are not well suited to be decided by a committee consisting of only 5 people, especially without jurisdictional representation, and lacking in process.

We have made the case for change: the Federation's decision to accredit TWU should not be accepted. We have pointed out their very serious errors in process, the significant legal and logical errors made, and have stated the case why accreditation should not take place. To do so is but a simple matter of changing the Regulation to withhold authority for approval in new law schools for the NSBS, as always had been the case prior, including for the most recent new schools, such as Thompson Rivers and Lakehead Universities.

Thus, the new regulation should read:

(b) "law degree" means i) a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by Council for the granting of such degree, or an equivalent qualification...".

Consideration might also be given to following the lead of the Law Society of British Columbia, which reserves a right to reject a Federation recommendation within the regulation. If that option is selected, the regulation might read:

"(b) "law degree" means i) a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree, unless Council adopts a resolution declaring that it is not or has ceased to be an approved faculty of law, or an equivalent qualification..."

In addition, the regulation should specifically outline the Society's commitment to antidiscrimination and equality in legal education, and its duty to consider broad public interest issues, so there is no question that such considerations are part of the accreditation process. The sooner the Society makes this change, the better.

The passing of the regulatory amendment should then be followed by a motion to deny accreditation to TWU until such time as it changes its Community Covenant to no longer discriminate against gays and lesbians.

The impact of that regulation will mean that TWU graduates will not be automatically eligible for admission to this province's articling program. It does not mean that the NSBS would not accept a TWU graduate. For example, a TWU graduate may qualify to article by being accredited by the National Committee on Accreditation. They may be able to join a Society in another province and later take advantage of the National Mobility agreement. Thus the failure to accredit TWU creates a burden on graduates who wish to practice in Nova Scotia, but not one that is unreasonable. Rather it is an outcome that strikes a reasonable and appropriate balance between protecting religious freedom and protecting equality. Our position is not designed to prohibit individuals, but rather to refuse institutional accreditation to a university that discriminates on the basis of sexual orientation. TWU graduates would be treated precisely the same as law graduates from any other law school (currently meaning those outside of Canada) that is not accredited at the institutional level.

The true result of the decision not to accredit will be to send a very strong message to the public that this discrimination will not be accepted in Nova Scotia. That sends a message across the country, and indeed more broadly: discrimination on the basis of sexual orientation is wrong.

Thank you for taking the time to consider our submissions. We look forward to the opportunity to address the public meeting on February 13, 2014.

Ronald J. MacDonald, QC

Amy Sakalauskas

From: Leah Sandhu

Sent: Thursday, January 30, 2014 11:38 AM

To: Submissions

Subject: Proposed Trinity Western University law school

Follow Up Flag: Follow up Completed

Trinity Western University shouldn't even be an accredited school, let alone an accredited law school. Isn't that how Hitler started out? Preventing Jewish professors from holding tenured positions at Universities? I fail to see how the Community Covenant Agreement is much different. It would be a shame to the profession to sanction TWU's blatant discrimination by accrediting a TWU law school.

Sincerely,

Leah Sandhu

From: Barinder Sanghera [bss@slglawyers.com]
Sent: Thursday, January 30, 2014 5:58 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Based on what I have seen, read, and heard in the media, I think there are some serious issues with granting this institution a law school. Law schools should be encouraging law students and graduates to be free thinking individuals who believe in equality for all. Institutions should not be bringing religion and discrimination into the teaching of law.

Regards,

Barinder Sanghera

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PAUL SCHACHTER PAUL SCHACHTER

March 2, 2014

Via email to submissions@lsbc.org

Attention: Executive Director The Law Society of BC 845 Cambie Street Vancouver, BC V6B 4Z9

Re: Trinity Western University

Dear Benchers of the Law Society of BC:

Please accept this letter as public comment in connection with the application of Trinity Western University (TWU) for approval as a new faculty of law. I write in my capacity as an individual lawyer, now retired, who has worked in the area of civil liberties and constitutional law for over four decades. Although I practiced in the United States, I am a citizen of Canada and a resident of British Columbia. I have an interest in seeing that the laws of Canada and BC are fairly applied.

TWU has adopted obligatory policies that are widely recognized to have the effect of discriminating against and excluding people on the basis of sexual orientation, such as students in same sex relationships. TWU contends that it has the right to impose those policies based upon its religious freedoms. It is easy to understand why TWU, a religiously affiliated school, makes that argument. It is not as easy to see how the accreditation of TWU implicates the equality rights of individuals. I explain below why the activities of TWU, when analyzed under the appropriate legal framework, are governed by the requirement of equal protection and benefit of the law without discrimination.

The positions on whether or not religious organizations are subject to the law's equality provisions are often aligned on opposite poles. One view contends that religious groups must be exempt from provisions that violate their members' religious beliefs, while the other argues that no one, including a religious organization, is exempt from the equal protection requirement. The shortcoming of these standpoints is that they look at the nature of the organization or of the rights involved, but not at the characteristics of the activities. A better analysis, and one that respects both the right of free exercise of religion and the right to equality, is that private activities are not subject to equality rights, but activities that extend into the public sphere, including those of private and religious organizations, are not exempt from the requirement of equal protection.

Our laws on equality have not been consistently applied. There have been different outcomes of how equality rights affect activities of religious organization dependent on

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March 2, 2014 Page 2

whether the requested exemption from the rights involves race/origin discrimination, gender discrimination or sexual orientation/gender identity discrimination. The varying results for similar conceptual circumstances suggest that decisions are conditioned more on whether the particular social equality movement has gained acceptance than on a uniform and coherent analysis of a framework for applying the rights.

It is understandable that tribunals have reached uneven results as they try to balance the rights of and public attitudes towards groups that do not conform to "traditional" norms. Added to the need to consider the societal effects are the difficulties that arise because civil liberties are rarely absolute. It is easy to conceive of circumstances under which many fundamental rights might be abridged. For example, the right to association can be limited in circumstances of public danger, such as a fire hazard. The right to life may be in conflict with the right to security of the person where self-defence is required.

The tension between conflicting rights makes the resolution of the issue involving TWU seem troublesome. The free exercise of religion (which includes rights to freedom of religion, freedom of belief, freedom of expression and freedom of association) and the guarantees of equality necessary to ensure the full participation of minority groups in our society are at odds and, therefore, appear to need to be balanced.

A factor often considered in the balancing attempt is whether the right is a fundamental one worthy of the highest protection or one that is less weighty. There is no doubt that expressional and associational rights require assiduous protection. The increased surveillance of individuals and groups made possible by technological advances has greatly increased the risk to freedom of thought, belief, opinion and expression. Limitations on these rights must be closely scrutinized.

The same standard of vigilance applies to limitations on equal protection, because these provisions are also fundamental to democracy. The principle underlying equality rights is that minority and disfavoured groups must be guaranteed the right to participate in all public pursuits and affairs of the country. Because both rights deserve the same strong protection, it is not possible to resolve the question of which guarantee predominates in a conflict situation simply by looking at the "importance" of the right.

Balancing two fundamental rights by attempting to decide which is intrinsically more fundamental is subjective and changeable depending on the point of view of the decision-maker. This may be one reason such approach has led to inconsistent results. It is also not helpful to look solely at the nature of the organization. A church or club is considered private when it carries out its religious or social function. Even the fact that a church or club needs certain government permits and licences does not necessarily result in its losing its private nature. For example, a permit to construct a sign would not normally convert a private permit-holder into a public organization. In contrast, an analysis that does not take into account the relative weight of equally fundamental rights or the classification of an organization and, instead, looks at whether the activity affecting the rights involves the

March 2, 2014 Page 3

private or public sphere leads to consistent outcomes that give the greatest realization to both rights.

The rights to expression and association preclude the government from interfering with private activities. Associational rights permit all white, all black, all Aboriginal, all Asian, all Catholic, all Jewish or all agnostic private organizations to be established. Government may not dictate to anyone who his or her associates must be. Individuals can be as selective as they desire in the private sphere. While bigotry and prejudice are deplorable, it is the right of every person to close her or his home or private social life to any person solely on the basis of personal prejudices including homophobia. Worship, education on faith and religious canons, governance of spiritual organizations and most activities inside one's home and genuinely private clubs are within the private sphere where the obligations of equal protection do not apply.

Things are different where the activity reaches into the public realm. Such activities go beyond social interactions and infringe on the basic right of individuals in a democracy to participate in civil society. Where facilities serve the public, such as a restaurant or a grocery store, the private owner cannot limit customers based on the owner's preference to include only certain people or to exclude others due to their minority or disfavoured status that is protected by the law.

There are certain thresholds, which, once crossed, give the activity a public nature. Even the activities of a private club may be deemed public, when, for example, participation in those activities are necessary to obtain entrée into the public realm. Once an activity is in the public realm, society has an obligation to protect participation of all recognized protected sectors in that activity. If the guarantees of equality of every individual under the law and of equal benefit of the law without discrimination are to be meaningful, they must prevent official inaction to protect rights as well as affirmative action that abridges them. The fact that specific protective legislation does not yet exist is not determinative. Both the omission to protect and the omission to pass laws for protection of activities within the public sphere are denials of equal protection of the laws.

Accreditation of a law school involves activities that bring what might otherwise be a private organization into the public sphere. Accreditation is only necessary when a university desires to prepare law students for the practice of law under publicly enacted legislation or common law. Attendance at an accredited school is the gateway to a law licence that sanctions the holder to engage in the practice of public law and appear in the court system. This is in contrast to the right to practice ecclesiastical law. Accreditation and a law licence are not necessary for priests, rabbis, imams or lay congregants to be able to interpret and enforce the laws of a religion pertaining to faith. Indeed, for the reasons that matters of beliefs, worship and religious governance are inherently private, the public, through government, has no right to impose its standards on who can practice religious law.

Accreditation is the official imposition of standards. It is not like a permit to erect a sign. Rather, it is a comprehensive set of requirements that governs whether the activities of an

March 2, 2014 Page 4

institution will be recognized as capable of preparing students for service related to the public law. While a private institution may have the right to teach law to whom it wants, any way its wants, it does not have the right to be accredited as the preparer or gatekeeper for the public practice of law. Accreditation brings the activities into the public realm. If a law school discriminates in its activities, the guarantee of equal protection of the laws is implicated.

Lawyers in the province are engaged in public activities by the fact of their being lawyers. They are restrained from engaging in <u>any</u> prohibited discrimination. *Code of Professional Conduct Section 6.3-5* ("A lawyer must not discriminate against any person."). It is inconsistent with the *Code of Professional Conduct* for the Law Society to accredit a law school that overtly discriminates against individuals based upon sexual orientation and adopts such discrimination as one of its tenets, while it disciplines a lawyer trained at that officially approved school who discriminates on the same basis, as he or she has been taught to do. The argument that even though TWU discriminates on the basis of sexual orientation, it can, nonetheless, correctly teach the laws relating to equality and non-discrimination does not remedy this defect. Any parent knows that it is ineffective to teach "do as I say, not as I do." 1

Accreditation of TWU will bring its activities of teaching law, which otherwise may have been private, into the public realm where equal protection of the laws applies. For the reasons set forth in this letter, as long as its policies have the effect of discriminating on the basis of sexual orientation and gender identity, the TWU law school should not be accredited.

Respectfully yours,

Paul I Walt

Paul Schachter

PS:mem

¹ There is also a case to be made that discriminatory education undermines faith in the integrity of the legal system as a whole. Could a gay or lesbian individual have confidence in receiving fair treatment from a judge who is a graduate of the TWU law school in matters where his or her credibility is balanced against a heterosexual?

From: Gavin Smith [Gavin_Smith@wcel.org]
Sent: Monday, February 17, 2014 10:22 AM

To: Submissions

Subject: Opposition to TWU being approved as a faculty of law

Follow Up Flag: Follow up Completed

To whom it may concern,

I would like to express my strong opposition to Trinity Western University being approved as a faculty of law by the Law Society of BC.

I am substantially in agreement with two lawyers who have been vocal on this subject – Clayton Ruby, QC and Angela Chaisson – whose views are summarized in this opinion article:

http://blogs.theprovince.com/2013/10/29/clayton-ruby-and-angela-chaisson-title-goes-here/

To approve TWU as a faculty of law would be a step backward for the legal profession and for equality rights in BC and Canada.

Gavin Smith, Staff Counsel West Coast Environmental Law 200 - 2006 West 10th Avenue Vancouver, BC, Canada V6J 2B3

Direct: 604-601-2512 Fax: 604-684-1312 Toll free (in BC): 1-800-330-9235 ext. 212 Email: gsmith@wcel.org Web: www.wcel.org

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From: Snell, Peter V. [Peter.Snell@gowlings.com]

Sent: Friday, January 31, 2014 5:46 PM

To: Submissions

Subject: new law school at Trinity Western University (TWU)

Follow Up Flag: Follow up Completed

Dear Law Society of BC Benchers,

I am a partner at the law firm Gowling Lafleur Henderson LLP. I am writing to provide you with my personal comments, as solicited by the Law Society of BC, whether or not the Law Society of BC should agreed to TWU being permitted to operate a law school in British Columbia. As I understand it, TWU will require a signed agreement from all students and staff that acknowledges the school's faith-based values and beliefs, which includes specific language about abstaining from "sexual intimacy that violates the sacredness of marriage between a man and a woman".

I am opposed to TWU's proposal as I believe such a covenant is offensive and contrary to Canadian values and should not operate in a law school. To me it is akin to the controversy in Russia regarding its laws restricting gay-rights activities, which are also offensive.

How can a law school that demands this type of covenant from its students and staff teach constitutional law, and the charter of rights and freedoms? In particular, section 15 (1)of the Charter:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

I feel it would be a negative reflection on the Law Society of BC if it were to agree to allow TWU to operate a law school in BC.

Regards,

Peter Snell

Peter Snell ³

Partner 604-891-2281 Vancouver 403-776-3376 Calgary peter.snell@gowlings.com



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From: Martin Soudek

Sent: Monday, February 24, 2014 8:36 PM

To: Submissions

Subject: opinion against accreditation of a law school at Trinity Western University (TWU))

Follow Up Flag: Follow up Completed

Hello,

I am writing to state my opinion against an accredited professional law program at TWU. I do not believe that the BC Law Society would be acting in accordance with its mandate to act in the public interest in the administration of justice through protecting and preserving the rights and freedoms of all persons if it were to accredit a professional degree-granting law school at TWU. The conservative Christian interest espoused in the Covenant at issue is not synonymous with the public interest, which includes the interests of gender and sexual minorities that have historically and contemporaneously discriminated against by Christian religious institutions.

Accrediting a professional law school at TWU would effectively bar gender and sexual minority students from the classroom. Institutional segregation and exclusion of the minority from the oppressive majority has time after time created conditions that breed intolerance and hatred among the majority. I fear this would occur at TWU.

Furthermore, I am concerned about the precedent that accreditation would make regarding future religious law schools. Would the BC Law Society be prepared to accredit a conservative religious law school that segregates men and women? These issues should be considered. Once again, I do not believe that private religious prejudices and intolerances belong in a profession that operates in the public interest in the administration of justice through protecting and preserving the rights and freedoms of all persons.

Thank you for reading my submission.

Sincerely,

Martin Soudek

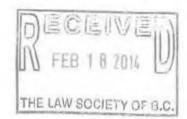
Martin Soudek, JD, MA

The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

February 17, 2014

Dear Sir or Madam:

Re: Trinity Western University



I am a straight person who believes that all of us are equal under the law including those who are gay or lesbian. It continues to amaze me that people who claim to be religious and believe that they came here because of their god do not realize we all were if that is the case.

I do not think that Trinity Western University should be allowed to teach law given their narrow views on things not their business.

Gay marriage is legal in BC and should not be affected by those teaching our future lawyers. We need open minded people to represent us.

Sincerely,

Barbara Spaans

Barbara Spaans

From:

Rob Stevenson Wednesday, February 12, 2014 12:48 PM Sent:

Submissions To: TWU Law School Subject:

Follow up Follow Up Flag: Flag Status: Completed

I am opposed to graduates of this school being admitted to the Bar for all of the good reasons that have been stated already.

Robert W. Stevenson

Sent from my iPad

From: Stephanie Streat

Sent: Tuesday, February 11, 2014 6:05 PM

To: Submissions Subject: TWU decision

Follow Up Flag: Follow up Completed

I'm writing to address my concern respecting the qualification of TWU's proposed law school. One could write a thesis on this but to put it simply, in my view, legal education needs to be equally available to all, or the profession can't begin to properly serve the interests of all of society. A discriminatory practice such as that followed by TWU should not be tolerated in our society.

Would we consider qualifying a school with criteria which essentially forbade women or Jews from entry? I hope not, as I would not then be a lawyer. Setting superficial criteria for entry excludes pockets of society from both access to education/opportunity, and society from fulsome legal representation.

Thank you for your consideration of this important matter.

Stephanie Streat Associate Dentons Canada LLP

D <u>+1 604 622 5198</u> stephanie.streat@dentons.com

From:

Pamela Third Monday, March 03, 2014 12:07 PM Submissions Sent:

To:

Proposed Trinity Western Law School Subject:

Follow Up Flag: Follow up Completed Flag Status:

http://pamelathird.wordpress.com/2013/12/26/update-on-the-trinity-westernuniversity-law-school-controversy-the-third-option/

Sent from my iPad

From: Nick Toth

Sent: Friday, January 31, 2014 4:34 PM

To: Submissions

Subject: Comment on proposed TWU law school

Follow Up Flag: Follow up Completed

Dear Benchers of the Law Society of BC,

I believe that the Benchers should not approve any faculty of law at the Trinity Western University (TWU) for the purpose of meeting the academic qualification requirement of the Law Society's admission process, unless the TWU ceases to discriminate against prospective law students who happen to be in a same-sex marriage. The fact that the TWU is apparently incapable of understanding why their written admissions policy is discriminatory makes me believe that the TWU is, at the very least, unsuitable for operating a law school that would presumably teach first-year constitutional law.

Sincerely, Nick Toth

From: Carla Terzariol [carla@tlabc.org]
Sent: Monday, March 03, 2014 10:19 AM

To: Submissions

Subject: RE: TWU Law School

Follow Up Flag: Follow up Completed

I neglected to mention that the below message was sent on behalf of TLABC's president Richard Parsons. The original will follow by mail.

Carla Terzariol
Executive Director/CEO

TRIAL LAWYERS ASSOCIATION of BRITISH COLUMBIA

604-682-5343

From: Carla Terzariol

Sent: Monday, March 03, 2014 9:52 AM

To: submissions@lsbc.org
Subject: TWU Law School
Importance: High

March 3, 2014

To: The Benchers of the Law Society of British Columbia

The TLABC represents 1400 lawyers engaged in the active practice of law in British Columbia. We have now debated this issue and there are strongly held views on both sides of the issue within our organization. There is mutual respect among us for each member's views and beliefs.

I do not write at this time on behalf of every member of our organization. However, following a vote of our Executive and Board of Governors, in which a majority participated, the vote was 72% in favour to urge the Benchers of the Law Society of British Columbia to vote for the motion tabled by David Crossin, QC and Kenneth Walker, QC.

WHEREAS:

- > Discrimination in the legal profession continues despite progress toward its elimination;
- > Ending discrimination in the legal profession is important to allow the legal profession to represent itself with integrity as an advocate for justice;
- > Discrimination in legal education undermines the ethical underpinnings of the legal profession;
- > The existence of discrimination in legal education may contribute to an educational environment in which freedom of expression is inhibited;
- > The formation of values in law school has a long-term impact on Canada's future lawyers;
- > Discrimination is not recognized as a protected form of freedom of expression; and
- Any conflict between enumerated freedoms must consider the potential impact on the legal profession, the justice system and society as a whole.

We submit that the Law Society of British Columbia and law societies across Canada must require that all legal education programs recognized for the purpose of training students for admission to the practice of law be required to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability.

Carla Terzariol
Executive Director/CEO

TRIAL LAWYERS ASSOCIATION of BRITISH COLUMBIA

1111-1100 Melville Street, Vancouver BC V6E 4A6

T: 604-682-5343 (Toll Free: 1-888-558-5222) F: 604-682-0373

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TWITTER @tla_bc FACEBOOK TLABC 3 March 2014

Law Society of British Columbia 845 Cambie Street Vancouver BC

Attention: Benchers of the LSBC

Re: Trinity Western University Faculty of Law

The TLABC represents 1400 lawyers engaged in the active practice of law in British Columbia. We have now debated this issue and there are strongly held views on both sides of the issue within our organization. There is mutual respect among us for each member's views and beliefs.

I do not write at this time on behalf of every member of our organization. However, following a vote of our Executive and Board of Governors, in which a majority participated, the vote was 72% in favour to urge the Benchers of the Law Society of British Columbia to vote for the motion tabled by David Crossin, QC and Kenneth Walker, QC.

WHEREAS:

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- Ending discrimination in the legal profession is important to allow the legal profession to represent itself with integrity as an advocate for justice;
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- The existence of discrimination in legal education may contribute to an educational environment in which freedom of expression is inhibited;
- The formation of values in law school has a long-term impact on Canada's future lawyers;
- Discrimination is not recognized as a protected form of freedom of expression; and
- Any conflict between enumerated freedoms must consider the potential impact on the legal profession, the justice system and society as a whole.

We submit that the Law Society of British Columbia and law societies across Canada must require that all legal education programs recognized for the purpose of training students for admission to the practice of law be required to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability.

Yours truly,

Richard Parsons President



FACULTY OF LAW AT ALLARD HALL

1822 East Mall Vancouver, BC Canada V6T 1Z1

Phone: 604 822 3151 Fax: 604 822 8108 www.law.ubc.ca

February 24, 2014

Mr. Timothy E. McGee, QC CEO and Executive Director Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mr. McGee:

The UBC Centre for Feminist Legal Studies writes in response to your request for input on the approval of admission to the British Columbia bar of graduates from Trinity Western University's (TWU's) planned law school. In our submission, we draw on our expertise as feminist researchers, teachers and lawyers. It is our view that TWU's Commun ty Covenant prevents students from receiving a well-rounded and complete legal education. The admission of TWU graduates to the British Columbia bar would run contrary to the Law Society of British Columbia's mandate to serve the public interest and protect the rights and freed oms of all persons.

We maintain a research centre within the Faculty of Law at the University of British Columbia that is devoted to the creation and dissemination of scholarship on feminism an the law. We involve students and the broader community in our work and host visiting judges and researchers from around the world. Our Ce itre fosters legal education that offers students a broad range of critical perspectives on gender and sexuality. Our affiliated faculty and students include people of all sexual orientations and many religious backgrounds. We share a commit ient to open, respectful scholarly inquiry and the advancement of sex equality through law. A number of our faculty are also members of the British Columbia bar and are involved in a variety of litigation and law reform initiatives.

We are deeply concerned about the limitations on academic freedom that flow from the Community Covenant and related policies. We note that TWU's ideological and faith requirements have been found to infringe academic freedom by the Canadian Association of University Teachers.

Requiring abstinence from all sexual activity outside of heterosexual marriage makes it extremely unlikely that a faculty member who identifies as a lesbian will ever take up a position at TWU. No feminist faculty member will be able to properly conduct research that takes a positive view of same sex or un narried sexual activity. Students would not have the opportunity of mentorship from faculty members who identify as lesbian or who do not subscribe to the Covenant. In addition, the requirement to affirm that life begins at conception takes it

impossible to conduct research on the relationship between forced pregnancy and women's inequality. It also encourages an environment in which women are shamed for deciding to terminate a pregnancy.

This is not simply a question of academic standards. TWU's Community Covenant has the effect of limiting students' opportunities for learning about key issues related to women's equality. Law students must have the opportunity to learn about and to debate these important issues if they are to be able to contribute to the development and application of the law so as to promote the rights and freedoms of all Canadians.

All existing Canadian law schools respect the varied religious beliefs of their students. Law students at UBC are free to abstain from some or all sexual activity on religious grounds. They are also free to carry any pregnancy to term, consistent with their religious values. All of this would still be true at TWU if this Community Covenant were to be rescinded. What makes TWU distinct is not the religious beliefs or practices of its students and faculty but the way in which it systematically limits who will teach those students and what they can learn.

We believe that the public interest requires that the Law Society of British Columbia take a stand that aligns itself with inclusion and independent inquiry. For some time, the Law Society of B.C. has tried to encourage diversity within the profession in order to better serve the public interest. We need not repeat the lessons which excluded women, Aboriginal people and others from the practice of law. The limits on who can go to TWU, who can teach there, and what research they can conduct, stand in direct opposition to the conviction that having lawyers from the widest range of possible backgrounds best serves the public. Equality law is the foundation for preparing students to understand and appreciate difference and social context in the practice of law.

For these reasons, we do not support admission of graduates from Trinity Western University's proposed law school to the practice of law in British Columbia.

Yours truly,

Janine Benedet, LLB, LLM SJD

Associate Professor of Law

Faculty Director, Centre for Feminist Legal Studies

Member (Non-Practising/Pro Bono), Law Society of BC

Justine Clark

From: Bobinski, Mary Anne [bobinski@law.ubc.ca]

Sent: Monday, March 03, 2014 5:24 PM

To: Submissions

Cc: Bobinski, Mary Anne

Subject: Additional Submissions, LSBC

Attachments: image001.png; UBC motion on Non-Discrimination in Legal Education.pdf; UBC Law

community submission for publication.pdf; UBC Law community submission with

signatories.pdf

Dear Mr. McGee, President Lindsay and Benchers of the Law Society of British Columbia,

Re: Attached Submission from faculty, staff and students of UBC Law re: LSBC consideration of proposed TWU School of Law program (revised) and UBC Law Faculty Council Motion (Monday, March 3, 2014)

I am writing to follow up on the note I sent yesterday (March 2, 2014) forwarding a submission from UBC Law faculty, staff and students with respect to the proposed TWU School of Law program (see below). I now write to provide updated versions of the submission sent yesterday along with a new submission arising from a Faculty Council meeting held today.

Justine Clark

From: Bobinski, Mary Anne [bobinski@law.ubc.ca]

Sent: Sunday, March 02, 2014 2:26 PM

To: Submissions Subject: Submission, LSBC

Attachments: UBC Law community submission for publication.pdf; UBC Law community submission with

signatories.pdf

Follow Up Flag: Follow up Completed

Categories: Red Category

Dear Mr. McGee, President Lindsay and Benchers of the Law Society of British Columbia,

Re: Attached Submission from faculty, staff and students of UBC Law re: LSBC consideration of proposed TWU School of Law program

I am forwarding via this email two versions of a submission that has been prepared by a group of students and certain faculty members at the UBC Faculty of Law in relation to the proposed TWU School of Law. It is important to note that the submission is not an official statement or position of UBC Law.

The submission itself explains the process that led to the submission being prepared, and to the two recommendations contained within it. Students, staff and faculty were invited to review the submission and to decide whether they wished to adopt one of the two recommendations made within it. Community members were also informed of the opportunity to make their own submissions directly to the Law Society. The submission grew out of a discussion at our Faculty Council about the opportunity to pursue a collaborative and respectful conversation among a very diverse group of students and faculty. The participants hope that the submission's origins have produced a stronger and more nuanced document than would otherwise have been possible.

The drafters of the document note that the Law Society's call for input flags that submissions "may be made publicly available." The difference between the two versions of the attached submission relates to the list of names that appears within the document. One version ("UBC Law Community Submission with signatories") contains the complete list of names of those UBC Law community members who have indicated an intention to adopt one of the two recommendations. This version is intended for the use of the Benchers and to be shared with Trinity Western University.

In the event that the Law Society decides to make submissions publicly available, I wonder whether you might consider whether it is in the public interest to publish the second version ("UBC Law Community Submission for publication") in lieu of the first. The second version of the document retains the names of faculty and staff who have adopted one of the two recommendations, but withholds the names of students who have indicated their position. It retains an indication of the number of students who have adopted each recommendation.

This request is made in light of the intense public scrutiny that has been given to the proposed TWU School of Law. By withholding names from publication, students will be protected from adverse judgments being made about their participation or about the views that they have expressed by those who have not had the opportunity to grapple directly with the complexity of these difficult issues.

The law school has made efforts to encourage our community members to resist stereotypes about any group or position when discussing the difficult issues raised by the proposed TWU School of Law. In particular, we have suggested that it would be too simplistic to assume that a decision by any member of our community to adopt one or the other recommendation can be understood as a rejection of the value of freedom of religion, or conversely as an endorsement of discrimination against LGBTQ individuals. However, given the nature of public debate, I would ask that you consider making public only the submission with students names redacted. Recognizing that this is ultimately a decision for the Law Society, the working group facilitator has advised students that submissions may be made publicly available.

Thanks for your efforts to encourage submission of views and information about this important matter.

Best regards,

MAB

Mary Anne Bobinski, B.A., J.D., LL.M.

Dean and Professor | Faculty of Law at Allard Hall The University of British Columbia 1822 East Mall | Vancouver, BC Canada V6T 1Z1 Phone 604 822 2818 | Fax 604 822 9322 bobinski@law.ubc.ca | www.law.ubc.ca | @ubclaw

Please note: Due to the volume of emails received at this address, time-sensitive items should be brought to the attention of Rosanna Falbo (falbo@law.ubc.ca)

You can access selected research papers on the Social Science Research Network (SSRN) at: Mary Anne Bobinski http://ssrn.com/author=328741.



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I. Introduction

This submission has been prepared collectively by a group of students and certain members of faculty at the UBC Faculty of Law.

In January 2014, Faculty Council of the UBC Faculty of Law passed a resolution addressed to the Law Society of BC in relation to the proposal that Trinity Western University (TWU) establish a school of law that will offer students a path to eventual admission to legal practice in British Columbia. When discussing the January 2014 resolution, members of Faculty Council expressed interest in bringing their expertise to bear on the legal, educational and ethical questions presented by the proposed TWU School of Law. In particular, difficult issues are raised by the Community Covenant Agreement that TWU requires all students, staff and faculty to sign and abide by as a

condition of their association with TWU. The present submission has emerged out of the process adopted by students, staff and faculty to work on these questions.

As the ensuing submission makes clear, our community includes a very diverse group of individuals, including a large cohort of lesbian, gay, bisexual, trans and queer (**LGBTQ**) individuals; individuals who hold a range of religious beliefs including evangelical Christian beliefs, Christian beliefs that are inconsistent with those articulated in the Community Covenant Agreement, and representatives of many non-Christian religions; Indigenous community members whose belief systems are quite different from those represented in the Judeo-Christian tradition that prevails in contemporary Canada; feminists; and many others (indeed, these enumerated groups overlap in interesting ways).

Given this diversity, members of our community hold a range of views about the merits of the proposed TWU School of Law and the role of the Community Covenant Agreement. These views are not capable of simple reduction by group, standpoint or suggested outcome. However, the majority of those who have participated in the process that led to this submission consider that the Community Covenant Agreement violates the principle of non-discrimination that we regard as indispensible to legal education and the practice of law. Further, we believe that the particular form of discrimination effected by the Community Covenant Agreement is not protected by the Charter value of freedom of religion as this value has been judicially interpreted. Accordingly, this group recommends that the Law Society pass a resolution that the proposed TWU School of Law in its current form (ie incorporating the Community Covenant Agreement as a mandatory condition of working or studying at the proposed School of Law) is not an approved common law faculty of law for the purposes of Rule 2-27(4)(a). This recommendation is described in this submission as the **first recommendation**.

A minority of those who participated in this submission take the position that the the Law Society should approve the proposed TWU School of Law, as the Federation of Law Societies of Canada has done, without imposing further conditions regarding the Community Covenant Agreement. This position is described in this submission as the **second recommendation**.

In working on the questions presented by the proposed TWU School of Law and the Community Covenant Agreement, the UBC Faculty of Law adopted a process that sought to maximize the opportunities for all interested individuals to participate in the conversation about, and have input into the contents of, this submission. This submission accordingly represents the product of a remarkably collaborative and collegial process of discussion. In keeping with the process that produced our conclusions, this submission expands upon the interpretation of the relevant legal and ethical principles that lead to both recommendations. However, given that the structure of the submission primarily reflects the analysis conducted by those who consider that Law Society should not

condone the Community Covenant Agreement, we have also attached as an Appendix, a memorandum prepared by a group of UBC community members who support the second recommendation. We strongly suggest that Benchers read both the submission and the Appendix in order to obtain a complete sense of the differing analyses that lead to these respective conclusions. Those who read this submission will note that the main submission and the Appendix share some contents in common.

This submission addresses several issues:

- 1. The Law Society of British Columbia's power to grant or deny accreditation to the proposed TWU School of Law;
- 2. The proper interpretation of s. 41 of the *Human Rights Code* RSBC 1996, c. 210 and its application to TWU;
- 3. Whether the Supreme Court of Canada's decision in *Trinity Western University v BC College of Teachers* dictates the result of TWU's application for accreditation for its proposed School of Law; and
- 4. The application of the *Charter* values of freedom of religion and equality and the human rights principle of non-discrimination to the Law Society of BC's decision-making process.

In the conclusion, we set out the two recommendations we have made in relation to the Law Society's decision. A list of those who endorse each recommendation appears after the conclusion.

II. The Law Society's power to grant or deny accreditation to the proposed TWU School of Law

In this section of this submission, we address several questions that arise regarding the Law Society's power to grant or deny accreditation to the proposed TWU School of Law. First, we discuss the Law Society's statutory mandate to regulate admission to legal practice in BC in a manner that upholds and protects the public interest in the administration of justice. Next, we consider the limited nature of the power delegated to the Federation of Law Societies of Canada (FLSC) and the Law Society's stated understanding of the relationship between the FLSC Approval Committee and the Law Society's obligations under the *Legal Profession Act*. Finally, we discuss the limitations of the process adopted by the FLSC in relation to TWU's proposed School of Law.

1. The Law Society's statutory mandate

Section 3 of the Legal Profession Act, SBC 1998 c. 9 provides

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

It is clear from the drafting of s. 3 that the Law Society's paramount duty is to uphold and protect the public interest in the administration of justice, by performing the functions listed in sub-sections (a) – (e). These functions specifically include "preserving and protecting the rights and freedoms of all persons" and "establishing standards ... for the education ... of lawyers and of applicants for call and admission". Pursuant to the *Legal Profession Act*, the Law Society is granted exclusive power to regulate admission to practice and the practice of law in BC. However, this power must be exercised in accordance with the Law Society's paramount duty to uphold and protect the public interest in the administration of justice and with the function of protecting and preserving the rights and freedoms of all people.

2. The limited nature of the power delegated to the FLSC Approval Committee

Section 11 of the *Legal Profession Act* grants the Law Society a broad power to make rules and regulations "for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act." Pursuant to this statutory power, the Law Society has established Rules that govern the accreditation of law schools for the purpose of educating prospective lawyers. According to Rule 2-27(4)(a), an applicant for the BC admission program may demonstrate that he or she has satisfied the academic qualification requirement to practice law by demonstrating "successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university". Rule 2-27(4.1) provides in turn that

For the purposes of this Rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

The effect of Rule 2-27(4.1) is that a common law faculty of law which has been approved by the FLSC will constitute an approved faculty for the purposes of Rule 2-27(4)(a) unless the Benchers pass a resolution declaring that the common law faculty of law "is not or has ceased to be" approved.

Rule 2.27(4.1) was adopted by the Law Society on 12 July 2013. The purpose of adopting the Rule was to give effect to an earlier policy decision to approve the creation of the Canadian Common Law Approval Committee (**FLSC Approval Committee**), which is a sub-committee of the FLSC. The purpose of creating the FLSC Approval Committee is to establish a national body to determine whether common law faculties of law comply with new uniform national requirements for entry to Canadian law society admission programs. Creation of the FLSC Approval Committee was recommended by the FLSC's Common Law Degree Implementation Committee in 2011.

Pursuant to the 2011 Report of the FLSC Common Law Degree Implementation Committee, the FLSC Approval Committee has a mandate to "determine law school program compliance with the national requirement" and

To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.¹

The 2011 Report recommended that the FLSC Approval Committee should include "Three current or former Law Deans or Law School Administrators (includes Associate, Assistant and Vice Deans), to be recommended by the" Canadian Council of Law Deans.²

Prior to the adoption of Rule 2-27(4.1), the Law Society defined "academic qualification" to include "successful completion of the requirement for a bachelor of law or the equivalent degree from a common law faculty of law in a Canadian university." When Rule 2-27(4.1) was adopted, the Law Society's Credentials Committee expressed the view that:

[T]he object and duty of the Law Society, combined with the statutory powers given it in sections 19 through 21 concerning credentials, give the Law Society a broad scope to determine how and by whom prospective lawyers will be trained and educated, because the focus of the enquiry is ultimately on issues such as independence, integrity, honour, professional responsibility, and the rights and freedoms of all persons, (all with a view to upholding the public interest in the administration of justice).⁴

The Credentials Committee specifically noted that the FLSC Approval Committee would not consider matters other than compliance with the national requirement, and suggested

5

¹ Common Law Degree Implementation Committee, *Final Report* (October 2011) at 4, available at http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf.

² Ibid at page 44.

³ Memo dated June 17, 2013 at page 1. This memo was contained as an attachment to the agenda for the Benchers' meeting on July 12, 2013, which can be found online at: http://www.lawsociety.bc.ca/docs/about/agendas/2013-07-12 agenda.pdf

⁴ Ibid at 3.

that it is consistent with the Benchers power to enquire into such matters as "the teaching methods or philosophies of the programs" as part of defining the academic requirements for admission to practice.⁵ While concluding that the Law Society has power to delegate the determination of the national requirement to the FLSC Approval Committee, the Credentials Committee observed that "the *ultimate* determination of the requirements for academic qualifications may not be delegated."

From this review of the *Legal Profession Act*, the Law Society Rules and the specific history of Rule 2-27(4.1), it seems quite clear that the Law Society retains the exclusive power to grant or deny approval to Canadian common law faculties of law for the purposes of the academic qualifications required to enter the BC admissions process. While it has been suggested that "Rule 2-27(4.1) confers on TWU what the cases describe as a legitimate expectation that its undergraduate law degrees will constitute academic qualification", a thorough examination of the relevant legal framework and prior decision-making demonstrates that the Law Society has signaled from the outset that the approval process adopted by the FLSC Approval Committee does not discharge its statutory mandate to regulate the academic qualifications associated with entry to the legal profession in BC. The Law Society retains ultimate power to determine the requirements for academic qualification for entry to legal practice BC.

3. The limited nature of the FLSC process re TWU's proposed School of Law

The FLSC Approval Committee issued its *Report on Trinity Western University's Proposed School of Law Program* (**Approval Committee Report**) in December 2013. The Approval Committee Report states that the FLSC Approval Committee considers that its mandate is confined to considering whether TWU's proposed program meets the "national requirement" by offering required courses and complying with minimum admission standards. The Approval Committee Report expressly does not consider other matters, including concerns about the effect of TWU's "Community Covenant Agreement" on access to a legal education and on TWU employees' and graduates' ability to discharge a lawyers' "special" responsibility of non-discrimination. ¹⁰

⁵ Ibid at 3-4.

⁶ Ibid at 4. Emphasis in original.

⁷ Memorandum from Geoffrey Gomery to Benchers of the Law Society of BC dated 8 January 2014 and attached to the agenda for the Benchers' Meeting on January 14, 2013, which can be found online at: http://www.lawsociety.bc.ca/docs/about/agendas/2014-01-24 agenda.pdf.

⁸ This report is available at: http://www.flsc.ca/ documents/ApprovalCommitteeFINAL.pdf.

⁹ Approval Committee Report ibid at para 29 - 31.

¹⁰ Law Society of BC, *Code of Professional Conduct for BC*, Chapter 6, rule 6.3-5 and commentary. This rule replaces the more elaborate form previously contained in Chapter 2 rule 3 of the *Professional Conduct Handbook for BC* (effective 1 January 2013). Part of the text of this paragraph mirrors that which was

When the Community Covenant Agreement was first raised within the FLSC process, TWU adopted the position that the FLSC's mandate does not include matters beyond the national requirement and specifically that the FLSC "itself has no jurisdiction from the law societies to consider or make recommendations with respect to the [Community] Covenant" Agreement.¹¹

Notwithstanding the position that was taken by TWU, the FLSC established a "Special Advisory Committee on Trinity Western's Proposed School of Law" (**Special Advisory Committee**). The mandate of the Special Advisory Committee was described as follows:

The specific mandate of the Special Advisory Committee is to provide advice to the Council of the Federation on the following question:

What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?¹²

The Special Advisory Committee was directed to have regard to submissions received by the Federation, applicable law and any other relevant information in answering that question.

In a submission made to the Nova Scotia Barristers' Society on 10 February 2014, Amy Sakalauskas and Ronald J MacDonald QC¹³ expressed the view that the decision to strike a separate committee to consider the issues raised by TWU's Community Covenant Agreement raises a perception of bias. Specifically, Sakalauskas and MacDonald suggest that it would have been more appropriate to expand the mandate given to the FLSC Approval Committee to incorporate attention to the effect of the Community Covenant Agreement on the public interest.¹⁴ They point to the fact that the FLSC Approval

contained in the background to the UBC Faculty of Law Faculty Council's motion to the Law Society of British Columbia, passed in January 2014.

¹¹ Letter from Jonathon S Raymond, President of Trinity Western University to John JL Hunter, Federation of Law Societies of Canada, dated 17 May 2013, page 2; see also Letter from Jonathon S Raymond, President of Trinity Western University to Canadian Common Law Program Approval Committee, Federation of Law Societies of Canada dated 24 April 2013. Both letters are appended to the Special Advisory Committee on Trinity Western's Proposed School of Law, *Final Report* (December 2013) available at: http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf.

¹² Special Advisory Committee on Trinity Western's Proposed School of Law, *Final Report* (December 2013) available at: http://www.flsc.ca/ documents/SpecialAdvisoryReportFinal.pdf.

¹³ Ronald J MacDonald QC is a former president of the Nova Scotia Barristers' Society.

¹⁴ Amy Sakalauskas and Ronald J MacDonald, Letter to Rene Gallant, President of the Nova Scotia Barristers' Society, dated 10 February 2014 at page 9 – 10 A copy of this letter is available at: http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-10_MacDonaldSakalauskas_TWU.pdf.

Committee raised a concern about TWU's ability to teach ethics and public law in support of the proposition that the FLSC Approval Committee may reasonably be taken to have held a different perspective on the impact of the Community Covenant Agreement than that expressed in the Special Advisory Committee's report.¹⁵

Furthermore, Sakalauskas and MacDonald identify that the Special Advisory Committee's Report addressed questions beyond its mandate. In particular, the Special Advisory Committee purported to answer such questions as whether the proposed TWU School of Law would be contrary to the public interest and whether approving TWU's proposed school of law would result in LGBTQ students having fewer opportunities and choices in respect of obtaining a legal education than others. As Sakalauskas and MacDonald point out, the Special Advisory Committee's mandate was limited to identifying what additional considerations should be taken into account in respect of accreditation, given that TWU requires students and faculty to sign and abide by the Community Covenant Agreement. Sakalauskas and MacDonald suggest that the Special Advisory Committee's conclusion in respect of matters that exceeded its mandate should be ignored. To

The concerns expressed by Sakalauskas and MacDonald regarding the process adopted by the FLSC are further reinforced by a letter written by four law professors to the Nova Scotia Barristers' Society on 21 January 2014. Jocelyn Downie, Richard Devlin, W. Brent Cotter QC and Jasminka Kalajzdic teach and conduct research in legal ethics and professional responsibility at Canadian law schools. They suggest that the recusal of all three law deans from the FLSC Approval Committee in respect of TWU's proposed School of Law created a "fatal deficiency" in the composition of the FLSC Approval Committee and consequently in the FLSC process. In particular, neither the FLSC Approval Committee nor the Special Advisory Committee included any member with expertise in legal education. Downie and co-authors make the point that the national requirement

turns on matters which fall squarely within the particular expertise of legal academics – including what constitutes academic freedom, and whether critical thinking about ethics and an understanding of equality and discrimination and their place in the Canadian legal

¹⁵ Ibid at page 10.

¹⁶ Ibid at page 11.

¹⁷ Ibid at page 12.

¹⁸ Jocelyn Downie, Richard Devlin, W. Brent Cotter QC and Jasminka Kalajzdic, letter to Rene Gallant, President of the Nova Scotia Barristers' Society, dated 21 January 2014. A copy of this letter is available at http://nsbs.org/sites/default/files/ftp/TWU Submissions/2014-01-24 Downie-Devlin-Cotter-Kalajdzic TWU.pdf.

¹⁹ See FLSC Approval Committee Final Report, above note 8 at page 7.

²⁰ Downie, Devlin, Cotter and Kalajzdic, above note 18 at page 2-3.

system and regulation of the legal profession can be taught and learned in an environment that practices discrimination and limits academic freedom. After the Deans recused themselves, no individuals with appropriate expertise in legal education were added to the committee.²¹

The questions identified by Downie and co-authors as central to the national requirement – but inadequately addressed by the FLSC Approval Committee – may also be understood as integral to the questions of public interest in the administration of justice, and in particular the preservation and protection of the rights and freedoms of all people, to which we return later in this letter.

Those of us who support recommendation one agree with Sakalauskas and MacDonald's proposition that the Special Advisory Committee's conclusions carry no weight to the extent that they exceed that committee's specific mandate. We also support the reasoning that underpins Sakalauskas and MacDonald's recommendation. In our view, this reasoning is strengthened by TWU's initial position that the FLSC has no jurisdiction or mandate to consider matters beyond compliance with the national requirement.²² TWU has since changed its position on the FLSC's mandate, stating that the FLSC "has done its job in evaluating the proposal, and in critically assessing the impact of the Community Covenant" Agreement.²³ However, tracing the adoption of Law Society Rule 2-27(4.1), reviewing the process adopted by various FLSC committees and having regard to TWU's *ex ante* position on the jurisdiction of the FLSC leads to the conclusion that the FLSC process suffered from significant shortcomings. The FLSC process does not discharge the Law Society's statutory obligation to uphold and protect the public interest in the administration of justice, including by protecting and preserving the rights and freedoms of all persons.

III. The proper interpretation of s. 41(1) of the *Human Rights Code* RSBC 1996, c. 210 and its application to TWU

In the previous section of this letter, we identified that the Law Society has a statutory mandate to preserve and protect the rights and freedoms of all persons. In public debate about the proposed TWU School of Law program, TWU and others who support the proposed School of Law have relied heavily on s. 41(1) of the *Human Rights Code* RSBC 1996 c. 210 (*Human Rights Code*) in support of TWU's entitlement to adopt discriminatory rules within the Community Covenant Agreement.

Section 41(1) of the *Human Rights Code* relevantly reads as follows:

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²¹ Ibid at page 2-3.

²² See the two letters from Jonathan S Raymond cited in note 11.

²³ Robert G Kuhn, "TWU has Played by the Rules", *The National Magazine* 28 January 2014, available online at: http://www.nationalmagazine.ca/Articles/January-2014/TWU-has-played-by-the-rules.aspx.

If a[n] ... educational, ... religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by ... a common race, religion, age, sex, marital status, political belief, ... that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

Accordingly, s. 41(1) of the *Human Rights Code* permits a not-for-profit educational or religious organization to grant a preference to members of the identifiable group if the promotion of that group's interests is a primary purpose of the organization.

In the Supreme Court of Canada decision *Trinity Western University v British Columbia College of Teachers*, ²⁴ Iacobucci and Bastarache JJ on behalf of the majority assumed without deciding that s. 41(1) of the *Human Rights Code* applied to TWU. However, that conclusion is open to question. Section 3(2) of the *Trinity Western University Act*, SBC 1969 c. 44 establishes that TWU's object is

to provide for young people of any race, colour, or creed university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian.

Creed is most relevantly defined in the *Oxford English Dictionary* as "[a]n accepted or professed system of religious belief; the faith of a community or an individual, *esp.* as expressed or capable of expression in a definite formula." The statutory object of Trinity Western University establishes its purposes, or at least these purposes must be consistent with the object as stated in the *Trinity Western University Act.* Based on s. 3(2), it is therefore not open to conclude that TWU has as a primary purpose the promotion of the interests and welfare of a specific form of (evangelical) Christian belief – in fact, the statutory language suggests the purpose of serving young people who are diverse in "race, colour or creed" by offering a university education that has an underlying Christian philosophy and viewpoint.

Returning to the language of s. 41(1) of the *Human Rights Code*, TWU is entitled to engage in conduct that would otherwise constitute discrimination under the terms of the *Human Rights Code* if that conduct takes the form of "granting a preference to members of the identifiable group or class of persons" and if promoting the interests of that group is a primary purpose of TWU. The leading decision on this provision is *Caldwell v Stuart*.²⁵ In that case, the Supreme Court of Canada held that a Catholic school was entitled to refuse to renew its employment contract with a teacher who had married a divorced man in a civil ceremony. This marriage was contrary to the strict religious strictures adopted by the school. Justice Macintyre accepted on behalf of a unanimous Court that the decision to terminate the teacher's employment constituted a

²⁴ 2001 SCC 31.

²⁵ [1984] 2 SCR 603.

"preference" for Catholics, in line with its status as a religious organization. The Court held that the identifiable group promoted by the Catholic school was Catholic families who resided in the parishes served by the school. *Caldwell v Stuart* was decided before s. 15 of the *Canadian Charter of Rights and Freedoms* came into force, and the events at stake in the case occurred in 1978. Accordingly, the case interprets identical statutory language from the predecessor to the *Human Rights Code* without having regard to *Charter* rights, freedoms and values.

More recently, section 41(1) was considered by the BC Court of Appeal in *Vancouver Rape Relief Society v Nixon*. ²⁶ In that case, the Vancouver Rape Relief Society claimed the right to select volunteers to work as rape crisis counselors by reference to whether potential volunteers had been born and raised as girls and women. (The context of the case was a claim by a transsexual woman that Vancouver Rape Relief had discriminated against her by denying her application to volunteer in this capacity.) Justice Saunders reviewed *Caldwell v Stuart* before holding that:

a group can prefer a sub-group of those whose interests it was created to serve, given good faith and provided there is a rational connection between the preference and the entity's work, or purpose. Just as the school [in *Caldwell v Stuart*] was not required to establish that it only served practicing Catholics in order to lawfully prefer practicing Catholics in its hiring practices for purposes of the group rights exemption, so here the Society is not required to establish that it only serves women raised and who have lived as females. And just as the School was not required to show that it never employed non-Catholics, here the Society is not required to show it never provided services to transsexuals.²⁷

Following *Vancouver Rape Relief Society v Nixon*, in order to decide whether a "preference" is permitted by s. 41(1) of the *Human Rights Code*, one must seek a rational connection between the preference and the organization's purpose. It is therefore not to the point whether TWU has ever offered educational services to LGBTQ individuals or others who are discriminated against by the terms of the Community Covenant Agreement.

In relation to TWU, it is arguable that there is no rational connection between the statutory object of serving students of "any race, colour or creed" by offering an education from an underlying Christian viewpoint and the behavioral requirements imposed by the Community Covenant Agreement. TWU's obligation to offer an education from a Christian philosophy and viewpoint is conditioned by the requirement that this education serve students of "any race, colour or creed". As numerous Christian leaders have eloquently demonstrated, the Christian perspective reflected in TWU's

²⁶ 2005 BCCA 601. Application for leave to appeal to the Supreme Court of Canada refused. *Nixon v Vancouver Rape Relief Society* 2007 CanLII 2772.

²⁷ Nixon v Vancouver Rape Relief Society, ibid at para 58. Finch CJ and Southin J agreed with Saunders J's reasons.

Community Covenant Agreement is not shared by all, or even most, Canadian Christians. Rather than furthering its statutory object, TWU's Community Covenant Agreement arguably prioritises a narrow interpretation of one dimension of that object - offering a viewpoint that is (evangelical) Christian - to the detriment of another dimension - serving young people of any creed who wish to obtain an education offered from a Christian perspective. ²⁹

Unlike a Catholic school serving a Catholic community, TWU is a Christian institution purporting to serve a wider community. While TWU teaches from a Christian perspective, it does not exclusively serve a Christian community, and therefore, it could be argued, does not have the purpose of "the promotion of the interests and welfare of an identifiable group or class of persons characterized by ... religion" as required for inclusion in the s 41 exemption. There is a logical as well as legal basis for this distinction. Where a school exists explicitly to serve a particular faith community, with the aim of strengthening and promoting that particular religious tradition, the institution has an interest in ensuring that those involved in the school adhere to the tenets of the religious tradition. Employing teachers who do not share the views or follow the rules of the religion may undermine the students' willingness to adhere to the religion themselves, and students' adherence to the religion is the school's objective. The exemption under s. 41 allows a school or other institution to take actions that would otherwise be discriminatory in order to promote the interests of the identifiable group that is its faith community.

Where an educational institution exists to generally promote a religious ideology in tandem with broader educational goals, and includes people of diverse religions in its community, the necessity that everyone involved in the school follows a specific set of religious tenets is less obvious. TWU does not exclusively serve any particular denomination nor the category of religious persons as a whole: it is intended, according to its enabling statute, to serve a wider community while incorporating Christian teachings. The rationale for the exemption does not appear to apply here, as it is not necessary for the institution to ensure that its staff adhere to any particular religious tradition in order to pursue its objective of offering Christian perspectives in education to people of all creeds.

²⁸ See for example Reverend Linda Yates, letter to Rene Gallant, President of the Nova Scotia Barristers' Society, dated February 9, 2014 available at http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-09_Rev.Yates_TWU.pdf; Reverend John Boyd, letter to Rene Gallant, President of the Nova Scotia Barristers' Society, dated February 10, 2014 available at http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-10_RevBoyd_TWU.pdf; Reverend Bob Ripley, "Context Key in Interpreting Bible" *London Free Press* (January 3, 2014) available at http://www.lfpress.com/2014/01/03/ripley-context-key-in-interpreting-bible.

²⁹ In sections IV and V of this submission, we address the argument that no-one is excluded by the Community Covenant Agreement from attending TWU.

The BC Court of Appeal held in *Vancouver Rape Relief Society v Nixon* that a group such as the Vancouver Rape Relief Society is entitled to exercise an internal preference for a sub-group of those whose interests it serves. In that case, the Vancouver Rape Relief Society was entitled to define women in a manner that excluded transsexual women. This reasoning must be distinguished where an organization seeks to distribute preferences to a limited group in a manner that derogates from its statutorily stipulated object. Those who support recommendation one take the view that the express language of s. 3(2) of the *Trinity Western University Act* is inconsistent with the exercise by TWU of a preference for a group that is willing to accept the terms of the Community Covenant Agreement. The assumption made by Iacobucci and Bastarache JJ in *Trinity Western University v British Columbia College of Teachers*³⁰ that s. 41(1) applies to TWU will not bind a subsequent decision-maker both because it does not form part of the *ratio decidendi* of that case, and because this assertion was made on the basis of assumed facts that prove, on closer analysis, to be unfounded.³¹

We are conscious that the decision at stake in this submission is whether it is in the public interest for the Law Society to adopt a resolution that declares that the proposed TWU School of Law is not or has ceased to be an approved faculty of law. Nonetheless, it is important to set out an analysis of why s. 41(1) of the *Human Rights Code* may (not) apply to TWU in respect of the Community Covenant Agreement. As will become apparent in section V of this submission, the purpose of setting out this analysis of s. 41(1) is to contextualise the position adopted those who support recommendation one that the Community Covenant Agreement discriminates against a number of identifiable groups, and that this discrimination is directly relevant to the question of whether it in the public interest for TWU's proposed School of Law to become an accredited common law faculty of law for the purposes of Law Society Rule 2-27(4)(a). However, before engaging with this question, we address the status of the Supreme Court of Canada's decision in *Trinity Western University v BC College of Teachers*. ³²

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³⁰ 2001 SCC 31.

³¹ See *Attorney General (Canada) v Bedford* 2013 SCC 72 at para 42 – 45. The application of s. 41(1) to TWU was expressly left open by the BC Court of Appeal in *Trinity Western University v BC College of Teachers* (1998), 169 DLR (4th) 234 at para 64.

³² 2001 SCC 31.

IV. Does the Supreme Court of Canada's decision in *Trinity Western University v BC College of Teachers* dictate the result of TWU's application for accreditation for its proposed School of Law?

In a memorandum of advice issued to Gérald Tremblay, President of FLSC, John B Laskin expressed the opinion that if the FLSC decided to refuse approval of TWU's proposed School of Law Program based on its discriminatory practices, *Trinity Western University v BC College of Teachers*³³ would govern the result of any subsequent litigation. Laskin offered three reasons for his opinion: that there would be "a great many" parallels between the BC College of Teachers case and the present instance; that the balancing approach delineated in the 2001 decision continues to apply; and the likely absence of evidence of actual harm.

In *Trinity Western University v BC College of Teachers*, the Supreme Court of Canada set out two questions for consideration: 1. is consideration of discriminatory practices within the jurisdiction of the BC College of Teachers? and 2. was the decision of the BC College of Teachers (to deny accreditation to TWU) justified? In relation to the second question, the Court set out two relevant sub-questions: a. what is the proper standard of review; and b. was there evidence of discriminatory practices, or was such evidence needed? This submission will work through each of these questions in turn.

In relation to the jurisdictional question, the Supreme Court of Canada unanimously concluded that the BC College of Teachers had jurisdiction to consider discriminatory practices in dealing with the TWU application for accreditation.³⁵ This decision was predicated on the BC College of Teachers' statutory mandate to regulate the professional responsibility and competence of its members in the public interest. In rejecting TWU's argument that the BC College of Teachers had no jurisdiction to consider discriminatory practices, Iacobucci and Bastarache JJ ruled that

Schools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance. It would not be correct, in this context, to limit the scope of [the BCCT's mandate to establish standards for teacher education] to a determination of skills and knowledge.³⁶

As we have already noted, a careful analysis of the *Legal Profession Act* suggests that the Law Society will similarly be found to have jurisdiction to consider discriminatory

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³³ 2001 SCC 31.

³⁴ John B Laskin, memorandum to Gérald Tremblay dated 21 March 2013, included within the Special Advisory Committee Report, above note 12 (**Memorandum**) at 4.

³⁵ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 14 per Iacobucci and Bastarache JJ.

³⁶ Ibid at para 13.

practices when considering whether to accredit (or withdraw accreditation from) a law school.

The BC College of Teachers failed on the second question - whether the denial of accreditation was justified. The Supreme Court of Canada held that the standard of review for the BC College of Teachers decision was correctness. This conclusion was based to a significant extent on its view that the

existence of discriminatory practices is based on the interpretation of the TWU documents and human rights values and principles. This is a question of law that is concerned with human rights and not essentially educational matters.³⁷

Justices Iacobucci and Bastarache regarded the legal question presented in this instance as somewhat removed from the expertise of the BC College of Teachers. In particular, "the Council is not particularly well equipped to determine the scope of freedom of religion and conscience and to weigh these rights against the right to equality in the context of a pluralistic society." The majority also noted that the decision taken to deny TWU accreditation was very different from a decision to discipline a particular teacher. This factor similarly militated towards correctness as the appropriate standard of review.

The Supreme Court of Canada decision, Doré v Barreau du Québec, affirms that the appropriate standard of review for discretionary decisions that implicate *Charter* values is "reasonableness", contextually applied.³⁹ The principle of deference informs this exercise, as a reviewing court must recognize that when the nature of the decision is discretionary, polycentric and involves balancing competing considerations, micromanaging by courts should be eschewed. 40 The Court concluded that the appropriate standard of review in this context was reasonableness, contextually applied.⁴¹ The proportionality test will be satisfied if the measure falls within a "range of possible, acceptable outcomes" and is explained by reasons exhibiting "justification, transparency and intelligibility".42

The final aspect of the majority's reasoning in *Trinity Western University v BC* College of Teachers considered whether there was evidence of discriminatory practices.⁴³ This aspect of the majority's reasoning is arguably crucial to the present context. The

³⁷ Ibid at para 18.

³⁸ Ibid at para 19.

³⁹ Doré v Barreau du Québec 2012 SCC 12 at para 56.

⁴⁰ Ibid at para 51.

⁴¹ Ibid at para 56.

⁴² Ibid: see also *Dunsmuir v New Brunswick* 2008 SCC 9 at para 47.

⁴³ The majority does not define the discriminatory practices with which it is concerned until this portion of the judgment.

majority held in relation to the code of conduct which preceded the Community Covenant Agreement and was then in place at TWU that

[a]lthough the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions.⁴⁴

In this passage, the majority appears to accept that TWU's affiliation with a particular Christian perspective coupled with the community standards that were then in force constitutes a religious community with the power to self-define the terms of membership. As discussed in the previous section, this characterization of TWU's purpose is questionable if one has regard to the object set out in the *Trinity Western University Act*.

The community standards to which students and staff at TWU agreed when *Trinity Western University v BC College of Teachers* was decided prohibited "practices which are biblically condemned" including "premarital and extramarital sex, common law relationships, and homosexual behaviour". The agreement also required, among other things, that "married members of the community agree to maintain the sanctity of marriage." The present *Community Covenant Agreement* is similar in substance, but differs in its language, requiring that adherents "abstain from...sexual intimacy that violates the sacredness of marriage between a man and a woman." The newer Community Covenant Agreement also includes an explicit disciplinary provision by which TWU reserves the right to "discipline, dismiss, or refuse a student's re-admission to the University." Given that this disciplinary provision is new, it is not clear from the community standards that were in place in 2001 whether those standards had the coercive dimension that is now present within the Community Covenant Agreement. We return to this coercive dimension in section V of this submission.

Having identified that LGBTQ students would be unlikely to apply to TWU, the majority in *Trinity Western University v BC College of Teachers* defined the residual question as being whether "the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15". ⁴⁷ Justices Iacobucci and Bastarache held that reaching this conclusion would be contrary to freedom of conscience and religion. However, this passage of the majority decision does not engage with the possibility that a TWU student (including a Christian TWU student) may hold different religious beliefs from those articulated in a document such as the

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⁴⁴ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 25.

⁴⁵ TWU v BCCT at para 10.

⁴⁶ Trinity Western University, Student Handbook: Community Covenant Agreement, 2013.

⁴⁷ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 25.

Community Covenant Agreement. Under TWU's present rules, for the duration of his or her studies at TWU, such a student is compelled to accept constraints on his or her capacity to act in accordance with personal beliefs to the extent that they are inconsistent with the requirements of the Community Covenant Agreement. Failure to abide by these constraints may lead to disciplinary consequences, including expulsion.

The majority concluded that it was proper for the BC College of Teachers to have regard to equality in its decision-making process, 48 and that the equality rights engaged by the decision included the right to equality on the basis of religious belief in addition to the right to equality on the basis of sexual orientation. The majority held that the correct approach to resolving the questions presented by Trinity Western University v BC College of Teachers was first to engage in a "proper delineation of the rights and values involved."⁴⁹ In this instance, the majority held that a thorough analysis would reveal that there was no true conflict between the various rights and freedoms. The BC College of Teachers had fallen into error by inferring without any concrete evidence that holding discriminatory personal beliefs about the propriety of homosexual acts "will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools." The BC College of Teachers' approach prevented TWU students "from expressing freely their religious beliefs and associating to put them into practice."50 In the result, the majority concluded that the BC College of Teachers had committed an error because it did not take "into account the impact of its decision on the right to freedom of religion of the members of TWU."51 Drawing a line between "belief and conduct", the majority held that, in the absence of evidence of discriminatory practices by TWU graduates in the public school system, "the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected."52

The majority's characterization of the sphere of potential conflict between rights and freedoms in *Trinity Western University v BC College of Teachers* focused on the possible conflict between the personal religious beliefs of those TWU students who sincerely embraced the tenets of the code of conduct that was then in place at TWU and

⁴⁸ Ibid at para 27.

⁴⁹ Ibid at para 29.

⁵⁰ Ibid at para 32.

⁵¹ Ibid at para 33. It is at this point in the majority's reasoning that TWU's presumed entitlement to an exemption under s. 41(1) of the *Human Rights Code* is cited in support of the majority's conclusions.

⁵² Ibid at para 36. More recently, in *Saskatchewan v Whatcott* a unanimous Court rejected an argument that evidence of actual harm is required in order to justify a legislative prohibition against hate speech. Instead, the proper threshold is a reasonable belief in the risk of harm. *Saskatchewan v Whatcott* 2013 SCC 11 at para 105 and 132.

the equality rights of LGBTQ students and teachers in the public school system. This articulation is clearest in the following passage:

The issue at the heart of this appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.'s public school system, concerns that may be shared with their parents and society generally.⁵³

While the majority's characterization likely reflects the manner in which the questions were framed before the Supreme Court of Canada in that case, the range of potential conflicts among *Charter* values and statutory objectives is far more nuanced in the present context.

Justice L'Heureux-Dubé issued a dissenting judgment in *Trinity Western University v BC College of Teachers*. She agreed that the BC College of Teachers had jurisdiction to consider discrimination, but held that its decision should be reviewed on a standard of patent unreasonableness. Justice L'Heureux-Dubé concluded that the BC College of Teachers had appropriately focused its enquiry on fostering the value of equality and not on the substance of TWU graduates' religious views. In a passage that was recently adopted by the Court in *Whatcott v Saskatchewan*⁵⁴ she observed:

I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. But, in the words of the intervener EGALE, "[r]equiring someone not to act in accordance with their identity is harmful and cruel. It destroys the human spirit. Pressure to change their behaviour and deny their sexual identity has proved tremendously damaging to young persons seeking to come to terms with their sexual orientation" ... This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood. ⁵⁵

While recognizing that the tenets of the code of conduct were not illegal, L'Heureux-Dubé J rejected the majority's characterization of the code as an expression of belief rather than a form of conduct. ⁵⁶ Justice L'Heureux-Dubé would have reinstated the BC College of Teachers' decision that TWU students must complete a fifth year of teachers' education at Simon Fraser University.

⁵⁵ Ibid at para 69.

⁵³ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 28.

⁵⁴ 2013 SCC 11.

⁵⁶ Ibid at para 72.

Several commentators, most notably including law professor Elaine Craig, have suggested that the Supreme Court of Canada's decision in *Trinity Western University v BC College of Teachers* should be read in the context of more recent case law on the issues addressed in that judgment.⁵⁷ We have already identified the decision of *Doré v Barreau du Québec* as offering a more recent, and somewhat different, discussion of the standard of review and of the approach that should be taken by an administrative decision-maker charged with balancing *Charter* values and statutory objectives. A second decision that directly engages issues of relevance to the proposed TWU School of Law is *Saskatchewan v Whatcott*.⁵⁸

Several complaints were laid with the Saskatchewan Human Rights Tribunal against Whatcott after he published brochures articulating homophobic views. The Tribunal concluded that Whatcott had breached a statutory provision against publications that promote hatred against or affront the dignity of groups on the basis of a prohibited ground. Justice Rothstein held on behalf of a unanimous Court that the statutory provisions infringed Whatcott's rights under s. 2(a) and 2(b) of the *Charter*, but concluded that the infringement constituted a reasonable limit pursuant to s. 1.⁵⁹

Justice Rothstein characterized the task placed before the Court in *Whatcott* as follows:

We are therefore required to balance the fundamental values underlying freedom of expression (and, later, freedom of religion) in the context in which they are invoked, with competing Charter rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings.⁶⁰

While the Court was dealing with s. 1 of the *Charter* in this case, this passage offers a reasonable characterization of the task now presented to the Law Society having regard to the decision in *Doré v Barreau du Québec*. The question a reviewing court will ask in the administrative law context, then, is: given the nature of the decision and the particular statutory and factual contexts, did the decision-maker properly assess the impact the decision would have on the relevant *Charter* value? If yes, then the court will conclude

⁵⁹ The Court struck certain words out of the Saskatchewan legislation on the basis that they were overbroad and did not constitute minimal impairment of the freedom of expression.

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⁵⁷ See especially Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25 Canadian Journal of Women & the Law 168; Elaine Craig, letter to René Gallant, President of the Nova Scotia Barristers' Society, dated February 5, 2014 and available at: http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-05 Craig TWU.pdf.

⁵⁸ 2013 SCC 11.

⁶⁰ Saskatchewan v Whatcott 2013 SCC 11 at para 66.

that the decision-maker proportionately balanced statutory objectives and Charter values to arrive at a reasonable outcome.⁶¹

We note of course that the Law Society must also have regard to the range of statutory objectives set out in the *Legal Profession Act*. If the Community Covenant Agreement is properly characterized, in part, as an expression of religious belief, the Law Society must balance freedom of religious belief as it has been defined by the Court against the other *Charter* values and statutory objectives that are engaged by a potential decision to accredit the proposed TWU School of Law.⁶²

One further aspect of *Saskatchewan v Whatcott* is important in the present context. The Court confirmed that restricting freedom of expression on the basis of a discriminatory effect, rather than requiring evidence of a discriminatory impact, was an appropriate approach given the challenges presented by systemic discrimination. On this point, Rothstein J quoted Dickson CJ in *Canada (Human Rights Commission) v. Taylor*

The preoccupation with effects, and not with intent, is readily explicable when one considers that systemic discrimination is much more widespread in our society than is intentional discrimination. To import a subjective intent requirement into human rights provisions, rather than allowing tribunals to focus solely upon effects, would thus defeat one of the primary goals of anti-discrimination statutes.⁶³

The broadly held misconception that conduct or expression must be performed with a discriminatory intent in order to constitute discrimination is discussed at greater length in Section V. For the time being, it suffices to identify that this misconception emerges within TWU's public statements about the role and effect of the Community Covenant Agreement. For instance, in a press release issued by TWU on 18 December 2013, TWU President Robert Kuhn was quoted as saying:

"It needs to be said," said President Kuhn, "that all students (gay or straight) are welcome to attend Trinity Western University, providing they meet our academic requirements and agree to respect our community values." 64

In *Saskatchewan v Whatcott*, the Court unanimously and roundly rejected the proposition that one could distinguish between disapprobation of acts that are integral to a person's identity - such as expressions of sexual intimacy - and disapprobation of the person or group who engages in those acts:

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⁶¹ Ibid at para 57.

⁶³ Canada (Human Rights Commission) v Taylor [1990] 3 SCR 892 at 931 - 2 cited in Saskatchewan v Whatcott 2013 SCC 11 at para 126.

⁶⁴ Press release, "TWU School of Law Receives Final Approval" (December 18, 2013) available on request.

there is a strong connection between sexual orientation and sexual conduct. Where the conduct that is the target of speech is a crucial aspect of the identity of the vulnerable group, attacks on this conduct stand as a proxy for attacks on the group itself.⁶⁵

TWU's perpetuation of the claim that one can meaningfully distinguish between the prohibition of certain conduct and discrimination against groups who are defined in part by that conduct suggests a lack of understanding of Canadian discrimination law and a lack of familiarity with empirical studies of discrimination.⁶⁶

To conclude this section, we consider that the Supreme Court of Canada's decision in Trinity Western University v BC College of Teachers is plainly relevant to the task that now faces the Law Society. However, this case must be read alongside more recent jurisprudence regarding the decision-making processes of administrative tribunals (especially Doré v Barreau du Québec) and the proper delineation of Charter rights, freedoms and values (notably including Saskatchewan v Whatcott).⁶⁷ Those who adopt the first recommendation suggest that the evidentiary record in *Trinity Western University v BC College of Teachers* may well be different from the present case. In particular, the Community Covenant Agreement is distinct from the Community Standards that were relied upon by TWU in 2001. For those who support the first recommendation, these differences are likely to be analytically important. Most of those who support the second recommendation take the view that Trinity Western University v BC College of Teachers cannot be distinguished from the present context. As others have noted, the public understanding of gay and lesbian people within Canadian society has advanced since 2001, as has legal protection of their equality rights. However, as we explain in Section V, gay and lesbian individuals are not the only people whose equality may be impacted by the Law Society's decision.

⁶⁵ Saskatchewan v Whatcott 2013 SCC 11 at para 124.

⁶⁶ For example, CD Hardin and MR Banaji "The Nature of Implicit Prejudice: Implications for Personal and Public Policy" in E Shafir (Ed.) *The Behavioral Foundations of Public Policy* (Princeton NJ: Princeton University Press, 2012); A Greenwald, TA Poehlman, EL Uhlmann & MR Banaji "Understanding and using the Implicit Association Test: III. Meta-analysis of predictive validity" (2009) 97 *Journal of Personality and Social Psychology* 17; Cass Sunstein, "Three Civil Rights Fallacies" (1991) 79 California Law Review 751.

⁶⁷ To avoid any potential for mis-construction of the analysis supplied in this submission, our reliance on *Saskatchewan v Whatcott* should not be read as an implicit assertion that the Community Covenant Agreement constitutes hate speech. It is plain from *Saskatchewan v Whatcott* that hate speech has a limited definition. Rather, we suggest that the unanimous decision of the Court in this case represents a very recent articulation of the proper delineation of the *Charter* values of equality, freedom of expression and freedom of religion and a model for how best to approach the resolution of conflicting *Charter* and statutory values.

V. The application of the *Charter* values of freedom of religion and equality and the human rights principle of non-discrimination to the Law Society of BC's decision-making process

We noted in Section IV that the 2012 decision in *Doré v Barreau du Québec* offers guidance to administrative tribunals about how to approach a decision that engages one or more *Charter* values. In *Doré*, the majority held that an administrative decision-maker must not disproportionately and unreasonably limit a *Charter* right or value when exercising its statutory discretion. In exercising discretion, the decision-maker should first identify the relevant statutory objectives as well as the *Charter* and non-*Charter* values pertinent to that statutory context. ⁶⁸ Once the objectives and values have been identified, the decision-maker engages in a balancing exercise that involves weighing these objectives and values. The decision-maker must have regard to how best to protect Charter values in light of the statutory scheme, by engaging in a proportionality analysis that balances the severity of any interference with *Charter* values with the importance of the statutory objective. In *Doré*, the majority held that a reviewing court should exhibit deference to an administrative decision that is the result of this balancing exercise.⁶⁹ Deference will be warranted if the measure adopted by the decision-maker falls within a "range of possible, acceptable outcomes" and is explained by reasons exhibiting "justification, transparency and intelligibility."⁷⁰

In section II of this submission, we identified the Law Society's statutory mandate, and noted the centrality of concepts of public interest, the duty to protect and preserve the rights and freedoms of all peoples and the non-delegable obligation to regulate standards for admission to practice, including academic requirements. In section III, we identified TWU's statutory object and considered the relationship between that object and the claim that s. 41(1) of the *Human Rights Code* permits TWU to adopt discriminatory practices through the Community Covenant Agreement. In section IV, in the course of reviewing the most relevant past case law, it became apparent that the key *Charter* and human rights values at stake in this case are freedom of religion and belief (including the freedoms of expression and association that are associated with freedom of religion), equality and non-discrimination. In this section, we adopt the process required by *Doré* and *Trinity Western University v BC College of Teachers*, and therefore begin by delineating the relevant rights and freedoms.

Before setting out the *Charter* rights and freedoms that are engaged by the Law Society's decision, it is important to note that it is uncertain whether or not the *Charter*

⁷⁰ Dunsmuir v New Brunswick 2008 SCC 9 at para 47.

⁶⁸ Doré v Barreau du Québec 2012 SCC 12 at para 55.

⁶⁹ Ibid at para 57.

⁷¹ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 29.

applies directly to TWU's actions. Case law on the application of Charter obligations to universities is evolving, ⁷² making a definite answer to this question tricky. Suffice it to say that it is not sufficient to decide the issue to assert that TWU is a private institution. TWU has received considerable public funding and its proposed School of Law must be approved by the BC Ministry of Education and by the Law Society. Neither of these features is enough on its own to pull TWU within the ambit of the *Charter* but increasingly courts appear willing to look to the character of the service being offered and the connection between that service and the state as an element in consideration of *Charter* application. Regardless of whether the *Charter* applies directly to TWU, however, *Charter* values are plainly engaged by the Law Society's decision whether to approve TWU's proposed School of Law for the purposes of Law Society Rule 2-27(4).

1. Freedom of religion

Section 2 of the *Charter of Rights and Freedoms* provides:

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

To some extent, these freedoms have been interpreted together because, for instance, the Supreme Court of Canada has held that giving full effect to freedom of religion requires courts to have regard to freedom of belief, freedom of expression and freedom of association.⁷³

Notions of personal choice and individual autonomy have been emphasized within judicial discussions of the freedom of religion.⁷⁴ In *Syndicat Northcrest v Amselem*, Dickson J (as he then was) defined freedom of religion as

the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.⁷⁵

⁷³ R v Big M Drug Mart Ltd [1985] 1 SCR 295 at 336 - 7 per Dickson J (as he then was) cited with approval in *Trinity Western University v BC College of Teachers* 2001 SCC 31 at para 28.

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⁷² Pridgen v University of Calgary 2010 ABQB 644

⁷⁴ See especially *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para 40.

⁷⁵ R v. Big M Drug Mart Ltd [1985] 1 SCR 295 at para 94.

These three dimensions - belief, expression and practice - establish freedom of religion as a principle that goes beyond protecting privately held convictions. Fundamentally, the *Charter* allows every Canadian to decide his or her own religious obligations and to live accordingly.

Justice Dickson stated in *Edwards Books* that the purpose of protecting freedom of religion

is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices.⁷⁶

Justice Dickson expanded on this articulation of the purpose of freedom of religion within a free society in *Big M Drug Mart*,

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the *Charter*. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint.⁷⁷

Accordingly, freedom of religion promotes the inherent dignity of each individual and protects individuals from being compelled by the State or by others to act in a manner that is contrary to their personal beliefs.

The judicial emphasis on personal choice of religious beliefs means that objective validity or recognition by other members of the same religion is not required.⁷⁸ In fact, an inquiry into whether a religious belief is valid is not appropriate. Protection is given to subjective religious obligations, and does not depend on whether the observance of an act or belief is objectively mandatory.⁷⁹ In *Syndicat Northcrest v Amselem*, Dickson J set

⁷⁶ R v Edwards Books and Art Ltd.[1986] 2 SCR 713 at para 97.

⁷⁷ R v Big M Drug Mart Ltd [1985] 1 SCR 295 at 336 - 7.

⁷⁸ Syndicat Northcrest v. Amselem, 2004 SCC 47 at para 43.

⁷⁹ Ibid at para 47.

out the steps necessary to demonstrate that a claim to freedom of religion has been triggered

Thus, at the first stage of a religious freedom analysis, an individual advancing an issue premised upon a freedom of religion claim must show the court that (1) he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief. Only then will freedom of religion be triggered.⁸⁰

Notably, the conditions for triggering a claim to freedom of religion focus on the personal beliefs and practices of an individual and not on official requirements imposed by religious leaders or religious teachings. Justice Dickson appears in this paragraph to suggest that the protection offered by the *Charter* is granted to individuals and not to religious institutions - the possibility that an individual might hold a religious belief that is not endorsed by official sources, and obtain protection for practices predicated on that belief, is plainly contemplated.

Applying the principles from *Syndicat Northcrest v Anselem* in the present context is not straightforward. Specifically, the Community Covenant Agreement - which lies at the heart of the present case - is not simply an expression of individual religious belief. The fourth paragraph of the Community Covenant Agreement reads as follows:

The community covenant is a solemn pledge in which members place themselves under obligations on the part of the institution to its members, the members to the institution, and the members to one another. In making this pledge, members enter into a contractual agreement and a relational bond.⁸¹

The Community Covenant Agreement goes on to state:

Sincerely embracing every part of this covenant is a requirement for employment. ... Students sign this covenant with the commitment to abide by the expectations contained within the *Community Covenant* ...

The University also provides formal accountability procedures to address actions by community members that represent a disregard for this covenant.⁸²

⁸⁰ Ibid at para 56.

⁸¹ Trinity Western University, Community Covenant Agreement. A copy of the agreement appears as Appendix E to the FLSC Approval Committee Report, above note 8 and may also be found on TWU's website.

⁸² Ibid.

Accordingly, regardless of his or her personal religious beliefs, a person who seeks to study or work at TWU places him- or herself under binding obligations to act and refrain from acting in certain ways as a condition of study or employment. While these obligations are framed in terms of biblical injunctions, they gain their binding status from the Community Covenant Agreement rather than arising from a religious relationship such as the relationship between a minister and her parishioner.

To the extent that the Community Covenant Agreement reflects the sincerely held personal beliefs of some members of the TWU community, those beliefs, the expression of those beliefs, and the right to conduct one's life in accordance with those beliefs plainly fit within the scope of freedom of religion as articulated by Dickson J in *Syndicat Northcrest v Anselem*. For a student or staff member who wishes to attend TWU - for example, because she wishes to learn in a faith-based environment - but who does not share the religious tenets expressed in the Community Covenant Agreement, the Community Covenant Agreement represents a limit on religious freedom of belief, expression and conduct.

The claim that the Community Covenant Agreement may not be an incidence of freedom of religion can be distinguished from the broader proposition that students who wish to learn and teachers who wish to teach in an environment "with an underlying philosophy and viewpoint that is Christian" possess a claim to freedom of religion that accords with the conditions set out by Dickson J in Syndicat Northcrest v Anselem. Plainly, freedom of religion is engaged in this context. However, in keeping with Iacobucci and Bastarache JJ's injunction to begin with a proper delineation of the rights and freedoms that may be engaged by a given administrative decision, 84 it seems crucial to distinguish between the personal religious beliefs of individual members of the TWU community, religious practices that may be communally exercised by those who share core tenets, and an institutional code of conduct that may be enforced in a manner that conflicts with personal belief. In this regard, a range of individuals whose beliefs are inconsistent with the Community Covenant Agreement - including Christians who also identify as LGBTO, feminists who believe in reproductive rights, and those who believe that it is morally and spiritually acceptable to engage in sexual intimacy without marrying - have an equal claim to freedom of conscience and religion under s. 2(a) of the *Charter*. As Dickson J observed in *Big M Drug Mart*, they too should be free from being "compelled by the state or the will of another to a course of action or inaction which [they] would not otherwise have chosen".85

⁸³ s. 3(2) Trinity Western University Act, SBC 1969 c. 44.

⁸⁴ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 29.

⁸⁵ R v Big M Drug Mart Ltd [1985] 1 SCR 295 at 336 - 7.

The Law Society has a statutory mandate to preserve and protect the rights and freedoms of all persons. Accordingly, the limitation of freedom that is inherent within the coercive dimensions of the Community Covenant Agreement is a relevant consideration when deciding whether accrediting the proposed TWU School of Law will uphold and protect the public interest in the administration of justice. Likewise, the need to preserve and protect the freedom of religion of those who wish to study law in a faith-based environment is also a relevant consideration in this process.

2. Equality and discrimination

Section 15 of the Charter reads

- (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

The Supreme Court of Canada has repeatedly named substantive equality as the animating norm of the right to equality protected in the *Charter*. This notion requires going beyond the dictates of mere formal equality, looking instead to outcomes, to context, and to accommodation and celebration of difference. While the courts have yet to achieve fully such a rich handling of equality, the language of Supreme Court of Canada jurisprudence commits them to this task. Substantive equality acknowledges that different treatment is not always unequal treatment, and that similar treatment is not necessarily equal. Intention to discriminate is not a precondition to a finding that the equality guarantee has been violated; rather, the analysis is effects and outcome sensitive. Action that on its face that appears neutral, may indeed be strongly discriminatory in its outcome and thus condemned by the *Charter* commitment to equality. One purpose of s. 15 is to prevent discrimination arising from prejudice or stereotyping; a second is to ameliorate the position of groups that have suffered historical disadvantage. The sum of the court of the courts are prevent discrimination arising from prejudice or stereotyping; a second is to ameliorate the position of groups that have suffered historical disadvantage.

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⁸⁶ See, most recently, Withler v Canada (Attorney General) [2011] 1 SCJ 396 [Withler]; Quebec (Attorney General) v A, [2013] SCR 61.

⁸⁷ Eaton v Brant County Board of Education [1997] 1 SCR 241 at para 66; Law v Canada (Minister of Employment and Immigration) [1999] 1 SCR 497 at para 51.

Case law provides a convoluted path through equality doctrinal analysis under section 15.88 What is clear, however, is that the drawing of a distinction (on an enumerated or analogous basis) is only a first initial requirement of any equality analysis. This first step requires a comparative analysis, distinguishing between treatment of one individual or group and another individual or group. Considerable case law contemplates how such a comparison is to be formulated. Most recently in *Quebec (Attorney General)* v A, the Court admonished that claims should not be discounted by too mechanistic an application of this stage.⁸⁹

Once a distinction is found, attention then turns to the complicated issue of when different treatment is discriminatory treatment. 90 Differential treatment will be discriminatory when the distinction has the impact of creating or perpetuating disadvantage. In Quebec v A, the majority formally rejects the contention that it is necessary to show promotion or perpetuation of prejudice or false stereotyping. The majority asserts that discriminatory treatment is "nothing more than a disadvantage imposed on a listed or analogous ground."91 A number of contextual factors have been identified as relevant to a conclusion that discrimination is present. Neither the presence nor absence of any single factor is dispositive of a section 15 claim. Indicia that incline toward a finding of discrimination include: pre-existing disadvantage, the degree of correspondence with the actual characteristics or circumstances of the claimant, and the ameliorative effects of the impugned measure upon a disadvantaged group. 92

Given that the Law Society has an obligation to preserve and protect the rights and freedoms of all people, it is not necessary that the *Charter* be found to apply directly to TWU. The BC Law Society is nonetheless bound by both administrative and constitutional law to respect the value of equality in its decision making with regard to TWU's request for approval. Establishing that section 15 would likely be breached were the *Charter* to apply directly to TWU demonstrates that the constitutional value of equality, as distinct to the section 15 right to equality, is at issue regardless of direct *Charter* application to TWU itself.

The BC Human Rights Code prohibits discrimination on a range of grounds and in various contexts. The *Human Rights Code* does not define discrimination except by

⁸⁸ See particularly Andrews v Law Society of British Columbia 1989 SCC 2; Law v Canada (Minister of Employment and Immigration) [1999] 1 SCR 497; R v Kapp 2008 SCC 41; Withler v Canada (Attorney General) 2011 SCC 12.

⁸⁹ Withler, ibid.

⁹⁰ *R v Kapp* 2008 SCC 41 at paras 17 and 18.

⁹¹ Quebec (Attorney General) v A, [2013] SCR 61, at paras 319-324.

⁹² Law v. Canada (Minister of Employment and Immigration), [1999] 1 SCR 497 at para 62.

reference to prohibited behaviours. For example, section 7(1) of the *Human Rights Code* provides in part:

A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons ...

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

Accordingly, the *Human Rights Code* is, to a certain extent, circular in its definition of discrimination. Section 2 expressly provides that a discriminatory intent is not required in order to breach the *Human Rights Code*.

Public debate about the proposed TWU School of Law has largely focused on the Community Covenant Agreement's prohibition against sexual intimacy between same-sex couples. Sexual orientation is an analogous ground under section 15 of the Charter. We agree that the equality rights of gay, lesbian and bisexual people are engaged by the present decision, and that the Community Covenant Agreement discriminates against these individuals. Clearly, a distinction is drawn between individuals on the basis of sexual orientation as to the conduct in which one may engage as a student or employee at TWU. The Community Covenant Agreement imposes a disparate impact or indirect impact on lesbian, gay and bisexual individuals, including those who are married under Canadian law; in studying or working at TWU they bear a burden to refrain from sexual activity that is not imposed upon married heterosexual individuals.

The second question of the Charter equality analysis is, we believe, equally simply answered in respect of gay, lesbian and bisexual individuals. The distinction imposed by the Community Covenant Agreement is discriminatory as it disadvantages these individuals when accessing TWU's educational or employment services. The requirement to sign and adhere to the Community Covenant reflects and reinforces historic prejudice against the LGBTQ community by perpetuating differential treatment of that group. Referencing the four factors detailed in *Law v. Canada (Minister of Employment and Immigration)* is helpful to this analysis. LGBTQ individuals are a

⁹³ Egan v Canada [1995] 2 SCR 513; Vriend v Alberta [1998] 1 SCR 493. Similarly, none of the primary universal treaties governing human rights, such as the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, *explicitly* prohibit discrimination on the basis of sexual orientation. However, the UNHRC has upheld freedom from discrimination on the basis of sexual orientation as a basic human right. Canada has been regarded as a leader in the protection of international human rights, including in relation to sexual orientation.

⁹⁴ Quebec (Attorney General) v A, [2013] SCR 61 at para 357.

⁹⁵ [1999] 1 S.C.R. 497.

historically disadvantaged group. Sexual orientation is not an attribute that corresponds meaningfully to exclusion from admission to an academic program such as a law school, nor to one's capacity to comply with disciplinary rules regarding academic affairs within such a program. Sexual orientation is not a reasonable proxy for academic, professional or community achievement potential. The interests affected for LGBTQ individuals by the Community Covenant Agreement are significant and weighty: reduced ability to compete for a scarce and valuable educational resource with consequent reduced opportunities for careers dependent upon a legal education, and a disparate burden of compliance in the event that one becomes a member of the TWU community. For these reasons, and having regard to the discussion of *Saskatchewan v Whatcott* in section IV of this letter, the Community Covenant Agreement negatively impacts the equality of gay, lesbian and bisexual people.

Less attention has been devoted to the equality dimensions of other aspects of the Community Covenant Agreement. Specifically, the Community Covenant Agreement also engages the equality rights of women in respect of their reproductive freedoms, of unmarried couples whether heterosexual or same-sex, and of trans people. We discuss the equality rights of individuals within each of these groups in turn.

The Community Covenant Agreement requires members of the TWU community to "treat all persons with respect and dignity, and uphold their God-given worth from conception to death." The implication of this passage is that life begins at conception. The passage indicates an expectation that female students and staff will abstain from seeking abortion services while attending or working at TWU. It also requires staff and faculty of TWU to "sincerely embrac[e]" the pro-life position that life begins at conception. Abortion in Canada is lawful. The 1988 decision *R v Morgentaler* held that criminal provisions against abortion constituted an unjustified violation of women's rights to life, liberty and security of the person. Since that time, Canadian courts have repeatedly and vehemently rejected the proposition that fetuses have personhood.

A woman who works or studies at TWU will find herself in breach of contract if she accesses abortion services. This places a disparate burden on the reproductive freedom of women who work or study at TWU, relative to their female peers elsewhere and relative to the reproductive freedom of men who work or study at TWU. The inclusion of a provision regarding reproductive rights raises the spectre that TWU may take disciplinary action, including possible expulsion, against a woman at one of the

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⁹⁶ Trinity Western University, Community Covenant Agreement. A copy of the agreement appears as Appendix E to the FLSC Approval Committee Report, above note 8 and may also be found on TWU's website.

⁹⁷ [1988] 1 SCR 30.

⁹⁸ Tremblay v Daigle [1989] 2 SCR 530; Borowski v Canada (Attorney General) [1989] 1 SCR 342; Winnipeg Child and Family Services v G(DF) [1997] 3 SCR 925; R v Demers 2003 BCCA 28.

more vulnerable moments in her life. Those of us who endorse the first recommendation take the view that this possibility cannot be consistent with equality rights of women nor with women's right to life, liberty and security of the person. The question of how faculty who are contractually obliged to teach from the perspective articulated within the Community Covenant Agreement and sincerely embrace its tenets can adequately teach the Canadian legal position of fetal personhood has not, to the best of our knowledge, been addressed by TWU.

TWU has repeatedly pointed out that the Community Covenant Agreement prohibits any sexual intimacy that occurs outside the context of a marriage between a man or a woman - it does not only prohibit sexual intimacy between same-sex couples. The *Family Law Act* SBC 2011, c. 25 recognizes legal rights and responsibilities in relation to both married and unmarried spouses. Same sex partners may, of course, legally marry pursuant to the *Civil Marriage Act* SC 2005, c. 33. The Community Covenant Agreement discriminates against unmarried individuals of all sexual orientations, and thereby has a negative impact on the equality rights of those individuals based on the prohibited ground of family status. Family status was recognized as an analogous ground by the Supreme Court of Canada in *Quebec v A*. ⁹⁹ This decision also accepts that unmarried *de facto* couples are a historically disadvantaged group. The analysis of how this group's equality is negatively impacted by the Community Covenant Agreement would proceed along similar lines to the analysis offered above in respect of lesbian, gay and bisexual individuals.

Finally, very little attention has been paid in this debate (or within public discourse in general) in relation to the equality rights of trans people. For the purposes of clarity, the definitions used by the Ontario Human Rights Commission will be used here. According to the OHRC, the term Trans "is an umbrella term that is used to describe individuals who, to varying degrees, do not conform to what society usually defines as a man or a woman". ¹⁰¹ This term often includes Transgender and Transsexual individuals and will sometimes also be used to describe individuals who are Intersexed and those who crossdress. According to the OHRC these terms can be defined as follows:

• **Transgender:** People whose life experience includes existing in more than one gender. This may include people who identify as transsexual, and people who describe themselves as being on a "gender spectrum" or as living outside the categories of "man" or "woman."

⁹⁹ Quebec (Attorney General) v A, [2013] SCR 61.

¹⁰⁰ Ibid at para 356.

¹⁰¹ "Gender Identity and Gender Expression", OHRC, last accessed February 9, 2014 http://www.ohrc.on.ca/en/gender-identity-and-gender-expression-brochure.

- **Transsexual:** People who were identified at birth as one sex, but who identify themselves differently. They may seek or undergo one or more medical treatments to align their bodies with their internally felt identity, such as hormone therapy, sex-reassignment surgery or other procedures.
- **Intersex:** People who are not easily classified as "male" or "female," based on their physical characteristics at birth or after puberty. This word replaces the inappropriate term "hermaphrodite."
- **Crossdresser:** A person who, for emotional and psychological well-being, dresses in clothing usually associated with the "opposite" sex. ¹⁰²

The Community Covenant Agreement limits marriage to that which takes place between one man and one woman. People who live outside of these binary gender categories and those whose sex is not reflective of their gender identity may not fit into this Covenant if they are sexually involved. Acceptance under the Community Covenant Agreement will depend on how these individuals are identified and not necessarily on how they identify themselves. Many Trans individuals would therefore be effectively excluded from TWU, and their equality rights will correspondingly be negatively impacted.

Discrimination against Trans people is a persistent problem in Canada with severe ramifications for those it affects. As noted by the Ontario Human Rights Commission, "there are, arguably, few groups in our society today who are as disadvantaged and disenfranchised as transgenderists and transsexuals". According to a study published in 2010, 43% of Trans people surveyed had attempted suicide and 19% of Trans people 16-24 years old had attempted suicide within the 12 months prior to the survey. The discrimination has also presented itself in society inequalities. In the same study, 50% of trans people surveyed reported personal annual earnings of \$15,000 or less. Those who endorse the first recommendation suggest that, in considering the public interest in upholding and promoting the administration of justice, and especially in seeking to preserve and protect the rights of all people, the Benchers should have particular regard to the impact of its decisions on this extremely disadvantaged group.

Before concluding the equality analysis, it seems important to note that requiring commitment to the Community Covenant Agreement does not constitute affirmative action, or an ameliorative programme. The tenets of the Community Covenant Agreement are not a measure necessary to providing an education at an institution that is

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¹⁰² Ibid.

¹⁰³ "Policy on harassment and discrimination becasue of gender identity", OHRC, last accessed February 9, 2014, http://www.ohrc.on.ca/en/policy-discrimination-and-harassment-because-gender-identity#sthash.0dAgH4BZ.dpuf.

^{104 &}quot;Ontario's Trans Communities and Suicide", Trans Pulse E-bulletin Vol 1 Issue 1, November 12, 2010.

¹⁰⁵ "Policy Paper: Sex inscriptions on the Canadian Passport", Egale Canada, 2011.

Christian in outlook and mission. If one accepts that evangelical Christians are a historically disadvantaged group, the tenets of the Community Covenant Agreement do not ameliorate this disadvantage.

The discussion offered so far in this section has focused on facial discrimination within the Community Covenant Agreement. As the Supreme Court of Canada recognized in *Trinity Western University v BC College of Teachers*¹⁰⁶ and as was also recognized in the Special Advisory Committee report, the tenets of the Community Covenant Agreement will make some prospective students feel unwelcome at TWU, with the consequence that they are unlikely to apply to the proposed School of Law. It is more difficult to predict the impact that the Community Covenant Agreement will have on the learning environment at the proposed TWU School of Law and on public perceptions of legal education and the legal profession in BC. However, these are relevant questions that must be addressed in the course of deciding whether it is in the public interest in upholding the administration of justice to approve the proposed TWU School of Law.

3. Legal education in an environment of structured discrimination

Section 3(c) of the *Legal Profession Act* gives the Law Society the function of establishing standards for the education of lawyers. In Section II, we identified that the Law Society has taken the position that this function "give[s] the Law Society a broad scope" to oversee the education of potential lawyers. ¹⁰⁸ In particular, this scope extends well beyond compliance with the national requirement.

The requirement that TWU students, faculty and staff sign the Community Covenant Agreement introduces structured discrimination into the legal educational environment. Freedom of religion requires respect for the right of individuals and churches to adopt their own beliefs (for example, about same-sex relationships), to speak about these beliefs, and to counsel those who seek religious guidance. However, it was identified in section V.1 above that the Community Covenant Agreement takes that belief structure one step further by seeking to impose binding obligations on those prospective community members who may not share the particular perspective articulated in the Covenant.

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¹⁰⁶ 2001 SCC 31 at para 25.

¹⁰⁷ Special Advisory Committee Report above note 12 at para 36.

¹⁰⁸ Memo dated June 17, 2013 at page 3. This memo was contained as an attachment to the agenda for the Benchers' meeting on July 12, 2013, which can be found online at: http://www.lawsociety.bc.ca/docs/about/agendas/2013-07-12 agenda.pdf.

Contemporary research shows that much discrimination is unwitting, uncontrolled, and the product of unconscious processes of implicit prejudice. The best antidotes to prejudice are:

- 1. to ensure that there is social and institutional support for integrating different groups, including an expressed commitment by authority figures to the value of integration;
- 2. to foster close interpersonal relationships between members of different groups;
- 3. that contact between different groups must take place between equal-status participants; and
- 4. that members of different groups must share common goals or purposes and work collectively towards achieving these goals. 110

Research into the social psychology of groups and intergroup behavior suggests that a legal education that is conducted within an environment of structured discrimination is likely to exhibit two features.

First, many LGBTQ students and many feminist students who feel deeply about reproductive freedom will feel unwelcome at TWU, and will never apply to the proposed law school. This will correspondingly reduce the diversity of opinions and life experiences that may be reflected within the classroom at TWU. The Community Covenant Agreement will limit the opportunities available to LGBTQ and feminist individuals who wish to study law or teach at a law faculty. This limitation operates asymmetrically - students, staff and faculty who share the beliefs reflected in the Community Covenant Agreement are not similarly subject to structural discrimination in other Canadian law schools.

Secondly, LGBTQ and feminist students who attend TWU will study in an environment in which their lifestyle, beliefs and values are systematically depicted within the Community Covenant Agreement as improper. Students who engage in behavior that accords with their personal beliefs may be vulnerable to disciplinary procedures or expulsion. This possibility violates every one of the antidotes to prejudice listed above, and will act as a real impediment to full and equal participation in the learning environment. Discriminatory beliefs expressed by TWU faculty and students, which would elsewhere be subject to contestation and discussion, may well stand unchallenged in a TWU classroom. Accordingly, and based on the leading theories of prejudice and discrimination as well as a *Charter*-influenced commitment to equality, the Community

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¹⁰⁹ See for example, Rupert Brown, *Prejudice: Its Social Psychology*, (Mississauga: Wiley, 2010) and the work arising out of the Harvard Implicit Association Test, some of which is cited in note 66.

¹¹⁰ Ibid; Pettigrew, "Intergroup Contact Theory" (1998) 49 Annual Review of Psychology 65.

Covenant Agreement may be antithetical to the goal of preparing students to fully discharge a lawyer's responsibility of non-discrimination.

In Trinity Western University v BC College of Teachers, a majority of the Supreme Court of Canada held that there must be actual evidence of discriminatory practices before the freedom of religion of TWU students could be limited by requiring additional education. 111 Those of us who subscribe to the first recommendation submit that the Community Covenant Agreement constitutes actual discrimination in its current form. However, we also note that in Saskatchewan v Whatcott, 112 the Court held that evidence of actual harm was not required in order to justify limiting freedom of expression where the purpose of that limitation was to address the harms of systemic discrimination. In this instance and having regard to the research cited above (most of which has been published since 2001), we suggest that waiting for further evidence of actual harm is both unnecessary and improper.

In her letter to the Nova Scotia Barristers Society, former law professor Dianne Pothier argues that the responsibilities of law schools to teach non-discrimination may be distinguished from the requirements that were imposed on teacher education in 2001:

Law Schools are mandated to teach legal principles of equality, in the constitutional and statutory context. Furthermore, while public school teachers carry only the obligation of all members of the community not to discriminate in the provision of public services, lawyers have an extra level of responsibility. Lawyers are potentially involved in the administration of constitutional and statutory equality and anti-discrimination provisions. Thus there is good reason to impose a higher bar than in BCCT v. TWU, i.e. good reason for going beyond looking for specific evidence that TWU Law School graduates will, as a group, engage in discriminatory conduct. 113

Pothier observes further that the Supreme Court of Canada has granted more latitude to limit freedom of religion where the context is access to benefits or privileges rather than the imposition of penal consequences. 114 In this instance, approval of a common law faculty of law pursuant to Rule 2-27(4) of the Law Society Rules plainly constitutes a benefit or privilege. The question posed by the Supreme Court of Canada in Alberta v Hutterite Brethren of Wilson Colony was whether a limit placed on religious freedom "leaves the adherent with a meaningful choice to follow his or her religious beliefs or practices."¹¹⁵ We return to this proposition in the conclusion.

¹¹¹ Trinity Western University v BC College of Teachers 2001 SCC 31 at para 36.

¹¹² 2013 SCC 11.

¹¹³ Dianne Pothier, letter to Rene Gallant, President of the Nova Scotia Barristers Society dated January 18, 2014. Available at http://nsbs.org/sites/default/files/ftp/TWU Submissions/2014-01-24 Pothier TWU.pdf.

¹¹⁴ Alberta v Hutterite Brethren of Wilson County [2009] 2 SCR 567 at paras 37, 95 cited by Pothier ibid.

¹¹⁵ [2009] 2 SCR 95 at para 88.

4. Public perceptions of the legal profession, and professional standards

A further concern regarding the Community Covenant Agreement arises from the potential interaction between the duties imposed on TWU staff and faculty by that agreement and associated institutional policies, and the professional responsibilities imposed on lawyers by the *Code of Professional Conduct for BC*. TWU's Community Covenant Agreement is inconsistent with the requirement of non-discrimination imposed upon lawyers who are admitted to practice in BC. The faculty and staff of law schools frequently include individuals who are admitted to practice in the jurisdiction in which the law school is located. It is therefore possible that a practicing lawyer who is employed by TWU and in a position to make employment or disciplinary decisions may be forced to choose between fulfilling their contractual duty to enforce the Community Covenant Agreement and complying with the *Code of Professional Conduct for BC* if a disciplinary issue arises in relation to which the duty of non-discrimination conflicts with the tenets of the Community Covenant Agreement. This possibility sits at the most acute end of a broader concern about the effect of approving the proposed TWU School of Law Program on public confidence in the legal profession.

While numerous foundational principles underlie our legal system, perhaps none is more critical than the principle that a justice system cannot properly function without public confidence. In *R. v. Hall*, in finding that a power to detain accused persons prior to trial in order to preserve public confidence was constitutional, McLachlin CJC held

Public confidence is essential to the proper functioning of the bail system and the justice system as a whole: see *Valente v. The Queen*, [1985] 2 S.C.R. 673, at p. 689. Indeed, public confidence and the integrity of the rule of law are inextricably intertwined.¹¹⁷

One of the principal means of measuring public confidence in our justice system is considering the perceptions of reasonable persons who are aware of the relevant circumstances. Central to the issue of public confidence is circumstances that give rise to a reasonable perception of improper or unfair conduct. For example, there will be a breach of the principle of judicial independence where a judge is not actually biased, but where there is a reasonable perception of bias in the circumstances. Public confidence is also measured in the context of community values concerning fairness. In interpreting the term "interests of justice" in a statute, the Ontario Court of Appeal held

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¹¹⁶ Law Society of BC, Code of Professional Conduct for BC, Chapter 6, rule 6.3-5 and commentary.

¹¹⁷ *R v Hall*, [2002] 3 S.C.R. 309 at para. 27.

¹¹⁸ Canada v Tobiass, [1997] 3 S.C.R. 391 at paras. 69-70, 72.

That phrase is a broad one and includes maintaining public confidence in the civil justice process. That confidence is promoted by orders that are, broadly speaking, in accord with the community's sense of fairness. 119

Public confidence must also take into account the long-term impact of decisions. In *R. v. Grant*, the Supreme Court of Canada had to interpret section 24(2) of the *Charter of Rights and Freedoms*, which bases admissibility determinations on their impact on the repute of the administration of justice. The Court held that it should conduct this analysis on the basis of the long-term implications of its decisions

The phrase "bring the administration of justice into disrepute" must be understood in the long-term sense of maintaining the integrity of, and public confidence in, the justice system. Exclusion of evidence resulting in an acquittal may provoke immediate criticism. But s. 24(2) does not focus on immediate reaction to the individual case. Rather, it looks to whether the overall repute of the justice system, viewed in the long term, will be adversely affected by admission of the evidence. The inquiry is objective. It asks whether a reasonable person, informed of all relevant circumstances and the values underlying the *Charter*, would conclude that the admission of the evidence would bring the administration of justice into disrepute. ¹²⁰

Public confidence in the legal profession is an integral part of public confidence in our justice system. In *Consulate Ventures Inc. v. Amico Contracting & Engineering, infra*, Doherty J.A. characterized public confidence as "crucial to the effective and just administration of justice." ¹²¹

One of the central roles of the Law Society is to preserve public confidence in the profession. The Law Society has recognized confidence as a crucial element in the relationship between the legal profession and public. Commentary provided by the Law Society in section 2.2 on the Duty of Integrity of the B.C. Code of Professional Conduct states "if a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing." It is further noted that "a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety." As per the Code, a key duty of the lawyer is to encourage

¹²¹ Consulate Ventures Inc. v. Amico Contracting & Engineering (1992) Inc., 2010 ONCA 788 at para. 22; see also Mide-Wilson v. Hungerford Tomyn Lawrenson and Nichols, 2013 BCCA 559.

¹¹⁹ Ontario (Attorney General) v. 8477 Darlington Crescent, 2011 ONCA 363 at para. 96; see also British Columbia (Director of Civil Forfeiture) v. Wolff, 2012 BCCA 473 at paras. 37-38.

¹²⁰ R v Grant, [2009] 2 S.C.R. 353 at para. 68.

¹²² See the Law Society of British Columbia *Code of Professional Conduct for BC*, Rule 2.2-1(1), online: Law Society of British Columbia http://www.lawsociety.bc.ca/page.cfm?cid=2637&t=Chapter-2----Standards-of-the-Legal-Profession.

¹²³ Ibid Rule 2.2-1(2).

public confidence and to improve the administration of justice.¹²⁴ Eroding this confidence, respect, and trust is harmful to the legal profession and the public it serves. Even conduct in the private sphere may be subject to scrutiny and disciplinary action should it be perceived to adversely affect the integrity of the profession and the administration of justice.¹²⁵

Lawyers have a special position in the community, as their profession is one that is ancient, honourable, and learned. Due to this unique status, in situations where the profession and its individual members are subject to increased public scrutiny there is a heightened importance placed on adherence to the profession's duty of self-regulation. The commentary to Rule 7.4-1 states that the profession must be aware that because lawyers are "in the public eye, [they] can more readily be brought into disrepute by a failure to observe [the Law Society's] ethical standards." The commentary to Rule 5.6 similarly warns "the lawyer in public life should be particularly careful... because the mere fact of being a lawyer will lend weight and credibility to public statements." 128

The Law Society has made it clear that the proper administration of justice is inextricably tied to continued public confidence in the legal profession: "judicial institutions will not function effectively unless they command the respect of the public." To command this respect, the public must perceive the legal profession as being reflective of its own diversity. Accordingly, the Law Society has directly involved members of the public in executing its functions under s. 3 of the *Legal Profession Act*. The inclusion of government-appointed non-lawyers as Appointed Benchers of the Law Society echoes the importance placed on the profession reflecting the "diversity of the overall population."

¹²⁴ See the Law Society of British Columbia *Code of Professional Conduct for BC*, Rule 5.6-1, Law Society of British Columbia http://www.lawsociety.bc.ca/

http://www.lawsociety.bc.ca/page.cfm?cid=2641&t=Chapter-5-Relationship-to-the-Administration-of-Justice#5.6.

¹²⁵ Ibid Rule 2.2-1(3) http://www.lawsociety.bc.ca/page.cfm?cid=2637&t=Chapter-2---Standards-of-the-Legal-Profession.

¹²⁶ Ibid Rule 2.1 http://www.lawsociety.bc.ca/page.cfm?cid=2637&t=Chapter-2---Standards-of-the-Legal-Profession.

¹²⁷ Ibid Chapter 7.4-1(1) http://www.lawsociety.bc.ca/page.cfm?cid=2645&t=Chapter-7----Relationship-to-the-Society-and-Other-Lawyers#7.3.

¹²⁸ Ibid Rule 5.6-1(1) http://www.lawsociety.bc.ca/page.cfm?cid=2641&t=Chapter-5-Relationship-to-the-Administration-of-Justice#5.6.

¹²⁹ Ibid Rule 5.6-1(2) http://www.lawsociety.bc.ca/page.cfm?cid=2641&t=Chapter-5-Relationship-to-the-Administration-of-Justice#5.6.

¹³⁰ "Lay Benchers: Twenty Years of Bringing the Public to the Bencher Table" https://www.lawsociety.bc.ca/page.cfm?cid=508&t=Lay-Benchers; *supra*, note 3.

Those of us who subscribe to the first recommendation believe that that the approval of a School of Law that is founded on structured discrimination will cause public's confidence in the legal profession to falter. Approving an institution with explicitly discriminatory practices is out of step with basic public policy and sentiment in relation to the rights of LGBTQ individuals, and regressive in terms of the goal of protecting the rights of those who are already highly vulnerable to discrimination. If the Law Society takes this step, it is possible that the public will draw the conclusion that the equality rights of LGBTQ people and reproductive freedom are regarded by the legal profession as less worthy of protection than the desire of a faith-based community to regulate its own membership while offering a professional education. The legal profession performs crucial public functions - including upholding the rule of law and enforcing all *Charter* rights and freedoms - and it should not be seen to be prioritizing any of these rights and freedoms to the exclusion or detriment of others.

VI. Conclusion and recommendations

Based on the analysis offered in this submission of the Law Society's statutory mandate, the FLSC process, TWU's statutory object, the decision in *Trinity Western University v BC College of Teachers* and other relevant case law, and the *Charter* values that are engaged by the present context, a majority of students, staff and faculty who have worked on this project recommend that the Law Society pass a resolution that the proposed TWU School of Law in its current form (ie incorporating the Community Covenant Agreement as a mandatory condition of working or studying at the proposed School of Law) is not an approved common law faculty of law for the purposes of Rule 2-27(4)(a)

Those who support the first recommendation consider that this outcome fulfills the Law Society's obligation to minimize any negative impact on *Charter* values including the freedom of religion and the equality rights of all persons. TWU has repeatedly emphasized that it considers the Community Covenant Agreement indispensible to its institutional character and signaled plainly to the FLSC that it would not accept any interference with the contents of the Community Covenant Agreement. The consequence of TWU's position is that the proposed TWU School of Law must be approved or denied approval with the Community Covenant Agreement in place. If the Law Society acts on the first recommendation, all persons remain free to hold personal religious beliefs such as those reflected in the Community Covenant Agreement, to express those beliefs and to organize their own lives in a manner that reflects those beliefs. However, TWU will be precluded from infringing the freedom of religion and belief of those who wish to study law or work in a law school but who do not share the tenets reflected in the Community Covenant Agreement. The first recommendation furthers the Law Society's mandate to preserve and protect the rights and freedoms of all people, including the equality rights of LGBTQ individuals, de facto couples and women. Those who subscribe to the second recommendation take the view the Law Society should approve the proposed TWU School of Law, as the Federation has done, without imposing further conditions regarding the Community Covenant Agreement. The legal analysis adopted and arguments made by these community members have been integrated throughout this submission. For fairness sake, they are also reproduced in their entirety as an Appendix to this letter. We strongly recommend that the Benchers read this Appendix in order to obtain a more complete understanding of the position taken by those who adopt the second recommendation.

VII. First recommendation

I agree with the recommendation that the Law Society pass a resolution that the proposed TWU School of Law in its current form (ie incorporating the Community Covenant Agreement as a mandatory condition of working or studying at the proposed School of Law) is not an approved common law faculty of law for the purposes of Rule 2-27(4)(a).

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VIII. Second recommendation

I agree with the recommendation that the Law Society approve the proposed TWU School of Law, as the Federation has done, without imposing further conditions regarding the Community Covenant Agreement.

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IX. Appendix

To: Law Society of BC From: UBC Faculty of Law, student working group on freedom of religion Date: Feb 17, 2014 Re: Religious Freedom issues raised in considering accreditation of Trinity Western University's proposed law school Table of Contents **Executive Summary** 46 Preamble 47 1. Freedom of Religion in Canada 48 2. The 2001 TWU v. BCCT Case 50 a) Summary of the Facts and Judicial Background 50 b) Summary of the Analysis and Application 51 3. Can the Present Situation Be Distinguished 54 from TWU v BCCT on the Facts? 54 a) Do Lawyers Play a Unique Role in Society Such that Religious Freedom Should be

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Executive Summary

- 1. The Supreme Court of Canada has given an expansive definition to the *Charter* right of religious freedom. This includes not only the right to belief, but the right for those beliefs to inform one's conduct and practices. Religious freedom cannot be infringed unless it is shown to cause harm to another Charter right, such that the balance of rights should be shifted for public protection.
- 2. The Supreme Court of Canada undertook such a balancing of rights in *TWU v BCCT* in 2001, when Trinity Western University (TWU) challenged BCCT's decision to deny accreditation of their teaching program because of TWU's *Community Standards*. The Court concluded that BCCT's mandate was only to consider whether TWU's policy negatively affected teaching standards, and they had failed to show evidence of such harm. It was not within BCCT's mandate to consider the religious precepts held by students at TWU, and the religious freedom of those students could not be outweighed without evidence of actual public harm.
- 3. In deciding whether to accredit TWU's proposed law school, the same balancing of rights struck in *TWU v BCCT* should be maintained. An outweighing of religious freedom is justified if the current circumstance can be distinguished on the facts. Given the role of lawyers in society, TWU's current *Community Covenant* and the absence of public harm, such a distinction cannot be made.

- 4. The balancing of rights set out in *TWU v BCCT* has been affirmed in subsequent jurisprudence and the Supreme Court of Canada has said nothing to weaken its authority. Although societal values have evolved to afford greater protection to minorities including LGBT individuals, this does not diminish protection of religious freedom. The law requiring demonstration of public harm as set out in *TWU v BCCT* still stands and should be applied accordingly.
- 5. A decision to deny accreditation of TWU's law school would have important implications for the jurisdiction, criteria and consequences of the accreditation process. This raises numerous questions that the Law Society of BC should be prepared to address in making its decision.

Preamble

Religious freedom is a foundational ideal of our Canadian democracy. As UBC law students, we believe that this ideal is best met when individuals of any faith background (or none at all) are free not only to hold religious opinions in private but also to express these convictions in and through religious institutions. A distinctively Christian law school, for those students who choose it, would provide an opportunity to thoughtfully integrate the principles of their faith with their legal education. It also would afford students the chance to live and study in communities which reflect their own deeply held values. So long as Christians continue to practice law this can only make for better Christian lawyers.

As it stands many Canadian teachers, nurses, and social-workers have been or are already being educated at such institutions. The Supreme Court of Canada has affirmed the legitimacy of these programs. There is no principled reason to deny law students this same liberty.

We acknowledge that others are certainly entitled to their own convictions. We believe that all individuals are worthy of respect and dignity. Furthermore, we have come to respect and value the work and talents of LGBT members of our school and the wider legal profession. We count them as family members, friends and colleagues. Supporting the freedom of religion rights of TWU and of law students who desire to study at a religious institution does not negate these critical values and beliefs.

Since our mandate was only to consider the freedom of religion issues at play, we have not attempted to address all of the arguments put forward by the other working groups represented in this UBC submission.

1. Freedom of Religion in Canada

The *Charter* right guaranteeing freedom of religion has been given an expansive definition—a definition centered around the notions of personal choice and individual autonomy. In *Amselem*, Dickson J defined freedom of religion under s. 2(a) of the *Charter* as "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination" [emphasis added] 1132 Fundamentally, the Charter allows every Canadian to decide his or her own religious obligations and to live accordingly.

This emphasis on personal choice of religious beliefs means that objective validity or recognition by other members of the same religion is not required. In fact, an inquiry into whether a religious belief is valid is not appropriate. Protection under freedom of religion is given to subjective religious obligations, and must not be confused with whether the observance of an act or belief is objectively mandatory. Dickson J in *Edwards Books*, states that the purpose of s. 2(a) of the *Charter* is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices [emphasis added].

Freedom of religion, like every other right, can be made subject to overriding societal concerns. ¹³⁶ The basis for such restrictions is rooted in s.1 of the *Charter* which provides for reasonable limitation, so long as it can be demonstrably justified in a free and democratic society. *Charter* jurisprudence has consistently underscored that

¹³⁵ R. v. Edwards Books and Art Ltd., [1986] 2 SCR 713 at para 97, 35 DLR (4th).

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¹³¹ Syndicat Northcrest v. Amselem, 2004 SCC 47 at para 40, [2004] 2 SCR 551, [Amselem].

¹³² R. v. Big M Drug Mart Ltd., [1985] 1 SCR 295 at para 94, 18 DLR (4th) 321. [Big M].

¹³³ *Amselem*, at para 43.

¹³⁴ *Ibid*, at para 47.

¹³⁶ Amselem, at para 63.

religiously motivated conduct will only be justly proscribed, in the sense the *Charter* envisions, when that conduct can be said to injure others directly, or infringe the parallel rights of others to hold and express beliefs of their own. Conduct which potentially causes harm to or interference with the rights of others is not automatically controlled. Both *Amselem* and *TWU v BCCT* affirm that evidence of harm against others is needed and that the measure of harm must be more than minimal. The Court is concerned with the degree of harm to another protected right, and the evidence of harm before the court must provide a satisfactory answer as to what extent another right is infringed so that a balance between rights may be struck.

In *Amselem*, the court articulated two criteria which must be met in order for any given practice or belief to fall within the scope of freedom of religion. These constitute the core of the freedom and consequently trigger Charter protection. Adapting its language to the present circumstances, TWU, and its students, must demonstrate the following to successfully advance a claim of religious freedom:

- (1) Upholding the covenant represents a practice related to TWU's religious belief, whether this particular line of conduct is objectively or subjectively obligatory, irrespective of whether the practice of upholding all lines of conduct within the covenant is in conformity with the position of religious officials of whichever denomination to which the school belongs or adheres, and
- (2) TWU is sincere in this belief. 140

In the case of TWU these criteria are met. The purpose of the *Community Covenant* is to embody the distinctive Christian values of TWU. Among them is voluntary abstinence from pornography, tobacco use, obscene language, and all sexual conduct outside of a marriage between one man and one woman. It is important to consider each provision of the covenant in the context of the covenant as a whole. Each provision is equally protected under freedom of religion and the purpose of the covenant would be defeated if individual provisions were treated as extinguishable. Thus, the most contentious provision, prohibiting certain forms of sexual intimacy, is integral to full and free expression of their faith. For the TWU community, it represents a key commitment

¹³⁸ Amselem, at para 62.

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¹³⁷ *Big M*, at para 123.

¹³⁹ *Ibid*, at para 85.

¹⁴⁰ *Ibid*, at para 56.

to live their faith and to maintain an environment where their religious calling to remain abstinent is respected. Removal of this clause would substantially interfere with this commitment.

Canada is committed to being a multiethnic and multicultural community promoting tolerance of religious and ethnic minorities. 141 A willingness to recognize the rights of others, even if many people find their practices wrong, is considered vital to courts in order to maintain a democracy attempting to maximize human rights.

2. The 2001 TWU v BCCT Case

a) Summary of the Facts and Judicial Background

In TWU v BCCT¹⁴², eight judges of the Supreme Court of Canada held that the appeal of the British Columbia College of Teachers ("BCCT") should be dismissed because they had unfairly denied accreditation to Trinity Western University. TWU, a private BC institution affiliated with the Evangelical Free Church of Canada, had applied to the BCCT for approval to assume full responsibility of their teacher education program, rather than having TWU education students complete their 5th year at Simon Fraser University ("SFU"). At the root of the denial was the *Community Standards* document that TWU students were required to sign, committing to refrain from practices that are biblically prohibited, including homosexual behaviour. When TWU applied for reconsideration, the Council confirmed its denial stating "...Council still believes the proposed program follows discriminatory practices that are contrary to the public interest and public policy which the College must consider under its mandate as expressed in the Teaching Profession Act."143

On judicial review in the BC Supreme Court, Davies J found that it was not within the BCCT's jurisdiction to consider whether the program follows discriminatory practices since matters of public interest within their mandate related to teaching standards, not religious beliefs. 144 Davies J also found no reasonable foundation to

¹⁴¹ *Ibid*, at para 87.

¹⁴² Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, [2001] 1 SCR 772, [TWU v BCCT].

¹⁴³ TWU v BCCT, at para 5.

¹⁴⁴ Trinity Western University v. British Columbia College of Teachers, [1998] 4 WWR 550; 47 CRR (2d) 155 (BCSC).

support the BCCT's decision regarding discrimination. This BC Supreme Court decision was affirmed by a majority of the BC Court of Appeal, with one dissent. ¹⁴⁵

b) Summary of the Analysis and Application

The Supreme Court of Canada ("SCC") in *TWU v BCCT*, determined that the BCCT was acting within their jurisdiction when it considered discriminatory practices¹⁴⁶, adopted a correctness standard in determining whether their decision to reject TWU's application was justified¹⁴⁷, and stated that the BCCT's decision should have been based on evidence of actual discrimination by TWU teacher program graduates or of a real risk of such discrimination rather than presumption.¹⁴⁸ In their judgment for the majority, Iacobucci and Bastarache JJ held that the Community Standards document in itself was not sufficient evidence of discrimination:

To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality. 149

After discussing the importance of equality in Canadian society, as described in $Vriend^{150}$, the SCC provided a reminder that section 15 of the *Charter* not only protects against discrimination based on sexual orientation, but also based on religion. Section 2(a) of the *Charter* guarantees, as a fundamental freedom, freedom of conscience and religion and BC's human rights legislation accommodates religious freedom by allowing religious institutions to discriminate in their admissions policies based on religion. Dickson J's eloquent statement in $Big\ M$ is quoted in support of the importance of freedom of religion in Canadian society. 151

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¹⁴⁵ Trinity Western University v. British Columbia College of Teachers, [1999] 7 WWR 71; 169 DLR (4th) 234 (BCCA).

¹⁴⁶ Ibid at para 14.

¹⁴⁷ Ibid at para 17.

¹⁴⁸ Ibid at para 19.

¹⁴⁹ Ibid at para 25.

¹⁵⁰ Vriend v Alberta, [1998] 1 SCR 493, 156 DLR (4th) 385.

¹⁵¹ *TWU v BCCT*, at para 28.

The SCC concluded that "the issue at the heart of this appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in BC's public school system, concerns that may be shared with their parents and society generally." ¹⁵² In this present submission, it is what the SCC has to say about this balancing of rights which is of greatest assistance.

The SCC determined that a conflict of competing rights can be resolved through proper delineation of the scope of the rights since neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. ¹⁵³ Charter rights are inherently limited by the rights and freedoms of others ¹⁵⁴ and, while the freedom of belief may be broad, the freedom to act upon those beliefs is considerably narrower. ¹⁵⁵ In addition, a hierarchical approach to *Charter* rights must be avoided since *Charter* principles require a balance that fully respects the importance of both sets of rights when the protected rights of two individuals come into conflict. ¹⁵⁶

In the TWU case, the SCC stated that the BCCT should have considered the effect of their decision on the freedom of religion rights of parties involved. The BCCT's decision placed a burden on members of a particular religious group and effectively prevented them from voluntarily expressing and living in accordance with their religious beliefs with others of like belief. TWU itself was affected because, if it chose not to abandon its Community Standards, it would be renouncing certification and full control of an education program which would allow access to the public school system. Students would also be affected since the affirmation of their religious beliefs and attendance at TWU would not grant them certification as public school teachers.¹⁵⁷

The SCC recognized that the logical result of the BCCT's denial, based upon the presumption of intolerant behavior, would be the denial of accreditation to members of a particular church as well.¹⁵⁸ The SCC was committed to taking into account the impact of this decision on the right to freedom of religion of the members of TWU because "...The diversity of Canadian society is partly reflected in the multiple religious

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¹⁵² *Ibid*, at para 28.

¹⁵³ *Ibid*, at para 29.

¹⁵⁴ P. (D.) v S. (C.), [1993] 4 SCR 141, 108 DLR (4th) 287.

¹⁵⁵ B. (R.) v Children's Aid Society of Metropolitan Toronto, [1995] 1 SCR 315, 122 DLR (4th) 1.

¹⁵⁶ Dagenais v Canadian Broadcasting Corp, [1994] 3 SCR 835, 120 DLR (4th) 12.

¹⁵⁷ *TWU v BCCT*, at para 32.

¹⁵⁸ *Ibid*, at para 33.

organizations that mark the societal landscape and this diversity of views should be respected..." Diversity and religious public education rights were recognized by the Court in the tradition of religious affiliations of many Canadian universities, including Queen's, McGill and Concordia, in section 93 of the *Constitution Act, 1867*, in provincial constitutional protections in effect in Ontario, Alberta, Saskatchewan and Manitoba and in BC's human rights legislation. ¹⁶¹ The SCC held:

It cannot be reasonably concluded that private institutions are protected but that their graduates are *de facto* considered unworthy of fully participating in public activities...In this particular case, it can reasonably be inferred that the BC legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. Although this evidence is not conclusive, given that no students have yet graduated from a teacher education program taught exclusively at TWU, it is instructive. Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. 162

The proper place to draw the line when restricting rights is generally between belief and conduct as evidenced by the fact that the BCCT does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. "For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society." It is when these divergent beliefs manifest in

¹⁵⁹ *Ibid*, at para 33.

¹⁶⁰ Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

¹⁶¹ *Ibid*, at para 34.

¹⁶² *Ibid*, at para 35.

¹⁶³ *Ibid*, at para 36.

discriminatory conduct by a public school teacher that the BCCT has a right to step in with disciplinary proceedings since the erosion of the high standards expected of teachers in positions of trust and influence may lead to a loss of public confidence in the public school system. 164

In the TWU case, the SCC stated that the BCCT should have based its concerns on specific evidence, such as student teacher reports, opinions of school principals, and discipline files involving TWU graduates regarding the behaviour of current or past TWU students rather than on general perceptions. There was also no basis for the inference that the fifth year at SFU corrected any attitudes. 165 In considering the religious precepts of TWU instead of the actual impact of these beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations, and therefore, unfairly. 166

3. Can the Present Situation Be Distinguished from TWU v BCCT on the Facts?

Unless the present circumstance can be distinguished from TWU v BCCT on some grounds, an assessment of the competing rights that arise should strike the same balance provided by the SCC. The final report issued by the Federation of Law Societies of Canada considered a legal opinion from constitutional scholar John B. Laskin which found no grounds for distinguishing the current issue from the facts of the 2001 decision. 167 Some of the arguments presented by opponents of the TWU law school include: the unique role of lawyers in society, the changes made to TWU's Community Covenant since 2001 and the concern that legal education in a religious setting will necessarily cause public harm. This section examines each of these questions and concludes that there are insufficient grounds to distinguish the present issue from TWU v BCCT on the facts.

a) Do lawyers play a unique role in society such that religious freedom should be outweighed by a concern for discrimination within the legal profession?

In TWU v BCCT the Supreme Court of Canada concluded that unless graduates of

¹⁶⁴ Ross v New Brunswick School District No. 15, [1996] 1 SCR 825, 133 DLR (4th).

¹⁶⁵ TWU v BCCT, at para 38.

¹⁶⁶ *Ibid*, at para 43.

¹⁶⁷ Federation of Law Societies of Canada, Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report, 2013.

TWU's teaching program could be shown to cause harm to the public, the school's right to exercise its beliefs through its *Community Covenant* could not be displaced by a concern for discrimination. If public harm is more likely to occur through graduates of the proposed law program than through TWU's teaching program, however, such a concern might be merited.

As advocates for all Canadians before the law, including vulnerable individuals and marginalized groups, and as representatives of the law before the Canadian public, it is important that lawyers maintain high professional ethical standards. In British Columbia, legal practice standards are established in the *Code of Professional Conduct for BC*. The *Code* states "a lawyer must not discriminate against any person." The commentary accompanying this provision clarifies that "a lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws." Therefore, the BC *Human Rights Code* applies to lawyers in British Columbia, the same as it applies to teachers.

The *Human Rights Code* explicitly exempts religious, educational and other institutions that promote the interests of an identifiable group, on the grounds that such institutions grant a preference for members of that group. ¹⁷⁰ As was determined in the 2001 decision, Trinity Western University fits this profile. ¹⁷¹ Since lawyers are prohibited from discrimination under the *Human Rights Code* but TWU is not, rejecting accreditation would require demonstration of public harm caused by the law school graduates themselves, as was the case with TWU's teaching graduates. But the CPC simply incorporates by reference the *Human Rights Code* into the lawyers' code of ethics; it requires no more of lawyers than the *Human Rights Code* has always required of teachers.

Lawyers in BC have a privileged position in relation to the public, given their special expertise and influence in a field of such importance. But it is difficult to see how the personal beliefs of lawyers should be subjected to greater scrutiny than those held by teachers, nurses, and graduates of every other program TWU currently offers. Teachers are responsible for the learning and development of children and their ability to influence

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¹⁶⁸Code of Professional Conduct for British Columbia, 2013, art 6.3-5.

¹⁶⁹ Ibid, art 6.3.

¹⁷⁰Human Rights Code, RSBC 1996, c 210, s 41.

¹⁷¹ *TWU v BCCT* at para 32.

the beliefs and values of students is potentially significant. Still, the 2001 judgment saw no public harm that had resulted from the personal beliefs held by teachers from TWU. In the private legal market, the public has the freedom to choose its legal representation and avoid the potential for conflict where religious opinions are of concern. Lawyers employed in the public sector, like many government employees, are screened for personal conflicts of interest during the hiring process. Further, the *Code of Professional Conduct in BC* prohibits discrimination of clients and defines the duties owed by lawyers to their clients, the state and the courts. Thus if any discrimination does occur as a result of a lawyer's personal beliefs, he or she is subject to discipline under the *Code* regardless of the law school he or she attended. Given these factors, the ability for lawyers to discriminate based on their personal beliefs in a manner that is harmful to the public seems, if anything, more limited than that of teachers.

b) Do the changes made to TWU's Community Covenant after 2001 have a relevant impact on the analysis?

The *Community Standards* to which students and staff at TWU agreed at the time of *TWU v BCCT* prohibited "practices which are biblically condemned" including "premarital and extramarital sex, common law relationships, and homosexual behaviour". The agreement also required, among other things, that "married members of the community agree to maintain the sanctity of marriage." The Current *Community Covenant* is similar in substance, but differs in its language, requiring that adherents "abstain from…sexual intimacy that violates the sacredness of marriage between a man and a woman." The newer agreement also includes an explicit disciplinary provision wherein the right is reserved to "discipline, dismiss, or refuse a student's re-admission to the University."

The newer version adopts softer language, requiring adherence to a general Christian definition of heterosexual marital sex instead of explicitly identifying prohibited expressions of sex such as homosexuality. But the substance of the prohibition is effectively the same. The provision allowing for discipline or dismissal of a student who breaches the *Community Covenant* is an addition to the original covenant, but this addition does not alter the weight or significance of the covenant. The University's power to discipline a breach under the old standards was implicit in its assertion that if a student

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¹⁷² Code of Professional Conduct for BC, art 6.3.

¹⁷³ TWU v BCCT at para 10.

¹⁷⁴ Trinity Western University, Student Handbook: Community Covenant Agreement, 2013.

could not commit to such standards, he or she should consider enrolling elsewhere. In any event, this cannot be a legally significant distinction, as the Court's analysis in *TWU v BCCT* proceeded on the basis that even, given the older *Community Standards*, a homosexual student would not have been interested in applying for admission. ¹⁷⁵

c) Is there evidence that public harm would be caused by graduates of TWU's law program?

In *TWU v BCCT* the court found no evidence that public harm had been caused by graduates of TWU's teaching program. No such evidence has been suggested in the present case. To hypothesize that law graduates with certain beliefs would cause public harm is pure conjecture, and the assumption that lawyers with particular religious views will necessarily discriminate against their clients is unfounded speculation. "In considering the religious precepts of TWU instead of the actual impact of those beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations." Decision-makers may only weigh competing *Charter* rights using actual evidence, not concerns about the reasonableness or objective validity of those religious convictions. As noted above, if individual TWU law graduates behave unethically, the Law Society will be right to respond.

The assumption that religious institutions are incapable of training students to think critically and fairly is unfounded and based entirely on stereotype. Many Christian law students and lawyers across Canada hold beliefs that are routinely challenged in the course of their education, practice and personal lives. These challenges, if anything, refine their critical faculties by requiring them to actively engage with and consider how their beliefs inform their conduct as legal professionals. To argue that the religious perspective taught at TWU is harmful overlooks the value of diversity in the legal profession and is premised on the implicit assumption that lawyers cannot practice ethically if they hold religious beliefs. Such arguments privilege a non-religious worldview above all others and seek to preclude religious freedoms from protection in spheres of public influence. Canadian law requires a balancing of these competing values and rights, not a hierarchy. ¹⁷⁸

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¹⁷⁵ TWU v BCCT at para 25.

¹⁷⁶ Ibid at para 43.

¹⁷⁷ *Amselem* at para 43-44

¹⁷⁸ Dagenais v CBC

4. Is TWU v BCCT Still Good Law?

Given the strong correspondence between the factual circumstances in *TWU v BCCT* and the present situation, it stands to reason that *TWU v BCCT* represents the correct outcome and the Federation of Law Societies' decision is proper. However, arguments may also be adduced not to distinguish *TWU v BCCT* on the facts, but to challenge the applicability of the law laid out in that judgment. Does it still reflect of the Supreme Court's approach to balancing and evaluating Charter rights and in particular the scope afforded freedom of religion?

In "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program," Professor Elaine Craig attempts to make the case that TWU v BCCT is no longer a reliable source of law. She argues that the legal and social context has changed in significant ways since TWU v BCCT was decided 12 years ago. This amounts to an argument that if the case were litigated again in 2014, it would be decided differently.

The basis of Professor Craig's contention is twofold. First, it is claimed that the standard of review applied to the assessment of administrative decisions such as those in *TWU v BCCT* is no longer correctness but reasonableness. Second, it is claimed that Canadian social values and attitudes have changed in subsequent years. Recent Canadian history has been marked by a trajectory of growing sensitivity to and intolerance of discrimination against homosexual members of our community. She contends that this social reality is reflected in recent discrimination cases such as *R v Tran*, and can be expected to drive future *Charter* jurisprudence. For the purposes of this memo we will only address Professor Craig's second claim, since whether or not the standard of review has changed should not have any substantive effect on the current decision before the Law Society of BC.

It can be conceded that Canadian "societal values have evolved" with respect to the legal protection and treatment afforded homosexual individuals. This is a welcome and positive development. But this fact has no bearing upon the issue of the accreditation of faith-based institutions for the purposes of the professional education of its members. Increased focus upon one deeply held *Charter* value cannot be understood to somehow

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¹⁷⁹ Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25 CJWL 168.

¹⁸⁰ R v Tran, 2010 SCC 58, [2010] 3 SCR 350.

imply the diminishment of other deeply held *Charter* values. A greater application of Section 15 to orientation-based discrimination, as distinct from other bases for discrimination, should not come at the expense of freedom of religion. This is particularly the case in *TWU v BCCT*. In a 2006 decision, the same Court affirmed that there had been "no conflict of fundamental rights" in *TWU v BCCT*, and thus no need to "prefer" one over the other.¹⁸¹

The Supreme Court of Canada has not indicated that its approach to the balancing of rights or the value afforded freedom of religion has changed in substance. In addition to *Multani*, other decisions have affirmed the reasoning in *TWU v BCCT*. Last year, in *Whatcott*, the court unambiguously stated that "the protection provided under s. 2(*a*) should extend broadly." ¹⁸²

Alternatively, it could be argued that Professor's Craig's analysis might work to strengthen the Court's protection of freedom of religion in cases such as *TWU v BCCT*. The more a religiously-grounded position or opinion represents a minority position within the broader context of Canadian culture, a trend which may continue with respect to traditional Christian views on marriage, the more vulnerable it will be to unconstitutional infringement by the majority. In such cases the court should respond vigilantly to protect freedom of religion.

Fundamentally, it must be recognized that *TWU v BCCT* is the constitutional law in Canada. It cannot be set aside because one hopes that it would be decided differently today. Vague appeals to societal values are an insufficient legal basis to challenge the ruling. It is not a safe course to presume, without clear direction from the SCC, that *TWU v BCCT* has been in any way been substantially modified or invalidated. Respect for the rule of law requires that it be followed unless it can be distinguished on the facts.

5. What are the Implications of Denying the TWU Law School Accreditation?

A decision not to recognize TWU law school accreditation would put the Law Society of BC in a difficult position, given the numerous implications that logically follow. The Law Society should carefully consider the significance of a decision to scrutinize the personal beliefs and practices of lawyers outside of their professional obligations. Since there is no code or principled reason for holding lawyers to a higher

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¹⁸¹ Multani v Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6 at para 28, [2006] 1 SCR 256.

¹⁸² Saskatchewan (Human Rights Commission) v Whatcott, 2013 SCC 11, [2013] 1 SCR 467 at para 154.

standard, regulatory bodies governing other professionals trained at TWU would be forced to re-examine their accreditation of TWU's teaching, nursing and social-worker programs and graduates. The Law Society itself would also have to consider whether it is prepared to evaluate and adjudicate the qualifications of all law students, lawyers and judges on this basis. This raises important questions about jurisdiction, criteria and consequences:

- Should currently practicing lawyers with undergraduate credentials from TWU be investigated?
- What about graduates of law, undergraduate and other educational programs from religious backgrounds (Protestant, Catholic, Muslim, Jewish, Mormon), or from schools overseas with different cultural worldviews?
- Will each provincial law society carry out these assessments, and based on what criteria?
- What should be the consequences of such investigations?
- Is each provincial law society equipped with the resources and expertise to determine which personal beliefs are acceptable to the profession and which should be deemed discriminatory?

If the Law Society of BC decides to take on the responsibility of investigating the religious and cultural perspectives of educational institutions, it should be prepared to address these questions.

Non-Discrimination in Legal Education

WHEREAS all legal education programs must be open to potential law students on an equal and non-discriminatory basis;

WHEREAS public confidence is integral to the proper operation of our legal system and to the legal education that underpins the legal system;

WHEREAS discrimination undermines public confidence in the administration of justice and respect for the rule of law;

WHEREAS discrimination contributes to a corrosive educational environment that is hostile to freedom of expression and equality;

WHEREAS the freedoms of religion, expression, association and assembly are fundamental and constitutionally protected freedoms in Canada;

WHEREAS the resolution of any conflict between enumerated rights and freedoms in the context of legal education must consider the potential impact on the legal profession, access to legal education, the justice system and our society as a whole;

WHEREAS requiring law students, staff and faculty to sign the Community Covenant Agreement at Trinity Western University constitutes discrimination on the basis of sexual orientation, gender identity/expression, and marital status, and cannot be justified as an exercise of freedom of religion or on any other ground;

WHEREAS the Law Society of British Columbia has a central role in ensuring public confidence in the legal profession;

The voting members of the UBC Faculty of Law Faculty Council:

urge the British Columbia Law Society to require all legal education programs whose students are recognized for admission to the bar to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education – including faculty and employees (in hiring, continuation, promotion, and continuing faculty status), applicants for admission, enrolled students, and graduates.

Justine Clark

From: Leif Jensen

Sent: Sunday, March 02, 2014 11:05 AM

To: Submissions
Cc: Anand, Sanjeev
Subject: USask Student Letter

Attachments: USask Students Re TWU.pdf

Follow Up Flag: Follow up Completed

Categories: Red Category

Dear Mr McGee,

Please find attached a letter, signed by over 100 students at the University of Saskatchewan, expressing our concern with the prospect of accreditation of Trinity Western University. We ask that you consider these concerns when determining whether or not TWU should be accredited. Thank you for inviting this input. Best,

Leif Jensen.

University of Saskatchewan College of Law – USask OUTLaws Law Building, 15 Campus Drive Saskatoon, SK S7N 5A6

Law Society of British Columbia Attn: Executive Director 845 Cambie Street Vancouver, B.C. V6B 4Z9

Dear President Lindsay and Benchers,

Re: Trinity Western University's Discriminatory Community Covenant

As current students at the University of Saskatchewan College of Law, we write regarding the proposal to accredit Trinity Western University's (TWU) College of Law, in light of their discriminatory Community Covenant Agreement.

As you are aware, the covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." As well, the Covenant is binding whether or not the student is on campus, and failure to follow these policies can result in the student being disciplined, dismissed, or refused readmission to TWU.² While other aspects of the Covenant relate to other types of behaviour, the prohibitions against non-heterosexual actions go to the core of an individual's identity.

The issue we are concerned with is not the ability of TWU to teach legally, but with the exclusion of LGBT students from TWU. Any benefit in the increased diversity of legal thought would be negated by the exclusion of others.

In admissions, the legal community would suffer because any LGBT prospective law student would be at a competitive disadvantage if TWU were accredited. Were TWU to be accredited, one out of the four colleges of law in British Columbia would exclude LGBT students. This is clearly discriminatory.

¹ Trinity Western University Community Covenant Agreement at page 3, available online: http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

² Trinity Western University Student Handbook, Student Accountability Process, online: http://twu.ca/studenthandbook/university-politics/student-accountability-process.html

As to the student experience, we all benefit from having peers and colleagues from diverse backgrounds. This comes about in a myriad of ways: from comments in class to discussions and debates in our studies, a variety of perspectives challenge us to think critically about the values espoused in Canadian society as well as in the *Charter*.

As future members of the legal profession, we are committed to acting in ways that encourage equality and acceptance of others. To this end, we ask that you oppose TWU's accreditation, or place conditions on them which would address these issues.

Sincerely,

- 1. Leif Jensen (J.D. Candidate, 2014)
- 2. Linh Le (J.D. Candidate, 2015)
- 3. Bruce Gordon (J.D. Candidate, 2016)
- 4. Brandon Veenstra (J.D. Candidate, 2016)
- 5. Carly Romanow (J.D. Candidate, 2014)
- 6. Shawn Heinz (J.D. Candidate, 2015)
- 7. Stefanie Kingsbury (J.D. Candidate, 2015)
- 8. Desirée Lalonde (J.D. Candidate, 2015)
- 9. Craig Mracek (J.D. Candidate, 2016)
- 10. Arran Ferguson (J.D. Candidate, 2016)
- 11. Tonya Kent (J.D. Candidate, 2015)
- 12. Lisa Smart (J.D. Candidate, 2016)
- 13. Celia Ngo (J.D. Candidate, 2014)
- 14. Jasmine Hatfield (J.D. Candidate, 2015)
- 15. Breeanna Mussell (J.D. Candidate, 2015)
- 16. Dominic Sikora (J.D. Candidate, 2016)
- 17. Taylor Carson (J.D. Candidate, 2015)
- 18. Katie Oram (J.D. Candidate, 2016)
- 19. Tyler Arnold (J.D. Candidate, 2014)
- 20. Daniel Pagan (J.D. Candidate, 2016)
- 21. Tricia Kennedy (J.D. Candidate, 2015)
- 22. Mohammad Hajivandi (J.D. Candidate, 2015)
- 23. Theresia Cooper (J.D. Candidate, 2015)
- 24. Thomas Hynes (J.D. Candidate, 2015)
- 25. Katina Mikos (J.D. Candidate, 2016)
- 26. Amanda Zalmanowitz (J.D. Candidate, 2016)
- 27. Brooke Johnson Gaab (J.D. Candidate, 2016)
- 28. Lindsay Hill (J.D. Candidate, 2014)
- 29. Vanessa Williams (J.D. Candidate, 2016)
- 30. Sarah Gryba (J.D. Candidate, 2016)
- 31. Shealagh Mooney (J.D. Candidate, 2016)
- 32. Ashlan Friesen (J.D. Candidate, 2016)
- 33. Benjamin Parsonson (J.D. Candidate, 2016)

- 34. Daniel LeBlanc (J.D. Candidate, 2015)
- 35. Lorelle Binnion (J.D. Candidate, 2015)
- 36. Heather Franklin (J.D. Candidate, 2015)
- 37. Janice Charnstrom (J.D. Candidate, 2014)
- 38. Erica Tang (J.D. Candidate, 2015)
- 39. Rchnapreet Saroya (J.D. Candidate, 2016)
- 40. Andrea Chung (J.D. Candidate, 2016)
- 41. Kerry-Anne Holmes (J.D. Candidate, 2015)
- 42. Heather White (J.D. Candidate, 2016)
- 43. Tyson Rivet (J.D. Candidate, 2016)
- 44. Paula Bittman (J.D. Candidate, 2015)
- 45. Jordyn Allan (J.D. Candidate, 2016)
- 46. Julian Nahachewsky (J.D. Candidate, 2016)
- 47. Madlin Lucyk (J.D. Candidate, 2016)
- 48. Adam Pawlovich (J.D. Candidate, 2016)
- 49. Jordan Bolt (J.D. Candidate, 2016)
- 50. Morgan Grant (J.D. Candidate, 2016)
- 51. Brandi Rintoul (J.D. Candidate, 2016)
- 52. Nordika Dussion (J.D. Candidate, 2016)
- 53. Kristen Ross (J.D. Candidate, 2016)
- 54. Deep Brar (J.D. Candidate, 2016)
- 55. Mandeep Minhas (J.D. Candidate, 2016)
- 56. Sean Watson (J.D. Candidate, 2016)
- 57. John Fast (J.D. Candidate, 2016)
- 58. Matthew Feehan (J.D. Candidate, 2016)
- 59. Jared Brown (J.D. Candidate, 2016)
- 60. Karyn Kowalski (J.D. Candidate, 2016)
- 61. Dusty Ernewein (J.D. Candidate, 2016)
- 62. Jon Ponath (J.D. Candidate, 2016)
- 63. Sarah Miller (J.D. Candidate, 2014)
- 64. Lindsey Cybulskie (J.D. Candidate, 2014)
- 65. Rochelle Blocka (J.D. Candidate, 2015)
- 66. Tovah Moffat (J.D. Candidate, 2015)
- 67. Siobhan Morgan (J.D. Candidate, 2014)
- 68. Gus Michalik (J.D. Candidate, 2014)
- 69. Lorne Fagnan (J.D. Candidate, 2016)
- 70. Stephanie Lavallee (J.D. Candidate, 2015)
- 71. Mackenzie Tulloch (J.D. Candidate, 2015)
- 72. Jonathan Sims (J.D. Candidate, 2015)
- 73. Curtis Mennie (J.D. Candidate, 2014)
- 74. Richika Bodani (J.D. Candidate, 2014)
- 75. Merrilee Kinder (J.D. Candidate, 2014)
- 76. Britney Weber (J.D. Candidate, 2014)
- 77. Patrick Hopf (J.D. Candidate, 2014)
- 78. Hilary Nelson (J.D. Candidate, 2014)
- 79. Stephanie Frazer (J.D. Candidate, 2014)

- 80. Matthew Fox (J.D. Candidate, 2015)
- 81. Patrick McKenna (J.D. Candidate, 2016)
- 82. Devin Beaton (J.D. Candidate, 2014
- 83. Graham Christie (J.D. Candidate, 2014)
- 84. David Burland (J.D. Candidate, 2015)
- 85. Emily Harris (J.D. Candidate, 2015)
- 86. Galen Richardson (J.D. Candidate, 2014, LSA President)
- 87. Andrew Glum (J.D. Candidate, 2015)
- 88. Clarke Ries (J.D. Candidate, 2014)
- 89. Miles Waghray (J.D. Candidate, 2015)
- 90. Brooklyn Thorpe (J.D. Candidate, 2015)
- 91. Kyla Duchin (J.D. Candidate, 2016)
- 92. Aleksandra Gracia (J.D. Candidate, 2014)
- 93. Katelyn Sheehan (J.D. Candidate, 2015)
- 94. Matthew De Cloedt (J.D. Candidate, 2016)
- 95. Caeli MacPherson (J.D. Candidate, 2016)
- 96. Amanda Krishan (J.D. Candidate, 2016)
- 97. Jesse Rottenberg (J.D. Candidate, 2015)
- 98. Samantha Smith (J.D Candidate, 2016)
- 99. Carolyn Wong (J.D. Candidate, 2016)
- 100. Alex Anderson, (J.D. Candidate, 2014)
- 101. Tom O'Hara, (J.D. Candidate, 2014)
- 101. Tolli o Hara, (j.D. Callulate, 2014)
- 102. Eric Tollefson (J.D. Candidate, 2016)
- 103. Kara Moen (J.D. Candidate, 2015)
- 104. Katherine Melnychuk (J.D. Candidate, 2014)
- 105. Stacey Walker (J.D Candidate, 2015)
- 106. Calen J. Nixon (J.D Candidate, 2014)
- 107. Elise Calvert (J.D Candidate, 2014)
- 108. Samuel Edmondson (J.D. Candidate, 2014)



Faculty of Law Office of the Dean

University of Victoria Fraser Building Room 108 PO Box 1700 STN CSC Victoria British Columbia V8W 2Y2 Canada Tel 250-721-8147 Fax 250-472-4299 Web www.law.uvic.ca

February 26, 2014

Timothy E. McGee, QC Chief Executive Officer and Executive Director The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Dear Mr. McGee,

At the meeting of the Faculty Council of the Faculty of Law, University of Victoria, held on 26 February 2014, the attached resolution was passed by a vote of 21 to 0, with 1 abstention. This resolution was the result of a series of discussions begun at the Faculty Council meeting of 22 January 2014 and continued over two special informal meetings of the Law School community.

I convey the terms of this resolution to you in my capacity as Chair of Faculty Council. I would be grateful if you would bring it to the attention of the Benchers.

Thank you very much.

Sincerely.

Professor Jeremy Webber,

Dean, and Canada Research Chair in Law and Society

MOTION TO UNIVERSITY OF VICTORIA LAW FACULTY COUNCIL

Moved by Hester Lessard; Seconded by Rebecca Johnson February 26, 2014

Passed: 21 in favour; 0 against; 1 abstention

Whereas, the issue of ensuring accessibility and an inclusive learning environment for people of faith and of all sexualities is not an issue that is unique to Trinity Western University ("TWU");

Whereas all law schools need to take actions to ensure an inclusive climate for persons of faith and members of the Lesbian, Gay, Bisexual, Trans*, Two-spirit, Intersex and Queer ("LGBTTIQ") communities;

Whereas limits imposed on religious freedom have often had unanticipated and harsh impacts on vulnerable religious communities;

Whereas there is a long history of social and legal exclusion, as well as violence, against LGBTTIQ communities in Canada;

And whereas the key issue is an exclusionary admissions requirement to law school that directly impacts LGBTTIQ people, not the curriculum or the incorporation of elements of faith therein:

The University of Victoria Faculty of Law Asserts:

- 1. The key question currently before the Law Society of BC (the "LSBC") is fundamentally about access to law schools and in turn, to the legal profession. The requirement that students at TWU affirm their responsibility to fulfill every part of the Trinity Western University Community Covenant Agreement (the "Covenant") directly excludes persons in same-sex marriages, as well as the wider LGBTTIQ communities and their allies. The Covenant excludes these persons by demanding that all members commit themselves to a set of beliefs and a course of conduct that is inconsistent with their legal and personal relationships and their identities. [For example, a gay Christian, who might otherwise choose to study law at TWU, would be barred from admission by their inability to affirm their commitment to the definition in the Covenant of healthy sexuality.]
- 2. The distinctive nature of law school renders the barriers to access contained in the Covenant particularly problematic. Our concern is not that graduates of a law school at TWU would themselves discriminate, but that TWU's discriminatory admissions policy is problematic given the symbolic and material role of law schools in society. In this regard the LSBC should pay due attention to the role of law schools in society in their deliberations including the following:

- that symbolically, law schools signal justice and access to justice to the broader society;
- that a commitment to non-discriminatory access to law school is fundamental to a society that values democratic participation and inclusion;
- that law schools are the only route to the judicial branch of government, as well as a common route to public office in legislatures and executive bodies;
- and that lawyers as a group have significant social and political capital, and enjoy many privileges and responsibilities that are public in nature.
- 3 The LSBC should take a rigorously contextual approach to this issue. Some important contextual elements include:
 - that although the requirement to sign the Covenant potentially discriminates on many grounds, the salient issue is the impact on members of LGBTTIQ communities because of their historical and ongoing vulnerability within law schools and within society more broadly;
 - that given the relatively small number of law schools in the country, students repeatedly point out that it is not uncommon to be accepted to a single law school, especially a single law school within one's province of residence;
 - that the composition of the law student population has a material effect on the learning experience;
 - and that against the backdrop of these concerns, it is particularly important to ensure that the context in which future generations of lawyers and judges learn law is robustly inclusive.
- 4. The LSBC is an organization with a public task, charged with acting in the public interest. It thus has a distinctive role and responsibility to ensure non-discriminatory access to TWU's proposed law school.

Recommendation:

In light of these assertions, we recommend that the LSBC take steps to ensure that the TWU law school admissions requirements do not exclude persons in same-sex marriages, the wider LGBTTIQ communities and their allies.



March 2, 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

RE: Call for input on the accreditation process of the proposed law school at Trinity Western University

Dear President Lindsay and Benchers:

We are writing on behalf of the students at the University of Victoria's Faculty of Law regarding Trinity Western University's (TWU's) proposed law school. TWU's program is currently seeking the approval of the provincial law societies for admission to the bar of each jurisdiction. In British Columbia, this accreditation process falls within the authority of the Law Society of British Columbia (LSBC).

The UVic Law Students' Society holds the collective opinion that the LSBC should not accredit graduates of a potential law school at TWU, so long as the discriminatory Community Covenant remains in place.

The UVic Law Students' Society opposes the accreditation of graduates from this proposed school because of the overt discrimination against lesbian, gay, bisexual, transsexual, transgender, intersex, and queer ("LGBTTIQ") individuals contained within its Community Covenant, which all students must sign upon admission into TWU. This covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Students who do not comply with the agreement may be removed from the university without readmission.¹

Heterosexual couples have the option of marrying and thus are no longer required to abstain from sexual intimacy in order to comply with the covenant. Non-heterosexual couples, however, are treated differently. Intimacy within their legally recognized marriages will still violate the covenant and put them at risk of expulsion. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest. This obligation is mandated by section 3(a) of the Legal Profession Act, which articulates that the LSBC is to "uphold and protect the public interest in the administration of justice by ... preserving and protecting the rights and freedoms of all persons."

¹ Trinity Western University, Student Accountability Policy,

http://twu.ca/studenthandbook/university-policies/student-accountability-policy html

Freedom of religion is an integral aspect of Canadian society and the UVic Law Students' Society recognizes TWU's freedom to provide faith-based education. However the existing Community Covenant will lead to a comparatively smaller number of available law school admission spots for LGBTTIQ students. At the same time, the legal profession has traditionally been an institution plagued by barriers to accessibility and a lack of diversity. In this context, it is the LSS' position that the LSBC should take a stand against discrimination by refusing to accredit any law graduates of TWU so long as the discriminatory Community Covenant Agreement remains in place.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans, the Canadian Bar Association, the Canadian Federation of Students, numerous prominent lawyers and academics, law school faculty councils, editorial boards, and over one thousand law students. They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTTIQ students.

One of our priorities as students at the University of Victoria Faculty of Law is making legal education more accessible, practical, and representative of Canadian society. As future lawyers, we are committed to equality and promoting the values of the Charter within our practices. The leadership of the profession in BC should reflect the same interests in rendering their decision on TWU's accreditation.

There is a history of discrimination towards members of the LGBTTIQ community and many students continue to be subject to systemic discrimination, exclusion, and hatred on the basis of their sexual orientation. It would be tremendously disheartening to see the profession's leadership support policies that perpetuate these unacceptable experiences by constraining access to legal education for LGBTTIQ individuals.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. Whether TWU as a private institution is generally allowed to discriminate under s. 41 of BC's *Human Rights Code* is not at issue. Private institution or not, all law schools serve an inherently public function as gatekeepers to the judiciary. Thus, law schools must be operated in accordance with the public interest. To accredit TWU as it now stands with the covenant, would be to act outside the public interest of encouraging the growth of a diverse legal community.

We strongly recommend that you deny the accreditation of the proposed law school at TWU. We also encourage you to advance an accreditation requirement in the province that prevents any accredited law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Yours sincerely,

The University of Victoria Law Students' Society

From: Holly Vear [holly@woodwardandcompany.com]

Sent: Tuesday, February 11, 2014 4:54 PM

To: Submissions

Subject: Re: Trinity Western University **Attachments:** CBA Resolution 14-04-M.pdf

Follow Up Flag: Follow up Flag Status: Flagged

Executive Director of the B.C. Law Society:

I am writing to provide my thoughts on the Benchers' consideration of whether to accept Trinity Western University ("TWU") law graduates to the B.C. Law Society.

It is my position that graduates from the TWU law program should not be admitted to the B.C. Law Society's bar admission program. In support of this position, I adopt the resolution tabled by the Canadian Bar Association (attached), namely, all legal education programs recognized by Canadian law societies for admission to the bar must provide equal opportunity without discrimination on the basis of religion and sexual orientation. As the preamble of the resolution provides, there already exists too much discrimination within the legal profession, without introducing a new and explicitly prescribed basis to discriminate.

I urge the Benchers to deny TWU's application to the B.C. Law Society.

I appreciate your consideration of my submissions.

Sincerely,

Holly Vear
Barrister & Solicitor
Woodward & Co. Lawyers LLP
Second Floor, 844 Courtney Street
Victoria, BC V8W 1C4

Email: holly@woodwardandcompany.com

Phone: 250.383.2356 Fax: 250.380.6560

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Resolution 14-04-M Résolution 14-04-M

Non-Discrimination in Legal Education

WHEREAS discrimination continues in the legal profession in Canada despite significant progress toward its elimination, undermining public confidence in the administration of justice and respect for the rule of law;

WHEREAS ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice;

WHEREAS discrimination in legal education undermines the ethical underpinnings of the legal profession;

WHEREAS discrimination contributes to a corrosive educational environment that is hostile to freedom of expression;

WHEREAS the formation of values in law school has a long-term impact on Canada's future lawyers;

WHEREAS publicly-accredited law schools must comply with the *Canadian Charter of Rights and Freedoms* and provincial human rights legislation;

WHEREAS discrimination is not a recognized protected form of freedom of expression;

Non-discrimination dans la formation juridique

ATTENDU QU'il y a encore de la discrimination dans la profession juridique au Canada, malgré les importants progrès réalisés en vue de l'éliminer, et qu'elle mine la confiance du public dans l'administration de la justice et le respect de la primauté du droit;

ATTENDU QUE l'élimination de la discrimination dans la profession juridique est avantageuse pour la profession parce qu'elle lui permet de se présenter légitimement comme défenseur de la justice;

ATTENDU QUE la discrimination dans la formation juridique mine les fondements éthiques de la profession juridique;

ATTENDU QUE la discrimination contribue à un environnement éducatif malsain qui est hostile à la liberté d'expression;

ATTENDU QUE l'acquisition de valeurs dans les écoles de droit a une incidence à long terme sur les futurs avocats au Canada;

ATTENDU QUE les écoles de droit publiques agréées doivent respecter la *Charte canadienne des droits et libertés* et les lois provinciales sur les droits de la personne;

ATTENDU QUE la discrimination n'est pas reconnue comme une forme de liberté d'expression protégée;

Resolution 14-04-M Résolution 14-04-M

WHEREAS any conflict between enumerated freedoms must consider the potential impact on the legal profession, the justice system and our society as a whole;

BE IT RESOLVED THAT the Canadian Bar Association urge the Federation of Law Societies of Canada and the provincial and territorial law societies to require all legal education programs recognized by the law societies for admission to the bar to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education – including faculty and employees (in hiring, continuation, promotion and continuing faculty status), applicants for admission, enrolled students and graduates.

ATTENDU QUE tout conflit entre des libertés protégées doit être réglé en tenant compte de l'incidence possible sur la profession juridique, le système de justice et notre société dans son ensemble;

QU'IL SOIT RÉSOLU QUE L'Association du Barreau canadien exhorte la Fédération des ordres professionnels de juristes du Canada et les barreaux provinciaux et territoriaux à exiger que tous les programmes de formation juridique reconnus par les barreaux en vue de l'admission au barreau assurent l'égalité des chances indépendamment de toute discrimination fondée sur la race, l'origine ethnique, l'origine nationale, la couleur, la religion, le sexe, l'orientation sexuelle, l'expression sexuelle, l'identité sexuelle, l'âge ou la déficience mentale ou physique, et un comportement qui fait partie intégrante de l'identité et en est indissociable pour tous dans la formation juridique, y compris pour les enseignants et les employés (dans l'embauche, le maintien en poste, la promotion et le maintien de l'affiliation à une faculté), pour les candidats à l'admission pour les étudiants inscrits, et pour les étudiants diplômés.

Moved by SOGIC, Equality Committee, Young Lawyers – CBA and CCCA Diversity Committee Proposée par la Conférence sur l'orientation et l'identité sexuelles, le Comité sur l'égalité, les Jeunes avocats et avocates de l'ABC et le Comité de l'ACCJE sur la diversité

From:

Douglas Veira Saturday, March 01, 2014 9:50 AM Sent:

Submissions To: TWU & the law Subject:

Follow up Follow Up Flag: Completed Flag Status:

I write to let you know I feel very uncomfortable that Trinity Western University might soon be graduating lawyers with a discriminatory approach to the treatment of individuals. I hope you will not recognize lawyers graduating from TWU where religious opinions of the institution encourage biases in their approach to the constitution and individual rights.

Douglas Veira

From: Merel Veldhuis [merel@harbourlaw.ca]
Sent: Sunday, March 02, 2014 10:36 PM

To: Submissions

Subject: Attn Executive Director; Law Society of BC; Re: Input regarding the admittance of TWU law

school students to LSBC

Follow Up Flag: Follow up Completed

I have been reading about the pending decision of the Law Society of British Columbia concerning whether the LSBC will accept graduates of the proposed law school at Trinity Western University into its admission program to practice law in British Columbia. The issue of concern is the covenant that TWU requires its students and staff to sign prior to admission or employment on campus. I have not taken a legal approach to the issue; rather I am taking this opportunity to express my personal views.

As lawyers, we all have different backgrounds, beliefs, religious faiths, prejudices, preferences and intolerances. Our values all likely play a part in how we practice, who we practice for and how we engage the public in our practice of law. However, we are all required to take similar legal education, with classes educating us on the nuances and application of various legislation, the common law, the Charter and discrimination and equality rights. My experience of law school in 2001-2004 was of discussions in the classroom that were open and included a variety of background and value systems, which enriched my education. The students and professors were similarly diverse. The general atmosphere was one that allowed for a full freedom of expression. This diversity adds substance and balance to our education and to our profession.

A law school that has its own belief system to the point that it restricts its students and staff to those who share that system is limiting in two ways: (1) in who can enter law school and (2) in who can teach there and how they teach (that is, a limiting of expression and discussion).

Firstly, a potential applicant who is otherwise qualified but will not or cannot sign the covenant could be refused entry in favour of those less qualified but willing to sign the covenant. Potential applicants who cannot sign or adhere to the covenant will be more limited in their ability to access a placement in law school across Canada. Lawyers should not be trained in a law program that restricts entry of students or the hiring of professors and other faculty members based on a value system that has nothing to do with the learning and practice of law, such as sexual orientation/identity/expression, race, ethnicity, sex and so on.

Secondly, I strongly believe that a law school that restricts its staff members and students to those willing to sign on to a certain value system inherently changes the way that classroom discussion and teaching occurs and has a dampening effect on expression and learning. Each individual lawyer practicing in BC has their own belief system, but lawyers should not be trained in a law program that itself has a belief system which impacts who does the teaching, dampens open discussion, and limits the diversity that could be present in the program.

As a women in the practice of law, it is encouraging to see that previous discrimination towards women that limited the numbers of women attending law school has been successfully battled. It would be a disappointing step if the Law Society of British Columbia were to support a law school that included a way of filtering its students and faculty that has nothing to do with their ability to practice law, especially in light of the various day-to-day discrimination LGBT people still experience in BC

today. I am heartened that lawyers and the variety of organizations that act within the legal profession are actively trying to balance the law profession, by sex, ethnicity, religion, colour, etc. and I believe accepting students that attend TWU law school into the LSBC is damaging to the integrity of and trust in the profession of law that we work every day to ensure.

I do not doubt that students who have signed the Trinity Western covenant can, will and already do make fantastic lawyers, when educated in Canada's current law schools.

I stand behind the CBA's resolution 10-04-M and I would hope that the Law Society of BC does as well.

Regards, Merel Veldhuis

W harbourfamilylaw.ca

Merel Veldhuis Lawyer, Collaborative Practitioner & Mediator **Harbour Family Law Corporation T** (604) 259-2428 **F** (604) 259-2426

From: Kathryn Vennard [kvennard@bjdlaw.com]
Sent: Saturday, January 25, 2014 12:15 PM

To: Submissions

Subject: Proposed TWU Law School

Follow Up Flag: Follow up Flag Status: Flagged

As a member of the Law Society of British Columbia, I believe that we as a Law Society believe in fairness, equality and support diversity in our profession. I understand that the TWU requires students to adhere to a code/covenant prohibiting sex before marriage (as between a man and a woman) and requires them to be Christian in their faith. I do not agree with the Law Society endorsing a law program in a school that will not accept students who are gay, sexually active, or non-Christian. If a student starts with the belief that he or she has succeeded when a non-Christian, non-heterosexual, or simply sexually active individual has not, how can you ever expect that student to endorse fairness, equality and diversity?

How many of our members would not be members if the TWU covenant was required of them? I am opposed to the Benchers agreeing to TWU having a Faculty of Law.

Kathryn M. Vennard

51 3rd Street N.E. P.O. Box 67 Salmon Arm, B.C. V1E 4N2 t: (250) 832-9311 f: (250) 832-3801 e: kvennard@bjdlaw.com

From: Christina Vinters [Christina.Vinters@nixonwenger.com]

Sent: Monday, March 03, 2014 9:49 AM

To: Submissions

Subject: Comments regarding the proposed TWU law school

Follow Up Flag: Follow up Completed

Hello,

I strongly believe that the Law Society of British Columbia should not accept law degrees from TWU law school for the purpose of meeting the academic qualification requirement.

Academic institutions and, particularly law schools, have a duty to society to promote a fair and inclusive environment, and espouse non-discriminatory policies and values.

The LGBTQ community has worked for decades to gain the rights they currently hold. The TWU law school policy would be not only a significant setback for those rights but an embarrassment for the Canadian legal community.

It is inconceivable to me that a law school, trusted with teaching future lawyers/politicians/community leaders about equity, justice, and rule of law, could be allowed to regulate the personal behaviours of a select group of students, behaviours which relate to the core of their personhood, and which in no way affect their studies or interfere with other students or faculty.

The faculty, administration and students at the proposed TWU law school are certainly entitled to their feelings, opinions and religious beliefs but should not be allowed to discriminate against LGBTQ students with their hateful policy.

If the proposed school insists on maintaining their discriminatory policy, the Law Society of British Columbia should take a strong stand, exemplify the Canadian values of justice and inclusivity, and reject law degrees from TWU law school for the purpose of meeting the academic qualification requirement deny the school.

Sincerely,

Christina Vinters

Family Law Lawyer & Mediator Direct Line: (250) 541-4305



#301 - 2706 30th Avenue Vernon, B.C., V1T 2B6 Switchboard: (250) 542-5353

Fax: (250) 542-7273

Website: www.nixonwenger.com

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From: Bob Waterman [BWaterman@rbs.ca]
Sent: Bob Waterman [BWaterman@rbs.ca]
Monday, February 03, 2014 10:29 AM

To: Submissions

Subject: Proposed Law School at Trinity Western

Follow Up Flag: Follow up Completed

Adding another law school which results in more law students eventually seeking positions in law firms for articles and then associate positions lacks total reality. The province is already producing far more lawyers than the market can take. It is unfair to encourage students to pursue a career where there is no demand or positions available. We hire 3 students each year. For those 3 positions we receive about 200 applications. I know we do not get applications form every student who is seeking articles in Vancouver. I also know there are nowhere near 200 articling positions available. Many law firms are reducing their student intake. This has to stop or we will be turn into another Ontario. Not only would I not be in favour of another law school in BC I would encourage the present law schools to reduce enrolment.

J. Robert Waterman, Director of Administration

Direct Tel: 604.661.9241 | Email: bwaterman@rbs.ca

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From: Katherine Wellburn [kwellburn@murrayjamieson.com]

Sent: Tuesday, February 11, 2014 3:44 PM

To: Submissions

Subject: Trinity Western University - proposed law school

Follow Up Flag: Follow up Completed

I am a member of the Law Society of British Columbia. I support resolution 14-14-M submitted to the Canadian Bar Association and urge the Law Society of British Columbia to not agree to accept graduates of a law school that does not comply with the requirements of the resolution for admission to the Law Society of British Columbia.

I am concerned that an institution that endorses discrimination on the basis of religious belief and sexual orientation will produce like-minded graduates who will not advance the principles of equality and fairness upon which our country and legal system are founded.

Katherine Wellburn

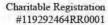
Katherine M. Wellburn

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WEST COAST LEGAL EDUCATION AND ACTION FUND (LEAF)

555 – 409 GRANVILLE STREET VANCOUVER, B.C. V6C 1T2 TEL: (604) 684-8772

FAX: (604) 684-1543 E-MAIL: info@westcoastleaf.org WEBSITE: www.westcoastleaf.org

Timothy E. McGee, QC Executive Director Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Via Email: submissions@lsbc.org

March 3, 2014

Dear Mr. McGee:

RE: Accreditation of Trinity Western University School of Law

Thank-you for this opportunity to make submissions to the Benchers of the Law Society of BC on the issue of whether Trinity Western University meets the academic qualification requirement of the Law Society's admission process. As an equality-seeking organization committed to advancing a substantive understanding of equality in British Columbia law and policy, West Coast LEAF opposes approval of a law school that enforces hiring and admissions policies that discriminate on the basis of sexual orientation and deny women's constitutionally protected reproductive rights. We urge you to reject TWU's application.

As you know, TWU seeks to establish a law school that is closed to individuals whose sexuality has expression outside of marriage between a man and a woman. TWU also restricts the reproductive freedom of its community members. Students, staff, and faculty must sign an agreement with the University to this effect, and anyone who does not comply with these requirements may be expelled from the University or otherwise sanctioned. The school's Community Covenant specifically contemplates that LGTBQ students may be subject to disciplinary measures, including expulsion, on the basis of their sexuality. Similarly, women may face sanction and/or expulsion for exercising their constitutionally protected right to access abortion care.

The requirement that prospective students and staff must agree to abstain from same-sex sexual activity discriminates against gays and lesbians, including those who are legally married. Moreover, the policy effectively excludes LGBTQ students from access to the benefits of a legal

education at the University, at least not without sacrificing their sexual identity and expression. It also requires women to cede their constitutionally protected reproductive rights, regardless of their own personal aspirations, dignity, and autonomy. These policies are contrary to the laws of Canada and have no place regulating a law school in British Columbia.

The Supreme Court of Canada, which considered TWU's policies in *Trinity Western University v. British Columbia College of Teachers*, found that the University's admissions policies create "unfavourable differential treatment" on the basis of sexual orientation. The majority of the Court found that "a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost." While the discriminatory policies were found not to be unlawful because of the religious exemption provided to the University by section 41 of the BC *Human Rights Code*, the Court held that if a public university or government actor adopted TWU's policies, it would violate the equality rights protected by human rights legislation and the *Canadian Charter of Rights and Freedoms*.

In West Coast LEAF's submission, the Law Society should not see itself as bound by the Court's decision in the Teachers College case. In our view, there is a strong argument that the Court would consider the issue differently today. Much has changed regarding the social, political, and legal considerations at play; as Professor Elaine Craig argues, social values have evolved, and "[t]odays' decision-makers are expected to be much more protective of gay and lesbian equality than were the decision-makers of ten, fifteen or twenty years ago." Legal protections not available to Canada's LGBTQ communities when the Teachers College case was decided, including recognition of same-sex marriage, rights of same-sex common law couples to the benefits of provincial family law legislation, and the addition of gender identity and expression as prohibited grounds of discrimination in some jurisdictions, have changed the legal landscape for LGBTQ people in Canada.

Developments in administrative law may also affect the standard of review applicable to the Law Society's decision. The Court applied a correctness standard to the question of whether the BC College of Teachers was justified in its decision; however, in *Doré v Barreau du Québec*, ⁴ the Court held that in reviewing discretionary decisions of administrative decision-makers that are required to consider *Charter* values, it is appropriate to apply a standard of reasonableness when the decision-maker has specialized expertise and discretionary power. The Court stated that "if, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable." The Court also found that "it goes without saying that administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values." Clearly, the Law Society must consider the values of equality, religious

¹ [2001] 1 S.C.R. 772.

² *Ibid.* at para. 25.

³ Elaine Craig, "The case for the Federation of Law Societies rejecting Trinity Western University's proposed law degree program" (2013) 25(1) Can. J. Women & L. 148.

⁴ 2012 SCC 12.

⁵ Ibid at para 58.

⁶ Ibid at para 24.

freedoms, and anti-discrimination norms in making its decision. In our submission, a decision to reject TWU's proposed law school would be afforded deference and found to be reasonable under the current law.

Regardless of whether the Teachers College case would be decided differently today in light of these developments in the law, a discriminatory <u>law school</u> has particular implications that distinguish it from other faculties.

Equality is a core value in Canadian law. Discrimination on the basis of sexual orientation is unlawful in Canada, and fundamentally at odds with the core values of Canadian law and Canadian law schools. In West Coast LEAF's submission, prospective lawyers cannot receive effective and adequate instruction in human rights and legal ethics in an environment that practices discrimination against gays and lesbians. Moreover, it is not in the public interest for lawyers to be trained in an environment that does not reflect Canada's diversity. Learning to practice law effectively means learning to work with colleagues and clients whose backgrounds, beliefs, and identities differ from one's own. In our submission, a law school cannot possibly prepare its students to be lawyers without the benefits of a diverse student body. While Canada's law schools have a long way to go towards meeting the goal of diversity, particularly with respect to socio-economic status, we should not be moving in the opposite direction with the creation of a law school that actively excludes particular communities.

A law degree confers considerable power and public status in Canada, and TWU's admissions policies exclude a vulnerable and historically marginalized segment of Canada's population from accessing this benefit. The additional 60 seats the proposed law school would add in British Columbia would not be open to LGBTQ students, disadvantaging this community and creating a situation in which Christian law students have greater access to the social and economic advantages that a law degree confers.

It is no answer to say that LGBTQ students can access the law school if they simply agree to not to engage in sexual intimacy. In this weekend's Globe and Mail, the perspective of an openly gay, religious TRU student reveals the significance of the convenant to his sense of human dignity and self-actualization. Before he came out, he was generally indifferent to the convenant, but afterwards, he says: "I realized I couldn't take it so much as a difference of opinion, that, in fact, excluding people who don't desire to marry the opposite gender, outside of 'God's intention,' is frankly alienating, violating and far past the point of differed opinions...There are some days that I feel like I'm less of a human being than the other Trinity students because I'm of a different orientation, and I don't want to feel that way."

The Law Society exercises a critical gatekeeper function in deciding who qualifies to be a lawyer in BC. Moreover, the Law Society has a mandate to protect the public interest in the administration of justice, and to set and enforce standards of professional conduct for lawyers. In West Coast LEAF's submission, it is not in the public interest to train future lawyers in an institution governed by policies that discriminate on the basis of sexual orientation, or which

⁷ Andrea Woo, "Inside Trinity Western's struggle between faith and equality" (1 March 2014) *The Globe and Mail*.

deny women's constitutionally protected reproductive rights. To approve a law school with policies that would violate human rights law if implemented by any of Canada's other law schools does not advance the rule of law, and would be incompatible with the Law Society's mandate to protect the public interest.

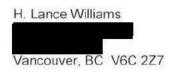
One of the ethical and professional duties of Canadian lawyers is the duty not to discriminate. Rule 6.3-5 of the Code of Professional Conduct states: "A lawyer must not discriminate against any person", and the Code emphasizes that "A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws." We are concerned about whether a law school with policies that exclude gays and lesbians and, in the words of the Supreme Court of Canada, create "unfavourable differential treatment" on the basis of sexual orientation, can impart on prospective lawyers a sufficient understanding of the ethical duty not to discriminate and honour the obligations enumerated in human rights laws.

The *Charter*, as well as human rights legislation in every Canadian province, prohibits discrimination on the basis of sexual orientation. Equality, specifically protected by sections 15 and 28 of the *Charter*, underlies all of the *Charter's* rights protections and is a fundamental component of the rule of law. The Law Society's decision whether to approve a law degree from TWU must be consistent with *Charter* values. In West Coast LEAF's view, a proper balancing of the right to freedom of religion, the right to equality, and the Law Society's mandate to protect the public interest demands that the Law Society reject TWU's application and, at the very least, mandate rigorous additional study and entrance requirements for prospective TWU law school graduates.

Thank-you for considering our submission. We would be pleased to discuss this issue further, if that would be helpful.

Yours truly,

Laura Track Legal Director



March 2, 2014

Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Attention: Executive Director

Dear Sir:

Re: Trinity Western University ("TWU") Law School ("TWU Law")

This letter is in response to the news release of the Law Society of British Columbia (the "Law Society") dated January 30, 2014 seeking submissions regarding the application of TWU Law to be an approved faculty of law for the purposes of the Law Society's admission requirements. I write in opposition.

Many parties, both lawyers and members of the community at large, have provided a host of strong arguments against the approval of TWU Law by the Law Society. I don't wish to repeat these arguments, but highlight two major points.

First, and foremost, the Community Covenant of TWU discriminates against LGBT students. It reserves "sexual expression of intimacy for marriage" which is defined as being solely between a man and a woman. It is preposterous, as has been suggested, that a school that bans sexual expression between two people of the same sex no matter their relationship status (including marriage under the laws of Canada), does not *de facto* exclude those students. In her article in the Globe and Mail published December 18, 2013, Elaine Craig adeptly characterizes this point:

To be clear, TWU's covenant differentiates on the basis of sexual orientation. Despite attempts by those supportive of TWU to muddy the waters by suggesting that gay people are welcome at the university so long as they don't have sex, the restrictions on gays and lesbians found in TWU's covenant are discriminatory and have been characterized as such by the Supreme Court of Canada. It is disingenuous to suggest, as have some TWU supporters, that a meaningful distinction can be drawn between forbidding same-sex intimacy and excluding gays and lesbians. This love the sinner, hate the sin logic was explicitly rejected by the Supreme Court last year.

The fundamental question before the Law Society in deciding whether to approve TWU Law is whether it is in the public interest to accredit a law school that actively discriminates against one segment of society. As has been noted by a number of commentators, we would not be this far into the process if the discrimination was directed at another segment of society. It is beyond reason to think that we would even be having a discussion around potential accreditation of a law school if the discrimination were directed at a particular race or religion - such a law school would not have made it past even preliminary approval. Why then is it a question when the discrimination is directed at gays and lesbians? Discrimination in any form is unacceptable and not in accordance with Canadian Charter values. The Canadian Bar Association Sexual Orientation and Gender Identity Conference note in their letter of March 18, 2013 to the President of the Federation of the Law Societies of Canada that the Supreme Court of

Canada in *Doré v. Barreau du Québec* reiterated that law societies must act consistently with *Charter* values. Freedom of religion does not grant TWU Law the right to discriminate against gays and lesbians and be accredited by the Law Society.

I would strongly suggest to you Ms Craig's full article *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program* published in the Canadian Journal of Women and the Law, Volume 25, Number 1, 2013 at pp. 148-170.

Consistent with Charter values, the Law Society must find discrimination unacceptable when accrediting any law school. A clear, consistent policy to be applied to TWU Law and all other law school applicants in the future would give certainty and creditability to the Law Society's accreditation process.

Thank you for considering this submission. Please note that this submission is made by me personally as a member of the Law Society, and does not necessarily represent the views or opinions of the firm with which I practice.

Yours truly,

H. Lance Williams

From: Michael Lucas

Sent: Monday, February 17, 2014 8:49 AM

To: Submissions Subject: FW: Trinity Western

Follow Up Flag: Follow up Completed

This came into the "diversity" email box.

Michael Lucas | Manager, Policy and Legal Services Law Society of British Columbia 845 Cambie Street, Vancouver, BC V6B 4Z9 t 604.443.5777 | BC toll-free 1.800.903.5300

From: Ingrid Reynolds

Sent: February-17-14 8:35 AM

To: Michael Lucas

Subject: FW: Trinity Western

From: trekpac

Sent: February-16-14 9:26 AM

To: diversity

Subject: Trinity Western

Dear Law Society:

As a professional in B.C., I respectfully have to weigh in on Trinity Western's decision to use a covenant to restrict people from entering its law school because of sexual preferences and practices. I respect their having a different view than most Canadians on this, but as such, I think they should find fields other than law that are compatible with their narrow and today not very enlightened teachings if they want to open a new school.

Respectfully, I request that the Law Society of B.C. decline to recognize graduates from their school as long as they choose to restrict how tolerant they are to all members of our loving, kind and just society. I am sure that TWU in the next 10 years will recognize the wisdom of this and increasingly recognize all kinds of relationships just for what they are - love between two individuals.

Blake Wilson R.P.F Delta, B.C.



From: Elizabeth Yip [EYip@terralawcorp.ca]
Sent: Monday, March 03, 2014 10:19 AM

To: Submissions

Cc: James L. Carpick (jcarpick@owenbird.com)

Subject: FW: Comments on Trinity Western University's proposed law school

Follow Up Flag: Follow up Flag Status: Follow up

Dear Sir/Madam,

I support the views expressed in the email from James Carpick below.

Regards,

Elizabeth H. Yip*

Terra Law Corporation

www.terralawcorp.ca

Suite 2800 – 650 West Georgia Street Vancouver, British Columbia, Canada V6B 4N7 Direct: 604.628.8998

Email: eyip@terralawcorp.ca
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*Law Corporation

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TERRA LAW

From: James Carpick

Sent: Monday, February 17, 2014 2:14 PM

To: 'submissions@lsbc.org'

Subject: Comments on Trinity Western University's proposed law school

The Law Society solicited views from its members as to whether it should approve the opening of a new law school at TWU. These are my views.

I read the Federation of Law Societies of Canada Canadian Common Law Program Approval Committee "Report on Trinity Western University's Proposed School of Law Program" and the Federation's Special Advisory Committee on Trinity Western's Proposed School of Law Final Report.

In my respectful view, the Law Society should refuse to approve TWU opening a new law school.

TWU is a private university. As such, it is exempt from the application of the *Human Rights Code* (BC). It is also unabashedly a religious institution. It thus enjoys the privilege, in the name of religious freedom, of adopting policies that any public institution could not adopt.

There is some suggestion that TWU is not a private institution because it does benefit from receipt of some public funding. That may be true, but my comments are not based on that point.

We must proceed to consider this matter from the fundamental perspective that the Law Society owes TWU no duty to approve its request to sanction the opening of its proposed law school. The Law Society may grant or withhold such sanction as it sees fit.

Naturally, its members would expect the Law Society to respond to TWU's request in good faith, but the Law Society carries no brief for TWU; it should make its decision solely on the basis of what it considers is best for its interests.

Thus, the Law Society should make its decision based on criteria relevant only to its own mandate and interests. To put it another way, it would be inappropriate for the Law Society to approve TWU's proposed new law school on the basis of other criteria.

Section 3 of the *Legal Profession Act* stipulates the Law Society's fundamental mandate:

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

This mandate goes beyond simply applying due process. It is concerned with the merit of any matter in issue as it affects the "public interest in the administration of justice".

The Law Society thus has an interest in how law students are educated. Its mandate does not include operating law schools; but the Law Society can at least approve a new law school, or refuse to recognize the credentials of a candidate for call to the bar whose legal education was at a law school of which the Law Society disapproves, for whatever reason. No one has a right to a legal education or a right to be allowed to become a lawyer, absent at least compliance with the requirements established by the Law Society in the exercise of its discretion.

Before going on, I want to comment on the reports by the Federation and its SAC.

Both reports were narrowly focused. The Federation's report merely determined that TWU's application met the current national standards. It was because it was aware of the narrowness of its report's focus, and the controversial nature of TWU's application, that the Federation struck the SAC, to consider the issues more broadly.

However, even then, the SAC's mandate was still fairly restrictive. The SAC concluded that "…none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies" (para. 65). This sounds broad enough, but the SAC was given the relatively discrete task of

advising in effect whether the fact that TWU faculty and students must agree to abide by TWU's faith based values should be an impediment in allowing TWU law school graduates to be called to a provincial bar.

So, the Law Society appears to be the only professional body with the ability or willingness to consider the public interest in the broadest sense of that term. Section 3 of the *Legal Profession Act* defines the scope of that consideration, but is so broad in concept that it imposes no practical constraint on the analysis.

What the Law Society must decide is whether it is in fact a good thing that we have in British Columbia a law school taught at an evangelically theological university.

In my view, TWU is not an appropriate university at which law students should be educated who, upon graduation (and fulfillment of other requirements), would qualify for admission to the bar of British Columbia.

I have two concerns, one general, one more specific.

As a general concern, TWU's reason for being is to educate students from a Christian perspective. From its web site: "Trinity Western is a Christian University [sic].... lives are changed at TWU through its whole-person, Christ-centred approach to education." With respect, there can be no valid "Christ-centred approach" to legal education.

If that's not clear enough, here is TWU's main mission statement:

As an arm of the Church, to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life.

Certainly, as a general proposition, there can be no objection to members of any faith (or no faith) establishing institutions for educating students from that perspective. But I submit that law students must *not* be educated from any such perspective. Lawyers must be independent, competent, and act with honour and integrity. These values are undermined by an education that is biased to one perspective. (What legal analysis can be expected from a lawyer with a "thoroughly Christian mind?") The "Great Commission" refers among others to the Bible passage in Matthew 28:18-20; basically, admonishing all Christians to proselytize and convert all non-Christians to the faith. Given that British Columbia is increasingly secular and non-Christian, it would be surprising and offensive to many people if the Law Society endorsed such a commission.

I am not saying that a Christian, or a Jew, or a Hindu, or a Sikh, or a person of any faith, or no faith, cannot be as unbiased as humanly possible as a practicing lawyer. We all have our own perspectives and we cannot entirely change who we are. But we British Columbia lawyers do (or should) acknowledge that the dictates of the law, and our *Code of Professional Conduct*, govern us and must take precedence over whatever personal inclinations we have. Religious legal education gnaws away at that principle.

For example, one of TWU's core values states, "Both individually and corporately Trinity Western wholeheartedly embraces all the Bible teaches in regard to faith, ethical commitments, and way of life, believing it to be the ultimate standard of truth and hope." This conflicts with s. 3 of the *Legal Profession Act*. Another TWU core value states, "God calls His followers to influence both individuals and the culture in which they live and ultimately draw people to Him. Trinity Western's programs

encourage thought, word and deed that affect the dynamics and institutions of our society on the basis of biblical principles such as justice, mercy and hope." Ditto.

If that's not enough, TWU further states this as a core value: "We believe the Scriptures, both Old and New Testaments, to be the inspired Word of God, without error in the original writings, the complete revelation of His will for the salvation of men, and the Divine and final authority for all Christian faith and life." TWU goes on to make this interesting assertion: "We live in a world that increasingly asserts and promotes pluralism not plurality in the sense of an increased demographic and cultural diversity in the nation which we embrace and welcome because all people are created in God's image but a philosophical pluralism that denies ultimate truth." It's a little hard to understand what is meant here because it's a run-on sentence, but from the context what is meant is that multiculturalism (plurality) is OK as long as Christian principles (i.e., the infallible word of the Bible) govern – a big no to pluralism (which is recognition of more than one ultimate principle).

I could go on and on but I trust these examples suffice to at least cause the Law Society to cast a critical eye on what it is exactly that TWU is really planning to do if given the power of operating a law school. I cannot imagine that TWU actually intends to educate law students in all respects in a way that our pluralistic society would desire. To educate students as our pluralistic society would wish would be contrary to the very ethos TWU explicitly embraces.

I note that TWU responded to inquiries along these lines by advising the Federation in effect that it will teach constitutional and human rights law, and legal ethics, as is, and not from any skewed perspective. That's only reassuring if we can assume that the study of law at TWU will be exempt from its general pedagogical principles, examples of which are set out above. In reality, we should expect that however technically correct the teaching of existing legal principles may be at its law school, TWU's pedagogy will affect how law students will be taught there, and this is not a good thing.

The SAC disagrees with me on that point, asserting in effect that there's no reason law can't be taught by a religious law school, as if teaching law is no different than teaching history or any other subject. I part company with the SAC here, for the reasons expressed above. For reasons too numerous to mention here, the study of law is not like the study of any other subject; it is one thing to have each professor bring his or her perspective to a law school; but it is another thing entirely to have a law school wholly dedicated to one perspective.

My more specific concern has to do with TWU's notorious anti-gay policies, and one related point.

All students who seek to enroll at TWU must sign a "Community Covenant Agreement". It sets out much of what is noted above and other things as well.

One specific requirement is: "observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce." One specific admonition is to refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." Later, this is stated: "...according to the Bible, sexual intimacy is reserved for marriage between one man and one woman...." Of course, according to TWU, the Bible is the word of infallible God.

While TWU cannot be made to stop enforcing these policies because it is a private institution, the fact is that the policies are discriminatory. A gay couple, lawfully married under Canadian law, cannot attend TWU without pledging to remain celibate. A heterosexual couple attending TWU would face no such offensive intrusion into their personal lives. Perhaps no rational gay person would attend TWU, but that creates a problem when TWU controls some of the limited resource of law school places. If more places

are needed – I'm not aware of any evidence to demonstrate that's so – they can surely be found at other, existing law schools. It is also no valid answer to the criticism to say that, if gay people don't like TWU's policies, they should go to law school elsewhere. The proper point of view is to say that if TWU wants to have such policies, it cannot have a law school.

By allowing TWU to operate a law school, we as a Law Society would be saying to gay persons that we consider them to be lesser human beings, and deserving of less from the law and the Law Society, than heterosexual persons. We would be saying this by sanctioning a religious university to operate a law school generally according to doctrines that exclude and demean such persons, in a way that would be illegal if the university were not private.

This attitude is contrary to the principle that the Law Society must preserve and protect the rights and freedoms of all persons. It is thus contrary to the public interest in the administration of justice.

Of course, anyone who wishes to attend TWU also has to sign a "statement of faith" certifying that Jesus Christ is their Lord, and related matters, so TWU law school is effectively also closed to any non-Christian. This is equally objectionable, for the same reasons.

So, in my respectful view, the Law Society should decline to sanction a new law school at TWU.

The views expressed herein are my own, personal views, not those of my firm or any of my colleagues, and I am solely responsible for them.

James L. Carpick

My contact details at my firm are:

James L. Carpick*
Barrister & Solicitor

(604) 691-7560 | Mobile (604) 787-6200 Direct Fax (604) 632-4439 <u>icarpick@owenbird.com</u>

<image001 gif>

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From: J Yuen

Sent: Sunday, March 02, 2014 9:23 PM

To: Submissions

Subject: TWU law faculty approval comments

Follow Up Flag: Follow up Completed

To the Benchers of the Law Society of British Columbia:

As a graduate of a British Columbia law school and a member of the Law Society of British Columbia, I urge the Benchers to withhold its approval from the proposed faculty of law at Trinity Western University.

Approval of the proposed law program in light of TWU's community covenant regarding sexual intimacy would effectively sanction a blatant and highly corrosive form of discrimination on the basis of sexual orientation. While I am confidant that the Benchers will carefully weigh the competing religious freedom/anti-discrimination claims, I hope it will also carefully consider the impact of its decision on TWU's student body, the law profession in British Columbia, and on the reputation of the Law Society itself.

GLBT individuals are subject to an enormous social pressure to hide or deny our sexual orientation. These repressive pressures manifest themselves in numerous harms ranging from as mental illness, depression, and numerous forms of conflict. As a gay law student, it was essential to my academic success and my ability to pursue my legal interests that I was able to study within an institution that did not discriminate against me on the basis of my sexual orientation. While at UBC, I benefited greatly from the support of numerous GLBT and non-GLBT faculty members, as well as from a visible and active GLBT student organization. This community enabled me to think creatively and critically as to the relationship between law and society, and to be an advocate for positive and progressive social change. This support fostered a deep commitment to my legal education – a commitment which ultimately led me to a clerkship at the Supreme Court of Canada, a graduate degree in law from Columbia University, and my career in constitutional law. Had I not had the support of my faculty and not felt free to explore my legal interests in a non-judgmental environment, I doubt my enthusiasm for the law and my commitment to my studies would have been the same. The proposed program at TWU would not only place significant limits on academic creativity, but also create a hostile environment for sexual minority students and their allies. Approval of such a program would communicate acceptance of such discriminatory treatment.

Importantly, a supportive and non-discriminatory law school communicates to its student body, and to the future legal profession, the importance of diversity, acceptance, and inclusion. As

much as law school provides an education in the law, it also provides an education to future lawyers in ethics and responsibility, and how to conduct themselves as a member of a diverse legal profession serving a diverse public. In other words, a legal education is also an education about the lawyer as citizen. A law program with discrimination at its foundation will have a strongly negative impact on the professional ethics of its graduates (instilling the notion that discrimination is permissible and valid), and negative implications for the legal community as a whole. I am very concerned that the public will have little faith in a community of lawyers trained in an environment where discrimination is sanctioned, or in a Law Society which sanctions and approves of such an education.

I am also very concerned that the Law Society will be on the wrong side of history should it approve the TWU law program. It would be a damaging and retrograde decision to approve a program based on such discrimination, and undermine the reputation of the Law Society in the eyes of its members and the public at large.

Thank you for considering these thoughts in your deliberation.

Best,

Jeffrey Yuen

Other

From: Lee Akazaki [lakazaki@Gilbertsondavis.com]

Sent: Friday, February 07, 2014 8:36 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Hello,

My response to your request for input appears on my blog here:

http://leeakazaki.com/2014/02/07/better-late-than-too-late-how-are-law-societies-to-respond-to-twu/

Thank you

R. Lee Akazaki, C.S. Partner / Avocat associé

Gilbertson Davis EMERSON

Barristers and Solicitors / Avocats 6 Adelaide Street East, Suite 800 Toronto, Canada M5C 1H6

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From: Cobban, Katie [kac@bht.com]
Sent: Saturday, March 01, 2014 2:28 PM

To: Submissions

Subject: Trinity Western University

Follow Up Flag: Follow up Completed

Hello,

I wish to add my impute into the issue if Trinity Western Law School.

I hope that the Bencher's and/or Law society will provide a summary of the proposal which includes a breakdown of issues relevant to the profession. I believe that this discussion would be more meaningful if the profession was aware of all of the facts. While religion appears to be the hot topic issue for many people, as lawyers our primary concern should be upholding a high standards for lawyers in the province, and by extension a high standards for graduates of law schools in this province.

I am concerned that increasing the number of law students graduating from law school in this province, and in Canada more generally, will have a negative impact on students ability to find articling positions and establishing successful careers.

Moreover, I am concerned that an additional law school introduced into BC so soon after TRU will only serve to lower the academic admission standards in this province. Students who do not have the academic caliber to enter UBC, UVIC and now TRU should not enter the profession. High admission standards ensure a competitive and intelligent legal community.

I hope that the Benchers, the Law Society, or some other institution will prepare a report on the following issues:

- Impact of 60 additional students entering the profession;
- Impact of 60 additional students entering the profession so soon after TRU graduates enter the workforce;
- Assessment of the academic admission standards of TRU compared to UBC and UVIC;
- Assessment of the proposed academic admissions standards of Trinity Western.

If such a report has been prepared, I hope that the Bencher of Law Society will forward this information to its members.

Finally, I have accessed the Trinity Western Law School fact sheet on their website. I am concerned that the proposal does not include an estimate of the tuition. I would be very concerns with any law program in Canada that had inflated tuition amounts as that would further lower the academic admission standards and preferentially benefit the well-off.

Thank you,

Katie Cobban

Katie Cobban

Associate, Dispute Resolution + Litigation
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From: Chris Dyson [cdyson@bclaw.bc.ca]
Sent: Saturday, February 01, 2014 10:14 AM

To: Submissions

Subject: Trinity Western Law - Submissions

Follow Up Flag: Follow up Completed

Dear Sir/Madam

Thank you for giving members and the public the opportunity to provide input on this topic.

I haven't yet decided whether the Law Society of British Columbia should grant accreditation to this proposed law school. However, I do think this is an important enough and controversial subject that the matter should be put to a vote among all of the individual Members in a secret ballot as we would elect Benchers.

There are a few points that need to be addressed:

- 1. The LSBC should press the school to drop its controversial covenant as a condition of accreditation by the LSBC if that's the decision.
- 2. BC has three law schools and already their graduates seem to have a tough time finding articling positions. AS such, I'm not sure that we need another one. It may not be in the public interest as there already seems a surplus of graduates.
- 3. A vote among all members of the LSBC would allow junior members of the bar to have input. Unlike myself, they likely do not have established practices and may be affected by the production of perhaps 100 new lawyers each year in BC.
- 4. My law firm is very geographically close to this school but contrary to TWU's submissions that the legal profession and the local bar being consulted and being supportive, my firm was never contacted or consulted by TWU about their proposal despite being almost next door neighbours. In fact, this is the first time I have been given the opportunity to have a say on the subject. The school needs to do a much better job of involving the local bar in their proposal if they want their project to succeed.

Thank you,

Chris

Christopher P. Dyson Barrister & Solicitor Yearwood & Co. –Lawyers 9613 – 192nd St. Surrey British Columbia (604) 513 - 2333

From: Fogel, Jay JAG

Sent: Thursday, January 30, 2014 11:56 AM

To: Submissions Subject: TWU law school

Follow Up Flag: Follow up Completed

Hi,

The only submission I would like to make is the following:

A graduate of TWU law school should not be prevented from call to the bar only by reason that their discliplinary history at TWU includes alleged or confirmed breaches of the school's covenant.

This is my personal view, not advanced on behalf of my employer. Jay Fogel

From: Brian Hutcheson [bhutcheson@swiftdatoo.com]

Sent: Thursday, January 30, 2014 1:28 PM

To: Submissions

Subject: new law school at Trinity Western University.

Follow Up Flag: Follow up Completed

I respectfully submit that the LSBC should not become involved in any inquiry or investigation over this new proposed law school. Members have a limited capacity to fund the activities of the Law Society. Members cannot afford to have the LSBC pouring scarce resources into every issue that arises even if some connection might be made out between s. 3 of the Legal Professions Act and the new law school.

If someone ever does graduate from this law school, and if that person ever decides to apply to become a member, then presumably if they are not a suitable candidate, the LSBC will at that time protect the public interest by declining the application. Why devote scarce resources to deal with this matter when in fact there may never be a problem?

The LSBC needs to be mindful of the members ability to pay and should decline to involve itself at this stage.

Brian Hutcheson Swift Datoo Law Corporation

From:

Andrew Pirie [apirie@uvic.ca] Wednesday, February 26, 2014 1:42 PM Submissions Sent:

To: Subject: TWU submission Attachments: TWU law school.docx

Follow up Follow Up Flag: Flag Status: Flagged

Dear Benchers.

Attached please find my submission.

Thank you very much. Professor Andrew Pirie Re: TWU Law School

I am a Law Professor at the Faculty of Law, University of Victoria. Apart from a few years where I have been on leave and working in other jurisdictions, I have been in this position for over 30 years. My main areas of research and teaching are Alternative Dispute Resolution (ADR), Civil Procedure and Legal Ethics and Professionalism. I appreciate the opportunity the Law Society of BC has offered for individuals and groups to offer their perspectives on TWU in order to ensure procedural fairness prior to your decision. Here are my views. They are not the views of the Faculty of Law.

This is a complex conflict. I agree with the view expressed by the Federation's President in a letter to Canada's Law Societies dated December 16, 2013. "The Federation was drawn into a larger societal debate about equality rights and religious freedom, about university community standards and the distinction between public and private institutions, about the dividing line between identity and conduct in matters relating to sexual orientation, and about whether a religiously-affiliated school can provide an appropriate legal education. With TWU's proposal to establish a law school, a debate that has challenged American legal educators and regulators for decades, found its way into Canada for the first time."

Despite the complexity, I would encourage the Benchers of the Law Society of BC not to take the easy way out. Given the preliminary approval by the Approval Committee, the approval by the BC government, the Report of the Special Advisory Committee including their unanimous agreement with the legal opinion from John Laskin, and the established American approach to this problem, it would not be surprising if the Benchers approved TWU unless new evidence emerges from this consultation. As I understand it, the question for the Benchers is not whether you agree with the religious values in TWU's Community Covenant or whether you regard the Community Covenant as discriminatory. The question is whether there is any public interest reason not to approve TWU and its graduates for admission to the profession because "It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

⁽a) preserving and protecting the rights and freedoms of all persons,"

The Supreme Court of Canada in TWU v BCCT has indicated that the answer to this question, at least respecting teachers, requires a balancing act that fully respects the importance of all equality rights. You have strong legal counsel (six at last count) advising you through the Federation that

"While the arguments made in the various submissions raise important issues that implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

It is the conclusion of the Special Advisory Committee that if the Approval Committee concludes that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."

Approval by the Law Society of BC would push this dispute into another forum. That forum could be the one suggested by the Federation's President-"The Federation considers that the debate about the form or content of a university code of conduct, such as the Community Covenant Agreement prescribed by TWU, is one that is more appropriately had with the relevant government authorities in the context of legislation and regulations that direct their oversight of educational institutions". The forum also could be the courts-my sources tell me there will be litigation.

I am not suggesting government or the courts are the wrong fora for this societal debate to continue. Indeed, the struggle by marginalized people who experience harsh discrimination needs to be carried on vigorously. However, in my opinion, not much will come on the government side and while litigation is often uncertain, if this case wound its way to the SCC in two years or so at considerable cost, it appears highly likely to me that the balancing of equality rights required by the SCC would be affirmed. Given (a) no concrete evidence of actual harm by TWU law graduates, (b) no overt admission discrimination to TWU but a very unwelcoming code of conduct for an LBGTQ person, (c) many lawyers presently in the legal profession who hold true to the values expressed in TWU's Community Covenant who do not discriminate, and (d) a bona fide expression of deeply held religious values by a private Christian university, it is difficult to disagree with the above legal opinion concurred in by six highly respected and experienced lawyers.

However, in the public interest, I would like to respectfully suggest a stronger and bolder leadership move by the Benchers of Law Society of BC. I would encourage the Law Society of BC to recognize that it is now a party, willingly

or not, in a complex multi-party dispute both as an entity itself and as a member of the Federation. This dispute is very likely headed to litigation. I would urge the Law Society to consider what every lawyer in the country is ethically required to consider in the same situation under the various codes of professional conduct –"whether it is possible to settle the dispute on a reasonable basis and in so doing to consider the use of alternative dispute resolution (ADR) when appropriate.

Whenever the dispute will admit of fair settlement the client should be advised to avoid or to end the litigation. A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Commentary

[1] A lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue those options.

The reason for this recently strengthened ethical mandate is clear. It has never been more in the public interest and indeed in clients' and the profession's interest to resolve problems whenever possible outside of court.

If the Benchers agree with the conclusion of the Special Advisory Committee on the public interest question and approve a law faculty at TWU, in the public interest I would like to see more. I would like to see strong and bold leadership from the Law Society about what happens next. Rather than delegating the problem to government or waiting for the inevitable timeconsuming and costly litigation. I would like to see the Law Society take the lead in recommending and encouraging a collaborative and facilitated negotiation process among the parties to this dispute and actively working with these parties to get agreement to participate in such a process. The exact form of this process and the participants would need to be negotiated but there are many in the legal profession who have experience in designing and implementing this type of multi-party process in similarly challenging settings. Recommending, encouraging, and participating in a continuing dialogue not only demonstrates a commitment to the public interest but also gives form to ethical responsibilities to seek creative solutions to challenging problems whenever it is possible.

Some might call this magical thinking. I would disagree if that means naiveté, impractical, or a waste of time. During my 30+ year career in the legal profession, I have seen many cases where the Law Society of BC and other law societies across the country have not shied away from these types of deep challenge. I am reminded of the great strides made in the legal profession around gender equality (more needed of course) because facing challenges head on is what makes law such an honourable profession

What would be the outcomes of the process I am recommending? That is to be discovered but, in my experience, I have seen many examples in disputes where open and honest collaborative discussions among seemingly the most unlikely of bed-fellows, facilitated by experienced and mindful legal professionals, have produced great results when at first no progress was expected. In my own law school, I do know that open and honest discussions among students and faculty with very divergent views have produced greater understanding of the complexities of this dispute, of the distinctions between beliefs and conduct, of the pain felt by the LBGTQ community, of religious freedom and how religious traditions are interpreted and change over time, of the significance of legal rights and the Rule of Law, and importantly of the Law Society's overarching obligation to uphold and protect the public interest. Even if these were the only outcomes of a Law Society inspired conversation, they would be preferable to the likely alternatives if no action is taken.

To date in this dispute most of what we have seen is a highly public flexing of positional muscles-approve TWU or don't approve it. I believe the Law Society of BC could demonstrate great leadership and contribute to a very constructive dialogue about what happens next in this dispute. It would be in the public interest for the Law Society to do so and a demonstration of a commitment to an ethical responsibility to seek solutions to disputes whenever it is possible. I would encourage the Law Society to take steps to see if some additional solutions are possible even if it approves a law faculty at TWU.

Thank you very much. I appreciate you taking the time to consider my comments.

Yours sincerely,

Professor Andrew Pirie



January 22, 2014

Jan Lindsay, QC President The Law Society of British Columbia 845 Cambie Street Vancouver, BC V6B 4Z9

Re: Accreditation of graduates of a law school at Trinity Western University

Dear Jan Lindsay, QC,

The University of Victoria Law Students' Society hereby requests that the Law Society of British Columbia conduct an open process concerning the accreditation of graduates of a law school at Trinity Western University.

The issues of discrimination and freedom of religion concern innumerable stakeholders and is of great public interest. An open process is imperative to the public mandate of the Law Society of British Columbia, particularly under the *Legal Profession Act* s. 3(a):

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by:

(a) preserving and protecting the rights and freedoms of all persons,

Conducting an open process will ensure that the necessary diversity of voices is heard concerning this complex matter. Significant value will be derived from such a process. It will lead to an understanding of the various positions by all involved. An open process will create connections and allow for meaningful substantive dialogue. Most importantly, it will allow the Benchers of the Law Society of British Columbia to make an informed and reasoned decision.

We would like to thank you for your consideration, and we look forward to hearing from you.

On behalf of the University of Victoria Law Students' Society,

Yianni Pappas-Acreman

President

University of Victoria Law Students' Society

Juris Doctor Candidate 2014

University of Victoria - Faculty of Law

Justine Clark

From: John Wade [jwade@bond.edu.au]
Sent: Monday, February 24, 2014 9:38 AM

To: Submissions

Subject: TWU freedom of religion discussion Attachments: CBA resolution --response.docx

Follow Up Flag: Follow up Flag Status: Flagged

Dear Sir/Ms,

Attached are some thoughts fyi following the CBA resolution last week.

I hope that they are of some assistance in your deliberations.

As you may know, the Saskatchewan Law Society decided narrowly last week to leave accreditation decisions to the centralised Federation of Law Societies.

Best wishes,

Professor John Wade Law Foundation Chair University of Saskatchewan

CBA resolution 14-04-M. No "discrimination" in legal education—Feb, 2014

A gathering at the CBA in Ottawa last week is reported to have passed resolution 14-04-M by overwhelming majority. In abbreviated statutory interpretation fashion, the resolution:

- Urge[s]
- The Federation of Law Societies of Canada and all 13 law societies
- To "require"
- "All legal education programs recognized by the law societies---"
- to provide "equal opportunity without discrimination_"
- on the basis of "race—gender identity—age, mental or physical disability, or conduct that is integral to and inseparable from identity—"
- "for all persons involved in legal education" (including employees, faculty, students, graduates--)

This remarkable resolution begs a number of questions which are being currently addressed by some law societies across Canada. It is not clear how many of these were analysed before the resolution was passed. Here are a few of the questions which can be grouped under three headings of jurisdiction, criteria and consequences.

Iurisdiction

- 1. How many law societies (or the Federation) want this expansive jurisdiction? How many have the time and resources to conduct hearings which allege that the "require" ments have not been met, for one person, or a class of persons?
- 2. What evidence would be submitted of individual or systemic "discrimination" practices and from how long in the past?
- 3. This broad "equal opportunity without discrimination" rule would come into operation at a time of deep dissatisfaction with legal education in western societies, including Canada—especially in relation to high debt and low employment of graduates. There are thousands of potential complainants who can readily convert their grievances into the slippery "discrimination" categories.
- 4. What funding do law schools and law societies have to defend against a stream of historic and future grievances? What slush funds do law schools have to pay off grievants and those negatively intimate with university conflicts before the hearings become public? Arguably, this area of grievance is ripe for new legal practice?
- 5. How long would it take for law societies to develop workable precedents to distinguish the many grievances arising from legal education into actionable discrimination; and acceptable discrimination? Eg places reserved for high paying foreign students; 100% exams; higher than normal "failure" rates; low marks awarded in a particular assignment; cross-cultural insensitivity of teachers or administrators; inadequate programs for older students, ESL students, multi-lingual students, slow learners, refugees, visual learners, depressed students and faculty, few

- clinics for experiential learners, emphasis on big law careers, etc. All law schools (like all law firms) are involved in "discrimination" at multiple levels, and always will be. Which practices will be deemed to be OK for the moment?
- 6. Can one complainant make a grievance application to all 13 law societies and also to the Federation about one law school? How will the doctrine of res judicata apply to 14 similar applications? Will standing be given to a class of applicants?
- 7. What if (inevitably) different law societies give different rulings about acceptable behaviour (or not) within "legal education programs"? What will this do to national mobility of law qualifications? How will forum shopping be managed (or not)?
- 8. Will law societies which adopt this recommended requirement, then also engage in a policing, supervising and re-accreditation role for all Canadian and foreign universities and law schools say every 5 years to check upon the balance of discriminatory practices? Will the law schools be required to pay the law societies to undertake such regular re-accreditation investigations?
- 9. How will the re-accreditation role, and hearing role of the law societies operate in relation to the many foreign universities and law schools whose increasing number of graduates are practicing, and will be practicing, in Canada?
- 10. Will the jurisdiction to hear grievances against existing law schools only apply to *future* events? Or will it be retrospective for *past* events?
- 11. How does the proposed no "discrimination" requirement relate to the narrower "unlawful discrimination" requirements of employment and other law? (especially in relation to law faculty and administrative staff whose jobs and promotions are precarious in changing times and budgets). Could the actions be run concurrently? Again what is the effect of evidence and decisions in each hearing?
- 12. As an undergraduate degree in something is a prerequisite to a "legal education program", does the proposed investigation, accreditation and complaint jurisdiction of the law societies extend to worldwide undergraduate degrees? Or is any undergraduate degree exempt from investigation no matter how "discriminatory"?
- 13. Presumably, any experienced employment lawyer can think of various other standard jurisdictional questions to add to this quick list.

Criteria

Assuming that one or more law society decides to accept **jurisdiction** to "require" no "discrimination"; and then to adjudicate on the (re-)accreditation of every law school, based on complaint or time, what **criteria** would the law society adjudicative committee use to label certain individual or systemic behaviour as improper or proper? Tolerable or intolerable? Here are a few predictable questions relating to this ancient debate?

- 1. The current CBA resolution arguably over-reaches. All businesses, universities, law schools, high schools and governments which have limited funding and/or particular goals engage in "discriminatory" practices. That is, they restrict resources to one interest group and expand them to others. Some of these practices are mentioned in 3 and 5 above under "Jurisdiction." The current CBA resolution prohibits hundreds of "standard" discriminatory practices at law schools in Canada and across the world—none of these will ever disappear despite some outstanding programs and window dressing to the contrary. Law schools which all live in glass houses are in danger when they throw stones. To repeat, there is standard discrimination against older, depressed, slow learner, ESL, aboriginal, creative, poor, multi cultural learners, foreign students, and those whose "identity" is attached to high theory or practical application. And there is standard (statistical) discrimination in favour of exam writing, articulate, wealthy, lawyer related, white students; and in promotion against faculty who are good teachers, student mentors, practicing lawyers, non PhDs etc. It is ironical that the CBA "without discrimination" resolution may apply to part time law teachers who are routinely exploited in pay, security, overtime, choice of subjects, often due to parental responsibilities—yet all essential to law school budgets, and frequently offensive to the part-timers' "identity".
- 2. How much evidence can law society committees collect from whom in order to understand "ordinary" law school discriminatory practices, shrinking budgets, limited "real" achievements (as compared to published policy and propaganda), and the historical critiques of law schools?
- 3. The CBA resolution leaves the historical tension intact. How to balance "equal opportunity" (whatever that means) and the contradictory "without discrimination", between religion, gender, age, mental or physical disability, and conduct "inseparable" from "identity".
- 4. The last criteria, which appears to be adapted from hate speech case law, is that law schools must not discriminate against "conduct that is integral to and inseparable from identity". This arguably opens a floodgate for say older, or mentally ill students, or students from other cultures and religions who have certain patterns of needy behaviour which require educational attention and expenditure. The weasel words also lead inevitably to philosophical and Platonic disputes, and conflicting expert evidence about what is "identity"; what is essence and what is added; what is volitional, habitual, cultural, genetic, attached by nature or nurture? Such debates may not interest some law society committees.

Consequences

Assuming that one or more law societies decide to take up the *jurisdiction* to require and adjudicate upon "without discrimination" behaviour of all law schools; and also eventually settle upon the evidence and *criteria* to satisfy the various balances of interests and freedoms; what range of *consequences* could the law society apply to each law school which has been found to engage in "discriminatory" behaviour?

- 1. Presumably, each law society will want a range of possible consequences, though each would inevitably choose differently from the range. For example, do nothing; accept evidence that the practice had changed already; OR under threat of dis-accreditation of the law school, mandate a private or public apology; require a reform program to curriculum over time; order special free tutoring for particular students; order legal costs against the law school; require free completion of the law degree or refund of fees; order an expert to supervise and report back to the law society on changes made over several years, all expert expenses paid by the law school; require suspension and re-education of a particular teacher or group of teachers or staff; payment of damages to a number of students or faculty or staff; and finally of course, dis-accreditation of the defaulting law school.
- 2. The devastating effect of the last sanction would of course lead to law schools agreeing privately to almost any conditions suggested by an organized group of student grievants; and occasionally to epic litigation and appeals supported by considerable existing student, university and alumni funds.

Conclusion: "To every complex social problem, there is a simple solution; and it is wrong"

The CBA resolution 14-04-M looks like law reform on the run. It is not clear that supporters have worked through the various unintended side-effects of the quick solution suggested. Some law societies and some law schools are aghast, and have run for cover.

Professor John Wade

College of Law, University of Saskatchewan.

24 February, 2014.

Justine Clark

From: John Wade [jwade@bond.edu.au]
Sent: Friday, January 31, 2014 3:46 PM

To: Submissions

Subject: FW: TWU accreditation

Attachments: Proposal in Saskatchewan for local law society to approve or disapprove other law

schools.docx; Tolerance and Intolerance of Minority Groups and individuals in Canada—the

example of Trinity Western Law School.docx; CV 2013 + New Pic.docx

Follow Up Flag: Follow up Flag Status: Flagged

Dear Benchers,

Thank you for the opportunity to make submissions to you in relation to the accreditation (or not) of TWU law school in BC. I appreciate the fact that you are taking time to collect the inevitably diverse views on this topic. It seems ironic to me that parallel discussions are occurring on similar topics arising out of the proposed charter in Quebec.

Given that the gradation of (in)tolerance of minority behaviour is always a controversial topic, I was surprised by the strange unanimity which was allegedly present amongst the Canadian law deans and the UBC law faculty?

I have been a legal academic and practitioner for over 40 years in Australia and elsewhere, with a special interest in legal education history and reform and have recently moved to Vancouver for family reasons. I have taught at a variety of Canadian law schools, and will teach again at Osgoode in 2014. FYI, I have attached a one page CV. This year (2013-2014), I have enjoyed a visiting appointment as Law Foundation Chair at the College of Law at the University of Saskatchewan.

The dean of law at the U of Saskatchewan encouraged the faculty to make submissions to the Saskatchewan law society about TWU. I have not heard whether the ten law societies are attempting to collate a standard body of submissions from across Canada?--but I may be missing something. There does seem to be a risk of ten different sets of evidence, and arguments, and ten differently nuanced conclusions with the flow-on effects of rule confusion and forum shopping etc.

Anyhow, I have made two very short submissions to the Saskatchewan law society and attach these FYI. The first argues against ten law societies readily opening the floodgates of disaccrediting "different" national and international law schools, at a time of increasing international criticism of traditional law schools (eg Carnegie Report; Tamanaha). The second submission, argues that if such gates are opened, there should be a careful definition of issues before considering whether to apply legal sanctions against minority individuals and institutions.

I hope that these documents are of some assistance.

If you need any elaboration, I can attempt to do that. If there are "hearings", I will attempt to attend. Please add me to any email list. My Vancouver phone number is 604-565-6294.

Best wishes in this challenging venture,

John Wade

John Wade

Proposal in Saskatchewan for local law society to approve or disapprove other law schools?—arising in the context of TWU.

I am an outsider, but my attention was caught by para 4 of the dean's report to the College of Law for January 2014. The following comments are not directed to the specific case of TWU, but rather to the implications of the pending local Saskatchewan decision.

Para 4 of the Dean's report suggests that the local Saskatchewan law society might take over the "national" function of approving or disapproving Canadian law schools and the legal education provided by each? If I have understood that correctly, and I do not know the history of federal-provincial and inter-provincial practice barriers, then this proposed local role will have some implications which need to be considered long and carefully.

This may be a case of a visiting fool rushing in where angels fear to tread. Perhaps that is what visitors are supposed to do? Additionally, I am paid large sums of money to assist in risk analysis attached to litigious decision making, so I will plunge in here. I also was closely involved in Australia responding to the very damaging regulation of law school behaviours by a secret non-consultative committee of elderly legal practitioners from one state (who obviously had not read the prophecies of Richard Susskind or his forebears).

What if each, or a number of, provincial law societies claim the power to approve or disapprove of JDs from other provinces, and other law schools?—then what inevitably follows is:

- 1. Harry Arthurs' nightmare, that not one national committee of legal practitioners, but say ten different groups of legal practitioners dictate in fluctuating fashion, which schools are "in" and which are "out".
- 2. Local law societies lobby each other quietly to request that "if you let my list in, I will let your list in". Voting blocks develop in the east and west, and in big and small law schools, skills and research law schools, old and new schools.
- 3. Local law societies draw up fluctuating check lists---- what are the educational goals, methods, resources and feedback used in propaganda and in reality at each law school in Canada, (and overseas given the internationalization of the law degree)?
- 4. Does each law school have in reality (not only in inevitable propaganda) sufficient learning of –skills? which skills? theory? history? research methods?—do they each have sufficient learning by doing? sufficient staff/ student ratios? sufficient publications; sholarships for the poor; for the rich and poor?social service?; practicums and clinics? overseas cross cultural learning experiences? (the "internationalization" of law and legal education); sufficient mandatory subjects for country and suburban practice (eg mandatory succession; business law; family law; running a business successfully) etc
- 5. Does each local law society have sufficient resources to collect evidence (beyond rampant propaganda) on each law school; and then hold hearings

- on each school say every 5 years to see if each has ticked the currently right boxes etc.
- 6. What if the Saskatchewan JD is not recognized in certain provinces because it has the currently "wrong" emphasis, or Saskatchewan College of Law does not give the time or resources to satisfy the fluctuating approving committees in each other province?
- 7. Local accreditation will inevitably have the effect of minimizing diversity of Canadian legal education even further than at present. Each law school must copy the behaviours of the big schools who get ten approvals, so that they get as many local approvals as possible.
- 8. What are the long term implications if some or many of the graduates of the "disapproved of" law school, turn out to be superb practitioners, judges and political leaders? What if the disapproved of law school is later ranked as top in the nation---as has just happened in the USA to the Mormon school in Utah, Brigham Young –best law school in USA for low cost to students and highest post graduation employment rates!!

From my experience elsewhere, these are a few risks and factors which need to be weighed up before Saskatchewan embraces such a (re)- accreditation role for the nation's (and global) law schools.

John Wade Law Foundation visiting chair 10 January 2014.

Tolerance and Intolerance of Minority Groups and individuals in Canada—the example of Trinity Western Law School

A submission to various Canadian law societies by Professor John Wade—30 January 2014

I have read some of the documents submitted to various law societies across Canada, objecting to the accreditation of Trinity Western Law School. The documents I have read are usually strident in tone, and would receive a failing grade in any law school subject based on standard "objective" legal writing criteria. Would a judge or attorney general strike out these documents for failure to define issues, confused arguments, misquoting the "law", absence of precedents, missing discussion of the field of choice, absent prediction of side-effects and flow on consequences, missing cost-benefit analysis, and adoption of premature solutions?

Naturally, provincial law societies have a strong interest in the quality of lawyers admitted to practice locally. If several law societies decide to be courts of appeal from the national accreditation or disaccreditation of law schools and their graduates in Canada and globally, then they will also inevitably need to decide about many diverse minority law schools, with their attached student codes. Such diversity includes Catholic, Jewish, Moslem, African American, skills emphasis (eg Lakehead), Protestant Christian of various flavours (eg Pepperdine), Mormon (eg Brigham Young), research emphasis (eg Toronto), poverty law required apprenticeships, multi lingual requirement (eg Spanish and Chinese), global practice requirement etc.

Presumably, provincial law societies will also need to revisit the eligibility of many *individuals* who graduated from such diverse global law schools and are now in practice. What is good for the goose is good for the gander? Or perhaps negotiate or decree an exemption clause for existing minority legal practitioners?

Lawyers know that legal practice is being pushed toward changes which were unthinkable 20 years ago (eg Susskind), and even comfortable legal education orthodoxies are experiencing glimmers of diversity after a century of conformity (eg Harvard; Edmonton conference 2013; Lakehead; Carnegie). Accordingly, the traffic of diversity in global and Canadian legal education and apprenticeships is likely to increase.

The writer is hoping that those law societies which decide to re-open "accreditaion" or "disaccrediation" engage in a structured and "professional" debate about TWU and other minority law schools and graduates. Set out below is a first draft of the historic "issues" attached to the broad and familiar question of what are the limits of tolerance (and intolerance) of diversity in a democracy?

In a former law reform career, the mantra was often quoted to me that "the right question is half of the answer". Of course, this wording can be revised.

1. Fact.

What are the factual versions, and with what evidentiary support, of the minority behaviours of the institution and individuals under consideration?

2. Historic Facts and Competing Values.

In a democracy, what variety of behaviours by minority groups has been and should now be "tolerated"? (eg different food, clothes or not, discipline of children, sexual abundance or abstinence, language spoken, books, medical treatment, life priorities, god(s) worshipped, educational methods and content etc)

3. Value and Process.

Who determines the current range of "tolerance" of minority behaviours, and by what process?

4. Value and Factual "Field of Choice"

If certain diverse behaviours arguably or certainly fall outside the current "tolerable" range, what range of consequences could be imposed on minority individuals and/or institutions? (eg ignore, exhort, criticize, shun, sack, de-register, deport, imprison, burn at the stake etc).

5. Fact and Value

What range of side-effects probably follows each possible "consequence"?

6. Value

Which response in the field of choice is probably the least detrimental amongst the historic options available?

7. Fact, Value and Process.

How and when to reopen and revise past decisions when "new" facts and values emerge?

JHW <u>jwade@bond.edu.au</u> <u>john.wade@usask.ca</u> 30 January, 2014

Justine Clark

From: Scott Whitehouse

Sent: Saturday, March 01, 2014 9:36 AM

To: Submissions; Scott Whitehouse

Subject: You'll be banning gay students as well

Follow Up Flag: Follow up Completed

Hi there,

As TWU has stated they welcome gay students but they can be banned/discriminated against just because they chose (freedom of choice) to go through TWU's law school. If TWU is allowed to operate this school, then you can't discriminate against the students themselves. What tolerance means to you I must question.

Thank you,

Scott Whitehouse