Court File No. S-149837
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

PETITIONERS

AND

THE LAW SOCIETY OF BRITISH COLUMBIA

RESPONDENT

RESPONSE TO PETITION

Filed by: The Law Society of British Columbia (the "**Law Society**")

THIS IS A RESPONSE TO the Petition filed December 18, 2014.

PART 1: ORDERS CONSENTED TO

The Law Society does not consent to the granting of the orders and relief sought in Part 1 of the Petition.

PART 2: ORDERS OPPOSED

The Law Society opposes the granting of the orders set out in all paragraphs of Part 1 of the Petition.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

OVERVIEW OF PETITION RESPONSE

(a) The Law Society's Resolution

1. The statutory mandate of the Law Society requires it to exercise its statutory powers in furtherance of the public interest in the administration of justice. In fulfilling this mandate, the Law Society must act diligently to preserve and protect the rights and freedoms of all persons and ensure the honour and integrity of the legal profession.

2. Trinity Western University ("**TWU**") is seeking approval for a law school that requires its students to sign a Community Covenant Agreement (the "**Covenant**"), as a condition of admission, swearing to abstain from same-sex intimacy, whether or not within a lawful marriage. It does not require that heterosexual married couples refrain from engaging in sexual activity.

3. On October 31st, 2014, the Law Society passed a resolution, declaring that the Law Society does not approve of TWU's proposed law school for the purpose of admission to the B.C. Bar (the "**Resolution**").

4. The Resolution makes it clear that the legal profession of B.C. does not condone and will not facilitate the exclusion of lesbian, gay, and bi-sexual (LGB) people from the practice of law.

5. This has not been done to punish TWU or those who hope to attend a law school rooted in evangelical Christian values. Rather, it has been done to advise TWU, its prospective students, and the Government in advance of TWU granting any law degrees, that the Law Society does not consider it to be in the public interest in the administration of justice for prospective graduates of a law school that discriminates in its admission policy to be enrolled in the Law Society's admission program.

(b) TWU's Challenge to the Law Society's Resolution

6. In its petition against the Law Society ("**TWU Petition**"), TWU is challenging the Resolution, alleging that it is *ultra vires*, unreasonable, and violates the *Canadian Charter of Rights and Freedoms* (the "***Charter***").

7. In response, the Law Society submits that it not only has the statutory power, but the obligation, to not approve a proposed law school for the purposes of admission if it is in the public interest to deny approval.

8. The *Legal Profession Act*, S.B.C. 1998, c. 9, states that it is the object and duty of the Law Society to uphold and protect the public interest in the administration of justice by, *inter alia*, preserving and protecting the rights and freedoms of all persons and ensuring the independence, integrity, honour and competence of lawyers. The *Legal Profession Act* confers upon the Law Society broad powers to adopt and apply requirements relating to enrolments and admissions to achieve these objectives.

9. This power was reasonably, and indeed correctly, exercised in the adoption of the Resolution.

10. The effect of the Resolution is that future graduates of TWU's proposed law school, if any, will not be enrolled in the Law Society's admission program.

11. This does not affect the freedom of TWU or any members of its religious community to profess their views, practice their religion, manifest their beliefs or associate for that purpose. Beyond its legal obligation to ensure that a proposed law school would further the public interest in the administration of justice, the Law Society has no mandate or ability to police what occurs at TWU or amongst TWU's membership, and has no interest in so doing.

12. Nor does the Law Society have the mandate to regulate the personal beliefs and views of its current or prospective members, in the absence of demonstrated ethical or professional violations. Evangelical Christians, including those who believe same-sex intimacy is sinful, are welcome in every law school in British Columbia and across Canada, and make a valuable contribution to the diversity of the legal profession.

13. The Law Society does, however, have an express statutory mandate to assess whether approval of TWU would be consistent with and further the public interest in the administration of justice, and a constitutional obligation to ensure that its decisions are consistent with *Charter* rights and values.

14. Where LGB persons would be denied equal access to the privilege of a legal education and the benefits it confers on the basis of their sexual orientation, the Law Society has the statutory and constitutional obligation to deny its approval to the proposed law school.

(c) TWU's Ability to Grant Degrees and the Loke Petition

15. While the Law Society has the power to deny approval to a law school for the purposes of admissions, it does not have the power to withhold approval to TWU to grant law degrees because of its discriminatory Covenant. This power lies with the Provincial Government and the Minister of Advanced Education (the "**Minister**"), under the *Degree Authorization Act*, S.B.C. 2002, c. 24.

16. Before there can be any TWU law graduates applying for enrolment in the Law Society's admission program, TWU needs the consent of the Minister to grant law degrees.

17. In parallel proceedings, Mr. Loke has brought a petition against the Minister, seeking an order that the Minister is legally required to refuse approval to TWU under the *Degree Authorization Act* (the "**Loke Petition**").

18. As a result of the Covenant, Mr. Loke would be effectively prohibited from accessing the additional law school places that would be provided by TWU's proposed law school; not because he does not share a Christian worldview, but simply because he is gay.

19. The Minister's initial decision to permit TWU's proposed law school to grant law degrees was challenged by Mr. Loke on the basis that the decision breaches his equality rights and religious freedom under the *Charter*.

20. The Law Society supports this position.

21. It submits that in light of the central role law schools play in the administration of justice and upholding the rights and freedoms of all persons, the Government is not legally able to give its consent to a proposed law school that discriminates against LGB people or members of other groups in its admissions policies.

(d) TWU Requires the Approval of Both the Minister and the Law Society

22. To be able to grant law degrees that will allow graduates to be eligible for admission to the B.C. Bar, TWU needs the approval of *both* the Government and the Law Society. While each decision is legally discrete, both determinations must be made in TWU's favour if TWU is to achieve the objectives it seeks.

23. The Minister's consent for TWU's proposed law school was rescinded, at least temporarily, after the law societies of B.C., Ontario, and Nova Scotia said that they would not approve or accredit TWU because TWU's admissions policy discriminates against LGB people.

24. TWU has not challenged the Government's decision to rescind its consent to TWU to grant law degrees. It has only challenged the Law Society's Resolution.

25. This seems to be based on TWU's view that its petition challenging the Law Society's Resolution will determine whether the Government can or must give its consent to TWU to grant law degrees under the *Charter*.

26. The Government appears to have the same view. In his December 11, 2014 letter to TWU, advising of the rescission of the Government's consent, the Minister of Advanced Education stated as follows:

> "I am not making any final determination as to whether consent for the proposed Law program at TWU should be forever refused because of the lack of regulatory body approval. Instead, I am making an interim determination that steps must be taken to protect the interests of prospective students until TWU's legal challenge to the decision of the Law Society of B.C. (as well as challenges to Law Societies in other provinces) have been resolved..."

27. However, contrary to what TWU and the Minister seemingly believe, the resolution of the legal issues raised in the TWU Petition will not resolve the legal issues raised in the Loke Petition.

28. Specifically, the legality of the Law Society's decision not to approve TWU's proposed law school *for the purpose of admission to the bar* will not resolve the legal issues regarding whether the Government can lawfully give its consent to TWU *for the purpose of granting law degrees*.

29. As the Supreme Court of Canada explained in *Doré v. Barreau du Québec*, 2012 SCC 12 ("***Doré***"), where a discretionary administrative decision engages *Charter* rights or values, the analysis proceeds by balancing those *Charter* interests with the objectives of the statute under which the decision was made. In carrying out this balancing exercise, the decision-maker should first consider the statutory objectives, and then "should ask how the *Charter* value at issue will best be protected in view of the statutory objectives" (at paras 55-56).

30. The Minister's legislative objectives in exercising discretion under the *Degree Authorization Act* are different from the Law Society's legislative objectives under the *Legal Profession Act*, as are the specific statutory powers under which each decision has been made. Accordingly, how those objectives are to be balanced against *Charter* values will necessarily differ in each statutory context.

31. Moreover, while both the Minister and the Law Society must consider the broader impact of their decisions, the relief sought in each case is distinct: the Loke Petition involves a challenge by a prospective student to a decision to *approve* TWU's application to grant law degrees, while the TWU Petition involves a challenge by TWU and a prospective law student to a decision *to not approve* of the proposed law school for the purposes of admission to the Bar.

32. As such, the resolution of the legal issues raised in one petition will not resolve the legal issues raised in the other.

33. This means that even if TWU succeeds in its petition against the Law Society, the legal issues regarding whether the Government legally can or must give its consent to TWU to grant law degrees must still be determined.

34. These issues will not 'disappear' after a ruling on the TWU petition if TWU seeks to obtain the ability to grant law degrees conferring access to the Bar.

(e) The Petitions Should be Heard Together

35. The Law Society respectfully submits that it does not make procedural sense to deal with the constitutional issues in slices – that is, first with respect to the Law Society's decision and then with respect to the Government's decision.

36. While the legal principles will have to be applied in different contexts, there are a number of overlapping issues of law. For instance, both petitions require a proper delineation of the scope of *Charter* rights and freedoms; the proper application of the *Doré* framework, particularly with respect to standards of review and burdens of proof; and determinations regarding issues of constitutional causation.

37. Likewise, the two petitions arise out of an interwoven factual setting. They will involve similar expert evidence and parallel legislative and social fact finding, including with respect to the impact of the Covenant on the LGB community, the diversity and inclusivity of the legal profession, and the administration of justice.

38. Moreover, as *Charter* rights and values are to be read together and reconciled wherever possible, joining the petitions in a single proceeding provides an opportunity for the Court to fully appreciate the constitutional interests at stake: *R. v. N.S.*, 2012 SCC 72.

39. The focus and perspectives of the petitioners in each case are diametrically opposed, which will provide the ideal legal and factual matrix in which the two sets of *Charter* interests can be best understood and reconciled.

40. As such, in the interests of efficiency, consistency, and a full understanding of the related legal questions, the constitutional issues relating to both the Law Society's and Government's decisions should be dealt with together in one proceeding.

PART 4: FACTUAL BASIS

A. TWU and the Admissions Covenant

41. TWU is an educational institution committed to the promotion of evangelical Christian values in the context of providing post-secondary education. It is affiliated with the Evangelical Free Church of Canada ("**EFCC**"), which is an association of churches that adhere to a common statement of faith. TWU provides evangelical Christians with an opportunity to come together and learn with other members of their religious community.

42. Although associated with the EFCC and committed to evangelical Christian values, TWU is not an insular religious organization, a theological school or a church. It is an institution of higher education that grants secular degrees.

43. TWU is authorized under the *Trinity Junior College Act*, S.B.C. 1969, c. 44, as amended ("***TWU Act***"). Among the statutory objects of TWU is the obligation to provide an education for "young people of any race, colour, or creed… with an underlying philosophy and viewpoint that is Christian" (s. 3(2)). The Petitioners state that TWU is open to all, "regardless of their personal beliefs".

44. As a condition of membership in the TWU community, students and faculty must affirm and adhere to the Covenant. TWU describes its Covenant as a "solemn pledge in which members place themselves under obligations" to "accept reciprocal benefits and mutual responsibilities" as outlined in the Covenant. It is a "contractual arrangement" into which all members must enter in order to be admitted to TWU.

45. According to the Covenant:

> It is vital that each person who accepts the invitation to become a member of the TWU community carefully considers *and sincerely embraces this community covenant*.

46. In signing the Covenant, all students affirm:

- 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 its responsibilities while I am a member of the TWU community.*

47. Among the religious commitments of TWU, as embodied in the Covenant, is the commitment to the institution of marriage, defined exclusively as the union between one man and one woman. The Covenant states that "according to the Bible, sexual intimacy is reserved for marriage between one man and one woman."

48. A footnote in the Covenant refers to a biblical passage denouncing same-sex intimacy as "vile", "against nature", and "unseemly".

49. LGB people can be admitted to TWU's proposed law school only if they agree to abstain from what the Covenant treats as their sinful sexual behavior. They must effectively renounce their sexual identity and treat their right to marry as a nullity for the duration of their education at TWU's proposed law school.

50. As such a renunciation would only come at an unacceptable personal cost, the Covenant effectively bars LGB Canadians from attending TWU. It is this discriminatory impact that has led to the two petitions before this Court.

B. The Role of the Law Society

51. As the protector of the public interest in the administration of justice, the Law Society is statutorily required to preserve and protect the rights and freedoms of all persons and to protect the integrity and honour of the legal profession.

52. The Benchers are the governing council of the Law Society. The *Legal Profession Act* provides broad statutory powers to the Benchers with which to govern and administer the affairs of the Law Society. These powers include the taking of "any action they consider necessary for the promotion, protection, interest or welfare of the society" and "any action consistent with this Act by resolution" (ss. 4(2), 4(3)).

53. The statutory obligations of the Law Society are outlined in section 3 of the *Legal Profession Act* as follows:

> 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.

54. As part of its broad statutory mandate, the Law Society has the authority under the *Legal Profession Act* to set requirements, including academic requirements, necessary to obtain admission to the Law Society, and to adopt rules establishing those requirements (ss. 20-21).

55. Law schools play an integral role in the Canadian legal system. They are the first step in training lawyers and judges that are at the heart of the administration of justice. Lawyers are expected and required to uphold the rule of law and fundamental values that underpin our democratic society.

56. The honour and integrity of the profession, and the public faith and confidence in the justice system, depends on the legal profession living up to this duty. As such, the Law Society has an obligation to make rules and set requirements for admission that will fulfil its statutory mission to uphold and protect the public interest in the administration of justice.

57. Under the statutory authority granted by ss. 20-21 of the *Legal Profession Act*, the Benchers have, in Rule 2-27, set out Rules relating to "Enrolment in the Admission Program".

58. Among the requisite qualifications for enrolment is proof that the applicant has completed the requirements for a degree "from an approved common law faculty of law in a Canadian university", unless the Benchers adopt a resolution declaring that the law school is not or has ceased to be an approved faculty of law: Rule 2-27 (4.1) ("**Subrule 4.1**").

59. In determining whether to exercise the discretion conferred by Subrule 4.1, the Law Society must consider and seek to advance the objectives set out in its statutory mandate.

60. This involves a consideration not only of the impact of its admission practices and policies on prospective applicants to the Bar. It also requires attention to the public interest and confidence in the administration of justice, including the accessibility and diversity of legal education, the integrity and honour of the legal profession, and the obligation to preserve and protect the rights and freedoms of all persons.

C. Procedural Background

61. In 2010, Canada's law societies agreed on a uniform national requirement that specifies competencies and skills that law schools must impart to graduates in order to be approved for the purposes of graduating students eligible for admission to provincial bars. The national requirement is administered by the Federation of Law Societies of Canada ("**FLSC**"), a national coordinating body for Canada's provincial and territorial law societies.

62. On June 15, 2012, TWU submitted its proposal for a new law school program to the Canadian Common Law Program Approval Committee of the FLSC (the "**Approval Committee**"), as well as to the Minister for approval under the *Degree Authorization Act*.

63. In light of the controversy surrounding TWU's proposed law school, the FLSC established a Special Advisory Committee (the "**Advisory Committee**") in April of 2013 to determine if any additional considerations should be taken into account in deciding whether TWU should be authorized to provide law degrees.

64. In particular, the Advisory Committee considered whether imposing the Covenant as a condition of admission to TWU posed any barriers to the provision of legal education in the public interest.

65. At the time of TWU's initial application to the Minister and to the FLSC, Law Society Rule 2-27(4) defined academic requirements for admission as "successful completion of the

requirements for a bachelor of laws or the equivalent degree from a common law faculty of law in a Canadian university."

66. The Law Society determined that a rule change was required in order to accommodate the role of the Approval Committee of the FLSC, without abdicating the Law Society's statutory responsibility to regulate admission to the legal profession in the public interest.

67. At a September 27, 2013 meeting, the Benchers unanimously approved an amendment to the *Law Society Rules*, including the new Subrule 4.1, which states that a common law program would be approved for the purposes of establishing adequate academic qualifications if approval was granted by the FLSC under the national requirement, "unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law."

68. On December 16, 2013, the Advisory Committee issued its report, finding that there was no clear 'public interest' bar to accrediting TWU as an approved institution for the purposes of issuing law degrees. The Approval Committee granted "preliminary" approval to TWU's proposed law school.

69. As a result of the FLSC's preliminary approval, the proposed law school at TWU automatically became an approved faculty of law for the purposes of enrolment in the Law Society's admissions program under Subrule 4.1.

70. On December 17, 2013, Minister of Advanced Education Amrik Virk granted consent to TWU to issue law degrees under the *Degree Authorization Act*.

71. Following the Minister's consent, Mr. Loke brought a petition alleging that the Minister's decision to approve TWU's application was unconstitutional. The Loke Petition was filed on April 11, 2014.

72. Between January and April of 2014, the Benchers of the Law Society considered whether to adopt a resolution declaring that the proposed faculty of law at TWU would not be an approved faculty of law. The Benchers convened numerous meetings and solicited submissions from the membership of the Law Society and the public regarding the

proposed TWU law school. TWU provided extensive submissions to the Benchers as part of this consultation and consideration process.

73. At the April 11, 2014 meeting, the Benchers debated whether to adopt a resolution under Subrule 4.1 declaring TWU to not be an approved faculty of law for the purposes of the Law Society admissions process.

74. The discussions during the April meeting fully canvassed a wide variety of legal and policy-based arguments for and against accrediting TWU. The views of individual Benchers ranged considerably, reflecting the significant controversy and division that TWU's proposed law school has generated.

75. Some of the Benchers were, at least initially, of the opinion that the Supreme Court of Canada's decision in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 ("***BCCT***") legally obliged the Benchers to approve of TWU's proposed law school, despite its discriminatory admissions policy.

76. Others disagreed, focussing instead on the impact on prospective law students, the function of the Law Society, the impact of the *Charter* and the Benchers' statutory duties, including whether the public interest would be harmed as a result of TWU receiving the Law Society's imprimatur.

77. Following the discussion, the Benchers voted on a motion to declare the proposed TWU law school to not be an approved faculty of law. The motion was defeated by a vote of 20-7. As such, TWU remained an approved institution for the purposes of Law Society admissions.

78. The Bencher's April 2014 decision provoked dissatisfaction among many members of the Law Society. A Special General Meeting of the Law Society ("**SGM**") was convened on June 10, 2014, and was held in 18 locations across the province. This meeting was initiated by the Law Society membership.

79. At the SGM, the membership considered and debated a resolution directing the Benchers to declare that the proposed law school at TWU is not an approved faculty of law for the

purposes of the Law Society's admission program (the "**SGM Resolution**"). The resolution was passed by a vote of 3,210 to 968.

80. The vote on the SGM Resolution was not binding on the Benchers.

81. At the July 11, 2014 Benchers meeting, the SGM Resolution was raised, and the Benchers determined to consider the issue further at the September 26th Benchers meeting.

82. On September 26, 2014, the Benchers held that meeting, during which they fully canvassed the issues arising from the SGM. Three motions were put before the Benchers at that time.

83. The first motion was to adopt the membership's SGM Resolution and declare that TWU was not an approved faculty of law for the purposes of Law Society admission.

84. The second motion was to direct a referendum on whether the Benchers should adopt the membership's SGM Resolution. The motion stated, in essential parts:

> BE IT RESOLVED THAT:
>
> 1. A referendum (the "Referendum") be conducted of all members of the Law Society of British Columbia (the "Law Society") to vote on the following resolution:
>
> > "Resolved that the Benchers implement the resolution of the members passed at the special general meeting of the Law Society held on June 10, 2014, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purpose of the Law Society's admissions program."
> >
> > Yes _____ No _____ (the "Resolution")
>
> 2. The Resolution will be binding and will be implemented by the Benchers if at least: (a) 1/3 of all members in good standing of the Law Society vote in the Referendum; and(b) 2/3 of those voting vote in favour of the Resolution.
>
> 3. The Benchers hereby determine that implementation of the Resolution does not constitute a breach of their statutory duties, regardless of the results of the Referendum.

85. The third motion was to delay voting on the first two motions until a decision had been rendered in litigation arising from TWU accreditation decisions in other provinces.

86. The second motion passed. It was determined that the referendum was to be conducted by mail-in ballot throughout October. Along with the ballot, members of the Law Society were provided access to audio-visual recordings and transcripts of the Benchers' discussions, the volume of submissions made to the Law Society (including from TWU), as well as the legal opinions before the Benchers, in order to inform their opinion and vote.

87. The referendum results were announced on October 30, 2014. A total of 5,951 BC lawyers (74%) voted in favour of and 2,088 (26%) against a resolution declaring that the proposed law school at TWU is not an approved faculty of law for the purpose of the Law Society's admission program.

88. On October 31, 2014, the Benchers reviewed the results of the referendum, and adopted a resolution under Subrule 4.1 that the proposed TWU law school was not an approved faculty of law for the purposes of admission to the BC Bar.

89. TWU sought judicial review of the Law Society's decision, alleging that the Resolution was invalid as it was *ultra vires* of the Law Society, unconstitutional, involved an improper subdelegation or fettering of authority, and represented an unreasonable application of the Law Society's discretion.

90. On December 11, 2014, the then-Minister of Advanced Education Amrik Virk announced that he was revoking his approval of the proposed law school at TWU under the *Degree Authorization Act*. The Minister stated in a letter to TWU that it may re-apply for approval in the future.

91. The effect of the Minister's decision to revoke approval is that TWU is not currently permitted to offer law degrees to students. Unless and until TWU is so permitted, there can be no graduates of TWU seeking admission to the Bar.

PART 5: LEGAL BASIS

A. Standard of Review

92. The Law Society submits that because the legal issues raised in this petition concern the interpretation and application of the Law Society's powers and obligations under the *Legal*

Profession Act, and relate to the governance of the profession in the public interest, the standard of review is reasonableness.

93. The Petitioner submits that the standard of review on the administrative law issues raised in this petition is correctness, as those issues engage the Law Society's jurisdiction to pass the Resolution. Respectfully, this position is inconsistent with the courts' modern approach to standards of review, and in particular the significant developments in the law that have occurred following *Dunsmuir v. New Brunswick*, 2008 SCC 9 ("***Dunsmuir***").

94. The category of "true jurisdictional" questions is vanishingly small, to the point that the Supreme Court of Canada has repeatedly questioned whether such a category exists at all: see e.g. *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 ("***ATA***"); *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40 ("***CNRC***") at para 61.

95. Rather, where an administrative decision maker is applying their home statute, there is now a presumption that a standard of 'reasonableness' applies (*ATA*, at para 39). There is no reason to depart from the presumption in this case.

96. There were, and still are, differing views within the legal community and public generally regarding the appropriateness and legality of approving, or refusing to approve, TWU's proposed law school.

97. Members of the law society governing councils are almost evenly divided on the issue. For instance, the Benchers in Ontario voted 28-21, the Council in Nova Scotia voted 10-9, and the Benchers in New Brunswick split directly in half, 12-12.

98. It is in precisely this type of situation that a reasonableness standard is appropriate, as such issues "do not lend themselves to one specific, particular result": *Dunsmuir*, at para 47.

99. The content of the reasonableness standard is determined by the context in which the decision was made. The Law Society has considerable expertise regarding issues relating to the obligations of the legal profession, its home statute and the rules made under it, in particular those relating to admissions. Considerable deference is afforded where a decision

maker is interpreting its own statute, with which it will have particular familiarity: *CNRC*, at para 55.

100. The decision taken by the Law Society in this case is quasi-legislative, involving complex matters of policy and implicating the broader public interest. The courts will afford significant deference to decision-makers in this context, and will seek to avoid substituting its preferred disposition for that reached by the administrative decision maker (DJM Brown & JM Evans, *Judicial Review of Administrative Action in Canada*, (looseleaf) at §15:2121).

101. The content of the reasonableness standard in this case is similar to the applicable standard for a judicial review of the decisions of other democratic bodies: that is, the courts should only intervene if "no reasonable body" could have arrived at the result: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at para 20 ("***Catalyst***").

102. The reasonableness standard also applies to the Law Society's consideration of *Charter* rights and values in exercising its statutory powers.

103. Although a correctness standard was applied in *BCCT*, recent Supreme Court of Canada case law dictates that discretionary decisions implicating *Charter* values should be reviewed on a standard of reasonableness: see *Doré*; *Divito v. Canada (Public Safety and Emergency Preparedness),* 2013 SCC 47 at para 49; see also *Gichuru v. The Law Society of British Columbia*, 2014 BCCA 396, at paras 107-108.

104. While a challenge to the constitutionality of a provision of the *Legal Profession Act* or the *Law Society Rules* would attract a correctness standard, the exercise of discretion under valid rules – even those which involve sensitivity to *Charter* interests – has been found subject to reasonableness review: *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 ["***Whatcott***"] at para 168.

105. On this standard, the discretion conferred by the legislature upon the Law Society must be exercised reasonably, and in a manner demonstrating a proportionate balance between the statutory objectives and *Charter* interests.

106. As will be explained below, the Law Society's decision to adopt the Resolution was a reasonable exercise of its statutory powers and is consistent with *Charter* rights and values.

107. However, if there is a need to determine the legal correctness of the Law Society's Resolution, which is denied, the Law Society submits that in adopting the Resolution, it correctly exercised its statutory obligation to protect the public interest in the administration of justice in a manner consistent with *Charter* rights and values.

B. The Law Society is authorized under the *Legal Profession Act* to adopt the Resolution

108. The Petitioners contend that the Law Society only has the power to refuse admission to the Bar where graduates fail to meet the Law Society's competency and fitness requirements. According to TWU, the Law Society's mandate is limited to determining the academic qualifications of prospective applicants to the Bar.

109. With respect, this is far too narrow a view of the Law Society's mandate. The Law Society has not only the *discretion*, but the statutory *duty*, to consider the public interest in the course of exercising its statutory powers regulating admission to the Bar.

110. As described above, section 3 of the *Legal Profession Act* states that it is the "object and duty of the society to uphold and protect the public interest in the administration of justice". The statute obligates the Law Society to fulfil this role by, *inter alia*, "preserving and protecting the rights and freedoms of all persons"; "ensuring the independence, integrity, honour and competence of lawyers"; and "establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission".

111. These objectives are inherently broad, indicating the legislature's intent to empower the Law Society to exercise a comprehensive supervisory function over the legal profession in B.C.

112. The exercise of its statutory duty to act in the public interest in the administration of justice is at the heart of the Law Society's governance of the profession. All decisions must be consistent with and directed at this overriding obligation.

113. As a result, the Law Society has a statutory obligation to consider whether approving of a law school that discriminates against LGB people is consistent with this duty. It also has a *constitutional* obligation to undertake this task in light of the *Charter* values that are engaged by its decision, and to seek to achieve a proportionate balance between those values and its broad statutory objectives and obligations.

114. The Law Society's specific authority to set rules to accomplish its statutory mandate in the context of enrolment and admissions is contained in sections 20 and 21 of the *Legal Profession Act*.

115. In relevant part, those provisions state as follows:

> **20** (1) The benchers may make rules to do any of the following:
> (a) establish requirements, including academic requirements, and procedures for enrollment of articled students;
> (…)
>
> **21** (1) 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;

116. Under the terms of the legislation, the Law Society is responsible for establishing "requirements, *including academic* requirements" for the enrolment of articling students and for admission to the Bar.

117. The use of the term "including" indicates clearly that academic requirements are not the only relevant requirements for enrolment and admission.

118. Had the legislature intended to limit the Law Society's discretion to considering *academic* requirements, as the Petitioner contends, this could have easily been accomplished by stating that the Law Society could establish criteria for admission to the bar based on "academic requirements".

119. The discretion to establish "requirements" beyond those necessary to ensure academic competence for admission to the bar is not unfettered (*Roncarelli v. Duplessis*, [1959] SCR 121). These powers must be referable to and directed at the broader purposes and objects

of the *Act*: see *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29, para 43.

120. Therefore, both the enactment of rules under ss. 20-21, and the subsequent interpretation and application of those rules, requires consideration of those factors that make up the Law Society's statutory mandate. This mandate includes but is not limited to ensuring the independence, integrity, and honour of the profession through maintaining the public confidence in the profession and the administration of justice, and upholding of the rights and freedoms of all persons.

121. As such, the Law Society not only retains the discretion under the *Legal Profession Act* to consider the public interest in the administration of justice in creating and applying rules relating to qualifications for admission, but it *must* do so, in order to fulfil its statutory mandate.

C. The Benchers did not sub-delegate its statutory authority or improperly fetter its discretion

122. The Benchers have 'delegated' no statutory powers to the membership of the Law Society, nor have the Benchers fettered their statutory discretion.

123. It is important to emphasize that the Petitioner does not assert that the Benchers delegated or fettered their statutory responsibility to "make rules" under ss. 20-21. This is the specific statutory authority conferred upon the Benchers by the *Legal Profession Act*.

124. TWU challenges only the *application* of that valid rule in the context of this case. Specifically, it challenges the Benchers' ability to "sub-delegate its *decision* under" and "fetter [their] *discretion*... under" Subrule 4.1.

125. TWU appears to suggest that because the authority to "make rules" is that of the Benchers, that only the Benchers are permitted to be involved in the subsequent application of the rules that are enacted.

126. The Petitioner's argument on this point misunderstands the power conferred by the statute, misinterprets the scope of Subrule 4.1, and would arbitrarily circumscribe range of legitimate mechanisms available and employed in exercising discretion under that rule.

(a) Scope of Subrule 4.1

127. The Benchers drafted and adopted Subrule 4.1 under its statutory power to "make rules" to "establish requirements, *including* academic requirements". For the reasons just stated, ss. 20-21 expressly contemplate requirements beyond mere "academic requirements".

128. The objective of Subrule 4.1 was not limited to considerations relating to the ability of a law school to provide an academically sound and adequate legal education. Indeed, ensuring a law school is able to develop adequate "skills and competencies" has been delegated primarily to the FLSC.

129. Rather, as the record demonstrates, Subrule 4.1 was passed in order to reserve to the Benchers, and ultimately the Law Society as a whole, the discretion to declare a law school to not be an approved faculty of law, where approving the school would not be consistent with the statutory obligations of the Law Society, including the obligation to protect and promote the public interest in the administration of justice.

130. The Benchers' application of the Rule to TWU is consistent with both its language and purpose, and is entitled to deference.

131. It is important to understand the precise scope of Subrule 4.1. It states:

> 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.

132. This Rule provides a broad, discretionary power to not approve a faculty of law for the purposes of admission, where approval of a law school would undermine the Law Society's legal obligations.

133. Subrule 4.1 does not say "unless the Benchers *conclude*" or "*decide*" or "*determine*"; it says "unless the Benchers *adopt* a resolution", without specifying upon which grounds that resolution must be based.

134. The language of Subrule 4.1 does not even imply, much less expressly require, that the decision must be made by the Benchers without consultation with the membership.

135. The Benchers are, however, required to interpret this rule, and exercise the discretion it confers, reasonably in each case, and consistently with its statutory duties and the relevant *Charter* values that may be implicated.

136. They did so in this case.

(b) Application of Subrule 4.1 to TWU

137. The Benchers' initial decision not to disapprove of TWU's proposed law school for bar admission purposes was not because the Benchers were unconcerned about the discriminatory Covenant. As noted above, the debates amongst the Benchers, mirroring the controversy generated in the legal community, were contentious and displayed a range of sometimes sharply divergent views.

138. The extensive discussions focused on the impact of accreditation on the public interest in the administration of justice, the diversity and inclusivity of the legal profession, as well as the impact of the *Charter* and prior case law on the decision. This array of considered opinion is revealed in the discussions among Benchers at both the April 11th and September 26th meetings.

139. The Benchers consulted widely throughout the process. They did not take their initial decision lightly, but neither was that decision cast in stone.

140. Following the Benchers' April decision, the matter was brought forward by the membership, many of whom agreed with those Benchers who argued that TWU's proposed law school should not be an approved faculty of law.

141. An overwhelming majority of the members at the SGM voted that, because of TWU's discriminatory admissions policy, it would be contrary to the public interest to approve of TWU for the purposes of admission to the Bar.

142. The legal effect of the SGM Resolution, when it was passed, was nil; at that stage, it was simply an expression of the collective wishes of the majority of those members who participated in the SGM.

143. Following the SGM, the Benchers received and discussed further legal advice with respect to the scope and mandate of the Law Society with respect to its decision to accredit TWU, as described above. The Benchers again debated the possibility of invoking Subrule 4.1, and the implications of the SGM Resolution on the governance and obligations of the Law Society.

144. By motion dated September 26, 2014, the Benchers decided that a referendum should be conducted in order to give effect to the Law Society's statutory mandate to protect and uphold the public interest in the administration of justice.

145. The motion adopted by the Benchers stated that the referendum would be binding on the Benchers in the event that (a) 1/3 of all members in good standing of the Law Society vote in the Referendum; and (b) 2/3 of those voting vote in favour of the Resolution. It also included the statement that the "Benchers hereby determine that *implementation of the Resolution does not constitute a breach of their statutory duties, regardless of the results of the Referendum*".

146. The clear implication of the motion is that the Benchers had collectively determined that *both* accrediting TWU and refusing to accredit would be consistent with its statutory duties, in that both decisions would be a reasonable exercise of the power afforded under the *Legal Profession Act*.

147. Having reached that conclusion, the Benchers decided that the most legitimate way to resolve the matter would be for the Law Society to speak through the membership as a whole.

148. It is important to stress that s.3 of the *Legal Profession Act* states that it is the "object and duty *of the society* to uphold and protect the public interest in the administration of justice", and to fulfil the specific duties outlined in section 3. These obligations are, therefore, *owed by the society as a whole*.

149. The members of the Law Society have an obvious interest in the governance of the profession, and in maintaining and upholding the public interest in the administration of justice.

150. The Benchers determined that, in the unique context of a decision affecting the public interest in the administration of justice, implicating the honour and integrity of the legal profession as a whole, and provoking strong commitments on both sides of a contentious legal and policy issue, the best way to implement its statutory obligations was to provide the Law Society with the opportunity of collectively fulfilling its statutory mandate.

151. Moreover, the conditions placed on the referendum by the Benchers mirror those conditions for a referendum set out in section 13 of the *Legal Profession Act*, namely the requirement for a sufficient proportion of the membership voting, and a super-majority of voters voting in favour of the resolution.

152. As such, the October referendum followed a procedure expressly contemplated by the *Act* as a means by which the membership can collectively decide upon a resolution to be adopted by the Benchers.

153. The Law Society is lawfully entitled to consider the views of its members in deciding on matters relating to the governance of the profession in the public interest, and the Benchers' interpretation of Subrule 4.1 as allowing the Law Society to proceed in this manner is entitled to considerable deference.

(c) Section 13

154. The Petitioners argue that the result of the October referendum cannot be considered "binding" because the Law Society failed to strictly comply with the terms of section 13 of the *Legal Profession Act*.

155. This argument misunderstands both section 13, and the process initiated by the September 26th motion.

156. Section 13 of the *Act* described the conditions under which the membership can legally *oblige* the Benchers to adopt a resolution of a general meeting. Section 13 states:

> 13 (1) A resolution of a general meeting of the society is not binding on the benchers except as provided in this section.
>
> (2) A referendum of all members must be conducted on a resolution if
>
> (a) it has not been substantially implemented by the benchers within 12 months following the general meeting at which it was adopted, and
>
> (b) the executive director receives a petition signed by at least 5% of members in good standing of the society requesting a referendum on the resolution.
>
> (3) Subject to subsection (4), the resolution is binding on the benchers if at least
>
> (a) 1/3 of all members in good standing of the society vote in the referendum, and
>
> (b) 2/3 of those voting vote in favour of the resolution.
>
> (4) The benchers must not implement a resolution if to do so would constitute a breach of their statutory duties.

157. Section 13 is designed to provide a mechanism by which the membership may impose a resolution on the Benchers, even if the Benchers disagree with that course of action, unless the latter find it contrary to their statutory duties. Section 13(2) clearly stipulates when a referendum *must* be held, and when the results of that referendum will be considered binding on the Benchers.

158. These sections do not *preclude* the Benchers from holding a referendum, where the Benchers determine that two or more decisions are within its jurisdiction to determine and consistent with its constitutional and statutory duties.

159. As such, the preconditions contained in section 13, including the requirement to wait 12 months, are not directly applicable to the process followed in holding the October referendum for the purposes of applying Subrule 4.1.

160. This interpretation is consistent with both the language and purpose of section 13.

161. In particular, s. 13(2)(a) accommodates a situation where a specific resolution adopted at a general meeting had not before been considered by the Benchers. In such a case, the 12 month delay provides the Benchers with the opportunity to study the resolution and its implications, and the opportunity to obtain advice and consider what their statutory and constitutional duties require.

162. The waiting period in s. 13(2)(a) is clearly designed to permit the Benchers the opportunity to carefully consider and adopt a resolution passed at general meeting without the need for a referendum, or to propose an alternative that would be consistent with the wishes of the membership, making a referendum unnecessary.

163. Section 13 is not intended to *prohibit* the Benchers from determining that the most reasonable way to resolve a highly contentious issue in the public interest – particularly a contentious issue affecting the legal profession as a whole – is to abide by the wishes of is membership, as long as the outcome is consistent with its statutory (and constitutional) duties.

164. Aside altogether from the ability of the membership to require the Benchers to adopt a resolution under section 13, the Benchers are lawfully entitled under the *Legal Profession Act* to adopt a resolution that is endorsed by its members, as a method whereby Subrule 4.1 is applied.

(d) Conclusion on Fettering and Subdelegation

165. To repeat, the Petitioners do not allege that the Benchers illegally delegated their authority or fettered their discretion to "make rules" under ss. 20-21 of the *Legal Profession Act.* They seek to challenge the Benchers decision as to how their discretion under the Rules they have made should be exercised.

166. As the Record reveals, the Benchers were deeply divided on whether the discretion conferred by Subrule 4.1 should be exercised in this case.

167. As neither outcome was determined to be inconsistent with the Benchers statutory or constitutional duties, both were considered to be available to the Benchers.

168. Far from fettering their discretion by calling a referendum, the Benchers thoughtfully *exercised* their discretion in determining the basis upon which they would invoke (or decline to invoke) Subrule 4.1.

169. As that determination constituted a reasonable interpretation of the power conferred both by Subrule 4.1 itself and by the statute under which it was made, and was consistent with the procedure expressly contemplated in the *Act*, the process was open to the Benchers, and no issue of fettering or sub-delegation arises.

D. The Law Society's Decision was Reasonable, and Correct

(a) Introduction

170. Once it is determined that the discretion to render the decision fell within the statutory mandate of the Law Society, and that the process followed in rendering its decision is legitimate, as described above, the question is whether the Law Society's conclusion was reasonable.

171. This requires an examination of whether the Law Society's Resolution to disapprove of TWU for the purposes of admission to the bar was a reasonable decision, consistent with the Law Society's statutory and constitutional obligations.

172. The decision to invoke Subrule 4.1 was a discretionary exercise of the powers conferred by the Law Society's home statute, which counsels deference on a standard of reasonableness. In order to be overturned, it must be a decision that "no reasonable body" could have arrived at: *Catalyst*.

173. Alternatively, the Law Society's Resolution must fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir,* at para 47.

174. The exercise of discretion under Subrule 4.1 also implicates *Charter* values, and therefore the Law Society must strike a reasonable balance between the statutory objectives and those *Charter* values: *Doré*.

175. As there were no written reasons for the Resolution, the court's task is to determine whether the ultimate conclusion was reasonable.

176. In undertaking that task, the courts must pay "respectful attention" to the reasons that "*could* be offered in support of a decision": see *Dunsmuir*, at para 48; *ATA*, at para 52-54; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 58.

177. In this case, the reasons that could be offered for the decision demonstrate that the Law Society's Resolution was not only reasonable, but also correct, if that is the applicable standard of review (which is denied).

178. The Covenant, and therefore TWU, discriminates against LGB applicants. It is contrary to the Law Society's statutory mandate and constitutional obligations to admit graduates of a law program tainted by an exclusionary and mandatory Covenant.

(b) The Covenant is Discriminatory and Inhibits Equal Access to Legal Education

179. The Petitioner contends that the Covenant does not have the effect of excluding LGB applicants, and that the Community Covenant cannot be discriminatory because it is non-binding.

180. With respect, both positions are unsustainable.

181. As described above, the Covenant is a solemn pledge that all members of TWU must embrace. Individuals cannot attend TWU if they do not assent to, or intend to act in defiance of, the prescriptions in the Covenant. Admitted students can be punished, up to and including expulsion, for acting in a manner inconsistent with the Covenant.

182. The Covenant states that TWU "provides formal accountability procedures to address actions by community members that represent a disregard for this covenant", the procedures of which are outlined in the TWU Student Handbook.

183. The Student Handbook referred to in the Covenant includes a "Student Accountability Policy", which provides:

> Each student who accepts an invitation of admission to Trinity Western University has agreed to accept the Community Covenant and/or policies and guidelines of the University for living in accordance with the community standards of this private, creedal Christian academic community. These are specified in the Community Covenant contract that each student signs. 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. Therefore, students who find themselves unable to maintain the integrity of their commitment should seek a living-learning situation more acceptable to them.

184. The Handbook states that it is the responsibility of the Assistant Directors of Community Life to "receive complaints and investigate possible violations of Community Covenant and/or policies and guidelines of the University" and that "(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 re-admission to the University".

185. The range of punishments available for a breach of the Covenant or other TWU guidelines includes an official warning, probation, suspension and ultimately, expulsion.

186. Moreover, the Covenant tasks all members of the TWU community with ensuring that each other adhere to and abide by the principles in the Covenant.

187. The Covenant states that "(e)nsuring 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."

188. Similarly, the Student Handbook states that it is "it is expected and encouraged that students, staff and faculty will hold each another accountable to the commitments each has made to the University and community". With respect to what it calls "informal accountability procedures", the Handbook states:

> Students are encouraged to informally challenge one another and hold each other accountable to the Community Covenant and/or policies and guidelines of the University out of genuine concern for others within the University community. Community members,

directly working with students in leadership or representative roles, may be notified of violations or incidents involving a student working within their care.

189. TWU effectively conscripts other members of the TWU community to police the sexual practices of its membership, and to report deviations from the principles contained in the Covenant.

190. This imposes significant peer pressure and social coercion to adhere to the Covenant, over and above any formal or informal reprisals visited upon students through the administrative apparatus of TWU.

191. The Covenant is 'voluntary' and 'not binding' only in the sense that one can choose to defy its proscriptions and accept the serious consequences of so doing. In this case, those consequences include categorical non-admission for applicants, and social isolation, ostracism, and expulsion for admitted students. This effectively informs LGB people that they need not apply for a position at TWU.

192. As the Supreme Court of Canada observed in *BCCT*:

> 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. [at para 25]

193. To the extent TWU relies on the fact that the Covenant does not *explicitly* exclude LGB students, but rather only condemns and prohibits same-sex conduct, this position also cannot be sustained.

194. Rules or policies which have the *effect* of excluding members on the basis of a protected ground are as discriminatory as rules or policies which directly exclude members of a protected group.

195. This has been long recognized in *Charter* and human rights code jurisprudence: *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 ("***Andrews***").

196. Nor does the fact that LGB applicants would have access to law schools that do not discriminate lessen the discriminatory impact of the Covenant. The "separate but equal" justification is a discredited notion with a pernicious history, and has no place in Canadian law. It was expressly rejected by the Supreme Court of Canada in the seminal *Charter* decision of *Andrews*, as a "loathsome artifact" of a previous era: *Egan v. Canada*, [1993] 3 FCR 401 at para 59; see also *Brown v. Board of Education*, 347 U.S. 483 (1953); *The Queen v. Drybones*, [1970] SCR 282 at 300, Hall J; *Moore v. British Columbia (Education)*, 2012 SCC 61 at para 30.

197. Moreover, the basis of TWU's argument that the Covenant does not have a discriminatory impact on LGB people because it only prohibits same sex intimacy, as opposed to sexual orientation expressly, is directly contrary to two recent and leading Supreme Court of Canada decisions.

198. TWU's argument proceeds on the assumption that condemning and prohibiting same-sex intimacy does not constitute discrimination against LGB persons. This premise was rejected in the Supreme Court's recent decision in *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 ("***Whatcott***"). In *Whatcott*, the Court unanimously recognized that impacting certain behavior that is "integral to and inseparable from the identity of the group" is no different from discriminating against the group directly.

199. Indeed, the unanimous Court in *Whatcott* quoted – with approval – the following passage from Justice L'Heureux-Dube's dissenting judgment in *BCCT*, at para 123:

> [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.

200. The Court in *Whatcott* confirmed that where the targeted conduct "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" (at para 125).

201. The Petitioner's submission that the Covenant does not discriminate because LGB people may attend TWU if they refrain from same-sex intimacy has also been recently rejected by the Supreme Court. In *Quebec (Attorney General) v. A*, 2013 SCC 5, the Court confirmed that the ability to avoid the discriminatory impact of a rule or policy does not negate discrimination. It cited approvingly the following passage from *Lavoie v. Canada*, 2003 SCC 23, per McLachlin C.J. and L'Heureux-Dubé J:

> . . . the fact that a person could avoid discrimination by modifying his or her behaviour does not negate the discriminatory effect. If it were otherwise, an employer who denied women employment in his factory on the ground that he did not wish to establish female changing facilities could contend that the real cause of the discriminatory effect is the woman's "choice" not to use men's changing facilities. The very act of forcing some people to make such a choice violates human dignity, and is therefore inherently discriminatory. The law of discrimination thus far has not required applicants to demonstrate that they could not have avoided the discriminatory effect in order to establish a denial of equality under s. 15(1).

202. TWU accepts that heterosexual married couples may engage in sexual intimacy as members of TWU, but does not permit same-sex married couples to do the same. LGB persons can attend TWU only at the "unacceptable personal cost" of renouncing an aspect of their identity and their legal rights. The Covenant therefore has the effect of discriminating against LGB persons.

(c) Trinity Western University v. BCCT does not resolve this case

203. TWU says that the Supreme Court of Canada has already ruled on the issue regarding TWU's proposed law school in its decision in the *BCCT* case.

204. With respect, that is not so. The *BCCT* case involved different facts, different legislation, a different constitutional focus, and is as a result not binding on the issues raised in this petition.

205. First, in the *BCCT* case, the Supreme Court ruled on whether a Teachers College could require the graduates of TWU's already existing education school to take additional courses elsewhere to qualify them to be teachers certified by the College.

206. In this case, there is no existing law school, there is only a proposed law school that does not have the consent to issue law degrees.

207. Therefore, there are no actual graduates of TWU's law school that are harmed by the Resolution. There may never be TWU law graduates if Mr. Loke is successful in his Petition.

208. Second, the statutory discretion afforded to the Law Society is considerably broader than the Teachers College at issue in *BCCT*.

209. The statute at issue in *BCCT* described the objects of the Teachers College as "*to establish*, having regard to the public interest, *standards for the education, professional responsibility and competence of its members*". Unlike the Teachers College, the Law Society has an express statutory mandate to act in the public interest in the administration of justice generally, and in particular, to preserve and protect the rights and freedoms of all persons.

210. Moreover, the impugned decision of the College was issued under its statutory power to make bylaws "respecting the training and qualifications of teachers and establishing standards, policies and procedures with respect to the training and qualifications". As noted above, the Bencher's rule-making power expressly contemplates requirements for enrolment and admission *beyond* mere academic requirements.

211. As such, both the interpretation of the jurisdiction of the Law Society, and the statutory objects that must be weighed against *Charter* values, will differ in this context. The valid statutory objectives of the Law Society are broader, and on a modern *Doré* analysis, this will affect the manner in which they are balanced against *Charter* values.

212. Third, as the Court explained in *BCCT*, "(s)tudents 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*". The Court found that the appropriate place to draw the line was between discriminatory *beliefs*, which must be tolerated, and discriminatory *conduct*, which must not.

213. However, the focus of the Supreme Court's decision in *BCCT* was the alleged possibility that graduates of TWU's teachers school would discriminate against primary and secondary school students, or create a discriminatory teaching environment in the classroom. The relevant 'conduct' was therefore the hypothetical and speculative *future discrimination against pupils* by TWU graduates. The Court ruled that there was insufficient evidence that this would occur, and therefore no concern that TWU students would "interfere with the rights of others".

214. By contrast, the relevant 'conduct' in this case is the direct and harmful *discrimination against LGB applicants* to TWU's proposed law school. The harm caused by this conduct is not hypothetical and speculative, but is rather inevitable, deliberate and institutionalized. Endorsing such discrimination will negatively impact LGB applicants and students. Moreover, condoning and facilitating such conduct will injure the public interest in the administration of justice, and hence the public confidence in the legal profession.

215. The Resolution is not premised upon, and the Law Society does not assert, that graduates of TWU would be incompetent to practice law, or that they would be reasonably expected to engage in discriminatory conduct in the future.

216. Rather, the Resolution is designed to prevent harm to LGB people, the administration of justice and the honour and integrity of the profession, by advising TWU and its prospective students in advance of the establishment of the proposed law school, that its students will not be eligible for admission to the B.C. bar if TWU carries through with its intention to discriminate against LGB people in its admission policy, contrary to the public interest in the administration of justice.

217. Effectively prohibiting LGB persons from attending TWU law school transforms religious belief into discriminatory conduct. As such, the Resolution represents a refusal to condone and facilitate discriminatory *conduct*.

218. Finally, even if it could be said that *BCCT* addressed and resolved the issues raised in this petition, which is denied, this Court may still revisit that decision. As the Supreme Court of Canada has recently observed, it is incumbent on lower courts to reconsider a decision, for instance, if "new legal issues are raised as a consequence of significant developments in the law, or if there is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate": *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para 42.

219. Since the time *BCCT* was decided, Canadian courts and lawmakers have been increasingly vigilant in protecting the rights of LGB persons, and have been solicitous to ensure their full participation in society: see *Whatcott*; *Reference re Same-Sex Marriage*, [2004] 3 SCR 698, 2004 SCC 79; *Civil Marriage Act*, S.C. 2005, c. 33, s. 2; *Barbeau v. British Columbia (Attorney General)*, 2003 BCCA 251; *Canada (Attorney General) v Hislop*, 2007 SCC 10; *R v Tran*, 2010 SCC 58 at para 34.

220. This petition raises new legal issues, the implications of new legal doctrine, and reflects a change in circumstances and evidence that fundamentally shifts the parameters of the debate.

221. The question is simply not, as was the case in *BCCT*, whether students of TWU's proposed law school would discriminate in the future; it is whether TWU's proposed law school itself discriminates against LGB persons. This issue must be decided on the evidence and arguments developed in this context, and in light of changes to the law over the past decade.

222. The different statutory context in which the decisions were made, the significant developments with respect to the law of equality and deference to administrative decision makers applying *Charter* values, the greater legal recognition of the rights of same-sex persons, and the focus on the directly discriminatory admissions requirement as opposed

to the hypothetical and speculative future conduct of graduates, all indicate that this court is not bound by the Court's decision in *BCCT*.

(d) Approving TWU is Unreasonable and Contrary to the Law Society's Statutory Mandate

223. TWU's argument under this heading is again based on the incorrect premises that the Law Society's mandate is limited to determining academic competence, and that the Law Society's Resolution was guided by a view that TWU's proposed graduates would not be qualified or fit for admission to the bar.

224. Once it is recognized that the Law Society's mandate was not so limited, and that this was not the basis for the Resolution, then it is clear that the adoption of the Resolution was neither unreasonable or incorrect.

225. For the reasons outlined above, the Petitioner is wrong in asserting that the Law Society's statutory mandate is limited to ensuring the bare "competence of lawyers", or is in any sense exhausted by ensuring that applicants meet certain academic qualifications.

226. The obligations of the Law Society are considerably broader, both as a matter of the *Legal Profession Act* and the nature of law societies generally. As Justice Sandra Day O'Connor put it in a speech at Vanderbilt Law School:

> Although lawyers have historically not been the most popular group of professionals in society, it can scarcely be doubted that, for better or for worse, lawyers occupy a special position in the administration of justice. In a society of laws, lawyers control the tools that are necessary for orderly social change. In many respects the public can gain access to our system of justice only through the services of lawyers. As lawyers, we must recognize fully the heavy responsibility that comes with the special privilege that we hold as the primary actors in our legal system. (Sandra Day O'Connor, "Professional Competence and Social Responsibility: Fulfilling the Vanderbilt Vision" (1983) 36 Vanderbilt L Rev 1 at 5).

227. As previously discussed, the Law Society has the statutory duty and professional obligation to ensure equal access to and diversity in the legal profession, which necessarily involves consideration of the admission policies of law schools.

228. The broad power conferred by the *Legal Profession Act* is entirely consistent with the fact that the legal profession has "a special role to recognize and protect the dignity of individuals and the diversity" of the legal profession, and that "*the ethos of the profession is determined by the selection process at the law schools*": Chief Justice Dickson, "Legal Education" (1986) 64:2 Can Bar Rev 374.

229. The proposed TWU law school seeks approval to grant law degrees despite having an admissions requirement that expressly discriminates against LGB applicants. The mandatory Covenant sends a clear message to LGB people that they are not wanted at the proposed TWU law school.

230. Had the Law Society approved of TWU's proposed law school, this would send a message to prospective students and to the community as a whole that it is acceptable to discriminate against LGB people, regardless of the principle of equality before and under the law and the rule of law generally.

231. As was the case in *Vriend v. Alberta*, [1998] 1 SCR 493 (*"**Vriend**"*), the failure of public bodies to condemn the discriminatory practices and policies of TWU sends the message that "it is permissible, and perhaps even acceptable, to discriminate against individuals on the basis of their sexual orientation" (at para 102).

232. This is a serious concern for the Law Society, dedicated as it is to promoting the public interest in the administration of justice, ensuring the honour and integrity of the profession, and upholding the rights and freedoms of all persons.

233. To acquiesce in a law school governed by a mandatory and discriminatory Covenant would imperil the integrity of a profession dedicated to equal access to the legal profession, and would seriously compromise the Law Society's obligation to assure a diversity of persons and views within the profession and the legal system generally. Such approval would serve to discredit the legal profession - the honour and integrity of which the Law Society is statutorily required to uphold - and harm its essential role in protecting the rights of all persons.

234. Similarly, the public perception and legitimacy of the legal profession in B.C. would be jeopardized by granting the Law Society's imprimatur to TWU. The public's faith and confidence in the administration of justice is seriously undermined if the legal profession accepts that it is permissible for a law school to discriminate against certain groups in our society, such as LGB people.

235. A decision to approve TWU would represent to the public that the administration of justice is reserved for certain groups in society and their views. This will negatively affect public respect for, and acceptance of, our justice system and the role of lawyers in it.

236. As one national newspaper editorial put the point: "Equality before the law is at the heart of Canadian law, and a law school that won't accept that idea has no legitimacy".

237. Therefore, the acceptance of TWU's admission policy by the Law Society for bar admission purposes is tantamount to condoning a violation of the very legal principles the Law Society is bound to uphold – the right of everyone in our society to be governed by the rule of law and hence to be treated equally before and under the law.

238. The adoption of the Resolution is therefore not only reasonable, but the most appropriate way for the legal profession to express its condemnation of the proposed discriminatory admission policy of TWU and to attempt to convince TWU to change its policy so that it does not stigmatize and marginalize LGB people.

239. The Resolution declaring TWU to not be an approved faculty of law is therefore fully within the Law Society's authority under the *Legal Profession Act*, and is necessary to fulfil its broad statutory mandate under section 3 to act in the public interest in the administration of justice.

(e) Approving of TWU Does Not Represent a Proportionate Balance of Charter Values

240. Discriminatory barriers to accessing a legal education that would be imposed by TWU's proposed law school directly implicate the constitutional obligations of both the Law Society and the Government.

241. The fact that TWU is not subject to the *Charter* does not mean that its conduct is irrelevant to whether the Government and the Law Society are fulfilling their constitutional obligations.

242. In exercising their statutory powers, both the Government and the Law Society must take into account, and act in a manner consistent with, *Charter* rights and values.

243. TWU requires the consent of the Government under the *Degree Authorization Act* to grant law degrees, and it needs the approval of the Law Society under the *Legal Profession Act* in order to graduate law students that may practice in B.C.

244. Therefore, TWU cannot discriminate against LGB Canadians in the provision of a secular legal education without the approval of both the Law Society and the Government.

245. TWU argues the Law Society's Resolution breaches the freedom of religion, expression and association of TWU and the members of its religious community under the *Charter*.

246. In response, the Law Society submits that the discrimination against LGB people imposed by the Covenant is not necessary to the exercise of these fundamental freedoms, nor does the right to compel public bodies to condone or approve of discriminatory conduct fall within the scope of the fundamental freedoms.

247. The first step in a *Charter* analysis is to define the scope of the *Charter* interests. Where there are competing *Charter* values at play, the courts will seek to define the scope of the rights in such a way as to reconcile them: *R. v. N.S.*, 2012 SCC 72.

248. Beginning with the *Charter* interests of potential future applicants to TWU, the equality rights of LGB persons are severely impacted by a mandatory Covenant as a condition of admission to law school. On the basis of their sexual orientation, LGB persons are effectively barred from attending TWU, may be expelled for engaging in sexual conduct within marriage, and in any event, would be subject to an environment in which the validity of their very identity is condemned, and described as vile, unnatural and sinful.

249. The result of approving of TWU's proposed law school would be that individuals seeking admission to law schools in B.C. would have differential access to an important public

good depending on their sexual orientation. This would have a severe impact on the *Charter* rights of LGB persons in B.C. seeking admission to law school.

250. Law schools are a critically important institution in Canadian society. They are the entry point to the legal profession, and all of the benefits and responsibilities that attend that privilege. Law schools are the only means through which persons can gain access to the legal profession and the judicial branch of government.

251. The approval of TWU's proposed law school would create two-tiers of accessibility to legal education in B.C.: one for heterosexuals, who would have access to all available law school seats, and another for LGB applicants, who would only have access to a portion of available seats. The necessary effect of approving TWU would be to create a pool of scarce law school seats reserved solely for heterosexuals.

252. If certain groups in our society, particularly historically disadvantaged groups, are excluded from equal access to and admission to law schools, they are to that extent precluded from participating in the administration of justice.

253. This would further serve to perpetuate the discrimination and historical disadvantage faced by the LGB community. As Madam Justice Abella found in *Quebec v. A*:

> The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed. If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory." [at para 332]

254. The historic disadvantage, prejudice and discrimination suffered by the LGB community is well recognized, and continues to this day: *Egan v. Canada*, [1995] 2 SCR 513 at 600-601; *Vriend v. Alberta*, [1998] 1 SCR 493 at 543-544; *M. v. H.*, [1999] 2 SCR 3 at para 69.

255. This exacerbates the discriminatory impact of the Covenant, and consequently, any decision of a public body to facilitate or endorse such discrimination. Approving of TWU would undoubtedly widen the gap between the historically disadvantaged group and the rest of society, and is therefore prohibited by section 15 of the *Charter*.

256. Not only does this harm the members of these groups by denying them the same opportunity to participate in the legal profession as other persons, it also harms the administration of justice by restricting the diversity of people and views involved in the justice system.

257. This constitutes a severe and blatant discriminatory impact, and approval by a public body would clearly violate the rights of LGB persons, who would be excluded from accessing law school places in the province made available by the Government. The Law Society reasonably concluded it could not countenance such an exclusion from a fundamental social institution as being consistent with its obligations under the *Charter*.

258. By contrast, if the *Charter* interests of TWU and its membership are engaged by the Resolution, they are only minimally impacted.

259. The *Charter* protects the freedom of persons to freely practice their religion, express themselves, and associate together, subject only to reasonable limits. Freedom in this context has been defined as the 'absence of coercion and constraint': see *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295.

260. The fundamental freedoms require protection for an individual's decision, not only how to worship, express or associate, but whether to do so at all.

261. The courts have consistently found that coerced speech is in itself an abrogation of freedom of expression: "freedom of expression necessarily entails the right to say nothing or the right not to say certain things": *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1080.

262. Similarly, freedom of religion entails the freedom to not practice or observe religious rites or convictions, while freedom of association entails the freedom to not associate: *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211.

263. Imposing a mandatory Covenant as a condition of admission is not directed at removing a barrier to the ability of individuals to freely practice their religion or proclaim their beliefs,

alone or with others, in whatever fashion suits them. The freedom to do so would be perfectly intact, and indeed better served, with a truly *voluntary* Covenant.

264. The entire purpose of the Covenant is to *require* students to express their adherence to the principles contained in the Covenant, and to establish and enforce behavioural norms, on pain of rejection or expulsion. TWU seeks to *impose* the commitments found in its Covenant on prospective law students, not as a Church or a private organization, but in the context of issuing secular law degrees, and with the complicity of public bodies subject to the *Charter*.

265. TWU is therefore asserting not the *absence* of coercion and constraint, but rather a *right* to issue law degrees, and a right to have public bodies confer the privilege to do so without regard to the standards by which TWU operates. It is seeking the approval of public bodies to impose a mandatory Covenant that all students must proclaim and by which all students must abide.

266. The fundamental freedoms do not provide a positive right to access to a benefit or privilege, like the right to offer secular degrees at an approved law school, unless it is a "necessary precondition" to the exercise of a freedom or where it would be "impossible to exercise" the freedom otherwise: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 at para 5; *Ontario (Attorney General) v. Fraser,* 2011 SCC 20 at paras 46-48.

267. The Petitioner does not assert that adherence to evangelical Christianity requires access to a law school with a discriminatory admissions policy. They do not assert that a law school governed by the Covenant is a "necessary precondition" to practicing evangelical Christianity, or that abiding by the tenants of the faith would be impossible without access to a law school that prohibits same-sex intimacy.

268. Adherence to the evangelical faith does not require insulation from non-adherents, such that members of the evangelical community could not obtain a law degree elsewhere, or at TWU in the absence of the mandatory Covenant.

269. TWU is not an insular religious institution, nor does it grant solely religious degrees. The granting of law degrees is not a religious practice; it is a fundamentally secular activity. The granting of law degrees is not worshiping, professing or associating for that purpose, and the imposition of discriminatory norms of behavior on others is not necessary to meaningfully adhere to the tenants and obligations of the faith.

270. As one member of the Law Society put the point: "is it necessary for one to enjoy freedom of religion, to be concerned about what the person sitting next to them in torts class is doing within the confines of their intimate relationship"? (Sharon Matthews, QC, April 11 meeting, at 33)

271. Nor does the Resolution in any way impact the ability of evangelical Christians to acquire a law degree. Many evangelical Christians have obtained law degrees at law schools that do not discriminate against LGB people in the admission policies.

272. Indeed, the Law Society has many Evangelical members, who necessarily obtained their degree at other institutions. Importantly, and unlike LGB students who would seek to apply to TWU's proposed law school, these individuals were not required to deny their identity as the price of admission to other law schools in Canada.

273. In the context of section 1, the balancing inquiry with respect to freedom of religion revolves around "whether the limit leaves the adherent with a meaningful choice to follow his or her religious beliefs and practices": *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 88.

274. The members of the TWU religious community undoubtedly have the freedom to hold, proclaim and manifest their religious beliefs, including the belief that same-sex intimacy is sinful or immoral, alone or in concert. Their freedom to do so is in no way imperiled by the Law Society's Resolution, nor is TWU's membership left without a meaningful choice to follow their religious beliefs.

275. The Law Society has no power, and no interest, in policing the religious beliefs of TWU or its community, much less its ability to express those beliefs. The Law Society has no jurisdiction or coercive power over TWU or its adherents.

276. However, TWU does not have a religious *right* to require public bodies - governed by the *Charter* and required to uphold the public interest and the rights and freedoms of all persons - to sanction, condone, or otherwise endorse discriminatory practices and beliefs.

277. The following passage from Justice Steven's concurring opinion in the U.S. Supreme Court's decision *Christian Legal Society v. Martinez, 561 US (2010)*, upholding the right of Hastings College of Law to deny a Christian student organization status within the Law School is applicable to the situation at hand:

> In this case, petitioner excludes students who will not sign its Statement of Faith or who engage in "unrepentant homosexual conduct," App. 226. The expressive association argument it presses, however, is hardly limited to these facts. 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].

278. Similarly, the Law Society (or the Government) is not required to give its approval to a Law School that discriminates against LGB persons in its admission policy. The Law Society is not constitutionally required to approve of an institution that excludes individuals on the basis of sexual orientation.

279. The Resolution constitutes a decision by the Law Society not to approve of the discriminatory admission policies of TWU's proposed law school, because doing so would be both contrary to the public interest in the administration of justice and would not properly balance *Charter* rights and values.

280. The religious, expressive and associational rights of TWU and its religious community, if they are engaged at all by the Law Society's Resolution, are therefore only minimally affected.

281. Any marginal impact on the *Charter* interests of TWU or its membership is outweighed in these circumstances by the serious breach of the equality rights and the injury to the human dignity of LGB people that would result from TWU's discriminatory admission policy.

282. In this context, the court is tasked with reviewing the reasonableness of an administrative decision which implicates *Charter* values. This involves weighing the statutory objectives with the *Charter* values at issue.

283. The statutory objectives sought to be achieved by the Resolution and *Charter* values, far from requiring 'balancing', are in fact consistent with the same conclusion. As such, the decision is not only plainly reasonable, but correct.

284. For the reasons stated above, the Law Society denies that the Resolution infringes the *Charter* rights or freedoms of TWU or its prospective law students as alleged in part (i) of the Legal Basis of the Petition, or at all.

285. In the alternative, the Resolution is a reasonable limit on the alleged *Charter* rights or freedoms which is prescribed by law and demonstrably justified in a free and democratic society in accordance with s. 1 of the *Charter*.

(f) There Were No Additional Legal Barriers to Adopting the Resolution

286. TWU also says that the Resolution is contrary to the Law Society's obligations under the *Labour Mobility Act*, S.B.C. 2009, c. 20, *Agreement on Internal Trade Implementation Act*, S.C. 1996, c.17, Inter-Jurisdictional Practice Protocol, the National Mobility Agreement, and the Territorial Mobility Agreement.

287. It remains to be seen whether and how these Acts and Protocols will apply in this situation. As matters now stand, there can be no graduates from TWU to be admitted to any bar. Only if it is affirmatively decided that the consent of the B.C. Government can and must be given to TWU to grant law degrees, does this issue arise. If consent is granted, it will then have to be adjudicated whether compliance with these Acts and Protocols is consistent with *Charter* rights and values.

288. Finally, TWU was not denied procedural fairness. As noted above, the Law Society's decision making process in evoking section 4.1 was quasi-legislative, for which little or no duty of procedural fairness was owed.

289. The fact that the resolution only applied to a single entity, in this case TWU, does not mean that it was not legislative in nature: see *Wells v. Newfoundland* [1999] 3 SCR 199 at para 61.

290. The decision involved "broad considerations of public policy", which emphasizes its legislative nature: *Office and Professional Employees' International Union, Local 378 v British Columbia (Hydro & Power Authority)* 2004 BCSC 44 at paras 88-9.

291. In any event, TWU has been given considerable and extensive participatory rights throughout the process.

292. TWU has been invited to Benchers meetings discussing the potential application of Subrule 4.1, and has been given the opportunity to make extensive written submissions. TWU provided submissions prior to the April meeting, following the SGM, and following the September 26th motion. These submissions were reviewed and carefully considered by the Benchers.

293. TWU has been kept fully informed of the decision making process, has had access to all of the information available to the Benchers and membership in making their decision, including the submissions of the public and legal opinions.

294. Both the Benchers and the membership as a whole have been fully informed of TWU's position, and TWU has repeatedly had opportunity to present its position to the Law Society, both through the formal consultation process and through public advocacy.

295. This degree of participation goes well beyond the degree of procedural fairness owed to TWU, if any is owed at all.

296. Nor does the Resolution run afoul of the B.C. *Human Rights Code*, RSBC 1996, c 210 (the "***HRC***"). Evangelical Christians do not suffer adverse treatment regarding admission to the Law Society. As described above, the Law Society does not inquire into or regulate the beliefs of its members. Evangelical Christians are welcome in the Law Society, without question or exception, and make a valuable contribution to the legal profession.

297. The Resolution of the Law Society was not based on the prohibited ground of religion. It was based solely on the discriminatory admission policy of the proposed TWU law school. Attempting to prevent discrimination by TWU of LGB people is not a breach of the *HRC*.

298. Finally, while the Petitioners assert that the B.C. *HRC* does not apply to TWU's proposed law school, this is not necessarily the case. The exemption provision relied upon by TWU, section 41(1), permits those institutions which have as "a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized" by, *inter alia*, a common religion, to give "preference" to members of that religion.

299. The primary purpose of TWU's proposed law school is to issue secular law degrees and train law students. TWU expressly states that its proposed law school is open to everyone regardless of their personal beliefs. As stated in the *TWU Act*, TWU has the object of providing an education to young people of any race, colour or creed. Therefore, a strong argument can be made that TWU's proposed law school does not fall within the exemption contained in the *Human Rights Code*.

300. Nevertheless, whether or not TWU is exempted from the *Human Rights Code* is not relevant to whether the Law Society was reasonable or correct in determining that its statutory mandate and *Charter* values require it to not approve a law school which discriminates against LGB persons.

E. Conclusion

301. The decision of the Law Society not to approve of TWU's proposed law school for the purposes of entry into the Law Society's admission program will not prevent TWU law school from granting law degrees if it has the consent of the Government to do so.

302. But, in its Resolution, the Law Society is telling the Government, TWU, prospective students at TWU, and the public that the Law Society does not condone or accept TWU's discriminatory admissions policy, and, therefore, in furtherance of the public interest in the administration of justice, will refuse to approve of the law school.

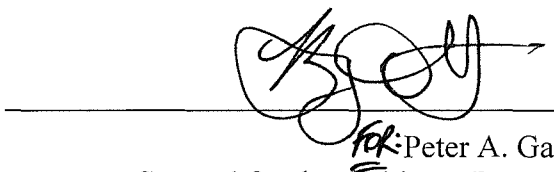
303. The Law Society submits that it exercised its statutory powers consistent with *Charter* values in a reasonable, and indeed correct, manner by adopting the Resolution to deny graduates of TWU's proposed law school admission to the B.C. bar because of TWU's discriminatory admissions policy.

304. The Resolution was considered necessary by the Law Society to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons and ensuring the integrity and honour of lawyers, as the Law Society is statutorily required to do in the exercise of its powers under the *Legal Profession Act*.

PART 6: MATERIAL TO BE RELIED UPON

1. Affidavit #1 of Tim McGee, Q.C. made January 16, 2015;
2. Affidavit #1 of Tracy Tso made January 16, 2015;
3. Any other materials filed in this Petition; and
4. Such further and other material as counsel may advise and this Court may allow.

The Law Society estimates that this Petition will take 5 days.



per: Peter A. Gall, QC
Counsel for the Petitioner Respondent,
the Law Society of British Columbia