Affidavit No. 1 of Timothy E. McGee, QC Made on January 15, 2015

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

AFFIDAVIT

- I, Timothy E. McGee, QC, Barrister and Solicitor, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY THAT:
- 1. I am the Chief Executive Officer of the Law Society of British Columbia (the "Law Society"), and as such have personal knowledge of the facts and matters set out in this Affidavit, save and except where such facts are stated to be based on information and belief, and where so stated I verily believe the same to be true.
- 2. I have read the Petition herein and I am aware that the Petitioner is challenging the resolution of the Law Society made on October 31, 2014 declaring that the proposed school of law at Trinity Western University ("TWU") is not an approved faculty of law for the purposes of the Law Society's admission program (the "Resolution").

- 3. I have reviewed the records of the Law Society and attach to this my affidavit those records related to the procedural background to the Resolution.
- 4. On June 2012, TWU submitted a proposal for the establishment of a new law school program to the Canadian Common Law Program Approval Committee (the "Approval Committee") of the Federation of Law Societies of Canada ("FLSC"). The Council of the FLSC established a Special Advisory Committee (the "Advisory Committee").
- 5. Now produced and shown to me and marked as **Exhibit "A"** to this my affidavit is a true copy of a Memorandum dated April 18, 2013 from the FLSC regarding the establishment of the Advisory Committee and its mandate.
- 6. Now produced and shown to me and marked as **Exhibit "B"** to this my affidavit is a true copy of the Minutes of the September 27, 2013 meeting of the Benchers of the Law Society (the "Benchers").
- 7. Now produced and shown to me and marked as **Exhibit** "C" to this my affidavit is a true copy of a report dated December 2013 by the Advisory Committee.
- 8. Now produced and shown to me and marked as Exhibits "D" and "E", respectively, to this my affidavit are true copies of a report dated December 2013 by the Approval Committee and related FLSC news release dated December 16, 2013.
- 9. Now produced and shown to me and marked as **Exhibit "F"** to this my affidavit is a true copy of a media release dated December 18, 2013 regarding the decision of Advanced Education Minister Amrik Virk granting consent to TWU's proposed new law school program.
- 10. Now produced and shown to me and marked as **Exhibit "G"** to this my affidavit is a true copy of the Minutes of the January 24, 2014 Benchers meeting.
- 11. Now produced and shown to me and marked as **Exhibit "H"** to this my affidavit is a true copy of the Minutes of the February 28, 2014 Benchers meeting.

- 12. On or about March 3, 2014, the Law Society made available on its website over 300 submissions received regarding the proposed new law school program at TWU.
- 13. Now produced and shown to me and marked as Exhibits "I" and "J", respectively, to this my affidavit are true copies of the Minutes of the April 11, 2014 Benchers webcast meeting and related transcript.
- 14. Now produced and shown to me and marked as **Exhibit "K"** to this my affidavit is a true copy of the Notice of Special General Meeting scheduled for June 10, 2014.
- 15. Now produced and shown to me and marked as **Exhibit "L"** to this my affidavit is a true copy of the transcript of the Special General Meeting held on June 10, 2014. Voting was held by paper ballot. The following resolution passed by a 3210-968 vote:

The Benchers are directed to declare, pursuant to Law Society Rule 2-27(4.1), that Trinity Western University is not an approved faculty of law.

- 16. Now produced and shown to me and marked as **Exhibit "M"** to this my affidavit is a true copy of the Minutes of the July 11, 2014 Benchers meeting.
- 17. Now produced and shown to me and marked as Exhibits "N" and "O", respectively, to this my affidavit are true copies of the Minutes of the September 26, 2014 Benchers meeting and related transcript.
- 18. Now produced and shown to me and marked as **Exhibit "P"** to this my affidavit is a true copy of a Notice of Referendum mailed to all members of the Law Society with ballots on or about October 3, 2014, returnable by October 29, 2014.
- 19. Now produced and shown to me and marked as **Exhibit "Q"** to this my affidavit is a true copy of an email which I am advised by Deborah Armour, Chief Legal

- Officer of the Law Society that she received from Earl Phillips on or about October 2, 2014.
- 20. On October 30, 2014, Law Society staff counted the Referendum ballots. The vote was 5,951 (74%) in favour of the Referendum question and 2,088 (26%) against, out of 8,039 valid ballots. The results were posted on the Law Society website.
- 21. Now produced and shown to me and marked as **Exhibit "R"** to this my affidavit is a true copy of the Minutes of the October 31, 2014 Benchers meeting.
- 22. Now produced and shown to me and marked as **Exhibit "S"** to this my affidavit is a true copy of a media release dated December 11, 2014 regarding the revocation of consent to the proposed new law school program at TWU by Advanced Education Minister Amrik Virk.
- 23. The Law Society is committed to the principles of equity and diversity and believes the public is best served by a more inclusive and representative profession. The Law Society believes that everyone in the legal community shares responsibility for promoting equality and diversity in the profession.
- 24. The Law Society has been promoting the principles of equity and diversity in the legal profession over the past number of years, through reports such as *Towards a More Representative Legal Profession: Better practices, better workplaces, better results*, a copy of which is attached and marked as **Exhibit "T"** to my affidavit, as well as through the institution of programs such as Justicia (a voluntary program, facilitated by the Law Society and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice) and the Aboriginal Lawyers Mentoring Program which is intended to enhance the retention and advancement of Aboriginal lawyers in the legal profession.

25. Through the Equity and Diversity Advisory Committee, the Law Society continuously monitors developments on issues affecting equity and diversity in the legal profession and the justice system.

SWORN BEFORE ME at the)
City of Vancouver,)
Province of British Columbia)
This 15th day of January, 2015.)
)
Far)
A Commissioner for taking Affidavits)
within British Columbia)

Timothy E. McGee, Q

JAIA RAI

Barrister and Solicitor
The Law Society of British Columbia
845 CAMBIE STREET
VANCOUVER, B.C. V6B 4Z9

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

Commissioner for taking Affidavits for British Columbia

"referred to in the

This is Exhibit" \mathcal{H}

affidavit of...Timent

this. 15 day of

MEMORANDUM

FROM:

Federation Executive

TO:

Council of the Federation

Law society CEOs (for information)

DATE:

April 18, 2013

SUBJECT:

Establishment of the Special Advisory Committee on Trinity Western

University's Proposed School of Law

ACTION REQUIRED:

FOR DECISION

DRAFT MOTION:

WHEREAS the Federation of Law Societies of Canada and its member law societies have established a national requirement that reflects their collective view of what is required in the public interest to ensure that new members of the profession are competent to practise and understand their ethical obligations;

WHEREAS the national requirement sets out the competencies that all graduates must meet for admission to any of the common law society admission programs;

WHEREAS the Canadian Common Law Program Approval Committee (the "Approval Committee") has been established to determine whether graduates of existing and proposed common law programs will meet the national requirement:

WHEREAS Trinity Western University ("TWU") has proposed to establish a new law school program and has applied to the Approval Committee for a determination as to whether its proposed program would meet the national requirement;

WHEREAS certain issues have been raised regarding TWU's application that are outside of the mandate of the Approval Committee;

WHEREAS at its meeting on March 22, 2013, the Council of the Federation approved in principle the establishment of a special committee to address these additional issues:

RESOLVED THAT: the Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee") be established with the mandate set out in the Terms of Reference attached as Appendix "A" to this memorandum;

RESOLVED THAT: the following individuals be appointed as members of the Special Advisory Committee:

- (a) John Hunter, Q.C., Chair;
- (b) Mona Duckett, Q.C.;
- (c) Derry Millar;
- (d) Bâtonniere Madeleine Lemieux, Ad. E.; and
- (e) Sheila Greene, Q.C.

AND RESOLVED THAT: the timing of the release of the report of the Special Advisory Committee be coordinated with that of the Approval Committee.

INTRODUCTION

1. The Council is requested to approve the establishment of the Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee").

BACKGROUND

- 2. Canada's law societies have approved a national requirement that reflects their collective view of what is required in the public interest to ensure that new members of the legal profession are competent to practise and understand their ethical obligations. The national requirement sets out the competencies that all graduates will have to meet as of 2015 to enter law society admission programs in any of the common law jurisdictions. The Approval Committee has been given a specific mandate by the law societies to determine whether graduates of existing and proposed common law programs will meet the national requirement.
- 3. Trinity Western University ("TWU") is proposing to open a new law school and has applied to the Approval Committee for a determination of whether its proposed program would meet the national requirement. The application is under consideration by the Approval Committee.
- 4. The TWU proposal raises issues that fall outside of the limited mandate of the Approval Committee, notably those related to the Community Covenant Agreement that all students, faculty and staff at TWU are required to undertake to abide by.
- 5. At its meeting in Quebec City on March 22, 2013, the Council of the Federation approved in principle the establishment of a special committee to consider these additional issues.



PROPOSED MANDATE

- 6. As set out in the Terms of Reference attached as Appendix "A" to this memorandum, the mandate of the Special Advisory Committee will be to consider whether there are additional considerations that should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively.
- 7. In the exercise of its mandate, the Special Advisory Committee will be asked to consider all of the representations received by the Federation to date including any responses to those representations by TWU, applicable law, including the *Canadian Charter of Rights and Freedoms*, human rights legislation, and the Supreme Court of Canada decision in *Trinity Western University v. British Columbia College of Teachers* (2001 SCC 31), and any other information that the Special Advisory Committee determines is relevant.
- 8. In light of the representations made to the Federation to date, the responses to those representations by TWU, and the substantial public record of views about those issues, the Special Advisory Committee will not be asked to undertake any formal public consultation.
- 9. The individuals who are recommended as members of the Special Advisory Committee have agreed to serve in that capacity if asked.
- 10. Given the complementary roles of the Special Advisory Committee and the Approval Committee, it is recommended that the timing of the release of their reports be coordinated.

RECOMMENDATION

11. It is recommended that the motion set forth on page 1 of this memorandum be adopted.



SPECIAL ADVISORY COMMITTEE ON TRINITY WESTERN UNIVERSITY'S PROPOSED SCHOOL OF LAW

Terms of Reference

ESTABLISHMENT OF A SPECIAL ADVISORY COMMITTEE

The Federation of Law Societies of Canada (the "Federation") establishes the Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee") to consider certain matters relating to the proposed common law program at Trinity Western University ("TWU").

BACKGROUND

Canada's law societies are charged with regulating the legal profession in the public interest. In doing so, they have approved a national requirement that reflects their collective view as to what is required in the public interest to ensure that new members of the profession are competent to practise and understand their ethical obligations. The national requirement sets out the competencies that all graduates of common law programs in Canada must meet in order to enter law society admission programs. The Federation's Canadian Common Law Program Approval Committee (the "Approval Committee") has been mandated by the law societies to determine whether graduates of existing and proposed common law programs will meet the national requirement.

TWU proposes to establish a new school of law. The decision to approve the establishment of a law school at TWU rests with the government of British Columbia.

TWU has applied to the Approval Committee for a determination as to whether its proposed law program meets the national requirement. However, certain issues have been raised regarding the proposal that are outside of the mandate of the Approval Committee. The Special Advisory Committee is established to consider those issues. In light of the representations made to the Federation to date, the responses to those representations by TWU, and the substantial public record of views about those issues, no formal public consultation is contemplated.

MANDATE

1. The specific mandate of the Special Advisory Committee is to provide advice to the Council of the Federation on the following question:

What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?

- 2. In its consideration of the question, the Special Advisory Committee shall take into account:
 - (a) all representations received by the Federation to date including any responses to those representations by TWU;
 - (b) applicable law, including the Canadian Charter of Rights and Freedoms, human rights legislation, and the Supreme Court of Canada decision in Trinity Western University v. British Columbia College of Teachers (2001 SCC 31); and
 - (c) any other information that the Special Advisory Committee determines is relevant to the question.

The Law Society

of British Columbia

This is Exhibit B referred to in the affidavit of Timothy E. mcgee, ac sworn before me at Vancouvel.....

Commissioner for taking Affidavits for British Columbia

this 5 day of Kinuan

Minutes

Benchers

Date:

Friday, September 27, 2013

Present:

Art Vertlieb, QC, President

Jan Lindsay, QC 1st Vice-President

(by telephone)

Ken Walker, QC 2nd Vice-President

Haydn Acheson Rita Andreone, QC Satwinder Bains Kathryn Berge, QC David Crossin, QC Lynal Doerksen Leon Getz, QC Miriam Kresivo, QC Peter Lloyd, FCA

Bill Maclagan

Ben Meisner

Maria Morellato, QC David Mossop, QC Thelma O'Grady Lee Ongman

Vincent Orchard, QC

Greg Petrisor Claude Richmond Phil Riddell

Herman Van Ommen, QC

Tony Wilson Barry Zacharias

Excused:

David Crossin, QC
Thomas Fellhauer
Stacy Kuiack
Nancy Merrill
David Renwick, QC
Richard Stewart, QC

Staff Present:

Tim McGee
Deborah Armour
Felicia Ciolfitto
Lance Cook
Robyn Crisanti
Su Forbes, QC
Ben Hadaway
Andrea Hilland

Jeffrey Hoskins, QC

Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Amy Tang
Alan Treleaven

Guests:

Mark Benton, QC, Executive Director, Legal Services Society Karima Budhwani, Program Director, Law Foundation of BC

The Honourable Thomas Crabtree, Chief Judge of the Provincial Court of BC

Dean Crawford, President, Canadian Bar Association, BC Branch Ron Friesen, CEO, Continuing Legal Education Society of BC

Jeremy Hainsworth, Reporter, Lawyers Weekly

Carol Hickman, QC, Life Bencher, Law Society of BC

Gavin Hume, QC, Law Society Member of Council of the Federation of Law

Societies of Canada

Marc Kazimirski, President, Trial Lawyers Association of BC

Carmen Marolla, BC Paralegal Association

Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch Anne Pappas, J.D, Interim Dean of Law, Thompson Rivers University Dr. Jeremy Schmidt, Dean of Law, University of British Columbia Kerry Simmons, Past President, Canadian Bar Association, BC Branch

Dr. Jeremy Webber, Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on July 12, 2013 were approved as circulated.

The in camera minutes of the meeting held on July 12, 2013 were approved as circulated.

The *in camera* minute of the Benchers' July 15, 2013 email authorization was approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

 Proposed Amendments to Rule 2-27(4): Academic Qualification for Enrolment in the Admission Program

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-27(4) and substituting the following:

- (4) Each of the following constitutes academic qualification under this Rule:
 - (a) successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university;
 - (b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada:
- (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.
- Proposed Amendments to Rule 1-17: Procedure for Committee Meetings

BE IT RESOLVED to amend the Law Society Rules as follows:

- 1. By rescinding Rule 1-13
- 2. By amending Rule 1-17 by adding the following subrule:
 - (3) A committee may take any action consistent with the Act and these Rules by resolution of a majority of the members of the committee present at a meeting, if the members present constitute a quorum.
- Proposed Amendments to Rules 1-48 and 1-49: Composition and Mandate of the Executive Committee

BE IT RESOLVED to amend the Law Society Rules as follows:

- 1. By re-numbering Rule 1-48 as 1-48(1) and adding the following subrules:
 - (2) The President is the chair of the Executive Committee, and the First Vice-President is the vice-chair.
 - (3) The Executive Committee is accountable and reports directly to the Benchers as a whole.

2. By rescinding Rule 1-49 and substituting the following:

Powers and duties

- 1-49(1) The Executive Committee provides direction and oversight for the strategic and operational planning of the Society and ensures that the Benchers exercise their oversight, regulatory and policy development responsibilities.
 - (2) The powers and duties of the Executive Committee include the following:
 - (a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;
 - (b) authorizing the execution of documents relating to the business of the Society;
 - (b.1) appointing persons to affix the seal of the Society to documents;
 - (b.2) approving forms under these Rules;
 - (c) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to him or her;
 - (d) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;
 - (e) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;
 - (f) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;
 - (f.1) providing constructive performance feedback to the President;
 - (g) recommending to the appointing bodies on Law Society appointments to outside bodies;
 - (g.1) determining the date, time and locations for the annual general meeting;
 - (g.2) overseeing Bencher elections in accordance with Division 1 of this Part;
 - (i) appointing members of the Board of Governors of the Foundation under section 59 of the Act;
 - (i.1) deciding matters referred by the Executive Director under Rule 2-72.5;
 - (i.2) declaring that a financial institution is not or ceases to be a savings institution under Rule 3-50;
 - (i.3) adjudicating claims for unclaimed trust funds under Rule 3-84;
 - (i) other functions authorized or assigned by these Rules or the Benchers.

Ratification of the National Mobility Agreement – August 30, 2013

BE IT RESOLVED to approve various amendments to the National Mobility Agreement 2013 (NMA 2013), and to authorize the President or his designate to execute the NMA 2013 on behalf of the Law Society of British Columbia, as recommended by the Credentials Committee (clean and redline drafts of the NMA 2013 are attached as Appendix 1 to these minutes))

 Re-appointment of Thomas Christensen to the Legal Services Society Board of Directors

BE IT RESOLVED to re-appoint Thomas Christensen to the Board of Directors of the Legal Services Society for a two-year term effective September 7, 2013

Reduced Fee Feasibility Working Group Report and Recommendation

BE IT RESOLVED to accept the report of the Reduced Fee Feasibility Working Group (page 267 of the meeting materials), as recommended by the Executive Committee

• Amendments to BC Code Rule 3.2-1.1; Limited Retainers

BE IT RESOLVED to adopt various amendments to the BC Code rules on limited retainers, as recommended by the Ethics Committee, as follows:

Add definition of "limited scope retainer" as follows:

"limited scope retainer" means the provision of legal services for part, but not all, of a client's legal matter by agreement with the client;

Amend commentary to rule 3.1-2 on competence (amendments underlined)

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

- [2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.
- [3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:
 - (a) the complexity and specialized nature of the matter;
 - (b) the lawyer's general experience;
 - (c) the lawyer's training and experience in the field;
 - (d) the preparation and study the lawyer is able to give the matter; and
 - (e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.
- [4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.
- [5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.
- [6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:
 - (a) decline to act;
 - (b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or
 - (c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.
- [7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or

other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

- [7.1] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.
- [8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.
- [9] A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.
- [10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.
- [11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or

services unrelated to the legal services retainer will also be subject to the constraints outlined in the rules/by-laws/regulations governing multi-discipline practices.

- [12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.
- [13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.
- [14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.
- [15] Incompetence, Negligence and Mistakes This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

Add new rule:

Limited Scope Retainers

3.2-1.1 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of

the service to be provided and any risks of the retainer.

- [2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.
- [3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.
- [4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (See rule 7.2-6.1)
- [5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

Amend rule 7.2-6 to refer to new rule

- 7.2-6 Subject to rules <u>7.2-6.1</u> and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:
 - (a) approach, communicate or deal with the person on the matter; or
 - (b) attempt to negotiate or compromise the matter directly with the person.
- 7.2-6.1 Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

Commentary

[1] Where notice as described in rule 7.2-6.1 has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

REGULAR AGENDA – for Discussion and Decision

3. Examination of the Relationship Between the Law Society as Regulator of Lawyers and as Insurer of Lawyers: Report of the Rule of Law and Lawyer Independence Advisory Committee

Mr. Richmond addressed the Benchers as Chair of the Rule of Law and Lawyers Independence Advisory Committee. Mr. Richmond moved (seconded by Ms. Berge) that the Benchers adopt the following draft resolution:

Whereas, having read the report of the Rule of Law and Lawyer Independence Advisory Committee dated April 12, 2013 (the Report), the Benchers understand that the Law Society's current co-existing responsibilities as both regulator and insurer of lawyers creates a propensity and risk for a conflict of duties that warrants corrective action.

THEREFORE BE IT RESOLVED THAT a working group of Benchers and staff be created to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers.

Mr. Richmond reviewed the background of the Committee's report (at page 300 of the meeting materials) and the draft resolution now before the meeting. He noted that the current Committee relied on discussion and analysis of this subject performed by the 2012 Rule of Law and Lawyers Independence Advisory Committee, and took note of the report prepared by the 2008 Independence and Self-Governance Advisory Committee. Mr. Richmond confirmed that the current review has been conducted pursuant to Initiative 1-1(b) of the 2012 - 2014 Strategic Plan: "Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers;" and pursuant to Strategy 1-1: "Regulate the provision of legal services effectively and in the public interest." The review entailed extensive research of approaches taken by other law societies and regulatory bodies, and extensive consultation with the Law Society's regulatory, insurance, finance and executive staff.

Mr. Richmond outlined the Committee's conclusion: the regulating and insuring of lawyers by the Law Society are both within the public interest at the policy-setting level; however at the operational level and warranting corrective action, there is tension and propensity for conflict between the Law Society's co-existing responsibilities as regulator and insurer of lawyers.

Mr. Richmond noted that the Committee considered a range of potential solutions (paragraphs 56-68 of the Report, pages 320-322 of the meeting materials) before identifying two solution options which it recommends for further consideration and development. From the Report:

- In the end the Committee supports the further consideration and development of two options. The two options should be measured by the extent to which they would be a reasonably practical solution in the public interest and by the extent to which they would provide substantive solutions to the various concerns identified by the Committee. As models of the two options are developed, they may display many similarities but they are distinguishable by a difference in corporate structure, as follows:
 - (a) Solution Option 1: Modify LIF's integration as a Law Society department -
- 62. This option maintains the Lawyers Insurance Fund "in-house" and involves no significant changes to the corporate structure of the Law Society.
- 63. The development of Option 1 incorporates the challenge of maintaining the existing corporate structure of the Society while envisioning a list of operational policies, protocols, and other changes that will address the concerns of the Committee for matters of both appearance and underlying substance.
 - (b) Solution Option 2: Operate LIF as a separate legal entity, in the form of a relatively independent subsidiary of the Law Society –

66. Rather than operating claims management and insurance services through a private, for profit corporate model, this option envisages instead the creation of a separate, not-for profit Law Society subsidiary corporation that would handle claims management with a separate board and reporting structure.

Committee member Herman Van Ommen, QC, confirmed the Committee's conclusion that the status quo is not desirable and that corrective action is needed. He noted that the Committee has not had enough information to recommend specific changes.

In the ensuing discussion 10 Benchers spoke in favour of the resolution and two spoke against. Issues raised were:

- Whether public confidence in the Law Society's objectivity and regulatory function may be undermined by misunderstanding by complainants and the public as to why the Lawyers Insurance Fund and the Professional Conduct department sometimes take different positions on the same facts
- Whether current practices around sharing of information by the Lawyers Insurance Fund and the Professional Conduct department may have adverse effect on the Law Society's regulatory performance
- Whether the Report's language and tone is sufficiently objective and neutral
- Whether the Committee and its report should have focused more on evidence of actual conflicts and adverse effects on regulatory performance and public confidence
- Whether the fundamental issues are the potential for public misunderstanding and diminished confidence flowing from inherent tensions between the Law Society's regulatory and insurance responsibilities
- Whether the members of the Audit Committee generally possess sufficient technical knowledge of the insurance industry to conduct oversight of the Law Society's insurance program
- Whether the Governance Committee should consider the governance aspect of such oversight

Ms. Andreone proposed a <u>friendly amendment</u>, to add the following words to the draft resolution: "..., having regard to the need to provide best practices oversight and governance of the insurance portfolio."

The amendment was approved.

Mr. Richmond stated the amended resolution:

Whereas, having read the report of the Rule of Law and Lawyer Independence Advisory Committee dated April 12, 2013 (the Report), the Benchers understand that the Law Society's current co-existing responsibilities as both regulator and insurer of lawyers creates a propensity and risk for a conflict of duties that warrants corrective action.

BE IT RESOLVED THAT a working group of Benchers and staff be created to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers, having regard to the need to provide best practices oversight and governance of the insurance portfolio.

The motion to adopt the amended resolution was <u>carried</u>.

The Benchers <u>agreed</u> that the mandate of any such working group should not be limited to the two solution options referenced in the resolution and in the Report.

The Benchers <u>deferred</u> consideration of the role of the Governance Committee in relation to the oversight and governance of the Law Society's insurance program.

4. CBABC Rural Education and Access to Lawyers (REAL) Initiative: Funding Request for 2014

Mr. Vertlieb briefed the Benchers on the background of this matter, noting that:

- CBABC Provincial Council has approved the contribution of \$50,000 by CBABC to 2014 funding of the REAL Initiative (Phase 3)
- The REAL Initiative aligns with Strategy 2-2 of the 2012 2014 Strategic Plan: "Improve access to justice in rural communities"
- The Executive Committee unanimously recommends the contribution of \$50,000 by the Law Society to 2014 funding of the REAL Initiative (Phase 3),
 - o matching the contributions of CBABC and the Law Foundation of BC

Mr. Walker moved (seconded by Ms. Bains) that the Benchers approve the Law Society's contribution of \$50,000 to 2014 funding of the REAL Initiative (Phase 3).

The motion was carried unanimously.

5. 2014 Fees and Budget: Finance Committee Recommendations to the Benchers

Ms. Lindsay briefed the Benchers as Chair of Finance Committee. She reviewed the work done by the Committee, with the full participation of Law Society management, in conducting a ground-up, zero-based review of the Law Society's operating budgets for 2014. Ms. Lindsay confirmed that she supports the view of the Finance Committee and management that the Law Society budget and fees proposed for 2014 will allow the Society to continue to regulate legal profession in the public interest.

Mr. McGee noted that the proposed 2014 budget includes funding for the first phase of an initiative already approved by the Benchers, to enhance the Law Society' practice advice and support functions. Ms. McPhee confirmed that the proposal before the Benchers calls for an increase of 1.3% for total mandatory fees paid by BC lawyers in 2014 (excluding taxes, and including the Lawyers Insurance Fund assessment, unchanged from 2013 at \$1,750).

Mr. Walker (Vice-Chair of the 2013 Finance Committee) moved (seconded by Mr. Acheson) the adoption of the General Fund, Lawyers Insurance Fund and Trust Administration Fee resolutions, as set out at Tab 4 of the meeting materials:

BE IT RESOLVED THAT, commencing January 1, 2014, the practice fee be set at \$1,940.00, pursuant to section 23(1)(a) of the Legal Profession Act, consisting of the following amounts:

General Fund	\$1,571.11
Federation of Law Societies of Canada contribution	25.00
CanLII contribution	36.00
Pro Bono contribution	30.39
Courthouse Libraries BC	190.00
Lawyers Assistance Program	60.00
The Advocate	<u>27.50</u>
Practice Fee	\$1,940.00

BE IT RESOLVED THAT:

- the insurance fee for 2014 pursuant to section 30(3) of the Legal Profession Act be set at \$1,750;
- the part-time insurance fee for 2014 pursuant to Rule 3-22(2) be set at \$875; and
- the insurance surcharge for 2014 pursuant to Rule 3-26(2) be set at \$1,000.

BE IT RESOLVED THAT:

• effective January 1, 2014, the trust administration fee be set at \$15 for each client matter, pursuant to Rule 2-72.2(1).

The motion was carried unanimously.

Mr. Vertlieb thanked the Finance Committee and acknowledged, Ms. Lindsay, Mr. McGee and Ms. McPhee for their direction and leadership throughout the 2014 budgeting and feesetting process.

6. Family Law Task Force Request for Permission to Provide Analysis & Recommendations to the Benchers re: Authority, Guidelines and Training for Designated Paralegals to act as Counsel at Family Law Mediations & Arbitrations

Family Law Task Force Chair Carol Hickman, QC briefed the Benchers and presented the following draft resolution for approval:

BE IT RESOLVED THAT:

The Family Law Task Force analyze and report to the Benchers with recommendations on whether:

- 1. Designated paralegals can act as counsel at family law mediations and arbitrations, and in other family law dispute areas, and if so, to consider what guidelines or practice commentary should be created to assist supervising lawyers;
- 2. Designated paralegals practising in family law ought to be strongly encouraged to take training in screening for domestic violence, consistent with the statutory obligation for family dispute resolution professionals contained in the Family Law Act.

The Benchers unanimously approved the resolution.

GUEST PRESENTATIONS

7. Provincial Court of BC Update

Mr. Vertlieb welcomed the Honourable Thomas Crabtree, Chief Judge of the Provincial Court of BC to the meeting and invited him to address the Benchers.

Chief Judge Crabtree thanked the Benchers for their hospitality, and expressed his appreciation to the Law Society to the Court for its support on three issues:

- public support for the BC Courts, and in particular the Provincial Court
- the Law Society's willingness to pursue innovation and to collaborate with the BC Courts in that regard, particularly in relation to the Family Law Paralegals pilot project
- the Law Society's participation in and contributions to the Judicial Council over many years

Chief Judge Crabtree emphasized the Provincial Court's commitment to enhancing the accessibility and timeliness of the judicial process. He noted the importance of recent progress in three areas:

- streamlining of the Court's administrative structure,
- improvements to the Court's information management and scheduling systems
- use of technology, particularly video-conferencing

Chief Judge Crabtree also commented on the Provincial Court's commitment to communication and transparency in the use of its website, referring to the publication of quarterly updates to a report first published in September 2010 on the Court's resources, particularly its complement of judges.

REPORTS

8. 2012 – 2014 Strategic Plan Implementation Update

This matter was put over to the next meeting.

9. President's Report

Mr. Vertlieb briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including:

a) First Year Faculty of Law Classes

Mr. Vertlieb spoke to the first year Law classes at UBC and the University of Victoria, addressing the themes of professionalism and collegiality. He will seek an early opportunity to visit the Faculty of Law at Thompson Rivers University.

b) CBA Legal Conference (August 18 – 20, 2013 in Saskatoon, Saskatchewan)

Mr. Vertlieb reported on the presentation by Dr. Melina Buckley, chair of the CBA's Envisioning Equal Justice Initiative, and briefed the Committee on the communications strategy for a proactive Law Society response to the release of the Initiative's report, which is expected later in the fall. Mr. Vertlieb also commented on Mr. McGee's presentation on corporate counsel issues, noting that representatives of the Canadian Corporate Counsel Association have been invited to deliver a presentation to the Benchers at the November 7 meeting.

c) International Criminal Court Conference in Victoria

Mr. Vertlieb delivered welcoming remarks for the Law Society at a recent International Criminal Court conference in Victoria.

d) Law Society Liaison to Canadian Bar Association Provincial and National Councils

Vancouver Bencher Maria Morellato, QC has been re-appointed as the Law Society President's non-voting nominee to the CBABC Provincial Council and the CBA National Council, each appointment for a one-year term commencing September 1, 2013.

10. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 2 to these minutes), including the following matters:

- Introduction
- 2014 Budgets and Fees
- Management and Staff Updates

- o New Manager, Intake & Early Resolution
- o Leadership Council
- o RRex Program
- o Thriving Professional Awards
- On-the-Spot Recognition
- o Golden Lion Award
- o RRex Day
- Inspired Lion Award
- o RRex Award
- Annual Performance Awards
- o 2013 Employee Survey
- Events and Conferences
 - Canadian Corporate Counsel Association Plenary Session CBA Canadian Legal Conference
 - 2013 International Institute of Law Association Chief Executives (IILACE)
 Annual Conference
 - o Kootenay Bar Association Summer Meeting
 - Federation of Law Societies of Canada Semi-Annual Meeting St. John's Newfoundland
 - o Fall Justice Summit
 - o National Action Committee on Access to Justice Event
- PLTC Thank you

11. Trust Assurance Program Summary Report: First Six-Year Cycle

Felicia Ciolfitto, Manager of Trust Assurance and Trust Regulation, briefed the Benchers on the successful completion of the first six-year cycle of the Law Society's Trust Assurance and Trust Regulation programs. Ms. Ciolfitto's written report is at Tab 10 of the meeting materials.

12. Law Society Financial Report (August 31, 2013

Jeanette McPhee, Chief Financial Officer and Director of Trust Regulation, referred the Benchers to her report on the Law Society's financial results and highlights for the first eight months of 2013 (Tab 11 of the meeting materials).

13. Law Society Liaison to the Canadian Bar Association National and Provincial Councils: Annual Update

Maria Morellato, QC briefed the Benchers as the Law Society's designated liaison to the Canadian Bar Association (CBA) National and Provincial (BC) Councils. Ms. Morellato reported that during the past year she had the privilege of attending the two national CBA Council meetings, and most Provincial Council meetings. She noted that the Law Society and the CBA have much in common, including mutual commitment to the public interest, an independent legal profession and the rule of law, and a number of shared goals and priorities. As examples Ms. Morellato referred to Law Society and CBA initiatives relating to access to justice, diversity issues and the pressing need to address the implications of a rapidly changing legal marketplace, including emerging regulatory challenges.

Ms. Morellato also outlined highlights of the work presented at the CBA national meetings in February and August, referring the Benchers to her written report (Tab 12 of the meeting materials) for details.

14. Federation Council Update

Gavin Hume, QC reported as the Law Society's member of the Council of the Federation of Law Societies of Canada. Mr. Hume outlined significant issues to be addressed at the upcoming Council meeting and Conference (October 17-18 in St. John's, Newfoundland). Key matters on the Council meeting agenda include:

- signing of the Quebec Mobility Agreement
- discussion of implementation issues relating to National Admission Standards

• Trinity Western University's pending application for law school accreditation

The Conference will feature discussion of the impact of a number of topics on legal regulation, including:

- technology
- globalization
- · the changing nature of legal practice and services

Mr. Hume also reported as Chair of the Federation Standing Committee on the Model Code of Professional Conduct. He noted that the Committee is about to send a major consultation package to the Federation's member law societies, the Canadian Bar Association and an association of ethics professors, proposing Model Code provisions and language on topics including:

- doing business with clients
- short term legal services
- conflicts rules
- incriminating physical evidence

15. Report on the Outstanding Hearing & Review Reports

A report on outstanding hearing and review reports was circulated, and a number of timing issues were discussed and explained.

The Benchers discussed other matters in camera.

WKM 2013-10-25 Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

SPECIAL ADVISORY COMMITTEE ON TRINITY WESTERN'S PROPOSED SCHOOL OF LAW

FINAL REPORT

This is Exhibit "C" referred to in the affidavit of TIMOTHY E MCGEE QC sworn before me at VANCOVER this 15 day of TANUARY 2015

A Commissioner for taking Affidavits for British Columbia

December 2013

Introduction

- 1. In 2010, Canada's law societies approved a uniform national requirement that graduates of Canadian common law programs must meet to enter law society admission programs. Developed by the Federation of Law Societies of Canada (the "Federation") ¹Task Force on the Canadian Common Law Degree, the national requirement specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. The national requirement will apply to graduates of existing and prospective Canadian law schools effective 2015.
- 2. The Federation's Canadian Common Law Program Approval Committee (the "Approval Committee"), is mandated to review existing and proposed law school programs to determine whether they comply with the national requirement. In the case of new law school programs, a positive determination by the Approval Committee is but one step in the process. New law school programs must also be approved by the relevant provincial government authority.
- 3. In June 2012, Trinity Western University ("TWU"), a Christian faith-based university in British Columbia, submitted a proposal for a law school program to the Approval Committee. Founded in 1962, TWU has been recognized as a university by the government of British Columbia since 1985. It currently offers 42 undergraduate and graduate degree programs and has a student enrollment of approximately 4,000.
- 4. The TWU proposal, which identified as one of its objectives the integration of a Christian worldview into the law school curriculum, provoked a strong response from many in the legal community. Many written submissions from groups and individuals were made to the Federation and the Approval Committee. Copies of those submissions are available at http://www.flsc.ca/en/twu-submissions/. Many of those writing alleged that TWU would discriminate against lesbian, gay, bisexual and transgendered ("LGBT") individuals and called on the Approval Committee to reject the TWU proposal. Others wrote in favour of the proposed law school citing the right of religious freedom, the value of diversity in law school education and TWU's reputation as an educational institution.
- 5. At the heart of the debate is TWU's Community Covenant, a statement of commitment to the Christian faith that includes an undertaking to refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." All students, faculty and staff are required to abide by the Community Covenant. The proposal to integrate a Christian worldview into the curriculum of the law school has also raised concerns amongst those who made submissions to the Federation.

¹ The Federation of Law Societies of Canada is the umbrella organization of Canada's 14 provincial and territorial law societies.

² Trinity Western University (TWU), Community Covenant Agreement, http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html.

- 6. The Approval Committee is responsible for assessing whether the law school program proposed by TWU would meet the national requirement. That assessment process is currently underway. There are, however, a number of issues raised in the various submissions made to the Federation about the TWU proposal that are outside of the mandate of the Approval Committee. Recognizing the importance of addressing these issues, the Federation established the Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee"). In establishing the Special Advisory Committee, the Council of the Federation approved the following mandate:
 - 1. The specific mandate of the Special Advisory Committee is to provide advice to the Council of the Federation on the following question:

What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?

- 2. In its consideration of the question, the Special Advisory Committee shall take into account:
 - (a) all representations received by the Federation to date including any responses to those representations by TWU;
 - (b) applicable law, including the Canadian Charter of Rights and Freedoms, human rights legislation, and the Supreme Court of Canada decision in Trinity Western University v. British Columbia College of Teachers (2001 SCC 31); and
 - (c) any other information that the Special Advisory Committee determines is relevant to the question.
- 7. John J.L. Hunter, Q.C., Past-President of the Federation and the Law Society of British Columbia was appointed to chair the Special Advisory Committee. The other members of the committee are:
 - Mona T. Duckett, Q.C., former Council member representing the Law Society of Alberta and Past-President of the Law Society of Alberta
 - Derry Millar, former Treasurer of the Law Society of Upper Canada
 - Madame la Bâtonnière Madeleine Lemieux, Ad. E., former Council member representing the Barreau du Québec and former Bâtonnière of the Barreau
 - Morgan C. Cooper, Past-President of the Law Society of Newfoundland and Labrador

- Support to the Special Advisory Committee is provided by Frederica Wilson, Federation Senior Director, Regulatory and Public Affairs and Daphne Keevil Harrold, Federation Policy Counsel.
- 8. In considering the question put to it, the Special Advisory Committee reviewed all of the submissions made to the Federation, together with responses to those submissions received from TWU. A number of email submissions from individuals sent directly to members of the committee were also considered. In addition, the Special Advisory Committee reviewed relevant law, and considered legal advice obtained by the Federation on the applicability of the Supreme Court of Canada's decision in *Trinity Western University v. British Columbia College of Teachers*³ ("BCCT"). The committee's review of the issues and its conclusions are set out below.

Role of Federation and Law Societies

- 9. In correspondence to the Federation dated April 24, 2013 and May 17, 2013 (copies attached as Appendices "A" and "B" respectively) TWU questioned whether consideration of broader public interest issues in relation to its application for approval of its proposed law school program is within the jurisdiction of the Federation. TWU also suggested that in establishing the Special Advisory Committee the Federation is "interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread," and have not asked the Federation to enquire into.
- 10. The Special Advisory Committee believes that the Federation can and should consider whether there are any broader public interest issues outside of compliance with the national requirement raised by TWU's proposed school of law.
- 11. Canada's law societies are mandated by statute to regulate the legal profession in the public interest, and as the umbrella organization of the law societies the Federation shares a public interest focus. Examples from some of the relevant provincial statues serve to illustrate the point.

Section 4.2 of Ontario Law Society Act provides in part:

- 4.2. In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
 - 3. The Society has a duty to protect the public interest.

The Saskatchewan Legal Profession Act contains a similar provision:

³ 2001 SCC 31 (CanLII), http://canlii.ca/t/dmd.

- In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:
 - (a) to act in the public interest;

The *British Columbia Legal Profession Act* includes an obligation to preserve and protect the rights and freedoms of all persons within its statutory duty to uphold and protect the public interest. Section 3 of that Act reads in part:

- 3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
 - (a) preserving and protecting the rights and freedoms of all persons,
 - (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,

. .

- 12. The Federation's public interest focus is evident from its mission statement, which opens with the words "[a]cting in the public interest."
- 13. In its decision in *BCCT* the Supreme Court of Canada held that the public interest jurisdiction of the teachers college permitted it to consider broad public interest issues such as those related to equality. The court held that the power of the teachers college to establish standards for entrance into the profession must be interpreted in light of the general purpose of its constating statute and in particular its public interest mandate. In reaching this conclusion, the Court rejected the argument put forward by TWU that the powers of the teachers college were limited to establishing standards to ensure that teachers were properly trained, competent, and of good character.
- 14. The Special Advisory Committee can see no reason for coming to a different conclusion in the case of TWU's application for approval of its proposed law school. Like the teachers college in the BCCT case, Canada's law societies are required to exercise their overall mandate in the public interest. Setting appropriate standards for admission to the legal profession is an essential component of the public interest mandate shared by Canada's law societies. The national requirement approved by each of the law societies was developed as part of this public interest mandate. It reflects the law societies' collective view of the competencies new members of the profession must possess to be able to practise. Assessing whether an applicant meets the national requirement is, however, only one aspect of the admissions process. Law societies must, for example, determine what

⁴ *lbid*, at paragraph 26.

⁵ *Ibid.* at paragraphs 12-13.

- additional training or exams applicants must undertake and must assess whether applicants are fit to practise and are of good character. In each case, the ultimate decision on admissibility rests with the individual law societies.
- 15. The consideration of public interest issues is one aspect of the overall responsibility of law societies for determining whether an applicant should be admitted to the legal profession. Assisting the law societies with the exercise of this responsibility is entirely consistent with the mandate of the Federation. The decision to establish the Special Advisory Committee was made by the Council of the Federation, a body comprised of representatives from every law society in Canada. The advice to be provided by the Special Advisory Committee is intended to assist the law societies, the bodies ultimately charged with determining whether graduates from the proposed TWU school of law should be admitted to the profession.
- 16. It is important to distinguish the task assigned to the Special Advisory Committee from the role of the Approval Committee. As noted above, the mandate of the Approval Committee is to determine whether TWU's proposed law school program, if implemented in a manner consistent with its proposal, would meet the national requirement. That matter is currently under consideration by the Approval Committee. The mandate of the Special Advisory Committee is quite different. The committee has no power to decide whether TWU's application should be approved. It has been asked only to provide advice on whether the application raises any additional public interest considerations.

The Law

- 17. As is more fully described below, many of the individuals and groups who made submissions to the Federation on the subject of TWU's proposed law school raised concerns about the Community Covenant that students, faculty, and staff are required to abide by. More particularly, many of the submissions argued that given what they see as the inherently discriminatory nature of the Community Covenant, approving a law school at TWU would be contrary to the public interest. Others, writing in support of TWU, cited the right of freedom of religion and argued that withholding approval of TWU's proposed school of law would violate the rights of those wishing to study law at a faith-based school.
- 18. In considering these issues and answering the question put to it by its terms of reference, the Special Advisory Committee has taken into account relevant case law, statutes, and the Canadian Charter of Rights and Freedoms (the "Charter"). The committee has also considered a legal opinion on the applicability of the Supreme Court of Canada's decision in BCCT prepared for the Council of the Federation by John B. Laskin, (see Appendix "C") a copy of which was provided to the Special Advisory Committee.
- 19. TWU is a private institution to which the *Charter* does not apply and which is exempt, in part, from the provisions of the British Columbia *Human Rights Code* (the "*Human Rights Code*"). Section 41(1) of that statute states:

- 41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.
- 20. In the *BCCT* case the Supreme Court held that although the *Charter* does not apply to TWU (as it is a private institution) and the university is exempt from certain provisions of the *Human Rights* Code, the rights and values articulated in the *Charter* and human rights legislation are relevant in considering broader issues of public interest.⁶
- 21. The *BCCT* case involved an application by TWU to the British Columbia College of Teachers for approval of its teacher education program. The college rejected the application, basing its decision on the fact that students, faculty and staff were required to abide by a Community Standards agreement (the forerunner to the current Community Covenant) that forbid "biblically condemned" practices including "homosexual behaviour." In finding that the teachers college erred in rejecting the TWU application, the Court noted that the *Charter* both protects against discrimination on the basis of sexual orientation and guarantees freedom of religion. The Court held that equality rights and freedom of religion must be balanced, and that neither right is to be preferred over the other.⁷
- 22. In reaching this finding, the Supreme Court confirmed the approach to reconciling different rights and values under the *Charter* articulated in its decision in *Dagenais v. Canadian Broadcasting Corp*:
 - A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law. When the protected rights of two individuals come into conflict . . . *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.⁸
- 23. The majority held that "the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence." ⁹ The Court held:

It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the *Charter* does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious

⁶ Ibid, at paragraph 27.

⁷ *Ibid*, paragraphs 27-30.

^{8 1994} CanLII 39 (SCC), http://canlii.ca/t/1frnq, as cited in BCCT supra, note 3 at paragraph 31.

⁹ Ibid, at paragraph 25.

beliefs, in a private institution, is sufficient to engage s.15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.¹⁰

- 24. The Court found that section 41 of the *Human Rights Code* protects a religious institution from a finding that it is in breach of the *Human Rights Code* "where it prefers adherents of its religious constituency." The Court also held that this statutory exemption accommodates religious freedom.
- 25. In reaching these findings the Supreme Court distinguished between belief and conduct stating:
 - ... the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society. 12
- 26. Some of those making submissions to the Federation about TWU's proposed school of law have suggested that the Court would take a different approach today to reconciling competing *Charter* rights. It has also been suggested that the Court might not require evidence of actual harm as it did in *BCCT*.
- 27. The Special Advisory Committee notes that since the BCCT case the Supreme Court has confirmed its approach to reconciling competing rights, most recently in its decision in Saskatchewan (Human Rights Commission) v. Whatcott, released in February 2013.¹³ In its decision in Whatcott, a case involving the prohibition of hate speech contained in Saskatchewan human rights legislation, the Court described its task as requiring it:

to balance the fundamental values underlying freedom of expression (and, later, freedom of religion) in the context in which they are invoked, with competing *Charter* rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings.¹⁴

28. It is the view of the Special Advisory Committee that the approach of the Supreme Court in *BCCT* to reconciling competing rights under the *Charter* and the requirement of evidence of

¹⁰ Ibid.

¹¹ *Ibid*, at paragraph 35.

¹² Ibid, at paragraph 36.

¹³ 2013 SCC 11 (CanLII), http://canlii.ca/t/1frnq, at paragraphs 6, 66, and 145. See also Reference re Same-Sex Marriage, 2004 SCC 79 (CanLII) (SCC), http://canlii.ca/t/1jdhv, at paragraph 50.

¹⁴ Ibid, at paragraph 66.

actual harm continue to be the law in Canada. Although the Special Advisory Committee cannot know what evidence might be presented in the event of a court challenge to TWU's proposed school of law, the committee has not received evidence that would, in its opinion, lead to a different outcome than occurred in the *BCCT* case.

Issues raised in submissions

- 29. The Federation has received representations from a number of individuals, organizations and groups of individuals (including TWU). These submissions, and a number of the emails sent directly to members of the committee, raise important issues that the Special Advisory Committee has considered in its deliberations. The committee has also considered the arguments made by Professor Elaine Craig in her paper *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program.* 15
- 30. Many writing in opposition to TWU's proposed law school argue that the policies of TWU, particularly its Community Covenant agreement, discriminate against LGBT individuals and are contrary to societal values of equality and non-discrimination. Approval of the proposed law school program, they argue, would thus not be in the public interest.
- 31. Some express concern that approval of TWU's proposed law school would result in LGBT students having fewer choices and opportunities than other students. Others question the ability of TWU to provide a balanced, high quality legal education and suggest that its stated intention to teach law from a Christian worldview would make TWU incapable of teaching legal ethics, constitutional and human rights law. A related argument suggests that students would not be taught important critical thinking skills. Concerns were also expressed about TWU's respect for academic freedom and the impact this would have on the legal education students would receive.
- 32. One submission points to the United States experience and suggests that the American Bar Association ("ABA") has adopted a new standard that prohibits law schools from discriminating on the basis *inter alia* of sexual orientation.
- 33. It must be noted, however, that not all individuals and organizations who wrote to the Federation oppose the TWU application. A number of the submissions argue in favour of approval of the proposed law school citing TWU's record as a high quality educational institution and suggesting, for example, that as a faith-based institution it would be well placed to impart an ethical view to its students. Others argue that secular schools should not have a monopoly on legal education in Canada and that the legal profession benefits from a diversity of views amongst its members. Many challenge the suggestion that a TWU law school would not properly teach Canadian law and legal values. They argue that in the absence of evidence that TWU would fail to do so, there is no reason to deny approval of its proposed law school program.

¹⁵ Canadian Journal of Women and the Law, Vol. 25, No. 1, 2013.

34. The Special Advisory Committee's consideration of these issues follows.

Whether approving TWU's proposed law school would be contrary to the public interest

- 35. The Special Advisory Committee has concluded that consideration of the public interest is clearly relevant in determining whether it would be appropriate to permit future graduates of TWU's proposed school of law to enroll in law society admission programs. As noted above, in the *BCCT* case the Supreme Court held that consideration of human rights principles and the values enunciated in the *Charter* are relevant to this consideration notwithstanding that TWU is a private institution that is exempt from certain provisions of British Columbia human rights legislation and is not bound by the *Charter*.
- 36. Recent submissions to the Federation have argued that TWU bans LGBT individuals from attending the school. They argue that approving a law school at an institution that bans students on the basis of sexual orientation would be contrary to the public interest. To the knowledge of the Special Advisory Committee, however, the suggestion that TWU bans LGBT individuals is inaccurate. The Special Advisory Committee recognizes that the Community Covenant may result in differential treatment of LGBT individuals. Faced with a requirement to commit to a code of behaviour that prohibits sexual activity outside of marriage between a man and a woman, LGBT students would legitimately feel unwelcome at a TWU law school. The Supreme Court has made it clear, however, that the religious freedom rights of those who might wish to attend such a faith-based institution must also be considered and it is clear from the submissions received by the Federation that there are many such students.
- 37. The Court also made it clear in *BCCT* that the assessment of the public interest cannot be based solely on the religious precepts of the school, or in this case, the proposed school and that the admissions policy requiring students to adhere to the Community Covenant is not sufficient to establish unlawful discrimination. Absent evidence for example, that graduates of the proposed law school would engage in discriminatory conduct or would fail to uphold the law, freedom of religion must be accommodated. No such evidence has been brought to the attention of the Special Advisory Committee; nor is it aware of any.
- 38. It has been suggested by some, that while TWU's policies may be lawful in British Columbia by virtue of the specific provisions of the BC *Human Rights Code*, the university's policies would be contrary to human rights legislation in other jurisdictions. In light of the Supreme Court of Canada's findings on the requirement to balance equality rights and freedom of religion, it is not evident to the Special Advisory Committee that this would be the case. In any event, the Special Advisory Committee has concluded that this suggestion misconstrues the nature of the analysis required in determining whether approval of the proposed TWU law school and admission of future graduates of the program to law society admission programs would be consistent with the public interest.

- 39. TWU has been recognized by the government of British Columbia as a degree granting institution. The issue is not whether TWU could operate in the same manner in another jurisdiction, but whether it is operating lawfully in the jurisdiction in which it is located and whether its policies are consistent with the values expressed in the *Charter* and human rights legislation. The Supreme Court of Canada concluded in the *BCCT* case that the Community Standards document, a forerunner to the Community Covenant that was more explicit in its prohibition of homosexual behaviour than the current Community Covenant, was not contrary to human rights values given the need to balance equality rights and freedom of religion. The Special Advisory Committee is not persuaded to reach a different conclusion in relation to TWU's proposed law school program.
- 40. The Special Advisory Committee believes that it is important to note that if TWU's proposed school receives preliminary approval from the Approval Committee and if evidence of actual harm emerges following such approval it would be appropriate to address it at that time.

Whether TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law

- 41. Some opponents of TWU's proposed law school argue that it will not provide a balanced, quality legal education. They suggest that TWU's policies and intention to teach from a Christian worldview would prevent free, open dialogue and that students in such a program would, as a consequence, fail to develop necessary critical thinking skills. It has also been suggested that TWU's intention to teach law from a Christian worldview would interfere with effective teaching of legal ethics, constitutional and human rights law. The inability to effectively teach legal ethics, particularly to teach students to think critically about ethics, is also one of the central arguments advanced by Professor Elaine Craig in her article, *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program.* 16
- 42. Others take the opposite view, arguing that as a faith-based institution TWU would be well placed to impart ethics to its students and that teaching from a Christian worldview might actually stimulate discussion and debate. It has also been suggested that "[t]he legal profession and the classrooms of Canada's law schools would benefit greatly from the expansion of legal education in institutions that hold non-mainstream views." ¹⁷
- 43. TWU has made strong representations in response to the suggestion that it cannot and will not teach legal ethics, constitutional and human rights law appropriately and that students in its proposed program will not develop critical thinking skills. The May 17, 2013 letter from TWU to the Federation includes a clear commitment to "fully and appropriately" teaching legal ethics and professionalism and a recognition of its duty to teach equality and non-

¹⁶ Note 15, supra.

¹⁷ March 19, 2013 letter from UBC law students – Group 2, Submissions to the Special Advisory Committee, http://www.flsc.ca/en/twu-submissions/

discrimination in both its legal ethics and substantive law courses. The letter highlights the fact that course outlines contained in its proposal indicate that TWU intends to rely on standard texts for teaching in the areas of legal ethics, constitutional and human rights law. TWU has also unambiguously acknowledged "its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism." In its May 17th letter, TWU also states that "TWU agrees with Egale Canada that 'the dignity and value of all individuals irrespective of their sexual orientation . . . now form part of the fabric of professional ethics and the rule of law."

- 44. In the view of the Special Advisory Committee the argument that TWU's Christian worldview will have a negative impact on the quality of legal education at the proposed law school and that students will fail to acquire necessary critical thinking skills is without merit. Such a finding cannot be based on TWU's stated religious perspective or its Community Covenant; as the Supreme Court made clear in BCCT it could be based only on concrete evidence. 19 Not only has no such evidence been brought to the attention of the Special Advisory Committee, the evidence that we do have demonstrates an understanding by TWU of its obligation to appropriately teach legal ethics and other substantive law subjects. We see no basis to conclude, as some have suggested, that individuals holding particular religious views are incapable of critical thinking and of understanding their ethical obligations, or that the quality of the legal education provided by a law school at TWU would not meet expected standards. There can be no doubt that TWU's Christian worldview is shared by many current members of the profession and the judiciary. There is no evidence that such individuals are any less capable of critical thinking or any less likely to conduct themselves ethically than any other members of the bar or the bench. Graduates of the proposed law school admitted to the profession would be subject to the supervision of the law societies and would be obliged to follow the ethical rules governing all members of the profession. Individuals breaching those ethical rules would be subject to disciplinary sanctions.
- 45. It is also worth noting that the proposed law school would not be the only professional faculty at TWU. The university operates both nursing and teacher education programs and has done so for many years. Graduates of those programs licensed to practise their respective professions must meet codes of professional conduct.²⁰ To the knowledge of the Special Advisory Committee, there is no evidence that graduates of the nursing and teaching programs at TWU are any less able to fulfill their ethical obligations than are graduates from programs at other schools.

¹⁸ See Appendix "B".

¹⁹ BCCT, paragraphs 32-33.

²⁰ See, for example, Standards for the Education, Competence, and Professional Conduct of Educators in British Columbia, http://www.bcteacherregulation.ca/documents/AboutUs/Standards/edu_stds.pdf and the Profession Standards of the College of Registered Nurses of British Columbia, https://www.crnbc.ca/Standards/ProfessionalStandards/Pages/Default.aspx. Similar professional codes apply to teachers and nurses licensed in other Canadian jurisdictions.

Whether TWU respects academic freedom

- 46. Some of the submissions to the Federation have argued that TWU fails to respect academic freedom. Support for this argument is drawn from an October 2009 report published by the Canadian Association of University Teachers (the "CAUT") that concluded that TWU's policy on academic freedom allowed for "unwarranted and unacceptable constraints on academic freedom." The CAUT report followed an investigation by an *ad hoc* committee charged with determining whether TWU employed a "faith test" in employment and whether "all academic staff at TWU have a full measure of academic freedom."
- 47. The *ad hoc* committee concluded that although TWU's policy on academic freedom "appears to affirm a commitment to open critical thought in teaching and research" that commitment is qualified by a requirement that the teaching and investigation occur "from a stated perspective" and as such violates academic freedom.²³ In reaching its finding the *ad hoc* committee also relied on the CAUT Academic Freedom Policy²⁴ which states, in part:

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service to the institution and the community; freedom to express one's opinion about the institution, its administration, and the system in which one works; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship.

48. The Special Advisory Committee agrees that a commitment to academic freedom is important in a law school program. We note, however, that there is no single definition of academic freedom. In October 2011, the Association Universities and Colleges of Canada (the "AUCC"), the national organization of Canadian universities and colleges, ²⁵ adopted a Statement on Academic Freedom²⁶ that includes a more limited definition. The AUCC statement provides for the possibility that academic freedom may be limited by the "academic mission" of the educational institution. Key provisions of the statement include the following:

Unlike the broader concept of freedom of speech, academic freedom must be based on institutional integrity, rigorous standards for enquiry and institutional autonomy, which allows universities to set their research and educational priorities.

²³ *Ibid*, at p. 4.

²⁵ The AUCC is a member-based organization representing 97 universities and colleges.

²¹ Report of an Inquiry Regarding Trinity Western University, p. 10, http://www.caut.ca/docs/reports/report-of-caut-ad-hoc-investigatory-committee-on-twu.pdf?sfvrsn=0.

²⁴ http://www.caut.ca/about-us/caut-policy/lists/general-caut-policies/policy-statement-on-academic-freedom.

http://www.aucc.ca/media-room/news-and-commentary/canadas-universities-adopt-new-statement-on-academic-freedom/.

Academic freedom is constrained by the professional standards of the relevant discipline and the responsibility of the institution to organize its academic mission. The insistence on professional standards speaks to the rigor of the enquiry and not to its outcome.

- 49. The criteria for membership in the AUCC include a requirement to respect the spirit of the AUCC Statement on Academic Freedom.²⁷
- 50. The academic freedom policy of TWU, a member of the AUCC, recognizes that it "is an essential ingredient in an effective university program." The full policy reads as follows:

Trinity Western University recognizes that academic freedom, though varyingly defined, is an essential ingredient in an effective university program. Jesus Christ taught the importance of a high regard for integrity, truth, and freedom. Indeed, He saw His role as in part setting people free from bondage to ignorance, fear, evil, and material things while providing the ultimate definition of truth.

Accordingly, Trinity Western University maintains that arbitrary indoctrination and simplistic, prefabricated answers to questions are incompatible with a Christian respect for truth, a Christian understanding of human dignity and freedom, and quality Christian educational techniques and objectives.

On the other hand, Trinity Western University rejects as incompatible with human nature and revelational theism a definition of academic freedom which arbitrarily and exclusively requires pluralism without commitment, denies the existence of any fixed points of reference, maximizes the quest for truth to the extent of assuming it is never knowable, and implies an absolute freedom from moral and religious responsibility to its community.

Rather, for itself, Trinity Western University is committed to academic freedom in teaching and investigation from a stated perspective, i.e., within parameters consistent with the confessional basis of the constituency to which the University is responsible, but practiced in an environment of free inquiry and discussion and of encouragement to integrity in research. Students also have freedom to inquire, right of access to the broad spectrum of representative information in each discipline, and assurance of a reasonable attempt at a fair and balanced presentation and evaluation of all material by their instructors. Truth does not fear honest investigation.

²⁷ Association of Universities and Colleges of Canada, *Criteria to Become a Member*, http://www.aucc.ca/about-us/member-universities/membership-eligibility/criteria-to-become-a-member/. https://twu.ca/academics/calendar/2012-2013/academic-information/academic-policies/.

51. In the view of the Special Advisory Committee, the qualification in the TWU policy that academic freedom be exercised from "a stated perspective" is consistent with the provision in the AUCC statement recognizing the right of an institution to constrain academic freedom to accord with its academic mission. In these circumstances, it is not open to the Special Advisory Committee to conclude that academic freedom will not be respected at the proposed law school.

Whether approving TWU's proposed law school would result in LGBT students having fewer opportunities and choices than others

- 52. If approved, a law school at TWU will bring to 20²⁹ the number of law schools in Canada offering common law programs and will result in an increase of the overall number of available law school places. Some have argued that even with this increase, approval of the TWU proposal would result in fewer choices for LGBT individuals wishing to attend law school than would exist for other students as TWU would not be a choice for LGBT students.
- 53. As a starting point, we are not aware of any evidence that TWU limits or bans the admission to the university of LGBT individuals. A number of those who made submissions to the Federation noted that there are LGBT students at TWU. It is reasonable to conclude that the requirement to adhere to the Community Covenant would make TWU an un welcoming place for LGBT individuals and would likely discourage most from applying to a law school at the university, but it may also be that a faith-based law school would be an attractive option for some prospective law students, whatever their sexual orientation. It is also clear that approval of the TWU law school would not result in any fewer choices for LGBT students than they have currently. Indeed, an overall increase in law school places in Canada seems certain to expand the choices for all students.

The ABA standards on discrimination on the basis of sexual orientation

54. In their joint submission³⁰ urging the Federation to consider the public interest issues related to TWU's proposed law school, the Canadian Bar Association's Sexual Orientation and Gender Identity Conference ("SOGIC") and its Equality Committee referred to the experience in the United States. The submission cites the American Bar Association's ("ABA") Standards and Rules of Procedure for Approval of Law Schools and in particular Standard 211 as a potential source of "inspiration" as to how to balance freedom of religion and equality.

²⁹ This number includes existing law schools and law schools that have received preliminary approval from the Approval Committee.

³⁰ March 18, 2013 letter to Gérald R. Tremblay, Submissions to the Special Advisory Committee, http://www.flsc.ca/en/twu-submissions/

- 55. ABA Standard 211 prohibits discrimination in law school admission and hiring practices. Since 1981, when Standard 211 was amended in settlement of a lawsuit brought by Oral Roberts University, law schools with religious affiliations have been permitted to have admission or employment policies that relate to the institution's religious affiliation. The relevant section of Standard 211 reads:
 - (c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.
- 56. Pursuant to the current version of the standard, law schools are precluded from discriminating against applicants or students on the basis, inter alia, of sexual orientation. According to Interpretation 211-2 (which forms part of the official standard), however, "the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs." The ABA has confirmed that the standard distinguishes between discrimination on the basis of a person's status, and rules or codes that prohibit certain conduct. The former is prohibited, the latter permitted.
- 57. In considering the American treatment of religiously affiliated law schools, the Special Advisory Committee also considered the bylaws of the Association of American Law Schools ("AALS"), a voluntary member-based organization dedicated to "the improvement of the legal profession through legal education." Membership is open to law schools that have been operating for at least five years and have graduated their third class. Members are also required to adhere to a comprehensive list of requirements set out in the association's bylaws similar to those contained in the ABA standards. 32 The list of members of the AALS includes a number of religiously- affiliated schools. Several other religiously-affiliated schools are in a category of "non-member, fee paid schools", which receive many of the benefits of full membership, including access to AALS publications and resources, but are not required to conform to all of the membership requirements.

³² AALS Bylaws, Article 6.

³¹ AALS Bylaws, Article 1, Section 1-2, http://www.aals.org/about_handbook_bylaws.php.

- 58. Section 6-3(a) of the bylaws of the AALS prohibits discrimination on the basis, inter alia, of sexual orientation. Guidance on the application of this section of the bylaws to religiouslyaffiliated law schools is provided by the AALS Executive Committee Regulations. Like ABA Standard 211, AALS Executive Committee Regulation 6-3.1 permits religiously-affiliated schools to have admissions and employment policies based on their religious affiliation provided such policies do not directly discriminate on the basis of sexual orientation and are consistent with the association's regulations on academic freedom. Notice of such policies must be provided in advance of a student, faculty or staff member becoming affiliated with the school.
- 59. Further guidance on the application of the non-discrimination bylaw to religiously affiliated law schools is provided in the AALS Statements of Good Practices. Interpretive Principles to Guide Religiously Affiliated Member Schools as They Implement Bylaw Section 6-3(a) and Executive Committee Regulation 6-3.133 opens with the following paragraph:

These principles are intended to guide religiously affiliated member schools as they implement Bylaw Section 6-3(a) and revised ECR 6-3.1. They seek to strike a fair and sensitive balance between the values of religious liberty and nondiscrimination based upon sexual orientation. These principles are based on the premise that Bylaw 6-3(a) protects against discrimination on the basis of sexual orientation. When applied to religiously affiliated schools, that absolute protection of the status of sexual orientation continues, but in the unique context of religious liberty, Bylaw 6-3(a) and ECR 6-3.1 should be interpreted to permit the regulation of conduct when that conduct is directly incompatible with the essential religious tenets and values of a member school. These principles will guide the Accreditation Committee in reviewing whether a member school is in compliance with the Association's Bylaws and Executive Committee Regulations.

60. There are currently more than 50 religiously affiliated law schools in the United States, the majority of them ABA approved schools. Many religiously affiliated law schools are also members of the AALS. Religiously-affiliated law schools in the United States span a broad spectrum of religious beliefs. In some, there is little overt focus on the religious orientation of the institution, but in others the religious affiliation is reflected in the course content and the perspective from which the law is taught. At least some law schools approved by the ABA require students, faculty and staff to abide by codes of conduct or policies that include prohibitions on same-sex sexual conduct. Examples of such law schools include Baylor University, a Baptist institution, that bans "sexual misconduct" defined as "sexual abuse, sexual harassment, sexual assault, incest, adultery, fornication and homosexual acts; 34 J. Reuben Clark Law School at Brigham Young University (affiliated with the Mormon Church), which requires students to abide by an Honour Code that expressly prohibits homosexual

http://www.aals.org/about handbook sgp rel.php.
 Baylor University, Sexual Misconduct Policy,

- conduct; ³⁵ and Liberty Law School, a self-described Christian institution, whose non-discrimination policy states expressly that while not discriminating on the basis of sexual orientation the school does "discriminate on the basis of sexual misconduct including any form of sexual behaviour that would undermine the Christian identity or faith mission of the University."
- 61. Approval by the ABA and membership in the AALS of religiously-affiliated schools that restrict same-sex sexual conduct is consistent with the distinction that the policies of both organizations draw between discrimination on the basis of status and restrictions on specified conduct. Although both the ABA and the AALS require as a condition of approval or membership that law schools not "preclude admission of applicants or retention of students on the basis of . . . sexual orientation . . ." neither the ABA standard nor the bylaws of the AALS prevent religiously-affiliated law schools from imposing restrictions on sexual conduct similar to those imposed by the TWU Community Covenant.
- 62. The Special Advisory Committee sees merit in the non-discrimination provisions of the ABA and the AALS discussed above and recommends that the Federation consider whether it would be desirable to add a similar provision to the national requirement. We note, however, that if the national requirement included a standard similar to that of the ABA and the AALS it would not be a bar to approval of the TWU proposal. Although those standards prohibit discrimination on the basis of sexual orientation, both permit the prohibition of certain conduct deemed incompatible with the religious values of the institutions.

Conclusion

- 63. The Special Advisory Committee was asked to consider whether the requirement that students and faculty at TWU must agree to abide by the Community Covenant raises additional considerations that should be taken into account in determining whether graduates of the proposed law school program should be permitted to enter law society admission programs.
- 64. Although the Approval Committee is charged with reviewing TWU's proposal to determine whether it would, if implemented as described, meet the national requirement, it is the individual law societies that must decide on the eligibility of each individual applicant to their bar admission programs. The public interest issues considered by the Special Advisory Committee are expected to be relevant to those decisions.
- 65. In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that

³⁵ Brigham Young University, Honor Code, http://www.law2.byu.edu/page/categories/admissions/pdf documents/part3 byu law application.pdf. http://www.liberty.edu/law/index.cfm?PID=8533.

implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

66. It is the conclusion of the Special Advisory Committee that if the Approval Committee concludes that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs.



BY E-MAIL (Original By Mail)

April 24, 2013

Canadian Common Law Program Approval Committee Federation of Law Societies of Canada World Exchange Plaza 45 O'Connor Street, Suite 1810 Ottawa, ON K1P 1A4

Attention: Gérald R. Tremblay, President

Dear Mr. Tremblay;

RE: CREATION OF A SPECIAL ADVISORY COMMITTEE

Thank you for your phone call last week and subsequent letter dated April 22, 2013. We also very much appreciate the time and work that the Federation of Law Societies of Canada (the "Federation") is putting into the review of Trinity Western University's (TWU) School of Law proposal.

Your letter raised two significant concerns. The first is with respect to the mandate of the Special Advisory Committee and the Federation itself. Your letter of December 4, 2012 to Dean Flanagan, along with your letter of April 22, 2013, indicates that consideration of TWU's Community Covenant is outside of the mandate of the Approvals Committee. It is clearly stated in the Terms of Reference that "certain issues have been raised regarding the proposal that are outside of the mandate of the Approval Committee." If these issues are





outside of the mandate of the Approval Committee, why would they be within the mandate of the Special Advisory Committee?

Our understanding of the correct mandate of the Federation and the Approval Committee is exactly as set out in the Terms of Reference; which is to determine whether graduates of a School of Law at TWU would meet the national requirements. Consideration of other issues, whether by the Approval Committee or the Special Advisory Committee, would be extraneous to that mandate. Consideration of other issues would also be amending the requirements for approval part way through the approval process which is contrary to principles of procedural fairness.

Should the Federation elect to proceed with the Special Advisory Committee notwithstanding the above noted concern, a second concern would then be with respect to the record and representations available for consideration by the Special Advisory Council. The terms of reference indicate that the Special Advisory Committee would take into account all representations received by the Federation to date including any representations by TWU. This creates procedural unfairness. TWU is aware that the Federation has received letters from various people and groups. However, in reliance on the advice in your December 4, 2012 letter to Dean Flanagan (copied to us) that such matters are not relevant to the Approval Committee's consideration of TWU's proposal, the University did not deem it necessary to fully respond to each of those letters.

There is considerable support for the School of Law across the country. Again, in reliance on your letter we have intentionally not requested supporters of the School of Law to write to the Federation. There has clearly been an organized campaign by opponents of TWU's proposal that has largely gone unanswered by TWU. We have not attempted to "balance the ledger" or make substantive submissions as we had no notice or any indication whatsoever that such was necessary. In fact, the converse was communicated to TWU. If the record on which this matter is now to be reviewed is "representations received by the Federation to date," the University is placed at a significant disadvantage which, in our view, would constitute procedural unfairness.





We trust the Federation will reconsider the creation of a Special Advisory Committee and proceed with a review by the Approval Committee of TWU's proposal pursuant to its stated mandate.

Yours truly,

TRINITY WESTERN UNIVERSITY

Jonathan S. Raymond, Ph.D.

President

JSR/hkp





BY E-MAIL (Original By Mail)

May 17, 2013

Federation of Law Societies of Canada World Exchange Plaza 45 O'Connor Street, Suite 1810 Ottawa, ON K1P 1A4

Attention:

John J. L. Hunter, QC

Chair of the Special Advisory Committee on Trinity Western University's

Proposed School of Law (the "Special Advisory Committee")

Dear Sirs/Mesdames:

Re: Response to Special Advisory Committee

We write in relation to your letter of May 3, 2013 to Dr. Jonathan Raymond and the mandate given to the Special Advisory Committee by the Federation of Law Societies of Canada (the "Federation"). We thank you for your letter, but TWU continues to have serious concerns with the creation of the Special Advisory Committee.

Canada's law societies are charged with regulating the legal profession in the public interest. They have each approved a national requirement that reflects their collective view as to what is necessary to ensure that potential new members graduating from a law degree program in Canada are competent to practice and understand their professional and ethical obligations. With the express approval of each law society in Canada, the Federation established the Canada Common Law Program Approval Committee (the "Approval Committee"), which applies the national requirement to each proposed new law degree program. As you have noted, TWU's Proposal for a School of Law (the "Proposal") is in the process of being reviewed by the Approval Committee.

As has been clearly and correctly articulated by the Federation, the Approval Committee has no mandate or authority to consider TWU's Community Covenant (the "Covenant") outside of the national requirement. The authority of the Federation arises only from the express approval

given by each of the 14 Canadian law societies to the national requirement and the Approval Committee. The Federation has no mandate with respect to matters outside of the national requirement. You have attempted to address this lack of mandate by indicating that the Special Advisory Committee will only provide advice to the Federation. While this may be true, it does not address the fact that the Federation itself has no jurisdiction from the law societies to consider or make recommendations with respect to the Covenant.

On its website, the Federation attempts to justify the existence and role of the Special Advisory Committee on the basis that issues raised about the Covenant by certain advocates opposing TWU's Proposal "were not anticipated when the national requirement was developed". With respect, this is not a justification for reaching outside of the Federation's mandate. In accordance with administrative law principles, the Federation must remain within that mandate.

TWU accepts that it must, and will, provide an institutional setting that appropriately prepares lawyers for public practice and for the diversity that its graduates will encounter. In Trinity Western University v. B.C. College of Teachers? ("TWU v. BCCT"), the Supreme Court of Canada found that such was the case with respect to TWU's education program and further held that denial of approval was unlawful since there was no "specific evidence" that graduates would not uphold the basic values of non-discrimination. If such were not also the case with respect to TWU's School of Law Proposal, presumably the Approval Committee would address that in considering whether graduates would meet the "Ethics and Professionalism" component of the "Competency Requirements" of the national requirement. In the context of the national requirement and the role of the Approval Committee, it is not relevant that the Covenant was not specifically anticipated. Either TWU's Proposal meets the national requirement or it does not (and we obviously believe strongly that it does).

The only purpose for the proposed work of the Special Advisory Committee is to provide advice to the Federation, and presumably through the Federation to its member law societies, pertaining to the religious foundations of TWU. It does not appear that the law societies have solicited this advice. The Federation is interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread. For these reasons, TWU objects to the establishment and mandate of the Special Advisory Committee. We urge the Special Advisory Committee to recommend to the Federation that this matter is, as has been maintained by the Federation in the past, outside of the Federation's mandate. To the extent that matters are external to the national requirement and the work of the Approval Committee, they are of a political nature and, if relevant at all, best left to the Ministry of Advanced Education in British Columbia.

¹ http://www.flsc.ca/_documents/TWUQuestionsandAnswers.pdf

^{2 [2001] 1} S.C.R. 772

³ TWU v. BCCT at para 38. See also paras, 12-13.

It is clear that there has been an organized political campaign to oppose TWU's Proposal, which commenced with the letter from the Council of Canadian Law Deans. You should be aware that in preparing the Proposal, TWU specifically consulted with a number of law deans, including all of the law deans in British Columbia. None of them raised any issues or concerns about the Covenant or TWU's religious nature.

All of that having been said, there are responses to all of the significant objections raised in the various submissions that you provided TWU with your letter of May 3, 2013. Below you will find TWU's responses, but these are provided with an express reservation of all of TWU's rights to seek legal redress against the Federation and any individual law society arising from the work of the Special Advisory Committee, including with respect to jurisdictional challenges, should that be necessary in the future.

RESPONSES TO OBJECTIONS RAISED BY OPPONENTS OF TWU's PROPOSED SCHOOL OF LAW

It would be very difficult to respond to each and every discrete point raised in the unsolicited letters and submissions sent to the Federation, particularly given the short period of time you allowed. The letters in opposition to the Covenant and TWU's Proposal raise a number of similar arguments and we will address these in a summary format. We will provide examples of statements of opposition as appropriate to demonstrate the flaws in the reasoning of TWU's opponents. As part of the legal team that represented TWU in TWU v. BCCT, the writer can say that most of these arguments were also made in that case and were rejected by the Supreme Court of Canada.

(a) Compatibility of the Covenant with Training in Ethics and Professionalism

A number of opponents have suggested that the Covenant is incompatible "with the ethical and legal training appropriately required of those seeking entry into the legal profession". West Coast LEAF has gone so far as to argue that, because of the Covenant, TWU "cannot impart on prospective lawyers a sufficient understanding of the ethical duty not to discriminate and to honour the obligations enumerated in human rights laws". Others suggest that TWU is "not up to the challenge of having an open, honest, meaningful discussion about its policies and practices" and that TWU "cannot be trusted to promote [a] constitutionally mandated understanding" of equality.

⁴ Egale Canada letter, January 25, 2013

⁵ See West Coast LEAF letter, February 25, 2013, page 3.

⁶ Letter from students of Schulich School of Law, undated

⁷ National Association of Women and the Law, March 8, 2013

These arguments are wrong at law, intellectually flawed, discriminatory in themselves and, at a minimum, deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

It should be beyond question that TWU acknowledges that human rights laws and section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation. The courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life. We trust that you have access to TWU's full proposal, including the course outlines contained therein. You will note that standard texts are proposed for such topics, which reference the historical inequality suffered by homosexuals. No course covering section 15 of the *Charter* or educating students on provincial human rights protections would be complete without fully addressing cases such as *Vriend v. Alberta*⁸, *Egan v. Canada*⁹, and *Reference re Same-Sex Marriage*. We are certain that the Approval Committee will be reviewing these course outlines as part of its work in assessing the academic program to be offered at TWU.

You will also note that TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course on Ethics and Professionalism (LAW 602). A summary description of this mandatory course in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities. [Emphasis added]

TWU is committed to fully and appropriately addressing ethics and professionalism and the opponents of the Porposal cannot credibly argue otherwise. We are certain that the Approval Committee will find more than sufficient coverage of these topics.

The opponents of our Proposal must therefore be suggesting that the very fact of the Covenant and the religious beliefs inherent therein, undermine the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be "equipped to deal with students" and be unable to "offer comfort and support to

^{8 [1998] 1} S.C.R. 493

^{9 [1995] 2} S.C.R. 513

^{10 [2004] 3} S.C.R. 698

¹¹ TWU Proposal, page 22. See also full description of course at page 93.

the students" 12. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools. ¹³

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism. TWU agrees with Egale Canada that "the dignity and value of all individuals irrespective of their sexual orientation ... now form part of the fabric of professional ethics and the rule of law". Each graduate of a TWU School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Covenant. In this regard, we note that there are many TWU graduates who have gone on to Canadian law schools and are now successfully practicing law across Canada.

As evident from the submissions received by the Federation, there are students currently at public law schools that hold these same religious beliefs¹⁵. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one suggests that they will not do so.

The oaths that graduating law students will take before being admitted to practice law require them to uphold the laws and rights and freedoms of all persons. For example, the oaths used in Ontario and British Columbia contain the following statements, respectively:

¹² B.C. College of Teachers Factum in TWU v. BCCT, para. 121. Note that when intervening in TWU v. BCCT, Egalè Canada made similar arguments.

¹³ TWU v. BCCT, paras, 32-33

¹⁴ See letter from Egale Canada, dated January 25, 2013

¹⁵ See letter from "Christian law students across Canada" dated March 10, 2013 indicating that the students "hold [the Biblical principles on which TWU's Covenant is based] trust regardless of the law school [they] attend". See also letter from current UBC law students dated March 19, 2013 where they make this same point: "Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law."

I shall champion the rule of law and safeguard the rights and freedoms of all persons 16.

...uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia, 17

If the opponents' line of reasoning prevails, it equates to denying accreditation to individuals on the basis of religious belief. The Supreme Court of Canada specifically addressed this concern in TWU v. BCCT:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. 18

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Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society. 12

It would clearly be abhorrent to suggest that the many lawyers across Canada holding similar religious views to those addressed in the Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs²⁰. While the opponents of TWU's Proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Covenant are a basis upon which TWU's application should be delayed or denied. As found by the Supreme Court of Canada, they are not a basis upon which the Federation should anticipate that graduates will fail to meet their professional and ethical obligations.

(b) TWU Graduates will require "Additional Study"

In a related argument, a number of opponents say that TWU should not have a School of Law as its students should "undertake additional study ... similar to the process for foreign trained lawyers" or that TWU graduates should not "become licensed to practice law without

¹⁶ Oath to practice law in Ontario as a barrister and solicitor (Bylaw 4(21): http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805

¹⁷ Barristers' and Solicitors' Oath: http://www.lawsociety.bc.ca/docs/publications/mm/oath.pdf

¹⁸ TWU v. BCCT, para, 33.

¹⁹ TWU v. BCCT, para, 36

²⁰ See Martin v. Law Society of British Columbia, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also Smith & Rhuland v. The Queen, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

²¹ West Coast LEAF letter, February 5, 2013.

further study and entrance requirements"²². This is presumably because such opponents believe that the Covenant will "impair the development of critical thought and legal analytical skill"²³ or the TWU students will not "remain independent and appropriately value-oriented"²⁴.

We have already noted how deeply offensive this reasoning is to lawyers and law students holding religious beliefs similar to those embodied in the Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience in order that they be competent to practice law.

There is a serious logical flaw in the argument. It is clear from the submissions sent to the Federation that existing law schools have: (1) students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. The current law schools have apparently not undermined these students' and lawyers' religious beliefs; and neither should they try to do so. Lawyers are not required to all believe the same way concerning issues of sexual morality. It is only required that their conduct be ethical and professional.

Again, we note that this same point was argued in TWUv. BCCT. The College of Teachers said that TWU education students should be required to "complete their fifth year of professional teacher education through an approved program at a public university". The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year. ²⁶ [Emphasis added]

These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. As stated by a number of Christian law students across the country in their submission to the Federation: "If commitment to Biblical principles results in the denial of a private institution as capable of

²² National Association of Women and the Law letter, March 8, 2013.

²³ Letter from UBC law students, March 14, 2013.

²⁴ Letters from students at a number of law schools. See for example, letter from UVic law students dated March 12, 2013.

²⁵ B.C. College of Teachers Factum in TWU v. BCCT, para, 118.

²⁶ TWU v. BCCT, para. 32

teaching law, this implicates our competence as future lawyers also. ... [A]dhering to religious beliefs does not equate to future discriminatory conduct". The Supreme Court of Canada agrees with these Christian students:

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.28

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.²⁹

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. 30

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.³¹

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be conclusive in your deliberations as well.

(c) TWU v. BCCT is Binding Law

The opponents of TWU argue that TWU v. BCCT is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that acknowledging TWU's freedom of religion and association rights to maintain the Covenant would involve a "race to the bottom" since not all human rights legislation across the country contain the same provisions. Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is "limited to BC law" and is simply a finding that TWU is in "compliance with B.C. legislation". It has been argued that human rights provisions recognizing religious associational rights are not applicable (despite the Supreme Court of Canada's

²⁷ Letter from "Christian law students across Canada" dated March 10, 2013.

²⁸ TWU v. BCCT, para, 19

²⁹TWU v. BCCT, para, 33

³⁰ TWU v. BCCT, para. 35

³¹ TWU v BCCT, para. 36

³² Letter from Ruby Shiller Chan Hassan dated February 28, 2013

³³ For example, see SOGIC letter, dated March 18, 2013, pages 2 and 4.

ruling in TWUv. BCCT) and that refusing TWU's application because of the Covenant would not violate freedom of religion or freedom of association. In particular, SOGIC draws on American jurisprudence, where there is no constitutional equality guarantee such as s.15 of the Charter, to argue that it is acceptable to allow TWU to exist, but also deny it approval of its programs. This is a surprisingly impoverished view of Canadian equality rights.

As already noted, many of the arguments advanced by the opponents of TWU's Proposal were also made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. It should be clear that the decision in TWU v. BCCT was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. We will address a number of the specific legal arguments made by opponents in their attempt to distinguish TWU v. BCCT.

(i) Section 41 of the B.C. Human Rights Code (and similar provisions)

In TWU v. BCCT, the Court made reference to section 41 of the Human Rights Code in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution³⁴. These were passing references, but the Court's analysis was much broader, based on preserving human rights and Charter values in acknowledging TWU's right to a teacher education program. This is conveniently summarized by the following quotes:

Consideration of human rights values in these circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values. Freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation...

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In Ontario Human Rights Commission v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. 35

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*³⁶, the Supreme Court of Canada wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion". In *Brossard (Town) v. Quebec (Commission des droits de la*

³⁴ TWU v. BCCT, paras.32 and 35.

³⁵ TWU v. BCCT, paras. 34-35

^{36 [1984] 2} S.C.R. 603

³⁷ At 626 (S,C.R.)

personne)³⁸ Beetz J. held that a similar provision promotes "the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits³³⁹. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.⁴⁰

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada, not just in B.C..⁴¹ It is trite to point out that all such legislation must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU is permitted to exist as a religious educational community only in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

We would also note that SOGIC has been under inclusive in listing protections granted to religious groups such as TWU in human rights legislation. For example, no reference is made to sections 4 and 6 of the Saskatchewan Human Rights Code, which state:

Right to freedom of conscience

Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free association

6 Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

SOGIC also argues that s.41 and similar provisions do not protect TWU as, they say, TWU does not promote the interests of individuals as members of an identifiable group nor "exclude individuals who do not share its religious beliefs"⁴². This misinterprets and misapplies the *Human Rights Code*. Specifically, it ignores the decision in *Vancouver Rape Relief Society v. Nixon*⁴³ where the Court of Appeal held that an organization is *not* required

^{38 [1988] 2} S.C.R. 279

³⁹ At 324 (S.C.R.). See also St. James Community Service Society v. Johnson, 2004 B.C.S.C. 1807 and Sahota and Shergill v. Shri Guru Ravidass Sabha Temple, 2008 B.C.H.R.T. 269

⁴⁰ Gillis v. United Nations Native Society, [2005] BCHRT 301 at para: 21, Sahota, supra. at para. 37.
41 See, for example, Ontario (Human Rights Commission) v. Brockie, 43 C.H.R.R. D/90 (Ont. Div. Ct.); Smith v. Knights of Columbus, 2005 BCHRT 544; Garrod v. Rhema Christian School (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); Kearley v. Pentecostal Assemblies Board of Education, [1993] N.H.R.B.L.D. no. 1 (Nfld. Bd. Inq.); Schroen v. Steinbach Bible College (1999); 35 C.H.R.R. D/1 (Man. Bd. Inq.)
42 SOGIC letter, March 18, 2013, page 5.

^{43 2005} B.C.C.A. 601 (leave application denied, February 1, 2007, S.C.C. No.31633)

to demonstrate that it exclusively provides services to a group enumerated under s. 41 in order to be protected by that section⁴⁴.

(ii) Civil Marriage Act

While it is without question that there have been some important societal changes since *TWU* v. *BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*⁴⁵ are worth noting:

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

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

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

This language again shows that the recognition of same-sex marriage was not intended to undermine freedom of religion or freedom of association by those holding religious beliefs that marriage is "the union of a man and woman to the exclusion of all others". The portion of the Covenant to which TWU's opponents object indicates nothing beyond such religious beliefs.

(iii) Hindering Freedom of Religion, Freedom of Association and Equality Rights

Opponents have argued that denying approval of TWU's School of Law Proposal because of the Covenant will not impair the constitutional rights of TWU and the individuals comprising its community⁴⁶. They promote a penurious view of these *Charter* rights.

Citing Saskatchewan (Human Rights Commission) v. Whatcott⁴⁷, SOGIC argues that denying TWU's application for a School of Law would not infringe s.2(a) of the Charter as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of

⁴⁴ Nixon, supra., para. 58.

⁴⁵ http://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html

⁴⁶ SOGIC letter, March 18, 2013, pages 5-6

^{47 2013} SCC 11

Canada in Whatcott also relied on the oft-cited words of Dickson J. in R. v. Big M Drug Mart⁴⁸ that the "essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person choses, the right to declare religious beliefs openly and without fear of hindrance or reprisal..." (emphasis added).

In Alberta v. Hutterian Brethren of Wilson Colony of, it was accepted that Alberta's mandatory photo requirement for driver's licensing breached the s.2(a) rights of the Hutterian Brethren because of their religious objection to having their photos taken. Applying the logic of TWU's opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver's licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice. This is precisely how the Supreme Court of Canada analyzed the matter in TWU v. BCCT:

Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system.³¹

SOGIC draws on American jurisprudence to suggest that only the existence of TWU as a religious community ought to be tolerated, but that its programs need not receive "official imprimatur" or be granted "equal access" In TWU v. BCCT, the College of Teachers made the same argument, relying on similar cases (including Bob Jones University), that it was right to withhold the imprimatur that approval of TWU's program would bring. 53 These arguments were clearly rejected by the Supreme Court of Canada.

Further, and surprisingly, SOGIC fails to recognize the importance of the equality right in the Canadian context. Section 15 of the *Charter* prohibits the imposition of burdens or withholding of benefits on account of personal characteristics, including based on religion. The leading definition of discrimination is still as articulated by McIntyre J. in *Andrews v. Law Society of British Columbia*⁵⁴:

... discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

^{48 [1985] 1} S.C.R. 295

⁴⁹ At p.336

^{50 [2009]} SCC 37

⁵¹TWU v. BCCT, para, 35

⁵² SOGIC letter, March 18, 2013, page 7.

⁵³ B.C. College of Teachers Factum in TWU v. BCCT, paras, 57, 79, 111, 116

^{54 [1989] 1} S.C.R. 143

Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.⁵⁵ [Emphasis added]

The denial of approval of TWU's School of Law application because of the Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community. As evidenced by many of submissions received by the Federation, opponents of TWU's proposal presume that Christians at TWU have "hostility to gay and lesbian people" and hide "homophobia in Christian values". There is absolutely no evidence for these statements about TWU or the members of its community. These opponents are guilty of the same type of prejudice and stereotyping about which they say the Federation should be concerned.

All of the opponents of TWU's proposal focus solely on the Covenant. This is, in fact, a focus by them on TWU's sectarian nature⁵⁸. The Federation's creation of the Special Advisory Committee continues this disturbing focus and we strongly encourage both the Special Advisory Committee and the Federation to earefully consider the following words of the majority in TWU'v. BCCT:

We would add that the continuing focus of the BCCT on the sectarian nature of TWU is disturbing. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system. ⁵⁹ [Emphasis added]

If there are pedagogical or other problems with the education to be provided at TWU's proposed School of Law, they will presumably be detected by the Approval Committee, the Ministry of Advanced Education, or both. As a matter of constitutional and human rights, it is not open for the Federation to focus solely on the sectarian nature of TWU, as communicated by the Covenant, to undermine the normal approval processes. The Federation and its law society members are not permitted to express moral disapprobation of the Christian beliefs on which TWU is founded. Again, we urge that the Special Advisory Committee advise the Federation to discontinue any further consideration of the Covenant and TWU's religious nature as separate from the Approval Committee.

⁵⁵ At pp.174-175. This definition recently reiterated by the S.C.C. in Withler v. Canada, [2011] 1 S.C.R. 396 at para. 29 and Hutterian Brethren, supra. at para, 108

⁵⁶ Letter from Ruby Shiller Chan Hassan dated February 28, 2013

⁵⁷ Letter from UBC law students, dated March 14, 2013.

⁵⁸ Which is derided by the lawyers at Ruby Shiller Chan Hassan as a "fundamentalist and narrow interpretation of Christianity"

⁵⁹⁻TWU v. BCCT, para. 42

(d) Diversity in the Legal Profession and Academic Freedom

Some opponents suggest that approval of TWU's program will "diminish diversity in the legal profession" ⁶⁰. It is peculiar, to say the least, that these advocates seek to silence a perspective different from their own within the Canadian legal community in name of diversity. While they express a concern that TWU's School of Law will have a "limited tolerance of diversity", their opposition exhibits exactly that trait.

There is nothing inimical to Canadian society contained in the Covenant. Its contents are to be expected in the context of an evangelical Christian university. As noted by a number of others, including uOttawa OUTLaw, the Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice". As we are sure you will agree, the legal profession encourages lawyers to be inculcated in these values. All opponents focus on only one aspect of the Covenant, ignoring the balance of its contents, which are not only unobjectionable but universally laudable.

As stated by Dickson J. in Big M Drug Mart, "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct". As then noted in TWU v. BCCT, "the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected." The TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

TWU's proposed School of Law should be assessed on its merits, based on the national requirement. As the only privately funded law school in Canada, it may provide a slightly different perspective, but this should be welcomed. As the Supreme Court of Canada suggested, Canada is enriched by having a diversity of institutions. There is no principled reason that secular, public institutions should have a monopoly on legal education in Canada⁶³.

A few opponents have questioned academic freedom at TWU. While we expect that this issue is outside of what will be considered by the Special Advisory Committee, we would note for your benefit that TWU maintains a strong policy on academic freedom that was

⁶⁰ Letter from UBC law students, dated March 14, 2013

⁶¹ At p.336.

⁶² TWU v. BCCT, para. 33:

⁶³ Law students from UBC have written in their letter of March 19, 2013 that, in their experience, their religious beliefs are "often openly derided" in the context of the explicitly secular emphasis at that institution. Not all secular law schools should be judged by this experience, but it does provide context for the opposition made by students at a number of law schools in Canada.

affirmed by British Columbia's Degree Quality Assessment Board in 2004. TWU is a member of the Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. There will be a full range of academic inquiry and debate within TWU's School of Law.

Conclusion

The arguments of opponents to TWU's proposed School of Law relate to the Covenant and TWU's religious character. As set out above, most of these arguments have already had a thorough hearing before, and been rejected by, the Supreme Court of Canada. One opponent, Egale Canada, raised some of the exactly same arguments as an intervenor in TWU v. BCCT as it now references in its letter to the Federation. The Supreme Court of Canada decision in that case should be considered determinative for the reasons set out above.

There is no "specific evidence" that TWU graduates will fail to uphold the basic values of non-discrimination⁶⁴. This does not leave a legitimate role for the Special Advisory Committee. We submit that the appropriate course is for the Special Advisory Committee to advise the Federation and its members that there are no relevant additional considerations to be taken into account in determining whether graduates of a TWU School of Law should be eligible to enroll in the admissions program of any Canadian law society.

We believe that we have answered the important points raised by TWU's opponents. If there are other issues on which you would like to receive TWU's position or views, or if there are additional documents that you would like to review that we may be able to provide, please do not he sitate to contact the writer.

Yours truly,

Kevin G. Sawatsky

Vice-Provost (Business) and University Legal Counsel

CC:

Gerald R. Tremblay, President

Kuhn LLP

⁶⁴ TWU v. BCCT at para.38. See also paras. 12-13.



.MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

Gérald R. Tremblay, C.M., O.Q., Q.C.,

Date

March 21, 2013

Ad. E. President

Federation of Law Societies of Canada

Jonathan G. Herman Chief Executive Officer

Federation of Law Societies of Canada

From

John B. Laskin

Re

To

Trinity Western University School of Law Proposal-

Applicability of Supreme Court decision in Trinity Western University v. British

Columbia College of Teachers

Overview

You have asked for my advice on the extent to which the decision of the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*,¹ rendered in 2001, applies to consideration of the Trinity Western University School of Law proposal, which TWU has submitted to the Canadian Common Law Program Approval Committee.

Before setting out my advice on this question I will first review in some detail the Supreme Court's decision. Next, I will discuss the stage of the approval process at which the *BCCT* case could come into play. I will then proceed to my conclusion: that if approval of the TWU proposal were refused on the basis of concerns about its discriminatory practices, and that decision were challenged, the *BCCT* decision would govern the result. As discussed below, I base that conclusion on the parallels between the circumstances in *BCCT* and those posited here, the currency of the approach taken in *BCCT* to the balancing the *Charter* values of equality and religious freedom, and the likelihood of an absence of evidence of the type of harm that would justify upholding the decision. I conclude by considering a number of the arguments that have been put forward in support of the view that *BCCT* would not apply.

The Supreme Court decision in BCCT

Factual background

The *BCCT* case arose from an application by TWU to the College of Teachers for approval of its program of teacher education for the purpose of certifying its graduates as eligible to teach in the province's public schools. The BCCT was authorized by statute to carry out this approval

^{1 2001} SCC 31 ("BCCT" or "the BCCT case")

function. Its statutory objects included "to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership." Its policies for approval of teacher education programs for certification purposes set three criteria for approval: context (including depth and breadth of personnel, research and other scholarly activity), selection (including an admission policy that recognized the importance of academic standing, interest in working with young people and suitability for entrance into the teaching profession) and content of the program.

Though there was no evidence that the TWU program would not meet these criteria, the BCCT rejected the request for approval. It did so on the basis that TWU's proposed program followed discriminatory practices, which were contrary to the public interest and public policy. The focus of the BCCT's concern was the requirement for students at TWU to sign a "Community Standards" document. This document included an agreement to "refrain from practices that are biblically condemned." Among the practices specified were "sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography." Faculty and staff were to sign a similar document. The requirement, in the view of the BCCT, had the effect of excluding persons from TWU on the basis of their sexual orientation.

TWU sought judicial review of the BCCT's decision. It challenged the BCCT's jurisdiction to consider the TWU practices that it regarded as discriminatory, and asserted that even if the BCCT had jurisdiction, there was no evidence of discriminatory consequences resulting from these practices.

Jurisdiction to consider alleged discriminatory practices

The Supreme Court first held that it was within the jurisdiction of the BCCT to consider TWU's discriminatory practices. Since teachers were a medium for the transmission of values, it was important that future teachers understand the diversity of Canadian society. In determining suitability for entrance into the teaching profession, the BCCT was therefore entitled to take into account "all features of the education program at TWU," and it would not be correct "to limit the scope of [the BCCT's statutory objects] to a determination of skills and knowledge." The BCCT's public interest jurisdiction made it appropriate for it to consider concerns about equality. Though it was not directly applying either the *Charter* or human rights legislation, it was entitled to consider them in determining whether it would be in the public interest to allow public school teachers to be trained at TWU.²

The Court determined, based on the prevailing standard of review jurisprudence and consideration of the nature of the BCCT's expertise, that the BCCT's decision should be reviewed on the standard of correctness. It went on to consider two questions: first, whether the requirement of adherence to the "Community Standards" document, and the program and practices of TWU, showed that TWU was engaging in discriminatory practices; and second, whether, if so, these discriminatory practices established a risk of discrimination sufficient to conclude that TWU graduates should not be admitted to teach in the public schools.

² Id. at paras. 13, 26-27

³ Id. at paras. 15-19

Existence of discriminatory practices

In considering the first question, the Court found that a homosexual student would not be likely to apply to TWU. It observed, however, that TWU was "not for everybody" — rather, it was designed to address the needs of people who share certain religious convictions. Its admissions policy, the Court found, was not sufficient to establish discrimination within the meaning of the *Charter*. It went on: "To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 [of the *Charter*] would be inconsistent with freedom of conscience and religion, which co-exist [sic] with the right to equality." While the BCCT was entitled to consider concerns about equality, it was also required to consider issues of religious freedom.

The Court noted in this connection that British Columbia's human rights legislation accommodates religious freedom by providing that a religious institution does not breach the legislation when it prefers adherents of its religion, and that the B.C. legislature must not have considered that university education with a Christian philosophy was contrary to the public interest, since it had passed legislation in favour of TWU.5 It also referred to the contribution made by religious institutions to the diversity of Canadian society, and the tradition in Canada of religion-based institutions of higher learning.6 While homosexuals might be discouraged from attending TWU, that would not prevent them from becoming teachers. On the other hand, the Court stated, the freedom of religion of students at TWU would not be accommodated if they were denied that opportunity.7

Sufficient risk of discrimination

The central issue in the case, therefore, was how to reconcile the religious freedom of individuals wishing to attend TWU with the equality concerns of public school students, their parents, and society generally. The Court held that the potential conflict between the two sets of rights and values should be resolved though their proper delineation.⁸

The proper place to draw the line, the Court held, was between belief and conduct. It followed that "[a]bsent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected." There was no evidence that graduates of TWU would not treat homosexuals fairly and respectfully, and no evidence of discriminatory conduct by any graduate of the teaching program that TWU had been offering jointly with Simon Fraser University. Absent evidence that training teachers at TWU would "pose a real risk to the public educational system," the BCCT had been wrong to refuse approval. "In considering the religious precepts of TWU instead of the actual impact of those beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations." If there were evidence that particular teachers in the public school system actually engaged in discriminatory conduct, discipline proceedings before

⁴ *Id*. at para. 25

⁵ Id. at paras. 28, 35

⁶ Id. at paras. 33-34

⁷ Id. at para. 35

⁸ *Id.* at para. 28

⁹ Id. at para. 36

¹⁰ Id. at paras. 35, 42-43

the BCCT could be taken.¹¹ But there was no basis in the evidence for concluding that graduates of TWU would engage in conduct of this kind.

Stage of the approval process at which BCCT could apply

It is not likely in my view that the *BCCT* decision would be applicable to a decision made by the Approval Committee within the scope of its current mandate. On my understanding of the current mandate of the Approval Committee, it is limited to considering the dimension of the public interest reflected in the national requirement. It may therefore consider the practices of TWU that are alleged to be discriminatory only to the extent of considering whether TWU's mission and perspective would constrain in any respect the teaching of the competencies set out in the national requirement. If the Approval Committee were to conclude that the teaching of the required competencies would be constrained so as to render the TWU School of Law unable to meet the national requirement, that decision would likely not engage the concerns about *Charter* values that underlay the decision in *BCCT*. It would be based not on generalized concerns about discriminatory practices grounded in religious beliefs, but on the conclusion that the TWU program would fail to teach a set of competencies that are required irrespective of religion.¹²

The BCCT decision could however come into play if the mandate of the Approval Committee were expanded to include other dimensions of the public interest, and it then decided to refuse approval of the TWU program based on concerns about discriminatory practices. It could also come into play if, despite the conclusion of the Approval Committee that the TWU program should be approved, one or more of the law societies decided, based on concerns about discriminatory practices and its view of the public interest, to refuse to accept completion of the TWU program as meeting the academic requirements for admission to the profession. Like the BCCT, law societies have been given a public interest mandate.

A variety of threshold issues could arise depending on precisely how and when in the approval process a challenge based on the *BCCT* decision was brought. These include issues of appropriate procedure and the manner in which *Charter* values may be invoked in relation to a decision of a committee of the Federation. I would be pleased to consider these matters further if you would like me to do so. In this discussion, I will focus on the substantive question whether, if a decision to refuse approval of TWU's program were made based on the practices that are alleged to be discriminatory, *BCCT* would govern the result.

Applicability of BCCT

In my view the answer to that question is that it would. I come to this view for three main reasons.

First, if a decision to refuse approval of TWU's program were made based on the practices that are alleged to be discriminatory, there would be a great many parallels between the circumstances that would then prevail and those in *BCCT*. These parallels would include the following.

¹¹ Id. at para. 37

¹² In making this point I do not intend to suggest that the Approval Committee would or should come to this conclusion.

- As in BCCT, the decision under review would be a decision whether completion of a program offered by TWU would meet the academic requirements for entry into a profession.
- As in *BCCT*, the decision would have been made by a body having a mandate to act in the public interest.
- As in *BCCT*, the concerns on which the decision was based would focus on the requirement that students at TWU sign a document in which they agree to abstain from among other things, homosexual sexual activity while attending TWU. (The current document, entitled "Community Covenant Agreement," is cast in somewhat less pointed terms than the document considered in *BCCT*. It no longer speaks of homosexual behavior as a "sexual sin" that is "biblically condemned." Instead it calls on members of the TWU community, "[i]n keeping with biblical and TWU ideals," to voluntarily abstain from, among other things, "sexual intimacy that violates the sacredness of marriage between a man and a woman.")
- As in BCCT, TWU remains a private, faith-based university, founded by the Evangelical Free Churches of Canada and America, established as a university by British Columbia statute, and exempted, in part, from the B.C. Human Rights Code.

Second, the Supreme Court of Canada continues to apply the balancing approach that it took in *BCCT* where more than one set of *Charter* rights or values —in that case the values associated with equality and freedom of religion — are engaged.

The Supreme Court has consistently rejected a hierarchical approach to rights and values, which places some over others. It did so yet again in its very recent decision in Saskatchewan (Human Rights Commission) v. Whatcott. In that case the Court engaged in a balancing of the same two sets of values (along with freedom of expression) that it considered in BCCT, in a manner very analogous to that in BCCT. In so doing it reiterated the statement the Court first made in Big M Drug Mart, the seminal Charter freedom of religion case, that the right to manifest religious belief by teaching is part of "[t]he essence of the concept of freedom of religion." 15

In Whatcott, the Court addressed the constitutional validity of the prohibition of hate speech in Saskatchewan human rights legislation. It was alleged that certain flyers distributed by Whatcott infringed the prohibition by promoting hatred on the basis of sexual orientation; Whatcott maintained that the flyers constituted the exercise of his freedom of expression and freedom of religion. The Court saw the case as requiring it

to balance the fundamental values underlying freedom of expression (and, later, freedom of religion) in the context in which they are invoked, with competing *Charter* rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings. 16

¹³ Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835 at 877

¹⁴ 2013 SCC 11

¹⁵ Id. at para. 159

¹⁶ Id. at para. 66

In striking this balance, which resulted in its severing certain portions of the prohibition but upholding the remainder, and finding the conclusion that there was a contravention of the legislation unreasonable for two of the four flyers in issue and reasonable for the other two, the Court stated that "the protection provided under s. 2(a) [the freedom of religion guarantee] should extend broadly," and that "[w]hen reconciling *Charter* rights and values, freedom of religion and the right to equality accorded all residents of Saskatchewan must co-exist." It also referred to the "mistaken propensity to focus on the nature of the ideas expressed, rather than on the likely effects of the expression."

Just as in *BCCT*, the Supreme Court in *Whatcott* found the proper balance point between equality and freedom of religion values to be the point at which conduct linked to the exercise of freedom of religion resulted in actual harm. Absent evidence of actual harm, it held in both cases, freedom of religion values must be given effect.

This leads to the third reason for concluding that *BCCT* would govern the result in the circumstances posited here: the likely absence of evidence of actual harm. I recognize of course that lawyers in Canada are subject to ethical duties to treat others with respect and avoid discrimination. But in *BCCT*, the Supreme Court was acutely sensitive to the role of teachers as a "medium for the transmission of values." The Court considered it "obvious that the pluralistic nature of society and the extent of diversity in Canada are important elements that must be understood by future teachers." The Court nonetheless had no difficulty concluding that graduates of TWU would "treat homosexuals fairly and respectfully." 20

If the TWU teachers program could be relied upon to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same. It seems very unlikely that evidence could be mounted that lawyers educated at TWU would actually engage in harmful conduct. Just as the Court observed in *BCCT*, disciplinary processes would be available to deal with individual cases of discriminatory behaviour, whether by TWU or by graduates of other common law programs.

Arguments against the applicability of BCCT

Though I conclude for the three reasons just set out that the *BCCT* decision would be dispositive of a challenge to a decision refusing to approve the TWU school of law program based on TWU's alleged discriminatory practices, I will nonetheless consider further the arguments that have been made to the contrary. A number of these arguments are set out in a paper by Professor Elaine Craig entitled "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program." In her paper Professor Craig argues that the legal

¹⁷ Id. at paras. 154, 161

¹⁸ See, for example, rule 5.04 (1) of the Law Society of Upper Canada Rules of Professional Conduct, which provides that

[[]a] lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other licensees or any other person.

¹⁹ Note 1 above at para. 13

²⁰ *Id*. at para. 35

²¹ Canadian Journal of Women and the Law, Vol. 25, No. 1, 2013

context has changed in two respects since BCCT was decided, and that the basis for refusing approval to the TWU school of law would be different from the basis on which the BCCT sought to refuse approval of TWU's teaching program. She argues that the courts' treatment of a decision to refuse approval of the TWU school of law proposal would therefore be different from that reflected in the Supreme Court's decision in BCCT.

The first change in legal context, according to Professor Craig, is the change in the standard of review that the courts would apply to the approval (or non-approval) decision.²³ As indicated above, the Supreme Court applied the correctness standard in considering whether the BCCT's decision was justified.

It is possible that Professor Craig is right in asserting that a court reviewing today a decision like that made by the BCCT would apply the reasonableness standard. In its 2012 decision in Doré v. Barreau du Québec,24 the Supreme Court held that in reviewing discretionary decisions of administrative decision-makers that are required to consider Charter values, it is appropriate to apply the approach to standard of review generally applied in judicial review proceedings, under which the standard of review is ordinarily reasonableness rather than correctness where the decision-maker has specialized expertise and discretionary power. 3 The Court stated that "if, in exercising its statutory discretion, the decision-maker has properly balanced the relevant Charter value with the statutory objectives, the decision will be found to be reasonable."26 Even before Doré, the Court had held in a series of decisions that an administrative body interpreting and applying its home statute (as a law society might be regarded as having done in this case if it decided against approval) should normally be accorded deference, through application of the reasonableness standard, on judicial review.27 In its very recent decision in Whatcott,28 discussed above, the Supreme Court applied the reasonableness standard in reviewing a decision of a human rights tribunal rendered in a context in which equality values, as well as those associated with freedom of expression and freedom of religion, were engaged.

Despite Doré and its antecedents, there also remains in my view a realistic possibility that a reviewing court would apply the correctness standard. The Supreme Court's standard of review case law contemplates that the correctness standard will apply to the determination of at least some constitutional issues, including those in which competing constitutional provisions must be accommodated.²⁹ In Doré itself, the Supreme Court implicitly recognized that the correctness standard may be appropriate in this context when it referred to its decision in BCCT as an example of the application of "an administrative law/judicial review analysis in assessing whether the decision-maker took sufficient account of Charter values." Unlike Doré and Whatcott, this is not merely a case in which Charter values would have to be balanced with

²² Id. at 22-26

²³ *Id.* at 22

²⁴ 2012 SCC 12

²⁵ Id. at paras. 23, 52-56

²⁶ Id. at para. 58

²⁷ Dunsmuir v. New Brunswick, 2008 SCC 9 at para. 54; Smith v. Alliance Pipeline Ltd., 2011 SCC 7 at para. 26; Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61 at para. 39

²⁸ Note 16 above at para. 168

²⁹ Dunsmuir v. New Brunswick, note 28 above at paras. 58, 61

³⁰ Note 25 above at para 32

statutory objectives, but one in which competing *Charter* values must themselves be balanced.³¹ The Supreme Court has laid down a legal rule as to how that balance is to be struck.

Even if a reasonableness standard applied, it does not follow that the decision would be upheld on judicial review. The key factor in the decision in *BCCT* was that there was no evidence of any harm to the public education system arising from the training of teachers at TWU. A finding based on no evidence is not just incorrect; it is unreasonable.³² In *Whatcott*, the Supreme Court set aside two of the human rights tribunal's four determinations on the basis that, having regard to the evidence, the tribunal could not reasonably have reached the result it did by applying the proper legal test.³³ Absent evidence of actual harm, a decision in this case not to approve based on concerns about discriminatory practices would likely be regarded as unreasonable.

The second change in legal context, according to Professor Craig, is that social values have evolved, and that "[t]oday's decision-makers are expected to be much more protective of gay and lesbian equality than were the decision-makers of ten, fifteen or twenty years ago."34

Assuming that this is the case, it is doubtful, in my view, that this evolution of social values would lead to a different outcome today from that in *BCCT*. As discussed above, *BCCT* was not simply an equality case. The core of the Supreme Court's decision in *BCCT* was the appropriate balancing of two sets of *Charter* values, those associated with equality and with freedom of religion.³⁵

The values associated with freedom of religion are at least as deeply embedded today as they were in 2001. I have already discussed the Supreme Court's very recent decision in *Whatcott*, in which the Court spoke of the right to manifest religious belief by teaching, and stated that the protection of freedom of religion "should extend broadly." The Supreme Court's approach to the balancing of values in *Whatcott* in 2013 appears little different from that in *BCCT* in 2001. It is in my view not correct to conclude that changes in social values since the *BCCT* case was decided would lead to a different outcome today.

As already mentioned, Professor Craig also relies, in arguing that the outcome of a challenge to a decision to refuse approval of TWU's law program would be different from that in *BCCT*, on the proposition that the basis for refusing approval to the TWU school of law would be different from the basis on which the BCCT sought to refuse approval of TWU's teaching program. ³⁶ She asserts that a decision not to approve the school of law could, and presumably would, be justified on two grounds. The first is that "it is reasonable to conclude that principles of equality, non-discrimination, and the duty not to discriminate ... cannot competently be taught in a learning environment with discriminatory policies." The second is that "it is reasonable to conclude that the skill of critical thinking about ethical issues cannot adequately be taught by an institution that violates academic freedom and requires that all teaching be done from the

³¹ Whatcott did entail a balancing of constitutional values, but at the first stage of determining the constitutionality of the provision of the human rights legislation was in issue, not at the subsequent stage of reviewing the decision of the human rights tribunal and applying the statute as the Supreme Court had interpreted it. It was only at the second stage that the Court applied the reasonableness standard of review. At the first stage, the standard applied was correctness.

³² Toronto (City) Board of Education v. O.S.S.T.F., District 15, [1997] 1 S.C.R. 487 at para. 44

³³ Note 16 above at para, 201

³⁴ Note 23 above at 25

³⁵ Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835 at 877

³⁶ Note 23 above at 26

perspective that the Bible is the sole, ultimate, and authoritative source of truth for all ethical decision making."

In my view, both of these asserted grounds for refusing approval would be highly questionable. As for the first, as also already mentioned the Supreme Court concluded that graduates of TWU would "treat homosexuals fairly and respectfully."³⁷ It was implicit in its decision that their education at TWU did not detract from their ability to comply with "principles of equality, non-discrimination, and the duty not to discriminate." Professor Craig provides no evidence to support the contention that the position would somehow be otherwise for law students.

As for the second, it proceeds from a view of academic freedom that is by no means universally shared.³⁸ Following its logic would lead to the conclusion that no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. This conclusion cannot be tenable. The second argument, like the first one, also fails to give any recognition to the positive value of religious diversity that the Supreme Court embraced in *BCCT*.

* * * * *

I hope that this memorandum provides the advice that you require on this aspect of the matter. Please let me know if you have any questions arising from it.

JBL/as

37 At para. 35

The TWU policies on academic freedom (available online at http://www.twu.ca/academics/calendar/2012-2013/academic-information/academic-policies/) include these statements:

Trinity Western University is committed to academic freedom in teaching and investigation from a stated perspective, i.e., within parameters consistent with the confessional basis of the constituency to which the University is responsible, but practiced in an environment of free inquiry and discussion and of encouragement to integrity in research. Students also have freedom to inquire, right of access to the broad spectrum of representative information in each discipline, and assurance of a reasonable attempt at a fair and balanced presentation and evaluation of all material by their instructors. Truth does not fear honest investigation.

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE

REPORT ON TRINITY WESTERN UNIVERSITY'S PROPOSED SCHOOL OF LAW PROGRAM

December 2013

This is Exhibit D "referred to in the affidavit of Timothy E. mcGee oc sworn before me at Vancouved this D day of January 20 15

A Commissioner for taking Affidavits for British Columbia

Introduction

- The Canadian Common Law Program Approval Committee (the "Approval Committee")
 is responsible for determining whether existing and proposed common law programs
 meet the national requirement that establishes the knowledge and skills that all
 applicants for entry to the admission programs of the law societies in the Canadian
 common law jurisdictions must possess.
- 2. The Approval Committee has reviewed the application by Trinity Western University ("TWU") for approval of its proposed law school program and has determined that, subject to the concerns and comment described below, if implemented as proposed, the program will meet the national requirement. The Approval Committee's detailed analysis is set out in the chart attached as Appendix "A".
- 3. The Approval Committee's decision is only one step in the process. Pursuant to the British Columbia *Degree Authorization Act* the proposed program also must be approved by the British Columbia Minister of Advanced Education.
- 4. The Approval Committee's report must also be considered by the law societies. Although, in the interests of consistency, the law societies mandated the Approval Committee to determine whether law degree programs meet the national requirement, the law societies continue to have the statutory authority to set policies for admission to the legal profession in their respective jurisdictions.

Background

- 5. Canada's law societies are mandated by provincial and territorial statute to regulate the legal profession in the public interest. A core aspect of this mandate is to determine the criteria for admission to the profession, including the academic requirements for entry into law society bar admission or licensing programs.
- 6. Each law society in the common law provinces and territories requires applicants to its bar admission or licensing program to hold a Canadian common law degree or its equivalent. Notwithstanding this common requirement, until a few years ago, there was no national standard for the Canadian common law degree. Recognizing the desirability of a common standard, in 2007 the Federation of Law Societies of Canada (the "Federation") established the Task Force on the Canadian Common Law Degree (the "Task Force") to recommend national academic requirements for Canadian common law degrees.
- 7. The Task Force report, released in October 2009 (available at www.flsc.ca), recommended the adoption of a national requirement outlining the knowledge and skills that all applicants for entry to the bar admission programs of the law societies in the Canadian common law jurisdictions must possess, and the law school academic program and learning resources law schools must have in place. The national

- requirement was approved by Canada's law societies in 2010 and will come into force for law school graduates in 2015. It is attached as Appendix "B" to this report.
- 8. Following approval of the national requirement, the Federation established the Common Law Degree Implementation Committee (the "Implementation Committee") to make recommendations on how to measure compliance with the national requirement.
- 9. The Implementation Committee report, released in August 2011, recommended that the Federation establish the Approval Committee and that the committee be mandated to determine whether existing and proposed law school programs meet the national requirement. The Implementation Committee prescribed in some detail how the Approval Committee should assess compliance and also made recommendations on the composition of the Approval Committee. The full report of the Implementation Committee is available at www.flsc.ca.

Canadian Common Law Program Approval Committee - Composition and Mandate

- 10. The recommendations of the Implementation Committee were approved by each of the law societies, and the Approval Committee was established in January 2012.
- 11. The Approval Committee comprises seven members, each of whom possesses specific qualifications relevant to the role. The membership of the Approval Committee must include three current or former law deans or law school administrators, one law society CEO or designate, and three lawyers with experience in law society regulation. All members of the Approval Committee are appointed by the Council of the Federation.
- 12. The current members of the Approval Committee are Laurie H. Pawlitza, (Chair), former Treasurer of the Law Society of Upper Canada and Federation Council member for Ontario; Catherine S. Walker, Q.C., former President, Nova Scotia Barristers' Society and Federation Council member for Nova Scotia; Stephen G. Raby¹, Q.C., former President, Law Society of Alberta and Federation Council member for Alberta; Alan Treleaven, Director of Education and Practice, Law Society of British Columbia; Dean Lorne Sossin, Osgoode Hall Law School; Dean Mary Anne Bobinski, Faculty of Law, University of British Columbia; and Dean Daniel Jutras, Faculty of Law, McGill University.²
- 13. The core function of the Approval Committee is to determine whether law school programs, existing or proposed, comply with the national requirement. The committee's complete mandate is attached as Appendix "C".

¹ Stephen Raby, Q.C. joined the Approval Committee in October 2013, filling a vacancy on the committee created by the resignation in October 2013 of Babak Barin, former Council member for the Barreau du Québec.

² As discussed below, Deans Sossin, Babinski and Jutras did not participate in the review of TWU's proposed law school program.

- 14. The Approval Committee has begun the process of assessing the existing common law programs to ensure that their graduates will meet the requirements for entry into law society admission programs when the national requirement comes into effect in 2015. Since 2012, existing programs have been required to submit an annual law school report form for the Approval Committee's review indicating how their programs meet the national requirement or how non-compliant aspects will be brought into compliance by 2015.
- 15. The process is an iterative one that may involve many exchanges between the Approval Committee and the institution. The process continues until the Approval Committee is satisfied that it has all of the information needed to properly assess the program.
- 16. If the Approval Committee has questions about a program's compliance with the national requirement, the committee may seek additional information from the institution. Pursuant to the recommendations of the Implementation Committee, compliance issues are categorized as a deficiency, a comment, or a concern. The identification of a deficiency indicates non-compliance with one or more elements of the national requirement. In such cases the Approval Committee will engage in discussions with the institution until the deficiency has been resolved or the committee determines that a resolution is not possible. Where an element of the national requirement is currently met, but compliance is at a minimum level that could deteriorate to a deficiency, the Approval Committee may raise the matter as a concern. A school may choose to address the concern, but no action is required for approval of the program. A comment relates to a matter that does not affect compliance, but that the Approval Committee wishes to bring to the attention of the institution.
- 17. Prior to the development and adoption of the national requirement, there had been no new law schools in Canada for 30 years. Before the Approval Committee was established, new law school programs at three universities Lakehead University, Thompson Rivers University, and the Université de Montréal were approved by an ad hoc committee established by the Federation. The ad hoc committee determined that each of the programs, would, if implemented as proposed, meet the national requirement. Each was given preliminary approval and is now subject to annual review by the Approval Committee.
- 18. Since its establishment in 2012, the Approval Committee has been responsible for the assessment of proposed new law school programs. The process for assessing proposed new programs is essentially the same as the process for approving existing programs. The Approval Committee reviews the written proposal and implementation plan submitted by the institution to determine whether, if implemented as proposed, the program would meet the national requirement. As with existing programs, the process is iterative and may involve a number of exchanges of information. Until a program is operating and has produced its first graduating class, assessment of whether it meets the national requirement is prospective only. To reflect this, a proposed program that would meet the national requirement will be given preliminary approval. Once a new

program has received *preliminary approval* it is subject to the annual review process in the same manner as existing law school programs.

Trinity Western University Proposal for a School of Law

- 19. In June 2012, TWU submitted a proposal to the Approval Committee for the establishment of a new law school program. A copy of the proposal is attached as Appendix "D".
- 20. Located in Langley, British Columbia, TWU was established in 1962 and was recognized by the government of British Columbia as a degree-granting institution in 1979. It has a student body of approximately 4,000 students. TWU currently offers more than 40 undergraduate and 16 graduate programs, including professional programs in nursing (B,SC.N., M. Sc.N.), education (BA Education), and business (M.B.A., B.B.A., B.A. Leadership).
- 21. TWU is an evangelical Christian university that requires all students, faculty and staff to abide by a Community Covenant that sets out behavioural expectations. In addition to detailing expected behaviour, the Community Covenant contains a list of prohibited behaviour, the most controversial of which has been the requirement to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." The Community Covenant distinguishes between faculty and staff on the one hand and students on the other in terms of the precise commitment required. For faculty and staff "[s]incerely embracing every part of the covenant is a requirement for employment." While students are required to abide by the expectations contained in the Community Covenant, it is recognized that "not all affirm" the university's theological views. A copy of the Community Covenant is attached as Appendix "E".
- 22. TWU's proposal describes a comprehensive law school program that "will focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas." The proposal contemplates a first year class of 60 students, with the student body growing to 170 by the third year of operation. The focus of the proposed curriculum is on the development of the core competencies required for the practise of law. To that end the program has a strong emphasis on the development of practical skills. Two of the mandatory courses Introduction to Practice Skills and the Practice of Law, and Practice Management focus on the development of practical skills and knowledge, and assignments in upper year courses will address issues or problems encountered in the practice of law. In addition, students will be required to complete three practical during the program to "integrate the real-world practice of law with the theoretical study of law."

⁴ Ibid., page 17.

³ Trinity Western University School of Law Proposal, Appendix "D", page 5.

- 23. All students will be required to take the following 19 mandatory courses:
 - Introduction to Law
 - Contract Law
 - Tort Law
 - Constitutional Law
 - Property Law
 - Criminal Law
 - Fundamentals of Canadian Law: Common Law and Statutory Instruments
 - · Introduction to Practice Skills and the Practice of Law
 - Ethics and Professionalism
 - Practicum (two courses)
 - Administrative Law
 - Business Organizations
 - Civil Procedure
 - Evidence
 - Jurisprudence
 - Practice Management
 - Real Estate Law
 - Wills and Trusts
- 24. TWU's proposal met with strong reaction. The Approval Committee reviewed the many letters and emails sent to the Federation from individuals and organizations both opposed to and supportive of approval of the proposed law school.⁵ The views of both the opponents and the supporters were clearly heartfelt and strongly held.
- 25. TWU's requirement that all students, faculty and staff abide by its Community Covenant is the source of much of the opposition to approval of its proposed law school program. Many contacting the Federation argued that the Community Covenant discriminates against lesbian, gay, bisexual and transgendered ("LGBT") individuals. Some suggested that TWU effectively bans LGBT students and such students would thus have access to fewer law school places than other students if the TWU proposal is approved.
- 26. TWU's intention to teach law from a Christian worldview caused some to question the university's ability to ensure that graduates of the proposed law school would acquire the required understanding of professionalism and legal ethics, and the substantive knowledge competencies related to the Canadian Charter of Rights and Freedoms and human rights law. Concerns were also raised about academic freedom at the university and the potential impact on the critical thinking skills of those who would attend the proposed school.

⁵ The letters received by the Federation and TWU's responses are available on Federation web site.

- 27. Others wrote in support of the proposed program, noting, for example, that TWU has an excellent academic reputation. Some responded directly to arguments made by those opposed to the school, challenging the suggestion that a TWU law school would not properly teach constitutional law or legal ethics and professionalism. Proponents suggested that as a faith-based institution TWU would be in a good position to ensure that its students develop an understanding of their ethical obligations.
- 28. Supporters also cited freedom of religion and some argued that there would be benefits to having a law school that holds views outside of the mainstream.
- 29. With one exception the requirement for a dedicated course on professional responsibility the national requirement does not address *how* the required competencies should be taught. In adopting an "outcomes" based approach (the acquisition of specified competencies) for all other aspects of the national requirement, the 2009 final report of the Task Force recommended that law schools be left to determine how their graduates would acquire the competencies. As the Task Force noted in its final report (at page 31), this approach "allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives...."
- 30. In its final report the Task Force took a similar approach to other aspects of the national requirement, including law school admissions policies. Other than specifying a prerequisite for entry to law school of successful completion of two years of postsecondary education at a recognized university or CEGEP, the national requirement does not establish specific admissions criteria or practices.
- 31. As noted above, the mandate of the Approval Committee is to determine whether existing and proposed law school programs satisfy the national requirement. Except to the extent of considering whether TWU's mission and commitment to teach law from a Christian worldview would constrain the teaching of the required competencies, inquiring into TWU's teaching methods or philosophies, or its admission criteria would go beyond consideration of whether a program meets the national requirement. These questions are thus outside of the mandate of the Approval Committee.
- 32. To ensure that the issues falling outside of the mandate of the Approval Committee were given full consideration, the Federation established the Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee"). The Special Advisory Committee was tasked with considering whether there are additional public interest issues that should be taken into consideration in determining the eligibility of future graduates of TWU's proposed law school program to enrol in law society admissions programs. The report of the Special Advisory Committee is available at www.flsc.ca.

⁶ Other than requiring a stand-alone course, the national requirement does not dictate *how* legal ethics and professionalism are to be taught.

Review of TWU Proposal - Process

- 33. In determining whether TWU's proposed law school would, if implemented as proposed, satisfy the national requirement, the Approval Committee had before it the following documents:
 - TWU's June 2012 Proposal for a School of Law (Appendix "D")
 - May 17, 2013 letter from TWU to the Chair of the Special Advisory Committee (Appendix "F")
 - August 13, 2013 letter from TWU to the Approval Committee responding to request for additional information (Appendix "G")
 - November 1, 2013 letter from TWU to the Approval Committee responding to second request for additional information (Appendix "H")
- 34. The Approval Committee began its review of TWU's proposal during a teleconference in September 2012. Consideration of the proposal continued during six days of in-person meetings and five conference calls between January and December 2013.
- 35. Early in the process an issue arose concerning participation in the review of TWU's proposal by the law deans who are members of the Approval Committee. Public statements in opposition to approval of TWU's proposal made by the president of the Council of Canadian Law Deans (the "CCLD") raised questions about the deans' impartiality.
- 36. In November 2012 Bill Flanagan, President of the CCLD, the organization of the deans of Canada's law schools, wrote to the Federation on behalf of the CCLD expressing concern about TWU's Community Covenant. The letter urged the Federation "to consider this covenant and its intentionally discriminatory impact on gay, lesbian and bisexual students when evaluating TWU's application to establish an approved common law program."
- 37. In subsequent public statements Dean Flanagan, speaking on behalf of the members of the CCLD, expressed strong opposition to approval of the proposed program on the grounds that TWU discriminates against gay, lesbian and bisexual students.
- 38. Dean Flanagan's representation that in speaking out against approval of TWU's proposed law school he was speaking on behalf of the members of the CCLD all law deans in Canada led some to question whether the involvement of the deans, who are also members of the CCLD, in the review of TWU's proposal could lead to a reasonable apprehension of bias.
- 39. The Federation raised this concern with Deans Bobinski, Jutras and Sossin in April 2013. While making it clear that the position of the CCLD would not influence their assessment, Deans Bobinski, Jutras and Sossin offered to withdraw from participation in the review of TWU's application. Although the Federation had complete confidence in the good faith of the three deans, to ensure that the review process was both fair and seen to be so, the Federation accepted their offer to withdraw.

- 40. With the recusal of Deans Bobinski, Jutras and Sossin a majority of the members of the Approval Committee remained and they continued their review of TWU's proposal. In October 2013, Babak Barin, then former member of Council for the Barreau du Québec, resigned from the Approval Committee. Stephen G. Raby, Counsel member for the Law Society of Alberta, was appointed to replace M. Barin, ensuring that the TWU proposal was reviewed by a majority of the seven members of the committee,
- 41. The committee was assisted in its work by Professor Bruce P. Elman of the University of Windsor's Faculty of Law. Following the withdrawal of the deans from the committee's review of the TWU proposal, the remaining members felt that additional technical assistance would be useful. Professor Elman's experience as a law professor and former law school dean (Windsor 2000-2011) enabled him to provide valuable insights into issues relating to the administration of a law school and the teaching of law. As Professor Elman has not been a member of the CCLD since his tenure as dean ended, concerns about possible apprehension of bias did not arise. It should be noted that Professor Elman was limited to providing technical advice; he did not participate in either the Approval Committee's analysis or decision.
- 42. The Approval Committee began its assessment by reviewing TWU's June 2012 proposal, a comprehensive document detailing the proposed law school program, including objectives, admission and graduation requirements, course descriptions, library plans, plans for housing the school, faculty and staff plans, and finances. The Committee also reviewed a May 17, 2013 letter from TWU to the Special Advisory Committee (see Appendix "F"), a copy of which was provided to the members of the Approval Committee. Although the letter primarily addresses matters outside the mandate of the Approval Committee, it also discusses the teaching of professionalism and legal ethics, and the substantive law competencies relating to *Charter* and human rights principles, matters squarely within the mandate of the Approval Committee.
- 43. Following the Approval Committee's initial review of the proposal, it sought additional information from TWU on matters related to budget, contingency plans, facilities, library, and student services. The Approval Committee did not request any additional information on the teaching of professionalism and legal ethics, or the substantive knowledge competencies related to the *Charter* and human rights principles, but it did indicate that the committee was relying on certain statements from TWU's May 17th letter in assessing whether its proposed program would ensure graduates would obtain the required competencies in the areas of ethics and professionalism and the *Charter* and human rights principles. The Approval Committee's letter of June 28, 2013 and TWU's August 13, 2013 response are attached as Appendix "G".
- 44. In October 2013, the Approval Committee requested additional information from TWU relating to its criminal law courses and the legal research competency. The Approval Committee's October 30, 2013 letter and TWU's November 1, 2013 response are attached as Appendix "H".

45. Having reviewed TWU's proposal and the additional information provided, the Approval Committee has concluded that, subject to three concerns and one comment set out below, the program would, if implemented as proposed, meet the national requirement and should be given *preliminary approval*.

Analysis

- 46. To assess whether TWU's proposed school of law would meet the national requirement, the Approval Committee analyzed the proposal against each individual element of the national requirement. That analysis is reflected in the chart attached as Appendix "A" identifying in detail how each competency will be met.
- 47. For the most part this was a straightforward task. The proposal is comprehensive and is designed to ensure that students acquire each competency included in the national requirement. The Approval Committee concluded that the program would, if implemented as set out in the proposal and subsequent correspondence from TWU, meet most elements of the national requirement.
- 48. The members of the Approval Committee did, however, identify three *concerns* about the proposal and one matter on which it wished to make a *comment*. The three *concerns* relate to i. the teaching of Ethics and Professionalism; ii. the teaching of the elements of the Public Law competency relating to the *Caṇadian Charter of Rights and Freedoms* and human rights law principles; and iii. the budget for the proposed school. The *comment* relates to the library acquisitions budget.
- 49. In the course of its analysis the Approval Committee considered TWU's ability to ensure that its students obtain the required competencies in both Ethics and Professionalism, and Public Law. It was suggested by some that as a private, faith-based institution that requires students, faculty and staff to abide by a Community Covenant that includes what many consider to be provisions that discriminate against LGBT individuals, TWU would not be able to teach these subjects in a manner that would ensure that students could acquire the competencies.
- 50. Although the course outlines for TWU's proposed Ethics and Professionalism and Constitutional Law courses are consistent with what one would expect for such courses, the members of the Approval Committee see a tension between the proposed teaching of these required competencies and elements of the Community Covenant. In particular, the Approval Committee is concerned that some of the underlying beliefs reflected in the Community Covenant, which members of faculty are required to embrace as a condition of employment, may constrain the appropriate teaching and thus the required understanding of equality rights and the ethical obligation not to discriminate against any person. This tension appears to be reflected in the description of the mandatory Ethics and Professionalism course (LAW 602), which states that the course "challenges students to reconcile their personal and professional beliefs within a framework of

- service to clients and community while respecting and performing professional obligations and responsibilities."
- 51. The question of TWU's ability to ensure that students acquire these competencies was addressed in the university's May 17, 2013 letter to the Special Advisory Committee (see Appendix "F"). In that correspondence TWU stated that it is committed to "fully and appropriately addressing ethics and professionalism" and further recognized "its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism." TWU also stated that "it should be beyond question that TWU acknowledges that human rights laws and Section 15 of the Canadian Charter of Rights and Freedoms protect against and prohibit discrimination on the basis of sexual orientation and that "the courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life."
- 52. Based on the proposed course outlines and TWU's commitments and undertakings noted above, the Approval Committee concluded that the issue of whether students will acquire the necessary competencies in both Ethics and Professionalism, and Public Law is, at this stage, a *concern*, rather than a *deficiency*. As is indicated in the chart at Appendix "A" setting out the committee's detailed analysis, to address these two *concerns* TWU will be required to provide additional materials in future annual reports, including more detailed course outlines demonstrating exactly how the competencies will be met.
- 53. With regards to the budget for the proposed school, the Approval Committee was concerned about the lack of detail contained in the information provided by TWU. To address this concern, TWU has been asked to provide more details in future annual reports.
- 54. The Approval Committee's one *comment* on the TWU proposal relates to its proposed library acquisitions budget. The committee notes that although the initial budget is generous, the budget for annual acquisitions appears low. TWU has indicated that once it has hired a librarian it will engage a consultant to assist with refining plans for the library, which may lead to changes to the budget. The Approval Committee will review this matter based on the information provided in subsequent annual reports.

⁹ Ibid.

Trinity Western University School of Law Proposal, Appendix "D", page 93.

⁸ Appendix "F" pages 4 and 5.

55. In keeping with the process for review of law school programs outlined by the Implementation Committee, TWU was given an opportunity to respond to the Approval Committee's three concerns and one comment. By letter dated December 6, 2013 (attached as Appendix "I") TWU indicated its willingness to provide more detailed course syllabi for its proposed Ethics and Professionalism and Public Law courses as they are developed. TWU also confirmed that it will provide detailed budget information as required by the Approval Committee. Finally, TWU advised that it is willing to reconsider its annual library acquisitions budget if, based on an acquisitions plan to be developed by the Director of the Law Library (to be hired approximately 18 months prior to the opening of the school) it proves inadequate.

Conclusion

56. The Implementation Committee identified only two possible outcomes when considering a proposal for a new law school program: *preliminary approval*, for a program that will meet the national requirement if implemented as proposed, and *not approved*, for a program that will not comply with the national requirement. The Approval Committee has concluded that, subject to the concerns expressed above, TWU's proposed school of law will meet the national requirement if implemented as proposed. The proposed program is given *preliminary approval*.

¹⁰ Implementation Committee Final Report, Table E, <u>www.flsc.ca</u>

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

Canadian Common Law Program Approval Committee

Trinity Western University Proposal

Evaluation Chart

December 2013

Applicant Submissions and their Alignment with the National Requirements – Summary Trinity Western University

December 3, 2013

(Unless otherwise indicated References are to the Appendices in this Report)

preliminary approval is given, subject to the implementation of the program as proposed, and subject to the concerns and comment determined that the proposal and implementation plan for a law program, if followed, will comply with the national requirement and The chart below reflects a summary of the Canadian Common Law Program Approval Committee's analysis of Trinity Western University's proposal for a law program. This analysis is based on the proposal submissions. The Approval Committee has expressed. The Approval Committee's analysis is based on the 19 mandatory courses included in TWU's proposal, which include three practica. included in Appendix D to this report (Appendix 8 of the TWU proposal). Where additional information was provided to clarify how a A list of the mandatory courses follows the table. The course outlines for all courses including these mandatory courses are competency is to be met, such additional information is noted in the submission column in the table below. In its analysis, while the Approval Committee may have identified multiple proposed courses to satisfy each competency, the analysis in this table will only identify one example per competency or sub-competency. All examples are from mandatory courses.

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments ¹
A. COMPETENCY REQUIREME	ENTS		
1. Skills Competencies The applicant must have demonstrated the following competencies:	nstrated the following compe	etencies:	
1.1 Problem Solving			
In solving legal problems, the applicant must have demonstrated the ability to, a. identify relevant facts; b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues; c. analyze the results of research; d. apply the law to the facts; and appropriateness of alternatives for resolution of the issue or dispute.	This standard will be assessed within five mandatory first year courses: LAW 502 (Contract Law), LAW 503 (Tort Law), LAW 504 (Constitutional Law), and LAW 506 (Criminal Law). Learning will be reinforced in upper year substantive courses. Appendix H November 1, 2013, letter and appendices 7 from TWU	Each mandatory first year course includes a problem solving component that, collectively, will meet this requirement if implemented as proposed. a. identify relevant facts In LAW 503 (Tort Law), students will be introduced to techniques for identifying elements of intentional torts and negligence. b. identify legal, practical, and policy issues and conduct the necessary	

Deficiency - indicates non-compliance with one or more requirements. If a "deficiency" has been identified and the school and the Approval Committee cannot agree on how to address it, the Approval Committee issues its final report.

Concern - indicates that although one or more requirements is currently met, it is at a minimum level that could deteriorate to become a deficiency. A school may note the "concern" without acting upon it, but it may be advisable for the school to resolve the concern, since it would be noted in the Approval Committee's final report. The iterative process described under "deficiency" could be used to resolve the "concern" if the parties agree.

Comment - this addresses a missing detail, a question, or a suggestion for more information. A school may take note of a "comment" without taking action upon it, but if it wishes to clarify or respond the Approval Committee can then re-issue its report reflecting this.

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments ¹
		research arising from those issues In LAW 504 (Constitutional Law), students will be taught to identify constitutional	
		issues and arguments to support differing positions. They will also be required to conduct the necessary research in the course of preparing for the mandatory moot in LAW 508	
		(Introduction to Practice Skills and the Practice of Law). c. analyze the results of research In LAW 506 (Criminal Law), students will be required to analyze a notice of violation.	
		d. apply the law to the facts In LAW 507 (Fundamentals of Canadian Law), students will be taught to develop the skill of applying principles from past legal cases to a new case.	·
		e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute	

National Requirement	Submission	Approval Committee	Concerns and Comments ¹
The state of the s			
		In LAW 708 (Real Estate), students will be taught the	
		range of potential remedies available to parties in	
		contracts for sale of land.	
		The competencies a, to e.	
		above, are supplemented by	
		LAW 602 (Ethics and Professionalism)	
1.2 <u>Legal Research</u>			
The applicant must have	e ere elile desees	Several mandatory courses	
demonstrated the ability to,	significant component of	include the development of	
a. identify legal issues; b. select sources and	LAW 507 (Fundamentals of	the legal research	
methods and conduct legal	Canadian Law) and LAW	collectively, will meet this	
research relevant to	508 (Introduction to Practice	requirement if implemented	
c. use techniques of legal	Skills and the Practice of Law) mandatory first year	as proposed.	
reasoning and argument,	courses, among other	a. identify legal issues	
such as case analysis and statutory interpretation, to	mandatory and optional	In LAW 506 (Criminal Law), the students will be faught	
analyze legal issues;	courses. Learning will be	how to identify legal issues in	
d. identity, interpret and apply results of research;	reiniorced in upper year courses.	a problem.	
and		b. select sources and	
e. effectively communicate	Appendix H November 1,	methods and conduct legal	
the results of research.	2013, letter and appendices	researcn reievant to Canadían Iaw	
	Irom Iwo	In LAW 507 (Fundamentals of	
		Callaulati Law), studerits will	

Concerns and Comments ¹				
Approval Committee Analysis	be taught how to conduct legal research, select sources of law and write a research paper.	c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues In LAW 507 (Fundamentals of Canadian Law), students will be taught how to undertake a case by case analysis, understand the legislative process and principles of statutory interpretation.	d. identify, interpret and apply results of research; In LAW 506 (Criminal Law), students will be required to prepare a memorandum of law.	e. effectively communicate the results of research In LAW 505 (Property Law), students will be required to prepare an opinion letter or academic paper. The competencies a. to e.
Submission				-
National Requirement				

Submission Approval Committee Concerns and Comments ¹ Analysis	above, are supplemented by upper year courses such as LAW 704 (Civil Procedure).	Oral and written legal communication skills are taught in LAW 508 communication to Practice of communications skills competency that, collectively, will meet this requirement if implemented as proposed. Law), a first year course and reinforced in all law courses and reinforced in all law courses as communicate clearly in the English or French language The program will be taught in English. The competency can be found throughout the program and in particular, in Law 508 (Introduction to Practice of Law), which includes interviewing, negotiating, a required first year moot and a factum.	b) identifying the purpose of the proposed communications
National Requirement		Communication The applicant must have demonstrated the ability to, comn a. communicate clearly in taugh the English or French language; b. identify the purpose of the proposed communication; c. use correct grammar, skills proposed communication; c. use correct grammar, c. use correct grammar, teinfo spelling and language suitable to the purpose of the communication and for its intended audience; and d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.	•

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments ¹
		students will be required to	
,		communicate the results of	
		legal research in class.	
		c) using correct grammar,	
		spelling, and language	,
		suitable to the purpose of	
		the communications and for	
		Its intended audience	
		Ave assume man I vvo s	
		programs, as with all law	
		have an appropriate standard	
		for grammar and spelling.	
		The development of language	
		skills suitable to the purpose	
		of the communications and its	
		intended audience will be	
		achieved through LAW 502	
		(Tort Law), where students	
		Will be required to draft an	
		opinion letter.	
		d) effectively formulating	
		and presenting well-	
		reasoned and accurate	
		regal argument, analysis,	
		In LAW 506 (Criminal Law).	
		students will be required to	
		draft a memorandum of law.	
		The competencies a. to d.	

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments ¹
		above, are supplemented by courses such as LAW 709 (Wills and Trusts).	
2. Ethics and Professionalism			
2. Ethics and Professionalism The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including, a. the duty to communicate with civility; b. the ability to identify and address ethical dilemmas in a legal context; c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to, i. circumstances that give rise to ethical problems; ii. the fiduciary nature of the lawyer's relationship with the client; iii. conflicts of interest;	LAW 508 (Practice Skills and the Practice of Law) and LAW 602 (Ethics and Professionalism) will fulfill the ethics and professionalism requirement. Also, faculty members will be encouraged to include ethics and professionalism content in each course.	Subject to the concern articulated by the Approval Committee, if this competency is implemented as proposed, it will be fulfilled through two courses: LAW 508 (Practice Skills and the Practice of Law), and LAW 602 (Ethics and Professionalism). LAW 602 is designated as three student hours, which will meet the national requirement for credits. a. the duty to communicate with civility In LAW 508 (Introduction to Practice Skills), the students will learn how to appropriately engage with the client and other counsel. In addition, the prescribed text, Alice Wooley's Lawyer's Ethics and	Concern: Notwithstanding the Approval Committee's analysis as more fully described in the Approval Committee's report, the Approval Committee has a concern: it sees a tension between certain aspects of TWU's Community Covenant, in particular the requirement that faculty "sincerely embrac[e] every part of this covenant [as] a requirement for employment ² ", and the teaching of ethics and professionalism. To satisfy the competency students must have demonstrated "an understanding of the ethical dimensions of the practice of law in Canada and an ability

² Trinity Western University's Community Covenant, Appendix E

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments ¹
iv. duties to the administration of justice; v. duties relating to		Professional Regulation, covers civility in detail.	to address ethical dilemmas in a legal context."
confidentiality and		b. the ability to identify and	not to discriminate against
disclosure; vi. an awareness of the		address ethical dilemmas in a legal context	any person.
importance of		In LAW 508 (Introduction to	The tension between the
professionalism in dealing		Practice Skills), the students	beliefs underlying the
with clients, other counsel, indees court staff and		will be required to identify and	Community Covenant and the
Judges, court start and members of the public; and		address enrical issues. Further in LAW 602 (Ethics	teaching of legal ethics is reflected in TMI is description
vii. the importance and value		and Professionalism), the	of the mandatory Ethics and
of serving and promoting		students will be required to	Professionalism course (LAW
the public interest in the		identify ethical issues in fact	602) which states that the
administration of justice.		scenarios and from past	course "challenges students
		cases where professional	to reconcile their personal
		bodies have imposed	and professional beliefs within
		discipline on lawyers for	a framework of service to
		failure to meet ethical	clients and community while
		obligations.	respecting and performing
			professional obligations and
		c. familiarity with the	responsibilities."
-		general principles of ethics	
		and professionalism	TWU has committed to
		applying to the practice of	appropriately teaching ethics
		law in Canada	and professionalism both in
			its course description and its
		i. circumstances that give	May 17, 2013 letter to the
		rise to ethical problems	Special Advisory Committee.
		In LAW 602 (Ethics and	
		Professionalism), the students	As plans for the proposed
		will be familiarized with the	course are more fully
		ethical issues arising from the	developed, the Approval

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments ¹
		practice of law. ii. the fiduciary nature of the lawyer's relationship with the client In LAW 602 (Ethics and Professionalism), the students will be introduced to the lawyer-client relationship.	Committee will require TWU to provide additional materials, including a more detailed course outline, to demonstrate precisely how the competency will be met.
		iii. conflicts of interest In LAW 602 (Ethics and Professionalism), the students will learn about the duty of loyalty and conflicts of interest	
		iv. duties to the administration of justice In LAW 602 (Ethics and Professionalism), the students will be introduced to Code of Professional Conduct for British Columbia (the BC Code).	
		v. duties relating to confidentiality and disclosure In LAW 602 (Ethics and Professionalism), the students will learn about confidentiality.	
	-	vi. an awareness of the	

e Concerns and Comments ¹	sel, to to nts fthe to to nts ithe	, iai	and
Approval Committee Analysis	professionalism in dealing with clients, other counsel, judges, court staff and members of the public. In LAW 508 (Introduction to Practice Skills), the students will learn about the role of the lawyer as professional. vii. the importance and value of serving and promoting the public interest in the administration of justice. In LAW 508 (Introduction to Practice Skills), the students will learn about the role of the lawyer as advanced and	understand the role of the lawyer as an agent of social change.	In addition, prescribed readings include Alice Wooley's Lawyer's Ethics and Professional Regulation.
Submission			
National Requirement			

. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including, a. principles of common law and equity; b. the process of statutory construction and analysis;

c. the administration of the

law in Canada.

Students will be required to take LAW 501 (Introduction to Law), a concentrated one week course designed to understand the Canadian legal system and how to read case law.

First year students will also be required to take LAW 507 (Fundamentals of Canadian Law: Common Law and Statutory Instruments) which will cover all three of the indentified foundations of law.

Appendix H November 1, 2013, letter and appendices from TWU

Several mandatory courses include the foundations of law and will meet this requirement if implemented as proposed.

a. principles of common law and equity

In LAW 507 (Fundamentals of Canadian Law), the students will be required to understand the origins of common law, including principles of common law and equity, precedents and stare decisis, and the relationship between legislation and common law.

b. the process of statutory construction and analysis in LAW 507 (Foundations of Canadian Law), the students will be required to understand the legislative process and principles of statutory interpretation.

		c. the administration of the	
		law in Canada	
		In LAW 501 (Introduction to Law), students will be	
		required to understand the basic structure of the	
		Canadian legal system and the structure of Canadian	
		courts.	
3.2 Public Law of Canada			
The applicant must have an	Public law of Canada will be	Subject to the concern	Concern: Notwithstanding
understanding of the core	taught through three	articulated by the Approval	TWU's acknowledgements
principles of public law in	mandatory first year courses	Committee, if implemented as	and the Approval
Canada, including,	and three mandatory upper	proposed, this requirement	Committee's analysis, the
a. the constitutional law of	year courses.	will be fulfilled through several	Approval Committee has a
Canada, including		mandatory courses, including	concern about this
federalism and the	The first year courses are:	LAW 504 (Constitutional	competency.
distribution of legislative	LAW 504 (Constitutional	Law).	
powers, the Charter of	Law), LAW 506 (Criminal		In its May 17, 2013, letter ³ to
Rights and Freedoms,	Law), and LAW 507	a. the constitutional law of	the Federation, TWU
human rights principles and	(Fundamentals of Canadian	Canada, including	acknowledged that it has a
the rights of Aboriginal	Law).	federalism and the	"duty to teach equality and
peoples of Canada;	i	distribution of legislative	meet its public obligation with
b. Canadian criminal law;	The upper level courses are:	powers, the Charter of	respect to promulgating non-
and	LAW 702 (Administrative	Rights and Freedoms,	discriminatory principles in its
c. the principles of Canadian	Law), LAW 706	human rights principles and	teaching". TWU also
administrative law.	(Jurisprudence) and LAW	the rights of Aboriginal	asserted that "it should be
	708 (Real Estate).	peoples of Canada	beyond question that TWU
		In LAW 504 (Constitutional	acknowledges that human
	Appendix H November 1,	Law), the students will be	rights laws and Section 15 of
	2013, letter and appendices	required to complete an	the Canadian Charter of
	from TWU	analysis of the Constitution	Rights and Freedoms protect
		Act, federal and provincial	against and prohibit

³ Trinity Western University letter to the Federation dated May 17, 2013, appendix F

į																				
discrimination on the basis of sexual orientation", and also that "TWU's School of Law courses will ensure that	students understand the full scope of these protections in the public and private enhances	of Canadian life".	The Approval Committee	sees a tension between certain aspects of TWU's	Community Covenant, in	particular the requirement that faculty "sincerely embraciel	every part of this covenant	[as] a requirement for	employment ⁴ ", and the	teaching of the core principles of nublic law in Canada	including the Canadian	Charter of Rights and	Freedoms and human rights principles.	As plans for the proposed	courses are more fully	Committee will expect TWU to	provide additional materials,	for example, more detailed	course outlines, to	demonstrate precisely how the competency will be met.
powers, the application of the Charter, fundamental rights and freedoms (including equality rights, heritage and	aboriginal rights) and reasonable limits thereon.	b. Canadian criminal lawLAW 506 (Criminal Law) will	be a comprehensive first year	criminal law course.	c. the principles of	Calladian administrative law	LAW 702 (Administrative	Law) will be a comprehensive	upper year administrative law	course.										
													-							

⁴ Trinity Western University's Community Covenant, Appendix E

Several mandatory courses include private law principles and will meet this requirement if implemented as proposed.	a. contracts, torts and property law In LAW 502 (Contract Law), LAW 503 (Tort Law) and LAW 505 (Property Law), and in LAW 708(Real Estate Law), students will gain an understanding of the foundational legal principles in the respective subject areas.	b. legal and fiduciary concepts in commercial relationships In LAW 703 (Business Organizations), students will gain an understanding of legal and fiduciary relationships in various
Private law principles are taught through three mandatory first year courses and two mandatory upper year courses.	The three first year courses are: LAW 502 (Contract Law), LAW 503 (Tort Law) and LAW 505 (Property Law). The two upper year courses are: LAW 703 (Business organizations) and LAW 708 if (Real Estate Law).	
3.3 Private Law Principles The applicant must demonstrate an understanding of the foundational legal principles that apply to private	relationships, including, a. contracts, torts and property law; and b. legal and fiduciary concepts in commercial relationships.	

B. APPROVED CANADIAN LAW DEGREE	W DEGREE		
The Federation will accept an LL.B. or J.D. degree from a Canadian law school as requirements if the law school offers an academic and professional legal educatic entry to a bar admission program and the law school meets the following criteria:		The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:	ne competency prepare the student for
1. Academic Program			
1.1 The law school's academic program for the	The J.D. is a three year 90 semester hour program.	The law program length and credit requirement will be met	
study of law consists of three academic years or its	Appendix D, page 13.	if implemented as proposed.	
equivalent in course credits.			
1.2 The course of study consists primarily of in-	The program will be mainly	The program mode of study	
person instruction and	delivered in class, supplemented by mentoring	will meet the national requirement if implemented	
and learning that involves	and practica.	as proposed.	
direct interaction between instructor and students.	Appendix D, page 30.		
1.3 Holders of the degree	The graduation requirements	The review of students for	
have met the competency	have been set to meet the national requirement. Any	graduation, including the law school's rules on transfer	
	transfer students must satisfy requirements	students, will meet this	
	designed to meet the national requirement.	as proposed.	
	Appendix D, page 16.		
1.5 Subject to special,	Applicants to TWU must	The national requirement	
circumstances, the admission requirements for	nave completed three years (90 semester hours) of study	addresses only the pre-law educational admission	
the law school include, at a minimum, successful	toward a degree. Five of the 60 seats will be reserved for	requirements. TWU's educational admission	

To answer and the market and an area			
comprehension on two years of postsecondary education at a recognized university or CEGEP.	exceptional applicants who may not meet the education requirements but who have demonstrated strength through related endeavours.	requirement will meet the national requirement of two years of postsecondary education if implemented as proposed.	
	Appendix D, pages 15-16.		
2. Learning Resources:			
2.1 The law school is	Plans have been developed	Subject to the concern	Concern: The Approval
adequately resourced to enable it to meet its	to ensure that appropriate human and physical	articulated by the Approval Committee, while the budget	Committee is concerned with the lack of detail in the
objectives, and in particular,	resources are in place to	provided to the Approval	preliminary budget provided.
has appropriate numbers of properly qualified academic	proposed J.D. degree program.	was sufficient for an initial application.	to the Approval Committee in future annual reports.
staff to meet the needs of the academic program.	Appendix D, pages 35-38, 151-161.		
	Appendix G.		
2.2 The law school has	TWU will house its law	The proposed building	
adequate physical resources	school in a new building	appears to provide adequate	
to normit effective ctudents	of the School of Law.	implemented as proposed. A	
loorning		funding plan is in place, as is	
realiniy.	Appendix D, pages 31-33, 139,146 and 161,162	a contingency plan in case	
		in time for the first law class	
·	Appendix G.		
2.3 The law school has	The report states that the	The designs for the new	
adequate information and	new School of Law will be at	School of Law appear to	
communication technology	the forefront of technology.	include appropriate	
to support its academic	11 support Will be provided from central university	information and	
program.	services.	to support the students'	

		needs if implemented as	
	Appendix D, page 162.	proposed.	
2.4 The law school maintains	Plans for the development of	Subject to the comment	Comment: The Approval
a law library in electronic	the library have been	articulated by the Approval	Committee comments that
and/or paper form that	prepared in accordance with	Committee, the proposed	while the initial acquisition
provides services and	the national requirement and	library appears to provide	budget is generous, the
colloctions sufficient in	the Canadian Academic Law	adequate services and	annual acquisition budget
conections sufficient III	Library Standards. TWU's	collections sufficient to meet	appears low. We expect that
quality and quantity to	initial library acquisition	the requirement if	these estimates will be
permit the law school to	budget is \$2M dollars with	implemented as proposed.	refined as plans for the library
foster and attain its	annual acquisition		continue to develop
teaching, learning and	allocations of \$200k		•
research objectives	thereafter. TWU plans to		
	hire four library staff		
	with the Director of the Law	-	
-	Library hired 12 to 15		
	months prior to the opening		
	of the School of Law.		
			,
	Appendix D, pages 33-36, 155-156 and 162		
	Appendix G.		

List of Mandatory Courses (all courses referenced in the table are mandatory):

LAW 501 Introduction to Law	LAW 602 Ethics and Professionalism
LAW 502 Contract Law	LAW 701 Practicum
LAW 503 Tort Law	LAW 702 Administrative Law
LAW 504 Constitutional Law	LAW 703 Business Organizations
LAW 505 Property Law	LAW 704 Civil Procedure
LAW 506 Criminal Law	LAW 705 Evidence
LAW 507 Fundamentals of Canadian Law: Common Law and	LAW 706 Jurisprudence
Statutory Instruments	LAW 707 Practice Management
LAW 508 Introduction to Practice Skills and the Practice of Law	LAW 708 Real Estate Law
LAW 601 Practicum	LAW 709 Wills and Trusts

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

National Requirement

A. Statement of Standard

Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LLB. or J.D. degree by the appropriate provincial or territorial educational authority.

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

- a. identify relevant facts;
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- c. analyze the results of research:

National Requirement

- d. apply the law to the facts; and
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

1.2 Legal Research

The applicant must have demonstrated the ability to,

- a. identify legal issues;
- select sources and methods and conduct legal research relevant to Canadian law;
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- d. identify, interpret and apply results of research; and
- e. effectively communicate the results of research.

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- a. communicate clearly in the English or French language;
- b. identify the purpose of the proposed communication;
- use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;
- b. the ability to identify and address ethical dilemmas in a legal context;
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,
 - i. circumstances that give rise to ethical problems;
 - ii. the fiduciary nature of the lawyer's relationship with the client;
 - iii. conflicts of interest;
 - iv. duties to the administration of justice;

National Requirement

- v. duties relating to confidentiality and disclosure;
- vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and
- vii. the importance and value of serving and promoting the public interest in the administration of justice.

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;
- b. the process of statutory construction and analysis; and
- c. the administration of the law in Canada.

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- b. Canadian criminal law; and
- the principles of Canadian administrative law.

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and
- b. legal and fiduciary concepts in commercial relationships.

National Requirement

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

- 1. Academic Program:
- 1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.
- 1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
- 1.3 Holders of the degree have met the competency requirements.
- 1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.
- 1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.
- 2. Learning Resources:
- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.
- 2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.
- 2.3 The law school has adequate information and communication technology to support its academic program.
- 2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE

MANDATE

- To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.
- To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report. [Implementation Committee Report dated August 2011]
- To make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.
- To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.
- To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.
- To ensure appropriate training for its members.
- To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.

Trinity Western University

School of Law Proposal

June 15, 2012



June 15, 2012

Canadian Common Law Program Approval Committee Federation of Law Societies of Canada World Exchange Plaza 45 O'Connor Street, Suite 1810 Ottawa, Ontario K1P 1A4

Dear Committee members:

Re: Trinity Western University School of Law Proposal

I am pleased to submit the attached proposal for the establishment of a new School of Law at Trinity Western University ("TWU"). The proposal has been developed over the last several years with broad consultation with the profession. TWU is the largest privately-funded Christian university in Canada. It has grown over the past decade to now offer 42 undergraduate majors and 16 graduate programs. Many of our 4,000 students are enrolled in professional programs. Trinity Western University is proposing to move forward with its plan to develop a law school with a focus on excellence, strong ethics, public service and professionalism.

We are cognizant that the creation of a law school will be a formidable task. However, we believe that TWU's commitment to academic quality would provide a good foundation for the creation of a small law school with a program that would prepare lawyers with excellence for the practice of law.

The attached proposal has been developed with the FLSC Common Law Degree Implementation Committee Final Report requirements in mind and we are confident that our proposal fully complies with these standards.

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

Sincerely,

Jonathan S. Raymond, Ph.D.

President and Acting Chancellor

proposal for a school of law at Trinity western university



Submission for accreditation by the Federation of Law Societies of Canada

JUNE 2012



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I. Executive Summary

This proposal is for the creation of a School of Law at Trinity Western University in Langley, B.C. The proposal is for the School of Law to open in September, 2015 in a new building on campus. The first year class would be 60 students with the total student body reaching 170 students by 2017. TWU seeks FLSC approval under the Program Approval Model.

Since 1992, Trinity Western University has had the development of a law school in its strategic plan. The university strives to develop excellence in its students and has a strong focus on developing leadership for the marketplaces of life. Within the last few years, several indicia have pointed to the need for new law schools in Canada: (1) the number of Canadian students attending law schools in other countries and then seeking to have those degrees recognized in Canada; (2) the need for new lawyers to practice in small firms and in smaller urban centres; and (3) the need for students to be trained in the law and in ethics.

Trinity Western University is proposing to move forward with its plan to develop a law school with a focus on excellence, strong ethics, public service and professionalism.

The School of Law will focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas. The School of Law will offer a J.D. degree based on an integrated curriculum that includes the development of core competencies needed for the practice of law. In keeping with the nature of Trinity Western University, specializations will be offered in charities and social justice law and in small business and entrepreneurial law.

The background, impetus and rationale for establishing a law school at Trinity Western University are provided below. Particulars of the proposed admissions policy, curriculum, library plan, and faculty/staff requirements are also provided. Operational details including the facilities plan are set out in the proposal as well.

This proposal is based on many years of work by a development committee at Trinity Western University and on the recommendation of the following:

- Dr. Jonathan Raymond, TWU President
- The TWU Board of Governors



- Dr. Robert Wood, TWU Provost
- TWU Senate
- TWU Graduate Academic Council
- TWU School of Law Task Force (2008) (see Appendix One)
- Curriculum Development Working Group (2009) (see Appendix Two)
- Law School Advisory Council (see Appendix Three)
- Numerous Stakeholders and Supporters (see Appendix Seven)

This proposal was reviewed by two well qualified external reviewers, Albert H. Oosterhoff, LL.B., B.A., LL.M., Professor Emeritus (University of Western Ontario) and Lyman R. Robinson, Q.C., B.A., LL.B., LL.M., Professor Emeritus (University of Victoria). Their external reviews are included in Appendices Four and Five.

II. Trinity Western University

A. HISTORY

The university was founded in 1962 as a junior college. In 1969, TWU was created by the B.C. Legislature as Trinity Junior College. In 1979 TWU was given the privilege to grant degrees and in 1984, was accepted as a member of the Association of Universities and Colleges of Canada. In 1985, the B.C. Legislature changed the name of the college to Trinity Western University and granted the university the authority under its amended charter to offer graduate degrees. The university celebrated its 50th anniversary in 2012.

TWU is now the largest privately-funded Christian university in Canada. It offers over 40 undergraduate majors and 16 graduate programs. It has a current student body of approximately 3,600 students with over 22,000 alumni. Many of the 3,600 students are enrolled in TWU's professional programs including Business (M.B.A., B.B.A., B.A. – Business), Leadership (M.A. – Leadership), Nursing (M.Sc.N., B.Sc.N.) and Education (B.A. – Education). TWU's sports teams have excelled in Canadian Interuniversity Sport athletics, winning national championships in soccer and volleyball. TWU has a renowned choir which performs regularly with the Vancouver Symphony Orchestra.

TWU was successful in a key case before the Supreme Court of Canada in 2001.4 The Court

⁴ Trinity Western University v. British Columbia College of Teachers, [2001] 1 S.C.R. 772.



¹ Trinity Junior College Act, S.B.C. 1969, c. 44.

² Trinity Western College Amendment Act, 1979, S.B.C. 1979, c. 37.

³ Trinity Western College Amendment Act, 1985, S.B.C. 1985, c. 63.

issued an order of mandamus requiring the British Columbia College of Teachers to accredit TWU's Teacher Education program. In the 8 to 1 decision in favour of TWU, the Supreme Court of Canada made the following statements about a professional program at a faith based university:

The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. (para. 33)

In this particular case, it can reasonably be inferred that the B.C. legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. (para. 35)

Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. (para. 35)

TWU has been a member of the Association of Colleges and Universities and Colleges of Canada (AUCC) since 1984.

B. ACADEMIC EXCELLENCE

Professors at TWU are committed to high-quality teaching. Due to small class size, students regularly interact with their professors. TWU is a community-oriented campus and professors regularly interact with students outside the classroom. TWU has built a reputation for academic quality, earning an A+ for Quality of Education in the Globe and Mail University Report Card for five years running. In 2011, the Globe and Mail survey led to the university being rated an A+ in "enriching educational experience."

C. RESEARCH

The university provides a stimulating environment for research. It has an Office of Research which assists faculty research and coordinates grant applications. Faculty members are funded through the Tri-Council Agencies, as well as through a wide variety of foundations and grants. This office holds regular professional development workshops to assist faculty in obtaining grants, publishing their research results and engaging in collaborative research. TWU has three Canada Research Council Chairs and is currently developing a fourth. TWU joined the Royal Society of Canada in 2009.



D. ACADEMIC INSTITUTES AND CENTRES OF EXCELLENCE

TWU has five academic Institutes and four Centres of Excellence. These include the Gender Studies Institute and the Religion in Canada Institute. The institutes provide opportunities for interdisciplinary collaboration, as well as special colloquia and lectures. The Religion, Culture and Conflict Research Group has, for the last five years, held annual inter-religious symposia on issues such as "Religion, Culture and Middle East Conflict," and has produced several books of collected papers.

E. CAMPUS AND FACILITIES

Trinity Western University is a 157-acre campus located outside Langley, BC, Canada. Its location is 45 minutes from downtown Vancouver and an hour from the North Shore mountains. Housing undergraduate and graduate programs, the campus includes residences, food services, health services, fitness centres, mail resources, sports facilities, a bookstore, a library, and an ecosystem study area. The university has a strong student life and student leadership program as well as a career centre and a wellness centre. The Equity of Access Officer ensures that students with disabilities are accommodated both with respect to facilities and academically. The university also has extension campuses in Bellingham, Washington and Ottawa, Ontario. A further extension campus is currently being developed in Richmond, B.C.

F. COMMUNITY ENGAGEMENT

TWU has a strong focus on students engaging with the community, be it locally in British Columbia or internationally in Zambia or Guatemala. Faculty and staff members organize a variety of service opportunities from working with the homeless in Vancouver's Downtown Eastside to summer programs to serve in hospitals in the developing world. TWU also facilitates students engaging in community work individually by connecting students with organizations. A significant focus of the university is that our graduates "serve the world's deepest needs." This starts while they are students.

III. Rationale and Demand for a School of Law at TWU

A. RATIONALE FOR A SCHOOL OF LAW

1. Advancement of the Mission of Trinity Western University

Over the last 15 years, Trinity Western University has developed several professional schools, including Nursing, Education and Business. With the development of student leadership and



excellence in these fields, a law school is a natural next step in the development of the university. It is in keeping with the mission and purpose of the university.

Trinity Western University has a mission focused on the development of leadership. TWU's recent strategic plan entitled *Envision the Century* described the vision of the university as follows:

The vision for Trinity Western University's future builds on its identity and essence as a Christian university of the liberal arts, sciences and professional studies, and on its historical mission to develop people of high competence and exemplary character who distinguish themselves as exceptional leaders in "the marketplaces of life." 5

A law school that focuses on the development of highly competent, professional and ethical graduates who will no doubt distinguish themselves in the legal community and beyond is a natural and appropriate advancement of the TWU mission.

As well, Trinity Western University is a unique faith-based educational community where its members are "called to care about the well-being of others; and committed to knowledge and understanding that addresses the world's deepest needs..." A law school that has strategic partnerships with agencies that serve the poor and the oppressed will give students unique opportunities to provide needed legal services to the less privileged and represents again a natural and appropriate advancement of the TWU mission.

2. Expanded Access to the Legal Profession Without the Need for Public Funding

In 2009, the Law Society of British Columbia held a public forum on access to justice. "Access to legal services is becoming more and more difficult for many individuals in our communities," said John Hunter, QC, then-President of the Law Society. "The increasing number of self-represented litigants and growing reliance on self-help guides is well known to us all." One of the barriers to training more lawyers has been the need for public funding. A law school at Trinity Western University has the great advantage of providing increased access to the legal profession without the need for public funding.

3. Training for the Profession - An Integrated Curriculum

A primary objective of the School of Law at TWU will be training students for the profession and ethical demands of the practice of law. The overarching curricular goal will be the

⁷ Law Society of British Columbia press release http://www.lawsociety.bc.ca/page.cfm?cid=448&t=Chief-Justice-of-Canada-to-speak-at-Law-Society-public-forum



⁵ Trinity Western University, Envision the Century, 2008.

⁶ Ibid.

development of core competencies that are the bedrock of the profession.

The 2008 Federation of Law Societies of Canada, Consultation Paper on the Canadian Common Law Degree⁸ (the "FLCS Consultation Paper") emphasized the importance of embedding "framework" competencies in law school curricula. The paper indicated that legal educators in Canada proposed curriculum requirements where "academic instruction is more closely integrated with the development of practice skills so that upon a call to the bar lawyers are better prepared to advise clients and protect their interests." These recommendations were substantially approved in the Federation of Law Societies Common Law Degree Implementation Committee Final Report.9

The proposed TWU School of Law will integrate into its curriculum the formation of professionalism including the nature of the profession of law, ethics and client relations. In upper years, the law school curriculum will also include courses that develop skills used in the practice of law such as drafting documents, negotiation and advocacy. Each course at the proposed TWU School of Law will focus on practice elements and skills.

4. Benefit to Sole Practitioner and Small Firm Practice

The January 2007 Report of the Small Firm Task Force for the Benchers of the Law Society of B.C.¹⁰ indicated that 35% of the B.C. bar practises as sole practitioners and a further 20% in firms of two to four lawyers. These lawyers provide the "vast majority of legal services outside of the urban centres." The Report indicates the following concern for the future of legal services in the province:

Younger lawyers do not enter sole and small firm practice with the same frequency as they enter practice in larger firms. Outside of the urban areas, where there are fewer medium size and larger firms, the absence of younger lawyers is more prevalent. These numbers raise concerns about whether the sole and small firm bar is renewing itself, particularly in less populated parts of the province...

The proposed TWU School of Law hopes to be able to serve the province of B.C. by attracting and training students interested in practising law in small firms, particularly outside of the major B.C. urban areas. The proposed law school will also work with small firms across the province to create

¹⁰ British Columbia, Law Society of B.C. Small Firm Task Force. Report of the Small Firm Task Force. 2007.



⁸ Federation of Law Societies of Canada Task Force on the Canadian Common Law Degree. Consultation Paper,

⁹ Federation of Law Societies Common Law Degree Implementation Committee. Final Report. 2011.

articling positions for its graduates. TWU believes that the integrated approach¹¹ indicated above is especially important for the development of needed competencies of those who will practice in small firms and has designed its curriculum accordingly. This integrated curricular approach will benefit B.C. and other provinces by providing graduates prepared for small firm practice.

5. Specialization in Charities and Social Justice Law

Charitable and Not-For-Profit organizations play a significant role in Canadian society. The 2003, National Survey of Non-Profit and Voluntary Organizations indicated the following:

- In 2003 there were approximately 161,000 non-profit or voluntary organizations in Canada with approximately 13% (20,000) in B.C.
- These organizations had a total revenue of \$112 billion with B.C. non-profits reporting revenues of \$11 billion.
- In B.C. these organizations provided employment for 147,000 people.
- Non-profits and voluntary organizations provided employment for almost 20% of the entire workforce across Canada

These organizations often have unique legal requirements in the areas of governance, human rights, employment, taxation etc. However, no law school in Canada provides a specialization in charities law, and many do not even offer a course related to this area. A key focus of the TWU School of Law will be in the area of charities and not-for-profit law. Trinity Western University already has considerable expertise and reputation in serving this area through its Non-Profit and Charitable Organization Management MBA program. By conducting scholarly legal research in this area and by giving students the option to have particular training in charities law, a law school at TWU would further contribute in a significant way to this important sector of Canadian society.

While charities and not-for-profit organizations have long been engaged in working for the public good, many are increasingly engaged in social innovation, working with social entrepreneurs to devise innovative solutions to society's problems. Students interested in pursuing social innovation through a specialization in charities and not-for-profit organizations will be encouraged to fulfill their practica requirements in placements related to social innovation. Many charities and not-for-profit organizations have a focus on social justice; for example,

¹¹ Further research on the need for an integrated approach can be found in Stuckey, Roy, ed. Best Practices for Legal Education (South Carolina: Clinical Legal Education Society, 2007) and William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, Educating Lawyers: Preparation for the Profession of Law (San Francisco: Jossey-Bass, 2007).



shelters for the homeless, international development agencies and food banks. Students pursing this specialization will engage with theoretical issues, such as the meaning of "justice," as well as practical issues such as advocacy for those who are marginalized.

6. Specialization in Small Business and Entrepreneurial Law

The Fraser Valley is a rapidly expanding business corridor. In the City of Surrey alone, approximately 18,600 business licenses were issued in 2011. The majority of these enterprises are small, growing, entrepreneurial businesses. Not surprisingly given its location, much of the TWU community is also from, or connected to, entrepreneurial, growing enterprises. TWU desires to serve this constituency through a specialization in small business and entrepreneurial law. Graduates from this specialization will be equipped to meet the legal needs of entrepreneurial, growing enterprises.

B. MARKET DEMAND FOR A SCHOOL OF LAW AT TWU

There is growing recognition across Canada that access to the legal profession must be expanded. Until 2010, no new law school had been approved in Canada for 30 years. For example, the population of B.C. has grown by 72% since the Faculty of Law at the University of Victoria was opened in 1976,¹² without there being any significant increase in access to the legal profession in B.C. until the opening of the new law faculty at Thompson Rivers University. Canada has the lowest number of law schools per capita of any Commonwealth country.¹³

Competition to get into existing law schools is now fierce, with many arguably qualified candidates unable to access a legal education. According to the LSAC Official Guide to Canadian Law Schools, the University of British Columbia, Faculty of Law had 2,188 applicants in 2010 with 182 being enrolled (2,006 applications being rejected). The University of Victoria, Faculty of Law had 1,346 applicants in 2010 with 113 being enrolled (1,233 applications being rejected). Many qualified candidates have been forced to look for international options for a legal education. (see Appendix Sixteen for a list of universities accepting Canadian students abroad) The province of Ontario reported having 272 international candidates registered for articles in that province in the 2010/11 licensing year.¹⁴

¹⁴ Law Society of Upper Canada Articling Task Force, Consultation Report, 2011:10.



¹² According to Statistics Canada the population of B.C. on January 1, 1976 was 2,520,425. On January 1, 2008 the population of B.C. was 4,346,201.

¹³ Lunau, Kate. "Where's a Lawyer When You Need One?" MacLeans, 9 Feb. 2009: 46-47.

The university engaged a market research firm, Concerto Marketing, to conduct surveys to determine the level of interest in the proposed School of Law. The results indicate that there is a sustainable level of interest to meet enrollment targets at our proposed tuition.

C. ADDRESSING THE ARTICLING GAP

A common challenge faced by graduating law students is a shortage of articling placements. A recent report by the Law Society of Upper Canada Articling Task Force noted a 12.1% shortage in articling placements for the 2010/11 licensing group. 15 The report also notes that the number of articling placements has remained static while the number of students seeking articles has increased. All Canadian law societies require completion of articles for licensing. This has similarly been a problem in British Columbia. 16

The proposed TWU School of Law curriculum has been designed to ensure that graduates will have the basic "turnkey" skills and knowledge to be immediately useful in the regular transactions that occur in small and medium sized firms. With mentorship that will have occurred in the practica that students are required to participate in, these skills and abilities will already have been brought into a workplace setting and will be readily adaptable to any new workplace situation.

Small and medium sized firms will see TWU School of Law graduates as already having many practical skills necessary to be valuable to the firm because of the practical opportunities gained through practice-oriented courses and required practica. They may be more inclined to offer articling positions.

The TWU School of Law will have an Articling Coordinator who will assist students to find articling placements and seek out new articling placements for graduates.

IV. The School of Law Juris Doctor (J.D.) Program

The three year J.D. curriculum, 90 semester hours, has been developed in accordance with the requirements set out in the Federation of Law Societies of Canada Common Law Degree Implementation Committee Final Report (August 2011). See Appendix Fifteen for a table detailing how the National Standards established in the Final Report are achieved in the curriculum.

¹⁶ Canadian Bar Association British Columbia Branch, http://www.cba.org/BC/initiatives/articles/ (accessed January 3, 2012).



¹⁵ Ibid., iii.

A. OBJECTIVES

The innovative J.D. curriculum is designed to build skills within the context of law as public service. The J.D. program will:

- 1) focus on professionalism, practice competence, and high ethical standards;
- 2) integrate practical assignments;
- 3) emphasize leadership and character development; and
- 4) integrate a Christian worldview.

B. HOW THE OBJECTIVES ARE ACHIEVED IN THE CURRICULUM DESIGN

- 1. Each course will have a focus on professionalism, practice competence, and high ethical standards. This focus will begin during Orientation Week. A required first year course, LAW 508, Introduction to Practice Skills and the Practice of Law, introduces students to professionalism and ethics. There will also be a required second year course, LAW 602, Ethics and Professionalism, that examines and applies these concepts more fully. In third year, students will be required to take the capstone LAW 706, Jurisprudence course and LAW 707, Practice Management.
- 2. School of Law faculty will be encouraged to integrate practical assignments into all courses. For example, students must draft contracts in LAW 502, Contract Law. They will be required to walk through all the steps to incorporate a company in LAW 703, Business Organizations. While understanding the theoretical principles is important for all law students, students also should experience what lawyers do when they practice law. Students will, therefore, be required to complete three practica over the course of the program with the expectation that this will integrate the real-world practice of law with the theoretical study of law.
- 3. TWU has a strong focus on leadership and character development. This focus is particularly relevant to the J.D. program in that lawyers are leaders in their communities and through their profession. Leadership development is infused throughout the university, among faculty, and through the entire student life program, and will be integrated into the J.D. curriculum. Leadership will be emphasized in the first year mentoring relationships. As well, leadership will be addressed in LAW 602, Ethics and Professionalism, where students will be encouraged to understand the practice of law as public service and their role as professionals as leaders with their clients and in the community.



4. TWU was chartered by the Province of British Columbia to provide to students of diverse backgrounds a university education "with an underlying philosophy and viewpoint that is Christian" (*Trinity Junior College Act*, SBC 1969, c 44, s 3(2)). The program faculty will respect all students' views and beliefs while integrating a Christian worldview into all courses. They will encourage all students to see the profession of law as a high calling in a life of service to God and to the community.

C. ADMISSION AND GRADUATION REQUIREMENTS

1. Admission

Entrance to the J.D. program will be determined by an Admissions Committee consisting of the Dean of the School of Law, three faculty members, and a student representative elected by the student body.

Applicants must have a degree from a recognized university or at a minimum have completed three years (90 semester hours) of study towards that degree having achieved a minimum GPA of 3.0 (or equivalent).

All applicants must complete an application form that lists work, leadership experience and community involvement, a personal statement, two academic references, transcripts and their LSAT score before a final decision will be made with respect to admission.

Grade Point Average (GPA) and the Law School Admissions Test (LSAT) will be two key factors in selecting students for admission. Other factors such as the personal statement, work experience, community involvement, public service, and leadership experience will also be considered. An interview with the Admissions Committee may be required.

If an applicant has written multiple LSAT exams the average score will be used. No LSAT score taken five years or more before the date of a candidate's application will be considered by the Admissions Committee.

A rolling admissions process will be used with first offers being made in November. The application deadline will be February 1 for admission to that year's incoming September cohort.

Up to five of the 60 places available will be reserved for exceptional applicants who may have a somewhat lower GPA and LSAT but elect to qualify for admission through the Special Access category. Special Access is designed for students who have had their academic careers impacted



by factors beyond their control and who are able to demonstrate strength in related endeavors. Applicants in the Special Access category will still be evaluated by GPA and LSAT but a greater weight will be placed on other factors such as leadership ability, work experience, community involvement and public service. In all cases applicants being considered in the Special Access category will be interviewed by the Admissions Committee either in person or by telephone.

Students are annually required to read, understand and pledge to the terms of the Community Covenant Agreement prior to registering for classes.

2. Transfer

A limited number of students will be accepted from other law schools. Transfer students must meet the requirements for admission noted above and have a minimum GPA of 2.75 in the course of studies at law school. The law courses completed must be compatible with the TWU School of Law curriculum. In the Application for Transfer, students must submit all materials necessary for Application as well as a statement on why they wish to transfer. Transfer students must complete two years of study at TWU School of Law to be eligible for graduation from Trinity Western University.

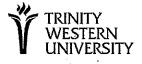
3. Graduation

To graduate from the J.D. program, graduates must successfully complete a minimum of 90 semester hours with an overall GPA of at least 2.75/4.3. The 90 semester hours will include required and elective courses and internships as set out in the Program Requirements section. It is expected that students will complete the program in six terms of study.

D. PROGRAM REQUIREMENTS

The J.D. curriculum is designed to build skills within the context of law as public service. Each course will have a focus on professionalism, practice competence and high ethical standards. This focus will begin during Orientation Week. A required first year course, LAW 508, Introduction to Practice Skills and the Practice of Law, introduces students to professionalism and ethics. There will also be a required second-year course LAW 602, Ethics and Professionalism. In third year, students will be required to take the capstone LAW 706, Jurisprudence course and LAW 707, Practice Management.

As with most law schools across Canada, TWU's first-year program will have a strong focus on learning to read and analyze case law. The first-year program will focus on understanding the legal system, recognizing authoritative legal sources, reading and analyzing cases, and becoming aware of the ethical calling of the practice of law.



During Orientation Week, students will take LAW 501, Introduction to Law, a concentrated course in understanding the legal system and how to read a law case. Throughout the first semester, students will also take LAW 507, Fundamentals of Canadian Law, to gain an understanding of how the Canadian legal system functions.

First-year students will be matched with a practitioner mentor for the first year. Mentors will be asked to invite students to their law firm to help them see first-hand how a law practice works and the ethical and professional framework at work in law offices. It will be up to the mentors and students if they wish to continue the mentoring relationship throughout law school.

As with most first-year law school programs across the country, all courses will be compulsory.

Note that the size of all first-year classes will intentionally be kept to approximately 30 students or less (so that there will be two sections of each class) in order to ensure a high degree of classroom interaction. LAW 507, Fundamentals of Canadian Law, includes the legal research component and writing lab while LAW 508, Introduction to Practice Skills and the Practice of Law includes the moot court.

Each student in first year will be required to complete a practicum, not for credit, either during the academic year or during the summer between first and second year. There will be an approved list of such practica, including: junioring an upper-year clinic student, participating in a familiarization tour and writing a report (visiting a prison as part of criminal law, for example) or completing a research report for a non-governmental organization.

The upper-year courses will each integrate a practice approach. Professors will be encouraged to ensure that each course includes assignments that include real-world issues or problems. The upper year courses will centre on practice-related courses, such as those required for sole or small firm practice. Students are required to take 20 courses in their combined second and third years of the J.D. program. With the exception of LAW 602, Ethics and Professionalism, which must be taken in second year and LAW 706, Jurisprudence, intended to be a capstone course for the J.D. program, which must be taken in third year, the remaining eight compulsory courses can be taken in any of the four terms of second and third year.

While understanding the theoretical principles is important for all law students, we believe that students should also experience what lawyers do when they practice law. Students will, therefore, be required to complete three practica over the course of their years in the J.D. program with the expectation that this will integrate the real- world practice of law with the theoretical study of law.



Juris Doctor Program Requirements

A. Required Courses - 60 Semester Hours

COURSE NUMBER	COURSE NAME	S.H.	NOTES
LAW 501	Introduction to Law	0	Orientation
LAW 502	Contract Law .	5	New course (full year)
LAW 503	Tort Law	5	New course (full year)
LAW 504	Constitutional Law	5	New course (full year)
LAW 505	Property Law	5	New course (full year)
LAW 506	Criminal Law	5	New course (full year)
LAW 507	Fundamentals of Canadian Law: Common Law and Statutory Instruments	2.5	New course (one semester)
LAW 508	Introduction to Practice Skills and the Practice of Law	2.5	Includes first-year practicum and moot court. New course (one semester).
LAW 601	Practicum	0	New course
LAW 602	Ethics and Professionalism	3	New course
LAW 701	Practicum	3	New course
LAW 702	Administrative Law	3	New course
LAW 703	Business Organizations	3	New course
LAW 704	Civil Procedures	3	New course
LAW 705	Evidence	3	New course
LAW 706	Jurisprudence	3	Capstone course.
			New course.
LAW 707	Practice Management	3	New course
LAW 708	Real Estate Law	3	New course
LAW 709	Wills and Trusts	3	New course
		60	

B. Electives - 30 Semester Hours

To complete their second and third-year course requirements, students may complete 10 courses from the following list. Students may choose to complete a specialization as part of their elective requirements [C.].

COURSE NUMBER	COURSE NAME	S.H.	NOTES
LAW 611	Aboriginal Law	3	New course
LAW 612	Advanced Advocacy	3	New course
LAW 613	Alternative Dispute Resolution	3	New course
LAW 614	Bankruptcy and Insolvency Law	3	New course
LAW 615	Charities and Not-for-Profits Law	3	New course
LAW 616	Client Relations and Interviewing Skills	3	New course



LAW 617	Commercial Law	3	New course
LAW 618	Conflict of Laws	3	New course
LAW 619	Consumer Law	3	New course
LAW 620	Debtor and Creditor Law	3	New course
LAW 621	Employment and Labour Law	3	New course
LAW 622	Environmental Law	3	New course
LAW 623	Family Law	3	New course
LAW 624	Financial Institutions	3	New course
LAW 625	Health and Elder Law	3	New course
LAW 626	Human Rights Discrimination Law	3	New course
LAW 627	Immigration and Refugees Law	3	New course
LAW 628	Insurance Law	´3	New course
LAW 629	Intellectual Property Law	3	New course
LAW 630	International Law	3	New course
LAW 631	Landlord and Tenant Law	3	New course
LAW 632	Municipal Law	3	New course
LAW 633	Natural Resource Law	3 .	New course
LAW 634	Advanced Negotiation	3	New course
LAW 635	Remedies	3	New course
LAW 636	Religion and the Law	3	New course
LAW 637	Securities Law	3	New course
LAW 638	Tax Law	3	New course
LAW 639	Advanced Tax Law	3	New course
LAW 640	Special Topics in Law	3	New course
LAW 641	Individual Directed Research	3	New course
LAW 642	External Moots	3	New course
LAW 701	Practicum	3-6	New course
ALON MARKET MARK	- III - III	20	TPL triting

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C. Optional Specializations - 9 Semester Hours

To receive a specialization, students must complete the required courses and three of the six elective courses. In addition, students must complete one of their three practica requirements in the area of their specialization.

COURSE NUMBER	COURSE NAME	S.H.	NOTES
1. Small Business and	Entrepreneurial Law		
LAW 614	Bankruptcy and Insolvency Law	3	
LAW 617	Commercial Law	3	Required
LAW 619	Consumer Law	3	
LAW 620	Debtor and Creditor Law	3	
LAW 621	Employment and Labour Law	3	Required



LAW 624	Financial Institutions	3	
LAW 628	Insurance Law	3	
LAW 639	Advanced Tax Law	3	
LAW 701	Practicum	3-6	
2. Charities and S	ocial Justice		
LAW 613	Alternative Dispute Resolution	3	
LAW 615	Charities and Not-for-Profits Law	3	Required:
LAW 616	Client Relations and Interviewing Skills	3	Required
LAW 621	Employment and Labour Law	3	
LAW 625	Health and Elder Law	3	
LAW 627	Immigration and Refugees Law	3	
LAW 628	Insurance Law	3	
LAW 639	Advanced Tax Law	3	<u> </u>
LAW 701	Practicum	3-6	
		9/30	**

E. COURSE DESCRIPTIONS

1. Required Courses

LAW 501 Introduction to Law (0 semester hours)

This course introduces students to law, the legal system and the legal profession. It will teach students the basic skill of how to read and analyze a case. By the end of Orientation Week, students should be able to write a basic case brief.

LAW 502 Contract Law (5)

This course sets out the rules for the formation of legally binding contractual relationships. The course will cover the formation and interpretation of contracts. Further, it will cover the enforcement of contracts including the remedies available in the event of a breach of contract. This is a full year course.

LAW 503 Tort Law (5)

Tort law is a foundational component of the common law system beginning as a system covering legal wrongs between private individuals. Today tort law has evolved into a complex body of law encompassing interactions between public and private entities. This course will cover the common law claims and defences for intentional torts such as assault, battery, false imprisonment, trespass and nuisance. Further, it examines the area of negligence. Other topics which will be examined include strict liability, defences, the assessment of damages and modern alternatives to tort law such as statutory compensation. Students will look critically at legal



actions involving carelessness and recklessness. Students will critically examine the role of torts in society and explore new developments in Canadian tort theory. This is a full year course.

LAW 504 Constitutional Law (5)

Canada is governed by a variety of documents collectively called "the Constitution." The first half of this course covers the "division of powers"; that is, the law that governs the relationship between different levels of government in Canada. The intended clear division between federal and provincial powers by the founding fathers of Confederation has been made more complex by new inventions, developments and circumstances such as aeronautics, telecommunications and commercial realities of the twenty-first century. The second half of the course will focus on the Canadian Charter of Rights and Freedoms and examine its application and interpretation. This will include an examination of the principles of human rights and Charter values. This is a full year course.

LAW 505 Property Law (5)

Canadian society, indeed Western society, places a high value on the ownership of property, including both land and things. This first part of the course examines the rules governing possession and ownership of real property (land). The second part of the course examines the rules governing possession and ownership of personal property (things). It will also examine the social context for use and ownership of property. This is a full year course.

LAW 506 Criminal Law (5)

This course examines the general principles of liability in Canadian criminal law as applied in the criminal trial process. Students will learn the legal elements of a crime and will use the *Criminal Code* to consider the elements of specific offences. Students will be provided with an introduction to common law and statutory defences as well as an overview of the process by which these various elements are proved in court. This course also canvasses basic concepts, principles and institutions of criminal procedure, as well as focuses on the review of the most important rules governing the criminal process from the investigative phase through the laying of charges until conviction, sentencing and beyond. The student who successfully completes the course will have a good understanding of the norms of procedure set out in the *Criminal Code* and related statutes, as well as the procedural rights guaranteed by the *Charter of Rights and Freedoms*. This is a full year course.

LAW 507 Fundamentals of Canadian Law: Common Law and Statutory Instruments (2.5)

In this course, students will become familiar with the principles of the common law system, including the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada. It further examines how laws are made and the principles of legislative interpretation and statutory analysis. It will also



examine how regulations are made under legislation and the relationship between legislation and regulations. Legal research will be a component of this course.

LAW 508 Introduction to Practice Skills and the Practice of Law (2.5)

Beyond understanding legal principles, the lawyer must master a variety of skills to use in private practice, many of which are more relational and creative (right-brained) than cognitive and linear (left-brained). This course introduces students to professionalism, engaging with clients, the art of negotiation and advocacy (both written and oral) in the context of representing clients. It will include the first year practicum and a moot court.

LAW 601 Practicum (0)

Upper year students must complete two practica. Law 601 will not be for credit but can include a broad range of possible placements.

LAW 602 Ethics and Professionalism (3)

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.

LAW 701 Practicum (3)

Upper year students must complete two practica. Law 701 will be a supervised practicum for academic credit.

LAW 702 Administrative Law (3)

Administrative law broadly covers the exercise of government power excepting that of criminal law powers. It regulates how governments exercise their authority, including both political and administrative authority. Administrative law addresses both direct exercise of government decision-making and the host of tribunals governments establish. This course will cover the rules governing how governments make decisions and carry them out as well as the procedures to challenge those decisions, including judicial review. Students will have the opportunity to visit a tribunal hearing.

LAW 703 Business Organizations (3)

This course will cover all aspects of business organizations from sole proprietorships to partnerships to corporations. The first question posed will be, "what type of business organization



is best?" Students will be required to complete all phases of incorporating and dissolving a corporation. They will also cover the legal effect of incorporation, responsibilities of directors, control and management of corporations and minority shareholder rights.

LAW 704 Civil Procedures (3)

An inquiry into the functions of a modern procedural system with specific consideration of the extent to which the litigation process aids in the achievement of just, speedy and economic resolutions of justiciable conflicts. Students will be introduced to the basic structure of a civil action and major items for consideration throughout the development of civil litigation. In the result, such matters as the expenses of litigation, jurisdiction, initial process, pleadings, amendment, joinder, discovery, disposition without trial and alternatives to adjudication will be discussed.

LAW 705 Evidence (3)

This course surveys the history of rules of evidence in Canadian law. The course introduces students to principles of admissibility, relevance, types of witnesses, written versus oral evidence and the use of demonstrative evidence in court and tribunal proceedings in Canada. It also examines concepts and rules relating to burdens of proof, presumptions, exclusionary rules, ethical issues in the law of evidence and the effects of the Canadian Charter of Rights and Freedoms on the law of evidence.

LAW 706 Jurisprudence (3)

Canadian law took shape from its British and French origins, both of which were heavily indebted to a Judeo/Christian understanding of law. This course explores the philosophical, social, historical, political, and religious underpinnings of the law and legal systems. Key questions include, "what is law?" and "do we have an obligation to obey the law?" Recurrent themes include the relationship between law and morals, legal reasoning and logic, and the relationship between law and liberty. The course will challenge students to understand, first through an historic lens, the development of notions of justice, fundamental rights of persons, and the use of force and punishment in society. Then the course will examine modern and postmodern legal theories as they affect current legal and ethical problems in Canadian and international discourse.

LAW 707 Practice Management (3)

The private practice of law is both a profession (calling) and a business; lawyers live and manage this tension on a daily basis. This course will introduce students to the business and administrative aspects of a law practice while keeping in view the duties owed by a lawyer to clients and the state. The class sessions will be highly interactive with many "hands on" experiences in the use of practice management tools and processes.



LAW 708 Real Estate Law (3)

This fundamental course will familiarize students with the mechanics and legalities of a real property transaction from its inception to post completion. The course examines the legal structure, the legal problems and the legal remedies associated with commercial transactions involving the sale, mortgaging and leasing of real estate. We will examine the agreement of purchase and sale that is the foundation of every real estate transaction, what should be included in it, how it should be drafted, how it is completed and what remedies are available for its breach. Other issues that will be examined include the two systems of land registration, real estate agents duties, mortgages and other security, development-related issues, leases, easements, title insurance, fraud and solicitor's opinions.

LAW 709 Wills and Trusts (3)

Students will understand the rationale and principles for preparing wills and have an opportunity to draft one. They will also understand the consequences of not having a will. The rules governing the administration of estates, particularly, the terminal tax return, rules governing matrimonial property, the care of dependants and distribution of assets. So-called "living wills" and issues around incapacity and substitute decision-makers will also be covered. Students will become familiarized with the law of trusts and their formation, benefits, regulation and taxation. The role and responsibilities of trustees will also be addressed.

2. Elective Courses

LAW 611 Aboriginal Law (3)

Aboriginal peoples in Canada belong to more than 50 nations. This course will examine the historical development of treaty rights and aboriginal title. It will consider the complex issue of self-government and aboriginal justice. Students will examine the *Indian Act* along with federal government proposals for amendment. As well, students will examine the legal cases involving aboriginal rights.

LAW 612 Advanced Advocacy (3)

The lawyer is an advocate. Students will learn to write effective legal arguments and how to express themselves persuasively. Students will be required to prepare written submissions, including a factum, and argue a moot court.

LAW 613 Alternative Dispute Resolution (3)

While most of the emphasis and popular attention in the arena of dispute resolution has focussed on litigation and the drama of the courtroom, increasingly, in practice, disputes are managed and resolved outside of trial. Lawyers who are assisting clients with disputes have an array of options



available to them including negotiation, mediation, arbitration and litigation, each of which is useful and appropriate in different circumstances. This course will focus on the "alternative" dispute resolution options with a balance of theory and practice.

LAW 614 Bankruptcy and Insolvency Law (3)

Bankruptcy and insolvency law assumes an important economic and social role in contemporary credit economies. The course will consider liquidation and reorganization as the two basic approaches to bankruptcy and focus on three legislative arenas: the Bankruptcy and Insolvency Act (BIA), the Companies' Creditors Arrangement Act (CCAA) and relevant provincial legislation. Students will become familiar with the fundamentals of the business and personal bankruptcy process including the various actors in the system. This course will familiarize students with monetary obligations, the rights and obligations of creditors and debtors, priorities among creditors, and certain restrictions on the discharge in bankruptcy of categories of debt. Students will apply the relevant statutory framework and case law to fact patterns in each stage of the bankruptcy process. The course will consider the broader public policy and institutional interests at play.

LAW 615 Charities and Not-for-Profits Law (3)

This course examines the special legal principles which apply to charities and not-for-profit corporations, with particular emphasis on the new federal and provincial not-for-profit legislation. It will cover incorporation, fundraising, taxation, and governance issues.

LAW 616 Client Relations and Interviewing Skills (3)

The practice of law is driven by the needs of clients. This course gives students practical skills for interviewing and advising clients, using a client-centred approach. It will help students understand the needs of clients during transactions and during challenges such as litigation. Students will discuss issues such as professionalism and ethical issues. Over half of the course time will be in practice scenarios.

LAW 617 Commercial Law (3)

Commercial law is that branch of private law concerned primarily with starting a business, financing a business, and the supply of goods or services by merchants and other businesses for profit. Commercial law includes such topics as sale of goods, bailment and carriage of goods, documents of title and negotiable instruments, banking, the various forms of secured credit and an introduction to the law of insolvency and bankruptcy. This course therefore provides the student with a basic understanding of the law affecting the operation of any business doing commercial transactions.



LAW 618 Conflict of Laws (3)

This practical course considers the increasingly prevalent issue of conflict of laws. The course will consider which court has jurisdiction to decide a case, what law should apply to the dispute, and whether the judgment will be recognized and enforced. Students will be introduced to common scenarios faced by lawyers in the context of globalization. The course will engage students in applying the Canadian rules of conflict of laws to problem-solving exercises drawn from all private law areas, including torts, contracts, property, succession and family law. This course will analyze Canadian rules of conflict of laws and equip students to assess legal situations that engage multiple jurisdictions, particularly the US and Asia.

LAW 619 Consumer Law (3)

This course focuses on the consumer law relating to the sale of goods and services, including an examination of the *Sale of Goods Act* and the *Business Practices and Consumer Protection Act*. Students will have an opportunity to develop practical problem-solving skills by applying relevant authority to contemporary scenarios. Students will also be introduced to the Vienna Convention on the International Sale of Goods.

LAW 620 Debtor and Creditor Law (3)

This course provides an examination of the methods by which unsecured creditors may enforce money judgments. There will be an overview of the general principles and forms of relief offered by provincial and federal legislation. A review will also be made of exemptions from enforcement that are available to debtors as well as other legal rights accorded to debtors after judgment. The course will be a combination of lecture, case analysis, and discussion of practice problems.

LAW 621 Employment and Labour Law (3)

All aspects of the employment relationship will be covered in this course including the employment relationship, the contract, implied rights and obligations and terminating the employment relationship. As it is termination of employment that is most frequently litigated, it will be examined in detail including constructive dismissal, reasonable notice, dismissal for cause and damages. Human rights legislation, as it applies to employment, will also be a significant topic. This course also addresses the relationship between management and labour when there is a union. It will include the historical development of unions in Canada. It will also cover all aspects of unionization including certification, bargaining in good faith, the collective agreement and industrial conflict.

LAW 622 Environmental Law (3)

This course examines the regulatory framework for environmental law, including federal and provincial jurisdictions. As well, it addresses the wide variety of environmental issues, including pollution, biodiversity and climate change.



LAW 623 Family Law (3)

The family is said to be the basic building block of society. This course will examine the state's regulation of the family and critically assess whether state regulation has changed the family or responded to social changes. It will also include an assessment of the current challenges in family law, especially the backlog in the courts, and alternative dispute resolution and mediation as alternatives.

LAW 624 Financial Institutions (3)

This course examines the law relating to banks and other deposit-taking institutions, such as credit unions. Particular emphasis will be on the regulatory framework, the bank and customer relationship and clearing systems such as ACSS, LVTS, Interac, credit cards and third party payment providers.

LAW 625 Health and Elder Law (3)

This course introduces students to the law relating to the Canadian health care system with a particular focus on care for the elderly. The first half of the course will cover the regulation of the health care system including health care professionals, informed consent to medical treatment, malpractice, confidentiality and disclosure of health information. The second half of the course will address specific issues related to our aging population, including mental disability, substitute decision-making and end-of-life decision-making.

LAW 626 Human Rights and Discrimination (3)

This course examines the historical roots for human rights legislation in Canada. Students will examine the structure of the human rights codes in terms of prohibited grounds and specific discriminatory practices. It will include critically examining human rights procedure, including the transition of provinces like British Columbia and Ontario to new systems that change the role of the Human Rights Commissions.

LAW 627 Immigration and Refugees Law (3)

Canada is largely a country of immigrants. This course will cover the regulatory framework for immigration to Canada. It will also critically assess the issues raised by Canadian immigration policy. As well, students will be introduced to the international and national rules governing refugees.

LAW 628 Insurance Law (3)

This course will examine the theory and elements of the practice of insurance law, with reference to the most common forms of both first party and third party insurance: property, life and motor vehicle insurance. It will cover the basic theory of insurance as a loss spreading mechanism; the



nature of insurance contracts; the insurance industry; principles of indemnity insurance; the duty of good faith and obligation of full disclosure; and the claims process. It will also cover selected issues on interpreting insurance policies.

LAW 629 Intellectual Property Law (3)

Intellectual property laws protect ideas, creativity and designs. These are protected by patents, trademarks, copyright and industrial design. This course will examine the rules governing each of these, the protection they offer and enforcement of each of these protections. Other rules and remedies, such as passing off, will also be covered.

LAW 630 International Law (3)

This course will cover the sources, development and institutions of international law. It will address the relationship between international law in its customary and conventional forms and the domestic laws of Canada. Trade, investment, peace and security and international human rights will be canvassed. Students will have the opportunity to assess bilateral and multi-lateral international agreements including the NAFTA, WTO and UN Agency-generated treaties.

LAW 631 Landlord and Tenant Law (3)

This course considers the essential landlord-tenant relationship in both residential and commercial contexts. It introduces students to the critical legal elements of the relations, including the requirements for the formation of a valid agreement, the rights and duties of the parties under the agreement, and remedies for breach. Students will become familiar with the statutory regimes governing landlord-tenant relationships. The course will provide opportunities for students to critically assess commercial and residential tenancy agreements for compliance with the relevant statutory provisions. Students will also engage in problem-solving exercises in order to advise clients on the best course for pursuing remedial action.

LAW 632 Municipal Law (3)

Issues of development and planning have become increasingly controversial. This course is an introduction to the basic structure, functions and powers of municipal or local governments. It will start with where municipal governments get their powers and how they make by-laws. It will include municipal taxation. A significant part of the course will focus on municipal planning and land use.

LAW 633 Natural Resource Law (3)

The course begins with an overview of the development of Canadian natural resource law, including some underlying philosophies, principles and ethics. This foundation will lead to an examination of the natural resource law framework in Canada from federal, provincial, municipal and Aboriginal perspectives. The course will also explore the legislation and common



law principles that govern natural resource protection, compliance, enforcement and liability for natural resource harm, natural resource rights, public participation and environmental assessment. Emphasis will be placed on the specific example of forestry, but will also include mining, oil and gas and fisheries.

LAW 634 Advanced Negotiation (3)

This skills-based course will develop negotiating theory and skills through practical assignments and readings on negotiation theory. Each week, students will have opportunity to participate in a practice scenario and to analyze the results. Coaching and peer input will be provided.

LAW 635 Remedies (3)

This course introduces students to legal and equitable remedies in the area of private law, predominantly torts, property and contract law. The class will emphasize principles governing remedial selection. Students will become familiar with the range of remedial options available in law, and will practice developing creative strategies to best meet clients' needs. The course will provide opportunities for students to apply their learning by analyzing problems, drafting opinion letters, and offering client advice in a client counselling session.

LAW 636 Religion and the Law (3)

This course examines the relationship between religion and the state in a wide variety of contexts. Chief Justice McLachlin noted that "both law and religion are comprehensive doctrines," that is, they place total claims on lives of citizens and adherents. This will inevitably lead to conflicts. Specific focus will be on Canada and will include human rights, regulation of religious institutions and accommodation of religious difference.

LAW 637 Securities Law (3)

This course covers securities regulation, predominantly through the raising of funds for corporate development through selling securities to the public. The course will focus specifically on the B.C. Securities Act. The course will include registration requirements for persons trading in securities, prospectus requirements to trade in securities, exemptions from the prospectus requirement, restrictions on the resale of securities, remedies for failure to comply with securities legislation, continuous disclosure requirements and take-over bid legislation.

LAW 638 Tax Law (3)

This course covers the fundamental principles, concepts, and application of Canadian federal income tax legislation. Topics include the concepts of income and liability for tax; income from employment, business, and property; shareholder benefits; deductions; capital gains and losses; computation of taxable income and tax planning for individuals. The course emphasizes



understanding of the conceptual structure of the *Income Tax Act* and the application of its rules to practical cases.

LAW 639 Advanced Tax Law (3)

This advanced course covers the principles of taxation that apply to entities other than individuals. It surveys tax implications that apply to corporate reorganizations, tax planning, and the application of tax principles and concepts to complex tax situations like trusts, partnerships, and corporations. Topics include shareholder benefits; transfer of property to corporations; anti-avoidance and other rules; purchase or sale of a business; partnerships; death; trusts; and intrafamily property transfers.

LAW 640 Special Topics in Law (3)

To be established where faculty expertise exists.

LAW 641 Individual Directed Research (3)

To be established where student interest exists.

LAW 642 External Moots (3)

To be established when student teams participate in external moots.

For new course outlines, see Appendix Eight.

F. PROGRAM DELIVERY

The program will be delivered mainly through the classroom, supplemented by mentoring and practica. The size of all first year classes will intentionally be kept to approximately 30 students or less (so that there will be two sections of each class) in order to ensure a high degree of classroom interaction. The majority of first year courses will be taught as full year courses with upper year courses as one semester courses.

The program emphasizes practical experience. Supervised practica may include the legal aid clinic, competitive moot, or a pro bono placement with an NGO such as the Red Cross, International Justice Mission, Amnesty International, Christian Legal Fellowship or Christian Prison Fellowship. Non-credit placement, which can be paid, may include a summer job with law firm, a summer placement with government, a courthouse or tribunal placement, correctional services, legal research for an NGO, or a political office. TWU has a small campus in Ottawa, the Laurentian Leadership Centre (LLC), which will offer practicum opportunities for students in the summer months with federal government, political offices and NGOs.



Students in the J.D. program will be able to accrue practicum experience through the pro-bono legal clinic TWU plans to establish with the partnership of a charitable organization serving the less fortunate in Vancouver and the Fraser Valley. Many clients of this type of organization have legal issues and often do not have the resources to get the assistance of a lawyer. Students working in the clinic will work one day a week under the supervision of a staff lawyer.

G. LEGAL CLINIC

TWU proposes to establish a pro bono legal clinic with the partnership of a charitable organization serving the less fortunate in Metro Vancouver and the Fraser Valley. Many clients of this type of organization have legal issues and often do not have the resources to get the assistance of a lawyer.

Students working in the clinic will work one day a week under the supervision of a staff lawyer. The legal clinic will be developed once approval for the TWU School of Law is granted. An expression of interest from Union Gospel Mission in the downtown east side is included with the Letters in Support in Appendix Seven.

V. The Facilities Plan

A. DEVELOPMENT PROCESS

The proposed School of Law will be housed in a new state of the art building (the "School of Law Building"). The School of Law Building will be a spacious and inviting building (see Appendix Ten for a cost estimate). It will have a prominent presence on the campus and will become a "signature" building for Trinity Western University. The proposed building is a "livelearn centre," meaning that there are dormitory facilities included in the building. While not all students will be able to take advantage of on-site dormitory facilities, those who do will have an enhanced community experience.

Appendix Eleven includes preliminary concept drawings. These drawings are based on research conducted on existing law school buildings in Canada and the U.S. The preliminary concept drawings have been drafted to ensure there are adequate classrooms and other facilities to properly offer the number and type of courses in the proposed J.D. program. TWU has been advised that, including the six months for architectural drawings, the School of Law Building could likely be completed in 18 months to two years from the date that approvals are provided.



B. THE SCHOOL OF LAW BUILDING

In particular the School of Law Building will include the following:

Spacious Lobby/Student Commons

People arriving at the School of Law Building will enter into a spacious lobby area. This lobby area or student commons will include a number of seating areas. It will be designed to create a welcoming and warm atmosphere for students and visitors.

Student Collegium

The School of Law Building will include a student collegium (lounge) modelled after the successful Graduate Collegium at TWU. The collegium will include comfortable seating, a partial kitchen area, coffee machine, computer stations with printers etc.

Law Library

The Law Library will be housed on two floors in approximately 14,250 square feet of space. The Law Library is more fully described in the Library Plan (Section VII below).

State of the Art Moot Court Room/ Lecture Theatre

This 2,200 square foot, 200 seat, high quality, lecture theatre will be designed to simulate a large courtroom. It will provide a fully equipped mooting facility but also will be useable for overall School of Law events, special lectures, law conferences and larger classes.

Large Classroom

This more general classroom will seat up to 75 students.

Skills Training Facility (Client Meetings, Witness Interviews, Negotiation and Mediation)

This multi-purpose room will be designed to assist students to develop some of the practical skills needed in the practice of law. This room will be used to teach interviewing, negotiation and mediation skills. It will include an observation area.

Two Medium (45 Seat) Classrooms

The School of Law Building will include two medium-sized classrooms designed for classes with up to 45 students.

Six Breakout/Meeting/Small Classrooms

Six breakout, meeting or small classrooms will be strategically located throughout the School of Law Building.



Executive Meeting Room

This 30 seat executive meeting room will be designed in boardroom style. It will be used for staff and faculty meetings and other School of Law business.

Faculty and Staff Offices

The School of Law Building office area will include 20 offices for full-time and adjunct faculty and staff. One office will be larger and executive-style to be used by visiting judges, lawyers or other visiting scholars. The office area will also include adequate space for School of Law staff.

Dean's Office

The Dean's Office will incorporate a professional meeting area for six to eight people.

Faculty Lounge

A faculty lounge will be included in the office area. This will be designed to encourage a collegial atmosphere between faculty members. It will include a comfortable seating and a partial kitchen.

Articling and Career Centre

An Articling and Career Centre will be maintained to provide students with information and advice on a range of career goals and opportunities, with a particular focus on articling placements. In particular, the Articling and Career Centre will run a variety of programs to prepare students for summer, articling, and clerking positions. It will also have an outreach function in working with small law firms to develop new articling positions.

Law Student Association Office

It is anticipated that the TWU School of Law will include a Law Student Association. While formation of such an association will be at the discretion of law students, space has been allocated for this purpose.

VI. The Law Library Plan

A. OVERALL LIBRARY OBJECTIVES

The library plan will be developed in accordance with the Canadian Academic Law Library Standards, which is included in Appendix Twelve.

The School of Law will maintain a law library that is an active and responsive force in the educational life of the law school. The law library's effective support of the School of Law's teaching, scholarship, research and service programs will require a direct, continuing and informed relationship with the faculty, students and administration of the School of Law.



The law library shall have sufficient financial resources to support the School of Law's teaching, scholarship, research, and service programs. These resources shall be supplied on a consistent basis. The School of Law will keep the law library abreast of contemporary technology and adopt it when appropriate. The law library will have its own librarian and staff, sufficient to meet the needs of faculty and students.

B. THE LAW LIBRARY FACILITY

The law library will be housed in approximately 14,250 square feet within the new School of Law Building. It is recognized that this space allocation is lower than other Canadian law school libraries. However, given the vast availability of legal resources in an electronic format, and the availability of interlibrary loans, this will provide faculty and students more than adequate access to legal resources.

The law library will include 75 computer stations and study carrels. Law students will be given priority for the use of these computer stations/study carrels.

C. LAW LIBRARY POLICIES AND COLLECTIONS POLICY

Approximately 12 to 15 months prior to the opening of the School of Law the Director of the Law Library (see position description at Appendix Thirteen) will be hired. The Director will be tasked to develop within three months the administration and staffing structure, overall library policy and collection policy for the law library. The collection policy will be based on research of collection policies at other Canadian law schools and on the Canadian Academic Law Library Standards (see Appendix Twelve). In particular the collections policy will include the following:

- An Overall Law Library Mission Statement
- Funding Policies and Requirements
- Law Library Coverage Levels and Priorities
- Resources Evaluation Criteria

D. ACQUISITION OF RESOURCES

In accordance with the collections policy, the Director will begin the acquisition of electronic, media and print resources approximately one year prior to the opening of the School of Law. An initial budget of \$2 million has been established for the creation of the Law Library with \$1,750,000 allocated for monographs and \$250,000 for electronic databases. (It is recognized that electronic resources will require annual funding for licence renewals with a component allocated for rate increases). The university currently has subscriptions for several electronic



databases that will be used by law students, including Quicklaw, JSTOR and EBSCOhost. TWU is cognizant that this budget is an estimate only and may need to be adjusted as the acquisition phase proceeds.

E. RESOURCE SHARING AGREEMENTS

The Norma Alloway Library at TWU is a full participant in the InterLibrary Loan system. The law library will also provide access to resources beyond TWU through resource sharing agreements with other academic law libraries in Canada and the United States.

VII. Faculty and Staff

A. FACULTY AND STAFF REQUIREMENTS

The School of Law will strive to appoint only the most highly qualified professors to teach in the School. It is recognized that an LL.M. (or equivalent) is considered sufficient for appointment as a faculty member at Canadian law schools. The School of Law will strive to have some faculty members with doctoral degrees in law. As well, given the focus on practice skills, the School of Law will prefer candidates with solid experience in the practice of law.

Appendix Fourteen outlines the teaching requirements in the School of Law. These teaching requirements, along with the leadership and administrative needs of the School of Law and law library will necessitate over a three-year period the hiring of:

- · a Dean of the School of Law
- an Assistant to the Dean
- a Faculty Secretary
- a Director of the Law Library
- an Associate Law Librarian
- two Law Library Support Staff
- a Marketing and Communications Director
- an Articling and Career Centre Coordinator
- 12 full-time faculty
- approximately 14 adjunct faculty

B. POSITION DESCRIPTIONS

Position descriptions for the Dean of the School of Law, the Director of the Law Library and a faculty member are included in Appendix Thirteen.



C. RECRUITMENT AND HIRING TIMELINE

Recruitment for the Dean of the School of Law will begin approximately two years prior to the opening of the School of Law. The objective will be that the Dean begin her/his position approximately 18 months prior to the opening of the School.

The Dean, in conjunction with the Provost, will seek to recruit and hire the Director of the Law Library approximately 12 to 15 months prior to the opening of the School of Law.

The Dean, in conjunction with the Provost, will begin recruitment of faculty 18 months prior to the opening of the School. Some potential faculty have already been contacted by TWU and have expressed interest in a position in the School of Law. However, the Dean will have primary responsibility for building the faculty team. As TWU currently does not have any law-related programs or courses, new faculty members will be hired.

As indicated in Appendix Fourteen the hiring of faculty will be a graduated process. Six full-time faculty will be needed for the opening of the School of Law. Four additional full-time faculty will be hired for the commencement of second year. Two further faculty members will be added for the commencement of the third year, bringing the full-time faculty to 12 members.

The objective will be for the Associate Law Librarian, the Marketing and Communications Director, and the Articling and Career Centre Coordinator to be recruited and commence their positions four to six months in advance of the School of Law opening. This will allow adequate time for the development of their offices and related policies.

The proposal developers, Janet Epp Buckingham and Kevin Sawatsky, both of whom are current faculty members of Trinity Western University, are potential faculty members for the School of Law. They have specializations in constitutional law, human rights, corporate and commercial law, charities and contracts. As well, during the consultation process, the Professors Buckingham and Sawatsky have had discussions with numerous potential faculty members. In particular, serious discussions have been held with potential faculty members qualified in the following areas: aboriginal law, administrative law, constitutional law, criminal law, employment law, human rights, labour law, international law, jurisprudence and torts. Numerous lawyers within easy driving distance from the University have indicated an interest in teaching courses as adjunct professors. We are confident we can obtain sufficient qualified faculty members.



VIII. Articling and Career Centre and Student Support Services

The School of Law will include an Articling and Career Centre to provide advice and information to law students on their career goals. The Articling and Career Centre will operate a variety of programs and services to ensure law students are prepared for, and are able to obtain, summer, articling and clerk positions. The Articling and Career Centre will provide personalized career counselling and assistance in resume and interview preparation. The Articling and Career Centre will be responsible for bringing guest speakers on career options to the School of Law. The Articling and Career Centre will also host career fairs for law firms and other organizations interested in School of Law students and graduates. The Articling and Career Centre will also be responsible for assisting students in locating mentors and good practicum opportunities. It will also have an outreach function in working with small law firms to develop new articling positions.

The Articling and Career Centre will be staffed by an Articling and Career Centre Coordinator along with administrative support staff.

IX. Financial Plan

TWU has developed a financial plan (the "Financial Plan") for the School of Law that has been reviewed by the Board of Governors. This Financial Plan is based on the following principles:

- The School of Law will be a distinct business unit under the direction of the Dean of the School of Law.
- The School of Law must be adequately funded to ensure there is consistent excellence in the provision of academic programs.
- The School of Law will be operating in a highly competitive environment with respect to the
 ability to recruit and retain high quality faculty. The School of Law salary budget will need
 to be structured to recognize this competitive environment.
- The law library must have sufficient financial resources to support the School of Law's teaching, scholarship, research, and service programs
- The School of Law must be self-sustaining by its third year of operation.



• The School of Law cannot have a detrimental impact on the overall finances of the University nor negatively impact other areas of campus.

Highlights of the Financial Plan include the following:

- The Financial Plan is based on a first year cohort of 60 students with the total student body
 increasing to 170 students by year three. Market research has been conducted by Concerto
 Research Inc. which indicates that "...demand for the Trinity Western Law School projects to
 safely meet enrollment targets."
- The School of Law will not be publically funded and will therefore be dependent on tuition.
 Tuition will be just slightly higher than undergraduate tuition rates at TWU, commencing
 at \$25,500 in 2015. Again market research by Concerto Research Inc. confirms there is
 adequate demand at that tuition price.
- By year three the School of Law will have a salary budget of \$2,225,000 for faculty and support staff.
- By year three the School of Law will have a direct operating expense budget of approximately \$600,000. (This is direct operating expenses only and excludes salaries, capital expenditures and facility overhead costs.)
- Following required approvals, TWU will immediately commence a capital campaign to fund building costs, pre-commencement development costs, library acquisitions, scholarships and endowment. It is anticipated that the capital campaign will be in the 18 to 20 million dollar range.

X. Accountability

A. STRUCTURE

The J:D. program will be administered by the Dean of the School of Law, who will report to the Provost.

B. EVALUATION AND ASSESSMENT

The J.D. program will be subject to the normal academic review procedures of the Academic Division at TWU. It will be assessed regularly to ensure it meets its goals, objectives and expected learning outcomes. In particular the program will be assessed by regular student evaluations,



surveys of School of Law graduates, credentials and research of faculty and an overall program review every five years.

The School of Law is also committed to working closely with the Federation of Law Societies of Canada and the Law Society of B.C. and fully complying with any program evaluation and assessment requirements they establish.

XI. Implementation Timeline

A. TARGET LAUNCH DATE

The target launch date for the J.D. program is September 2015.

B. ENTERPRISE IMPLEMENTATION TIMELINE

If all needed approvals are completed by early 2013, there will be sufficient time to construct the School of Law building, purchase library resources, hire required faculty and staff, and to recruit the first class.



Appendices



proposal for A SCHOOL OF LAW
at TRINITY WESTERN UNIVERSITY

APPENDIX ONE

Members of the TWU School of Law Task Force (2008)

- 1. Jonathan S. Raymond, Ph.D., President TWU, Langley, B.C.
- 2. Dr. Donald Buckingham, Law Professor, Lawyer Federal Department of Justice, Ottawa, ON
- 3. Dr. Janet Epp Buckingham, Director of Laurentian Leadership Centre of Trinity Western University, Ottawa, ON
- 4. Geoffrey Cowper Q.C., Partner Fasken Martineau LLP, Vancouver, B.C.
- 5. Dr. Dennis Jameson, Provost TWU, Langley, B.C.
- 6. Robert G. Kuhn, Partner Kuhn and Company, Abbotsford, B.C.
- 7. Dr. Eugene Meehan Q.C., Partner Supreme Advocacy LLP, Ottawa, ON
- 8. Kevin G. Sawatsky, Lawyer, Professor of Law TWU, Langley, B.C.
- 9. Elizabeth, Davis, Facilitator, London, ON

Note: additional members of this task force asked that their involvement be kept confidential.



APPENDIX TWO

Members of the Curriculum Development Working Group (2009)

- Dr. Donald Buckingham, Law Professor, Lawyer Federal Department of Justice, Ottawa, ON
- 2. Dr. Janet Epp Buckingham, Director of Laurentian Leadership Centre of Trinity Western University, Ottawa, ON
- 3. Dr. Eugene Meehan Q.C., Partner Supreme Advocacy LLP, Ottawa, ON
- 4. Prof. Kevin Sawatsky, Professor of Law Trinity Western University School of Business, Langley, B.C.

Note: Two additional members of this working group, who are faculty in other law programs in Canada, asked that their involvement be kept confidential.



APPENDIX THREE

Law School Advisory Council (2011-)

- 1. Kevin Boonstra, Partner, Kuhn LLP, Abbotsford, B.C.
- 2. Dr. Donald Buckingham, Chairperson, Canada Agricultural Review Tribunal, Ottawa, ON
- 3. Lorne Jacobson, Partner, Triwest, Calgary, AB
- 4. Dr. Eugene Meehan Q.C., Partner Supreme Advocacy LLP, Ottawa, ON
- 5. Peter Mogan, Partner, Access Law, Vancouver, B.C.
- 6. Amber Pashuk, Public Prosecution Service of Canada, Toronto, ON
- 7. Earl Phillips, Partner, McCarthy Tétrault LLP, Vancouver, B.C.

Note: additional members of this advisory council asked that their involvement be kept confidential.



APPENDIX FOUR

External Review: ALBERT H. OOSTERHOFF

REPORT

on the Academic Soundness of the Proposal for a

JURIS DOCTOR PROGRAM

at

TRINITY WESTERN UNIVERSITY

by

Albert H. Oosterhoff

Professor Emeritus Faculty of Law The University of Western Ontario

January 24, 2012



REVIEWER'S QUALIFICATIONS

Education

- The University of Western Ontario, J.D., 1964
- The Law Society of Upper Canada, Barrister & Solicitor, 1966
- The University of Western Ontario, B.A., 1968
- University of Toronto, LL.M., 1970

Work Experience

- Practiced law in London, Ont., 1966-68
- University of Windsor, Faculty of Law
 - o Assistant Professor, 1969-70
 - o Associate Professor, with tenure, 1970-72
- The University of Western Ontario
 - o Associate Professor, 1972-80
 - o Professor, 1980-2005
 - o Associate Dean (Student Affairs), 1982-85
 - o Associate Dean (Administration), 1989-92
 - o Acting Dean, January 1999 June 2000
 - o Associate Dean (Academic), 2001-03
 - o Retired June 30, 2005, with title of Professor Emeritus
 - Member of the University Senate for three terms and served on numerous University and Faculty Committees
 - Co-Director of the Joint LL.B./MBA Program, 1982-85 and 2001-03
- University of Toronto
 - o Adjunct Professor, 2005-10 (teaching Trusts)

Academic Specialization

Property, Trusts and Wills

Publications

Numerous publications in the form of peer reviewed articles, comments, monographs, reviews, reports, and studies, and continuing legal education materials. Frequently cited in all levels of courts.

Other Activities and Memberships

Associate Editor for many years of the Dominion Law Reports, Canadian Criminal Cases, and Ontario Reports.

Editor-in-Chief, Estates and Trusts Journal, 1987-89.

Consultants on a number of occasions to the Ontario Law Reform Commission, and the Uniform Law Conference of Canada, Consultant to law firms.

Member of the Law Society of Upper Canada, and the Canadian Bar Association.



1. GENERAL COMMENTS

The proposed Juris Doctor program is a very thorough and carefully considered proposal. It is very meritorious on many levels:

- The program is compatible with and builds on the University's mission.
- It satisfies the requirements of the Federation of Law Societies of Canada. There is demonstrated student demand for sound legal education in Canada and the demand greatly exceeds available spaces.
- The unique position of the University as a faith-based educational institution permits it to offer a program that emphasizes professionalism, high ethical standards, leadership, and character development, while integrating a Christian worldview.
- The proposed curriculum includes all the courses essential to a sound legal education and requires all students to take a core list of courses, but also leaves plenty of room for student choice.
- The proposed program permits a certain degree of specialization in charities and social justice law, and small business and entrepreneurial law. The emphasis on placing graduates in smaller communities which are underserviced is a desirable goal.

In my opinion, therefore, the proposal is a sound one and highly relevant in the current Canadian market.

2. SPECIFIC COMMENTS

2.1 Program Aspects

The Program Aspects have been developed carefully and, in my opinion, are more than adequate.

2.1.1 Objectives

The objectives are, in some respects, unique, for a common law Canadian law school. While a renewed emphasis on professionalism and ethics has become a feature in most Canadian law schools in the last decade, and while practical assignments have been part of Canadian legal education for many years, the program takes these desirable objectives to a new level by also emphasizing leadership and character development and integrating a Christian worldview into the program.

2.1.2 Curriculum Design

The Curriculum has been designed carefully to achieve the program's objectives.

2.1.3 Admission and Graduation Requirements

These requirements are fairly standard for a Canadian law school and are unexceptional.



2.1.4 Program Requirements

The program requirements elaborate on the design of the Curriculum. While the first year and upper year curricula are typical of the average Canadian law school, the emphasis on professionalism, practical competence, and high ethical standards sets this program apart, especially since these come into play from the outset and are built into all courses, including particularly three capstone courses.

The emphasis on a built-in practice approach is to be applauded, since it appears likely that law societies will get out of the business of operating bar admission courses.

The small-group approach in first-year is also to be applauded. This is common in many Canadian schools and is highly desirable from a pedagogical viewpoint.

2.1.5 Course Descriptions

Subject to a couple of suggestions in Section 2.3, the course descriptions are adequate and unexceptional.

2.1.6 Overall Program Design

The design of the program is adequate and unexceptional.

2.1.7 Program Delivery

As is to be expected, the program will be delivered mainly through classroom instruction. However, the program goes further than many Canadian schools by the features of mentoring and practica, important features that will set the program apart. The wide range of practicum placements sounds particularly exciting.

2.2 Strengths

In my opinion, the strengths of the program are the emphases on: (a) professionalism and high ethical standards; (b) practical competence; (c) social service; (d) a core curriculum; and the opportunity to specialize to some extent in underserviced areas of law.

2.3. Suggestions for Improvement

I have three suggestions that I believe may improve the program. I list them in no particular order:

A number of schools teach an Ethics course in the First Year. The program proposal states that the focus on professionalism, practical competence, and high ethical standards begins during Orientation Week, but there is no indication that professionalism and ethics will be taught further in the First Year. I realize that the First Year curriculum is already quite full, but I wonder if it



would not be possible to have a stronger focus on these matters throughout the First Year. perhaps by incorporating these matters in First Year courses, or during a break-out week at the start of the second term.

The second suggestion betrays my own interests, but I am concerned that there is only a joint course for Wills and Trusts, worth three semester hours. I doubt that one can do justice to both topics in such a short time frame and would prefer to see them divided into two separate courses. Lawyers practicing in smaller communities especially will be faced with wills and trusts issues on a regular basis and they will need more than an introductory course to prepare them for such a practice.

The list of required courses in the upper years has, I suspect, been considered carefully, so I am somewhat hesitant in questioning the choices. However, I am of the view that both might have made the list: Tax Law (the basic course), and Trusts. My reasons are: both Tax Law and Trusts are so pervasive in our legal system and a basic knowledge of the two subjects is essential in many areas of practice. I realize that they cannot simply be added to the list, since that would overload the required course list and have deleterious consequences for student choice. But to delete courses from the list may not be attractive to the developers of the program either. However, if it were my choice, I would delete Family Law and Real Estate Law. Neither course has the same pervasiveness as Tax and Trusts.

2.4 Resources

2.4.1 Facilities

I believe that the facilities in the form if the proposed state-of-the-art School of Law building will be adequate for delivery of the program. I assume that the building will be appropriately wired for state-of-the-art audio-visual presentations and for internet access, especially throughout the library, the classrooms, and student common areas. In my experience, seminar rooms are always in great demand and you may wish to increase their number from four to six.

2.4.2 Library

Since the library plan will be developed in accordance with the Canadian Academic Law Library Standards, I believe that the library will adequately serve the needs of the program. It is an exciting time to be planning a new law library when so many resources are now online, and, there, fewer hard copies will likely be needed. However, based on my experience, it will still be important to maintain and adequate monograph collection, both historical and current.

2.4.3 Personnel

The proposals for hiring a dean, a director of the library, and other staff and faculty have been developed with careful thought. I believe that the staffing of the Law School will be adequate for the delivery of the new program. Further, the proposed hiring of the faculty and staff over a three-year period once the program is approved and comes on stream is appropriate.



2.5 Timeline

It is a bit difficult for me to judge whether the timeline is realistic. Based on the information provided in the Proposal, it seems clear that internal approval should not present a problem and ministerial approval should not present a difficulty either. However, as the proposal indicates, the approval process of the Federation of Law Societies of Canada is new and the members of the new Canadian Common Law Program Approval Committee will be "learning on the job" so this part of the process may take a bit longer. I do not know how long it will take the Law Society of British Columbia to give its approval. Assuming that the approval time of both of these bodies is not more than a year in total, the working timeline for a launch of the J.D. Program in September 2015 is indeed realistic.

2.6 Other Observations

I believe that the proposal has demonstrated a need for a new Canadian common law school. The statistics clearly show that many qualified applicants cannot gain admission to the limited number of places. Further, from a marketing viewpoint, the special focus of the program, with its emphasis on professionalism, practical competence, high ethical standards, social service, a core curriculum, and its focus on placing graduates in smaller communities will be attractive to many applicants. So will the fact that the University provides an integrated Christian worldview for its students.

3. SUMMARY

In conclusion, it is my considered opinion that the Proposal is academically sound, will have adequate resources attached to it, satisfies regulatory requirements, and proposes a realistic timeline. In addition, the proposed program builds on the strength of the University's mission and existing programs.

Further, there is a demonstrated need for the program. And finally, the program will be attractive to many applicants because of its emphasis on social justice, high ethical standards, professionalism, and practical competence, as well as a core curriculum and the integration of a Christian worldview into the legal studies.

Respectfully submitted.

Albert H. Oosterhoff **Professor Emeritus** Faculty of Law The University of Western Ontario



APPENDIX FIVE

External Review: LYMAN R. ROBINSON, Q.C.

Lyman R. Robinson, Q.C.,B.A., LL.B., LL.M.

January 30, 2012

Dr. Elsie Froment, Dean of Research, Trinity Western University, 7600 Glover Road, Langley, B.C., V2Y 1Y1

Dear Dr. Froment:

RE: EXTERNAL REVIEW of PROPOSED Juris Doctor PROGRAM at TRINITY WESTERN UNIVERSITY

I understand that it is customary for an External Program Reviewer to provide a summary of his qualifications to provide an External Review.

My academic qualifications include substantial experience in both professorial and administrative positions at two Canadian law schools, namely Queen's University and the University of Victoria (hereinafter referred to as "UVic"). At UVic, I was one the founding members of the Faculty of Law where I participated extensively in the design and development of its curriculum. I subsequently became the second Dean of the Faculty (1980-85). I also served as Associate Vice-President, Legal Affairs at UVic (1996-2000).

In the early 1990s, I was a member of the Board of Trustees of the Law School Admissions Council (LSAC), a not-for-profit U.S. corporation that designs and administers the LSAT test. I served as the Chair of the Budget and Legal Affairs Committee of the LSAC for several years. During that period I became quite familiar with the accreditation standards and processes for the accreditation of law schools in the United States. The LSAC does not accredit proposed law schools; however, the LSAC was named as a defendant, along with the American Bar Association (ABA) and the American Association of Law Schools (AALS), in litigation involving the accreditation of law schools.

My understanding of the competency requirements that are needed by a practicing lawyer began in 1963 when I articled with and subsequently practiced with the law firm of Crease & Company in Victoria, B.C. Throughout my academic career, I have been periodically engaged as a consultant in legal matters and I have appeared as counsel at both the trial and appellate level. During the period from 1986 to 1996, I served as a chair of adjudicative tribunals on two federal tribunals. I have also served as chair of several public inquiries and I have been the



member of a number of arbitration panels.

1. EVALUATION OF ACADEMIC SOUNDNESS

Prior to writing my Review, I carefully read Draft 6 of the proposed Juris Doctor Program at Trinity Western University dated January 10, 2012 (hereinafter called "J.D. Program, Draft 6") and the Final Report of the Common Law Degree Implementation Committee of the Federation of Law Societies of Canada dated August 2011 (hereinafter called the "Federation Committee's Final Report on Accreditation Requirements"). I also read the draft Proposal for a School of Law at Trinity Western University, (hereinafter called the "Proposal for a Law School").

My evaluation of the academic soundness of the proposed J.D. Program of Trinity Western University (hereinafter referred to as "TWU") included an examination of several factors including:

- (1) The Objectives of the Program;
- (2) The structure and course content of the curriculum:
- (3) The teaching methodologies proposed to be used in the courses;
- (4) The adequacy of the resources that TWU proposes to allocate to the Program; and
- (5) The likelihood of accreditation by the legal profession's governing bodies.

After considering these factors in relation to my knowledge of the J.D. Programs of other Canadian law schools and my understanding of the substantive legal knowledge and practical skills that are required to practice law as a profession, I have concluded that the proposed J.D. Program is academically sound. My reasons for this conclusion are described in the following paragraphs.

OBJECTIVES OF THE PROGRAM: The objectives of the proposed J.D. Program are described in the J.D. Program, Draft 6, at pages 1 and 4. These objectives include a focus on professionalism, practice competence and ethical standards. These objectives are based, in part, on two reports regarding the relationship between academic legal education and the practice of law as a profession. The Federation of Law Societies of Canada Consultation Paper on the Canadian Common Law Degree dated September 2008, at page 15, paragraph 23, commented favourably upon the development of academic programs where "...academic instruction is more closely integrated with the development of practice skills". The Federation Committee's Final Report on Accreditation identified the competency requirements of law graduates who seek to enroll in provincial bar admission programs. This Report also emphasized the need to integrate the teaching of ethics and professionalism into law school curricula. The 2007 Report of the Small Firm Task Force prepared for the Law Society of British Columbia, at page 6, identified a need to educate law students who will be capable of practicing as sole practitioners or in small firms in less populated areas of the province. This followed an observation that when older lawyers, who are practicing in these areas retire, they are not being replaced by young lawyers. The objectives of the proposed J.D. Program respond to



needs that were identified in the above mentioned reports.

STRUCTURE AND CONTENT OF THE CURRICULUM: The structure of the curriculum of the proposed J.D. Program is similar to the structure of J.D. programs of other Canadian law schools whose degrees have been accredited by the provincial law societies, namely, 90 semester hours of course work over six terms (3 years). As is the case with most J.D. programs, all courses in the 1st Year of the curriculum are required courses because they serve as the foundation for upper year courses. It is in the 2nd and 3rd years of the TWU J.D. Program that both the structure and the content of curriculum are different than most Canadian J.D. programs. In the proposed TWU J.D. Program, students must complete 10 required courses in subjects that are regarded as essential for a graduate who is preparing to enter the legal profession. This is a significant improvement compared to many J.D. programs because it will ensure that graduates have a broader understanding of the legal subjects that are the foundation of the Canadian legal system. In many J.D. programs, it is common to have only one or two required courses in the combined 2nd and 3rd Years of the program. The course content of the proposed TWU J.D. Program is distinctive in that there is a much greater emphasis on the development of practice skills and a focus on professionalism and ethical standards. For example, two of the required courses are LAW 225 ETHICS AND PROFESSIONALISM and LAW 330 PRACTICE MANAGEMENT. 1 have examined the Course Description of each of the proposed courses in the J.D. curriculum and, in each case, I am satisfied that the course is academically sound and will contribute to the satisfaction of the objectives of the proposed J.D. Program.

TEACHING METHODOLOGIES: The teaching methodologies, which are proposed to be used the various courses, are suitable for the respective courses. In many cases, these methodologies will contribute to the development of practice skills and they are a significant improvement compared to the typical lecture format that is often used in basic substantive law courses in other J.D. programs.

RESOURCES: The resources, which TWU proposes to allocate to the J.D. Program, including the appointment of faculty and staff, the establishment of a law library, and the construction of a law school building, are relatively comparable to those of other Canadian law schools when the size of the proposed student body is considered. These resources will enable the School of Law to deliver the proposed J.D. Program and provide the students with a proper learning environment.

PROFESSIONAL ACCREDITATION: The likelihood of professional accreditation by the governing bodies of the legal profession is an important consideration in the evaluation of an academic program when it is proposed that the degree will serve as the credential for professional qualification. The Law Society of British Columbia will make its own decision regarding the accreditation of the proposed J.D. Program for the purpose of enrollment in its Bar Admission Program. Similarly, the Canadian Common Law Program Approval Committee ("the Approval Committee") established under the auspices of the Federation of Law Societies of Canada will



make its own decision regarding accreditation of the J.D. Program for the purpose of determining whether graduates of the proposed J.D. Program will be eligible for enrollment in bar admission programs of other provincial law societies. In developing the proposed J.D. Program, the developers have sought to develop the J.D. Program in accordance with the requirements set out in the Federation Committee's Final Report on Accreditation Requirements [See J.D. Program, page 4]. My analysis of the curriculum and course content of the proposed J.D. Program measured against the competency requirements described in the Federation Committee's Final Report on Accreditation Requirements provides me with encouragement that the proposed J.D. Program will be favourably received by the governing bodies of the legal profession when accreditation of the J.D. Program is considered by them. By way of a separate document, I have provided TWU with a copy of my analysis.

On the basis of my examination of the proposed J.D. Program I am completely satisfied that the proposed J.D. Program is academically sound and that the structure and content of the curriculum will satisfy the Program's objectives of producing law graduates who will have a comprehensive knowledge of the fundamental legal subjects of Canadian legal system and the practical skills to serve clients particularly in small law firms outside major metropolitan areas.

2. OVERALL SOUNDNESS and RELEVANCY OF THE PROPOSED J.D. PROGRAM

Program Aspects

FIRST YEAR

All of the 1st Year courses in the J.D. program are required courses. The courses are similar to those found in the 1st year program of many Canadian law schools. I have examined the structure of the 1st Year program, the course objectives, course outlines and suggested texts for each course. Subject to the two suggestions that I will make below under the heading "Suggestions for Improvements", I have concluded that the structure and content of the 1st Year of the J.D. program will provide students with the requisite knowledge of substantive law and an introduction to practice related skills that will serve as a proper foundation for upper year courses. Where texts are suggested for a course, the texts are appropriate for the course. An important feature of the 1st Year of the J.D. program is the proposal to divide the proposed enrollment of 60 students into two sections of 30 students or less [J.D. Program, Draft 6, pages 7 and 22]. In the 1st year of a law program, it is important to provide students with an opportunity to learn to "think like a lawyer". This involves regularly calling upon each student to articulate his or her understanding of the meaning and effect of a judicial decision or statutory provision, provide arguments in support of his or her understanding or interpretation, and respond to any contrary arguments. This teaching technique develops a student's analytical skills as well as the skill of making oral presentations. In my experience, this technique is most effective in classes with 30 or fewer students.



2nd & 3rd YEARS

The structure of the 2nd and 3rd Year of the J.D. Program requires each student to complete 10 required credit courses (one of which must be taken in 2nd Year) and two practicums (LAW 200 does not have any semester hour credit). After examining the structure of the proposed 2nd and 3rd program, the course outline for each course, and the proposed teaching methodology for each course, I have concluded that they are academically sound and consistent with objectives of the J.D. program. The proposed texts have been written and prepared by well-known and respected legal authors. The proposed teaching methodologies are suitable for the respective courses.

Strengths of the Proposed Program

There are several strengths of the proposed J.D. Program that merit emphasis. They include: (a) DEVELOPMENT OF PRACTICE COMPETENCIES AND SKILLS: The integration of practice competencies and skills into the J.D. curriculum is an objective of the J.D. Program. The proposed J.D. program accomplishes this objective in many courses, including: LAW 111A and LAW 111B CONTRACT LAW [J.D. Program, Draft 6, pages 29 & 30]: In both of these courses, students will be introduced to the principles of drafting contracts and given practice in negotiating and drafting contracts.

LAW 117 INTRODUCTION to PRACTICE SKILLS and the PRACTICE OF LAW [Draft 6, page 40]; LAW 305 BANKRUPTCY AND INSOLVENCY LAW [J.D. Program, Draft 6, page 49]: Students will be given practice drafting bankruptcy documents (proposals, assignments, etc).

LAW 306 BUSINESS ORGANIZATIONS [J.D. Program, Draft 6, pages 4, 13 & 51]: Students will be required to complete or "walk through" all steps of incorporating and dissolving a

LAW 308 CIVIL PROCEDURE [J.D. Program, Draft 6, page 53]: One of the course objectives is to develop legal drafting skills including the drafting of civil pleadings.

LAW 309 CLIENT RELATIONS and INTERVIEWING [J.D. Program, Draft 6, page 54]: Over half of the course time will be devoted to practice scenarios.

LAW 329 NEGOTIATION (Advanced) [J.D. Program, Draft 6, page 78];

LAW 331 REAL ESTATE LAW [J.D. Program, Draft 6, page 80]: The course objectives include developing practical skills through problem solving exercises.

LAW 332 REMEDIES: The Course Description includes "drafting opinion letters".

LAW 337 WILLS and TRUSTS: Students will be given practice in taking instructions for drafting a will [J.D. Program, Draft 6, page 87] and drafting a simple will [J.D. Program, Draft 6, page 20].

A secondary benefit, which flows from the development of practice skills, is that it demonstrates the importance of having a thorough understanding of the relevant substantive legal principles.

(b) DESIGNATION OF REQUIRED COURSES: The designation of 10 courses in the 2nd and 3rd years of the J.D. program [J.D. Program, Draft 6, Page7 & 8] as required courses is an important strength of the J.D. program. Over the past 40 years, the trend in most Canadian law schools has been to make the 2nd and 3rd year curriculum largely optional subject to one



or two required courses. Consequently, a student who has chosen an esoteric selection of optional courses, may not have a broad knowledge of the fundamental legal subjects that are the foundation of the Canadian legal system and may not have developed the practical skills that a lawyer needs to engage in the general practice of law with a small firm or as a solo practitioner. The proposed J.D. program, by designating 10 courses as required courses, ensures that each graduate of the program will have thorough knowledge of the legal subjects that are fundamental to the Canadian legal system and the practice skills to engage in the practice of law.

(c) ETHICS AND PROFESSIONALISM: An objective of the proposed J.D. Program is to focus upon and integrate ethical standards and professionalism into the curriculum. The proposed J.D. program accomplishes this objective in many courses and it is an important strength of the program. LAW 225 ETHICS and PROFESSIONALISM [J.D. Program, Draft 6, pages 12 & 43] is a required second year course where these topics are the center of attention. Examples of specific aspects of ethics and professionalism, which are expressly incorporated into other courses, include: LAW 117 INTRODUCTION TO PRACTICE SKILLS and the PRACTICE OF LAW: LAW 303 ADVANCED ADVOCACY; LAW 309 CLIENT RELATIONS AND INTERVIEWING SKILLS; LAW 313, DEBTOR and CREDITOR LAW; LAW 316 EVIDENCE, a required course; LAW 330 PRACTICE MANAGEMENT a required course; LAW 334 SECURITIES LAW; LAW 335 TAX LAW; LAW 336 TAX LAW (Advanced); and LAW 337 WILLS and TRUSTS.

Suggestions for Improvement of the Proposed Program

My comments in this section should not be interpreted as a criticism of the proposed J.D. Program but rather as observations that the developers of the Program may wish to consider as they proceed with the implementation of the Program.

FIRST YEAR CURRICULUM:

LAW 110 INTRODUCTION TO LAW [J.D. Program, Draft 6, page 28] is a required, not for credit, course that will be completed by first year students in the first week of the Fall Term. The objectives of this course include introducing students to the study of law, law as a profession and a calling, and teaching students how to read, analyze and brief a reported legal case. For most students, the study of law is an entirely new academic discipline with many components. While the stated course objectives are important, "case briefing" is a significant component of other first year courses (see, for example, LAW 112A and LAW 112B TORTS). I think that is equally important that students in an introductory course of this nature be given a framework of how the various components of the legal system relate to one another. The framework should include the basic structure of the constitution (division of powers), the legislative system (federal and provincial), the role of the courts in the interpretation of the constitution, legislation, and the development of the common law, and the role of private law where parties structure their own legal relationships by means of contracts, wills, and other legal arrangements. Students, who have a framework of this



nature, will be in a better position to understand how the content of the remainder of the 1st Year courses relate to legal system as a whole.

LEGISLATION and the PRINCIPLES OF STATUTORY INTPRETATION:

The J.D. Program, Draft 6 at page 6, states:

"As with most law schools across Canada, TWU's first year program will have a strong focus on learning to read and analyze case law."

This statement is followed, in the next paragraph, by a reference to Law 116, FUNDAMENTALS OF CANADIAN LAW, where students will "... gain an understanding of how the common law and the Canadian legal system function". My concern is the balance in the 1st Year curriculum between the development of the common law and the importance of legislation and the principles of statutory interpretation in Canada's legal system. LAW 111A and B CONTRACT LAW, LAW 112A and B TORT LAW, and LAW 114A and B PROPERTY LAW place heavy emphasis on the development of the common law on a "case-by-case" basis. There is a question in my mind whether LAW 116, FUNDAMENTALS OF CANADIAN LAW needs to devote much further time to the development of the common law. In my opinion, the typical 1st first year curriculum in most Canadian law schools does not give enough emphasis to statutes, regulations and municipal bylaws that are prominent components of the Canadian legal system. One of the core competencies identified in the Federation Committee's Final Report on Accreditation Requirements, under the headings of both "Skills Competencies - Legal Research" and "Foundations of Law", is statutory interpretation and analysis. The Course Description of LAW 116 FUNDAMENTALS OF CANADIAN LAW [J.D. Program, Draft 6, page 39] does include, among other topics, the principles of statutory interpretation, delegated legislative authority and regulations. However, for example, the UVic Law Program devotes an entire first year course to the legislative process and the principles of statutory interpretation. When I taught that course during its inception, I was often struck by how few students (other than those who had majored in political science) understood the legislative process in Canada. Lawyers have frequently told me that UVic law students (who may work in law firms as early as after 1st Year) had greater familiarity with legislation, regulations and the principles of statutory interpretation than their counterparts from other law schools. I submit that LAW 116 FUNDAMENTALS OF CANADIAN LAW could be strengthened by increasing the emphasis on the legislative process and the principles of statutory interpretation.

2nd and 3rd YEAR COURSES:..

LIST OF REQUIRED COURSES: In a discussion about the designation of required courses, there is often a debate about the courses that should be included on the required list. The debate is often shaped by the debaters' personal experience in practice. Notwithstanding that I practiced family law for several years, I don't think that it is essential that every lawyer have knowledge of family law. Nevertheless, I recognize that one of the objectives of the J.D. program at TWU is to prepare students for practice in small law firms particularly outside the major B.C. urban areas. Most lawyers who practice in this context will, almost



inevitably, have some clients who will require the advice of a lawyer who has knowledge of family law . Therefore, I understand why LAW 317 FAMILY LAW has been designated as a required course. There is an old axiom that only two things in life are certain, namely death and taxes. On the basis of this axiom, it could be argued that LAW 337 WILLS AND TRUSTS and LAW 335 TAXATION are just as important as Family Law and should be designated as required courses.

LAW 317 FAMILY LAW [J.D. Program Draft 6, page 63]: An important function of a lawyer who practices family law is the negotiation and drafting of separation agreements. This topic is not specifically mentioned in the Course Outline. Students would benefit from the inclusion of this topic in this course.

LAW 328 NATURAL RESOURCES LAW [J.D. Program, Draft 6, page 76]: Natural resources are an important part of British Columbia's economy. The content of this course would benefit from a greater focus on specific natural resource issues that lawyers in small firms outside the large urban areas may encounter. For example, legal issues relating to forest industry could be one focus of the course.

LAW 331 REAL ESTATE LAW [J.D. Program, Draft 6, page 80]: The following 3 topics are not specifically mentioned in the course description:

- (a) The acquisition of an interest in or on land situated on Indian Reserve Land. Both commercial and residential developments on Reserve land are becoming more common.
- (b) Strata property transactions: Many commercial and residential property holdings are now governed by Strata Property legislation. This course does cover the purchase and sale of real estate and this may include strata lots. The course content does not appear to cover aspects of the ongoing relationship between a strata lot owner and the strata corporation.
- (c) Conflicts of Interest: Circumstances arise in many real estate transactions where there

is a potential for a lawyer to become involved in a conflict of interest.

This course would benefit from the inclusion of these topics.

Adequacy of Resources

FACULTY and STAFF: When it reaches full strength, the proposed faculty complement will consist of a Dean, a 12 full-time faculty, and approximately 14 adjunct faculty members [J.D. Program, Draft 6, page 23 and Appendix B, pages 89 & 90]. Given the range of proposed course offerings in the curriculum, this number should be sufficient to deliver the proposed curriculum.

Upon the enrollment of its initial first year class, TWU proposes to have 6 full-time faculty and one adjunct faculty member [J.D. Program, Draft 6, Appendix B, page 88]. The UVic Faculty of



Law had a similar number of full-time faculty in when it enrolled its initial 1st Year class. The commencement of a new law school including the development of new courses requires a great deal of time and energy by the founding faculty members. I don't think that an attempt should be made to begin the first year of operation with less than 6 full-time faculty members.

The planned number of support staff is suitable for the planned number of faculty and students.

LIBRARY: The law library will be developed in accordance with the Canadian Academic Law Library Standards [J.D. Program, Draft 6, page 22-23]. Many electronic legal data bases are now available. This dramatically reduces the need to acquire hard copies of many series of law reports and the shelf space that would be required to house them. Provision will need to be made to enable law students in the J.D. program to gain access to these data bases. A criticism of recent law graduates, which I occasionally hear from law firms, is that they tend to rely exclusively on electronic legal data bases when they are conducting research. Law students will still require instruction to develop their knowledge of and skill in using traditional printed material, including legal digests and monographs that are frequently relied upon as legal authorities.

LAW SCHOOL BUILDING - CLASSROOMS and STUDENT FACILITIES: I have visited almost 20 law schools in Canada and the United States. As the chair of the UVic law school building committee, I carefully examined, in the company of an architect, the design and the space configurations of 6 law schools in Canada and the U.S. On the basis of the projected enrollment at TWU, and bearing in mind that electronic data has reduced the space needs of a law library, I believe that the components of the proposed new school law building [J.D. Program, Draft 6, page 22] and the proposed square footage and room configurations [See: Proposal for a School of Law, pages 25-28] are relatively comparable to those of other law schools and the proposed facilities of will properly serve the needs of students, faculty and staff. For a reader of this Review who has not have participated in the overall learning process in a law school, it is important to recognize a significant amount of learning takes place in informal settings with a law school building where students debate legal principles and the merits of various legal cases and statutory provisions. I regard the Student Collegium as a critical component of the proposed law school building.

Timeline for Development of the Proposed Program – Is it Realistic?

The timeline for recruiting a Dean, Law Librarian and faculty members [See: Proposal for a School of Law, pages 30-31] is comparable to the timeline followed by the UVic law school and it is realistic and achievable. The timeline for preparing architectural drawings and completing the construction the School of Law Building [J.D. Program, Draft 6, page 22 and 25; Proposal for a School of Law, page 25] by September, 2015 may be tight without much room for any unexpected delays.



Other Considerations

MARKET VALUE OF THE PROGRAM: There is a need for a law school where the primary emphasis of the J.D. Program will be to provide students with a knowledge of the substantive legal subjects that are the foundation of the Canadian legal system and the practical skills that will enable them to engage in the general practice of law in areas outside major urban areas. I expect that there are many prospective law students, whose primary objective is to become a practicing lawyer, who will find the J.D. Program at TWU to be very attractive.

3. SUMMARY

I have carefully reviewed the proposed J.D. Program and I have concluded that it is an academically sound program. Graduates from the Program will have a sound knowledge of the substantive legal subjects that are the foundation of the Canadian legal system. The Program's emphasis on ethical standards and professionalism and the development of the legal skills and competencies will likely result in the Program being favourably received by the governing bodies of the Canadian legal profession.

Yours truly,

Lyman R. Robinson, Q.C



APPENDIX SIX

Response to external reviews

The two external reviewers were very favourable in their assessments of the soundness and academic soundness of the program. Each made some suggestions for improvement of the proposed program, although they indicated that these were suggestions only.

Albert H. Oosterhoff

Suggestion 1: Professionalism and ethics should be incorporated into the First Year curriculum either by incorporating them in the courses or during a break-out week at the start of the second term.

It is crucial to have a focus on ethics in first year to underscore its importance. It will be incorporated into each of the first year courses. Issues of professionalism will be incorporated into LAW 508, Introduction to Practice Skills and the Practice of Law.

Suggestion 2: Divide the Wills and Trusts course, LAW 709.

After consultation with lawyers in small firms, or sole practitioners, this suggestion has not been taken. The lawyers felt that the course as designed was adequate.

Suggestion 3: Change the required upper year courses such that Family Law and Real Estate Law are not required but Tax and Trusts are.

The Wills and Trusts course has been made mandatory, replacing Family Law. However, the small firm lawyers consulted recommended that Real Estate Law remain a required course over Tax Law.

Suggestion 4: Increase the number of seminar rooms from four to six.

This is a helpful suggestion and this information has been incorporated into the proposal.

Lyman R. Robinson

Suggestion 1: In LAW 110 (renumbered LAW 501), include an introduction to the legal system. This is an excellent suggestion and the course description has been amended accordingly. Several of the topics mentioned in this suggestion are included in the course on the Fundamentals of Canadian Law, a required course in the first semester.

Suggestion 2: Increase the emphasis on legislation and principles of statutory interpretation in LAW 116 (renumbered LAW 507).

This course was developed in accordance with the requirements of the Federation of Law Societies of Canada. The FLSC requires that graduates of law schools must have an understanding of the foundations of law, including,

• Principles of common law and equity;



- The process of statutory construction and analysis; and
- The administration of law in Canada.

We believe that all three components are important. They will be addressed in other first year, and upper year courses but this is where the foundation is laid. Prof. Robinson makes the point that several of the first year courses focus on common law. As this is the case, LAW 507 will have more of an emphasis on statutory instruments and interpretation.

Suggestion 3: Change the required upper year courses such that Family Law is not required but Tax and Wills and Trusts are.

This is similar to a suggestion made by Albert H. Oosterhoff. Wills and Trusts has been made a mandatory course and Family Law has been removed as a mandatory course.

Suggestion 4: Add to LAW 317 (renumbered LAW 706) negotiation and drafting of separation agreements.

This is an excellent suggestion and the course description has been amended accordingly.

Suggestion 5: The Natural Resources Law course, LAW 328 (renumbered LAW 632) would benefit from a greater focus on specific natural resource issues that lawyers in small firms outside the large urban areas might encounter – forestry, for example. The course description and outline have been amended to include forestry.

Suggestion 6: Real Estate Law, LAW 331 (renumbered LAW 709) should be amended to include the following three topics: (a) land on Indian Reserve Land; (b) Strata property transactions; and (c) conflicts of interest.

The course outline has been amended accordingly.



APPENDIX SEVEN

Letters in Support



397 Gladstone Ave. Suite 100 Ottawa, ON K2F 0Y9 Canada Telephone: (613) 695-8655 Fam. (613) 695-8580 Reply to: Eugene Mechan Q.C. emechan@supremeadvocacy.ca

March 20, 2012

MAIL

Ms Elsie Froment, PhD Dean of Research Trinity Western University 7600 Glover Road Langley, BC V2Y 1YI

Dear Ms. Froment:

Re: Trinity Western University Law School

- I am an irregular church goer, but more regular Law School attendee (four times) so I
 probably know more about the latter than the former.
- 2. I do believe however in something greater than me.
- But this new Law School is doing something special, and big in my view, that I
 acknowledge, respect, and support it will be open to:
 - · all faiths
 - Christian or non-Christian
 - those of no faith.
- 4. Though the Law School will be small (in terms of graduates being produced) they will serve a very necessary need for lawyers in:
 - · small to medium sized firms
 - rural Canada (in this particular respect I attach the article "Nova Scotia Needs More Rural Lawyers", Canadian Lawyer magazine, Feb 2012)
- 5. This Law School will produce lawyers with strong moral values together with a sense of local community something most positive for the legal profession throughout Canada.
- 6. Because this Law School will focus on:
 - practical training
 - clinical programs
 - how-to programs as well as academic-type programs

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- cooperative programs their graduates will be much sought after.
- 7. My firm would be pleased to take anyone from the first graduating class as an articling student
- 8. And to speak personally and directly, I do put my money where my mouth is I have personally contributed \$25,000 to this Law School Initiative. I will contribute more:
- 9. And last, the Law School I (first) attended was the University of Edinburgh the University being founded in 1583 and the Law School 1707 - we do this now, we do this forever: In other words, creating something that wasn't there before, and doing so for the benefit of others, is something greater than us.

Yours very truly.

Eugene Mechan, O.C. LLB. (Edinburgh, 1975)

LL.M. (McGill, 1977)

LL.B. (Ottawa, 1978)

D.C.L. (Doctor of Civil Law, McGill, 1984)

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February 27, 2012

BY EMAIL AND POST

Trinity Western University 7600 Glover Road Langley, BC V2Y 1Y1

Attention: Dr. Elsie Froment, Dean of Research

Dear Sir/Mesdames:

I am pleased to express my support for the Juris Doctor proposal of Trinity Western University.

There are three features of the proposal that stand out as particularly important:

- better preparing law graduates for the practice of law,
- emphasizing ethics and professionalism, and
- promoting service to the community.

The traditional articling system is under strain and there is serious discussion of other ways to meet Law Society requirements for being qualified to practise law. It seems inevitable that some of the training burden will have to be assumed by law schools. There is also a need for more lawyers outside the major cities, but lawyers in the smaller centres must be convinced that law graduates have the training and practice skills that will make them worthy of hire.

Lawyers in Canada have the great privilege of being a self regulating profession. But that privilege can only be sustained by a constant emphasis on ethics and professionalism. Law schools have an important role to play, introducing and teaching law students about the ethical obligations of practising law, being officers of the court, and serving clients. Closely related is the need to emphasize what it means to be a professional; to act so as to truly profess the ideals of the rule of law, justice and equity.

Perhaps service to the community is part of professionalism, but it deserves special mention. This is a time of great legal complexity; it is also a time when access to justice is seriously strained. Lawyers must be prepared to offer their legal knowledge and skills in service to their communities and to those who lack real, practical access to justice. A law school curriculum and experience that is rich with encouragement and opportunity for community service will be of great benefit. It will bolster a key foundation of our society - the right of all people and organizations to have their rights honoured and their disputes resolved in a legal system that is available, accessible and fair.

DOCS #11225691 v. 1



I have been practising law for almost 32 years. The firm I joined in downtown Vancouver has grown from about 25 lawyers to 100 or so, and has been part of a national firm of 600+ lawyers since 1989. The changes we have seen in our firm have been matched by changes in our profession and our society. But those changes have only served to highlight the importance of the fundamentals of practising law: knowledge and skills, ethics and professionalism, and service. It is from that perspective that I gladly endorse the TWU proposal.

EP/asb

Attention: Dr. Elsie Froment, Dean of Research - February 27, 2012



Carters Professional Corporation / Societe professionnelle Carters Barristers, Solicitors & Trade-mark Agents / Avocats et agents de marques de commerce Terrance S. Carter B.A. LLB. TEP, Trade-Mark Agent

> Orangeville Office Tel: (519) 942-0001 x222 tcarter@carters.ca

March 9, 2012

SENT BY REGULAR MAIL

Trinity Western University 7600 Glover Road Langley, BC: V2Y 1Y1

ATTENTION: Jonathan S. Raymond, Ph.D., President

PRIVATE & CONFIDENTIAL!

Dear Sir.

Law School and Juris Doctor Degree Program at Trinity Western University Re:

I am writing to express my support for the pending proposal for a Law School and a Juris Doctor degree program at Trimity Western University. I have read the proposals, and as a lawyer and an employer, I would strongly encourage and endorse this program. I understand the program proposal will soon be submitted to the BC Ministry of Advanced Education for approval. You have my permission to include this letter as part of an appendix to that submission.

I understand that the Law School will have a particular focus on charity and not for profit law, As the Managing Partner of Carters Professional Corporation, one of the leading firms in Canada in the area. of charity and not-for-profit law, our firm has a particular interest in the development of a Law School program that puts forth a valuable curriculum with a charity and not-for-profit law focus. Two of our lawyers, Karen Cooper and Jane Burke-Robertson, have taught at the University Of Ottawa Faculty Of Common Law, teaching advanced seminars on charity and not-for-profit law. As well, I have given lectures as part of those courses over the last five years. Our firm also participates in an extensive number of seminars each year to assist churches, charities and not-for-profits in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability. A Law School at Trinity Western University would enhance the knowledge base of future lawyers in Charity and Not-for-Profit Law, and provide a Christian environment in which to learn.

I strongly recommend that this degree program be offered at Trinity Western University.

Yours truly.

Carters Professional Corporation

Terrance S. Carter

TSC:wines

Janet Epp Buckingham, Laurentian Leadership Centre, 252 Metcalfe St., Ottawa, ON K2P 1R3 S.Mawyer PoldersVTSCATWU 2012/velerence lener 2012 03 06 draft 2 doc

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Mississauga Office / Bureau de Mississauga 2 Robert Speck Parkway, Suite 750 Mississauga, Ontario, Canada; L42 1Ha Tel: (905) 306-2791 Fax: (905) 306-3434 www.charitylaw.@





Dennis K. Boon David M. Frechette* Donald L. Wilkinson Timothy T. Brown* Jaime M. Boyle Tom Smithwick, Q.C.* Mark A. Koochin* John S. Kennedy Christopher K. Wendell*

March 26, 2012

Dr. Elsie Froment Dean of Research Trinity Western University 7600 Glover Road Langley, BC, V2Y 1Y1

Dear Dr. Froment:

RE: Trinity Western University's ("TWU") Juris Doctor Proposal Endorsement Request

Thank you for your letter of March 6, 2012. I am delighted to be asked to give my opinion concerning the Juris Doctor degree program proposal. I have read the proposal with interest, including the appendices. The proposal is well written and engaging.

I heartily endorse this program for the following reasons:

1. The program's objectives set a new and high standard in Canadian legal education.

The integration of practical assignment with the study of case material will be much appreciated by the students. Although all courses may not lend themselves to this type of integration, those that do will add a "real life" element to the course. There were few of these available when I attended law school 20 years ago. The lack of practical experience was a constant complaint among students. I am pleased this proposal addresses that complaint.

The objective of integrating the study of law with a Christian worldview is intriguing, vital and distinctive. If fact, without this component, there really is no reason for TWU to have a School of Law, other than for general, educational purposes. However, in keeping with TWU's mission of approaching all of life with a Christian worldview in mind, this proposal is totally appropriate. The curriculum, as taught from a Christian perspective, will allow students and faculty alike to explore the dialectical relationship between love and justice. The late Reinhold Niebuhr's thought in this regard is instructive. "Justice is the embodiment of love in complex human relations. On the one hand, justice without love ceases to be justice. On the other hand, love without justice ceases to be love." To the best of my knowledge, there is no other Canadian law school that has as one of its objectives, to

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*Denotes Personal Law Corporation



wed the best of Canadian legal scholarship with the best of Christian theological scholarship.

I believe that TWU's Law School graduates will add a healthy dimension to B.C.'s and Canada's pluralistic society.

2. A new state-of-the-art Law School building will provide students and faculty with a valuable resource for years to come.

> I am of the opinion that a great law school program is built on a great law school library. The fact that TWU is going to build and equip a new library from the ground-up will allow it to take advantage of the newest in legal technological resources, as well as current hard copy resources. I am also of the opinion that the new library will not only be a valuable resource for those on campus, but will be a valuable resource for those who live throughout the Fraser Valley area of B.C.

3. There will be a unique curriculum design focused on leadership, character development and ethics.

Although alluded to above, under section 1, the focus on ethics and professional responsibility begins during Orientation Week and continues throughout the entire three year curriculum. The first year mentoring program is a wonderful idea. It is one which should be followed in all law schools. The second year course in Ethics and Professionalism is very positive, as are the third year courses in Practice Management and Jurisprudence.

However, most importantly, is the emphasis that law is a calling that has service to others. regardless of their economic status or social class, as its highest goal. I hope the Practice Management class will emphasize service to the poor and oppressed as being a virtue highly prized by Christ.

4. There will be an emphasis on the core subjects of legal education.

There may be some who will think that a law school that emphasizes a Christian worldview will be "soft" in terms of course content and methodology. This does not seem to be the case. The first year program will have a strong focus on learning to read and analyze case law. The five basic first year courses will be taught; Contracts, Torts. Property, Constitutional and Criminal Law. In addition, the first year students will take two half courses: Fundamentals of Canadian Law: Common Law & Statutory Instruments. and, Introduction to Practice Skills and the Practice of Law. Thirty-six credit hours in core subjects in first year law do not make for a "soft" legal program. Upper year courses also appear to be just as rigorous.

5. There are plenty of elective courses.

In many law schools there is the reoccurring complaint that there are too many mandatory courses and not enough electives. This does not appear to be the case as set out in the



proposal. Any student should be able to find courses that appeal to their tastes and interests and be useful in their legal practices after graduation.

6. There will be small class sizes.

It has been my experience, both as a student and a teacher, that small class sizes are more conducive to class participation than larger ones. Engaging in a give-and-take discussion or debate is more likely to happen in a smaller class setting than a larger one. I am pleased to see that first year classes will be kept to approximately 30 students or less per section.

7. There will be optional specializations.

A feature that I found particularly appealing is the option to specialize, either in Small Business and Entrepreneurial Law, or in Charities and Social Justice. I am unaware of this being offered in other law schools in Canada. This is particularly appealing for those students who have a firm view in mind of the area of the law they want to practice in.

8. The introduction of the requirement that each student must complete three practica over the course of their years in the J.D. program is an appealing feature of the program.

> This requirement is in keeping with the objective that the TWU-J.D. program will have a practical, as well as a theoretical focus to it. I am certain that each student will greatly appreciate this emphasis. It will give each student the feel of what legal practice is all about, and hopefully a love for the law.

Overall Strengths and Weaknesses

Overall, I am greatly impressed by the proposal to offer a J.D. program at TWU. If I were to make several small criticisms, the first would be that there is no Legal History course being offered. Although this course seems to have fallen out of favour in many law schools, I do think there is some merit in knowing the lineage of the law. It may be that this focus will be picked up as part of another class. If so, I would be in favour of it.

My second criticism is actually more a suggestion than a criticism. It pertains to the Charities and Social Justice specialization. I would think that you may want to include course LAW 626 - Human Rights Discrimination Law and course LAW 622 - Environmental Law under the same heading, particularly since they represent a major focus of Social Justice.

My last criticism concerns the task of teaching with a focus on a Christian worldview. Although the law school is not a seminary, it would be helpful that there be an optional course in Christian anologetics or a survey course in biblical/theological studies. It may be easy to say that the students are going to be taught with a Christian worldview in mind, but if students have little or no theological background or training, this may be difficult to achieve. It may even be the case that some instructors have little or no theological training. This criticism may become most if some of these issues are addressed in the Religion and Law course or the Jurisprudence course.



PORTER RAMSAY LLP

Some of the strengths of the proposed program I have already mentioned above. However, what I did not mention is the overall environment of this new law school. I suspect, given the nature and focus of TWU's mission, that the law school may have a more collegial or cooperative bent to the program than many law school programs in Canada. If such be the case, we may be seeing a new paradigm in legal education at TWU.

In conclusion, I am very much impressed by this proposal. As a partner of a mid-size law firm in Kelowna, B.C., I am sure that we would give serious consideration to any law school student from the School of Law at TWU looking for summer employment, articles or for permanent employment at a our firm, depending on our needs of course at that time. We would treat a TWU School Law graduate no differently than we would a graduate from any other law school in Canada. That is, we will assume they are well trained and ready to make a contribution to the practice of law.

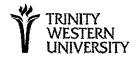
This is a very exciting proposal and one I hope comes to full fruition. There is definitely a need for another law school in British Columbia.

Thank you once again for inviting me to give my thoughts on this proposal. Should you have any questions or require any clarification concerning what is written herein, please feel free to contact me at your convenience.

Kind regards,

DONALD L WILKINSON

cc. Dr. Janet Epp Buckingham





May 1, 2012

Trinity Western University 7600 Glover Road, Langley, BC V2Y 1Y1

Attention:

Elsie Froment, PhD Dean of Research

Dear Sirs/Mesdames:

Re: Proposed Law School at Trinity Western University

It is with deep sense of gratitude, as well as unhesitating endorsement, that I write in full support of the establishment of a law school at Trinity Western University.

I graduated from what was then Trinity Western College in 1972 with an Associate of Arts diploma. Having been born and raised in the interior British Columbia, it proved to be the perfect accelerant to ignite and fuel my educational aspirations. Even then, as only a two-year school, it gave me an extraordinary opportunity to experience a post-secondary education in an environment that actually cared about me. Its faculty and staff invested in me as a young man, providing ample opportunity and encouragement to excel academically, as well as develop as a well-rounded person with something to contribute to our province and country. Trinity invested in me in a way that I believe no other school would have. They taught me to reinvest, which I believe my firm and I have been able to do through contributions made to the charity and notfor-profit sector of this province.

I have remained involved with TWU ever since I was a student, both personally and professionally. I have watched TWU mature into a first class, leading institution of higher learning. It rightfully has taken its place among other prestigious universities in British Columbia through membership in a number of organizations, including the Association of Universities and Colleges of Canada,

There are relatively few private universities in Canada. I believe that TWU is the largest and, given the economic, enrollment and regulation requirements, this must be recognized as a significant accomplishment. In academics, sports, community, national and international involvement, as well as numerous other arenas of comparison. Trinity has become 'the little school that could, challenging, effectively competing with and overcoming numerically superior universities in Canada in many ways. TWU has had to contend with numerous challenges in a relatively short period of time in order to achieve its size and superlative reputation, all without

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receiving public funds. This is a testament to the outstanding quality of its leadership, faculty and students. Many of its graduates who have taken their places as professional, business and political leaders in Canada are proud to be TWU alumni, attributing to that institution much of what provided them with the opportunity, skills and vision to become who they are.

I understand that TWU is the only university in Canada to receive an A+ award for overall quality of education in the Globe and Mail University report card in each of 2006, 2007, 2008, 2009 and 2010. It also received an A+ for Quality of Teaching and Learning in the 2011 and 2012 editions of this report (it was the only university in Canada to receive this A+ rating in 2012). This reputation is not deemed because of a lucrative funding base, but rather these widely accepted public "report cards" reflect and constitute compelling evidence that Trinity's educational excellence and vibrant, caring student life are worthy of respect and recognition.

TWU has succeeded brilliantly in establishing other professional schools, including ones for education and nursing. It also has a wide variety of very successful graduate programs in a variety of fields, including counselling psychology and leadership. Of particular note is its Master of Business Administration program, as the TWU School of Business was selected by the Globe and Mail as the best business school in British Columbia.

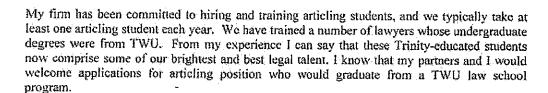
Given its track record for development of important educational programming and professional development, a law school is a logical next step for TWU. It will bring its standard of excellence, highly successful studem life environment, and ability to attract both highly qualified and yet caring faculty to legal education. As a graduate of TWU, and a lawyer who has practiced in Vancouver and the Lower Mainland for over 30 years, I know first-hand that the educational program at a law school developed and launched by Trinity would, as have its many other successes, leave the uninformed observer amazed. It is only those who carefully examine the educational environment created by TWU who will understand its amazing ability to transform its students by helping them to actualize their potential and realize their hopes and dreams, as it did for me.

A TWU law school would be the only one in the Fraser Valley. The Fraser Valley is probably the fastest growing geographic area of our Province, not just in a residential sense, but for business and institutional growth. Further, it is sustainable, and diverse and community-oriented growth. As a resident, and as founding partner of a medium-sized law firm with its head office in Abbotsford, I am fully convinced that a law school at Trinity would be well situated not only for present needs, but for the future of the Province.

A Trinity law school would educate lawyers that can serve in small to medium sized firms, like the one in which I am a partner. These firms serve the families and small to medium-size businesses that are the backbone of our economy. I fully expect that TWU's law school graduates would also be attracted to some of the rural areas of BC, which in my experience have been underserved by the legal profession. The practical legal education proposed at TWU would be very welcome and much-needed addition to our profession.







In conclusion, I cannot be more enthusiastic in my support of the development of a law school at Trinity Western University, I say this with the benefit of an education first grounded there, which has stood me in good stead in a dynamic and demanding legal profession. I say this knowing what it takes to succeed in that profession, especially in the Fraser Valley. I say this knowing the invaluable, well-rounded, educational experience received by students who attend Trinity. I say this in full confidence that a Trinity Western University law school would soon become an exemplar, a model of what a law school can be.

Yours truly,

KUHN LLP

Robert G. Kuhn Law Corporation





Dr. Janet Epp Buckingham Director, Laurentian Leadership Centre · Associate Professor, Trinity Western University 252 Metcalfe Street, Ottawa ON K2P 1R3

February 24, 2012

Dear Janet,

Warm greetings from rainy Vancouver! I trust this finds you well.

It was good to meet you last month and to hear of Trinity Western's University's interest in establishing a law program.

As I shared at that time, at Union Gospel Mission we serve a wide diversity of clients, many of whom come from marginalized and difficult situations, who need legal advice regarding all sort of personal matters. Many sadly have histories of convictions and crime and need help dealing with pardons, advice or other legal counsel. We have over 100 recovery and long-term residents living in this facility, and serve hundreds more each day in both our Hastings facility and Cordova's Womens' Centre.

All this to say, the idea of having legal clinic staffed by Trinity Western legal interns is exciting to us, and we anticipate would be huge help to our programs and our people.

We are very interested in exploring this idea with Trinity, and hope the law program becomes a reality.

I would be happy to meet and dialogue about this further.

Warm regards,

Dan Russell, DMin Director of Programs

HEAD OFFICE - ADILEAST HASTINGS SE, VARIOUSLAD FOUR CO





May 2, 2012

Dr. Elsie Froment Dean of Research Trinity Western University 7600 Glover Road Langley, BC, V2Y 1Y1

Dear Dr. Froment:

Re: School of Law and Juris Doctor Program at Trinity Western University

I am writing to express my support of the proposal to establish a School of Law at Trinity Western University and offer a Juris Doctor Program. Trinity Western University has a strong academic reputation. The university also has an excellent track record for graduates of strong character, high ethical standards, and exemplary leadership qualities. The graduates of this university that I have met and worked with, including Members of Parliament, political staffers, and Manning Centre for Building Democracy staff contribute substantially to the public good of their communities and indeed to Canada. I recommend approval of a School of Law and a Juris Doctor program to be offered at Trinity Western University.

Yours sincerely,

Preston Manning, C.C. President and CEO

PM:jmc



HOLMES & KING BARRISTERS & SOLICITORS

ROBERT D. HOLMES" Law Corporation reholmes@mbklaw.com

June 13, 2012

Janet Epp Buckingham, LLB, LLD. Director | Laurentian Leadership Centre 252 Metcalfe St., Ottawa, ON K2P 1R3 Associate Professor Trinity Western University

Dear Dr. Buckingham:

Trinity Western University School of Law Proposal

Thank you for meeting with me to discuss the exciting project that you and others associated with Trinity Western University are putting together for the establishment of a law school.

Thus far, three of my children have attended Trinity Western University. Our oldest daughter went through the sciences program, is now completing a Masters in Science at the University of Western Ontario and has been accepted into the School of Medicine at the University of British Columbia. Our second daughter graduated with a B.A. majoring in political science and is carrying on her studies at the University of Leicester in the UK studying law. Our third daughter is currently pursuing a program in the Trinity Western arts faculty and is aiming at finishing the requirements for her B.A. degree in three years instead of the usual four. In each case, our children have appreciated the high standards, teaching and research abilities of the faculty, the collegiality of the students and the leadership provided by the university administration.

With regard to the proposal for a new law school in British Columbia, I have to say that I enthusiastically support it. Lattended the University of British Columbia years ago for both my B.A. and LL.B. and then obtained an LL.M at Yale. The University of British Columbia, the University of Victoria and Thompson River University law schools are all largely funded by the provincial government and each provides, in their own way, a perspective on the law that is similar to that of other Canadian law schools.

In my view, it would be useful having another law school with another perspective offered. The mission statement and principles of Trinity Western University clearly would form a distinctive voice among Canadian law schools. Anyone truly committed to academic freedom and excellence and vigorous intellectual debate and discussion would have to concede that point,

Loffered my views to you on how Trinity Western University would, of course, have to provide a solid grounding in core courses in law that are required in Canadian law schools and by Canadian law societies for admission to the bar. I have already noted my own family's

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HOLMES & KING BARRISTERS & SOLICITORS

experience with the high standards that Trinity Western University displays in relation to the programs of study and the courses it already offers. I added that Trinity Western could readily draw upon the talents of other faculty members, particularly relating to philosophy, history, government, political science and other disciplines, so as to offer courses involving legal philosophy, legal ethics, professional obligations and legal history not emphasized or offered elsewhere. Thave in mind courses relating to the natural law tradition as but one example.

Trinity Western University makes a point of developing among its students not just academic excellence, but also an understanding of principles of leadership and service. Given that the legal community prizes all three of those that creates an opportunity and potential advantage for students graduating in law from Trinity Western University. Having what would perhaps amount to an even greater appreciation and understanding of the possibilities that a legal education and career in law affords would be very useful, in my view.

I am pleased to join in support of the proposal by Trinity Western University to open a law school.

> Yours truly. HOLMES & KING

Robert D. Holmes, Q.C.



APPENDIX EIGHT

New Course Outlines

LAW 501 Introduction to Law (0 s.h.)

Description

This course introduces students to law, the legal system and the legal profession. It will teach students the basic skill of how to read and analyze a case. By the end of Orientation Week, students should be able to write a basic case brief.

Course Objectives

The objectives of this course are to:

- 1) address what is, and is not, "law";
- 2) introduces students to the foundational principle of law as a profession and a calling;
- 3) enable students to understand the basic structure of the Canadian legal system;
- 4) teach students the basic skill of how to read and analyze a case;
- 5) enable students to write a basic case brief.

Course Outline

- 1. What is law?
- 2. The nature of the legal profession.
- 3. The structure of Canadian courts.
- 4. A framework for understanding law and the legal system.
- 5. Reading and analyzing cases.
- 6. Writing a case brief.

Texts

No Text



LAW 502, Contract Law (Formation) (5 s.h.)¹

Description

This course sets out the rules for the formation of legally binding contractual relationships. The course will cover the formation and interpretation of contracts. Further, it will cover the enforcement of contracts including the remedies available in the event of a breach of contract.

Course Objectives

This course is designed to:

- 1) describe and assess the role of contracts in the Canadian economy and society;
- 2) explain how a legally enforceable agreement is formed;
- 3) explain the requirements for the content and characteristics of a legally enforceable agreement;
- 5) give students an in-depth understanding of how the common law functions including legal interpretation, stare decisis and applying and distinguishing cases;
- 6) explain the role of standard form contracts and how courts control abusive use;
- 7) explain principles which may vitiate a contract at formation or performance;
- 8) introduce principles for remedies;
- 9) introduce students to ethical issues related to the formation, performance and breach of contracts:
- 10) practice negotiating and drafting contracts.

Course Outline

- 1. What is a contract?
- 2. How a contract is formed:
 - a. Offer and acceptance
 - b. Capacity
 - c. Intention
 - d. Consideration
- 3. Standard form contracts
- 4. The content of contracts including standard form contracts:
 - a. Letter of intent vs. contract
 - b. Oral vs. written contracts
 - c. Form
 - d. Priority
 - e. Misrepresentation
 - f. Terms
- 5. Exclusion clauses
- 6. Principles which may vitiate a contract at formation:
 - a. Mistake
 - b. Duress
 - c. Undue Influence

¹ This is a full year course.



- d. Economic duress
- 7. Principles which may vitiate a contract at performance:
 - a. Unconscionability
 - b. Illegality
 - c. Frustration
- 8. Remedies
- 9. Negotiating contracts
- 10. Drafting contracts
- 11. Ethical aspects of contract law

Texts

- S. Ben-ishai, C. Boyle, D. Percy D. Maccamus and R. Flanigan, Contracts: Cases and Commentaries, (8th edition), (Carswell, 2009).
- S.M. Waddams, The Law of Contracts (Canada Law Book, 2010)



Law 503, Tort Law (5 s.h.)²

Description

Tort law is a foundational component of the common law system beginning as a system covering legal wrongs between private individuals. Today tort law has evolved into a complex body of law encompassing interactions between public and private entities. This course will cover the common law claims and defences for intentional torts such as assault, battery, false imprisonment, trespass and nuisance. Further, it examines the area of negligence. Other topics which will be examined include strict liability, defences, the assessment of damages and modern alternatives to tort law such as statutory compensation. Students will look critically at legal actions involving carelessness and recklessness. Students will critically examine the role of torts in society and explore new developments in Canadian tort theory.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history of tort law and liability from its English origins to its modern day incarnations in Canada;
- 2) familiarize students with various theories of tort liability;
- 3) introduce students to the different types of intentional torts;
- 4) introduce students to techniques for identifying the elements of each of the intentional torts
- 5) introduce students to defences available to intentional torts;
- 6) enable students to read and analyze cases where an intentional tort is the cause of action, to identify the elements of an intentional tort raised in the cases, and the defences that were successfully (or unsuccessfully) raised in the case, and identify arguments that could have been used to support either side of the argument with respect to issues raised;
- 7) familiarize students with the theory and impact of negligence as a legal principle regulating the injurious conduct of persons in Canada;
- 8) familiarize students with the increasingly important role and scope of negligence law and responsibility in Canadian law;
- 9) assist students to identify the elements of a negligence action;
- 10) introduce students to expanding bases for negligence and related liability for wrongful or injurious conduct in Canada;
- 11) explain defences available to negligence claims;
- 12) equip students to read and analysis cases where negligence is the cause of action, to identify the elements of negligence raised in the cases, and the defences that were successfully (or unsuccessfully) raised in the case, and identify arguments that could have been used to support either side of the argument with respect to issues raised;
- 13) identify and discuss ethical issues in torts:
- 14) teach students to prepare short case briefs and prepare oral précis concerning cases covered to present in class.

² This is a full year course.



Course Outline

- 1. Development of tort liability and tort theory in Canada
- 2. Intentional torts
 - a) Trespass to the person
 - b) Intentional interference with the person
 - c) Trespass to property
 - d) Nuisance
 - e) Defences
- 3. Negligence
 - a). Duty of care
 - b) Standard of care
 - c) Causation
 - d) Remoteness
 - e) Defences and remedies
- 4. Tort liability of public authorities
- 5. Misrepresentation/pure economic loss
- 6. New developments in Canadian tort theory
- 7. Ethical issues related to intentional and unintentional torts

Texts

R. W. Solomon et al. Cases and Materials on the Law of Torts (8th student edition) (Thomson Carswell, 2011)

Philip Osborne, The Law of Torts, (4th edition) (Irwin Law Books, 2011)



Law 504, Constitutional Law (5 s.h.)³

Description

Canada is governed by a variety of documents collectively called "the Constitution." The first half of this course covers the "division of powers"; that is, the law that governs the relationship between different levels of government in Canada. The intended clear division between federal and provincial powers by the founding fathers of Confederation has been made more complex by new inventions, developments and circumstances such as aeronautics, telecommunications and commercial realities of the twenty-first century. The second half of the course will focus on the Canadian Charter of Rights and Freedoms and examine its application and interpretation. This will include an examination of the principles of human rights and Charter values.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the structure and substance of Canadian constitutional law, including both division of powers and the *Charter of Rights*;
- 2) familiarize students with techniques of Constitutional interpretation;
- 3) introduce students to the literature which expounds the Constitution, including case law and doctrine;
- 4) introduce students to methods of analysis which involve the Constitution in resolving legal problems;
- 5) teach students to identify constitutional issues, identify relevant facts, advise a client about what a court is likely to decide concerning the issue identified, and identify arguments that could be used to support either side of the argument with respect to issues and proposed legislation;
- 6) familiarize students with the specific rights and freedoms protected by the *Charter*, the structure of *Charter* arguments and assembling evidence to advance *Charter* claims and to create section 1 defences;
- 7) introduce students to the available remedies under the *Charter* including possible remedies that continue to be developed by the courts;
- 8) introduce students to written and oral advocacy skills in relation to the constitutionality of a proposed piece of legislation.

Course Outline

- 1. Pre-Confederation constitutional documents
- 2. Constitution Act, 1867, additional constitutional documents and amendments
- 3. Federal powers
- 4. Provincial powers
- 5. Concurrent and shared powers
- 6. Quasi-constitutional powers accorded to other bodies
- 7. Application of the Charter and the "notwithstanding" clause: Sections 32 and 33
- 8. The fundamental freedoms:

³ This is a full year course.



Section 2(a): freedom of conscience and religion

Section 2(b): freedom of thought, belief, opinion and expression

Section 2(c) and (d): freedoms of assembly and association

- 9. Democratic rights: sections 3 through 5
- 10. Mobility rights: Section 6
- 11. Legal rights:

Section 7: right to life, liberty and security of the person Sections 8 through 14: search, seizure, arrest, and criminal proceedings

- 12. Equality eights: sections 15(1) and (2), 27 and 28
- 13. Official languages, heritage and aboriginal rights: section 16 through 22, 25 and 27
- 14. Minority language educational rights: sections 23 and 29
- 15. Reasonable limits on rights: section 1, including the use of legislative facts and other methods of proof.
- 16. Ethical issues in Constitutional litigation

Texts

Peter. W. Hogg, Constitutional Law of Canada, (2010 student edition) (Carswell, 2010) L.I. Rotman, B.P. Elman, G.L. Gall, Constitutional Law: Cases, Commentary and Principles (Carswell, 2008)



LAW 505, Property Law (5 s.h.)⁴

Description

Canadian society, indeed Western society, places a high value on the ownership of property, including both land and things. This first part of the course examines the rules governing possession and ownership of real property (land). The second part of the course examines the rules governing possession and ownership of personal property (things). It will also examine the social context for use and ownership of property.

Course Objectives

This course is designed to enable students to:

- 1) understand the rules governing acquisition, possession and ownership of land;
- 2) understand and critique the social context for property law in comparative perspective (including aboriginal concepts of property and some community ownership such as the Hutterian Brethren);
- 3) understand the rules governing acquisition, possession and ownership of personal property (things);
- 4) understand and critique the social context for property law in comparative perspective;
- 5) identify and discuss ethical issues relating to property law;
- 6) analyze and critique cases related to property law;
- 7) conduct legal research and communicate the results.

Course outline

- 1. What is private property? Classifications of property
- 2. Transfer of property
- 3. Tenure, life estates, leaseholds
- 4. Contingent vs. vested interests
- 5. Rule against perpetuities
- 6. Matrimonial property
- 7. Easements
- 8. Restrictive covenants
- 9. Security interests on real property mortgages
- 10. Possession, finders law and ownership
- 11. Gifts
- 12. Security interests on personal property
- 13. Registration of interests
- 14. Ethical issues related to property law

Texts

Bruce H. Ziff, Jeremy deBeer, Douglas Harris, and Margaret McCallum, A Property Law Reader: Cases, Questions and Commentary (Carswell, 2008) Marjorie L. Benson, Marie-Ann Bowden and Dwight Newman, Understanding Property: A Guide to Canada's Property Law (2nd edition) (Carswell, 2008)

⁴ This is a full year course.



LAW 506, Criminal Law (5 s.h.)⁵

Description

This course examines the general principles of liability in Canadian criminal law as applied in the criminal trial process. Students will learn the legal elements of a crime and will use the Criminal Code to consider the elements of specific offences. Students will be provided with an introduction to common law and statutory defences as well as an overview of the process by which these various elements are proved in court. This course also canvasses basic concepts, principles and institutions of criminal procedure, as well as focuses on the review of the most important rules governing the criminal process from the investigative phase through the laying of charges until conviction, sentencing and beyond. The student who successfully completes the course will have a good understanding of the norms of procedure set out in the Criminal Code and related statutes, as well as the procedural rights guaranteed by the Charter of Rights and Freedoms.

Course Objectives

Through this course, students will:

- 1) understand and critically assess (a) the role of police, prosecutors, defence counsel and judges in the administration of the criminal law process, (b) the principles of criminal responsibility and punishment, and (c) the effect of the Canadian Charter of Rights and Freedoms upon both criminal procedure and substantive criminal law;
- 2) understand and critically assess theories and perspectives on the purposes and functions of the criminal law and criminal justice system and on the competing interests that both serve;
- 3) demonstrate practical competence in identifying legal issues in a problem and to present, in an acceptable legal style, arguments in relation to such issues;
- 4) gain a working knowledge of Canadian criminal procedure;
- 5) gain practical tools necessary for the practice of law in the area;
- 6) develop the necessary skills to identify procedural errors in various fact scenarios;
- 7) understand the criminal procedure governing various offences;
- 8) develop basic trial advocacy skills through participation in a mock trial;
- 9) produce high-quality critical writing about themes and issues within the criminal law;
- 10) identify and discuss critically ethical issues related to criminal law.

Course Outline

- 1. Introduction to criminal law
- 2. The structure of criminal proceedings
- 3. Burdens of proof
- 4. Elements of an offence
 - · a. Actus reus
 - b. Mens rea
 - c. Mens rea and the Charter
- 5. Types of offences

⁵ This is a full year course.



- 6. Defences
- 7. Criminal procedure: what is it, what is its purpose and what are its sources?
- 8. The levels of the criminal courts in British Columbia
- 9. The criminal process and the roles of police, Crown and defence
- 10. Investigative powers of police
- 11. Charge approval and commencing proceedings
- 12. Compelling appearance and judicial interim release
- 13. Arraignment, pre-trial case management, elections, re-elections and preliminary hearings
- 14. Pre-trial and other applications
 - a. Disclosure and procedural applications
 - b. Charter applications
 - c. Trial management
- 15. Jury selection
- 16. Trials
- 17. Sentencing
- 18. Youth court
- 19. Mentally disordered offenders
- 20. Appeals
- 21. Ethical issues in criminal law

Texts

Roach, Berger, Healy and Stribopoulos, Criminal Law and Procedure (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, Tremeear's Criminal Code (Carswell, 2011)

Stephen Coughlan, Criminal Procedure (Irwin Law, 2008)



LAW 507, Fundamentals of Canadian Law (2.5 s.h.)

Description

In this course, students will become familiar with the principles of the common law system, including the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada. It further examines how laws are made and the principles of legislative interpretation and statutory analysis. It will also examine how regulations are made under legislation and the relationship between legislation and regulations. Legal research will be a component of this course.

Course Objectives

Students in this course will:

- 1) learn the historical development of the common law system and its origins in Britain;
- 2) understand how common law works on an incremental, case-by-case basis, and develop skills in applying principles from past legal cases to a new case;
- 3) recognize that legislation supersedes common law but that legal principles are applied to interpret legislation and regulations;
- 4) understand the legislative process and the procedure to draft, pass and implement legislation, including the concept of delegated authority;
- 5) understand the administration of the law in Canada;
- 6) critically reflect on the interface between law and society.

Course Outline

- 1. Origins of common law, including principles of law and equity
- 2. Precedents and stare decisis
- 3. Differences between common law and civil law
- 4. The legislative process -- how are laws made?
- 5. Principles of statutory interpretation
- 6. Delegated authority and process to make regulations
- 7. The relationship between legislation and common law
- 8. The administration of law, including the organization of the courts and tribunals in Canada
- 9. Appeal processes
- 10. Law as an instrument of social change

Texts

- J. Horner, Canadian Law and the Legal System, (Pearson Education Canada, 2006)
- A. Hutchinson Laughing at the Gods: Great Judges and How They Made the Common Law, (Cambridge University Press, 2012)

Ruth Sullivan, Statutory Interpretation, (Toronto: Irwin Law, 2007).

J. A. Brauch, A Higher Law: The Influence of Christian Thought in Anglo-American Law, (2nd edition) (Fred B. Rothman, 2008)



LAW 508, Introduction to Practice Skills and the Practice of Law (2.5 s.h.)

Description

Beyond understanding legal principles, the lawyer must master a variety of skills to use in private practice, many of which are more relational and creative (right-brained) than cognitive and linear (left-brained). This course introduces students to professionalism, engaging with clients, the art of negotiation and advocacy (both written and oral) in the context of representing clients. It will include the first year practicum and a moot court.

Course Objectives

This course, taught primarily by guest practitioners, will be weighted heavily towards learning by practice and application. Students will have opportunities to:

- 1) understand the role of the lawyer as professional, advocate, problem-solver and negotiator;
- 2) become familiar with and engage in several of the skills used by lawyers in regular practice including interviewing, researching, drafting, negotiating and advocating;
- 3) be equipped to identify and address ethical issues;
- 4) understand the role of the lawyer as an agent of social change.

Course Outline

- 1. The role and activities of the practitioner: what is lawyering about and what are the activities that lawyers in private practice engage in?
- 2. The practice of law as a profession.
- 3. The lawyer as agent of social change.
- 4. Engaging with the client: an introduction to interviewing skills what is the lawyer seeking to achieve in an interview and how is this accomplished? Practice interviews.
- 5. Engaging with the client and other counsel communications skills: review of the tools by which the lawyer communicates with clients, opposing counsel and others and how these tools are most appropriately and effectively used.
- 6. Legal research: how lawyers use library and web-based tools to build and support their case and their opinions.
- 7. Legal drafting: an introduction to the language and strategies of legal drafting and to plain language concepts.
- 8. Negotiation: an introduction to the basic theories of negotiation including interest-based negotiation; an overview of negotiation styles and how they are used and practice.
- 9. Problem solving: many clients come to their lawyer presenting a problem, often one that is not easily categorized. A primary task of the practitioner is to listen, understand and develop a strategy. Through the use of case studies, students will consider real situations involving problem-solving skills.
- 10. Basic advocacy: a key role of the lawyer is to advocate for her client. In this course, students will be introduced to basic advocacy and will have opportunities to strategize and practice based on actual past cases.
- 11. Mooting: following the advocacy classes and practicums, each student will prepare for and participate in a moot trial, one of the highlights of the first year law school experience.
- 12. Ethics in practice.



Texts

Julian Webb, Caroline Maughan, Mike Maughan, Andy Boon, Marcus Keppel-Palmer, Lawyers' Skills 2011-12 (Oxford University Press, 2011) Joseph G. Allegretti, The Lawyer's Calling (Paulist Press, 1996) Michael P. Shutt, Redeeming Law (Intervarsity Press, 2007)



LAW 601, Practicum (0 s.h.)

Description

Upper-year students must complete two practica. Law 601 will not be for credit but can include a broad range of possible placements. Non-credit placement can be paid and will include:

- Summer job with law firm
- Summer placement with government
- Courthouse or tribunal placement
- Correctional services
- Legal research for NGO
- Political office

Course Objectives

Students will complete a variety of experience in their practica. The objectives are to give students exposure to the practical aspects of law. Students will set learning objectives and be required to write a summative detailing how they met their objectives.

Course Outline

Students must get approval for their practicum. There will be required documentation and a summative. The first week of third year, students will meet in small groups to discuss their learning experience.

Texts

No Text



LAW 602, Ethics and Professionalism* (3 s.h.)

Description

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history of the legal profession in Canada;
- 2) familiarize students with various notions of the role of the legal profession in Canadian culture and business;
- 3) familiarize students with the ethical issues arising from the practice of law;
- 4) familiarize students with the duties owed to clients and the legal profession;
- 5) introduce students to the Code of Professional Conduct and Professional Conduct Handbook:
- 6) enable students to identify ethical issues in fact scenarios and from past cases where professional bodies have imposed discipline on lawyers for failure to meet ethical obligations:
- 7) enable students to identify relevant facts and arguments to respond to various scenarios where professional obligations are raised and reconcile those arguments with personal beliefs and obligations to serve the public and to pursue justice.

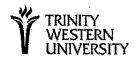
Course Outline

- 1. The history and evolution of the legal profession in Canada
- 2. Lawyer-client relationship
- 3. Confidentiality and privilege
- 4. Duty of loyalty and conflicts of interest
- 5. Ethics and criminal law practice
- 6. Civil litigation and ethics in advocacy
- 7. Lawyers in organized settings

Texts

Alice Wooley et al., Lawyers' Ethics and Professional Regulation (LexisNexis Canada, 2008) D. Buckingham, J. Bickenbach, D. Bronaugh & B. Wilson, Legal Ethics in Canada (Harcourt Brace, 1996)

Gordon Turriff, Q.C., Annotated British Columbia Legal Profession Act (Carswell: looseleaf)



LAW 611, Aboriginal Law (3 s.h.)

Description

Aboriginal peoples in Canada belong to more than 50 nations. This course will examine the historical development of treaty rights and aboriginal title. It will consider the complex issue of self-government and aboriginal justice. Students will examine the Indian Act along with federal government proposals for amendment. As well, students will examine the legal cases involving aboriginal rights.

Course Objectives

Through this course, students will:

- 1) develop an understanding of the history of state-first nations relations;
- 2) understand the legal framework for state-first nations relations;
- 3) critically assess the legal position of various first nations in Canada;
- 4) analyze impact of the Charter on Aboriginal peoples in Canada.

Course Outline

- 1. Aboriginal peoples in Canada: First Nations, Inuit, Metis
- 2. The *Indian Act*
- 3. Aboriginal land title
- 4. Residential schools
- 5. Criminal justice
- 6. Taxation
- 7. The Bill of Rights and the Charter and Aboriginal Peoples
- 8. Treaty rights and enforcement of Treaty rights
- 9. Governance and self-government
- 10. Aboriginal peoples and international law
- 11. Proposals for reform of the governance of Aboriginal peoples in Canada

Texts

- J. Burrows and L. Rotman, Aboriginal Legal Issues (LexisNexis Canada, 2007)
- J. Y. Henderson, First Nations Jurisprudence and Aboriginal Rights (Native Law Centre, University of Saskatchewan)



LAW 612, Advocacy (Advanced) (3 s.h.)

Description

The lawyer is an advocate. Students will learn to write effective legal arguments and how to express themselves persuasively. Students will be required to prepare written submissions, including a factum, and argue a moot court.

Course Objectives

Following on the basic level of instruction on advocacy in LAW 508, this course is designed to help students understand and practice the skills of advocacy so that they are prepared for advocacy in practice. It will:

- 1) provide students with a more advanced understanding of the theory of a case;
- 2) teach the steps involved in developing a case through discoveries, pre-trial motions, trial and appeal, the use of experts, interlocutory and summary applications and the evidentiary and ethical issues that counsel deal with in advocating for clients;
- 3) require students to practice advocacy skills, written and oral, including persuasive writing, pleadings and mooting.

Course Outline

- 1. The theory and development of a case: an examination of how to approach and strategize about a case. Students will have a hands-on opportunity to analyze a new case and write a strategic approach.
- 2. The steps in an action: how does a practitioner advance a case to resolution?
- 3. Where do ADR opportunities arise and how can they be used?
- 4. Pleadings: students will draft and be critiqued on pleadings.
- 5. Motions and interlocutory applications: what options are available; when and how to use them.
- 6. Evidentiary issues: how to recognize them and approach them.
- 7. Experts: when and how to select and use them.
- 8. Discoveries: preparing for and conducting an examination for discovery.
- 9. Case management: how to move a case along and maintain momentum
- 10. Trial preparation: getting ready; anticipating the unexpected.
- 11. Oral advocacy: how to build a persuasive argument and present a case.

Texts

H. Selby, Advocacy: Preparation and Performance (Irwin Law, 2009) Lee Stuesser, An Advocacy Primer (3rd edition) (Carswell, 2005)



LAW 613, Alternative Dispute Resolution (3 s.h.)

Description

While most of the emphasis and popular attention in the arena of dispute resolution has focussed on litigation and the drama of the courtroom, increasingly, in practice, disputes are managed and resolved outside of trial. Lawyers who are assisting clients with disputes have an array of options available to them including negotiation, mediation, arbitration and litigation, each of which is useful and appropriate in different circumstances. This course will focus on the "alternative" dispute resolution options with a balance of theory and practice.

Course Objectives

Students will leave this course with:

- 1) a solid understanding of conflict;
- 2) the dispute resolution options and when to use them;
- 3) the underlying theoretical basis for each method of dispute resolution;
- 4) practical knowledge of how to access each methodology;
- 5) practical experience in mediation both as counsel and as mediator.

Course Outline

- 1. Anatomy of a dispute an examination of the nature and breadth of disputes that legal counsel encounter in practice.
- 2. Conflict theory
- 3. Interest-based negotiation
- 4. Negotiation practicum students will have opportunities to role play negotiation scenarios where they will be encouraged to use interest-based methodologies.
- 5. Mediation the underlying theory and methodology of mediation
- 6. Mediation practicum I students will have opportunities to role play mediation scenarios taking turns as counsel, client and mediator
- 7. Challenges in mediation: power imbalances, the "third-party neutral", managing gender, race and cultural issues.
- 8. Mediation practicum II
- 9. The practice of mediation: service providers, mediation agreements, settlement agreements, failed mediations
- 10. Arbitration theory and practice
- , 11. Putting it all together

Texts

S.B. Goldberg, F.E.A. Sander, N.H. Rogers, S.R. Cole, *Dispute Resolution: Negotiation, Mediation and Other Processes* (Aspen Publishers, 2007)

R.A.B. Bush, J.P. Fogler, The Promise of Mediation (Jossey-Bass, 1994)

R. Fisher, W. Ury, Getting to Yes (Penguin Books, 1981)



LAW 614, Bankruptcy and Insolvency Law (3 s.h.)

Description

Bankruptcy and insolvency law assumes an important economic and social role in contemporary credit economies. The course will consider liquidation and reorganization as the two basic approaches to bankruptcy and focus on three legislative arenas: the Bankruptcy and Insolvency Act (BIA), the Companies' Creditors Arrangement Act (CCAA) and relevant provincial legislation. Students will become familiar with the fundamentals of the business and personal bankruptcy process including the various actors in the system. This course will familiarize students with monetary obligations, the rights and obligations of creditors and debtors, priorities among creditors, and certain restrictions on the discharge in bankruptcy of categories of debt. Students will apply the relevant statutory framework and case law to fact patterns in each stage of the bankruptcy process. The course will consider the broader public policy and institutional interests at play.

Course Objectives

This course is intended to:

- 1) describe the role of bankruptcy and its socio-economic significance;
- 2) familiarize students with the procedural steps involved in the bankruptcy process in relation to commercial and consumer bankruptcies;
- 3) explain the reasons for bankruptcy process procedures;
- 4) introduce students to the administration of the bankruptcy, including creditors generally, the priority of claims, and the administration of the estate;
- 5) introduce students to corporate reorganizations;
- 6) equip students to walk a client through the procedure to file under both the BIA and the CCAA;
- 7) practice drafting simple bankruptcy documents (proposals, assignments, etc.).

Course Outline

- 1. Purpose of bankruptcy/insolvency law
- 2. Introduction to bankruptcy legislation
- 3. Commencement of bankruptcy
- 4. Property of the bankrupt
- 5. Third party proprietary claims
- 6. Preservation of the bankrupt estate
- 7. Enhancement of the bankrupt estate
- 8. Administration of the bankrupt estate
- 9. Secured creditors and receivers
- 10. Creditors meetings
- 11. Property of debtor and claims to specific property, goods, or fund
- 12. Liquidation
- 13. Orderly payment of debts
- 14. Proof of claims
- 15. Discharge of bankrupt
- 16. Special commercial bankruptcy issues



- 17. Special consumer bankruptcy issues
- 18. Bankruptcy offences

Texts

Duggan, Ben-Ishai, Telfer, Wood & Ziegel, Bankruptcy and Insolvency Law (2nd edition) (Emond Montgomery, 2009)

Roderick J. Wood, Bankruptcy and Insolvency Law (Irwin Law, 2009) Federal and Ontario Insolvency Legislation (Canada Law Book, 2011-2012)



LAW 615, Charities and Not-For-Profits Law (3 s.h.)

Description

This course examines the special legal principles which apply to charities and not-for-profit corporations, with particular emphasis on the new federal and provincial not-for-profit legislation. It will cover incorporation, fundraising, taxation, and governance issues.

Course Objectives

This course is designed to:

- 1) describe and assess the role of charities and not-for-profits in Canada;
- 2) explain how not-for-profits may be organized, structured, governed and regulated
- 3) explain how lawyers interact and advise not-for-profits on an ongoing basis;
- 4) practice incorporating a not-for-profit organization:
- 5) enable students to understand how a Christian worldview impacts on charitable giving and volunteering and how rules governing charities can enhance or hinder the practice of religion.

Course outline

- 1. Charities and not-for-profits in societal context
- 2. Constitutional jurisdiction
- 3. Definition of "charity" and "charitable purpose"
- 4. Legal structures
- 5. Governance issues duties and liabilities of the board of directors, members and volunteers
- 6. Incorporating the charity or not-for-profit
- 7. Restrictions on charities political activity and business activities.
- 8. Employment and volunteers
- 9. Human rights considerations
- 10. Fundraising the rules of getting
- 11. Philanthropy the rules of giving
- 12. The special tax rules income tax, property tax, GST exemptions
- 13. Issues in social innovation

Texts

Donald Bourgeois, The Law of Charitable and Not-for-Profit Organizations (3rd edition) (LexisNexis, 2002)

Knechtel, Kranendonk, Douma, Charities Handbook: The Comprehensive Guide for Charities (Canadian Guide for Christian Charities, 2006)



LAW 616, Client Relations and Interviewing Skills (3 s.h.)

Description

The practice of law is driven by the needs of clients. This course gives students practical skills for interviewing and advising clients, using a client-centred approach. It will help students understand the needs of clients during transactions and during challenges such as litigation. Students will discuss issues such as professionalism and ethical issues. Over half of the course time will be in practice scenarios.

Course Outcomes

Students completing this course will:

- 1) have a solid grounding in the purposes, methodologies and challenges of oral and written communications with clients;
- 2) understand and apply client confidentiality and solicitor/client privilege;
- 3) confidently approach client relationships based on their many hours of practice interviews and written communications.

Course Outline

- 1. The lawyer-client relationship: formation, engagement and ending the relationship
- 2. The lawyer as counsellor: listening, advising, responding
- 3. The interview: purposes, methods, challenges
- 4. The belligerent client
- 5. The reluctant client
- 6. Power imbalances: spouses, business partners
- 7. The organizational client: business, NGOs
- 8. Written communication: how to write, electronic vs. letter communications, goals and methodologies
- 9. Fees: managing the financial side of the relationship
- 10. Conflicts of interest: how to manage emerging conflicts in the client relationship and when to terminate the relationship
- 11. Confidentiality
- 12. Solicitor/client privilege

D.A. Binder, P. Bergman, S.C. Price, Lawyers as Counsellors (2nd Edition) (West Group Publishing, 2004)



LAW 617, Commercial Law (3 s.h.)

Description

Commercial law is that branch of private law concerned primarily with starting a business, financing a business, and the supply of goods or services by merchants and other businesses for profit. Commercial law includes such topics as sale of goods, bailment and carriage of goods, documents of title and negotiable instruments, banking, the various forms of secured credit and an introduction to the law of insolvency and bankruptcy. This course therefore provides the student with a basic understanding of the law affecting the operation of any business doing commercial transactions.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history and development of commercial transaction and the law that governs such transactions in Canada;
- 2) familiarize students with the division of powers between the federal and provincial legislatures in the area of commercial law:
- 3) familiarize students with the steps needed to buy or sell a business;
- 4) familiarize students with the basics of a commercial transactions and the chain of purchase, carriage and insurance contracts that arise from such transactions;
- 5) familiarize students with an understanding of financing commercial transactions and the types of security that are available to lenders and sellers:
- 6) familiarize students with a basic understanding of the operation of Canadian law when commercial enterprises can no longer meet their financial and commercial obligations;
- 7) enable students to learn how commercial entities require legal services at various junctures of their operation;
- 8) enable students to analyze various business challenges facing commercial clients and develop an understanding of how to advise clients on the legal implications of sales and service contracts, financing and eventually, if necessary, insolvency and bankruptcy issues facing them.

Course Outline

- 1. Division of powers over commercial transactions
- 2. Buying and selling a business
 - a. Sale of a business by assets
 - b. Sale of a business by shares
 - c. Stages of a transaction
 - d. Drafting an agreement
- 3. Financing the business security in commercial transactions
 - a. Bank Act security
 - b. The PPSA
- 4. Sales law
- 5. Bills of Exchange and negotiable instruments
- 6. Introduction to insolvency and bankruptcy
- 7. The impact of technology on commercial law



8. Future directions for commercial law in Canada

Texts

J.S. Ziegel, B. Geva, R.C.C. Cuming, Commercial and Consumer Transactions: Cases, Text and Materials (4th edition) (Emond Montgomery, 2002)

Ziegel, Cumming, Duggan, Secured Transactions in Personal Property and Suretyships, (4th edition) (Emond Montgomery, 2003)

Dorothy Duplessis et al, Canadian Business and the Law (Nelson Education, 2010)



LAW 618, Conflict of Laws (3 s.h.)

Description

This practical course considers the increasingly prevalent issue of conflict of laws. The course will consider which court has jurisdiction to decide a case, what law should apply to the dispute, and whether the judgment will be recognized and enforced. Students will be introduced to common scenarios faced by lawyers in the context of globalization. The course will engage students in applying the Canadian rules of conflict of laws to problem-solving exercises drawn from all private law areas, including torts, contracts, property, succession and family law. This course will analyze Canadian rules of conflict of laws and equip students to assess legal situations that engage multiple jurisdictions, particularly the US and Asia.

Course Objective

The objectives of this course are to:

- 1) introduce students to the principles and concepts of private international law;
- 2) familiarize students with the issues of jurisdiction, choice of law theories, and recognition and enforcement of extra-territorial judgments;
- 3) develop practical skills by applying conflict of law rules to problems drawn from various areas of private practice;
- 4) acquaint students with the policy concerns, such as the impact of globalization and technology, underlying the development of private international law:
- 5) provide students an opportunity to make and defend submissions on jurisdiction in a mock court setting.

Course Outline

- 1. Choice of law
- 2. Adjudicatory jurisdiction
- 3. Marriage
- 4. Contractual obligations
- 5. Extra-contractual obligations
- 6. Substance and procedure
- 7. Proof of foreign law
- 8. Jurisdiction
- 9. Recognition and enforcement of foreign judgments and awards

Texts

Stephen G.A. Pitel and Nicholas Rafferty, Conflict of Laws (Irwin Law, 2010) Dicey, Morris and Collins on the Conflicts of Laws (Sweet and Maxwell, 2006)



LAW 619, Consumer Law (3 s.h.)

Description

This course focuses on the consumer law relating to the sale of goods and services, including an examination of the Sale of Goods Act and the Business Practices and Consumer Protection Act. Students will have an opportunity to develop practical problem-solving skills by applying relevant authority to contemporary scenarios. Students will also be introduced to the Vienna Convention on the International Sale of Goods.

Course Objectives

Through this course, students will:

- 1) learn fundamental legal principles applying to sales transactions;
- 2) become familiar with the legal framework for consumer protection;
- 3) develop practical skills by analyzing fact scenarios according to relevant statute and case law.

Course Outline

- 1. Historical development, context and overview of Sale of Goods Act
- 2. Sale of goods
 - a. Transfer of property
 - b. Transfer of title
 - c. Assumption of risk
 - d. Statutory contract
 - e. Delivery
 - f. Payment and acceptance
 - g. Seller's remedies
 - h. Buyer's remedies
- 3. Consumer protection legislation
- 4. Introduction to the Convention on International Sale of Goods

Texts

Kevin P. McGuinness, Sale & Supply of Goods (2nd edition) (LexisNexis, 2010) G.H.L. Fridman, Sale of Goods in Canada (5th edition) (Thomson Carswell, 2004)



LAW 620, Debtor and Creditor Law (3 s.h.)

Description

This course provides an examination of the methods by which unsecured creditors may enforce money judgments. There will be an overview of the general principles and forms of relief offered by provincial and federal legislation. A review will also be made of exemptions from enforcement that are available to debtors as well as other legal rights accorded to debtors after judgment. The course will be a combination of lecture, case analysis, and discussion of practice problems.

Course Objectives

The objects of this course are to:

- 1) explain debtor and creditor law and relations;
- 2) critically analyze debtor and creditor legal issues and policy considerations;
- 3) equip students with a basic understanding of the procedures and practical aspects of how to enforce money judgments:
- 4) enable students to understand professional responsibility matters especially important to lawyers acting for debtors and creditors.

Course Outline

- 1. Overview of the law governing debtor and creditor relations
- 2. Credit- credit reporting, credit cards and lines of credit, interest rates
- 3. Debt collection practices
- 4. Initiating proceedings-limitations, choice of registry, initiating the action, service of process
- 5. Proceeding to judgment- default judgment, summary judgment and summary trial
- 6. Registration and actions on foreign judgments
- 7. Pre-judgment execution-the Mareva injunction, preservation orders, prejudgment garnishment
- 8. Post-judgment execution-examination in aid of execution, subpoena to debtor, Small Claims Court
- 9. Post-judgment garnishment
- 10. Execution against land
- 11. Execution against personal property-goods, chattels, effects, money and securities for money, shares
- 12. Equitable execution-equitable receivers, equitable charging order
- 13. Execution priorities
- 14. Exemptions and immunities-federal and provincial
- 15. Fraudulent transactions-fraudulent conveyances, fraudulent preferences
- 16. Bankruptcy and insolvency-property, income, claims against the estate, and discharge
- 17. Professional responsibility

Texts

- F. Bennett, Bennett on Creditors' and Debtors' Rights and Remedies (5th edition) (Carswell,
- C.R.B. Dunlop, Creditor-Debtor Law in Canada (2nd edition) (Carswell, 1995)
- L.R. Robinson, British Columbia Debtor Creditor Law and Precedents (Student Edition) (Carswell, 2009)



LAW 621, Employment and Labour Law (3 s.h.)

Description

All aspects of the employment relationship will be covered in this course including the employment relationship, the contract, implied rights and obligations and terminating the employment relationship. As it is termination of employment that is most frequently litigated, it will be examined in detail including constructive dismissal, reasonable notice, dismissal for cause and damages. Human rights legislation, as it applies to employment, will also be a significant topic. This course also addresses the relationship between management and labour when there is a union. It will include the historical development of unions in Canada. It will also cover all aspects of unionization including certification, bargaining in good faith, the collective agreement and industrial conflict.

Course Objectives

The objectives of this course are to:

- 1) give students a historical understanding of the development of employment law and trade unions and collective bargaining;
- 2) equip students with a basic knowledge of the nature of employment contracts, the rights and responsibilities of employers and employees specifically on termination of the employment relationship;
- 3) equip students with a basic knowledge of the role of trade unions, certification, negotiating collective agreements and strikes and lockouts;
- 4) assist students to understand the crucial role of the Charter and human rights law in the employment context.

Course Outline

- 1. The employment relationship as distinct from other relationships
- 2. The employment contract
- 3. Statutory minimum standards
- 4. Rights and responsibilities of employees and employers
- 5. Terminating the employment relationship
- 6. Unions and certification
- 7. Collective bargaining and the collective agreement
- 8. Industrial conflicts -- strikes and lock-outs
- 9. The trade union and its members
- 10. The Charter and trade unions
- 11. Human rights in employment law

Texts

The Labour Law Casebook Group, Labour and Employment Law: Cases, Materials and Commentary (8th edition) (Irwin Law, 2011)

David Harris, Wrongful Dismissal (Carswell, looseleaf)

Geoffrey England, Innis Christie, Peter Barnacle and Robert Wood, Employment Law in Canada (4th edition) (LexisNexis, 2005)



LAW 622, Environmental Law (3 s.h.)

Description

This course examines the regulatory framework for environmental law, including federal and provincial jurisdictions. As well, it addresses the wide variety of environmental issues, including pollution, biodiversity and climate change.

Course Objectives

The course aims to instill in students:

- 1) an understanding of the economic, social and political context of environmental policy and law:
- 2) an appreciation of the limits of the common law and historical property law principles in approaching environmental issues;
- 3) a basic familiarity with environmental statutes and regulations and the federal and provincial
- 4) an understanding of enforcement principles and regulatory powers;
- 5) an appreciation of specific topics in First Nations issues, the role of local governments and wilderness and wildlife protection;
- 6) practical considerations arising from land sales and other transactions, pollution abatement and responding to governmental enforcement will be emphasized throughout.

Course Outline

- 1. The common law
 - a. Applying traditional tort law and understanding their limits:
 - b. Class action suits and environmental tort claims
- 2. Jurisdiction of the environment division of powers
- 3. Environmental regulation sectoral regulatory regimes
- 4. Compliance and enforcement
 - a. Using the courts and tribunals to protect the environment
 - b. Using administrative decision making
 - c. Corporations and harnessing market forces
- 5. Judicial review of environmental decision making, including public interest standing
- 6. Federal environmental assessment
- 7. Species protection

Texts

Meinhard Doelle, Chris Tollefson, Environmental Law: Cases and Materials (Carswell, 2009) Muldoon, Lucas, Gibson and Pickfield, An Introduction to Environmental Law and Policy in Canada (Edmond Montgomery, 2009)

David R. Boyd, Unnatural Law, Rethinking Canadian Environmental Law and Policy (UBC University Press, 2003)

E. L. Hughes, A. R. Lucas and W. A. Tillman (eds.), Environmental Law and Policy (3rd edition) (Edmond Montgomery, 2003)



LAW 623, Family Law (3 s.h.)

Description

The family is said to be the basic building block of society. This course will examine the state's regulation of the family and critically assess whether state regulation has changed the family or responded to social changes. It will also include an assessment of the current challenges in family law, especially the backlog in the courts, and alternative dispute resolution and mediation as alternatives.

Course Objectives

This course aims to:

- 1) promote an interest in family law and the legal and social issues in familial relationships;
- 2) communicate basic principles that underlie and inform regulation of families through law;
- 3) explore relevant legislation and case law and identify current family law issues in order to make effective family arguments;
- 4) provide students with practical experience in drafting agreements related to family law;
- 5) provide an opportunity to examine and consider the law reform and theoretical debates that shape and inform family law in Canada.

Course Outline

- 1. Histories and changing definitions: What is "family"?
- 2. The legal framework for family law
- 3. Creating the "family": marriage and marriage-like relationships
- 4. Children: determining parentage and adoption
- 5. Legal regulation of family life: abuse, violence and child protection
- 6. Family breakdown and corollary issues, including alternative dispute resolution
- 7. Negotiating and drafting prenuptial and separation agreements (and practice drafting)
- 8. Economic consequences of family breakdown
- 9. Policy directions in family law
- 10. Ethical issues in family law

Texts

Statutes are available online:

- Supreme Court Family Rules
- The Family Law Act (note: bill passed in the BC Legislature on November 23, 2011 and will replace the Family Relations Act)
- Family Relations Act and Regulations
- Divorce Act

Harold Niman (ed.), Evidence in Family Law (Canada Law Book, looseleaf) Berend Hovius and Mary Jo Maur, Family Law: Cases, Notes and Materials, (7th edition) (Carswell, 2009)



LAW 624, Financial Institutions (3 s.h.)

Description

This course examines the law relating to banks and other deposit-taking institutions, such as credit unions. Particular emphasis will be on the regulatory framework, the bank and customer relationship and clearing systems such as ACSS, LVTS, Interac, credit cards and third party payment providers.

Course Objectives

The objective of this course is that students learn to:

- 1) describe and explain the role of banks and other deposit-taking institutions in Canada;
- 2) describe and explain the institutional context within which Canadian banks operate;
- 3) explain how banks and other deposit-taking institutions are regulated and what they may do;
- 4) explain how the bank and customer relationship operates with respect to paper and electronic transactions, including the mutual duties owed by each party;
- 5) understand the international context for financial institutions and financial transactions.

Course Outline

- 1. Banks and Credits Unions
- Definition of "banking"
- 3. Regulation and prudential oversight of financial institutions, including federal/provincial jurisdiction
- 4. Financial institutions as businesses
- 5. Financial institutions and the customer
- 6. Bills of Exchange
- 7. Account operation
- 8. Loans
- 9. Electronic fund transfer
- 10. Electronic payments
- 11. Credit cards
- 12. Dispute resolution
- 13. Monitoring of financial transactions -- money laundering and terrorist financing
- 14. International banking (and the global financial crisis)

Texts

M.H. Ogilvie, Banking Law: Cases and Materials (4th edition) (Captus Press, 2008) Christopher C. Nicholls, Financial Institutions. The Regulatory Framework (LexisNexis, 2008)



LAW 625, Health and Elder Law (3 s.h.)

Description

This course introduces students to the law relating to the Canadian health care system with a particular focus on care for the elderly. The first half of the course will cover the regulation of the health care system including health care professionals, informed consent to medical treatment, malpractice, confidentiality and disclosure of health information. The second half of the course will address specific issues related to our aging population, including mental disability, substitute decision-making and end-of-life decision-making.

Course Objectives

The course aims to instill students with a basic understanding of fundamental principles and issues in health law and policy, including:

- 1) legal foundations of health care law and health care funding;
- 2) regulation of health care professionals and institutions, both private and public:
- 3) negligence law and patient safety;
- 4) consent to treatment and mental capacity;
- 5) privacy and confidentiality in health care:
- 6) public health law, including laws relating to infectious disease control;
- 7) ethical and legal issues in end-of-life care.

Course Outline

- 1. Regulation of health care professionals and complementary health care professionals
- 2. The Canadian health care system, including federal and provincial statutes
- 3. Private and public health care providers and statutes regulating the same
- 4. Applicable tort law, including medical malpractice
- 5. Informed consent
- 6. Minors and health care
- 7. Elderly and health care
 - a. Personal autonomy and capacity
 - b. Financial planning, powers of attorney and elder abuse
 - c. Private elder care and regulation
 - d. Family support and the elderly
- 8. Mental health law
- 9. Health information and privacy
- Public health law
- 11. End of life
- 12. Decision-making at the end of life (including living wills)

Texts

Jocelyn Downie, Timothy Caulfield & Colleen M. Flood, eds., Canadian Health Law and Policy (3rd edition) (LexisNexis, 2007)

Tracey M. Bailey, Timothy Caulfield and Nola M. Ries, eds., Public Health Law and Policy (2nd edition) (LexisNexis, 2008)



LAW 626, Human Rights and Discrimination (3 s.h.)

Description

This course examines the historical roots for human rights legislation in Canada. Students will examine the structure of the human rights codes in terms of prohibited grounds and specific discriminatory practices. It will include critically examining human rights procedure, including the transition of provinces like British Columbia and Ontario to new systems that change the role of the Human Rights Commissions.

Course Objectives

The course aims to instill students with a basic understanding of fundamental principles and issues in human rights law and policy, including:

- 1) interaction between ideas of morality social justice and human rights and the purpose of protecting human rights;
- 2) development of human rights post-WW II;
- 3) competing conceptions of equality and discrimination:
- 4) the impact of human rights laws on private relationships and contracts;
- 5) preparing and assembling evidence for human rights complaints;
- 6) defending against human rights complaints.

Course Outline

- 1. Historical development of human rights law quasi-constitutional status of human rights
- 2. Meaning of discrimination substantive equality v. formal equality
- 3. Structure of human rights statutes process
 - a. Human rights commissions
 - b. Human rights tribunals
 - c. Practice issues
- 4. Structure of human rights statutes substantive protections
 - a. Areas of protection (employment, wages, employment advertisements, purchase of property, discriminatory/hateful speech, tenancy, services customarily available to the public, association/union membership, etc.)
 - b. Grounds on which discrimination is prohibited
- 5. BFOR/BFOQ defences
- 6. Special interest exemptions
- 7. Charter limitations on scope of human rights prohibitions
- 8. Judicial review, privative clauses and scope of deference to human rights commissions and tribunals.

Texts

Stanley Corbett, Canadian Human Rights Law and Commentary (LexisNexis, 2007) Russel W. Zinn, The Law of Human Rights in Canada: Practice and Procedure (Canada Law Book, looseleaf)

Anita Braha, Annotated British Columbia Human Rights Code (Canada Law Book, looseleaf)



LAW 627, Immigration and Refugees Law (3 s.h.)

Description

Canada is largely a country of immigrants. This course will cover the regulatory framework for immigration to Canada. It will also critically assess the issues raised by Canadian immigration policy. As well, students will be introduced to the international and national rules governing refugees.

Course Objectives

The course aims to instill students with a basic understanding of fundamental principles and issues in immigration and refugees law in Canada including:

- 1) the constitutional and international basis for migration laws;
- 2) social, political and economic context and consequences of migration control;
- 3) practical skills for representing immigrants and refugee claimants;
- 4) obtaining protection as a refugee;
- 5) border protection;
- 6) process and principles for settling in Canada;
- 7) losing the ability to stay in Canada.

Course Outline

- 1. Introduction to migration, borders and mobility
- 2. Canada's place in the world: the Charter and international legal instruments
- 3. Citizenship and permanent residency requirements
- 4. Introduction to asylum law
- 5. Security, human trafficking and smuggling
- 6. Definition of refugee in Canada, persecution and ability to return
 - a. Interdiction
 - b. Refoulement
 - c. Expulsion of refugees
- 7. Immigrating to Canada
 - a. Decision-making structure and process, including immigration and refugee board
 - b. Standard of review
 - c. Economic criteria and classes of immigrants
 - d. Family class immigration
 - e. Humanitarian and compassionate immigration
- 8. Exclusion, removals and deportation
 - a. Criminality
 - b. War crimes
 - c. Medical and health issues.

Texts

Lorne Waldman, Canadian Immigration & Refugee Law Practice 2011 (LexisNexis, 2011) Annotated Immigration and Refugee Protection Act (Carswell, 2012) Benjamin A. Kranc, North American Relocation Law (Canada Law Book, looseleaf)



LAW 628, Insurance Law (3 s.h.)

Description

This course will examine the theory and elements of the practice of insurance law, with reference to the most common forms of both first party and third party insurance: property, life and motor vehicle insurance. It will cover the basic theory of insurance as a loss spreading mechanism; the nature of insurance contracts; the insurance industry; principles of indemnity insurance; the duty of good faith and obligation of full disclosure; and the claims process. It will also cover selected issues on interpreting insurance policies.

Course Objectives

This course will allow students to:

- 1) gain an appreciation of the principles of insurance law and the particular operation of contract law in the insurance context;
- 2) develop an ability to analyze insurance problems and apply legal doctrine and policy considerations to them;
- 3) develop skills in working with mixed jurisprudence based in part on statute and in part on common law:
- 4) acquire insight into the structure and substance of insurance policies;
- 5) evaluate the effectiveness of legislation and common law principles in controlling the insurance industry and protecting consumers of insurance products.

Course Outline

- 1. Introduction to insurance
- 2. Nature of insurance
- 3. Insurable interest
- 4. Principle of indemnity
- 5. The insurance contract
- 6. Duty of good faith and obligation of full disclosure
- 7. Selected issues in interpreting insurance contracts
- 8. Public policy restrictions
- 9. The claims process
- 10. Valuation

Texts

James A. Rendall and Won J. Kim, eds., Canadian Cases on the Law of Insurance, 4th Series (Thomson Carswell, 2011)

Barbara Billingsley, General Principles of Canadian Insurance Law (Student Edition) (LexisNexis, 2008)



LAW 629, Intellectual Property Law (3 s.h.)

Description

Intellectual property laws protect ideas, creativity and designs. These are protected by patents, trademarks, copyright and industrial design. This course will examine the rules governing each of these, the protection they offer and enforcement of each of these protections. Other rules and remedies, such as passing off, will also be covered.

Course Objectives

In this course, students will be exposed to the legal protection for inventions and creativity. They will:

- 1) understand the various protections, and length of protection, for patents, industrial design, trademarks and copyright;
- 2) understand the issues for international protection for intellectual property, or lack of protection, as the case may be;
- 3) have a basic understanding of the procedures of the Canadian Intellectual Property Office (CIPO) to protect intellectual property;
- 4) know how to search CIPO databases;
- 5) be challenged to think about innovation and how that affects the protection of intellectual property.

Course Outline

- 1. What is intellectual property and why protect it?
- 2. The global context for intellectual property protection
- 3. Patents
 - a. Novelty
 - b. Non-obvious
 - c. Utility
 - d. Claim construction
 - e. Infringement
 - f. Defences
 - g. Remedies
- 4. Industrial design
- 5. Trademarks
 - a. Registrable?
 - b. Official/non-official
 - c. Infringement
 - d. Defences
- 6. Passing off
 - a. Misrepresentation
 - b. Damages
- 7. Copyright
 - a. Works
 - b. Infringement
 - c. Moral rights



d. Defences

8. New issues with intellectual property coming out of new technologies

Texts

David Vaver, Copyright Law (Irwin Law, 2000) David Vaver, Intellectual Property Law (Irwin Law, 2011) Daniel Gervais & Elizabeth Judge, Intellectual Property: The Law in Canada (Thomson/Carswell, 2005)



LAW 630, International Law (3 s.h.)

Description

This course will cover the sources, development and institutions of international law. It will address the relationship between international law in its customary and conventional forms and the domestic laws of Canada. Trade, investment, peace and security and international human rights will be canvassed. Students will have the opportunity to assess bilateral and multi-lateral international agreements including the NAFTA, WTOA and UN Agency-generated treaties.

Course Objectives

The objectives of this course are that students be able to:

- 1) explain the relationship between the historical origins and nature of international law and the current international legal system;
- 2) outline the key characteristics and fundamental principles of international law, particularly with respect to customary and conventional law;
- 3) identify the principal attributes of the main players in the international legal system;
- 4) describe how international law is generated, the theories advanced to explain its legal effects, and the manner in which it interacts with domestic (particularly Canadian) law;
- 5) articulate key substantive doctrines of international law, including rules relating to the sovereign equality of states, the prohibition of intervention in the domestic affairs of states, state succession, the principle of self-determination of peoples, the law of treaties, state jurisdiction, the law of the sea, air and space law, sovereign and diplomatic immunities, state responsibility, and the international protection of human rights and/or the use of force in international relations:
- 6) identify international legal issues in various fact scenarios and analyze such issues in light of the foregoing knowledge in order to provide well-reasoned, persuasive international legal advice:
- 7) engage in critical and informed debate concerning the nature, reality, content, strengths and shortcomings of current international law.

Course Outline

- 1. Sources of international law
- 2. Customary international law
- 3. Jus Cogens norms and Erga Omnes obligations
- 4. Jurisdiction and immunities
- 5. The law of treaties
- 6. Trade law
- 7. Human rights

Texts

J.H. Currie, C. Forcese & V. Oosterveld, International Law: Doctrine, Practice and Theory (Irwin Law, 2007)

Gib van Ert, Using International Law in Canadian Courts (2nd edition) (Irwin Law, 2008) H. Kindred and M. Saunders, International Law Chiefly as Interpreted and Applied in Canada (7th edition) (Emond Montgomery, 2009)



LAW 631, Landlord and Tenant Law (3 s.h.)

Description

This course considers the essential landlord-tenant relationship in both residential and commercial contexts. It introduces students to the critical legal elements of the relations, including the requirements for the formation of a valid agreement, the rights and duties of the parties under the agreement, and remedies for breach. Students will become familiar with the statutory regimes governing landlord-tenant relationships. The course will provide opportunities for students to critically assess commercial and residential tenancy agreements for compliance with the relevant statutory provisions. Students will also engage in problem-solving exercises in order to advise clients on the best course for pursuing remedial action.

Course Objectives

This course will:

- 1) introduce students to the nature of the landlord-tenant relationship;
- 2) familiarize students with the essential elements of a valid tenancy agreement and the distinctions between commercial and residential relationships:
- 3) equip students to identify flaws, inconsistencies and deficiencies in tenancy agreements;
- 4) develop skills to provide effective client advice on remedial options under tenancy agreements and applicable legislation.

Course Outline

- 1. Creation of landlord-tenant relationship
- 2. Application of landlord and tenant statutes
- 3. Leases and tenancy agreements
- 4. Agreements for lease
- 5. Obligations of landlord
- 6. Obligations of tenant
- 7. Rent
- 8. Assignment and subletting
- 9. Renewals and options
- 10. Merger and surrender
- 11. Forfeiture and re-entry
- 12. Abandonment
- 13. Termination by Notice to Quit
- 14. Statutory remedies
- 15. Fixtures

Donald H.D. Lamont, Q.C., Residential Tenancies (Carswell, 2000) Harvey M. Haber, Understanding the Commercial Lease: A Practical Guide (3rd edition) (Canada Law Book, 1999)



LAW, 632, Municipal Law (3 s.h.)

Description

Issues of development and planning have become increasingly controversial. This course is an introduction to the basic structure, functions and powers of municipal or local governments. It will start with where municipal governments get their powers and how they make by-laws. It will include municipal taxation. A significant part of the course will focus on municipal planning and land use.

Course Objectives

This course will enable students to:

- 1) understand the unique role of municipalities in regulating planning and property taxation;
- 2) be equipped to make applications to the relevant municipal bodies for planning approvals, and understand the appeals processes:
- 3) understand and apply the relevant legislation for municipal regulation.

Course Outline

- 1. Where do municipalities derive their authority?
- 2. Scope of municipal authority
- Municipal taxation
- 4. The scope of the zoning power
- 5. Land use, non-conformity and variances
- 6. Subdivision
- 7. Municipal regulation of houses of worship
- 8. First Nations issues
- 9. Liability issues for municipalities
- 10. Liability issues for planners
- 11. Municipal services

Texts

W. Buholzer, British Columbia Planning Law and Practice (LexisNexis, looseleaf) Stanley Makuch, Neil Craik and Signe B. Leisk, Canadian Municipal and Planning Law (2nd edition) (Carswell, 2004)



LAW 633, Natural Resource Law (3 s.h.)

Description

The course begins with an overview of the development of Canadian natural resource law, including some underlying philosophies, principles and ethics. This foundation leads to an examination of the natural resource law framework in Canada from federal, provincial, municipal and Aboriginal perspectives. The course also explores the legislation and common law principles that govern natural resource protection, compliance, enforcement and liability for natural resource harm, natural resource rights, public participation and environmental assessment. Emphasis will be placed on the specific example of forestry, but will also include mining, oil and gas and fisheries.

Course Objectives

This course will enable students to:

- 1) gain an appreciation of the social, political and economic context of natural resource law and policy making and enforcement;
- 2) consider the challenges of natural resource law making and regulation within the Canadian federation, including First Nations issues and the role of local government;
- 3) understand the scope and limitations of common law actions and remedies in the natural resource context;
- 3) gain a basic familiarity with natural resource regulation and law making at the federal and provincial levels including standard-setting, the emerging debate with respect to "smart regulation" and related issues of public participation, enforcement, judicial review and standing:
- 4) evaluate the efficiency and effectiveness of these models within a broader socio-political context, and consider possibilities for reform;
- 5) consider the role of the criminal law in natural resource regulatory enforcement including private prosecution;
- 7) acquire an understanding of the natural resource assessment and species protection processes, with an emphasis on federal issues and emerging critiques;
- 8) consider the impact of climate change on selected areas of natural resource law and policy.

Course Outline

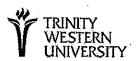
- 1. Overview of Canadian natural resource law
- 2. Sources of jurisdiction and natural resource legislation
- 3. Using the courts for natural resource protection
- 4. Regulation of natural resources
- 5. The future of natural resource law
- 6. Practicing natural resource law

Texts

Meinhard Doelle and Chris Tollefson, Environmental Law: Cases and Materials (Thomson Carswell, 2009)

David R. Boyd, Unnatural Law: Rethinking Canadian Environmental Law and Policy (UBC University Press, 2003)

Jamie Benidickson, Environmental Law (3rd edition) (Irwin Law, 2008)



LAW 634, Negotiation (Advanced) (3 s.h.)

Description

This skills-based course will develop negotiating theory and skills through practical assignments and readings from on negotiation theory. Each week, students will have the opportunity to participate in a practice scenario and to analyze the results. Coaching and peer input will be provided. Prerequisite(s): LAW 613 Alternative Dispute Resolution.

Course Outcomes

Students will have:

- 1) a comprehensive understanding of how and why we negotiate;
- 2) the moral and practical benefits of principled (interest-based) negotiation;
- 3) skills to understand the client's interests;
- 4) the methods used to lead people to engage in principled negotiation;
- 5) personal testing of their negotiation styles and many hours of negotiation practice and observation in a variety of scenarios;
- 6) honed skills and outcomes in all aspects of life: professional, family and community.

Course Outline

- 1. Negotiation methodologies and styles. (Course participants will get a personal negotiation style assessment.)
- 2. Negotiation theory building on the basic theoretical models discussed in Law 304, a comprehensive examination of how individuals, groups, organizations and nations engage in negotiations, how to measure results based on maximizing interests, and optimization
- 3. Distributive and integrative bargaining
- 4. Taking instructions from a client
- 5. Single issue vs. multiple issue negotiations: identifying and mapping interests
- 6. Negotiating in the business context
- 7. Negotiating in the family context
- 8. Negotiating between organizations
- 9. International negotiations
- 10. Documenting the course of negotiations and documenting the outcome
- 11. Challenges for negotiators: ethical issues, getting to the table, power imbalances, the "hard bargainer", cultural and gender issues, managing personal emotions
- 12. Using negotiation software as an optimization tool

Texts

W. Ury, Getting Past No: Negotiating in Difficult Situations (Bantam Books, 1993)

S. Diamond, Getting More (Crown Business, 2010)



LAW 635, Remedies (3 s.h.)

Description

This course introduces students to legal and equitable remedies in the area of private law, predominantly torts, property and contract law. The class will emphasize principles governing remedial selection. Students will become familiar with the range of remedial options available in law, and will practice developing creative strategies to best meet clients' needs. The course will provide opportunities for students to apply their learning by analyzing problems, drafting opinion letters, and offering client advice in a client counselling session.

Course Objectives

The objects of this course are to:

- 1) introduce students to the method of remedial choice, and the factors that influence various choices:
- 2) familiarize students with principles governing the assessment of damages and the rationale;
- 3) develop practical skills by applying rules and authority to client scenarios in order to identify the benefits and drawbacks for clients in pursuing various remedial strategies;
- 4) consider public policy considerations that influence courts' choice of remedies, including social justice concerns.

Course Outline

- 1. Basic principles of remedies
- 2. Damages
 - a. Expectation damages
 - b. Reliance damages
 - c. Restitutionary remedies
 - d. Aggravated and punitive damages
 - e. Damages for personal injury
 - f. Limiting principles
- 3. Equitable remedies
- 4. The social and policy implications of various remedies

Texts

Jamie Cassels and Elizabeth Adjin-Tetty, Remedies: The Law of Damages (Irwin Law, 2008) Jeffrey Berryman, The Law of Equitable Remedies (Irwin Law, 2000)



LAW 636, Religion and the Law (3 s.h.)

Description

This course examines the relationship between religion and the secular state in a wide variety of contexts. Chief Justice McLachlin noted that "both law and religion are comprehensive doctrines," that is, they place total claims on lives of citizens and adherents. This will inevitably lead to conflicts. Specific focus will be on Canada and will include human rights, regulation of religious institutions and accommodation of religious difference.

Course Objectives

This course will allow students to:

- 1) critically analyze the place of religion in Canada's pluralistic, multicultural state;
- 2) understand the historical roots of many of Canada's current religious conflicts;
- 3) understand and evaluate regulation of religious institutions;
- 4) understand the legal framework for religious freedom including the Charter and human rights codes.

Course Outline

- 1. Understanding religion and religious diversity in Canada
- 2. The Constitutional background
- 3. Religion and education
- 4. Religion and family law
- 5. Accommodation of religious practices
- 6. Limits on religious expression
- 7. Regulation of religious institutions
- 8. The place of religious law
- 9. Competing and conflicting rights

Texts

Janet Epp Buckingham, Crosses, Kirpans and Conflict, (McGill-Queen's University Press,

M.H. Ogilvie, Religious Institutions and the Law (3rd edition) (Irwin Law, 2010)



Law 637, Securities Law (3 s.h.)

Description

This course covers securities regulation, predominantly through the raising of funds for corporate development through selling securities to the public. The course will focus specifically on the B.C. Securities Act. The course will include registration requirements for persons trading in securities, prospectus requirements to trade in securities, exemptions from the prospectus requirement, restrictions on the resale of securities, remedies for failure to comply with securities legislation, continuous disclosure requirements and take-over bid legislation.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the origins of regulation of securities transactions;
- 2) explain the concepts of public offerings, private placements, market disclosures, insider trading;
- 3) understand the law regulating offerings and trading of traditional domestic equity securities;
- 4) analyze court decisions, security commission rules, disclosure forms, regulatory explanations, and formulate ways in which they would assist clients raising funds through security offerings:
- 5) familiarize students with the effects of the Canadian Charter of Rights and Freedoms on securities law especially with regards to enforcement actions against individuals;
- 6) analyze ethical issues in advising clients in securities law matters generally and when representing clients before the securities commissions or before federal judicial bodies while still meeting the lawyer's professional responsibility obligations.

Course Outline

- 1. The history and evolution of the regulation of raising money for industry
- 2. The registration process for newly issued securities
- 3. Civil liability for deficiencies and misrepresentations in the registration materials
- 4. Exemptions from registration
- 5. Definition of security
- 6. Regulation of securities trading markets
- 7. Liability for securities fraud (and insider trading)
- 8. Regulation of securities industry participants
- 9. Cross-border regulation of securities transactions
- 10. Ethical considerations in securities law

Texts

M. Condon, A. Anand, J. Sarra, Securities Law in Canada (Emond Montgomery, 2005) The (British Columbia) Securities Act, R.S.B.C. 1996, c. 418 The (Ontario) Securities Act, R.S.O. 1990, c. S.5



LAW 638, Tax Law (3 s.h.)

Description

This course covers the fundamental principles, concepts, and application of Canadian federal income tax legislation. Topics include the concepts of income and liability for tax; income from employment, business, and property; shareholder benefits; deductions; capital gains and losses; computation of taxable income and tax planning for individuals. The course emphasizes understanding of the conceptual structure of the *Income Tax Act* and the application of its rules to practical cases.

Course Objectives

The objectives of this course are to:

1) familiarize students with the history and evolution of tax law in Canada;

>

- 2) explain the fundamental principles of Canadian federal income taxation;
- 3) explain how individuals calculate income tax payable under Canadian law for different types of income earned including employment, professional, business, rental and investment income;
- 4) explain the kinds of deductions available to individuals when calculating income tax payable;
- 5) understand the Canada Revenue Agency's tax administration, audit and enforcement under the *Income Tax Act*;
- 6) familiarize students with the effects of the Canadian Charter of Rights and Freedoms on the law of income tax especially with regards to enforcement actions against individuals;
- 7) enable students to read and interpret provisions effectively relating to individuals in the *Income Tax Act*;
- 8) analyze various ethical issues relating to advising clients in tax matters generally and when representing individuals before the Canada Revenue Agency or before federal judicial bodies while still meeting the lawyer's professional responsibility obligations.

Course Outline

- 1. History, objectives and the legislative process that applies to taxation in Canada
- 2. Jurisdiction and liability to tax
- 3. Tax administration and enforcement
- 4. Types of taxable assets and income
- 5. Deductions and credits
- 6. Capital gains
- 7. Tax avoidance and tax evasion
- 8. Provincial and other taxes
- 9. Professional ethics in tax planning and tax litigation

Texts

David M. Sherman, *Practitioner's Income Tax Act*, 2011 (40th edition) (Carswell, 2011). Vern Krishna, *Fundamentals of Income Tax Law* (Carswell, 2009).



LAW 639, Tax Law (Advanced) (3 s.h.)

Description

This advanced course covers the principles of taxation that apply to entities other than individuals. It surveys tax implications that apply to corporate reorganizations, tax planning, and the application of tax principles and concepts to complex tax situations like trusts, partnerships, and corporations. Topics include shareholder benefits; transfer of property to corporations; antiavoidance and other rules; purchase or sale of a business; partnerships; death; trusts; and intrafamily property transfers. Prerequisite(s): LAW 638, Tax Law.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the fundamental principles of Canadian federal income taxation as it applies to entities other than individuals;
- 2) familiarize students with how entities calculate income tax payable under Canadian law for different types of income earned by corporations, partnerships, limited partnerships and trust;
- 3) explain the kinds of deductions available to corporations, partnerships and trusts when calculating income tax payable;
- 4) explain the implications and techniques of corporate reorganization to minimize tax under the Income Tax Act;
- 5) explain concepts under the Income Tax Act relating to purchase or sale of a business and intrafamily property transfers:
- 6) explain concepts under the Income Tax Act relating to the death of an individual and the winding-up of a corporation;
- 7) enable students to read and interpret provisions effectively relating to partnerships, corporations and trust in the Income Tax Act;
- 8) analyze various ethical issues relating to advising corporate clients in tax matters generally and when representing corporate clients before the Canada Revenue Agency or before federal judicial bodies while still meeting the lawyer's professional responsibility obligations.

Course Outline

- 1. Overview of differences in the taxation of income earned by various business organizations
- 2. Taxation of the corporation, its officers and its shareholders
- 3. Transfers of property into and out of a taxable Canadian corporation
- 4. Corporate reorganizations and its tax implications
- 5. Anti-avoidance rules
- 6. Purchase and sale of a business
- 7. Partnerships, limited partnerships and trusts
- 8. Transfers of property among family members or family-held corporations
- 9. Death of a taxpayer

Texts

David M. Sherman, Practitioner's Income Tax Act, 2011 (40th edition) (Carswell, 2011) Vern Krishna, Fundamentals of Income Tax Law (Carswell, 2009)



LAW 701, Practicum* (3-9 s.h.)

Description

Upper year students must complete two practica. LAW 701 will be a supervised practicum for academic credit. The supervised practicum eligible for credit for LAW 701 will include:

- Legal aid clinic
- Competitive moot
- Private law firm, government legal services department
- Pro bono placement with a non-governmental organization
- Internship with a Member of Parliament or Senator, or provincial MLA (or equivalent)
- Tribunal or court

Course Objectives

Students will gain a practical experience of law and/or advocacy through the 3rd year placement.

Course Outline

Students must get approval for their practicum. There will be required documentation and a summative.

Texts

No Text



LAW 702, Administrative Law* (3 s.h.)

Description

Administrative law broadly covers the exercise of government power excepting that of criminal law powers. It regulates how governments exercise their authority, including both political and administrative authority. Administrative law addresses both direct exercise of government decision-making and the host of tribunals governments establish. This course will cover the rules governing how governments make decisions and carry them out as well as the procedures to challenge those decisions, including judicial review. Students will have the opportunity to visit a tribunal hearing.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history and development executive-branch agencies and tribunals in Canada;
- 2) explain the differences between the judiciary and administrative tribunals and agencies;
- 3) familiarize students with an understanding of the operation of government decision-making and that of agencies and tribunals and the process that governs challenging their decisions;
- 4) critique the social, religious and political implications of challenging governmental authority;
- 5) enable students to identify issues arising from governmental decision-making action that would permit legal review of such decisions;
- 6) enable students to learn to analyze and critique the rapidly changing area of administrative law; and to formulate arguments to address the ambiguity of conflicting decisions by different courts and to communicate their results to colleagues and clients.

Course Outline

- 1. History and development of administrative law in Canada
- 2. Constitutional basis for judicial review
- 3. Expertise and statutory purpose
- 4. Procedural fairness
- 5. Bias and lack of impartiality
- 6. Jurisdictional issues and discretionary decisions
- 7. Remedies

Texts

Van Harten, Heckman & Mullen, Administrative Law: Cases, Text and Materials (6th edition) (Emond Montgomery, 2010)

Sara Blake, Administrative Law in Canada (5th edition) (LexisNexis, 2011)

Guy Régimbald, Canadian Administrative Law (LexisNexis, 2008)



LAW 703, Business Organizations* (3 s.h.)

Description

This course will cover all aspects of business organizations from sole proprietorships to partnerships to corporations. The first question posed will be, "what type of business organization is best?" Students will be required to complete all phases of incorporating and dissolving a corporation. They will also cover the legal effect of incorporation, responsibilities of directors, control and management of corporations and minority shareholder rights.

Course Objectives

Students in this course will:

- 1) understand and be able to identify benefits and liabilities of various business structures;
- 2) know the steps to incorporate a company;.
- 3) understand the legal effects of incorporation;
- 4) understand fiduciary relationships in various business structures;
- 5) understand legal liabilities of corporations.

Course Outline

- 1. Sole proprietorships
- 2. General partnerships and limited liability partnerships
- 3. Joint ventures
- 4. Corporations
 - a. benefits of incorporation
 - b. legal status of a corporation
 - c. incorporating a company federal and provincial corporations
 - d. fiduciary relationships and the corporation
 - e. control and management of a corporation
 - f. closely held corporations
 - g. rights of shareholders
 - h. tort liability of corporations
 - i. contracting with a corporation
 - j. criminal liability of corporations
 - k. piercing the corporate veil
 - l. transferability of shares
- 5. Franchises

Texts

Bruce Welling, Lionel Smith & Leonard I. Rotman, Canadian Corporate Law: Cases, Notes & Materials (4th edition) (LexisNexis, 2010)

Fasken Martineau DuMoulin LLP, Annotated British Columbia Business Corporations Act (Carswell, looseleaf)



LAW 704, Civil Procedures* (3 s.h.)

Description

An inquiry into the functions of a modern procedural system with specific consideration of the extent to which the litigation process aids in the achievement of just, speedy and economic resolutions of justiciable conflicts. Students will be introduced to the basic structure of a civil action and major items for consideration throughout the development of civil litigation. In the result, such matters as the expenses of litigation, jurisdiction, initial process, pleadings, amendment, joinder, discovery, disposition without trial and alternatives to adjudication will be discussed.

Course Objectives

This course will:

- 1) introduce the fundamentals of civil procedure and familiarize students with the structure of a civil action;
- 2) provide a theoretical framework for the rules of procedure and identify the values and policies on which the rules are based;
- 3) place these rules in a practical context to encourage future practitioners to wield the rules in a responsible, strategic, and cost-effective manner;
- 4) develop practical legal drafting skills including: drafting a Notice of Civil Claim, Response to Civil Claim, Notice of Application and affidavits.

Course Outline

- 1. Theoretical perspectives on civil litigation
- 2. Commencement of proceedings
- 3. Pleadings and parties
- 4. Document discovery
- 5. Examinations for discovery, other discovery, applications, and examinations for discovery
- 6. Complex litigation
- 7. Interim relief and summary trials
- 8. Costs and access to justice
- 9. Trial procedure and experts' reports

Texts

Janet Walker, et al., The Civil Litigation Process: Cases and Materials (7th edition) (Emond Montgomery, 2010)

Bouck, Dillon, and Turriff, British Columbia Annual Practice 2010-2011 (Canada Law Book Inc.)



LAW 705, Evidence* (3 s.h.)

Description

This course surveys the history of rules of evidence in Canadian law. The course introduces students to principles of admissibility, relevance, types of witnesses, written versus oral evidence and the use of demonstrative evidence in court and tribunal proceedings in Canada. It also examines concepts and rules relating to burdens of proof, presumptions, exclusionary rules, ethical issues in the law of evidence and the effects of the Canadian Charter of Rights and Freedoms on the law of evidence.

Course Objectives

This course is designed to:

- 1) explain the history and development of the law of evidence in Canada;
- 2) identify and critically assess the basic principles and rules governing the burden of proof and admissibility in respect of the presentation and evaluation of evidence in adjudicative proceedings:
- 3) understand the types of witnesses and the types of evidence that are part of an adjudicative proceeding;
- 4) understand the ethical issues in the law of evidence and professional responsibilities as a
- 5) familiarize students with the effects of the Canadian Charter of Rights and Freedoms on the law of evidence:
- 6) enable students to identify effectively admissibility issues with respect to evidence;
- 7) analyze various issues relating to admissibility issues and to advise clients on how such issues should be addressed before a court or tribunal so as to provide the client with the best representation possible while still meeting the lawyer's professional responsibility obligations.

Course Outline

- 1. Why are rules of evidence important?
- 2. Burden of proof
- 3. Admissibility and relevance
- 4. Character evidence and exclusionary rules
- 5. Expert evidence
- 6. Ethical issues in the law of evidence
- 7. Effects of the Canadian Charter of Rights and Freedoms on the law of evidence

Texts

Delisle, Stuart & Tanovich, Evidence: Principles and Proof (8th edition) (Thomson Carswell,

David Paciocco and Lee Stuesser, The Law of Evidence (6th edition) (Irwin Law, 2011)



LAW 706, Jurisprudence (capstone course)* (3 s.h.)

Description

Canadian law took shape from its British and French origins, both of which were heavily indebted to a Judeo/Christian understanding of law. This course explores the philosophical, social, historical, political, and religious underpinnings of the law and legal systems. Key questions include, "what is law?" and "do we have an obligation to obey the law?" Recurrent themes include the relationship between law and morals, legal reasoning and logic, and the relationship between law and liberty. The course will challenge students to understand, first through an historic lens, the development of notions, of justice, fundamental rights of persons, and the use of force and punishment in society. Then the course will examine modern and postmodern legal theories as they impact on current legal and ethical problems in Canadian and international discourse.

Course Objectives

In this course, students will:

- 1) analyze and critique the concepts of "law", "legal systems" and "justice" in historical and modern day Canadian context;
- 2) explain the interaction and evolution of law, philosophy and religion from antiquity to the
- 3) explain the major schools of legal thought and the leading legal thinkers providing intellectual depth for more theoretical debates based on traditional modern theories like legal positivism and natural law and postmodern ones like feminist legal theory and critical race theory;
- 4) argue the competing positions on the justification and limits of legal rights;
- 5) critically analyze law in its social context, including how law shapes and is shaped by society
- 6) understand the philosophical basis of law;
- 7) articulate the issues in the foundations of law and assess the plausibility of alternative views;
- 8) analyze legal cases to determine the philosophical assumptions with which legal decisions are made.

Course Outline

- 1. Introduction and survey of legal doctrine in the New Testament
- 2. Survey of legal doctrine in the Old Testament and in other religions
- 3. Legal thought in Greek and Neo- Greek thought
- 4. The Reformation, Luther and the law
- 5. Law and modernity Natural Law, Positive Law and Legal Realism
- 6. Law in a postmodern world Feminism, Critical Legal Studies and Race Theory
- 7. Human rights, war, terrorism and humanitarian intervention
- 8. Crime and punishment, reconciliation and forgiveness in the legal system
- 9. The just use of property and science, bioethics, and the environment
- 10. Christianity, justice, equity and the practice of law
- 11. The separation and convergence of Church, Synagogue, Mosque and State
- 12. Current challenges in Canadian jurisprudence relating to worldviews



Texts

Susan Dimock, Classic Readings and Cases in the Philosophy of Law (Pearson Longman, 2007) Neil Simmonds, Central Issues in Jurisprudence (Sweet & Maxwell, 2008) Peter W. Edge, Religion and Law (Ashgate Publishing, Ltd., 2006) M. Kramer, Critical Legal Theory and the Challenge of Feminism (Rowman and Littlefield, 1995)



LAW 707, Practice Management* (3 s.h.)

Description

The private practice of law is both a profession (calling) and a business; lawyers live and manage this tension on a daily basis. This course will introduce students to the business and administrative aspects of a law practice while keeping in view the duties owed by a lawyer to clients and the state. The class sessions will be highly interactive with many "hands on" experiences in the use of practice management tools and processes.

Course Objectives

This course is designed to:

- 1) familiarize students with all aspects of the establishment and maintenance of a private practice of law and the requirements imposed by law and policy;
- 2) introduce strategies to maintain personal health and balance while in practice;
- 3) develop an understanding of what is required to enter practice;
- 4) have rich resources to turn to once they enter the profession.

Course Outline

- 1. Structure of practice: sole practitioner, associations, partnership, LLP, the law corporation and the agreements governing these relationships
- 2. Getting started: staffing, leasing office space, equipping and fixturing, service contracts
- 3. Marketing: getting clients in the door
- 4. Staying on side: the requirements of Law Society Rules and Professional Conduct Handbook on practitioners
- 5. Managing work flow: time and case management systems, conflict management systems, using precedents
- 6. Managing time accounting: manual and automated systems
- 7. Managing accounting: a review legal accounting software
- 8. Managing space and the quest to go paperless: document management systems, archiving
- 9. Managing technology: computer hardware and software, document management systems, case management software, backup systems, cloud computing, virus protection, copiers/printers/scanners, phone systems
- 10. Managing risk: insurance, tickler systems
- 11. Law office economics
- 12. Managing self: maintaining physical, emotional, social and spiritual health

Texts

Michael E. Gerber, Robert Armstrong, Sanford M. Fisch, The E-Myth Attorney: Why Most Legal Practices Don't Work and What to Do About It (Wiley, 2010)

Robert A. Hardie, A Practical Guide to Successful Law Firm Management (LexisNexis, 2006) Milton W. Zwicker, Developing and Managing a Successful Law Firm (Carswell, 1995)



LAW 708, Real Estate Law* (3 s.h.)

Description

This fundamental course will familiarize students with the mechanics and legalities of a real property transaction from its inception to post completion. The course examines the legal structure, the legal problems and the legal remedies associated with commercial transactions involving the sale, mortgaging and leasing of real estate. We will examine the agreement of purchase and sale that is the foundation of every real estate transaction, what should be included in it, how it should be drafted, how it is completed and what remedies are available for its breach. Other issues that will be examined include the two systems of land registration, real estate agents duties, mortgages and other security, development-related issues, leases, easements, title insurance, fraud and solicitor's opinions.

Course Objectives

This course will enable students to:

- 1) understand the legal framework governing real estate transactions;
- 2) understand the basic legal duties of real estate licensees and the legal implications of the listing contract, and be aware of conflict of interest issues:
- 3) evaluate and analyze the legal significance of problems that occur between signing the contract for purchase and sale and registration of land transfer documents in the Land Title Office:
- 4) understand the range of potential remedies available to parties in contracts for sale of land;
- 5) develop practical skills through problem solving exercises in evaluating and strategizing about breaches of contract;
- 6) scrutinize a purchase and sale agreement for compliance with the relevant rules and authorities.

Course Outline

- 1. Pre-contract
 - a. General Brokers
 - b. Deposits
- 2. Contract formation essential considerations
- 3. Special considerations for acquisition of an interest in or on land situated on Indian Reserve
- 4. Strata property transactions
- 5. Post-formation
 - a. Conditional contracts
 - b. The effect and implications of the contract
 - c. Misdescriptions of the contract subject-matter
 - d. Other defects of quality
 - e. Title
 - f. The Planning Act
 - g. The Registry Act and priorities
 - h. The Land Titles Act and priorities
- 6. Contract completion



- a. Time
- b. Tender
- c. Remedies
- 7. Post-contract completion
- a. Defects in quality and title
 8. Conflicts of interest in real estate transactions

Texts

Paul Perell & Sidney Troister, Real Property Law: Conquering the Complexities (Irwin Law,

Barry D. Lipson, The Art of the Real Estate Deal, (3rd edition) (Carswell, 2011)



Law 709, Wills and Trusts* (3 s.h.)

Description

Students will understand the rationale and principles for preparing wills and have an opportunity to draft one. They will also understand the consequences of not having a will. The rules governing the administration of estates, particularly, the terminal tax return, rules governing matrimonial property, the care of dependants and distribution of assets. So-called "living wills" and issues around incapacity and substitute decision-makers will also be covered. Students will become familiarized with the law of trusts and their formation, benefits, regulation and taxation. The role and responsibilities of trustees will also be addressed.

Course Objectives

The objectives of this course are to:

- 1) explain the history of wills, estates and trusts as they developed from English law to their introduction and evolution in Canada;
- 2) explain all aspects of establishing and managing trusts;
- 3) familiarize students to the principles governing the creation, administration, variation and termination of express private trusts as well as statutory, resulting and constructive trusts;
- 4) understand the duties and powers of the trustees as well as their fiduciary responsibilities;
- 5) understand the rights and duties of trust settlors, trustees and beneficiaries under a trust and remedies for breach of trust:
- 6) familiarize students with the basic concepts of taxation of trusts;
- 7) practice interviewing a client and taking instructions for drafting a will for that person;
- 8) identify and analyze various ethical issues relating to advising clients in wills, estates and trust matters while still meeting the lawyer's professional responsibility obligations.

Course Outline

- 1. Introduction to the law of trusts
- 2. Creation of express trusts
- 3. Changing or ending a trust
- 4. Statutory trusts
- 5. Resulting trusts and constructive trusts
- 6. Appointment, retirement, and removal of trustees
- 7. Duties of trustees
- 8. Powers and rights of trustees
- 9. Breach of trust
- 10. "Living" wills and powers of attorney

Texts

Chambers, McInnes, Oosterhoff & Smith, Oosterhoff on Trusts: Text, Commentary and Cases (7th edition) (Carswell, 2009)

E. Gillese and M. Milczynski, Law of Trusts (2nd edition) (Irwin Law, 2005) James Kessler and Fiona Hunter, Drafting Trusts and Will Trusts in Canada (3rd edition) (LexisNexis 2011)



APPENDIX NINE

Summary of Faculty Qualifications

The program developers, Dr. Janet Epp Buckingham and Prof. Kevin G. Sawatsky, are currently faculty members at Trinity Western University in other departments. They may be faculty members in the proposed TWU School of Law.

Janet Epp Buckingham

Specialization: Human Rights, Constitutional Law, Religion and the Law

Education: B.A. History (Western Ontario), LL.B. (Dalhousie), LL.D. (Stellenbosch)

Professional Certifications: Member of the Law Society of Upper Canada

Professional Associations: Law Society of Upper Canada, Law and Religion Scholars Network, Fellow, Religion in Canada Institute, Study of Parliament Group.

Professional Experience: Director of Laurentian Leadership Centre and Associate Professor Trinity Western University (tenured), Director of Law and Public Policy and General Legal Counsel for the Evangelical Fellowship of Canada, Executive Director of the Christian Legal Fellowship, Researcher for Public Legal Education Association of Saskatchewan, UN representative for the World Evangelical Alliance, private practice lawyer, academic and professional presentations and publications.

Kevin G. Sawatsky

Specialization: Charities Law, Business Organizations, Employment Law, Human Rights

Education: B.Comm. (U.B.C.), M.B.A. (U.B.C.), J.D. (U.Vic.)

Professional Certifications: Member of the Law Society of British Columbia

Professional Associations: Law Society of British Columbia, Canadian Bar Association.

Professional Experience: Vice-Provost (Business), Trinity Western University Legal Counsel, TWU School of Business Professor of Law (tenured), Dean of the School of Business (2001-2008), private practice lawyer, academic and professional presentations and publications.



APPENDIX TEN

School of Law Building Cost Protection



<u>Estimate</u>					
15-Apr-11					
					
	· ·		Size		
Room Types		No.	(sq.ft.)	Extension	Totals
Offices	Dean	1	250	250	
	Reception	1	140	140	
	Faculty	15	144	2160	
	Staff and Students	4	120	480	
	Student Association				
· · · · · · · · · · · · · · · · · · ·	Office	1	150	150	
•	Articling and Career				
	Centre	1	500	500	
	Copy & supply room	1	200	200	
	Hallways	2	175	350	
					423
Classrooms	Lecture Theatre (200)	1	2400	2400	
	Moot Courtroom (60)	1	1100		-
	Large (75)	1	1200	1200	
	Medium (45)	2	900	1800	-
	Breakout Rooms (15 -				
	20)	4	300	1200	
	Skills Training Facility	1	400	400	
	Entrance Foyer/Lobby	1	1000	1000	
	Hallways	2	450	900	
					10000
Meeting rooms	Boardroom (30)	1	500	500	
	Faculty Lounge	1	500	500	<u> </u>
	Collegium	1	1200	1200	
	Hallways	il	400	400	
		~ 			2600
Law Library	Office	2	120	240	2000
	Stacks	1	10000	10000	
	Sign-out Desk	1	300	300	
	Carrels/Cmpt. Stations	75	60	4500	
	, ,	 -	- 00	7300	15040
Centre of Excellence	Offices	2	120	240	13040
	Meeting room	- 	160	160	 .
	Library	- 1 1	480		
	Diotal y	1	480	480	880

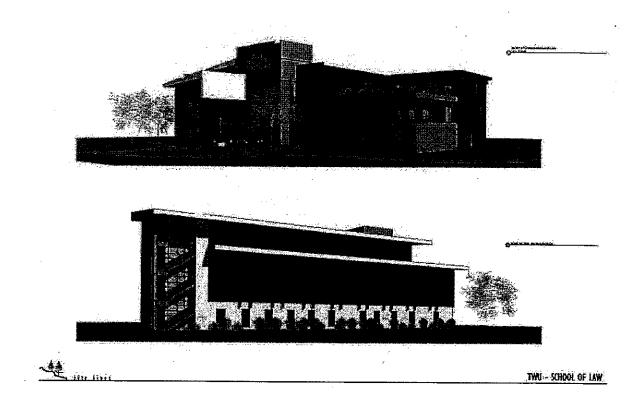


Infrastructure	Men's Washrooms	3.	150	450	
	Women's Washrooms	3	230	690	
	Janitorial Closets	3	75	225	
	Communications	3	75	. 225	· · · · · · · · · · · · · · · · · · ·
	Mechanical Room	1	450	450	-
	Electrical Room	1	100	100	
	Hallways	3	250	750	
					2890
					35640
Initial Cost Estimate				-	
	Cost Component		Sq.Ft.	\$/Sq.Ft.	Amount
	Construction		35640		
	Professional Fees	15%			\$1,336,500
	Permits				\$220,000
	Furnishings				\$400,000
	Landscaping			···	\$60,000
	Telecom & Networking			·-	\$200,000
	Contingency	20%		· · ·	\$2,781,625
	GST	3.5%			\$486,784
					\$14,394,909

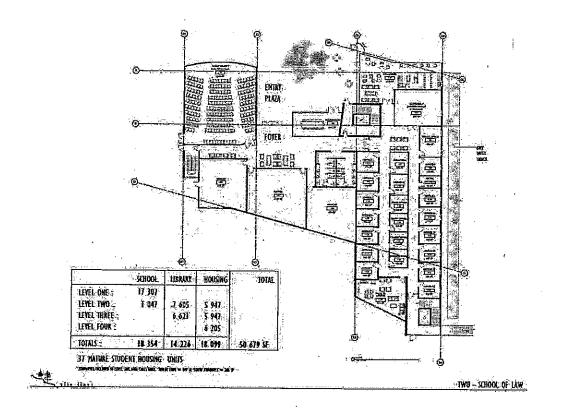


APPENDIX ELEVEN

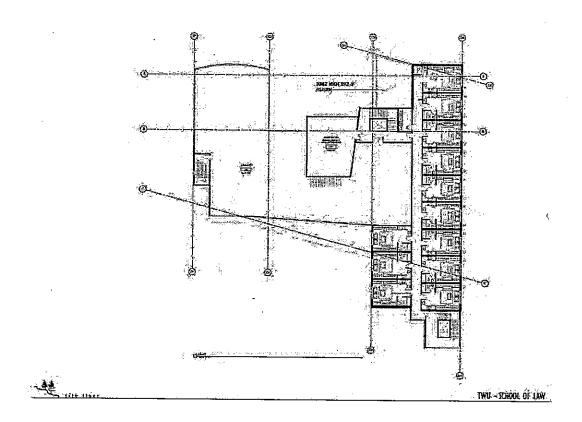
Preliminary Concept Drawings



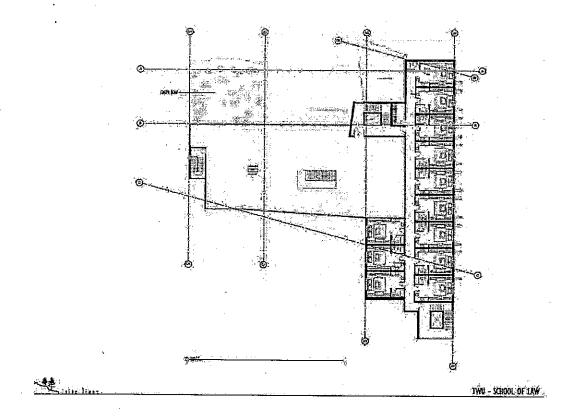




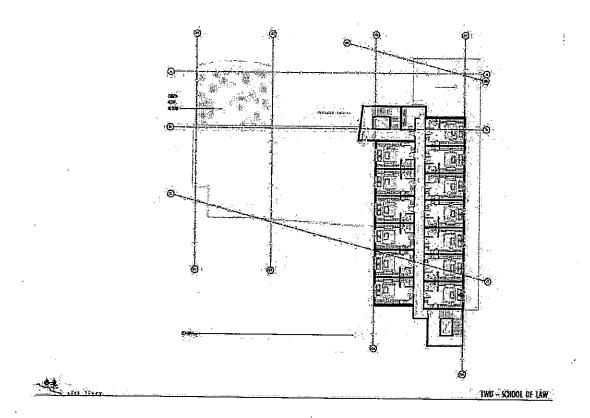














APPENDIX TWELVE

Canadian Academic Law Library Standards

Approved by the Canadian Academic Law Library Directors Association May 5, 2007

Preamble

CALLD Standards for Law Libraries aim at providing general provisions in the areas of administration, staffing, services, collections and facilities. These standards shall adhere to the provisions of the Access to Information Act (R.S.C., 1985, c. A-1) and shall be interpreted in a manner that respects and supports academic freedom.

General Provisions

- a) An academic law library shall be an active and responsive force in the educational life of the law school. A law library's effective support of the school's teaching, scholarship, research and service programs requires a direct, continuing and informed relationship with the faculty, students and administration on behalf of the law school.
- b) A law library shall have sufficient financial resources to support the law school's teaching, scholarship, research and service programs.
- c) A law library shall keep abreast of technology and adopt it when appropriate.

Administration

- a) An academic law library shall have sufficient administrative autonomy to direct its development of the law library and to control the use of its resources.
- b) The director of the law library, in consultation with the Faculty of Law and University Librarian, as appropriate, shall determine law library policy.
- c) The director of the law library is responsible for the selection and retention of personnel; the provision of law library services; and the collection development and maintenance.
- d) The budget of the law library may be determined as part of the law school budget or, according to institutional policy, allocated under the university library budget, but it should be administered by the law library director.

Note. This standard requires that decisions that materially affect the law library be enlightened by the needs of the law school educational program. This envisions law library participation in University library decisions that may affect the law library. This standard shall not be interpreted to restrict continuing support, collaboration and co-operation with University library initiatives designed to enhance institution-wide access to information services and collections.



Director of the Law Library

- a) The law library shall be administered by a director whose principal responsibility is the management of the law library.
 - Note: It is not a violation of this standard for the director of the law library also to have other administrative or teaching responsibilities, provided sufficient resources and staff support are available to ensure effective management of law library operations.
- b) The director of the law library shall have a degree in Library or Information Science. A law degree and experience in academic library administration are desirable.
- c) The director of the law library shall be selected according to the institutional policies of the University, but opportunity must be provided for input by the dean and faculty of the law school.

Personnel

The law library shall have a competent staff, sufficient in number to provide appropriate library and informational resource services.

Note: Factors relevant to the number of librarians and informational resource staff needed to meet this standard include the following: the number of law faculty and law students; the variety and number of research and teaching programs (including civil and common law programs as well as graduate programs); the level of informational resource and instructional support provided to faculties and departments outside the law school; the level of access and services provided to non-academic users; the growth rate of the collection.

Services

- a) The law library shall provide the appropriate range and depth of reference, instructional, bibliographic and other services to meet the legal information needs of members of the University community. Appropriate services include reference services, instruction in legal research techniques and information literacy, access services (cataloging, indexing, research guides), interlibrary loan and document delivery, and producing library publications (including web sites).
- b) Where the law library serves users outside the University community, the library's mandate shall make clear the levels of informational and instructional service provided to its different user groups.

Collection

- a) The law library shall provide access to a core collection of essential materials. The appropriate mixture of collection formats depends on the needs of the library and its clientele. The core collection of a Canadian academic law library shall consist of the following:
 - i. all reported Supreme Court of Canada and Federal Court decisions as well as the reported decisions of the appellate court of each province and territory;
 - ii. all federal, provincial and territorial statute revisions and annual volumes;



- iii. all federal, provincial and territorial regulations;
- iv. all international treaties to which the government of Canada is a signatory; those federal and provincial administrative decisions appropriate to the teaching, scholarly and research needs of the University community;
- v. those federal and provincial administrative decisions appropriate to the teaching, scholarly and research needs of the University community:
- vi. the legislative materials (hansard, debates, bills) of the Parliament of Canada and of the province in which the law school is located:
- vii. significant secondary works (journals, treatises, texts and monographs) necessary to support the programs of the law school and the University community; and
- viii. those citators, periodicals indexes, bibliographies and encyclopedias necessary to identify primary and secondary legal information sources and to update primary legal information sources.
- b) In addition to the core collection of essential material, a law library shall also provide a collection that through ownership or reliable access:
 - i. meets the research needs of the law school's students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
 - ii. contributes to the teaching, scholarship, research and service interests of the faculty;
 - iii. serves the law school's special teaching, scholarship, research and service objectives; and
 - iv. meets the University community's needs for interdisciplinary law-related materials.
- c) A law library shall formulate and periodically update a written plan for the development of the collection.
- d) All materials necessary to support the programs of a law school shall be complete and current and in sufficient quantity or with sufficient access to meet faculty and student needs. The law library shall ensure continuing access to all information necessary to the law school's programs.
 - i. In order to support and encourage the instruction and research of students and faculty, the law library shall facilitate access to a wide array of materials including central collections, databases, jointly held special collections, interdisciplinary materials and other types of off-side auxiliary resources.
 - ii. Agreements for sharing information resources, except for the core collection. satisfy the Collection standard if:
 - a. the agreements are in writing; and



b. the agreements provide faculty and students with the ease of access and availability necessary to support the programs of the law school.

Facilities

- a) The physical facilities for the law library shall be sufficient in size, location and design in relation to the law school's programs and enrollment to accommodate law school students and faculty, and the law library's services, collections, staff, operations and equipment.
 - Note: Off-site storage for non-essential library materials is acceptable so long as the material is organized and readily accessible in a timely manner.
- b) The law library shall provide a variety of work spaces to accommodate quiet study, research, collaborative learning and access to technology.
- c) The law library must provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection. Such equipment may include:
 - i. microform reader(s)/printer(s);
 - ii. computer hardware and software (including infrastructure support and services) in sufficient quantity and of acceptable currency to support the teaching and research programs of law students and faculty; and,
 - iii. audio-visual equipment relevant to the formats in the collection.



APPENDIX THIRTEEEN

Position Descriptions - Dean of School of Law, Director of the Law Library, Faculty Member

DEAN OF SCHOOL OF LAW Position Description

The Dean of the School of Law will be a dynamic and proactive leader. His/her role includes initiating, shaping, implementing, supervising, and evaluating programs in the School of Law as well as managing its day-to-day operations. She/he will possess the commitment, personal characteristics, insights and abilities not only of a strong faculty member but also those of an effective administrative and organizational leader. The Dean oversees the work of program directors, faculty and staff, and reports to the Provost and/or his/her designate. The Dean will responsibly represent and implement the academic and administrative policies and decisions of the University. In this context, the successful candidate will:

- Serve as an effective spokesperson for the School of Law and University in legal, academic and community circles;
- Demonstrate a commitment to academic freedom in a faith affirming academic environment;
- Effectively represent the academic administration and institutional matters to the faculty and report on faculty matters to the academic administration;
- Provide a servanthood model of leadership in setting and implementing School of Law goals and managing to institutional and Board policies;
- Demonstrate a collegial style of leadership and governance with departments and faculty members under his/her jurisdiction;
- Promote strategic planning and assessment on behalf of the School of Law's programs and personnel annually and in accord with institutional planning initiatives;
- Provide and prepare annual professional development reviews/reports for each faculty member in accord with the Office of the Provost:
- Articulate and engage others in the focused vision of Trinity Western University's mission and the integration of Christian faith and learning in disciplines beyond his/her own;
- Unreservedly adhere to the University's Statements of Faith and Community Covenant;
 and
- Exemplify the characteristics and qualifications of a leader with a mature Christian faith;



JOB DESCRIPTION

1. Academic Leadership

The Dean will provide academic leadership to the School of Law including:

- a. Initiate and implement new programs and courses in the School of Law in conjunction with faculty, the Office of the Provost, and University Councils:
- b. Represent the School on the Graduate Academic Council, the Dean's Council, and on other committees, as appropriate:
- c. Represent School of Law's interests within the broader context of the University's priorities and the University's policies, goals, and priorities to the School of Law;
- d. Promote, monitor, evaluate, and provide support for the work of the faculty with respect to teaching, scholarship and research, and service to the University community;
- e. Promote mission fulfillment, the achievement of the University's core values, and the integration of faith and learning in all aspects of the School of Law's operations;
- Effectively articulate University standards and policies both orally and in writing;
- g. Monitor course syllabi and their implementation as well as how students are evaluated, and work with the faculty in developing new course syllabi;
- h. Direct School of Law reviews as determined by the Provost;
- Plan appropriate professional development sessions and stimulate academic activities such as faculty colloquia in cooperation with the Office of Research and Faculty Development:
- Demonstrate academic expertise in an area encompassed by the School of Law by teaching a prescribed number of courses per year as approved by the Provost or his/her designate.

2. Staffing and Personnel

The Dean will enable all faculty and staff in the School of Law to exercise their duties effectively:

- a. Supervise and evaluate all teaching in the School of Law, assisting instructors to improve their teaching skills;
- b. Review and assess annual professional development agreements with all full-time faculty;
- c. Review and assess, for the appropriate committees, all faculty applying for tenure, promotion, sabbatical leaves, and research funding within the School of Law;
- d. Meet regularly with and provide supervision to program directors, and work with a faculty assistant in a spirit of warm interpersonal relations;
- e. Cooperate with the Provost's Office when recruiting and/or appointing all full and parttime faculty;
- f. Hire and supervise any Assistant/Associate Deans, teaching assistants and other School of Law support staff; and



g. Lead the recruitment and selection of faculty members for the School of Law and provide advice to the Academic Unit of the University on offers of employment to the faculty of the School of Law.

3. General Administration

The Dean will provide effective and efficient administration of all matters pertaining to the operation of the academic departments in her/his School:

- a. Create and articulate a clear vision for the School of Law;
- b. Administer relevant academic, faculty and staff policies;
- c. Evaluate course viability (student demand and enrolment), student evaluations of courses, and grade distribution reports, and, when desirable, take corrective action;
- d. Prepare each semester's course schedule in conjunction with the faculty;
- e. Prepare and manage operating, capital, and salary budgets for the School of Law (envelope system), including the supervision and approval of purchases;
- f. Give general oversight to the usage and development of specialized departmental teaching facilities as needed:
- g. Handle final student appeals pertaining to grades, dropping courses, changes in final examination schedules, exemption forms for graduation requirements, student discipline regarding academic dishonesty, and student complaints about faculty as it relates to competence; and
- h. Recommend assignment of faculty and staff office space.

4. External Relations

The Dean will provide effective leadership and show willingness to work with external relations and the development of fundraising initiatives:

- a. Have networking experience with other law schools and faculties, agencies, and organizations and have knowledge of the funding structures in Canada
- b. Serve as the faculty lead for strategic planning, faculty recruitment, and fundraising.
- c. Connect with influential legal and business leaders such that the School of Law remains well grounded in marketplace realities and well positioned within the marketplace.

TERM OF REFERENCE

Term of Office

The Dean must be qualified to teach in one or more of the academic disciplines in the School of Law. Initial appointment is for a five-year term with renewals every three years following. The Dean will preferably have an earned doctorate in his or her discipline or a minimum of a LLM or other relevant Masters degree and significant academic and professional experience. Eight to ten years of senior leadership experience is preferred. Leading candidates will be interviewed by a



President's/Provost's Committee, a committee of faculty representatives, a committee of student representatives, and a committee of members of the Board of Governors.

Salary

The salary scale will be based on the level achieved on the faculty salary scale plus an administrative stipend.

Campus Responsibilities

The Dean will be on campus between August 15 and May 30 unless leave has been authorized by the Provost. He/she will take regular holidays between June 1 and August 14 but will periodically check in to her/his office to ensure that necessary administrative work is completed during the summer months. This will be particularly important when there are vacancies in fulltime or part-time positions that may be filled before the semester begins.



DIRECTOR OF THE LAW LIBRARY **Position Description**

Position Summary

Reporting to the Dean of the School of Law and a member of the TWU faculty, the Director of the Law Library gives leadership in developing, implementing and monitoring the Law Library mission, budget and policies. The Director will in particular develop and manage the Law Library collections policy. The Director will also manage all aspects of the Law Library operations including personnel, technology, purchasing and facilities, and will support the overall School of Law's fundraising objectives.

Duties and Responsibilities

- 1. Establish policies, procedures and systems that produce an effective Law Library operation.
- 2. Acquire, organize, and process the library resources necessary to support the curriculum needs of the School of Law.
- 3. Plan, coordinate and implement budgets required to ensure an efficient Law Library operation.
- 4. Develop, coordinate, and implement long range plans related to future needs for Law Library services.
- 5. Hire, direct, and evaluate personnel required to carry out various Law Library related functions.
- 6. Prepare, write, and submit reports on progress in meeting Law Library goals.
- 7. Establish and implement programs for in-service development of Law Library personnel.
- 8. Promote, participate, and contribute to Law Library cooperation with other law schools and the legal community.
- 9. Investigate, evaluate, and implement new technologies which enhance Law Library services.
- 10. Promote, solicit, and facilitate communication with faculty colleagues about the various facets of Law Library operations.
- 11. Support, contribute to, and encourage the mission and goals of the University.
- 12. Provide leadership as a cooperating team member to ensure the performance of duties essential to an efficient Law Library operation.

Supervision

Given: Assistant librarians, staff

Received: Dean of School of Law, Provost

Job Standards/Requirements

Education: Law Degree, Master's Degree in Library and Information Science.

Experience: Substantial relevant experience including several years in a senior administrative role in a law library.



Personal: Warm-hearted, committed, dedicated, and mature Christian. Firm commitment to TWU's mission, covenant commitment, and statement of faith. Impeccable character and reputation. Positive and progressive outlook in a busy and challenging environment. Salary

Remuneration will be commensurate with qualifications and experience.



POSITION DESCRIPTION: FACULTY MEMBER, SCHOOL OF LAW

Position Summary

A faculty member of the School of Law will be a dynamic and proactive leader. She/he will possess the commitment, personal characteristics, insights and abilities not only of a strong faculty member, including demonstrated ability to research and publish, and to teach students at the law school level.

Duties & Responsibilities

- 1. Teach courses as assigned by the Dean of the School of Law:
- 2. Engage in scholarly activity such as research and writing, organizing conferences and symposia, and giving scholarly papers. Contribute generally to the scholarly life of the School of Law and Trinity Western University.
- 3. Serve on School of Law and Trinity Western University committees as assigned.
- 4. Advise students.

Job Standards & Requirements

Education: LL.M. or equivalent, Doctorate preferred.

Some teaching experience at law school preferred. Experience:

Skills: Able to teach courses. Demonstrated ability to research and publish.

Warm-hearted, dedicated, committed and mature evangelical Christian with a keen Personal: desire to serve in family, church, work and community. A firm commitment to TWU's mission, Statement of Faith and Community Covenant. Impeccable character and reputation, a pleasant personality with a positive and friendly attitude in the

midst of a very busy and challenging environment.

Supervision

Received: This position reports to the Dean of the School of Law.

Given: None

Campus Responsibilities

Faculty members are required to be on campus between August 15 and May 30 unless leave has been authorized by the Dean. He/she will take regular holidays between June 1 and August 14 but will periodically check in to her/his office to ensure that necessary administrative work is completed during the summer months.



APPENDIX FOURTEEN

Analysis of Teaching Requirements

YEAR 1						
	FALL			SPRING	,	
Course No.	Course Name	Notes	Course No.	Course Name	Notes	
LAW 501	Intro to Law	Team taught				
LAW 502	Contract Law	Section A	LAW 502	Contract Law	Section A	
LAW 502	Contract Law	Section B	LAW 502	Contract Law	Section B	
LAW 503	Tort Law	Section A	LAW 503	Tort Law	Section A	
LAW 503	Tort Law	Section B	LAW 503	Tort Law	Section B	
LAW 504	Constitutional Law	Section A	LAW 504	Constitutional Law	Section A	
LAW 504	Constitutional Law	Section B	LAW 504	Constitutional Law	Section B	
LAW 505	Property Law	Section A	LAW 505	Property Law	Section A	
LAW 505	Property Law	Section B	LAW 505	Property Law	Section B	
LAW 506	Criminal Law	Section A	LAW 506	Criminal Law	Section A	
LAW 506	Criminal Law	Section B	LAW 506	Criminal Law	Section B	
LAW 507	Funds of Canadian Law	Section A	LAW 508	Intro to Practice Skills	Section A	
LAW 507	Funds of Canadian Law	Section B	LAW 508	Intro to Practice Skills	Section B	

Year One Teaching Requirements:

- Six Full-Time Faculty
- One Adjunct Faculty (Fundamentals of Canadian Law)

Assumes in Year One that full-time faculty will develop courses. As well, with the exception of the Dean and adjunct faculty members, each full-time faculty member will teach four classes in Year One. The Dean and adjunct faculty members will teach two classes each in Year One.

YEAR 2						
	FALL			SPRING		
Course No.	Course Name	Notes	Course No.	Course Name	Notes	
LAW 501	Intro to Law	Team taught				
LAW 502	Contract Law	Section A	LAW 502	Contract Law	Section A	
LAW 502	Contract Law	Section B	LAW 502	Contract Law	Section B	
LAW 503	Tort Law	Section A	LAW 503	Tort Law	Section A	
LAW 503	Tort Law	Section B	LAW 503	Tort Law	Section B	
LAW 504	Constitutional Law	Section A	LAW 504	Constitutional Law	Section A	
LAW 504	Constitutional Law	Section B	LAW 504	Constitutional Law	Section B	
LAW 505	Property Law	Section A	LAW 505	Property Law	Section A	
LAW 505	Property Law	Section B	LAW 505	Property Law	Section B	
LAW 506	Criminal Law	Section A	LAW 506	Criminal Law	Section A	
LAW 506	Criminal Law	Section B	LAW_506	Criminal Law	Section B	



LAW 507	Funds of Canadian Law	Section A	LAW 508	Intro to Practice Skills	Section A
LAW 507	Funds of Canadian Law	Section B	LAW 508	Intro to Practice Skills	Section B
LAW 601	Ethics and		LAW 601	Ethics and	
	Professionalism			Professionalism	
LAW 702	Administrative Law		LAW 702	Administrative Law	
LAW 613	Alt Dispute Resolution		LAW 612	Advanced Advocacy	-
LAW 703	Business Organizations		LAW 703	Business Organizations	
LAW 704	Civil Procedure		LAW 704	Civil Procedures	
LAW 618	Conflict of Laws		LAW 617	Commercial Law	
LAW 621	Employment and Labour		LAW 705	Evidence	
	Law		!		
LAW 705	Evidence		LAW 626	Human Rights and	
	_		_	Discrimination	
LAW 623	Family Law		LAW 628	Insurance Law	
LAW 629	Intellectual Property		LAW 630	International Law	
	Law				
LAW 634	Advanced Negotiation	1	LAW 708	Real Estate	
LAW 708	Real Estate		LAW 635	Remedies	· ·
LAW 709	Wills and Trusts		LAW 638	Tax Law	

Year Two Teaching Requirements:

- 10 Full-Time Faculty
- Six Adjunct Faculty (one course per instructor)

Assumes faculty teaching a first year course also teach one section of a second or third year course. Also assumes faculty teaching only second or third year students will teach four sections.

		Y	EAR 3		
	FALL	FALL SPR		SPRING	
Course No.	urse No. Course Name		Course No.	Course Name	Notes
LAW 501	Intro to Law	Team taught			
LAW 502	Contract Law	Section A	LAW 502	Contract Law	Section A
LAW 502	Contract Law	Section B	LAW 502	Contract Law	Section B
LAW 503	Tort Law	Section A	LAW 503	Tort Law	Section A
LAW 503	Tort Law	Section B	LAW 503	Tort Law	Section B
LAW 504	Constitutional Law	Section A	LAW 504	Constitutional Law	Section A
LAW 504	Constitutional Law	Section B	LAW 504	Constitutional Law	Section B
LAW 505	Property Law	Section A	LAW 505	Property Law	Section A
LAW 505	Property Law	Section B	LAW 505	Property Law	Section B
LAW 506	Criminal Law	Section A	LAW 506	Criminal Law	Section A
LAW 506	Criminal Law	Section B	LAW 506	Criminal Law	Section B
LAW 507	Funds of Canadian Law	Section A	LAW 508	Intro to Practice Skills	Section A
LAW 507	Funds of Canadian Law	Section B	LAW 508	Intro to Practice Skills	Section B
LAW 602	Ethics and		LAW 602	Ethics and	1
	Professionalism			Professionalism	
LAW 611	Aboriginal Law		LAW 702	Administrative Law	
LAW 702	Administrative Law		LAW 612	Advanced Advocacy	



LAW 703	Business Organizations	LAW 613	Alt Dispute Resolution	
LAW 615	Charities and Not-for-	LAW 614	Bankruptcy and Insolvency	_
L	Profits Law		Law	
LAW 704	Civil Procedures	LAW 703	Business Organizations	
LAW 616	Client Relations and	LAW 704	Civil Procedures	
	Interviewing Skills			
LAW 617	Commercial Law	LAW 618	Conflict of Laws	
LAW 619	Consumer Law	LAW 622	Environmental Law	
LAW 620	Debtor and Creditor	LAW 705	Evidence	
LAW 621	Employment and	LAW 623	Family Law	_
	Labour Law	'		
LAW 622	Environmental Law	LAW 627	Immigration and Refugees	
			Law	
LAW 705	Evidence	LAW 628	Insurance Law	
LAW 624	Financial Institutions	LAW 630	International Law	
LAW 625	Health and Elder Care	LAW 706	Jurisprudence	
LAW 629	Intellectual Property	LAW 632	Municipal Law	
	Law		·	
LAW 706	Jurisprudence	LAW 633	Natural Resource Law	\neg
LAW 631	Landlord and Tenant	LAW 707	Practice Management	\neg
	Law			
LAW 634	Advanced Negotiation	LAW 708	Real Estate	\neg
LAW 708	Real Estate	LAW 637	Securities Law	$\overline{}$
LAW 638	Tax Law	LAW 639	Advanced Tax Law	\neg
LAW 709	Wills and Trusts			\dashv

Year Three Teaching Requirements:

- 12 Full-time Faculty14 Adjunct Faculty (one course per instructor)



APPENDIX FIFTEEN

Alignment with Federation of Law Societies Canada National Standards

Part 1: Proposed Learning Resources

- 1.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.
 - This proposal is for a class size of 60 students per year over 3 years. We are planning for a full-time faculty complement of 12 plus approximately 14 adjunct faculty members. We also anticipate having a Dean with support staff, and two additional staff members, including an Articling and Career Centre Coordinator. We anticipate having a Director of the Law Library plus three additional staff.
 - As this is a new program, we cannot give specifics of the faculty members. A draft position description for a Faculty Member is found in Appendix Thirteen. In general, the preference is for all faculty members, including adjunct faculty, to have at least an LL.M. or equivalent as well as significant practice experience.
 - The proposal is for a class size of 60 full-time equivalent students in a J.D. program each of three years. We expect some attrition so when the program is in its third year, we anticipate a class of 170.
 - The proposed School of Law will have an Articling and Career Centre to facilitate practicum placements and articling positions. The university has additional student support services, including a Wellness Centre, counselling services, financial aid, student life, food services and housing services. The library has access to interlibrary loans. There is a bookstore on campus. The campus is well equipped with sports facilities and fitness centres. IT support is also available to students and these services will be enhanced in anticipation of the opening of the School of Law.
- 1.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.
 - The proposed School of Law will be located in a new building on campus. Concept drawings for this building are found at Appendix Eleven.
 - The proposed building includes a large lecture theatre, a moot court room, a large classroom, two medium-sized classrooms, six breakout rooms, the library, an executive meeting room, a skills-training facility, student commons, a student collegium, an Articling and Career Centre, and space allocated for student associations. An outdoor lounge area is available on the third floor.



- The proposed building is on three floors, accessible by elevator. The front door is at ground level.
- 1.3 The law school has adequate information and communication technology to support its academic program.
 - With the development of the School of Law as a new undertaking, it will be on the forefront of technology. Wireless internet is available across campus for all students and faculty. Most students bring their own laptop computers to university, including tablet computers. A section of the library will be equipped with computers for student use but it is anticipated that these will not be in high demand.
 - TWU has shared IT services across all Schools and Faculties. Students and faculty have access to a "Helpdesk" function that gives fairly rapid service for IT difficulties. As noted above, it is anticipated that the IT department will enhance its support complement in anticipation of additional students and faculty on campus.
- 1.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.
 - A position description for a Director of the Law Library has been included at Appendix Fourteen. We anticipate hiring an Associate Law Librarian and two Law Library Support Staff.
 - The first Director of the Law Library will have significant input in developing the collection and collections policies. The Director will adhere to the Canadian Academic Law Library Directors Association's standards.
 - An initial budget of \$2 million has been established for the creation of the Law Library with \$1,750,000 allocated for monographs and \$250,000 for electronic databases. (It is recognized that electronic resources will require annual funding for licence renewals with a component allocated for rate increases). The university currently has subscriptions for several electronic databases that will be used by law students, including Quicklaw, JSTOR and EBSCOhost. TWU is cognizant that this budget is an estimate only and may need to be adjusted as the acquisition phase proceeds.
 - In addition to law library staff, the university library staff are also available to support faculty, students and other library users. The university has reciprocal COPPUL and inter-library loan agreements with most universities across Canada.

Part 2

TWU is applying to have the program approved under the Program Approval Model.



Competency Requirements

National Requirements - 1 - 1 - 3 -	TWU School of Law proposal fulfillment
1. Skills Competencies	a a state a second seco
1.1 Problem-Solving	Problem-solving is a standard skill taught in first
	year substantive courses, LAW 502, Contract Law,
	LAW 503, Tort Law, LAW 504, Constitutional Law,
	LAW 505, Property Law, LAW 506, Criminal Law.
	It is reinforced in upper year substantive courses.
1.2 Legal Research	Legal research skills are a significant component of
	LAW 507, Fundamentals of Canadian Law, which is
	taught in first year. These skills are reinforced in
	upper year courses.
1.3 Oral and Written Legal	Oral and written legal communication are a
Communication	significant component of LAW 508, Introduction to
,	Practice Skills and the Practice of Law, which is
	taught in first year. These skills are reinforced all
	law school courses. Certain upper year electives
·	particularly focus on these skills, including LAW
	612, Advanced Advocacy, LAW 613, ADR, and
2.70	LAW 642, External Moots.
2. Ethics and Professionalism	Fulfilled through LAW 508, Practice Skills and the
	Practice of Law and LAW 602, Ethics and
	Professionalism. All faculty members will be
	encouraged to include issues of ethics and
2.6.17 4 137	professionalism in each course.
3: Substantive Legal Knowledge 3.1 Foundations of Law	Evicile 14 marsh 1 AW 507 F
3.1 Foundations of Law	Fulfilled through LAW 507, Fundamentals of
	Canadian Law, a required first year course. Note that
	LAW 706, Jurisprudence, is a required capstone
	course that is intended to draw together substantive
3.2 Public Law of Canada	legal knowledge through a philosophical framework. The Public Law of Canada is taught through a
5.27 dono bavy or canada	number of required courses:
	LAW 504, Constitutional Law, is a first year
•	course and teaches federalism and the
·	distribution of legislative powers, the Charter
	of Rights and Freedoms and human rights
	principles. The rights of Aboriginal peoples
	of Canada is addressed in LAW 504, LAW
	507, Fundamentals of Canadian Law (a
	required first year course) and LAW 708,
	Real Estate (a required upper year course).
	Real Estate (a required upper year course).



	Students may also take LAW 611, Aboriginal Law, an upper year elective. Canadian criminal law is taught in LAW 506, Criminal Law, a required first year course. The principles of Canadian administrative law is taught in LAW 702, a required upper year course.
3.3 Private Law Principles	 Private law principles are taught through a number of required courses: LAW 502, Contract Law, a required first year course, teaches the principles of contract law. LAW 503; Tort Law, a required first year course, teaches the principles of tort law. LAW 505, Property Law, a required first year course, teaches the principles of property law. LAW 708, a required upper year course, teaches the principles of property transactions. LAW 703, Business Organizations, a required upper year course, teaches the principles of legal and fiduciary concepts in commercial relationships. Students also have a number of upper year electives that also address these concepts: LAW 614, Bankruptcy and Insolvency Law; LAW 617, Commercial Law; LAW 630, Debtor and Creditor Law; LAW 637, Securities Law;
·	LAW 638, Tax Law; and LAW 639, Advanced Tax Law.



APPENDIX SIXTEEN

Universities Outside Canada Accepting Canadian Law Students

Country	University	Number of Cdn law	Accepts Cdn law
		students (if known)	students (no number)
Australia 24. 25.	A Bond University # 1	超高速距离15000000000000000000000000000000000000	建设有的的基础的基础的
Australia	James Cook		yes
	University		
Australia 116 Australia	Macquarte University		yes, a yes
Australia (* 1744)	Monash University University of		yes
AUNIRAIN	Melbourne Melbourne		ye. Year and a
Australia	University of		
1 Lubil Clift	Newcastle		yes
Australia balinas	Uminyensiny ดูกับและเก		Marting of the second
	Oceansland		
Australia	University of Sydney		yes
Dingland	City University of		yes a yes
	Londitin		
England	Kingston University		yes
England	Middlesex University		a popular propiesta popular del
England	Newcastle University		yes
lingsand .	Oxford Brooks		en orackim yes en in branc
Co-cloud	University 1 1 1 1 1 2		
England	Queen Mary		yes
TErogland	University of London		
	ารูกับเขาเหลียนเก		2) - 20 (1996) yes
England	University of Bristol		NO.
- Bingland between	University of Basics	karantan kanggang bang dan ka	yes
	Amelia		yes Tarahan yes
England	University of Essex	9	
Brigand	Umiversity of Kent		VEZ PER SE
England	University of	216	
	Leicester		
- England	University of Director		e namenta di yesikili dan kale
England	University of		yes
	Liverpool		
Bingland	University of		end Care VSS are were
Production designation of the control of the contro	Southampion		
England Scolland	University of Sussex		
Scotland	University of Dundee		
Socialia	University of Stirling		yes



Wales	Aberystwyth is a meist.	新疆的中华有些共和共和党	West Property
	University		
Wales	Cardiff University	40	
Wales	Swansea University		ves a ves



Trinity Western University

Community Covenant Agreement

TRINITY WESTERN UNINERSITY Community Covenant Agreement

Our Pledge to One Another

Trinity Western University (TWU) is a Christian university of the liberal arts, sciences and professional studies with a vision for developing people of high competence and exemplary character who distinguish themselves as leaders in the marketplaces of life.

1. The TWU Community Covenant

The University's mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible. This identity and allegiance shapes an educational community in which members pursue truth and excellence with grace and diligence, treat people and ideas with charity and respect, think critically and constructively about complex issues, and willingly respond to the world's most profound needs and greatest opportunities.

The University is an interrelated academic community rooted in the evangelical Protestant tradition; it is made up of Christian administrators, faculty and staff who, along with students choosing to study at TWU, covenant together to form a community that strives to live according to biblical precepts, believing that this will optimize the University's capacity to fulfil its mission and achieve its aspirations.

The community covenant is a solemn pledge in which members place themselves under obligations on the part of the institution to its members, the members to the institution, and the members to one another. In making this pledge, members enter into a contractual agreement and a relational bond. By doing so, members accept reciprocal benefits and mutual responsibilities, and strive to achieve respectful and purposeful unity that aims for the advancement of all, recognizing the diversity of viewpoints, life journeys, stages of maturity, and roles within the TWU community. 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.

2. Christian Community

The University's acceptance of the Bible as the divinely inspired, authoritative guide for personal and community life¹ is foundational to its affirmation that people flourish and most fully reach their potential when they delight in seeking God's purposes, and when they renounce and resist the things that stand in the way of those purposes being fulfilled.² This ongoing God-enabled pursuit of a holy life is an inner transformation that actualizes a life of purpose and eternal significance.³ Such a distinctly Christian way of living finds its fullest expression in Christian love, which was exemplified fully by Jesus

The Biblical passages cited in this document serve as points of reference for discussion or reflection on particular topics. TWU recognizes the necessity of giving careful consideration to the complexities involved in interpreting and applying biblical passages to contemporary issues and situations.

¹ Deuteronomy 6:4-9; Psalm 19:7-11; 2 Timothy 3:16

² Matthew 6:31-33; Romans 8:1-17; 12:1-2; 13:11-14; 16:19; Jude 20-23; 1 Peter 2:11; 2 Corinthians 7:1.

³ 2 Peter 1:3-8; 1 Peter 2:9-12; Matthew 5:16; Luke 1:74-75; Romans 6:11-14, 22-23; 1 Thessalonians 3:12-13, 4:3, 5:23-24; Galatians 5:22; Ephesians 4:22-24, 5:8.

Christ, and is characterized by humility, self-sacrifice, mercy and justice, and mutual submission for the good of others.4

This biblical foundation inspires TWU to be a distinctly Christian university in which members and others observe and experience truth, compassion, reconciliation, and hope. TWU envisions itself to be a community where members demonstrate concern for the well-being of others, where rigorous intellectual learning occurs in the context of whole person development, where members give priority to spiritual formation, and where service-oriented citizenship is modeled.

3. Community Life at TWU

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

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice⁶
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity⁷
- communicate in ways that build others up, according to their needs, for the benefit
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death⁹
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society 10
- observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce 11
- exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others 12
- encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another. 13

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

⁴ Matthew 22:37-40; 1 Peter 5:5; Romans 13:8-10; 1 John 4:7-10; Philippians 2:1-5; 1 Corinthians 12:31b-13:8a; Romans 12:1-3, 9-10; John 15:12-13, 17; 1 John 3:10-11, 14-16; Ephesians 5:1-2,21.

From TWU's "Envision the Century" Strategic Directions Document, p 5 ("Ends"). Galatians 5:22-24; Colossians 3:12-17; Isaiah 58:6-8; Micah 6:8.

Proverbs 12:19; Colossians 3:9; Ephesians 4:25; Leviticus 19:11; Exodus 20:16; Matthew 5:33-37.

Ephesians 4:29; Proverbs 25:11; 1 Thessalonians 5:11.

Genesis 1:27-28; Psalm 139:13-16; Matthew 19:14; Proverbs 23:22.

¹⁰ Romans 13:1-7, 1 Peter 2:13-17: Genesis 1:28; Psalm 8:5-8; 2 Thessalonians 3:6-9.

¹¹ Genesis 2:24; Exodus 20:14,17; 1 Corinthians 7:2-5; Hebrews 13:4; Proverbs 5:15-19; Matthew 19:4-6; Malachi 2:16; Matthew 5:32.

Proverbs 4:20-27; Romans 14:13,19; 1 Corinthians 8:9,12-13, 10:23-24; Ephesians 5:15-16.

¹⁵ James 5:16; Jude 20-23; Romans 12:14-21; 1 Corinthians 13:5; Colossians 3:13.

- communication that is destructive to TWU community life and inter-personal relationships, including gossip, slander, vulgar/obscene language, and prejudice14
- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others¹⁵
- sexual intimacy that violates the sacredness of marriage between a man and a woman 16
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event.

4. Areas for Careful Discernment and Sensitivity

A heightened level of discernment and sensitivity is appropriate within a Christian educational community such as TWU. In order to foster the kind of campus atmosphere most conducive to university ends, this covenant both identifies particular Christian standards and recognizes degrees of latitude for individual freedom. True freedom is not the freedom to do as one pleases, but rather empowerment to do what is best. 17 TWU rejects legalisms that mistakenly identify certain cultural practices as biblical imperatives, or that emphasize outward conduct as the measure of genuine Christian maturity apart from inward thoughts and motivations. In all respects, the TWU community expects its members to exercise wise decision-making according to biblical principles, carefully accounting for each individual's capabilities, vulnerabilities, and values, and considering the consequences of those choices to health and character, social relationships, and God's purposes in the world.

TWU is committed to assisting members who desire to face difficulties or overcome the consequences of poor personal choices by providing reasonable care, resources, and environments for safe and meaningful dialogue. TWU reserves the right to question, challenge or discipline any member in response to actions that impact personal or social welfare.

Wise and Sustainable Self-Care

The University is committed to promoting and supporting habits of healthy self-care in all its members, recognizing that each individual's actions can have a cumulative impact on the entire community. TWU encourages its members to pursue and promote: sustainable patterns of sleep, eating, exercise, and preventative health; as well as sustainable rhythms of solitude and community, personal spiritual disciplines, chapel and local church participation, 18 work, study and recreation, service and rest.

¹⁴ Colossians 3:8; Ephesians 4:31.

¹⁵ Exodus 20:15; Ephesians 4:28.

¹⁶ Romans 1:26-27; Proverbs 6:23-35. ¹⁷ Galatians 5:1,13; Romans 8:1-4; 1 Peter 2:16.

¹⁸ Ephesians 5:19-20; Colossians 3:15-16; Hebrews 10:25.

Healthy Sexuality

People face significant challenges in practicing biblical sexual health within a highly sexualized culture. A biblical view of sexuality holds that a person's decisions regarding his or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to one's (future) spouse, to others in the community, and to oneself. Further, according to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation. Honouring and upholding these principles, members of the TWU community strive for purity of thought and relationship, respectful modesty, personal responsibility for actions taken, and avoidance of contexts where temptation to compromise would be particularly strong.

Drugs, Alcohol and Tobacco

The use of illegal drugs is by definition illicit. The abuse of legal drugs has been shown to be physically and socially destructive, especially in its potential for forming life-destroying addictions. For these reasons, TWU members voluntarily abstain from the use of illegal drugs and the abuse of legal drugs at all times.

The decision whether or not to consume alcohol or use tobacco is more complex. The Bible allows for the enjoyment of alcohol in moderation, ²⁴ but it also strongly warms against drunkenness and addiction, which overpowers wise and reasonable behaviour and hinders personal development. ²⁵ The Bible commends leaders who abstained from, or were not addicted to, alcohol. ²⁶ Alcohol abuse has many long-lasting negative physical, social and academic consequences. The Bible has no direct instructions regarding the use of tobacco, though many biblical principles regarding stewardship of the body offer guidance. Tobacco is clearly hazardous to the health of both users and bystanders. Many people avoid alcohol and/or tobacco as a matter of conscience, personal health, or in response to an addiction. With these concerns in mind, TWU members will exercise careful discretion, sensitivity to others' conscience/principles, moderation, compassion, and mutual responsibility. In addition, TWU strongly discourages participation in events where the primary purpose is the excessive consumption of alcohol.

Entertainment

When considering the myriad of entertainment options available, including print media, television, film, music, video games, the internet, theatre, concerts, social dancing, clubs, sports, recreation, and gambling, TWU expects its members to make personal choices according to biblical priorities, and with careful consideration for the immediate and long-term impact on one's own well-being, the well-being of others, and the well-being

^{19 1} Corinthians 6:18-19

²⁶ Genesis 2:24; Exodus 20:14,17; 1 Corinthians 7:2-5; Hebrews 13:4; Proverbs 5:15-19; Matthew 19:4-6.

²¹ Matthew 5.27-28; 1 Timothy 5:1-2; 1 Thessalonians 4:3-8; Job 31:1-4; Psalm 101:2-3.

²² 1 Peter 3:3-4; 1 Timothy 2:9-10

^{22 1} Corinthians 6:18; 10:13; 2 Timothy 2:22; James 4:7.

²⁴ Deuteronomy 7:13, 11:14. Psalm 104:15: Proverbs 3:10: Isaiah 25:6; John 2:7-11; 1 Timothy 5:23.

²⁸ Genesis 9:20-21: Proverbs 20:1: 31-4; Isaiah 5:11; Habakkuk 2:4-5; Ephesians 5:18.

²⁶ Daniel 1:8, 10:3; Luke 1:15; 1 Timothy 3:3,8; Titus 2:3.

of the University. Entertainment choices should be guided by the pursuit of activities that are edifying, beneficial and constructive, and by a preference for those things that are "true, noble, right, pure, lovely, admirable, excellent, and praiseworthy," recognizing that truth and beauty appear in many differing forms, may be disguised, and may be seen in different ways by different people.

5. Commitment and Accountability

This covenant applies to all members of the TWU community, that is, administrators, faculty and staff employed by TWU and its affiliates, and students enrolled at TWU or any affiliate program. Unless specifically stated otherwise, expectations of this covenant apply to both on and off TWU's campus and extension sites. Sincerely embracing every part of this covenant is a requirement for employment. Employees who sign this covenant also commit themselves to abide by TWU Employment Policies. TWU welcomes all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University's Christian identity. Students sign this covenant with the commitment to abide by the expectations contained within the *Community Covenant*, and by campus policies published in the Academic Calendar and Student Handbook.

Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility. The University also provides formal accountability procedures to address actions by community members that represent a disregard for this covenant. These procedures and processes are outlined in TWU's Student Handbook and Employment Policies and will be enacted by designated representatives of the University as deemed necessary.

By my agreement below I affirm that:

I have accepted the invitation to be a member of the TWU community with all the mutual benefits and responsibilities that are involved;

I understand that by becoming a member of the TWU community I have also become an ambassador of this community and the ideals it represents;

I have carefully read and considered TWU's Community Covenant and will join in fulfilling its responsibilities while I am a member of the TWU community.

²⁷ Philippians 4:8.

Correspondence from Trinity Western University re: Mandate of Special Advisory Committee



BY E-MAIL (Original By Mail)

May 17, 2013

Federation of Law Societies of Canada World Exchange Plaza 45 O'Connor Street, Suite 1810 Ottawa, ON K1P 1A4

Attention:

John J. L. Hunter, QC

Chair of the Special Advisory Committee on Trinity Western University's

Proposed School of Law (the "Special Advisory Committee")

Dear Sirs/Mesdames:

Re: Response to Special Advisory Committee

We write in relation to your letter of May 3, 2013 to Dr. Jonathan Raymond and the mandate given to the Special Advisory Committee by the Federation of Law Societies of Canada (the "Federation"). We thank you for your letter, but TWU continues to have serious concerns with the creation of the Special Advisory Committee.

Canada's law societies are charged with regulating the legal profession in the public interest. They have each approved a national requirement that reflects their collective view as to what is necessary to ensure that potential new members graduating from a law degree program in Canada are competent to practice and understand their professional and ethical obligations. With the express approval of each law society in Canada, the Federation established the Canada Common Law Program Approval Committee (the "Approval Committee"), which applies the national requirement to each proposed new law degree program. As you have noted, TWU's Proposal for a School of Law (the "Proposal") is in the process of being reviewed by the Approval Committee.

As has been clearly and correctly articulated by the Federation, the Approval Committee has no mandate or authority to consider TWU's Community Covenant (the "Covenant") outside of the national requirement. The authority of the Federation arises only from the express approval

given by each of the 14 Canadian law societies to the national requirement and the Approval Committee. The Federation has no mandate with respect to matters outside of the national requirement. You have attempted to address this lack of mandate by indicating that the Special Advisory Committee will only provide advice to the Federation. While this may be true, it does not address the fact that the Federation itself has no jurisdiction from the law societies to consider or make recommendations with respect to the Covenant.

On its website, the Federation attempts to justify the existence and role of the Special Advisory Committee on the basis that issues raised about the Covenant by certain advocates opposing TWU's Proposal "were not anticipated when the national requirement was developed". With respect, this is not a justification for reaching outside of the Federation's mandate. In accordance with administrative law principles, the Federation must remain within that mandate.

TWU accepts that it must, and will, provide an institutional setting that appropriately prepares lawyers for public practice and for the diversity that its graduates will encounter. In Trinity Western University v. B.C. College of Teachers' ("TWUV. BCCT"), the Supreme Court of Canada found that such was the case with respect to TWU's education program and further held that denial of approval was unlawful since there was no "specific evidence" that graduates would not uphold the basic values of non-discrimination. If such were not also the case with respect to TWU's School of Law Proposal, presumably the Approval Committee would address that in considering whether graduates would meet the "Ethics and Professionalism" component of the "Competency Requirements" of the national requirement. In the context of the national requirement and the role of the Approval Committee, it is not relevant that the Covenant was not specifically anticipated. Either TWU's Proposal meets the national requirement or it does not (and we obviously believe strongly that it does).

The only purpose for the proposed work of the Special Advisory Committee is to provide advice to the Federation, and presumably through the Federation to its member law societies, pertaining to the religious foundations of TWU. It does not appear that the law societies have solicited this advice. The Federation is interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread. For these reasons, TWU objects to the establishment and mandate of the Special Advisory Committee. We urge the Special Advisory Committee to recommend to the Federation that this matter is, as has been maintained by the Federation in the past, outside of the Federation's mandate. To the extent that matters are external to the national requirement and the work of the Approval Committee, they are of a political nature and, if relevant at all, best left to the Ministry of Advanced Education in British Columbia.

¹ http://www.flsc.ca/_documents/TWUQuestionsandAnswers.pdf-2 [2001] 1 S.C.R. 772

³ TWU v. BCCT at para 38 . See also paras, 12-13.

It is clear that there has been an organized political campaign to oppose TWU's Proposal, which commenced with the letter from the Council of Canadian Law Deans. You should be aware that in preparing the Proposal, TWU specifically consulted with a number of law deans, including all of the law deans in British Columbia. None of them raised any issues or concerns about the Covenant or TWU's religious nature.

All of that having been said, there are responses to all of the significant objections raised in the various submissions that you provided TWU with your letter of May 3, 2013. Below you will, find TWU's responses, but these are provided with an express reservation of all of TWU's rights to seek legal redress against the Federation and any individual law society arising from the work of the Special Advisory Committee, including with respect to jurisdictional challenges, should that be necessary in the future.

RESPONSES TO OBJECTIONS RAISED BY OPPONENTS OF TWU'S PROPOSED SCHOOL OF LAW

It would be very difficult to respond to each and every discrete point raised in the unsolicited letters and submissions sent to the Federation, particularly given the short period of time you allowed. The letters in opposition to the Covenant and TWU's Proposal raise a number of similar arguments and we will address these in a summary format. We will provide examples of statements of opposition as appropriate to demonstrate the flaws in the reasoning of TWU's opponents. As part of the legal team that represented TWU in TWU'v. BCCT, the writer can say that most of these arguments were also made in that case and were rejected by the Supreme Court of Canada.

(a) Compatibility of the Covenant with Training in Ethics and Professionalism

A number of opponents have suggested that the Covenant is incompatible "with the ethical and legal training appropriately required of those seeking entry into the legal profession". West Coast LEAF has gone so far as to argue that, because of the Covenant, TWU "cannot impart on prospective lawyers a sufficient understanding of the ethical duty not to discriminate and to honour the obligations enumerated in human rights laws". Others suggest that TWU is "not up to the challenge of having an open, honest, meaningful discussion about its policies and practices" and that TWU "cannot be trusted to promote [a] constitutionally mandated understanding" of equality.

⁴ Egale Canada letter, January 25, 2013

⁵ See West Coast LEAF letter, February 25, 2013, page 3.

⁶ Letter from students of Schulich School of Law, undated

⁷ National Association of Women and the Law, March 8, 2013

These arguments are wrong at law, intellectually flawed, discriminatory in themselves and, at a minimum, deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

It should be beyond question that TWU acknowledges that human rights laws and section 15 of the Charter protect against and prohibit discrimination on the basis of sexual orientation. The courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life. We trust that you have access to TWU's full proposal, including the course outlines contained therein. You will note that standard texts are proposed for such topics, which reference the historical inequality suffered by homosexuals. No course covering section 15 of the Charter or educating students on provincial human rights protections would be complete without fully addressing cases such as Vriend v. Alberta. Egan v. Canada, and Reference re Same-Sex Marriage. We are certain that the Approval Committee will be reviewing these course outlines as part of its work in assessing the academic program to be offered at TWU.

You will also note that TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course on Ethics and Professionalism (LAW 602). A summary description of this mandatory course in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities. [Emphasis added]

TWU is committed to fully and appropriately addressing ethics and professionalism and the opponents of the Porposal cannot credibly argue otherwise. We are certain that the Approval Committee will find more than sufficient coverage of these topics,

The opponents of our Proposal must therefore be suggesting that the very fact of the Covenant and the religious beliefs inherent therein, undermine the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be "equipped to deal with students" and be unable to "offer comfort and support to

^{8 [1998] 1} S.C.R. 493

^{9 [1995] 2} S.C.R. 513-

^{10 [2004] 3} S.G.R. 698

¹¹ TWU Proposal, page 22. See also full description of course at page 93.

the students"12. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools.

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BECT should anticipate intolerant behaviour in the public schools. ¹³

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism. TWU agrees with Egale Canada that "the dignity and value of all individuals irrespective of their sexual orientation.... now form part of the fabric of professional ethics and the rule of law". Lach graduate of a TWU School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Covenant. In this regard, we note that there are many TWU graduates who have gone on to Canadian law schools and are now successfully practicing law across Canada.

As evident from the submissions received by the Federation, there are students currently at public law schools that hold these same religious beliefs¹⁵. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one suggests that they will not do so.

The oaths that graduating law students will take before being admitted to practice law require them to uphold the laws and rights and freedoms of all persons. For example, the oaths used in Ontario and British Columbia contain the following statements, respectively:

¹² B.C. College of Teachers Factum in TWU v. BCCT, para. 121. Note that when intervening in TWU v. BCCT, Egale Canada made similar arguments.

¹³ TWU v. BCCT, paras. 32-33

¹⁴ See letter from Egale Canada, dated January 25, 2013

¹⁵ See letter from "Christian law students across Canada" dated March 10, 2013 indicating that the students "hold [the Biblical principles on which TWU's Covenant is based] trust regardless of the law school [they] attend". See also letter from current UBC law students dated March 19, 2013 where they make this same point: "Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers; regardless of their personal beliefs, are expected to apply the law."

I shall champion the rule of law and safeguard the rights and freedoms of all persons 16.

... uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia. 17

If the opponents' line of reasoning prevails, it equates to denying accreditation to individuals on the basis of religious belief. The Supreme Court of Canada specifically addressed this concern in TWU v, BCCT.

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. 18

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

It would clearly be abhorrent to suggest that the many lawyers across Canada holding similar religious views to those addressed in the Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs²⁰. While the opponents of TWU's Proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Covenant are a basis upon which TWU's application should be delayed or denied. As found by the Supreme Court of Canada, they are not a basis upon which the Federation should anticipate that graduates will fail to meet their professional and ethical obligations.

(b) TWU Graduates will require "Additional Study"

In a related argument, a number of opponents say that TWU should not have a School of Law as its students should "undertake additional study ... similar to the process for foreign trained lawyers" or that TWU graduates should not "become licensed to practice law without

¹⁶ Oath to practice law in Ontario as a barrister and solicitor (Bylaw 4(21): http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805

¹⁷ Barristers* and Solicitors' Oath: http://www.lawsociety.bc.ca/docs/publications/mm/oath.pdf

¹⁸ TWUv, BCCT, para. 33. 19 TWUv, BCCT, para. 36

²⁰ See Martin v. Law Society of British Columbia, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also Smith & Rhuland v. The Queen, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

²¹ West Coast LEAF letter, February 5, 2013.

further study and entrance requirements, This is presumably because such opponents believe that the Covenant will "impair the development of critical thought and legal analytical skill" or the TWU students will not "remain independent and appropriately value-oriented".

We have already noted how deeply offensive this reasoning is to lawyers and law students holding religious beliefs similar to those embodied in the Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience in order that they be competent to practice law.

There is a serious logical flaw in the argument. It is clear from the submissions sent to the Federation that existing law schools have: (1) students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. The current law schools have apparently not undermined these students' and lawyers' religious beliefs; and neither should they try to do so. Lawyers are not required to all believe the same way concerning issues of sexual morality. It is only required that their conduct be ethical and professional.

Again, we note that this same point was argued in TWU v. BCCT. The College of Teachers said that TWU education students should be required to "complete their fifth year of professional teacher education through an approved program at a public university." The Supreme Court of Canada rejected this reasoning:

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

These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. As stated by a number of Christian law students across the country in their submission to the Federation: "If commitment to Biblical principles results in the denial of a private institution as capable of

23 Letter from UBC law students, March 14, 2013:

26 TWUv. BCCT, para. 32

²² National Association of Women and the Law letter, March 8, 2013.

²⁴ Letters from students at a number of law schools. See for example, letter from UVic law students dated March 12: 2013:

²⁵ B.C. College of Teachers Factum in TWU v. BCCT, para. 118.

teaching law, this implicates our competence as future lawyers also. . . [A]dhering to religious beliefs does not equate to future discriminatory conduct." The Supreme Court of Canada agrees with these Christian students:

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU. 28

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.²⁹

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.G., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.³¹

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be conclusive in your deliberations as well.

(c) TWU v. BCCT is Binding Law

The opponents of TWU argue that TWUv BCCT is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that acknowledging TWU's freedom of religion and association rights to maintain the Covenant would involve a "race to the bottom" since not all human rights legislation across the country contain the same provisions. Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is "limited to BC law" and is simply a finding that TWU is in "compliance with B.C. legislation." It has been argued that human rights provisions recognizing religious associational rights are not applicable (despite the Supreme Court of Canada's

²⁷ Letter from "Christian law students across Canada" dated March 10, 2013.

²⁸ TWU v. BCCT, para. 19

²⁹TWU v. BCCT, para, 33 30 TWU v. BCCT, para, 35

³¹ TWU v BCCT, para, 36

³² Letter from Ruby Shiller Chan Hassan dated February 28, 2013

³³ For example, see SOGIC letter, dated March 18, 2013, pages 2 and 4.

ruling in TWU v. BCCT) and that refusing TWU's application because of the Covenant would not violate freedom of religion or freedom of association. In particular, SOGIC draws on American jurisprudence, where there is no constitutional equality guarantee such as s.15 of the Charter, to argue that it is acceptable to allow TWU to exist, but also deny it approval of its programs. This is a surprisingly impoverished view of Canadian equality rights.

As already noted, many of the arguments advanced by the opponents of TWU's Proposal were also made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. It should be clear that the decision in TWUv. BCCT was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. We will address a number of the specific legal arguments made by opponents in their attempt to distinguish TWUv. BCCT.

(1) Section 41 of the B.C. Human Rights Code (and similar provisions)

In TWUv. BCCT, the Court made reference to section 41 of the Human Rights Code in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution 34. These were passing references, but the Court's analysis was much broader, based on preserving human rights and Charter values in acknowledging TWU's right to a teacher education program. This is conveniently summarized by the following quotes:

Consideration of human rights values in these circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values. Freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation...

It cannot be reasonably concluded that private institutions are protected but that their graduates are defacto considered unworthy of fully participating in public activities. In Ontario Human Rights Commission v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. 15

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart* 35, the Supreme Court of Canada wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion. In *Brossard (Town) v. Quebec (Commission des droits de la*

³⁴ TWU v. BCCT, paras.32 and 35.

³⁵ TWU v. BCCT, paras. 34-35

^{36 [1984] 2} S.C.R. 603

³⁷ At 626 (S.C.R.)

personne)³⁸ Beetz J. held that a similar provision promotes "the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits." Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs. 40

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada, not just in B.C. ⁴⁾ It is trite to point out that all such legislation must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU is permitted to exist as a religious educational community only in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

We would also note that SOGIC has been under inclusive in listing protections granted to religious groups such as TWU in human rights legislation. For example, no reference is made to sections 4 and 6 of the Saskatchewan Human Rights Code, which state:

Right to freedom of conscience

Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free association

6 Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

SOGIC also argues that s.41 and similar provisions do not protect TWU as, they say, TWU does not promote the interests of individuals as members of an identifiable group nor "exclude individuals who do not share its religious beliefs". This misinterprets and misapplies the *Human Rights Code*. Specifically, it ignores the decision in *Vancouver Rape Relief Society v. Nixon* where the Court of Appeal held that an organization is *not* required

^{38 [1988] 2} S.C.R. 279

³⁹ At 324 (S.C.R.), See also St. James Community Service Society v. Johnson, 2004 B.C.S.C. 1807 and Sahota and Shergill v. Shri Guru Ravidass Sabha Temple, 2008 B.C.H.R.T. 269

⁴⁰ Gillis v. United Nations Native Society. [2005] BCHRT 301 at para. 21, Sohota, supra. at para. 37
41 See, for example, Ontario (Human Rights Commission) v. Brockie, 43 C.H.R.R. D/90 (Ont. Div. Ct.); Smith v. Knights of Columbus, 2005 BCHRT 344; Garrod v. Rhema Christian School (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); Kearley v. Pentecostal Assemblies Board of Education, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); Schroen v. Steinbach Bible College (1999); 35 C.H.R.R. D/1 (Man. Bd. Inq.)
42 SOGIC letter, March 18, 2013, page 5.

^{43 2005} B.C.C.A. 601 (leave application denied, February 1, 2007, S.C.C. No.31633)

to demonstrate that it exclusively provides services to a group enumerated under s. 41 in order to be protected by that section 44

(ii) Civil Marriage Act

While it is without question that there have been some important societal changes since TWU v. BCCT was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the Civil Marriage Act⁴⁵ are worth noting:

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

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

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

This language again shows that the recognition of same-sex marriage was not intended to undermine freedom of religion or freedom of association by those holding religious beliefs that marriage is "the union of a man and woman to the exclusion of all others". The portion of the Covenant to which TWU's opponents object indicates nothing beyond such religious beliefs.

(iii) Hindering Freedom of Religion, Freedom of Association and Equality Rights

Opponents have argued that denying approval of TWU's School of Law Proposal because of the Covenant will not impair the constitutional rights of TWU and the individuals comprising its community. They promote a penurious view of these *Charter* rights.

Citing Saskatchewan (Human Rights Commission) v. Whatcott⁴⁷, SOGIC argues that denying TWU's application for a School of Law would not infringe s.2(a) of the Charter as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of

⁴⁴ Nixon, supra., para, 58.

⁴⁵ http://laws-lois.justice.gc.ca/eng/acts/C-11.5/page-1.html

⁴⁶ SOGIC letter, March 18, 2013, pages 5-6

^{47 2013} SCC 11

Canada in Whatcott also relied on the oft-cited words of Dickson I, in R. v. Big M Drug. Mart 18 that the "essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person choses, the right to declare religious beliefs openly and without fear of hindrance or reprisal... 149 (emphasis added).

In Alberta v. Hutterian Brethren of Wilson Colony⁵⁰, it was accepted that Alberta's mandatory photo requirement for driver's licensing breached the s.2(a) rights of the Hutterian Brethren because of their religious objection to having their photos taken. Applying the logic of TWU's opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver's licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice. This is precisely how the Supreme Court of Canada analyzed the matter in TWU's BCCT:

Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. 51

SOGIC draws on American jurisprudence to suggest that only the existence of TWU as a religious community ought to be tolerated, but that its programs need not receive "official imprimatur" or be granted "equal access". In TWU v. BCCT, the College of Teachers made the same argument, relying on similar cases (including Bob Jones University), that it was right to withhold the imprimatur that approval of TWU's program would bring. 53 These arguments were clearly rejected by the Supreme Court of Canada.

Further, and surprisingly, SOGIC fails to recognize the importance of the equality right in the Canadian context. Section 15 of the Charter prohibits the imposition of burdens or withholding of benefits on account of personal characteristics, including based on religion. The leading definition of discrimination is still as articulated by McIntyre J. in Andrews v. Law Society of British Columbia.

. . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

^{48 [1985] 1} S.C.R. 295

⁴⁹ At p.336

^{50 [2009]} SCC 37

⁵¹TWU v. BCCT, para. 35

⁵² SOGIC letter, March 18, 2013, page 7.

⁵³ B.C. College of Teachers Factum in TWU v. BCCT, paras, 57, 79, 111, 116

^{54 [1989] 1} S.C.R. 143

Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.35 [Emphasis added]

The denial of approval of TWU's School of Law application because of the Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community. As evidenced by many of submissions received by the Federation, opponents of TWU's proposal presume that Christians at TWU have "hostility to gay and lesbian people" and hide "homophobia in Christian values 357. There is absolutely no evidence for these statements about TWU or the members of its community. These opponents are guilty of the same type of prejudice and stereotyping about which they say the Federation should be concerned.

All of the opponents of TWU's proposal focus solely on the Covenant. This is, in fact, a focus by them on TWU's sectarian nature 58. The Federation's creation of the Special Advisory Committee continues this disturbing focus and we strongly encourage both the Special Advisory Committee and the Federation to carefully consider the following words of the majority in TWU v. BCCT:

We would add that the continuing focus of the BCCT on the sectorian nature of TWU is disturbing. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system. 59 [Emphasis added]

If there are pedagogical or other problems with the education to be provided at TWU's. proposed School of Law, they will presumably be detected by the Approval Committee, the Ministry of Advanced Education, or both. As a matter of constitutional and human rights, it is not open for the Federation to focus solely on the sectarian nature of TWU, as communicated by the Covenant, to undermine the normal approval processes. The Federation and its law society members are not permitted to express moral disapprobation of the Christian beliefs on which TWU is founded. Again, we urge that the Special Advisory Committee advise the Federation to discontinue any further consideration of the Covenant and TWU's religious nature as separate from the Approval Committee.

⁵⁵ At pp.174-175. This definition recently reiferated by the S.C.C. in Withler v. Canada, [2011] 1 S.C.R. 396 at para: 29 and Hutterian Brethren, supra, at para, 108

⁵⁶ Letter from Ruby Shiller Chan Hassan dated February 28, 2013

⁵⁷ Letter from UBC law students, dated March 14, 2013

⁵⁸ Which is derided by the lawyers at Ruby Shiller Chan Hassan as a "fundamentalist and narrow interpretation of Christianity"

⁵⁹ TWU v. BCCT, para: 42

(d) Diversity in the Legal Profession and Academic Freedom

Some opponents suggest that approval of TWU's program will "diminish diversity in the legal profession". It is peculiar, to say the least, that these advocates seek to silence a perspective different from their own within the Canadian legal community in name of diversity. While they express a concern that TWU's School of Law will have a "limited tolerance of diversity", their opposition exhibits exactly that trait.

There is nothing inimical to Canadian society contained in the Covenant. Its contents are to be expected in the context of an evangelical Christian university. As noted by a number of others, including uOttawa OUTLaw, the Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice". As we are sure you will agree, the legal profession encourages lawyers to be inculcated in these values. All opponents focus on only one aspect of the Covenant, ignoring the balance of its contents, which are not only unobjectionable but universally laudable.

As stated by Dickson J. in Big M Drug Mart, "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct." As then noted in TWU v. BCCT, "the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. The TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

TWU's proposed School of Law should be assessed on its merits, based on the national requirement. As the only privately funded law school in Canada, it may provide a slightly different perspective, but this should be welcomed. As the Supreme Court of Canada suggested, Canada is enriched by having a diversity of institutions. There is no principled reason that secular, public institutions should have a monopoly on legal education in Canada.

A few opponents have questioned academic freedom at TWU. While we expect that this issue is outside of what will be considered by the Special Advisory Committee, we would note for your benefit that TWU maintains a strong policy on academic freedom that was

⁶⁰ Letter from UBC law students, dated March 14, 2013.

⁶¹ At p.336.

⁶² TWU v. BCCT, para. 33.

⁶³ Law students from UBC have written in their letter of March 19, 2013 that, in their experience, their religious beliefs are "often openly derided" in the context of the explicitly secular emphasis at that institution. Not all secular law schools should be judged by this experience, but it does provide context for the opposition made by students at a number of law schools in Canada.

affirmed by British Columbia's Degree Quality Assessment Board in 2004. TWU is a member of the Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. There will be a full range of academic inquiry and debate within TWU's School of Law.

Conclusion

The arguments of opponents to TWU's proposed School of Law relate to the Covenant and TWU's religious character. As set out above, most of these arguments have already had a thorough hearing before, and been rejected by, the Supreme Court of Canada. One opponent, Egale Canada, raised some of the exactly same arguments as an intervenor in TWU y, BCCT as it now references in its letter to the Federation. The Supreme Court of Canada decision in that case should be considered determinative for the reasons set out above.

There is no "specific evidence" that TWU graduates will fail to uphold the basic values of non-discrimination ⁶⁴. This does not leave a legitimate role for the Special Advisory Committee. We submit that the appropriate course is for the Special Advisory Committee to advise the Federation and its members that there are no relevant additional considerations to be taken into account in determining whether graduates of a TWU School of Law should be eligible to enroll in the admissions program of any Canadian law society.

We believe that we have answered the important points raised by TWU's opponents. If there are other issues on which you would like to receive TWU's position or views, or if there are additional documents that you would like to review that we may be able to provide; please do not he sitate to contact the writer.

Yours truly,

Kevin G. Sawatsky

Vice-Provost (Business) and University Legal Counsel

cc: Gerald R. Tremblay, President Kuhn LLP

64 TWU v. BCCT at para 38 . See also paras. 12-13.

Exchange of Correspondence between Trinity Western University and the Canadian Common Law Approval Committee



August 13, 2013

Federation of Law Societies of Canada World Exchange Plaza 1810 – 45 O'Connor Street Ottawa, ON K1P 1A4

Attention: Laurie H. Pawlitza, Chair, Canadian Common Law Program Approval Committee

Dear Ms. Pawlitza:

Re: TWU School of Law Proposal - Response to Letter of June 28, 2013

Thank you for your letter of June 28, 2013 asking for further information with respect to the proposal for a School of Law at Trinity Western University.

We first note that the B.C. Minister of Advanced Education appointed a Review Panel to make a site visit to the campus and issue a report advising on the program. In response to issues raised by the Review Panel, we propose to make minor amendments to the program of studies. LAW 708, Real Estate Law will not be compulsory, but will instead be highly recommended. LAW 506, 1st year Criminal Law will be split such that the first year course covers the principles of criminal law and a new upper year, elective course will be developed to address criminal procedure (See Appendix A for the new course descriptions). We do not believe that these changes will affect the requirements for a common law degree program established by the FLSC, but thought it appropriate to advise of these minor amendments.

We have addressed the questions you raise in your letter in the same outline order that you have posed them as follows:

I. Budgeting:

a) Your letter requests further information with respect to the financial plan for the School of Law. We have attached as Appendix B a pro-forma budget for the proposed School of Law. In addition, the Review Panel appointed by the Minister of Advanced Education requested very similar information. We have attached as Appendix C the document provided to the Review Panel entitled School of Law Financial Information. We trust these documents will be of assistance in providing





further detail with respect to the financial aspects of the School of Law proposal. We would request that this financial information be kept confidential by the Approval Committee.

In addition to the documents attached as Appendices B and C, we have provided below a response on each of the areas requested in paragraph 1(a):

Anticipated Law School Revenue Over and Above Tuition

Trinity Western University is privately funded, largely through tuition fees. However, other revenues are generated through ancillary services such as student residences, food services, retail sales etc. With respect to the School of Law these additional revenues are not included in the pro-forma budget as these monies will be utilized to cover a portion of general University overhead. In addition, TWU is supported by donations from alumni and other friends to the University. It is anticipated that there will be on-going donation support for the School of Law. The exact amount of on-going donation income for the School of Law can't be projected with accuracy and we have not therefore included such in the pro-forma budget.

Salary Costs

As indicated in Appendix B, total faculty and staff salary cost by year five will be \$2,365,000. We would note that the actual salary cost is higher than this amount. Some positions will be added in other departments to support the School of Law and the cost of such will be absorbed outside of the direct School of Law budget (as part of University overhead). This includes additional staff in I.T., Admissions, Financial Aid and the Registrar's Office.

We would note that Appendix C provides a more detailed staffing/faculty Rollout Plan. It also provides a more detailed breakdown of "Teaching Requirements".

Initial Library Acquisitions Budget

The initial library acquisitions budget is \$2,000,000.





Annual Library Budget

The annual library acquisitions budget is currently set at \$200,000. However, we are cognizant that this budget may need adjustment pending the development of a full library plan.

The staffing plan for the library includes the Director, an Associate Director, two full-time library support staff and other part-time staff as may be required. Library staffing costs are incorporated into the general School of Law budget.

Costs for Physical Infrastructure

The \$18,700,000 capital campaign for commencement of the School of Law includes approximately \$15,000,000 for the School of Law building. This includes all needed infrastructure such as water, sewer, electrical, mechanical, telecomm as well as furnishings. Appendix 10 to the Proposal provided a detailed breakdown of building and infrastructure costs. (We are cognizant that the \$14.4 million projection set out in Appendix 10 was created for us in April of 2011 and costs have increased somewhat. However, based on information from our professionals, we believe that \$15 million is still a reasonable estimate for building and infrastructure costs.)

Costs for Student Clinics

Leadership for student clinics will be included as part of the teaching load of a faculty member. The salary cost for such is included in the overall faculty budget. In addition, \$40,000 is included in the annual budget for the operation (non-salary) cost of the clinics. While this dollar amount may appear low, we believe it is feasible because the clinics will be operated in conjunction with other charitable organizations, utilizing their facilities.

University Taxes and Overhead Charges

We are assuming the meaning of "taxes" in your letter is that the University requires a percentage of tuition to be paid back to the University in order to fund overhead costs. In the TWU context that would be correct. Given that TWU is privately funded, all academic programs must return a healthy percentage of revenue in order





to fund general University overhead (including scholarships and financial aid). By year five, it is projected that the School of Law will return approximately 40% of gross tuition revenue to the University.

Anticipated Changes to Student Numbers and Tuition Levels.

We are not anticipating changes to projected enrollment numbers. Concerto Research Inc. ("Concerto") conducted an extensive market research study on behalf of TWU in the Spring of 2012. Concerto determined that there was more than adequate demand to sustain enrollment of 60 students per year. See final page of Appendix C.

Tuition is projected to increase approximately 2.5% to 3.0% per year.

b) The following are contingency plans in each of the areas requested in your letter:

Fundraising

Potential donors have demonstrated considerable interest in the School of Law. Significant monies have already been raised for this project. It is not anticipated that a "fundraising" contingency will be required. However, if the capital campaign took longer than anticipated, delaying the completion of the School of Law building, the University would explore situating the School of Law in the Richmond campus (see paragraph 2 below and Appendices D and E) for a short time.

Construction Timelines

Please see paragraph 2 below which outlines the contingency plan should construction timelines result in the School of Law building not being completed by September 2016.

Enrollment Targets

As indicated above, market research conducted on behalf of the University by Concerto Research Inc. concluded that there is more than adequate demand to sustain a first year enrollment of 60 students. As indicated on the pro-forma budget, there will be a significant surplus being returned to the University by year four. That surplus provides a healthy buffer (contingency) should enrollment targets not be met.





Ability to Offer a Full Range of Classes

We are uncertain whether this request was with respect to there not being sufficient students to take a course or a concern with respect to securing instructors.

With respect to inadequate student enrollment for a particular course, the contingency would be to offer such as a directed study (to one or more students) in accordance with University policy.

With respect to the ability to hire high quality instructors, Trinity Western University offers a broad range of programs and has not had difficulty in attracting high calibre instructors in other professional areas. We have already had numerous inquiries from qualified potential full-time and sessional instructors for the proposed School of Law even though it is not yet approved and the University is not yet recruiting faculty.

c) The School of Law will be financially self-supporting. As indicated above, financial aid and other University overheads are not included in the pro-forma budget. However, the University is comfortable that these overheads are more than covered by ancillary revenues and by the tuition surplus that is returned to the University.

We note that with respect to student financial aid, the School of Law expects to have its own financial aid system in place, although it will be administered, and budgeted for, through the University Financial Aid Office. Most of Admissions, Registration and Financial Aid are completed on-line. If a student wishes to attend these offices in person, they are housed together in a centrally located office on campus.

2. Facilities:

As indicated above, given the length of the approvals process we believe it is prudent to move the anticipated commencement date to September 2016. This will allow adequate time to complete the School of Law building.

While this is not anticipated, should the School of Law building not be completed by September 2016, we would create a temporary home for the entire year of 2016–17. We believe it would be too disruptive to the first class to have to move part way through the





academic year. Should space be necessary to house the School for 2016-17, TWU would follow one of the following two options:

- Locate the School of Law for 2016-17 in the new Richmond campus. Please see Appendices D and E which describe the Richmond campus and provide the floor-plan as currently designed. As the Richmond campus will largely be utilized for Adult Degree Completion programs offered in the evenings, adequate classroom space would be available during the day for the School of Law. The classrooms on the second level could relatively easily be converted into a temporary space for the law library. Overall, close to 20,000 sq. feet of space would be available to the School of Law which would be adequate for the first year of operation.
- Lease adequate space close to the TWU campus for 2016-17.

3. Library:

As stated in the proposal, the law library will be housed in approximately 14,250 square feet within the new School of Law Building. Library resources are an area of great change as substantial on-line resources become available. As we have met with deans and law librarians both in the U.S. and in Canada, the strong message we heard is that there is considerable transition. Law libraries are redesigning and culling hard copy resources. While a full library plan could possibly have been prepared for the Proposal, we felt that it was prudent to wait until the program was approved and the Law Librarian hired before finalizing a library plan. We plan to hire an expert consultant to assist with the development of the law library.

The TWU Library has experience in developing print and digital library collections to support new graduate and undergraduate programs. The TWU Law Library will consult with faculty members to ensure that library materials, both core and supplemental, are available for students in their courses. The TWU Law Library aims to establish a balanced collection of both print and online resources. Collaborative initiatives and partnerships will be pursued to develop a strong academic law library collection and services for the TWU School of Law. The TWU Law Library will meet the requirements established by the Canadian Academic Law Librarians Association. As this will be the second library on campus, we anticipate that there will be significant work needed to integrate the two libraries, and the Law Librarian and needed staff will be hired well in advance of the opening of School of Law.

Please see Appendix F for a preliminary list of Required Resources for the Law Library.





4. Admissions and Student Services:

- a) Special Admissions Categories: The TWU School of Law proposal reserves up to five places for special admissions. There are several categories of persons who could qualify for these places:
 - Aboriginal students: We will consider for admission First Nations students
 conditional on successful completion of the Program of Legal Studies for Native
 People offered at the University of Saskatchewan along with strong references.
 The University has support systems in place for student success for Aboriginal
 students.
 - Mature students: The University has an Adult Degree Completion program for adult learners who have not completed the required university degree. Completion of the B.A. Leadership with the recommendation of Adult Degree Completion faculty, along with significant work experience will be considered if the student has met the threshold LSAT score.
 - Students with disabilities: Some students will not meet the usual admissions
 requirements due to a recognized disability. Students who do not meet the
 threshold requirements for GPA or LSAT scores will be considered in the special
 admissions category if they have strong references and based on their personal
 statement and leadership experience.

b) Centralized services:

Admissions: The University has centralized Admissions services, although staff are assigned certain programs. We anticipate hiring a full time Admissions officer for the School of Law. As the admissions process is paperless, Admissions will ensure that the file is complete before it is transferred to the School of Law Admissions Committee for a decision on admissions. The University currently has several programs with particular admissions requirements. Admissions can customize procedures such that admissions files are categorized according to specified criteria; in the case of law students, for example, that they meet a threshold for LSAT scores. Once files are completed and categorized, they can be accessed by the Admissions Committee for a decision on an admissions offer.





- Student Services: The University has a Student Success Office that includes writing assistance, study skills development, and the Equity of Access Office. The latter provides accommodations for all students with disabilities across the campus. The writing skills and study skills development is intended to assist undergraduate students. The School of Law will have its own articling and career centre, which will also provide student assistance in terms of writing skills and study skills. Academic advisors also provide some assistance to students in these areas. Trinity Western University regularly receives an A+ in student-faculty interaction as our faculty genuinely care about student success. We have an early warning system in place to identify students at risk of failing classes.
- Academic Advisory Services: All students at the University are assigned an academic advisor. This is a professor in their department, faculty or school that will advise them on course selection and also be available as a primary contact for referral to academic support services. While the assignment of the academic advisor is done on a centralized basis by the Admissions Department at the University, the academic advisors will be in the School of Law for all law students.

Finally, we note the Approval Committee's references to Trinity Western University's approach to meeting the Ethics and Professionalism competency and the substantive legal knowledge competency, particularly with respect to constitutional law. It was unclear to us if the letter was simply noting a step taken by the Committee or whether a concern was being identified. We have attached the proposed course outlines for the courses that meet the specific competencies you raise (Appendix G) and are not aware of anything in these proposed courses that would raise concerns. The description of Trinity Western University's approach, outlined in the two numbered paragraphs at the top of the third page of your letter, is accurate. If the Approval Committee does have concern about specific matters in the proposed courses, we would be pleased to address those concerns. The University has successfully launched professional programs in business, education and nursing with great success. These programs have received accreditation from numerous professional bodies and associations. Our graduates are highly sought after, particularly because they have high ethical standards and exemplary professional competencies.





We trust this fully answers the questions posed.

Yours truly,

TRINITY WESTERN UNIVERSITY

Bob Kuhn, J.D.

Interim President

Bob Kuhn

BK/hkp

Appendices (A-G)

APPENDIX A - Course Descriptions

Criminal Law

Description

This course introduces students to substantive Canadian criminal law. This course teaches the basic principles underlying criminal culpability and focuses on the elements of specific substantive offences. Students will use the *Criminal Code* to identify the elements of various offences, in particular the various forms of *mens rea* as developed in law. Students will also explore the nature and application of various defences, such as self-defence, provocation, automatism and necessity, and mental disorder. Students will consider theories of punishment and the various purposes underlying sentencing. Students will also be introduced to the limits of provincial jurisdiction in creating offences and learn to distinguish between true crimes and regulatory offences.

Course Objectives

Through this course, students will:

- 1. understand and critically assess the principles of criminal responsibility and punishment,
- 2. understand and critically assess theories and perspectives on the purpose and function of the justice system, and the competing interests they serve;
- 3. develop practical skills by identifying the elements of various offences as set out in the *Criminal Code*;
- 4. apply substantive knowledge to fact scenarios by identifying the evidence that supports and negates various offences and corresponding defences;
- 5. identify whether an offence is properly characterized as a regulatory or a criminal offence;
- 6. produce high-quality, critical writing about themes and issues within the criminal law; and
- 7. identify and critically discuss ethical issues related to substantive criminal law.

Course Outline

- 1. Introduction to criminal law
- 2. Theories of criminal liability
- 3. Burdens of proof
- 4. Principles of criminal liability
- 5. Elements of an offence
 - Actus reus
 - Mens rea
 - Mens rea and the Charter
- 6. Types of offences
 - Regulatory
 - Summary
 - Indictable
 - Hybrid

- 7. Specific offences
- 8. Raising a defence
- 9. Specific defences
- 10. Not criminally responsible by reason of mental disorder
- 11. Theories of punishment and principles of sentencing
- 12. Aboriginal offenders
- 13. Gender and racial critiques of the criminal law

Texts

Roach, Berger, Healy and Stribopoulos, Criminal Law and Procedure (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, *Tremeear's Criminal Code* (Carswell, 2011) Stephen Coughlan, *Criminal Procedure* (Irwin Law, 2008)

Criminal Procedure

Description

This course examines the principles of Canadian criminal procedure. It canvasses the various sources of criminal procedure; basic concepts, principles, and institutions; and the most significant rules governing the criminal process. This course focuses on the dynamic impact of the *Charter*, as developed through the common law, on safeguarding the accused's rights and circumscribing state power at each phase of the criminal process. Students will be introduced to the substance and application of these rules from the investigative phase through the laying of charges, to the trial, conviction, sentencing and beyond.

Course Objectives

Through this course, students will:

- 1. understand and critically assess the competing interests and values animating rules of criminal procedure;
- 2. gain a working knowledge of criminal procedure;
- 3. demonstrate practical competence by identifying procedural errors in various fact scenarios, applying the proper legal framework and analyzing the effects of these errors;
- 4. understand the criminal procedure governing various offences;
- 5. apply their knowledge of criminal procedure participating in, observing and critiquing mock exercises, including a bail hearing, *Charter* application and sentencing;
- 6. develop basic advocacy skills through participation in a mock trial; and
- 7. identify and critically discuss ethical issues arising in the criminal law process.

Course Outline

- 1. Introduction to criminal procedure
- 2. Sources of criminal procedure
- 3. Overview of the structure of criminal proceedings
- 4. Levels of courts in British Columbia
- 5. Roles of police, Crown and Defence
- 6. Investigative powers of police
- 7. Charge approval and commencing proceedings
- 8. Compelling appearance and judicial interim release
- 9. Arraignment, pre-trial case management, elections, re-elections and preliminary hearings
- 10. Pre-Trial and other applications
- 11. Disclosure and procedural applications
- 12. Charter applications and exclusion of evidence
- 13. Trial management
- 14. Jury selection
- 15. Trials

- 16. Sentencing
- 17. Youth court
- 18. Mentally disordered offenders
- 19. Appeals
- 20. Ethical issues in criminal law

Texts

Roach, Berger, Healy and Stribopoulos, $Criminal\ Law\ and\ Procedure\ (10th\ edition)$ (Emond Montgomery, 2010)

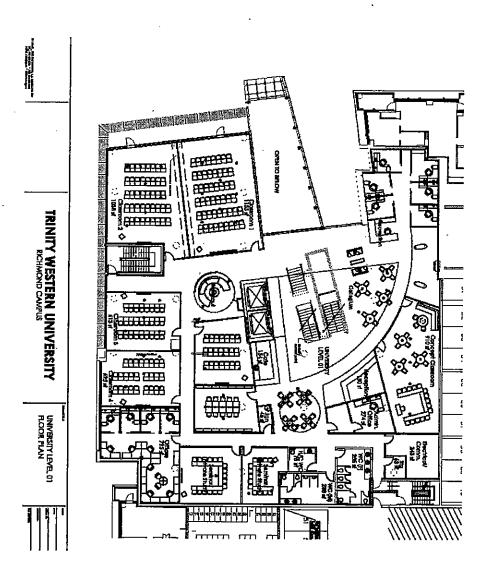
Watt and Fuerst, Tremeear's Criminal Code (Carswell, 2011)

APPENDIX B - Pro-Forma Budget

TRINITY WESTERN UNIVERSITY PRO-FORMA SCHOOL OF LAW BUDGET					
	Year One	Year Two	Year Three	Year Four	Year Five
Revenue				The state of the s	
Tuition	1,530,000	3,020,000	4,590,000	4,720,000	4,845,000
.Total Revenue	1,530,000	3,020,000	4,590,000	4,720,000	4,845,000
Expenditures					
Salary and Benefits	1,045,000	1,835,000	2,225,000	2,275,000	2,365,000
Operations (non-salary)	441,000	495,000	502,000	512,000	522,000
Total Expenditures	1,486,000	2,330,000	2,727,000	2,787,000	. 2,887,000
Contribution to Overhead	44,000	690,000	1,863,000	1,933,000	1,958,000

Note: The costs for Financial Aid, IT Support, Admissions and Registrar's Office, Student Life, Administration, Building Maintenance, etc. are all funded from University Overhead.

APPENDIX D - Richmond Campus Floor Plans

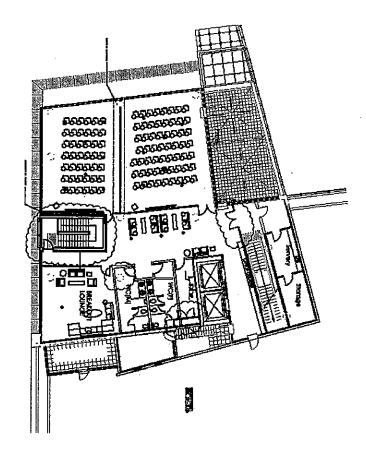


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TRINITY WESTERN UNIVERSITY

UNIVERSITY LEVEL 2 FLOOR PLAN

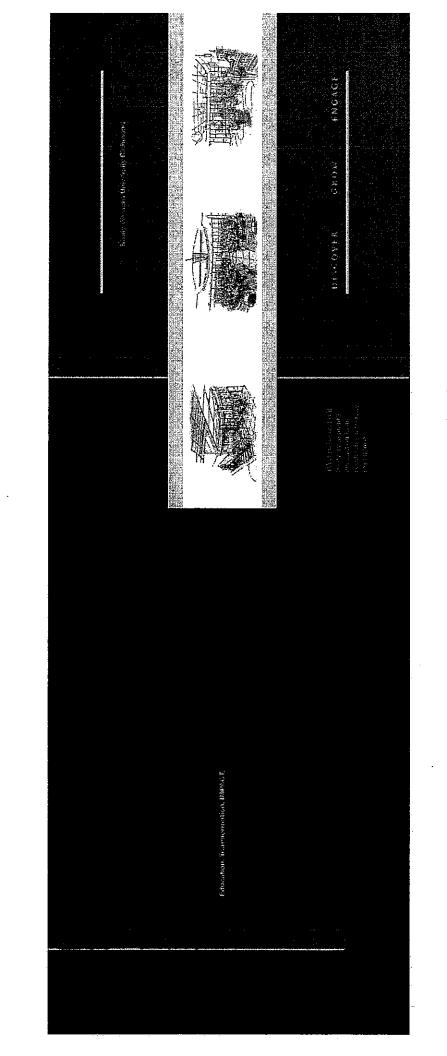


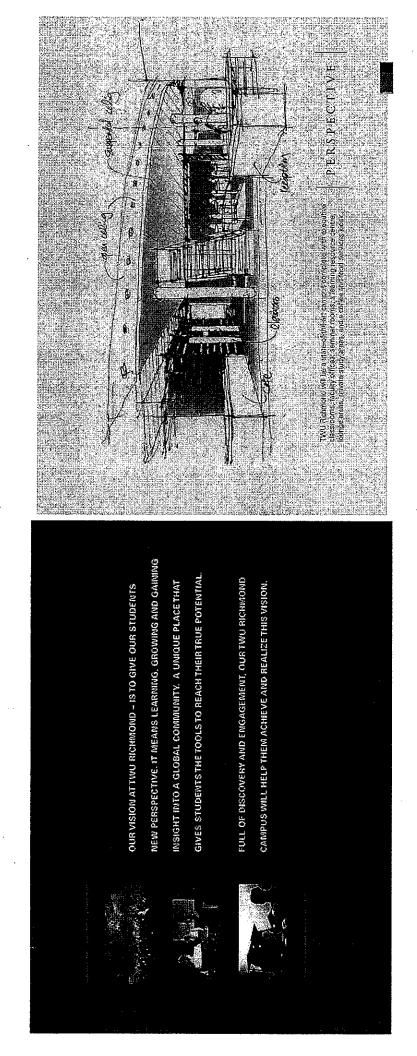


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$Appendix \ E-Richmond \ Brochure$









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We are bringing an intentionally designed program to meet the needs of Pichmond."

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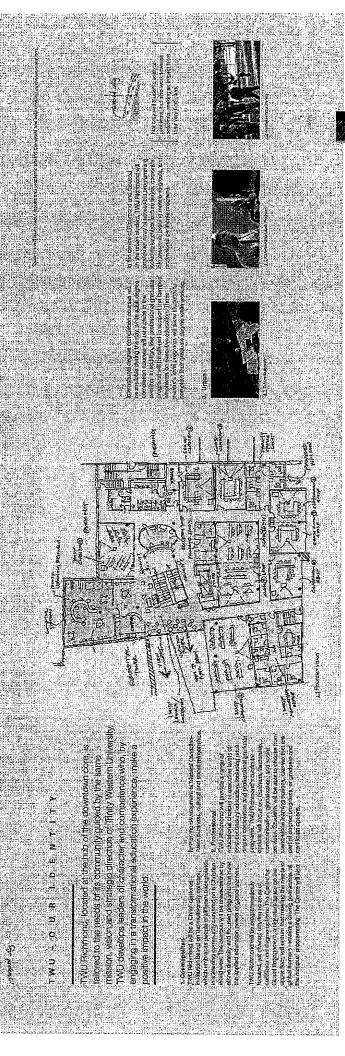
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RICHMOND AT A GLANCE

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TWU.CA/RICHMOND

Appendix F - Required Library Resources

Core Collection Recommendations

The following are recommendations for a core Canadian legal academic collection. This list will consist of essential primary sources and secondary sources, and their respective finding tools. Where there are comparable electronic and print media we indicate such. The collection will be further developed based on the intended foci and faculty expertise. Except for basic print and online texts have not included textbooks in this list. Textbook acquisitions should be 50% of the collections budget.

The collection will support the teaching of the J.D. degree, university programs that would benefit from a law collection, and the wider research and legal community. The communities the collection will serve will inform the balance of online/print and the cost of the licenses for online access. There will be a conservative balance of electronic and print.

I. Free Online Tools

There has been substantial growth in free online legal information tools and resources. Law Societies and academic institutions have developed tools primarily for the use of practitioners and professionals. Most of their collections are voluntary submissions and are therefore not comprehensive. They often lack the depth of editing and annotation work done by the subscription services. They are increasingly adding additional tools such as citators that will increase value to these resources.

a. CanLII

The Canadian Legal Information Institute (CanLII) is a not-for-profit organization initiated by the Federation of Law Societies of Canada. CanLII seeks to gather and make accessible online legislative and judicial texts, as well as legal commentaries, from federal, provincial and territorial jurisdictions on a single Web site.

b. CommonLII

The Commonwealth Legal Information Institute service is comprised of 981 databases from 59 Commonwealth and common law countries and territories via the Free Access to Law Movement.

c. BAILII

British and Irish case law & legislation, European Union case law, Law Commission reports, and other law-related British and Irish material.

d. Cornell LII

Cornell's most-accessed website, the LII provides the full online hypertext of the U.S. Code and other U.S. laws and court decisions

II. <u>Complimentary Subscription Services</u>

Currently all Canadian Law students (LLB, JD, LLM, JSD), full-time law faculty, and academic law librarians are provided free access and training to several practitioner services. These services provide access to digital versions of many of the primary and secondary materials collections below. These will be accessed through individual user accounts..

a. LexisNexisQuicklaw (QL)

As a qualified law schools including students, academic staff, and law librarians, TWU will receive free access to this superior online legal content coupled with free, high-quality training and support.

(Note: we will consider a campus subscription to LexisNexis Academic Plus)

b. WestlawCanada (WL)

With Westlaw Canada, law school faculty and staff are able to help students with tools and resources designed for classroom instruction, article creation, legal library needs, and more.

c. Maritime Law Book (National Reporter System)

Any student is entitled to one free trial period of 15 days. However as a law school library that maintains multiple subscriptions we understand we will be able to make arrangements for free law student access for the entire school term.

Note: We will consider negotiating a campus subscription to MLB.

III. Primary Sources and Finding Tools

a. Canadian Legislation

Most legislation collections are available online through free and subscription services. However many of the online source are not official. We will provide a selective collection of legislative materials for most jurisdictions and comprehensive collection of B.C. legislative materials.

- i. Federal Annual Statutes and Regulations (Print)
- ii. All Provincial and Territorial Annual Statutes and Regulations (Print)
- iii. All Legislative materials for Federal and British Columbia Hansards, Journals, and Committee reports (Print)
- iv. Legislation Citators for Federal and British Columbia (Print)

b. Canadian Caselaw

We will provide on online sources for caselaw with the following exceptions for Federal and British Columbia. Topic reports can be collected based on teaching specializations.

- i. British Columbia Law Reports (Print)
- ii. Western Law Reports (Print)
- iii. Supreme Court Law Reports (Print)
- iv. Federal Court Reports (Print)

c. United Kingdom

A commonwealth collection is essential for understanding the development of Canadian law, and for locating precedent.

i. ICLR Online

d. Finding Tools

- i. Halsbury's Laws of Canada (Print)
- ii. Halsbury's Law of England (Print)
- iii. Canadian Abridgment (Print)
- iv. Canadian Encyclopedic Digest (Print)
- v. The Digest UK (Print)

IV. Secondary Sources

a. Journal Indices and Full Text

i. Index to Canadian Legal Literature (Print and WL/QL)

Index to Canadian Legal Literature (ICLL) is a bibliographic index providing thorough coverage of Canadian law journal literature. ICLL indexes journals, law reports, books, book reviews, theses, essay collections and Canadiana Forthcoming Books. ICLL records relate to articles, monographs, case comments, annotations, seminar proceedings, etc., as selected by ICLL's legal editors.

ii. LegalTrac Fulltext (Online Gale)

Provides full-text coverage of major law reviews, legal newspapers, bar association journals and international legal journals offers law students, faculty and legal researchers the publications they need for their research and practicum. Each title included is selected on the basis of criteria provided the American Association of Law Libraries.

iii. <u>Index to Legal Periodicals</u> Full Text and ILP Retrospective (Online EBSCO)

Indexes articles from 615+ legal periodicals published in the United States, Canada, Great Britain, New Zealand and Australia. The retrospective database indexes over 750 legal periodicals published in the United States, Canada, Great Britain, Ireland, Australia and New Zealand.

iv. Index to Foreign Legal Periodicals (Online HeinOnline)

Produced by the American Association of Law Libraries, the Index to Foreign Legal Periodicals (IFLP) is the preeminent multilingual index to articles and book reviews appearing in 470 legal journals published worldwide. It provides in-depth coverage of public and private international law, comparative and foreign law, and the law of all jurisdictions other than the United States, the U.K., Canada, and Australia.

b. Full Text Online Collections - Journals and Books

i. HeinOnline

HeinOnline is the world's largest image-based legal research database. HeinOnline is an especially useful collection of full-text legal periodicals but also contains a vast array of additional legal content. All content within HeinOnline is image-based in PDF format, from inception and fully searchable. Our subscriptions includes the following databases: Law Journal Library, English Reports - Full Reprint (1220-1865), American Association of Law Libraries (AALL), Association of American Law Schools (AALS), Code of Federal Regulations, European Center for Minority Issues, Federal Register Library, Legal Classics, Manual of Patent Examining Procedure, Philip C. Jessup Library, Treaties and Agreements Library, U.S. Attorney General Opinions, U.S. Federal Legislative History Library, U.S. Presidential Library, U.S. Statutes at Large and the U.S. Supreme Court Library.

ii. Irwin Law E-Library Essentials of Canadian Law

Irwin Law's E-Library, using ebrary technology, will allow students to access authoritative Irwin Law titles anytime, anywhere, as well as to take advantage of powerful technology that increases productivity and efficiency.

iii. O'Brien's Encyclopedia of Forms (Online)

Canada's most comprehensive collection of legal forms and precedents, covering the broadest range of legal topics.

iv. Canadian law journals (Print/Online)

We will consider where possible print as well as online access to Canadian law journals depending on research foci.

- The Advocates' Quarterly
- Alberta Law Review
- Annals of Air and Space Law
- Appeal: review of current law and law reform
- Asper Review of International Business and Trade Law
- Banking & Finance Law Review
- Les Cahiers de Droit
- The Canadian Bar Review
- Canadian Business Law Journal
- Canadian Criminal Law Review
- Canadian Family Law Quarterly
- Canadian Journal of Administrative Law and Practice
- Canadian Journal of Criminology and Criminal Justice
- Canadian Journal of Family Law
- Canadian Journal of Human Rights (2010-)
- Canadian Journal of Insurance Law
- The Canadian Journal of Law and Jurisprudence
- Canadian Journal of Law and Society
- Canadian Journal of Law and Technology (2002-)
- Canadian Journal of Women and the Law
- Canadian Labour & Employment Law Journal
- Canadian Law Library Review
- Canadian Tax Journal
- Canadian Yearbook of International Law
- Constitutional Forum
- The Criminal Law Quarterly
- Dalhousie Journal of Legal Studies
- Dalhousie Law Journal
- Education & Law Journal
- Estates, Trusts & Pensions Journal
- Health law in Canada
- Health Law Journal
- Health Law Review
- The Indigenous Law Journal (2002-)
- Intellectual Property Journal
- Journal of Environmental Law & Practice

- Journal of International Law and International Relations;
- Journal of Law & Equality (2002-)
- Journal of Law and Social Policy
- Journal of Parliamentary and Political Law (2008-)
- Journal of Politics and Law (2008-)
- The Journal of Public Policy, Administration and Law (2009-)[online]
- Manitoba Law Journal
- McGill International Journal of Sustainable Development Law and Policy (2005-)
- McGill Journal of Law and Health (2007-)
- McGill Law Journal
- National Banking Law Review
- National Journal of Constitutional Law
- Ocean Yearbook
- Osgoode Hall Law Journal
- Ottawa Law Review
- · Queen's Law Journal
- Review of Constitutional Studies
- Revue de droit de l'Université de Sherbrooke
- Revue de la common law en français
- Revue générale de droit
- Revue juridique des étudiants et étudiantes de l'Université Laval
- Revue juridique Thémis
- Revue québécoise de droit international
- Saskatchewan Law Review
- The Supreme Court Law Review
- University of British Columbia Law Review
- University of New Brunswick Law Journal
- University of Ottawa Law and Technology Journal (2003-)
- University of Toronto Faculty of Law Review
- University of Toronto Law Journal
- Windsor Review of Legal and Social Issues
- The Windsor Yearbook of Access to Justice

v. Textbooks

- Black's Law Dictionary
- <u>Canadian Law Dictionary</u>
- Canadian Guide to Uniform Legal Citation
- The ultimate guide to Canadian legal research
- Legal writing and research manual
- The practical guide to Canadian legal research
- Legal Research and writing manual

Appendix G - Proposed Course Outlines

LAW 602, Ethics and Professionalism* (3 s.h.)

Description

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history of the legal profession in Canada;
- 2) familiarize students with various notions of the role of the legal profession in Canadian culture and business;
- 3) familiarize students with the ethical issues arising from the practice of law;
- 4) familiarize students with the duties owed to clients and the legal profession;
- 5) introduce students to the Code of Professional Conduct and Professional Conduct Handbook;
- 6) enable students to identify ethical issues in fact scenarios and from past cases where professional bodies have imposed discipline on lawyers for failure to meet ethical obligations;
- 7) enable students to identify relevant facts and arguments to respond to various scenarios where professional obligations are raised and reconcile those arguments with personal beliefs and obligations to serve the public and to pursue justice.

Course Outline

- 1. The history and evolution of the legal profession in Canada
- 2. Lawyer-client relationship
- 3. Confidentiality and privilege
- 4. Duty of loyalty and conflicts of interest
- 5. Ethics and criminal law practice
- 6. Civil litigation and ethics in advocacy
- 7. Lawyers in organized settings

Texts

Alice Wooley et al., Lawyers' Ethics and Professional Regulation (LexisNexis Canada, 2008) D. Buckingham, J. Bickenbach, D. Bronaugh & B. Wilson, Legal Ethics in Canada (Harcourt Brace, 1996)

Gordon Turriff, Q.C., Annotated British Columbia Legal Profession Act (Carswell: looseleaf)

Law 504, Constitutional Law (5 s.h.)¹

Description

Canada is governed by a variety of documents collectively called "the Constitution." The first half of this course covers the "division of powers"; that is, the law that governs the relationship between different levels of government in Canada. The intended clear division between federal and provincial powers by the founding fathers of Confederation has been made more complex by new inventions, developments and circumstances such as aeronautics, telecommunications and commercial realities of the twenty-first century. The second half of the course will focus on the Canadian Charter of Rights and Freedoms and examine its application and interpretation. This will include an examination of the principles of human rights and Charter values.

Course Objectives

The objectives of this course are to:

- 1) familiarize students with the structure and substance of Canadian constitutional law, including both division of powers and the *Charter of Rights*;
- 2) familiarize students with techniques of Constitutional interpretation;
- 3) introduce students to the literature which expounds the Constitution, including case law and doctrine;
- 4) introduce students to methods of analysis which involve the Constitution in resolving legal problems;
- 5) teach students to identify constitutional issues, identify relevant facts, advise a client about what a court is likely to decide concerning the issue identified, and identify arguments that could be used to support either side of the argument with respect to issues and proposed legislation;
- 6) familiarize students with the specific rights and freedoms protected by the *Charter*, the structure of *Charter* arguments and assembling evidence to advance *Charter* claims and to create section 1 defences;
- 7) introduce students to the available remedies under the *Charter* including possible remedies that continue to be developed by the courts;
- 8) introduce students to written and oral advocacy skills in relation to the constitutionality of a proposed piece of legislation.

Course Outline

- 1. Pre-Confederation constitutional documents
- 2. Constitution Act, 1867, additional constitutional documents and amendments
- 3. Federal powers
- 4. Provincial powers
- 5. Concurrent and shared powers
- 6. Quasi-constitutional powers accorded to other bodies
- 7. Application of the Charter and the "notwithstanding" clause: Sections 32 and 33
- 8. The fundamental freedoms:
 - Section 2(a): freedom of conscience and religion
 - Section 2(b): freedom of thought, belief, opinion and expression

¹ This is a full year course.

Section 2(c) and (d): freedoms of assembly and association

- 9. Democratic rights: sections 3 through 5
- 10. Mobility rights: Section 6
- 11. Legal rights:

Section 7: right to life; liberty and security of the person Sections 8 through 14: search, seizure, arrest, and criminal proceedings

- 12. Equality eights: sections 15(1) and (2), 27 and 28
- 13. Official languages, heritage and aboriginal rights: section 16 through 22, 25 and 27
- 14. Minority language educational rights: sections 23 and 29
- 15. Reasonable limits on rights: section 1, including the use of legislative facts and other methods of proof.
- 16. Ethical issues in Constitutional litigation

Texts

Peter. W. Hogg, Constitutional Law of Canada, (2010 student edition) (Carswell, 2010) L.I. Rotman, B.P. Elman, G.L. Gall, Constitutional Law: Cases, Commentary and Principles (Carswell, 2008)

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

BY EMAIL

June 28, 2013

Jonathan S. Raymond, Ph.D. President and Acting Chancellor Trinity Western University 7600 Glover Road Langley, BC V2Y 1Y1

Re: Trinity Western University School of Law Proposal

Dear Dr. Raymond,

The Canadian Common Law Program Approval Committee "Approval Committee") is continuing its review of Trinity Western University's new law degree proposal, and thanks you for the helpful documentation submitted by Trinity Western University.

The Approval Committee, in its review of law school degrees, both existing and proposed, focuses on whether the elements of the Federation's national requirement will be met. While Trinity Western University's proposal provides much of the information required to complete this evaluation, we do have some additional questions, primarily in the area of those elements of the national requirement that deal with law school resources. These questions are set out as follows.

1. Budgeting:

- a) Consistent with the reviews the Federation has carried out with respect to other proposed law degree programs in recent years, please provide a more detailed financial plan that includes anticipated law school revenue over and above tuition if any, salary costs, an initial library acquisition budget and an estimated annual library budget including acquisition costs, costs for physical infrastructure, costs for student clinics, university "taxes," and any overhead charges. Please include any anticipated changes to the student numbers and tuition levels set out in your proposal;
- b) Please provide the contingency plans in place to deal with potential challenges to the law school start-up plans, including fundraising, construction timelines, enrollment targets, ability to offer the full range of classes noted in the report, and other possible challenges; and

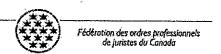
- c) With respect to the statement at page 38 of your proposal that the law faculty will be financially self-supporting, please clarify the extent, identified in your proposal, to which the law faculty intends to draw upon central university personnel with respect to, for example, student financial aid and other resources.
- Facilities: With the proposed law school start date for classes being in 2015,
 please indicate what plans are in place if the new dedicated law school building is
 not ready by that time. Please provide more information about space plans for any
 period prior to the occupancy of the new building.
- 3. Library: Please provide additional information about the proposed library collections, including the space that is expected to be allocated to paper and electronic materials.
- 4. Admissions and Student Services
 - a) As part of our process of review of all law degrees, we are inquiring about admissions policies that result in the waiver of the national requirement minimum of two years of post-secondary education. Please provide a detailed description of any proposed special admissions categories; and
 - b) Please provide details about how admissions services, student services and academic advisory services will be provided, for example, through hiring of additional staff such as admissions staff, a Registrar, Assistant Deans, or academic advisors, or through arrangements with the university.

Kevin Sawatzky's May 17, 2013 letter to John Hunter, in his capacity as Chair of the Federation's Special Advisory Committee on Trinity Western University's Proposed School of Law, has been forwarded to the Approval Committee.

The Approval Committee, as a part of its consideration of your application in the context of the national requirement, has addressed whether Trinity Western University would with respect to:

- the Ethics and Professionalism competency, ensure that graduates possess the skills to identify and engage in critical thinking about ethical issues in legal practice, and
- 2. the substantive legal knowledge competency, ensure that graduates fully understand the effect of the *Canadian Charter of Rights and Freedoms* in its totality, and in particular section 15 of the *Charter* and human rights principles.

The Approval Committee, in its consideration of these two matters, has taken particular note of the following elements of Mr. Sawatzky's letter:



- Trinity Western University acknowledges it has a duty to teach equality. In
 meeting its obligation to promulgate non-discriminatory principles in its teaching
 of substantive law, and ethics and professionalism, Trinity Western University
 agrees that the dignity and value of all individuals irrespective of their sexual
 orientation form part of the fabric of professional ethics and the rule of law; and
- 2. Trinity Western University acknowledges that human rights laws and section 15 of the Canadian Charter of Rights and Freedoms protect against and prohibit discrimination on the basis of sexual orientation, and that TWU's courses will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.

Finally, as a point of information only, the Approval Committee has noted, at page 12 of the Trinity Western University proposal, that the statistics regarding the number of applications accepted and rejected do not reflect the actual number of acceptances and rejections, given the application process that Trinity Western University plans to employ. The Approval Committee is not asking for a response to this point, but is identifying it only for your consideration.

We invite you to provide any additional comments with respect to these matters, and look forward to receiving your answers to our questions. Please direct your responses and any requests for additional information or clarification to Deborah Wolfe.

Sincerely,

Laurie H. Pawlitza

Chair, Canadian Common Law Program Approval Committee

cc: Deborah Wolfe, P.Eng.

Director, Law School Programs



Exchange of Correspondence between Trinity Western University and the Canadian Common Law Approval Committee

Education. Transformation. IMPACT.



November 1, 2013

Laurie H. Pawlitza
Chair, Canadian Common Law Program Approval Committee
Federation of Law Societies of Canada
1810-45 rue O'Connor Street
Ottawa, ON K1P 1A4

Dear Ms. Pawlitza:

Re: Trinity Western University School of Law Proposal

Thank you for your letter of October 30, 2013 asking for clarification on two program issues with respect to the TWU School of Law proposal. I am pleased to provide the answers as follows:

- 1. Criminal Law Course. The credit value of the revised first year course will be 5 semester hours, the same as it was in the original proposal. The credit value of the new upper year Criminal Procedure course will be 3 semester hours, consistent with other upper year electives. Please see attached Appendix 1 for the revised course descriptions.
- 2. Legal Research. While legal research and writing is a key component of all first year law programs, there is a wide variety of methods and approaches to teaching this material. Some law schools have a specific course, others include it in one first year course, others include it across the first year curriculum and still others have it as a self-taught, on-line module. The approach at the proposed TWU School of Law will be to include the legal research module in LAW 507 but spread the writing and advocacy skills requirements across the first year curriculum. We also intend to have significant resources on-line to assist students with specific research issues. Please see the revised LAW 507 curriculum attached as Appendix 2. The proposed practical writing and advocacy skills to occur across the curriculum are attached as Appendix 3.

Thank you again for the consideration given to our proposal.

Yours truly,

Robert G. Kuhn, J.D.

President

Appendix 1 - Revised Criminal Law Course Descriptions

LAW 506, Criminal Law (5 s.h.)

Description

This course introduces students to substantive Canadian criminal law. This course teaches the basic principles underlying criminal culpability and focuses on the elements of specific substantive offences. Students will use the *Criminal Code* to identify the elements of various offences, in particular the various forms of mens rea as developed in law. Students will also explore the nature and application of various defences, such as self-defence, provocation, automatism and necessity, and mental disorder. Students will consider theories of punishment and the various purposes underlying sentencing. Students will also be introduced to the limits of provincial jurisdiction in creating offences and learn to distinguish between true crimes and regulatory offences.

Course Objectives

Through this course, students will:

- 1. understand and critically assess the principles of criminal responsibility and punishment;
- 2. understand and critically assess theories and perspectives on the purpose and function of the justice system, and the competing interests they serve;
- 3. develop practical skills by identifying the elements of various offences as set out in the *Criminal Code*;
- 4. apply substantive knowledge to fact scenarios by identifying the evidence that supports and negates various offences and corresponding defences;
- 5. identify whether an offence is properly characterized as a regulatory or a criminal offence:
- 6. produce high-quality, critical writing about themes and issues within the criminal law; and
- 7. identify and critically discuss ethical issues related to substantive criminal law,

Course Outline

- 1. Introduction to criminal law
- 2. Theories of criminal liability
- 3. Burdens of proof
- 4. Principles of criminal liability
- 5. Elements of an offence
 - Actus reus
 - Mens rea
 - Mens rea and the Charter
- 6. Types of offences
 - Regulatory
 - Summary
 - Indictable
 - Hybrid

- 7. Specific offences
- 8. Raising a defence
- 9. Specific defences
- 10. Not criminally responsible by reason of mental disorder
- 11. Theories of punishment and principles of sentencing
- 12. Aboriginal offenders
- 13. Gender and racial critiques of the criminal law

Texts

Roach, Berger, Healy and Stribopoulos, Criminal Law and Procedure (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, Tremeear's Criminal Code (Carswell, 2011) Stephen Coughlan, Criminal Procedure (Irwin Law, 2008)

Criminal Procedure (course number still to be assigned) 3 s.h.

Description

This course examines the principles of Canadian criminal procedure. It canvasses the various sources of criminal procedure; basic concepts, principles, and institutions; and the most significant rules governing the criminal process. This course focuses on the dynamic impact of the *Charter*, as developed through the common law, on safeguarding the accused's rights and circumscribing state power at each phase of the criminal process. Students will be introduced to the substance and application of these rules from the investigative phase through the laying of charges, to the trial, conviction, sentencing and beyond.

Course Objectives

Through this course, students will:

- 1. understand and critically assess the competing interests and values animating rules of criminal procedure;
- 2. gain a working knowledge of criminal procedure;
- 3. demonstrate practical competence by identifying procedural errors in various fact scenarios, applying the proper legal framework and analyzing the effects of these errors;
- 4. understand the criminal procedure governing various offences;
- 5. apply their knowledge of criminal procedure participating in, observing and critiquing mock exercises, including a bail hearing, *Charter* application and sentencing;
- 6. develop basic advocacy skills through participation in a mock trial; and
- 7. identify and critically discuss ethical issues arising in the criminal law process,

Course Outline

- 1. Introduction to criminal procedure
- 2. Sources of criminal procedure
- 3. Overview of the structure of criminal proceedings
- 4. Levels of courts in British Columbia
- 5. Roles of police, Crown and Defence
- 6. Investigative powers of police
- 7. Charge approval and commencing proceedings
- 8. Compelling appearance and judicial interim release
- 9. Arraignment, pre-trial case management, elections, re-elections and preliminary hearings
- 10. Pre-Trial and other applications
- 11. Disclosure and procedural applications
- 12. Charter applications and exclusion of evidence
- 13. Trial management
- 14. Jury selection
- 15. Trials
- 16. Sentencing
- 17. Youth court
- 18. Mentally disordered offenders
- 19. Appeals
- 20. Ethical issues in criminal law

Texts

Roach, Berger, Healy and Stribopoulos, Criminal Law and Procedure (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, Tremeear's Criminal Code (Carswell, 2011)

Appendix 2 - Revised LAW 507, Fundamentals of Canadian Law (2.5 s.h.)

LAW 507, Fundamentals of Canadian Law (2.5 s.h.)

Description

In this course, students will become familiar with the principles of the common law system, including the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada. It further examines how laws are made and the principles of legislative interpretation and statutory analysis. It will also examine how regulations are made under legislation and the relationship between legislation and regulations. Legal research will be a component of this course.

Course Objectives

Students in this course will:

- 1) learn the historical development of the common law system and its origins in Britain;
- 2) understand how common law works on an incremental, case-by-case basis, and develop skills in applying principles from past legal cases to a new case;
- 3) recognize that legislation supersedes common law but that legal principles are applied to interpret legislation and regulations;
- 4) understand the legislative process and the procedure to draft, pass and implement legislation, including the concept of delegated authority;
- 5) understand the administration of the law in Canada;
- learn how to conduct legal research, sources of law, secondary sources and write a research paper; and
- 7) critically reflect on the interface between law and society.

Course Outline

- 1. Origins of common law, including principles of law and equity
- 2. Precedents and stare decisis
- 3. Differences between common law and civil law
- 4. The legislative process -- how are laws made?
- 5. Researching the law using the library and on-line research tools, primary and secondary sources of law
- 6. Principles of statutory interpretation
- 7. Delegated authority and process to make regulations
- 8. The relationship between legislation and common law
- 9. The administration of law, including the organization of the courts and tribunals in Canada
- 10. Appeal processes
- 11. Law as an instrument of social change

Texts

- J. Horner, Canadian Law and the Legal System, (Pearson Education Canada, 2006)
- A. Hutchinson Laughing at the Gods: Great Judges and How They Made the Common Law, (Cambridge University Press, 2012)

Ruth Sullivan, Statutory Interpretation, (Toronto: Irwin Law, 2007).

J. A. Brauch, A Higher Law: The Influence of Christian Thought in Anglo-American Law, (2nd edition) (Fred B. Rothman, 2008)

Appendix 3 - Practical Assignments for First Year

While TWU anticipates that the founding Dean and faculty members will ultimately decide the details of the practical assignments in the First Year curriculum, the University will commit to the following practical assignments as the minimum required for First Year:

- I. Contract Law (LAW 502)
 - a. One short, simple contract
 - b. One more complex contract
- 2. Tort Law (LAW 503).
 - a. One memorandum of law on Intentional Torts
 - b. One opinion letter on a Negligence issue
- 3. Constitutional Law (LAW 504)
 - a. One case comment on a division of powers issue
 - b. One factum on a Charter issue
 - c. Moot
- 4. Property Law (LAW 505)
 - a. At least one written assignment that could include a memorandum of law, an opinion letter or an academic paper
- 5. Criminal Law (LAW 506)
 - a. One analysis of some type of notice of violation (could be anything from a parking ticket to a criminal violation)
 - b. One memorandum of law
- 6. Fundamentals of Canadian Law (LAW 507)
 - a. One research paper
- 7. Introduction to Practice Skills and the Practice of Law (LAW 508)
 - a. Mock negotiation

Federation of Law Societies of Canada



Fédération des ordres professionnels de juristes du Canada

BY EMAIL

October 30, 2013

Bob Kuhn, J.D. Acting President Trinity Western University 7600 Glover Road Langley, BC V2Y 1Y1

Re: Trinity Western University School of Law Proposal

Dear Mr. Kuhn,

The Canadian Common Law Program Approval Committee ("Approval Committee") is continuing its review of Trinity Western University's new law degree proposal, and would like to thank you for your response to our June 28, 2013, letter.

As the Approval Committee continues its analysis of your proposal we have two more questions:

- Criminal Law Course. Given the changes to the first year Criminal Law course, please
 provide the credit value for both the revised first year course and the new upper year
 Criminal Procedure course.
- 2. Legal Research: We ask for some clarification with regard to the manner in which the legal research competency is met as outlined in your proposal (page 162). The proposal states that LAW 507, Fundamentals of Canadian Law, contains a "significant component" of legal research. However, the course particulars for LAW 507, while indicating that 'legal research will be a component' in the description, does not reference legal research in either the course objectives or outline. Please provide further particulars as to where in the program the students will build their legal research competencies, including in the legal research subcompetencies.

We invite you to provide the response to these questions directly to Deborah Wolfe.

Sincerely.

Laurie H. Pawlitza

Chair, Canadian Common Law Program Approval Committee

cc:

Deborah Wolfe, P.Eng.

Director, Law School Programs

Correspondence from Trinity Western University re: Draft Report

December 2013



December 6, 2013

Federation of Law Societies of Canada World Exchange Plaza 1810 – 45 O'Connor Street Ottawa, ON K1P 1A4

Attention: Deborah Wolfe, Managing Director, National Committee on Accreditation and Director, Law School Programs

Dear Ms. Wolfe:

Thank you for your communication of December 2, 2013 attaching the draft report. We very much appreciate the work of the Approval Committee and are happy to provide a brief response to the three concerns and one comment expressed.

Ethics and Professionalism

As indicated in the Proposal and in our letter of May 17, 2013 Trinity Western University is committed to fully and appropriately teaching ethics and professionalism. We do believe that the faculty who originally teach LAW 508 and LAW 602 should have the freedom to more fully develop the syllabus and curriculum for those classes. However, the University is more than willing to provide more detailed outlines and syllabi for those courses as they are developed.

Constitutional Law

TWU is committed to comprehensively teaching all aspects of public law in Canada, including a full and complete examination of the Charter of Rights and Freedoms and human rights principles. Once the faculty initially teaching the relevant courses have more fully developed syllabi and course materials we would be happy to provide such.

Budget

When providing future annual reports TWU will certainly provide budget information at the level of detail requested by the Approval Committee.

Library Budget

In accordance with the Staffing Rollout Plan a Director of the Law Library will be hired approximately one and half years prior to the opening of the School of Law. The Director will be charged with the development of an initial and on-going acquisitions plan. If the annual acquisitions budget as indicated currently is not adequate, TWU will be happy to reexamine such as part of that plan.

Again, our thanks for the work of the Approval Committee.

Yours truly,

TRINITY WESTERN UNIVERSITY

Kuhn

Bob Kuhn, J.D.

President



News Release

Federation of Law Societies of Canada Grants Preliminary Approval of Trinity Western University's Proposed Law Program

For Immediate Release December 16, 2013

After a thorough review of the proposal submitted by Trinity Western University (TWU), the Common Law Program Approval Committee of the Federation of Law Societies of Canada has granted TWU preliminary approval of its proposed law school program. The Approval Committee identified three concerns that it will monitor in subsequent reviews.

The Approval Committee had a limited mandate: to determine whether the proposed law school program would produce graduates competent for admission to law society bar admission programs. All law schools in Canada must adhere to a National Requirement set by the Federation and the law societies that outlines the knowledge and skills competencies that applicants for entry to the bar admission programs in the Canadian common law jurisdictions must possess.

Until it produces its first graduates, a program that complies with the National Requirement can be granted preliminary approval only and will be subject to regular reviews. The concerns that will be monitored by the Approval Committee in these reviews relate to TWU's teaching of legal ethics and public law, as well as the budget for the proposed law program.

TWU is a Christian university located in Langley, British Columbia. Established in 1962, it currently offers more than 40 undergraduate and 16 graduate programs, including recognized professional programs in nursing, education and business.

Approval of the academic program is only one phase in the development of a new law school in Canada. Provincial government authorities decide whether universities can offer specific degree programs. In this case, the British Columbia Ministry of Advanced Education would have to consent to TWU offering a new law degree program.

"The Federation followed a fair, rigorous and thoughtful process", said Federation President Marie-Claude Bélanger-Richard, Q.C. She added, "We took into account and listened very carefully to all points of view that were expressed about this proposal."

Following TWU's application for approval of its proposed law school program, issues relating to TWU's Community Covenant Agreement were raised that were outside the scope of the Approval Committee mandate. The Federation decided that these issues should be addressed and appointed a Special Advisory Committee of respected leaders of the legal profession to examine them. The advisory committee concluded that as long as the National Requirement is met, there is no public interest reason to exclude future graduates of the TWU program from law society bar admission programs.

"Members of the legal profession are bound to uphold the Rule of Law and fundamental constitutional values set out in the Constitution of Canada, including the Charter of Rights and Freedoms and human rights legislation", noted Ms. Bélanger-Richard. She added that "adherence by lawyers to principles of non-discrimination in the exercise of their professional duties is an essential part of what defines a member of the profession."

This is Exhibit " referred to in the

This is Exhibit* E *referred to in the affidavit of Timothy E McGec OC sworn before me at Vancouver this 5 day of Tanvary 20,5

..../2

A Commissioner for taking Affidavits
for British Columbia

News Release (page 2)

The Special Advisory Committee recommended that consideration be given to adding a non-discrimination provision to the National Requirement similar to that required of American law schools. Ms. Bélanger-Richard said that the Federation Council agrees that this suggestion will be explored.

The reports of the Approval Committee and of the Special Advisory Committee have been provided by the Federation to Canada's law societies. The law societies have the statutory authority to set policies for admission to the legal profession in their jurisdictions.

All documents referred to in this news release are available on the Federation web site (http://www.flsc.ca/en/twu-common-law-program/). Additional information about the Federation's common law program approval process is available here: (http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs/)

The Federation of Law Societies of Canada is the national coordinating body of the 14 law societies mandated by provincial and territorial law to regulate Canada's 100,000 lawyers and Quebec's 4,000 notaries in the public interest. It plays an important role in the development of high, consistent national standards of regulation of the legal profession, including standards for admission to the profession. It is also a leading voice on issues of national and international importance relating to the administration of justice and the Rule of Law.

For more information on the Federation, please visit our web site at www.flsc.ca

For more information about this release, or to acquire a high resolution photograph of the Federation President, please contact:

Bob Linney
Director of Communications / Directeur des communications
Federation of Law Societies of Canada /
Fédération des ordres professionnels de juristes du Canada
Tele 240 700 700 700

Tel.: 613.783.7399 Cell: 613.769.0644 blinney@flsc.ca



STATEMENT

For Immediate Release 2013AVED0047-001903 Dec. 18, 2013

Ministry of Advanced Education

Statement on Trinity Western University's proposed law degree

VICTORIA – Advanced Education Minister Amrik Virk issued the following statement after he granted consent for the proposed new law school program at Trinity Western University.

"Trinity Western University is a faith-based, private university that does not receive operating or capital funding from government.

"I have now had an opportunity to consider the Degree Quality Assessment Board's recommendation and findings, as well as the Federation of Law Societies of Canada reports.

"The Degree Quality Assessment Board reviewed Trinity Western University's proposed law degree and found that it met the degree program quality assessment criteria for private and out-of-province public institutions.

"Further, the review by the Federation of Law Societies confirmed that graduates of the proposed law program could meet the national standards to practise law.

"As Advanced Education Minister, I have granted consent for Trinity Western University's application for its proposed new law school program."

Media Contact:

Catherine Loiacono

Communications Manager Ministry of Advanced Education

250 952-6400

Connect with the Province of B.C. at: www.gov.bc.ca/connect

This is Exhibit" F "referred to in the affidavit of Jimothy E. McGce Co. sworn before me at Vancouse this 5 day of January 20,15

Commissioner for taking Affidavits for British Columbia

The Law Society of British Columbia

Minutes

Benchers

Date:

Friday, January 24, 2014

Present:

Jan Lindsay, QC, President

Ken Walker, QC, 1st Vice-President

David Crossin, QC, 2nd Vice-President

Haydn Acheson Joseph Arvay, QC Satwinder Bains Pinder Cheema, QC

David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer

Craig Ferris Martin Finch, QC

Miriam Kresivo, QC

Dean Lawton Peter Lloyd, FCA

Excused:

Staff Present:

Not Applicable

Tim McGee, QC

Deborah Armour Robyn Crisanti Su Forbes, QC Andrea Hilland Jeffrey Hoskins, QC

Ryan Lee

This is Exhibit "C "referred to in the affidavit of Throthy E INCOLVEL sworn before me at VANCOUVEL this 15 day of January 20.15

A Commissioner for taking Affidavits for British Columbia

Jamie Maclaren

Sharon Matthews, QC

Ben Meisner Nancy Merrill

Maria Morellato, QC David Mossop, QC

Lee Ongman Greg Petrisor Claude Richmond

Phil Riddell

Elizabeth Rowbotham Herman Van Ommen, OC

Cameron Ward Tony Wilson Barry Zacharias

Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe

Guests: The Hon. Robert J. Bauman Chief Justice of British Columbia

Dom Bautista Executive Director, Law Courts Center

Mary Ann Bobinski Dean of Law, University of British Columbia

Kari Boyle Executive Director, Mediate BC Society

Karima Budhwani Program Director, The Law Foundation of BC

Anne Chopra Equity Ombudsperson

Ron Friesen CEO, Continuing Legal Education Society of BC

Jeremy Hainsworth Reporter, Lawyers Weekly

Gavin Hume, QC Law Society Member of the Council of the Federation of

Law Societies of Canada

Drew Jackson Director of Client Services, Courthouse Libraries BC
Derek LaCroix, QC Executive Director, Lawyers Assistance Program

Sherry MacLennan Director of Public Legal Information and Application

Services, Legal Services Society

Caroline Nevin Executive Director, Canadian Bar Association, BC Branch

Priyan Samarakoone Program Manager, Access Pro Bono

Alex Shorten Vice President, Canadian Bar Association, BC Branch

Rose Singh BC Paralegal Association

Prof. Jeremy Webber Dean of Law, University of Victoria

Ryan Williams President, TWI Surveys Inc.

CONSENT AGENDA

1. Oaths of Office

The Honourable Robert J. Bauman, Chief Justice of British Columbia, administered oaths of office sworn or affirmed by President Jan Lindsay, QC, First Vice-President Ken Walker, QC, Second Vice-President David Crossin, QC and the 2014 Benchers (except Vancouver Bencher Sharon Matthews, whose oath of office was administered by Ms. Lindsay).

2. Minutes

a. Minutes

The minutes of the meeting held on December 6, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on December 6, 2013 were approved as circulated.

b. Consent Resolutions

The following resolutions were passed unanimously and by consent.

- Rules 2-69.1 and 4-38: Publication of hearing decisions
 - BE IT RESOLVED to amend the Law Society Rules as follows:
 - 1. In Rule 2-69.1, by rescinding subrules (1) to (3) and substituting the following:
 - (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any final or interlocutory decision of a hearing panel or review board on an application under this Division and the reasons given for the decision.
 - (2) When a publication is allowed under subrule (1), the Executive Director may also publish generally
 - (a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or
 - (b) all or part of the written reasons for the decision.; and

١.

- 2. In Rule 4-38, by rescinding subrules (3) and (4) and substituting the following:
 - (3) When a publication is required under subrule (1) or permitted under subrule (2), the Executive Director may also publish generally
 - (a) a summary of the circumstances of the decision, reasons and action taken,
 - (b) all or part of the written reasons for the decision, or
 - (c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.
- Rule 10-1: Service and delivery of documents

BE IT RESOLVED to amend Rule 10-1 as follows:

- 1. In subrule (1), by rescinding the preamble and substituting the following:
 - (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by
- 2. By rescinding subrule (3) and substituting the following:
 - (3) A document sent by ordinary mail is deemed to be served 7 days after it is sent.
 - (3.1) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.
 - (3.2) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

REGULAR AGENDA – for Discussion and Decision

3. 2012 - 2014 Strategic Plan Annual Review

Mr. McGee presented a summary of the implementation status of the three goals and related initiatives set out in the current Strategic Plan. Those three goals are:

Goal 1: the Law Society will be a more innovative and effective professional regulatory body;

Goal 2: the public will have better access to legal services; and

Goal 3: the public has greater confidence in the administration of justice and the rule of law.

A copy of Mr. McGee's PowerPoint presentation is attached as Appendix 1 to these minutes.

4. Equity and Diversity Advisory Committee: Enhancing Diversity in the Judiciary

Ms. Morellato introduced this matter as Chair of the Equity and Diversity Advisory Committee. She reported that at the July 12, 2013 Bencher meeting the Honourable Lynn Smith, QC, and the Honourable Donna Martinson, QC, retired justices of the BC Supreme Court, presented on the importance of diversity in the composition of the judiciary. Following that presentation, President Vertlieb requested that the Equity and Diversity Advisory Committee develop recommendations to the Benchers to improve diversity on the bench.

To fulfill this request, a subcommittee of Equity and Diversity Advisory Committee was struck to develop recommendations. Appointed Bencher Satwinder Bains (Chair), Vancouver Bencher Thelma O'Grady, non-Bencher Linda Robertson and Staff Lawyer Andrea Hilland comprised the subcommittee. The subcommittee met over the course of October and November to develop draft recommendations. The Equity and Diversity Advisory Committee reviewed and amended those recommendations before approving them for presentation to the Benchers.

Ms. Bains referred to the Equity and Diversity Advisory Committee's memorandum at page 90 of the agenda package for the four recommendations (the Judicial Diversity Recommendations) being presented to the Benchers for approval:

The Equity and Diversity Advisory Committee recommends that the Law Society of British Columbia:

1. Be pro-active in selecting a more diverse list of lawyers as the Law Society's candidates for appointment to the Federal Judicial Advisory Committee;

- 2. Investigate and endeavour to address the systemic barriers impacting the retention and advancement of lawyers from equity seeking groups, through the development and implementation of effective programs and more informal ways of supporting lawyers from equity seeking groups;
- On an annual basis, monitor and assess the effectiveness of Law Society of British Columbia initiatives relating to the retention and advancement of lawyers from equity-seeking groups, in light of the objective of improving diversity on the bench; and
- 4. Continue to collaborate with organizations representing lawyers from equity seeking groups in British Columbia to help disseminate information on the judicial appointments process, and to facilitate the career advancement of lawyers from equity seeking groups.

Ms. Bains confirmed that the focus of the recommendations is enhancement of judicial diversity in general, not just with respect to gender.

Mr. Meisner moved (seconded by Mr. Zacharias) that the Judicial Diversity Recommendations be approved by the Benchers for implementation by the Law Society.

In the ensuing discussion a question was raised regarding the relationship of the Judicial Diversity Recommendations to the work of the Justicia Project. Ms. Morellato confirmed that Justicia is presently focused on gender only, while the Judicial Diversity Recommendations go beyond gender diversity to include enhancing diversity for all equity-seeking groups. The intention is for the subcommittee to now move beyond the aspirational goals reflected in our 4 recommendations in order to foster diversity on the Bench for all equity-seeking groups, by implementing the recommendations in concrete ways.

The motion was <u>carried unanimously</u>.

Ms. Morellato confirmed that the 2014 Equity and Diversity Advisory Committee will form a new subcommittee to gather evidence, to develop strategies and initiatives, and to work with the Communications department on a public communications plan, all in aid of supporting implementation of the Judicial Diversity Recommendations. She advised that the Equity and Diversity Advisory Committee intends to report to the Executive Committee by June 2014 in that regard.

GUEST PRESENTATIONS

5. 2013 Employee Survey Results

Ryan Williams, President of TWI Surveys Inc., presented a summary of the results of the 2013 Law Society Employee Survey (a copy of Mr. Williams's PowerPoint presentation is attached as Appendix 2 to these minutes). Mr. Williams explained the purpose and value of annual employee surveys, noting that 2013 marked the eighth successive year that this voluntary survey has been conducted by the Law Society. Mr. Williams also noted that 86% of Law Society employees responded to the 2013 survey: the highest level of staff participation since the inception of the annual survey.

REPORTS

6. Federation of Law Societies of Canada (FLSC) Council Update

Gavin Hume, QC briefed the Benchers as the Law Society's member of the FLSC Council. He reported on matters covered in the December Council meeting in Ottawa, including:

- Receipt and review of committee reports regarding Trinity Western University's law school accreditation application
- Updates on the National Admission Standards Project and the National Discipline Standards Project
- Update on recent work and current projects of the Model Code Standing Committee
 - o awaiting responses from the law societies regarding the Standing Committee's proposed changes to the current conflicts rules, and the rules regarding the handling of incriminating physical evidence

Mr. Hume confirmed that the next meeting of the FLSC Council is scheduled for April 2014 (in Regina), and the focus of that meeting will include a review of the Federation's governance structure and the final report on National Discipline Standards. The governance review will include recommendations for replacing the current process for selection of the Federation President, which is based on geographic rotation, with a process based on merit.

7. President's Report

Ms. Lindsay welcomed media representatives, regular Bencher meeting guests, and the 11 Benchers newly appointed or elected for the 2014-2015 term:

Joseph Arvay, QC (Vancouver County – elected)

- Pinder Cheema, QC (Victoria County elected)
- David Corey, (Victoria County appointed)
- Jeevyn Dhaliwal (Vancouver County elected)
- Craig Ferris, (Vancouver County elected)
- Martin Finch, QC (Westminster County elected)
- Dean Lawton (Victoria County elected)
- Jamie Maclaren (Vancouver County elected)
- Sharon Matthews, QC (Vancouver County elected)
- -. Elizabeth Rowbotham (Vancouver County elected)
- Cameron Ward (Vancouver County elected)

Ms. Lindsay also welcomed First Vice-President Ken Walker, QC and Second Vice-President David Crossin, QC to their roles as Law Society officers for 2014.

Ms. Lindsay described the Law Society's three-year strategic plan as the foundation for the Benchers' work. She noted that development of the 2015-2017 Strategic Plan will be a key undertaking for the Law Society's Benchers and staff in 2014. Ms. Lindsay also noted that consideration of Trinity Western University's application for accreditation of a new law school will likely occupy a considerable portion of the Benchers' attention and time in 2014.

Ms. Lindsay commented on the importance of open, respectful discussion in Bencher meetings, describing consensus as the desired but not always attainable outcome of those discussions.

8. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 3 to these minutes) including the following matters:

- Introduction
- Operational Priorities for 2014
- Implementation of Legal Service Providers Task Force Report Recommendations
- Law Society as Insurer and Regulator Working Group

- Implementation of Lawyer Support and Advice Project
- Support for Law Firm Regulation Review
- Review and Renewal of Staff Performance Management Process
- New Workplace Bullying and Harassment Policy
- Fall Justice Summit Report
- Continuing Professional Development (CPD) Program Update
- 2013 Employee Survey

9. Report on the Outstanding Hearing & Review Reports

The Benchers received and reviewed a report on outstanding hearing and review decisions.

FOR INFORMATION

10. Briefing on Process re: Trinity Western University (TWU) Faculty of Law Matter

Ms. Lindsay briefed the Benchers regarding the process and timeline proposed by the Executive Committee for the Benchers' pending review of TWU's application for accreditation of a faculty of law. Ms. Lindsay referred to Law Society Rule 2-27(4.1) as the foundation for that review:

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.

Ms. Lindsay noted that the Federation of Law Societies has granted preliminary approval of Trinity Western University's (TWU) application for approval of a faculty of law at TWU, and that BC's Minister of Advanced Education has subsequently authorized TWU to grant law degrees.

Ms. Lindsay also noted that the Law Society has retained Geoffrey Gomery, QC of Nathanson, Schechter & Thompson LLP in this matter. She referred to the memorandum (page 150 of the

agenda package) for Mr. Gomery's advice on the nature of and basis for the duty of administrative fairness owed by the Law Society:

... In my opinion, Rule 2-27(4.1) confers on TWU what the cases describe as a legitimate expectation that its undergraduate law degrees will constitute academic qualification. The Law Society is therefore subject to an obligation of administrative fairness in considering any proposal that TWU's faculty of law be disapproved by the Law Society. That obligation requires that TWU be given notice of the proposal and an opportunity to make submissions before a final decision is made.

The duty of administrative fairness thus imposed on the Law Society only arises in the context of a resolution that TWU's faculty of law is not an approved faculty. It would not arise in the absence of any action by the Law Society, or in the event of a Benchers' resolution not to disapprove the TWU faculty.

Ms. Lindsay referred to the Executive Committee's memorandum at page 147 of the agenda package for explanation of the Bencher process developed by the Committee:

... [T]he Executive Committee concluded that there be should be a background briefing at the upcoming January 24th Bencher meeting at which general information would be presented about the process to date, together with the Federation decisions and some other considerations.

In the interests of transparency and openness, following the January Bencher meeting the Executive Committee concluded we should also invite input in writing through a posting on our website and communication through our regular E-Brief communication to the members. These responses would be compiled and provided to the Benchers as part of the material for their consideration at the February 28th meeting. If questions occur to the Benchers following the January 24th meeting, they should feel free to send them to the President.

For the February 28th Bencher meeting, the Executive Committee expects that all the Benchers will have read and fully considered all of the relevant material, as well as had an opportunity to reflect on the January briefing. The agenda for that February meeting will provide for a full and open discussion of any issues that approval of a TWU faculty of law presents. At the conclusion of that discussion, in the absence of a motion from any of the Benchers, the President will remind the Benchers that an applicant for admission from TWU faculty of law will meet the requirements for academic qualification under our Rules (in effect, that TWU will be an approved faculty of law) unless the Benchers adopt a resolution otherwise. It is expected that the wording of such a resolution should reflect the advice from Mr. Gomery:

Pursuant to Rule 2-27(4.1), the Benchers declare that, notwithstanding the preliminary approval granted to Trinity Western University on 16 December 2013 by the Federation of Law Societies' Canadian Common Law Program Approval Committee, the proposed faculty of law of Trinity Western University is not an approved faculty of law.

If a resolution declaring that the proposed TWU faculty of law is not an approved faculty of law is moved, and seconded, the discussion of the motion would be adjourned to the April 11th Bencher meeting. TWU would be provided with a transcript of the Bencher discussion at the February 28th meeting and any input we have received. TWU would be given the opportunity to make written submissions for consideration by the Benchers on April 11th. We would also provide representatives of TWU with the opportunity to attend the April 11th Bencher meeting.

Ms. Lindsay noted that since the preparation of its memorandum, the Executive Committee has re-considered the matter of a deadline for submission of input from the profession and the public, and now recommends that such deadline to be set at March 3, 2014.

Ms. Lindsay confirmed that if a motion to adopt a resolution declaring that the Law Society does not approve TWU's proposed faculty of law is presented and seconded at the February 28th Bencher meeting, that motion will be tabled and TWU will be provided with:

- a transcript of the relevant February 28th Bencher meeting proceedings;
- copies of input received from the profession and the public by March 3;
- an invitation to provide written submissions for the Benchers' consideration
 - with an appropriate deadline to ensure that the Benchers will have reasonable opportunity to consider any such submissions in advance of their April 11th meeting; and
- an invitation to attend and be heard at the April 11th Bencher meeting.

Ms. Lindsay also confirmed that if it is apparent some or all of the Benchers are not ready to make their decision on this matter at the April 11th meeting, or for any other reason that it is premature to call for the Benchers' decision at their April 11th meeting, then the matter will be put over to another date.

The Law Society's member of the Federation Council, Gavin Hume, QC, provided the Benchers with an overview of the process followed by the Federation of Law Societies of Canada in reviewing and approving TWU's application.

Michael Lucas, Staff Lawyer and Manager of Policy & Legal Services, outlined issues arising from provisions of the National Mobility Agreement, the Agreement on Internal Trade and the Labour Mobility Act (BC).

A discussion followed, during which the Benchers considered various issues in relation to their pending deliberations on this matter.

Ms. Lindsay confirmed that the Executive Committee will review Benchers' input provided in this discussion and then engage counsel to provide such additional legal opinions and briefings as seem warranted to the Committee, to be circulated to the Benchers for their consideration in advance of the April 11th meeting.

The Benchers discussed other matters in camera.

WKM 2014-02-03

The Law Society of British Columbia

This is Exhibit" H "referred to in the affidavit of Timothy E mcGR CC sworn before me at Vancouver

A Commissioner for taking Affidavits for British Columbia

Minutes

Benchers

Date:

Friday, February 28, 2014

Present:

Jan Lindsay, QC, President

Ken Walker, QC, 1st Vice-President

David Crossin, QC, 2nd Vice-President

Haydn Acheson Joseph Arvay, QC Satwinder Bains

Pinder Cheema, QC

David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer

Craig Ferris Martin Finch, QC

Miriam Kresivo, QC

Dean Lawton Peter Lloyd, FCA

Excused:

Lee Ongman

Greg Petrisor

Counsel Present:

Geoffrey Gomery, OC

(TWU matter only)

Staff Present:

Tim McGee, QC Deborah Armour

Su Forbes, QC Andrea Hilland Jeffrey Hoskins, QC

Ryan Lee Michael Lucas Jamie Maclaren

Sharon Matthews, QC

Ben Meisner Nancy Merrill

Maria Morellato, QC David Mossop, QC Claude Richmond

Phil Riddell

Elizabeth Rowbotham Herman Van Ommen, QC

Cameron Ward Tony Wilson Barry Zacharias

Bill McIntosh
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe

Guests:

Dom Bautista Executive Director, Law Courts Center Kari Boyle Executive Director, Mediate BC Society

Maureen Cameron Director of Membership, Volunteers & Public Affairs,

Canadian Bar Association, BC Branch

Jay Chalke, QC Assistant Deputy Minister, Ministry of Justice, representing

the Attorney General

Ron Friesen CEO, Continuing Legal Education Society of BC

Jeremy Hainsworth Freelance Reporter

Gavin Hume, QC Law Society Member of the Council of the Federation of

Law Societies of Canada

Drew Jackson Director of Client Services, Courthouse Libraries BC Anne Pappas, J.D. Interim Dean of Law, Thompson Rivers University

Richard Parsons President, Trial Lawyers Association of BC

Alex Shorten Vice President, Canadian Bar Association, BC Branch

Prof. Jeremy Webber Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on January 24, 2014 were approved as circulated.

The in camera minutes of the meeting held on January 24, 2014 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

Approval of Territorial Mobility Agreement 2013

BE IT RESOLVED to approve amendments to the Territorial Mobility Agreement 2013 (TMA 2013), and to authorize the President or her designate to execute the TMA 2013 on behalf of the Law Society of British Columbia, as recommended by the Credentials Committee (clean draft of the TMA 2013 is attached as Appendix 1 to these minutes)

REPORTS

2. Lawyers Insurance Fund: Program Report for 2013

Ms. Forbes presented a review of the Law Society's insurance program (the Lawyers Insurance Fund) for 2013. Ms. Forbes referred to PowerPoint slides throughout her presentation (Appendix 2 to these minutes), addressing the following topics:

- Drivers: Who we are and what we do
 - o Who We Are
 - o What We Do
- Places of Interest: Part A
 - BC Lawyers
 - o Number and Frequency of Reports
 - Claim Payments

- o Frequency by Area of Practice
- o Severity by Area of Practice
- o Closed Reports with No Payment
- o Results of Reports
- o Insurance Fee History
- o Insurance Fee Comparison
- Milestones: Part B
 - o LSBC Launches Novel 'Trust Protection' Insurance Scheme
 - o Part B Claims: 2004 2013
 - o Lawyers with Paid Claims
 - o Paid Claims by Source of Trust Funds
 - o Payment Time Lines / Comparison with Special Compensation Fund
- Signposts: Who we serve and what they think
 - Service Evaluation Forms: Part B
 - o Part B: Feedback from Claimants
 - o Service Evaluation Forms: Part A
 - o Service Evaluation Form Results: Part A

A Question and Answer session followed Ms. Forbes's presentation.

3. Briefing by the Law Society's Federation Council Member

Gavin Hume, QC briefed the Benchers as the Law Society's member of the FLSC Council. He reported on the following matters:

a. National Admission Standards Meeting (February 20, 2014 at the Law Society Building)

Don Thompson, QC (Executive Director of the Law Society of Alberta and Chair of the Federation's National Admissions Standards project) and several Federation staff members met with the Law Society's Lawyer Education Advisory Committee met on February 20, 2014. A number of other Benchers participated by telephone.

b. April 3-5 Federation Council Meeting and Conference (April 3-5 in Regina, Saskatchewan)

The Conference theme will be "pro-active discipline": addressing issues of risk identification and management. Mr. McGee will chair a half-day session on consistency and fairness in law societies' discipline processes; Ms. Armour will speak on National Discipline Guidelines and Ms. Lindsay will join Law Society of Upper Canada Treasurer Tom Conway in providing closing remarks.

c. CBA Code of Professional Conduct – to be phased out

The Canadian Bar Association has announced their decision to phase out the CBA's *Code of Professional Conduct*. Mr. Hume sees that decision as a significant reflection of the progress made by the Federation and its member societies in implementation of the Federation's *Model Code of Professional Conduct*.

4. President's Report

Ms. Lindsay briefed the Benchers on various Law Society matters to which she has attended since the last meeting, including:

a) American Society of Association Executives (ASAE) Symposium (February 10-11, Phoenix, Arizona)

Ms. Lindsay and Mr. McGee attended this conference for board chairs and chief executives of not-for-profit organizations. The ASAE represents more than 10,000 organizations, and its annual symposium is the lead educational conference educational conference on best practices for ensuring a strong and productive working relationship between chief elected and chief staff officers. Ms. Lindsay noted that the topics on board communication and consultation on difficult issues were particularly relevant to the Law Society.

b) 2014 Committees and Task Forces Update

Adjustments have been made to the membership of several 2014 Committees, to address meeting schedule conflicts and Bencher work load issues.

c) Mandates & Composition for New Task Forces

Work is progressing on development of draft mandates for two new task forces arising from the recommendations of the Legal Service Providers Task Force that were adopted by the Benchers in December 2013.

d) The Law Society's Bullying and Harassment Policy

The Law Society has implemented a bullying and harassment policy, responding to workplace bullying and harassment policies issued by WorkSafeBC in November 2013 under the *Workers Compensation Act*. The Act requires BC organizations to have in place a workplace bullying and harassment policy and provide appropriate training. The Law Society's new workplace bullying and harassment policy applies to all those working for the Law Society in any capacity, including management, professional staff, administrative staff, articling students, summer students, and contract personnel. It also applies to Benchers, committee members and volunteers.

Training sessions for Law Society staff, Benchers and volunteers are underway.

5. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 3 to these minutes) including the following matters:

- Introduction
- Report on 2013 Key Performance Measures
- Federation of Law Societies of Canada 2014 Spring Semi-Annual Conference in Regina
- ASAE Symposium for Chief Staff and Elected Officers
- Bencher Retreat Planning
- Financial Statements for Fiscal Year 2013

6. Report on 2013 Key Performance Measures

Mr. McGee reported on the Law Society's key performance measures (KPMs) program and process. 2013 was the seventh successive year that the organization has reported on KPMs,

¹ The Law Society's new workplace bullying and harassment policy has been posted to the BENCHER RESOURCES and COMMITTEE, TASK FORCE AND WORKING GROUP RESOURCES sections of the Law Society website.

which are intended to provide the Benchers and the public with evidence of the effectiveness of the Law Society's effectiveness in fulfilling its mandate to protect the public interest in the administration of justice.

Mr. McGee provided highlights of the 2013 KPM results, referring the Benchers to page 126 of the meeting materials for the detailed written report. He noted that while the Professional Conduct and Discipline departments use many other metrics to track performance, all but one of the departments' KPMs are based on complainants' surveys regarding satisfaction with the Law Society's handling of their complaints, on the following themes:

Timeliness

> Target: At least 75% of Complainants express satisfaction with timeliness

Fairness

> Target: At least 65% of Complainants express satisfaction with fairness

Courtesy

> Target: At least 90% of Complainants express satisfaction with courtesy

Thoroughness

> Target: At least 65% of Complainants express satisfaction with thoroughness

• Would Recommend

> Target: At least 60% of Complainants would recommend the complaint process

Mr. McGee pointed out that there are inherent limitations regarding interpretation and reliability of complainants' survey responses: particularly the tension between perceptions of "timeliness" and "thoroughness" and the impact of dissatisfaction with results on complainants' perceptions.

He explained that there can be a perception that on the part of a complainant that if the Law Society closed their file quickly, it could not have been investigated thoroughly.

Ms. Armour noted that there is a close connection between results of an investigation and complainant satisfaction. 87 per cent of complaints files handled in 2013 were closed at the staff level. Most complainants are not happy that their files have been closed, sometimes because the Law Society does not have jurisdiction. In cases where Law Society staff were able to resolve the issue between a client and their lawyer, client survey results were generally very positive. Timeliness of the Law Society's handling of complaint files has improved significantly in recent years. 98 per cent of complaint files closed in 2012 were closed within one year: our highest 'timeliness' rate ever and significantly better than the National Discipline Standard of 80 per cent. Ms. Armour also noted follow-up telephone surveys are being considered to address the current lack of evidence regarding complainants' rationale for their survey responses.

Mr. McGee commented that currently no other Canadian law societies operate a performance assessment program comparable to the Law Society's Key Performance Measures program.

7. Reports on Outstanding Hearing Decisions and Conduct Review Reports

Written reports on outstanding hearing decisions and conduct review reports were <u>received and</u> <u>reviewed</u> by the Benchers.

DISCUSSION/ DECISION

8. Governance Committee: 2013 Bencher and Committee/Task Force Evaluations

Ms. Kresivo briefed the Benchers as chair of the 2014 Governance Committee regarding evaluations completed by the 2013 Benchers and other members of the Law Society's 2013 committees and task forces. She referred to the Committee's report at page 189 of the meeting materials for background on the evaluation process and analysis of the results. Ms. Kresivo reported that in mid-December 2013, all of the Benchers and all the members of the 2013 committees and task forces were provided with links to online evaluation forms and asked to complete the forms by year-end. By December 31, 2013, 25 of 31 Benchers (81%) and 104 of 131 members of committees and task forces (79%) had completed their evaluation forms.

Ms. Kresivo confirmed that the evaluations indicated generally high levels of satisfaction with relationships with Law Society management and the Benchers' own working processes. She highlighted three issues regarding which the evaluations indicated Bencher interest in more information:

• CEO succession-planning

- Enterprise risk assessment and management
- Bencher involvement in LS budget process

Ms. Kresivo referred to paragraphs 26-29 of the Governance Committee's report for (page 198) for the Committee's recommendations to the Benchers:

. . .

- 26. The Benchers should encourage the Executive Committee to follow up on Mr. McGee's memorandum and bring the matter of succession planning forward to the Benchers so that the Benchers can meet their obligation to ensure there is an adequate CEO succession plan in place.
- 27. The Benchers should consider more frequent reporting on the enterprise risk management plan, perhaps as a stand-alone item on the Bencher agenda.
- 28. The Benchers should be encouraged to attend separate budget sessions and the Chair of the Finance & Audit Committee should continue to present the budget and fees to the Benchers.
- 29. The Chairs of the 2014 committees and task forces should review the 2013 evaluation responses for their respective committee or task force to consider whether the responses might signal opportunities for improvement.

Ms. Lindsay requested that the Benchers express any concerns they might have with those recommendations. None were expressed.

Ms. Kresivo acknowledged Adam Whitcombe, Chief Information and Planning Officer, for his able assistance in preparing the Governance Committee's report.

Mr. Walker encouraged interested Benchers to attend upcoming meetings of the Finance and Audit Committee (April 10 and April 24).

9. Proposed Trinity Western University (TWU) Faculty of Law

Process Update for April 11 Bencher Meeting

Ms. Lindsay reviewed the contents of her memorandum to the Benchers (page 255 of the meeting materials). She stressed the importance of ensuring procedural fairness and maintaining an open, transparent process throughout the Benchers' consideration of this matter. Ms. Lindsay also addressed the Benchers on issues relating to their avoidance of apprehension of bias and conflict of interest.

Mr. McGee provided an update regarding the Law Society's receipt of online submissions on the TWU matter. He confirmed that about 170 such submissions have been received to date. The submissions being reviewed and collated by Law Society staff prior to circulation to Benchers and TWU, in an orderly manner and well in advance of the April 11 Bencher meeting.

Mr. McGee outlined recent developments in other jurisdictions.

Mr. Walker briefed the Benchers on his attendance at the recent Canadian Bar Association National Council meeting, particularly regarding the debate and passage of a resolution urging Canada's law societies and their national coordinating body to require all legal education programs to offer equal opportunity to all, without discrimination.

Ms. Lindsay outlined the process being planned for the April 11 Bencher meeting and invited questions and discussion of related issues, particularly noting the importance of the Benchers refraining from the expression of their views on the merits of TWU's application for law school accreditation until after a motion calling for adoption of an appropriate resolution has been moved and seconded.

In the ensuing discussion the following issues were raised:

- whether non-Benchers will be permitted to speak at the Bencher meeting
 - o it was confirmed that the meeting will not be an open forum and will be conducted under the Rules governing Bencher meetings
 - Benchers and Life-Benchers may address the meeting orally
 - otherwise, submissions are to be made in writing and in advance
- whether Benchers' in camera deliberation is planned to precede their vote on the TWU matter
 - o an in camera session is not planned
- when should Benchers share their personal views on the merits of TWU's application
 - o at the April 11 meeting, after an appropriate resolution has been moved and seconded
- Mr. Mossop requested that the Law Society endeavour to obtain and provide to the Benchers the following information in advance of the April 11 meeting:

- copy of BC Human Rights Commission Annual Report that sets out complaints and statistics on areas of discrimination
- copy of the Law Society Equity Ombudsperson's 2011 report on areas of discrimination
 - background on the four discrimination complaints referred to therein
- o information from the Canadian law deans regarding any trouble with they have had with Trinity Western graduates, in particular in the area of anti-gay activities
- o information on the American Bar Association's anti discrimination policy, and particularly details and background regarding any exemption for religious law schools
- o Law Society discipline matters regarding anti-gay activity
- o information from Trinity Western University regarding
 - number of people who have been disciplined (including warnings and informal meetings) for engaging in activities prohibited by TWU's Community Covenant
 - breakdown and details of areas of discipline at TWU
- logistics and protocol for webcasting the April 11 meeting
- confirmation that members of the public may provide anonymous submissions for the Benchers' consideration
- process and protocol for the TWU deliberation being planned for the April 11 Bencher meeting

At the conclusion of the discussion a notice of motion (Appendix 4 to these minutes) was circulated, which Ms. Lindsay confirmed is expected to be moved and seconded as the basis for the Benchers' debate and deliberations of the TWU matter at the April 11 meeting.

The Benchers discussed other matters in camera.

WKM 2014-03-21

The Law Society of British Columbia

Minutes

Benchers

Date:

Friday, April 11, 2014

Present:

Jan Lindsay, QC, President

Ken Walker, QC, 1st Vice-President David Crossin, QC, 2nd Vice-President

(by telephone) Haydn Acheson Joseph Arvay, OC Pinder Cheema, QC

David Corey (by telephone)

Jeevyn Dhaliwal Lynal Doerksen Thomas Fellhauer Craig Ferris

Martin Finch, QC Miriam Kresivo, QC

Dean Lawton

This is Exhibit" \mathcal{I} "referred to in the affidavit of Timothy E mesee, Oc sworn before me at. V.Q

A Commissioner for taking Affidavits for British Columbia

Peter Lloyd, FCA Jamie Maclaren

Sharon Matthews, OC

Ben Meisner

Maria Morellato, QC David Mossop, QC Lee Ongman

Greg Petrisor Claude Richmond

Phil Riddell

Elizabeth Rowbotham Herman Van Ommen, QC

Cameron Ward Tony Wilson

Excused:

Satwinder Bains

Nancy Merrill

Counsel Present:

Geoffrey Gomery, QC

Staff Present:

Tim McGee, QC

Jeffrey Hoskins, QC

Bill McIntosh

Guests:

Kevin Boonstra Legal Counsel, Trinity Western University

Anne Chopra Ombudsperson, Law Society of British Columbia

Cedric Hughes Law Society Member, Hughes & Company Law Corporation

Gavin Hume, QC Life Bencher

Bob Kuhn, J.D. President, Trinity Western University

Wayne Robertson, QC Executive Director, Law Foundation of BC

Kevin Sawatsky Vice-Provost (Business) and Legal Counsel, Trinity Western

University

Alex Shorten Vice President, Canadian Bar Association, BC Branch

Krista Simon Law Society Member, Hammerberg Lawyers

Geoffrey Trotter Law Society Member, Geoffrey Trotter Law Corporation
Sandra Wilkinson Law Society Member, Ministry of Justice – Legal Services

Branch

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on February 28, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on February 28, 2014 were approved as circulated.

The minute of the March 17, 2014 email approval of time limits on Benchers' speeches at the April 11 Bencher meeting was approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

 Recommendation to Form the Legal Services Regulatory Framework Task Force, and Proposed Mandate

BE IT RESOLVED to create the Legal Services Regulatory Framework Task Force, and to endow that body with the mandate to develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest. Specifically, the Task Force should:

- (a) identify areas of unmet needs for legal services or advice;
- (b) identify who in British Columbia and elsewhere, besides lawyers and notaries, currently provide legal services and assess the current value and skill that those providers bring to their work;
- (c) identify areas of legal practice suitable for the provision of legal services by non-lawyers;
- (d) identify the qualifications necessary for non-lawyers to be able to provide such services;
- (e) make recommendations to the Benchers for a regulatory framework to:
 - (i) credential non-lawyers to provide legal services in discrete areas of practice;

- (ii) set standards for the provision of such services; and
- (f) ensure that the framework developed is consistent with a unified regulatory regime for legal services.

REPORTS

2. President's Report

Ms. Lindsay briefed the Benchers on various Law Society matters to which she has attended since the last meeting, including:

a. Legal Services Regulatory Framework Task Force Membership

The Bencher-members of the Legal Services Regulatory Framework Task Force are: Art Vertlieb, QC (Chair), David Crossin, QC (Vice-Chair), Satwinder Bains, Jeevyn Dhaliwal and Lee Ongman. The non-Bencher members are: Karey Brooks (Janes Freedman Kyle Law Corporation), Nancy Carter (Ministry of Justice), Dean Crawford (Canadian Bar Association, BC Branch), Carmen Marolla (BC Paralegal Association), Wayne Robertson, QC (Law Foundation of BC) and Ken Sherk (BC Society of Notaries).

b. BC Supreme Court Assessment Panels

The BC Supreme Court is seeking applicants for two new Vancouver Registry positions (Master and Registrar). Ms. Lindsay and First Vice-President Ken Walker, QC will serve on the assessment panels to review the applications.

c. Federation of Law Societies of BC Conference and Council Meeting in Regina

The Law Society is well-represented by its Federation Council representative, Gavin Hume, QC, who will report on the recent (April 2-5) Federation Conference and Council Meeting in Regina.

d. Replacement of Barry Zacharias as County of Prince Rupert Bencher

A Bencher by-election is underway (June 6) in the County of Prince Rupert, following Barry Zacharias's recent resignation as Bencher for that district. Mr. Mossop has replaced Mr. Zacharias as Chair of the Access to Legal Services Advisory Committee and Ms. Merrill is now Vice-Chair.

e. Legal Services Society Funding Update

A recent letter from the Honourable Suzanne Anton, QC (previously circulated to the Benchers) provided an update on Legal Services Society funding, and outlined a number of provincial government initiatives intended to enhance access to legal services.

f. Recent Honours

The following recent honours were announced:

- Past President Bruce LeRose, QC has been recognized by the City of Trail for his
 distinguished record of public service, most notably for serving as the Law Society's
 first President from Kootenay County in 2012;
- Vancouver Bencher Joseph Arvay, QC, is the recipient of the 2014 Robert S. Litvack Award, from the McGill University Centre for Human Rights and Legal Pluralism
- The Law Society's <u>Justicia Project</u> has been nominated for a provincial Nesika Award for the project's efforts to promote diversity and equity in the legal profession over the past year. The nomination came from a member of the public. "Nesika" (pronounced Ne-SAY-ka) is Chinook for "we, us, our" and comes from a trade language used by many different Aboriginal linguistic groups along the west coast of North America. The Nesika Awards were started in 2008 to recognize the people, organizations and businesses whose exceptional work helps bring our diverse cultures together.

3. CEO's Report

Mr. McGee advised that since the February 28 Bencher meeting, preparations for the TWU debate and decision at today's meeting have occupied much of his time and attention, and that of many Law Society staff members. Mr. McGee's usual written report to the Benchers will be included in the agenda package for the May meeting.

Preparations for the third Justice Summit (May 4-5) are well underway. Convened by the Ministry of Justice, this summit will focus on issues of access to justice and legal services in family law matters. Mr. McGee will serve as moderator, and Policy & Legal Services Manager Michael Lucas is a member of the planning committee.

4. Federation Council Member's Report on the Federation's Council Meeting and Conference: April 3-5, Regina

Gavin Hume, QC briefed the Benchers as the Law Society's Federation Council member regarding the recent Federation Conference and Council meeting in Regina.

Key topics of the April 3 Council meeting were:

- National Discipline Standards Pilot Project
 - o a set of national discipline standards were approved, to be sent to the member law societies for review and approval
 - o a standing committee was created to monitor those standards
- Strategic Planning
 - o review of the Federation's current strategic plan was begun, including the subject of Presidential succession planning
- National Mobility
 - o The Territorial Mobility Agreement was signed by the Presidents of the Federation's member law societies

The theme of the Conference was Discipline: Understanding Today's Risks and Preparing for Tomorrow's Challenges: The focus was on proactive approaches to discipline. The Law Society's Chief Legal Officer, Deborah Armour, gave a presentation on the LSBC Sanctioning Guidelines Project. CBA President Fred Headon spoke and dealt with three topics:

- discontinuance of the CBA Code of Ethics because of the success of the Model Code
- continuing cooperation between the CBA and the Federation and its members on Access issues
- request for Federation input into the CBA Future s Project as it looks at Regulation of the profession.

5. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were <u>received and reviewed</u> by the Benchers.

DISCUSSION/ DECISION

6. Trinity Western University Proposed School of Law

Ms. Lindsay opened the discussion by noting that the Benchers of the Law Society of BC were being asked to determine whether Trinity Western University's proposed School of Law is an approved faculty of law for the purposes of the Law Society's admissions program. She reviewed the history of the matter and then outlined the procedure to be followed in the discussion of the motion, notice of which was circulated to the Benchers at their February 28 meeting and then provided to TWU.

Mr. Walker moved (seconded by Mr. Crossin) that the Benchers adopt the following declaration:

Pursuant to Law Society Rule 2-27(4.1), the Benchers declare that, notwithstanding the preliminary approval granted to Trinity Western University on December 16, 2013 by the Federation of Law Societies' Canadian Common Law Program Approval Committee, the proposed School of Law of Trinity Western University is not an approved faculty of law.

In the ensuing discussion a number of Benchers spoke for or against the motion.

A number of Benchers who spoke for the motion indicated that they found the provision of the covenant requiring that TWU "community members voluntarily abstain from ... sexual intimacy that violates the sacredness of marriage between a man and a woman" (the Community Covenant) to be discriminatory, and inconsistent with the Law Society's mandate set out in <u>s.</u> 3(a) of the Legal Profession Act.

A number of Benchers who spoke against the motion indicated that they did so reluctantly: having concluded that the determinative Canadian law remains as stated by the Supreme Court of Canada in *Trinity Western University v. BC College of Teachers* (2001 SCC 31); and without approving or supporting the provision of the Community Covenant.

A number of Benchers who spoke against the motion encouraged TWU to remove the offending words of the Community Covenant, and to consult with other BC legal institutions regarding the language of the Community Covenant and its application to the faculty and students of the proposed TWU School of Law

At the conclusion of the discussion, Ms. Lindsay re-read the motion and called for a vote by show of hands.

The following Benchers voted for the motion: Mr. Arvay, Mr. Lloyd, Mr. Maclaren, Ms. Matthews, Ms. Ongman, Ms. Rowbotham and Mr. Ward (7 votes).

The following Benchers voted against the motion: Mr. Acheson, Ms. Cheema, Mr. Corey,

Mr. Crossin, Ms. Dhaliwal, Mr. Doerksen, Mr. Fellhauer, Mr. Ferris, Mr. Finch, Ms. Kresivo,

Mr. Lawton, Mr. Meisner, Ms. Morellato, Mr. Mossop, Mr. Petrisor, Mr. Richmond,

Mr. Riddell, Mr. Van Ommen, Mr. Walker and Mr. Wilson (20 votes).

The motion was defeated (7 for and 20 against).1

There being no further business, Ms. Lindsay declared the meeting terminated.

WKM 2014-04-23

¹ Ms. Lindsay announced the result as "6 for and 20 against" but the confirmed tally is "7 for and 20 against."



This is Exhibit "J" referred to in the affidavit of Timothy E many or sworn before me at Vancouver this 5" day of January 20.15

A Commissioner for taking Affidavits for British Columbia

Law Society of British Columbia Bencher Meeting DATE: April 11, 2014

[Transcription begins at 3:28]

Welcome everyone to – whoopsie, there you go, welcome everyone to April 11, JL: 2014, a day that we've all been working very hard toward. The table looks a little bit different than usual. We will note that Geoff Gomery, our counsel, is at, is sitting at the table with us but we don't have any other guests in the chair beside Mr. Mossop, excuse me, beside Mr. Mossop for guests to speak if recognized. You've all got a microphone in front of you, you've got the notes on how to the microphone works. We're going to try to run this meeting as we run all meetings, call for speakers and call for show of hands. Geoff and I will keep a list and we will be identifying the speakers by the list and I will, from time to time, announce the list so that the technical people can line up the cameras in anticipation. But as much as we can, we want to be, run the meeting as we do. When you are called upon, when you're recognized to speak, then you have to activate, one or the, you have to activate your microphone by one or the other of the buttons, they're the same button, it's one button in two spots, and then when you're finished speaking then you're to turn off your microphone or I can turn it off for you if that becomes difficult.

[Laughter – several speak at once – inaudible]

JL: I want to just make a couple of comments. We have, attending the meeting today by telephone, David Crossin and David Corey, hello gentleman. That's okay, we're not going to open the [inaudible] just for that. Excused from the meeting, Satwinder Bains and I'm put Nancy Merrill, sorry, family emergency, we also

saw Nancy last night, family emergency and she's not here. We wish her the best and - she's fine. Okay. I want to make a special welcome to our guests, representatives from Trinity Western, Mr. Bob Kuhn, President, Mr. Kevin Sawatsky, Vice Provost Business, and Kevin Boonstra, legal counsel. Thank you gentleman for attending. We have virtually a full table other than the excused that we've mentioned. We have also at the table, which is not unusual, Tim McGee and Jeff Hoskins, anyone notice that? We've invited people to attend and I am pleased to welcome Alex Shoreden, CBA, Jeff Trotter, Mr. Trotter, Krista Simon, pleased to meet you Krista, Ann Chokra, our equity ombudsperson, Sandra Wilkinson, Cedric Hughes, Gavin Hume, Life Bencher, I see Mr. Robertson at the back, not along the - Liam Robertson. Thank you all for attending. I've talked about the microphone a bit, I'm mixing up the agenda a bit, we're going to have just some preliminary matters, I'm going to give a little bit of a President's report and then we'll hear briefly from Tim and then we will hear from Gavin on a Federation meeting in Regina, and then we will move to, any discussions of the meeting. You've all taken a look at the material and you've been sent an agenda. You'll appreciate that we now have a task force struck arising from the Legal Services Providers task force recommendations made by Bruce and his committee at the meeting at the end of 2013. Given that we now have a mandate, I have appointed the task force, or populated the task force with Art Vertlieb who will Chair, David Crossin is Vice-Chair, bencher is Satwinder Bains, Jeevyn Dhaliwal and Lee Ongman, thank you both or all. Non-benchers, Terry Brooks, Nancy Carter, Carmen Nerola, and Liam Robertson, thank you again, and from the Society of [inaudible]. The other work that, most of the work you can appreciate had, recently, has been on the big issue of the day, but the Law Society is continuing to work and we are continuing to be called, excuse me, on a number of matters. You will have seen that the Supreme Court is looking for a new Master and a new Registrar and has the CBBC and also the Law Society to participate in the assessment panels so Mr. Walker and myself will participate in those assessment panels for the selection of new Master and new Registrar. There, you will hear from Gavin about our meeting in the, the Federation meeting in Regina,

we were just in Regina last weekend. And for those who care, there is still snow on the ground, there's still quite a bit of ice, but it was above freezing and there were many puddles of water not running away so walking was a bit of a challenge for [inaudible], it's okay. I just want to remind all of you that we are very wellrepresented by Mr. Hume. He is well respected at the Federation, he is listened to, he is an effective member and speaks on all of our behalf at Federation meetings and we should, we thank him for that and we should be pleased and comforted that we are, we are well-represented. The other thing arising from Regina or the Federation meeting was a dinner meeting at the museum, I can't remember the, the MacKenzie museum, and there was a three-women group who sang for us. It was, they were tremendous, I was inspired, almost as good as Jeevyn, I was inspired and I am working furiously to try to get them out here or to organize some kind of presentation because I thought they were just so good, we'll see how that works. I just also want to remind everyone, and you will note there's an empty chair, Barry Zacharias has resigned and you know about that, it's, we're sorry to lose Barry, he was a valuable member of this table and a friend to many. However, it goes on and David Mossop has kindly agreed to step up as Chair of the Access to Legal Services Advisory Group, and Nancy will step up as Vice Chair of that group. His other duties will be, I think, replaced by the new bencher arriving from Prince Rupert, probably in early June, hopefully in time for the June meeting. That's, so we've set the wheels in motion for the nominations and the nomination meeting's coming up and then the election date and the result will be I think the Thursday before our meeting in June. With any luck, someone will be able to attend, we'll see. We continue to have access top of mind. I'm working with, or I'm attending meetings around the formation of a Justice Commission which would, multiparty interest groups, stakeholders, participating and how can we move forward, what can we do. You know that it's the topic of our retreat and we are, we generated a fair bit of interest across the country. There are attendees from many of the Law Societies coming to our retreat to hear us and to share with us on access issues. You've seen copies of the correspondence or my correspondence and Art's correspondence with the Attorney General on the issue

of funding for LSS and of course we are continuing to work on that topic [inaudible]. Now I want to speak about some recent honorees. You all remember Bruce LeRose, immediate, no, two-times past president. Bruce is being recognized tonight by the City of Trail for his - no sorry, early May - for his distinguished record of public service and most notably for his bringing Trail to the provincial spotlight through his position as President of this Society, the Law Society. He's pleased to be honored and I think we should be proud of the good work he did here that brought him that honour. I also want to recognize Joe Arvay who is the recipient of the 2014 Robert Litvack Award from the University of McGill Center for Human Rights and Legal Pluralism. And finally, I want to confirm or recognize the Law Society's Justicia Project which has been nominated for the provincial [??] Award for the project's efforts to promote diversity and equality in the legal profession over the past year. The nomination came from a member of the public, [??] is Chinook for we, us, or our, and comes from a trade language used by many different aboriginal linguistic groups along the west coast of North America. [??] Award started in 2008 to recognize the people, organization, or businesses whose exceptional work help bring our diverse cultures together. And I think we should all be proud of the work being done by Equity and specifically the Justicia Project who received the nomination. I think that brings me to the end of the things that I need to say. So that is my report, anyone have any questions? Mr. McGee?

TM: Thank you Madame President. My report is very brief, there isn't one, but I would just like to point out obviously the preparations for today have occupied most of my time and many staffs' time and just want to thank all of you for your cooperation and patience in all of this planning. There are a number of things going on at the Law Society. What I've decided to do, with the approval of the President, is to carry those over to my report at the retreat in May, May 9th and 10th, so there will be a further report that will combine both those. The only I thing I'd mention this morning is that there is a spring Justice Summit. This is the third in the series of Justice Summits that we are involved with the Ministry of Justice. This is on access in family law. That is taking place on May 4th and 5th

here in Vancouver. Our own Michael Lucas is on the planning committee. I will act as moderator for the conference again, and a number of Law Society members and others will be involved on that important day. So if you are particularly interested in that topic, please see me or Michael and we can give you a fuller update on the planning for that. Thank you Madame President.

JL: Thank you Mr. McGee. Mr. Hume, could you brief us on Regina? And I've already talked about the group so...

GH: Thank you Madame President, and thank you for your embarrassing but kind remarks. And I'll be brief, you said briefing so I'll be brief. We met in Regina on April 3rd through 5th. April 3rd is the Council meeting where we received the usual reports dealing with the various committees and groups that are working on Council and Federation matters. And there was one decision of significance, the decision involving an pilot project on the National Discipline Standards, a project that our members are very happily involved in. The discipline standards were approved, [inaudible] that pilot project approved, and they are now being deferred to the various Law Societies across the country for final acceptance. I think it's fair to say that the consensus was, at that meeting and in the subsequent conference, that the discipline standards had very much contributed to raising the standards that Law Societies across the country have with respect to the administration of our discipline processes. Separate and apart from that, there was also the creation of a standing committee to monitor how those discipline standards are in fact working with the new, to, and in recognition of the fact that from time to time those standards will have to be adjusted as issues arise and they work their way through the process. The conference focused on discipline. This is obviously the highest profile work that our Law Societies engage in and the profile from the public's perspective, so the focus of the day-and-a-half conference was on discipline. The theme was understanding today's risks and preparing for tomorrow's challenges in discipline, and there was a lot of emphasis, appropriate emphasis in my view, on proactive discipline, how do we instead of just being responsive and reactive to discipline problems, how do we move proactively in order to avoid the need to have reactive disciplinary

sanctions. That included presentations from the senior legal officers of various professions, physicians, security commission, all of which were quite instructive and I think provided the various members of the Law Societies who were in attendance with some ideas as to how we might be more proactive and consistent. It's one of the projects I know we're working on here at our Law Society. Our [inaudible] did a presentation on the Sanctioning Guidelines Project that she and others are working on and I think that was well received. And as I said, the consensus during the discussion was that the discipline standards, having discipline standards result in [inaudible] of all the Law Societies across the country and of course there are challenges in that regard because of the disparity and the size of those various Law Societies. We also heard from Fred Headon, the President of the Canadian Bar Association, and he had three themes which are, in my view, of significance to the Law Societies. First of all, he commented on our model Code process and the fact that the CBA will no longer pursuing the ongoing development of their Code of Conduct, with recognizing I think the good work that the Federation has done to develop a standard and consistent approach to ethical issues in Canada. He spoke about the access report that the CBA had worked on, developed, and encouraged collaboration with the Federation on those topics. He also discussed the future project that they're engaged in and made specific comment on the regulation portion of that future project, and again invited the Federation and the various Law Societies to participate with them as they look at the impact of regulation on the future of the legal profession. In addition to that, our President signed, along with the other Presidents of the Law Societies, the Territorial Mobility Agreement, another step forward for the profession in Canada to permit national mobility, and our President participated in the regular Presidents' Meeting with the President of the Federation and the other Presidents and Vice Presidents from across the country where there was a good discussion of presidential [abrogation of Canada's structured Code system??], who becomes the President of the Federation, and then a beginning discussion with respect to our strategic plan because in the next year or two we have to develop a new strategic plan. The consensus appeared to be disciplinary consensus obviously, and then going forward, we should continue to focus on national standards for the Law Societies across the country, flowing in of course largely from the mobility processes that we have in place. So Madame President, those, that's my report and I'm happy to answer any questions. Seeing none, I'll retire from the [meeting??].

JL: Thank you Mr. Hume. In keeping with, the next thing on the agenda is the report on outstanding hearing and review reports, and in keeping with the comments on national standards, and this is specifically discipline standards, we circulated this list to make sure that we are complying with the standards and that we have all of our reports and processes well under way and there's no grey on this report so that's good news. We've raised attention on this meeting, well done everyone, thank you very much. Oh oh, are you all right? All right, so we move now to the discussion and decision on the Trinity Western University proposed School of Law. I'm going to have a few introductory comments. So today, benchers of the Law Society are being asked to determine whether Trinity Western University Law School is an approved Faculty of Law for the purposes of the Law Society's Admission Program. In December 2013, the Federation of Law Societies announced the Canadian Common Law Program Approval Committee had completed its work and gave preliminary approval to the proposed law school at Trinity Western. Shortly thereafter, the BC Minister of, Ministry of Advanced Education authorized the Institution to grant law degrees. On January 24, the Law Society invited the public and lawyers to make written submissions regarding the proposed law school. The deadline for submission passed on March the 3rd, at which point close to 300 letters and submissions had been received for us to consider. On February 28, at our last meeting, a notice of the motion to be made at today's meeting was provided to the benchers. I made it clear at that time that in giving the Notice of Motion, there was no intention to express any opinion on the merits and that the notice was being given basically by the Executive in order that the question might be properly and fairly considered by the benchers at this meeting. The Law Society rule, our rule 2-27 (4.1) provides for the purposes of this rule, a common law facility 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. That's what gives rise to the motion that we are considering today. The Notice of Motion was circulated at the February meeting. [Inaudible] have made it clear that the sole intention of the motion is to provide the benchers with the opportunity to consider thoroughly, carefully, and in a manner that's fair, whether to exercise their discretion under 2-27 (4.1) in the public interest. The operative clause of the motion, pursuant – sorry- this is, the motion is 'Pursuant to Law Society rule 2-27 (4.1), the benchers declare that notwithstanding the preliminary approval granted to Trinity Western University on December 16, 2013, by the Federation of Law Societies Canadian Common Law Program Approval Committee, the proposed Faculty of Law at Trinity Western is not an approved Faculty of Law. Mr. Walker?

KW: Madame President, I made the motion.

JL: And so I call on Mr. Crossin. Is that, is Mr. Crossin ...?

KW: He's on the phone.

JL: Yeah, we just have to wait for it.

DC: Can you hear me?

JL: There we are, yes, go ahead, thanks David.

DC: Okay, yes, I second the motion.

JL: All right. There we have it, the motion's on the table. The plan is to proceed as much as we can in the way we usually do. I will call for speakers, who [inaudible] call, keep a list of speakers, ask you to show your hand if you want to speak, we'll keep a list and from time to time, I will review the list for the purposes of the technical people so that they can know where to point the camera in anticipation. When you are called on to speak, then please activate your speaker or your microphone and turn it off when you're finished. All right. Sorry? Oh, and time limits, Mr. Hoskins reminds me that we all agree, well we virtually all [inaudible] that limits for speeches will be five minutes for first speeches and three minutes

for second, and I want to just thank everyone for your quick response to that proposal and I'm sure that [inaudible] for everyone [inaudible]. All right, so I will call for speakers. Mr. Arvay, Mr. Maclaren, Mr. Doerksen, Mr. Wilson, Mr. Riddell, [inaudible], Riddell, Mr. Lloyd, this isn't, this isn't the only chance you can show your hand. It's okay, [inaudible], Mr. Richmond, thank you. Oh my goodness, and we're going to determine the list right here. Mr. Lawton, did I get, Mr. Mossop I have you, Mr. Lawton...

KW: Mr. Meisner.

- JL: Mr. Meisner, thank you. Mr. Finch, Mr. [inaudible], Ms. Rowbotham, and Mr. Ward, all right. Ms. Matthews, all right, I will read the list oh, and I'm sure that we will have speakers from the phone too, perhaps, I think what we've asked is that you would email Mr. MacIntosh if you want to be added to the list and he will let us know, all right? All right, so the order, the list, the names that I have so far: Mr. Arvay, Mr. MacIaren, Mr. Doerksen, Mr. Wilson, Mr. Riddell, Mr. Lloyd, Mr. Mossop, pardon me a moment Mr. Seagull, Mr. Richmond, Mr. Lawton, Mr. Meisner, Mr. Finch, Ms. Rowbotham, Mr. Ward, Ms. Matthews, and I've missed Ms Morellato I see. And as I say, this is not the end of the list, but one speech only in this time round. Mr. Arvay.
- JA: Madame President, all benchers, I speak to support the resolution not to approve the TWU Law Faculty. In my opinion, it is not in the public interest for the Law Society to approve this law school and I say that this is the ultimate issue that is before us, and not simply whether its students will be academically qualified to be lawyers. This is the view of Chief Justice Finch, and to the extent that others say otherwise, I respectfully disagree. My main objection to this law school is what I see as discriminatory conduct by the Administration of the law school. I object to what I say is the metaphorical sign at the gate at the law school which says no LGBT students, faculty, or staff are welcome. It is this act or conduct of the Administration of TWU that is discriminatory and per se harmful and it is the reason that the Law Society, which is charged with respecting the rights and freedoms of all persons in British Columbia, must refuse to approve this law

school. The Federation's Special Advisory Report, which also by the way considered it appropriate to consider the wider public interest and not only the academic program, acknowledged that the community covenant made the law school an unwelcome place for LGBT students and faculty even if it was not a complete ban. That committee concluded that the community covenant would likely discourage most from applying to the law school at the university. In my view, a sign that says LGBT are not welcome is as bad as a sign that says you cannot apply. The Federation, in considering whether the proposed law school should be approved, adopted the distinction that it was going to rely on United States law schools between the status of being gay, lesbian, or transgendered and the conduct of such a person. The Federation says that it is impermissible to have a rule that denies or discourages entry based on status but it is okay if it is about conduct. This was a surprising and disturbing distinction to have drawn. It is simply a euphemistic way of embracing the aphorism that we love the sinner but hate the sin and it is indeed the very proposition that is at the core of TWU's community covenant and why I say it should not be approved as a law school. What is even more surprising about the Federation's Special Advisory Report is that while it acknowledged the most recent decision of the Supreme Court of Canada on the topic, being the Whatcott Decision, it failed to point out that the Supreme Court of Canada not only unanimously and soundly rejected the sin/sinner distinction, but it did so by adopting the dissenting opinion of Madame Justice L'Heureux-Dubé in the Trinity Western case. This leads me to the relevance of the Supreme Court of Canada in the Trinity Western case. In light of the Supreme Court of Canada adoption of Justice L' L'Heureux-Dubé's dissent, one must now question whether the Supreme Court of Canada would decide that case the same today that it did 13 years ago. In my view, it would not. But even if it might, in my view, the focus of that case was very different than what ought to be the focus of the matter before us. As the Supreme Court of Canada said most recently in the Bedford case, even lower courts can refuse to follow a decision of the Supreme Court of Canada if there has been a quote change in the circumstances that fundamentally shifts the parameters of the day. And this debate

has not only been unprecedented, but has fundamentally shifted from what was before the Supreme Court of Canada. The focus of the Supreme Court of Canada was the view of the College that graduates from a teachers' college at TWU would discriminate against their future students. The Supreme Court of Canada said that should not be presumed and drew the sensible distinction between what such a graduate might believe and how such a graduate might behave, and said that in the absence of evidence of such harmful behaviour, there is no reason to deny the graduate a teaching certificate. There was but passing reference in the Supreme Court of Canada to what I say is now the real issue before us, and that is what I call the sign at the gate. All the Supreme Court of Canada said about that was that the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our Section 15 Jurisprudence and that as a private institution it is exempt from the BC Human Rights Act. In my view, the evolving jurisprudence of the Supreme Court of Canada Section 15, and I don't have time to elaborate, would now condemn this admission policy were it enacted by a governing body and it would uphold the decision of this Law Society as a body subject to the Charter which refused to sanction such a discriminatory policy. That admission and hiring policy perpetuate prejudice against LGBT students and faculty and it is irrelevant that this may not be the motive or purpose of the community covenant; all that matters is that it has this affect or impact. Nor, in my opinion, could TWU take any refuge in the exemption allowed to religious organizations under the BC Human Rights Code. The problem with TWU seeking to rely on this exemption is that it does not seek to give preference to persons of the same religious belief, since it says anyone regardless of their religious belief can attend. Instead of using belief as the criteria of admission, TWU uses a Code of Conduct and there is nothing in the Human Rights Act that allows discrimination based on such conduct. Once we understand that there cannot be a distinction between the status of being gay and the conduct that defines your sexual orientation, then what TWU is doing is discriminating based on sexual orientation and not religious belief. They are not permitted, under the Human Rights Code, to give a preference to heterosexuals since even they would

concede that being a homosexual is not inconsistent with their religious belief. Hence, in my opinion, the community covenant would be a breach of the Human Rights Code. If I can have one more minute Madame Chairman. The Federation referred to the decision of the Supreme Court of Canada in Whatcott as somehow justifying its decision when it said that it was simply trying to balance freedom of religion and equality. What I fail to understand is how approving this law school in any way balances the rights of religious freedom and the rights of equality. I take no issue with there being a religious law school. I would take no issue with that law school having as one of its core beliefs that same-sex marriage and sexual intimacy that this entails being a sin. What I take issue with is that belief being imposed on those who do not share that belief. No one is asking any of their religious students or faculty to abandon their beliefs. How is it even possible to say that if we refuse to give our imprimatur, the state's imprimatur to this law school that we interfere with any of those religious beliefs or for that matter religious practices? But TWU in requiring LGBT students and faculty as an effective condition of entry to the law school to hide their sexual orientation and to reenter the closet that they have been told by the Supreme Court of Canada they no longer need to hide in. The decision of the Federation is not in any way balanced, it is horribly skewed in favour of religion without any regard to equality. Balance would have said that the law school can be approved but only if it removed the requirement that those seeking admission or hiring must adhere to the community covenant which prevents them from not only being true to their own selves but actually prevents them from being married by the State, a right that was hard fought and hard won and came into existence only after the TWU decision. 30 seconds please, 30 seconds.

- JL: I think this will have to be a sacrifice of your, the three minutes in response.
- JA: I accept that.
- JL: [Inaudible] time.
- JA: I am always reluctant to invoke the race card when arguing the equality race, but I am afraid there is no way to avoid asking that question as to what this Law

Society would do if the community covenant related to inter-racial marriage, even if that precept was based on religion as it was in the case of the Bob Jones University. I have no doubt what your decision would be. It should be no different when the issue is same-sex marriage. This is a momentous moment for the Law Society. I urge you to resolutely support this resolution and be confident that you will be on the right side of history when the courts uphold your decision. Thank you.

- JL: Thank you Mr. Arvay. I can't help but note that you went over time, so we will take view of that in your, in the second.
- JA: Thank you.
- JL: Mr. Corey can wait. The next speaker I have is Mr. Maclaren.
- JM: Thank you Madame President. This is a most difficult and serious task, weighing the rights and freedoms of one identity group against another. And so I will read from my notes in the aim of being clear and unequivocal for the record. As I see it, the major difficulty of our task lies in justifying tolerance for institutional intolerance, adopting a position of nondiscrimination in the face of pointed discrimination. In as many ways as I've tried to reconcile the paradox, I cannot. The discriminatory message and effects of TWU's community covenant are clear. LGBTQ students are not welcome at TWU unless they essentially renounce their identity and agree not to engage in any form of same-sex relationship or intimacy, even within a legal marriage. At the same time, heterosexual students are free to engage in intimacy within the sanctity of marriage between a man and a woman. Now we know that a Canadian legal education is [inaudible]. Admission to Canadian law schools is increasingly competitive and successful admission grants access to a degree that in turn grants access and privilege, affluence, interesting careers and status, indeed, a law degree is a condition for entry to the judicial branch of government. It is within this competitive market that TWU proposes to mete out disadvantage to the LGBTQ community, an equity-seeking group that has historically faced stereotyping, ridicule, assault, imprisonment, and execution because of their identity. It isn't far enough to consider whether we would have

the same debate over discrimination against other equity-seeking groups like women, people with disabilities, or racial minorities. Is sexual orientation a somehow more acceptable basis for discrimination? This table has a duty to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons, and we as benchers may take any action considered necessary for the promotion, protection, interest, or welfare of the Law Society. In seeking to retain the public's trust and to remain an important and respected institution within our civil society, the Law Society must take every opportunity to condemn discrimination against marginalized people. Freedom of religion is not unlimited and must sometimes yield to the important goals of a civil society. Our refusal to approve TWU would not unduly infringe upon the freedom of religion of its students or staff. It would not circumscribe their beliefs nor prohibit their religious rights or practices. It would not stop them from living by the terms of the covenant or from holding views about homosexuality. It would not prevent TWU from operating a law school and issuing law degrees. It would only deny our profession's approval and endorsement of discrimination involved in the covenant. I therefore urge this table to approve this motion and deny approval of TWU's law school until it removes the current provisions relating to intimacy and traditional marriage. I submit that this approach provides the just and proportionate balance necessary when rights and freedoms conflict. Thank you.

- JL: Thank you Mr. Mclaren. Next I have Mr. Doerksen.
- LD: Thank you Madame President. I am not in favour of this motion. With respect to the academic requirements of Trinity Western's proposed law school program, I see no merit to what are behind the findings of the Federation of Law Societies and [inaudible]. But with respect to the issue of discrimination, the belief that marriage is only between a man and a woman is not a novel or unusual belief, it is a belief that is ancient and held by most of the religions of this world. In and of itself, this belief is not offensive. It has been suggested by many that Trinity Western's practice of insisting that students and faculty must respect this belief is akin to the former practice of Bob Jones University in the United States which

banned interracial relationships. This comparison is neither direct nor apt for three reasons. First, the belief such as was held at Bob Jones is offensive in and of itself. Second, the belief that marriage is only meant between people of the same race is not a tenet of the majority or any of the world's major religions. Third, the belief that marriage is between a man and a woman is recognized and explicitly condoned in legislation. I refer of course to the Civil Marriage Act, and specifically section 3.1. Of all of the submissions against Trinity Western's application, only one item referred to section 3.1 of the Civil Marriage Act. There is no legislation in Canada that I am aware of that condones the belief that marriage is only meant for people of the same race. Unfortunately, the use of Bob Jones as an example only serves to inflame emotions on this issue and detracts from the legal analysis we must carry out. I appreciate this is an emotional issue and that people do not like the effect of Trinity Western's community covenant on the LGBT community. However, I need to conduct this test dispassionately and regardless of my personal views. Here is my brief, legal analysis. We have a university that has a belief that is not only lawful but is explicitly recognized in federal legislation. This legislation, the Civil Marriage Act, is itself compliant with the Charter. The Civil Marriage Act is good law. The BC Human Rights Code applies in this province and it explicitly exempts private religious institutions like Trinity Western from some of its provisions. Again, the BC Human Rights Code is, as far as I'm aware, compliant with the Charter. We also recognize that the Charter, as stated in section 32, does not apply to private institutions, only governments or those carrying out a government function. The Charter does not apply to Trinity Western but it does apply to us. So although the community covenant is lawful and the legislation that Trinity Western operates under is Charter-complaint, and the Charter does not apply to a private institution, I am being asked to deny Trinity Western's law grads from becoming lawyers because their institution was not complying with Charter values. I believe that when people talk about Charter values, they are in fact referring to societal values or social norms. Social values and the Charter should not be conflated. Social norms have changed but just because someone or some group is out of step with

these changes does not mean the Charter should be used as a sword to force everyone to fall into line. I have always understood the Charter to be an instrument to protect citizens from the abuses or unfair practices of their government, not from other citizens. Further, it seems odd since we have never before looked behind the foreign law degree to see if [inaudible] has ever been done by a religious covenant to do so now. With respect to our role as benchers, I believe we are here to apply the law as it is, not as you may wish it to be. I freely concede that the Supreme Court of Canada can and does alter, amend, and sometimes reverse previous rulings. I am not convinced that this is one of those occasions. In any event, if we the Law Society of British Columbia were to end up before the Supreme Court of Canada, my preference is to argue that we apply the law, not give, admonish the courts for failing to do so. I am sure there will a lot of interveners more motivated than us to argue that the Court should decide differently. Finally, I have always understood the phrase 'public interest' to mean as a Law Society we are to protect the public from dishonest and incompetent lawyers, not to protect the public from lawyers who have different societal values. To refuse Trinity Western's law school accreditation on the basis their exercise of their belief in a traditional marriage is not in the public interest is, in my view, a very shady legal foundation which will not stand up in court. If we cannot do something directly to Trinity Western because the Charter does not apply to it, then we should not attempt to do so indirectly by invoking the public interest. I admit I found the reasoning of the submissions of the BC Civil Liberties Association more persuasive and [inaudible] and I adopt theirs as my own. Madame President, I want to express my appreciation to you and the Executive for the manner in which you've guided us through this most challenging issue and have had the pleasure of speaking with some of my colleagues at this table and the discussion has been vigorous but always respectful and I look forward to doing that still with my colleagues here. Thank you.

JL: Thank you Mr. Doerksen. Please remember to turn off your microphone. Next I have Mr. Wilson and just, just before you start, I'm just going to remind the

technicians, following Mr. Wilson, Mr. Riddell, Mr. Lloyd, Mr. Mossop, Ms. Kresivo.

TW: Thank you Madame President. At the outset, I intend to use all of my time and I'm not in a position of selling my unused minutes to Mr. Ward so he that he can resell them to other benchers [inaudible] last night. I wish to state that I have no horse in this race. I'm an atheist and I have no difficulty telling people of faith that I don't believe in their God. But I'm also respectful of the right of all Canadians to believe in something spiritual if they so desire. Indeed, even many faith, for many faith and the belief in the Divine is an indispensible component of who they are as human beings and how they carry on their relationships with others. I'm sure there are many atheists and agnostics who would like God to go away forever in a puff of logic but that's not going to happen. God and the freedom to believe in God is enshrined in the Canadian Charter of Rights and Freedoms but so is the rule of law. Despite the desires of some Canadians who would prefer that God go away and mind her own business, enforced secularism is a risky, and dare I say, discriminatory public policy. We saw on Monday the defeat of a Quebec government that tried to impose an offensive secular orthodoxy on its citizens, particularly citizens of faith. According to the politicians and policy makers, I must tread carefully, when there are issues of faith at stake, there has to be a balancing of interests. I have read all of the public submissions and all the numerous opinions rendered. I have had, over the past six months, a number of interesting and spirited discussions with colleagues at this table, with other lawyers in Canada, and with non-lawyers who have learned about the issue in the media and have told me how much they oppose the idea of a law school at Trinity Western University. Arguments such as how can you approve a law school that obviously discriminates against members of the LGBT community? Or denying one's sexuality is like denying one's race and discrimination based on sexual orientation is equivalent to discrimination based on race. Or that we have a public duty as benchers to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons including homosexuals. Or it's repugnant

discrimination thinly disguised and shielded by religious protection and incompatible with Canadian law. Or it's contrary to the Canadian Charter of Rights and Freedoms. And there were these arguments: TWU will produce lawyers and potentially judges who will discriminate against gays and lesbians. TWU law professors will not be able to competently teach legal ethics and constitution law, particularly the lawfulness of gay marriage. Or critical thinking about legal issues cannot adequately be taught by a law school that violates academic freedom and requires that all teaching be done from the perspective that that Bible is the ultimate and authoritative [inaudible] for ethical decision making. Or no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. Many of these arguments are debatable, others are simply opinions without any evidence whatsoever, but to suggest that a future law school at TWU and students at that law school will be taught to discriminate against homosexuals or that a person of faith can't teach law or think critically about ethical issues is, to my mind, absurd. Does it mean that people of faith who happen to be law professors shouldn't even be able to teach ethics at Canada's existing law schools? We as benchers must uphold the rule of law with respect to this issue and I believe we are still bound by the Supreme Court of Canada's decision in the Trinity Western teachers' decision. We have all read the case. We've all seen the opinions, particularly John Laskin's persuasive opinion that the teachers' case is still a law in Canada and unlikely to be overturned. I am also persuaded by my colleague and friend Peter Anderson who, in his submission, substituted the word lawyers and courts for teachers in schools, and I'll quote with the substituted words. To paraphrase McLaughlin [CJSC??] then was, absent concrete evidence that training lawyers at TWU fosters discrimination in the courts of BC, the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. And for those who may believe that the teachers' case is either wrongly decided or that societal norms have changed, I am further persuade them by the BC Civil Liberties Association's submission on this topic. Finally, I would echo Professor Benson's argument from the Advocate and in his submission, to deny TWU a law school is at odds with the principles of free, moralistic, and tolerant society because, among other reasons, it would be discriminating against the Christian community and others of faith. Until the Supreme Court of Canada says otherwise, I believe we as benchers of the Law Society of British Columbia are bound to comply with the rule of law and that the Trinity Western and BC College of Teachers case is still a law and that the motion should be [defeated??].

JL: Good timing Mr. Wilson, thank you very much. Mr. Riddell?

PR: I oppose the resolution and in my view we are involved in the assessment of a legal question and accordingly we have to follow the law. The reasons stated by Mr. Wilson, I am of the view that TWU and teachers college case is still the law in Canada, and until we are told otherwise, that is a law which we are bound to follow. We have been provided with a number of legal opinions which appear and justify the belief that TWU [inaudible] is still the law. We have also requested information with regard to an evidentiary basis to show that there is some connection between a belief system and the actions. This was an issue raised by the Supreme Court of Canada in the college case in which there was no evidence. We received information with respect to discriminatory claims or absence of discriminatory claims from TWU graduates in the nursing and teaching programs. There is no connection. We are now in a system in which the practice of law occurs on a national basis. We have a national mobility agreement in place. We are bound by legislation such as the Labour Mobility Act and the internal [inaudible] upon trades. We are in a situation in which there is no justification, legally, to bar the TWU graduate from academic qualification for the Law Society. My personal experience as a bencher has been in conducting article student interviews in Westminster County, probably a third or half of our article students are foreign-trained. In no way a scientific survey as to the foreign-trained law students who apply for entry to our Law Society but based upon what I have seen, I have seen foreign law school graduates graduate from law schools throughout the United States and England and Wales and Australia and South Africa and in India. Their entry on an academic basis to our Law Society is based upon the Federation of Law Societies looking at their training and determining

what courses they have to take through the NCA program [inaudible]. There is no examination as to any covenants or rules of those law schools. We seem to have no difficulty admitting foreign-trained lawyers without looking behind their law degrees. We look at whether or not they've met their academic requirements, we do not look at the belief system at the law school, the existence of covenants, we look at their academic training. If we end up in a situation in which we find law students who are not of good character, the credentialing process of the Law Society is the place at which that issue is decided. On pure academic acceptance do they have the law degree that takes all our loses, think of [inaudible] who has that. If there were problems with [inaudible] aside from that issue, that is dealt with in the credentialing process. Thank you Madame President.

JL: Thank you Mr. Riddell. I have Mr. Lloyd, Mr. Mossop, Ms. Kresivo. Mr. Lloyd?

PL: Madame President, fellow benchers. Something my friend Mr. Riddell said, this is certainly a legal matter, I must, not surprisingly, respectfully disagree. This is not a hearing panel. We sit as governors of the Law Society and our mandate is to regulate in the public interest. Surely that requires each of us to discern, as best we can, what is the public interest in this case. A plain reading of the TWU community covenant could only be interpreted as offensive to gay people. It is plainly a discriminatory barrier to entry. But is it a rather persuasive argument that in any way is that discrimination. I have heard four. They are, in my words, it's not our fight, why don't you just go to UBC, Alberta may become the back door and what I call teacher teacher. First, it's not our fight. What makes law students so special? Let somebody else take this case. But we're not commenting on the general right of TWU to operate their institution as they see fit. We are specifically examining an application to accredit a law school in BC. That is our fight. It may be annoying but it distracts us from other more strategic issues. But look around. The decision today will define the Law Society of BC for years to come, argument dismissed. Next, why not just go to UBC? If a law student doesn't like the conditions for entry to TWU, they can always apply elsewhere. Sounds a bit like we don't allow black people in our golf club but they can play somewhere else. But we're asked to approve this law school as being a civil place

to train future lawyers. TWU asserts that the training provided will occur in an environmental of respect for Canadian equality law so why will they not even consider amending the offensive clause? Argument dismissed. Alberta may become the back door. This argument asserts that our refusal to approve this law school will cause a problem with national mobility agreements, well yeah, life is messy but [inaudible] of convenience should not outweigh principle. This proposed law school is in BC, it's for others to follow our lead, not vice versa. Argument dismissed. Finally, TWU accepts gay students but only if they sign a document with which they plainly cannot agree, others too have difficulty. A great start to a career in law, don't you think? How can it be in the public interest to accept discrimination in a law school? This time it's about gay students. Another prospective law school might tell us well they accept women but only if they agree to sit separately at the back of the class. Where will we draw the line? The BC College of Teachers case is often quoted but much has changed since that time, not just because of [inaudible] gay marriage but also I say Canadian public opinion has become dramatically more inclusive in the last 10 or 15 years. The belief that the Supreme Court in its efforts to balance competing rights can never [move??] it's opinion in any way provides a very gloomy view of justice. Jan Brewer, the Governor of Arizona, recently vetoed a bill that would have allowed anti-gay discrimination if based on religious belief. If she could find the courage to do so in Arizona, surely we can do the same here. This is 2014, this is Canada, and we at the Law Society of BC do not tolerate discrimination. Please join me in voting for the motion. Thank you.

JL: Thank you Mr. Lloyd. Mr. Mossop.

DM: Thank you Madame President.

JL: Peter, you have to turn yours off.

PL: Oh, sorry about that.

DM: Thank you Madame President. I'd like to make three preliminary comments. First, my views are my personal views, they don't represent any [inaudible]. I am in favour of gay marriage and find the offending positions of the covenant

inconsistent with my personal views. Thirdly, I will vote against the motion, in other words, I support the approval of Trinity Western University. In my view, the Supreme Court of Canada decision in Trinity Western versus the BC Teachers College is part of our society. I come to this conclusion despite the creative arguments presented on the other side. In my view, they are not convincing in law. I agree with the opinions of Mr. Gomery and Mr. Laskin. The simple result of the Trinity Western case is the covenant is discriminatory in the common sense way but the Supreme Court of Canada says they can do it and we just basically have to accept that. It's also important to remember that religion and education is guaranteed in our constitution for denominational schools and the Charter does not apply to denominational schools, they're exempted under Section 29. We have a whole bunch of Christian and other religious independent schools that are partially funded by the government that are exempted from the Human Rights Code. They all have various forms of covenants so the issue is not just limited to this law school, it's a broader issue. It's of, and what I consider of some significance is the existing law schools in British Columbia have been accepting Trinity Western graduates, undergraduates, for years and these law schools have never looked at the community covenant. What they do is they look at a student, they look at their marks, they look at what they got in the LSATs, they look at the reference and make a decision. The information we got from the law schools, the law schools here in British Columbia, there was never a problem with Trinity Western graduates, and I think that's of some significance, and that goes to the harm that has to be proven. Now I went, I'm going to say something else to our representatives from Trinity Western in my last two and a half minutes. You have a right to have the covenant, that's a matter of law, but just because you have a right to do it doesn't mean you should do it. The present trend in Christian churches is to accept gay marriage, it's happened in the Anglican Church. Recently, one of the largest Protestant denominations in the United States, United Methodists, were going to defrock an 80-year-old minister for performing a gay marriage. He used to head the School of Divinity at Yale University and then the trial was set for March 11th or 12th and it was called off. And who was he going to

marry? He was going to marry his son and this stopped the trial, the Bishop stopped the trial and stated we have to have a dialogue in the Church. And I'm sure the three representatives will disagree with me, they'll never change their views, but maybe their children and grandchildren may change their views. The other thing I wanted to say to the Trinity Western representatives is you have a great curriculum, I was really impressed by it. But to be a successful law school in British Columbia or in Canada you have to have broad support within the legal community. You do not have that broad support. There are significant members of this profession who are against your approval. There is nothing the Law Society can do about that. That's an individual thing for individual lawyers. That will be, if I could use the biblical example, a millstone around your neck. And over time, the pressure will come from the faculty and from the student bodies at the law school to change the covenant and maybe 8 to 15 years from now, you will change the covenant and at that time, those people in charge will say why did we ever do this in the first place? But that's something internally for Trinity Western to deal with. Today I'm going to vote against the motion and vote for the approval. Thank you.

JL: Thank you Mr. Mossop. Please turn your microphone off. Ms. Kresivo. Mr. Mossop, you have to turn yours off.

MK: Thank you Madame Chairman, and thank you to all benchers. My remarks will be somewhat truncated because others have expressed many of my views. Let me say that I, in my view, the resolution should be defeated. This is a very difficult decision for me. I have to say my personal feelings about this are very strong. I am not a fan of religion, I don't have religious beliefs and I often, I think that religion often leads to intolerance. It troubles me but if I apply my own personal views, I would vote for the motion. I am not here to apply my personal views as others have said. I am here as a bencher to apply the law and as a bencher, I have to remove my personal feelings and say what is the law. And I believe, I adopt the comments of Mr. Doerksen and Mr. Wilson that we have very good, very impartial legal opinions which indicate that the Supreme Court of Canada TWU case still applies and is good law, and it is not our discretion to say that we would

prefer it to be different. We do not apply our own personal standards, we are applying the law, and we as benchers, of all people, should apply the law. The Supreme Court of Canada has clearly held that privately, private educational institutions formed by religious groups can have their constitutional rights recognized and we have to balance equality rights and religious beliefs. I'm strongly persuaded, as was Mr. Doerksen, by this, by the Civil Liberties submission on how that should be done and that we look at belief versus conduct, that we look at actual harm versus what people might believe. Some people here have said things have changed, we must change with societal mores. I do not believe what the Supreme Court of Canada stated in the TWU case has changed, that that balancing, notwithstanding that there is greater recognition of LGB rights, but those rights, which I support fully, that that changes the basic premise of the Supreme Court of Canada case. And I cannot be, I do not think that we can bar TWU from a law school because of the covenant, although the covenant may be abhorrent to me. I think we have to follow the law. We have to assume that TWU graduates will be able to distinguish between their personal views and apply the law and that is exactly the position that I am in and we are in which is we are expected to put aside our personal views and apply the law, and the law is clear I believe, and I think we should be able to meet the expectation even if the decision is very unpopular and very difficult. Thank you.

JL: Thank you Ms. Kresivo. Mr. Richmond, and just for the record, I have Mr. Richmond, Mr. Lawton, Mr. Meisner, Mr. Finch. Mr. Richmond.

CR: Thank you Madame President. My name is Claude Richmond and I'm a Lay Bencher, now called an Appointed Bencher. The decision we are going to make here today is not one that should be made because we are concerned with what the fallout might be or whether some people will be disappointed with our decision or how history will view us. It should be based on what we feel is the right thing to do, whatever you perceive that to be. The Supreme Court of Canada has said the rights of one group should not trump the rights of other groups and they ruled in favour of TWUs application for a law school. The lawmakers in Victoria have ruled in favour of Trinity Western's law school, whether we agree or not, it is the

law of the land. The Ministry of Advanced Education also gave TWU their approval as did the Federation of Law Societies of Canada. Trinity Western now has the right, under the law, to have a law school. We are talking about whether or not the Law Society of British Columbia will recognize the graduates of TWU or deny them the right to practice in British Columbia. This would truly be a case of discrimination. There are many faith-based universities and they seem to operate very well. There are also many secular universities and they also seem to operate very well. People are able to make choices as to which they will attend and that to me is the way it should be. I take the freedom of speech and the freedom of ideas very seriously and I take umbrage with those who disagree and resort to the argument that I am not enlightened or I just don't understand. It is the last refuge of those who are bereft of arguments. Madame President and fellow benchers, we must not trample on the rights of one group in society to satisfy the rights of another. I am in favour of the Trinity Western University having a law school and will be voting against this motion.

- JL: Thank you Mr. Richmond. Mr. Lawton.
- DL: Thank you Madame President. I was very impressed with the energy and thoughtfulness, and in some cases the passion put into the many submissions to us for consideration of this motion. I thank the individuals and organizations who have provided their views; I have read them all. I remind myself, in considering the submissions and the resolution, especially in the context of being a recently elected bencher, of the obligation of the Law Society of British Columbia and of benchers is to uphold and protect the public interest in the administration of justice, and this includes protecting the rights and freedoms of all persons. This includes as well, in my opinion, the mandate to consider legal education program delivery. It is in the context of this environment that the Law Society of British Columbia, in my view, has the jurisdiction to decline accreditation to the Trinity Western University JD degree. One of the opponents to accreditation has written the following, quote: Trinity Western University should not be permitted to impose upon the public a religiously-grounded program, that it is incompetent to deliver a legal education consistent with what the regulators of the law profession

in Canada have identified as necessary to protect the public. The basis for this criticism appears to be the community covenant agreement which has adherents pledge they shall reserve sexual expressions of intimacy for marriage and that marriage is reserved between a man and a woman. I suspect why this caused so much concern among those opposed to accreditation is not the pledge of celibacy but the statement of marriage being sacred exclusively between a man and a woman. Were it not for the statement about marriage, I expect we would not be considering this matter today. What we have then, in my opinion, is a conflict between views of faith-based evangelical Christian adherents and those who govern their lives and behaviours from a secular foundation informed by a political or social philosophy. These different beliefs and perspectives are unlikely to disappear and one set is not superior to the other, one correct and the other not. Indeed, from a legal perspective, the Supreme Court of Canada has rejected the hierarchical approach to rights and values which places some over others. And in this regard, I am very reluctant [inaudible] excuse me the 2001 decision of Trinity Western University and the British Columbia College of Teachers. In that case, the Supreme Court of Canada provided pragmatic and clear direction that there is a difference between belief and conduct. In my opinion, there needs to be evidence of harm that occurred or likely to occur as a result of the Trinity Western community covenant agreement being embraced by law students. In this approach, a fellow bencher has asked for data with respect to any passages [inaudible] histories relating to discrimination by Trinity Western University teacher graduates or undergraduates who have gone on to BC law schools. None were reported. While I do not agree with the soundness of Trinity Western University's perspectives on sexual expression or marriage, these are nevertheless a legitimate faith-based [inaudible]. There are lawyers practicing in British Columbia who are graduates of Trinity Western University. There are lawyers practicing in British Columbia who are Mormons, Catholics, Anglicans, Muslims, Jews. There are lawyers practicing in British Columbia who are agnostics, atheists, existentialists, and secular humanists. All these lawyers recognize their professional responsibilities and adhere to them in the practice of

law. I suggest that the Law Society of British Columbia must be careful not to become Pharisees of secularism, but at the same time, people need to be assured that the sanctity of even treatment before the law trumps the sanctity of the lawyer or the standards of Trinity Western University. That can only occur over time. It can occur [inaudible] demonstrates going forward that Trinity Western University students or graduates are not meeting professional and ethical standards of conduct then the Law Society can use its discipline authority accordingly. I graduated from law school over 30 years ago. For me, it was an expansive, invigorating experience. I'd had the benefit of being an exceptional lecturer in law school at the University of Victoria since that time. It continued to an expansive and enriching environment. I heard one of my fellow benchers earlier say that maybe over time this covenant will be modified. I suspect it will, I suspect ironically we're dealing with a Trojan horse environment, in other words, when students go to that faculty, they will over time become more enlightened, they will learn to balance the interests of all. And so my fellow benchers, I am opposed to this resolution. Thank you.

JL: Thank you very much Mr. Lawton. I have Mr. Meisner then Mr. Finch then Ms. Rowbotham.

BM: Madame Chair, fellow benchers. I am a Lay Bencher appointed by the province. My submission is not about the legal aspects of the decision but rather how does the public view this matter and what is the best interests of the public. Trinity Western seeks to establish a faculty of law at their private institution. The faculty will be funded entirely by the faculty and the facility and students. I am of the opinion there appears to be a lot of head bobbing in the issue of Trinity Western arguing that the provision of sexual intimacy is reserved for one man and one woman within marriage. On the other hand, various groups are seeking same-sex unions. I have no personal or family issues in this matter, my loyalty sits with what I believe is the best interest of the public. Section 15 and Section 15-1 of the Charter, in my mind, states the case on behalf of both of these groups in an equal manner so I am left with a decision to make on what harm would a facility of this type do at Trinity Western and how would it foster in the general population of

this province. The barrister and solicitor's oath which must be sworn in order to become a lawyer in BC is very straightforward. Let me refresh your memory on the words contained in that oath. Do you sincerely promise and swear or affirm that you will diligently, faithfully, and to the best of your ability, execute the offices of barrister and solicitor, that you will not promote suites upon frivolous pretences, that you will not pervert the law to favour or prejudice anyone, but in all things, conduct yourselves truly and with integrity and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and the province of British Columbia. If a student is not prepared to swear that oath of office, they'll not be permitted to practice and that's what we are as regulators. One takes from that oath the obligation to uphold the rule of law. The Law Society of BC has within its rules and regulations the checks and balances necessary to ensure that this oath is maintained. If it seemed reasonable that this is where the individual should be judged if they do not conform to that oath, there are consequences for violating that oath on the rules and regulations of the Law Society of BC. The consequences include losing one's license to practice law in this province. While the forces for same-sex unions argue that the proviso contradicts the Charter and therefore approval should not be granted, boil the issue down to one of common sense, what harm will come from a lawyer who graduates from Trinity who swears to uphold and conduct themselves in a manner that reflects all of society by their oath in office? The issue has received little attention outside of these two factions in disagreement to a point that in my region of the province, you'd be hard pressed to find someone who not only knows about the issue but who could speak with any authority on the matter. That suggests to me that this is not an issue that is troubling for the people of the province of British Columbia so I back, looking at the harm that could come from such a facility being established. Students are free to apply and enroll in any university across Canada. Simply put, if you don't like what Trinity is offering, why would you seek admission? If there is a facility that tends to attract students who strongly believe in their views of same-sex unions, by all means, that's where you should seek admission. Trinity students would simply have no reason to apply.

What was acceptable by society and the Church over the past five decades has changed dramatically. All segments of society would agree that further change is only a matter of time. In voting, we have to have an eye on the future but we must represent the law of the land as it exists today. I will be voting against the resolution. Thank you.

JL: Thank you Mr. Meisner. Mr. Finch.

MF: Thank you Madame President, ladies and gentleman. I [inaudible] that the challenge of addressing this particularly complex problem that is peculiarly a product of our contemporary age. I recognize for instance thoughtful and compelling submissions from all quarters that have been presented to us. The perceived conflicts and the genuine concerns voiced evidence the seriousness with which we as Canadians value our rights and our freedoms. It is not possible to give full response to the broad compass of opinions that were provided to us in our over 2000 pages of written materials and I've read those materials. Each of us can articulate only a broad answer to what some consider a complicated question or indeed a set of complicated questions. I've struggled to do justice to this task for it appears to some an impossible exercise in resolving apparent conflicts [in right??]. The Law Society must be deeply committed to equality rights of all kinds, [inaudible] that those rights protect the fundamental fabric of our country. [Through??] this kind of diversity that we can inspire each other and learn from each other and progress into the future as a single people with multiple facets. I am also however particularly alive to the hard fought and often begrudgingly granted recognition of true equality rights due to members of the LGBT community. I totally support those rights. A step to exclude or limit those rights and to exclude or limit those members of our family of Canadian people from full participation in the fullness of Canadian life would in my view be discriminatory and it's fundamentally wrong. The question however for us is not one that requires the possible limitation of the Section 15 right for the LGBT community. We're being asked whether the training of students at a lawfully created university law school should be recognized as fit for the purpose of satisfying the requirements of the Law Society in its responsibility to ensure only properly

trained students should be granted the privilege of practicing law. The subject covenant is a voluntary one that is undertaken by TWU students. Participation in the TWU academic community is a matter of choice. As the Supreme Court of Canada has observed, it may not be for everyone and it may not be everyone's, to everyone's taste. Our country has a rich, intellectual tradition of secularism with a longstanding separation of Church and state. But these worlds coexist and they must. It is entirely consistent with our multicultural society that sectarianism, even of the kind voiced by TWU, can easily coexist with broadly based secularism. The expression of freedom of religion requires that. We have, in the intellectual history of our country, and indeed the intellectual history of the western world, a longstanding dynamic tension between secularism and sectarianism and it is one that we cannot simply, through the adoption of secular humanism, disregard or cause to be disregarded the long complex history of our culture and civilization. TWU is a privately-funded institution. It does not reduce the number of spaces for potential law students, it expands them. Any person who doesn't want to abide by their covenant need not attend. They will still have all of the available positions that are presently provided through publicly funded law schools. By certification of TWU, we add choice, we don't exclude options for persons who would not want to abide by the Charter. Mind you, it is a mistake, in the absence of compelling evidence, which I've seen none, to suppose that religious sectarianism will by itself result in a form of legal training that is not objective or broad ranging in its consideration. In order to understand contemporary Canadian law, students will necessarily need to study significant constitutional cases. Ironically, one of those cases will be the BC Teachers TWU case. Trust is an important component in human activity. In the absence of evidence to the contrary, there is no reason to suppose [inaudible] that the worst for TWU based on stereotypes of intellectual propensities. Lawyers take an oath, as my friend Mr. Meisner has observed, to act impartially in the interests of clients. Every day, Canadian lawyers of many different intellectual persuasions and beliefs exquisitely conduct the difficult task of acting in a professional manner for persons and causes of which they may personally have great distaste.

If they are incapable of doing that, I can see no reason why, in the absence of evidence, that TWU train persons without being able to do that. I oppose the motion.

JL: Mr. Finch, I'm going to take this time off of your second speech.

MF: Thank you Madame.

JL: Please conclude.

MF: Thank you. I, in conclusion, rely on the opinions of Mr. [Warbringer??] and also the submissions of the Civil Liberties Society as being aggregate of [inaudible] the law. I believe the law, as stated by the Supreme Court of Canada in the BC Teachers TWU case affected the complex task of balancing the [inaudible] of human rights. There was great wisdom in the judgment of Mr. Iacobucci and I believe that opposition to the motion is consonant with that [inaudible].

JL: Thank you Mr. Finch. Now Ms. Rowbotham, Mr. Ward, Ms. Matthews, Ms. Morellato.

ER: Thank you Madame President. I will begin by stating that I too have read all of the submissions and materials and that the comments that I am making today are my own. I would like to thank everybody who made submissions for their submissions, and for participating in the discussion. I appreciate the issue we are debating today has generated a considerable amount of interest among our members. I also appreciate that there are strongly held views on either side of the issue, and so I want to acknowledge the professionalism and the respectfulness of the discussion that has taken place. I would also like to pause here just for one moment to acknowledge how fortunate we are to be able to live in a country and a society where we can have this debate. And I think one final comment I would like to make is that I have had and I continue to have the pleasure of working with ethical and skilled lawyers who are part of the LGBT community and I have also had the pleasure of working with other equally skilled and ethical lawyers who have strong ties to their faith. So to turn to the motion, I respect the views of Mr. Arvay and Mr. Mclaren and - but I concur with many of the comments made by

Mr. Doerksen in particular and Mr. Richmond. In my view, there are two primary issues underlying the motion. The first we discussed is whether TWU can properly educate and instruct students on ethics. And the second issue is whether it's in the public interest to approve a law school whose mandatory community covenant operates as a barrier to entry on the basis of sexual orientation. With respect to the first issue, the ability of TWU to educate its students properly, I agree with others, I do not see much merit in this issue. I don't see anything, any reason why a faith-based university cannot properly instruct students. Of note, the description of TWU's ethics course speaks that it will discuss reconciling professional and personal beliefs with its students. I think this is probably not something restricted solely to Christian-based students. Other faith students may also have similar issues in other schools. The more problematic issue is the second issue and whether it's in the public interest to approve a private law school. I have a few comments and I'll sort of skip over them. I share Ms. Kresivo's comments. I struggled very hard on this, I find it very disturbing that people can be discriminated against on the basis of sexual orientation simply because an institution is a private institution. However, that is our laws in Canada and I think that if it's to be challenged then this is not the forum to do so. I considered at great length our professional, our Legal Profession Act, and where our jurisdiction lies. I appreciate that some would argue that Section 3 of our Act gives us the jurisdiction to disapprove or approve a law school on the basis of the covenant. I'm not so sure that that is how far our jurisdiction extends. I do not think it necessarily extends so far as to exclude applicants and that's who we would be excluding, applicants who are graduates from a particular school based solely on the characteristics of a school and not on the quality of the education provided in the school or the competency of the graduate. I also note that the Ministry of Advanced Education has approved the law school and I think that means, doesn't that mean that the law school exists? It just needs a few bricks and mortar and some faculty and some students so what we are really focusing on is the graduates from that school and banning them from admission based on the

characteristics of the school. I – those are my comments for now, thank you Madame.

JL: Thank you very much Ms. Rowbotham. Mr. Ward, Ms. Matthews, and Ms. Morellato. Mr. Ward.

CW: Thank you Madame Speaker, Madame President. I've considered the many submissions before us and I too appreciate the considerable thought and effort that went in to them. I paid particular attention to the December 2013 final report of the Federation of Law Societies of Canada's Special Advisory Committee because that committee thoroughly considered an extensive body of material similar to the material that's before us. The Special Advisory Committee stated in two places in its final report, their paragraphs 36 and 53, that Trinity Western University's community covenant would make LGBT students feel unwelcome there. I remember that in the 1960s some people in the deep south of the United States were made to feel unwelcome at lunch counters, at the fronts of buses, and indeed in some universities simply because of a characteristic they were born with and could not change, namely the colour of their skin. In my view, making people feel unwelcome anywhere because of their personal characteristics is a particularly repugnant form of discrimination. As a bencher, as a lawyer, and as a Canadian citizen, I feel I have the duty to oppose such discrimination, not to promote or to condone it. In my opinion, TWU's community covenant is an anachronism, a throwback that wouldn't be out of place in the 1960s. The Law Society recently invited the university to amend it, to remove this discriminatory language. TWU refused. The Trinity Western University is stubborn enough to stick to its principles; I'm stubborn not to stick to mine. I will proudly be voting in favour of the resolution.

JL: Thank you Mr. Ward. Ms. Matthews.

SM: Thank you Madame President. I found this issue terribly fascinating, I have lost sleep over this issue, but I also share the comment made by one of my colleagues that we are truly privileged to live in a society and a country where we have this form of debate and we are honored and privileged to be around this table where

the debate is so respectful. I open my comments with saying that I agree that we must act in the public interest and that that is our overriding duty. And that in acting in the public interest, I also share the comments observed that we must apply the law. But as I think will become clear, I believe some of the articulation of how we must apply the law has, in my respectful opinion, been too narrowly viewed. And in that regard I say that simply saying because the 2001 TWU case was decided the way it was decided that our decision is essentially made for us. So what I did was I reviewed the law, I reviewed all of the opinions, and then I went and read all of the cases as well as the submissions that were made. And I had a number of questions and I started with this, is as, first of all I would say that it is obvious that we have two Charter-protected rights that are coming into contact with each other here and are in conflict, and one obviously is freedom of religion and the other is equality or freedom from discrimination to put it that way. So and they must be balanced and you will hear me say that I think that the balancing that must be done must be done under Section 1 of the Charter which is not what happened in TWU 2001. But I started with freedom of religion and I first asked myself about religion because a number of the comments that have been made to me during discussions over this debate were people actually disputing the content of the religious beliefs of TWU, the content of religious beliefs in the covenant and saying that their version of Christianity didn't agree with that content. And of course there are versions of Christianity that don't agree with that content but my firm view is that the believer defines their beliefs, that we are not here to say that TWU shouldn't hold those beliefs or those students and faculty of TWU shouldn't hold those beliefs or shouldn't put them at the center of their community. The other part of freedom of religion of course is what is freedom and the question that is, I've been asking myself from the beginning is is it, and it's a very amazing question, 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. And that takes me to the covenant and it takes me to what TWU 2001 decided. TWU 2001 decided that in balancing these rights, you must look at whether belief becomes conduct. As long

as you stay on the belief side of the line, your freedom of religion must be respected. But if it becomes conduct, and the conduct is harmful, then the balance switches to protecting against discrimination. And in my view, one of the things that we must appreciate about the 2001 TWU case is that the majority, which was written contrary to Mr. Anderson, not by Chief Justice McLaughlin but by Justices Iacobucci and Bastarache, didn't undertake a typical Charter analysis where they asked whether or not TWU had been the subject of a discriminatory decision and then asked whether Section 1 saved that, saved that decision. They just got right into the balancing outside of the whole Charter structure analysis which generates all of the other Charter cases so it is generated by all of the other Charter cases. The minority or the dissent actually, Justice L'Heureux-Dubé said no, the majority's got it wrong, you have to do it under Section 1 and that was the driver of her decision. Whatcottt, which comes very recently and many years later makes it clear that that balancing has to be done under Section 1. So while I don't dispute what TWU 2001 says about belief and conduct, I do dispute that if it was properly applied to this covenant, the result would be the same because of the cases that have decided freedom of religion balanced against other rights under Section 1 analyses, and in particular the parts of the covenant which, as Mr. Arvay said, just got passing reference by the majority in TWU number one, starting with discrimination on admissions. That in my view is conduct, not belief. The community covenant implies that there can be sanctions up to dismissal for breaches of the covenant. I understand that to be very important to TWU, that it is a covenant, not simply an articulation of beliefs. I think if it was simply an articulation of beliefs we may not be having this debate or at least the same debate. So I say that is coercive conduct, it is conduct not belief. And the covenant also calls other members of the community into action in policing the covenant. Again, I say that is conduct and not belief and I would say that of those three, my greatest concerns would be the admissions conduct and I - as have been echoed in several of the submissions made to us. I also paid close attention to the fact, in several of the submissions, that the covenant contains some very not just

mutual but positive things including respecting the dignity and the worth of all human beings. I have to say with great respect that...

Ms. Matthews, I'm interrupting you because you've run your five minutes and also your three.

SM: Oh, I'm sorry.

JL: So if you need to wrap up...

SM: I can, I apologize, I was keeping an eye, I thought I was in the five minutes but that is my great flaw. I'll just say in closing, I agree we have to apply the law but we have to do it in a fulsome way, we have to do it as leaders and we have to do it with courage.

Thank you, whoopsie, thank you Ms. Matthews. And as I've done with Mr. Arvay and Mr. Finch, you've now had your second speech. Thank you. Ms. Morellato then I have Mr. Crossin then Mr. Van Ommen. Are there any more names? Ms. Morellato.

MM: Madame President, fellow benchers, and guests. There are rules and regulations we are guided by and we must follow the rulings of the Supreme Court of Canada. That court has emphasized the imperative of protecting both equality rights and freedom of religion. In the Big M Drug Mart case, Chief Justice Dickson reasoned and I quote: 'a truly free society is one which can accommodate a wide variety of beliefs, diversity of taste and pursuits, customs, and codes of conduct'. The Supreme Court of Canada has repeatedly underscored that tolerance of divergent beliefs is the hallmark of our free and democratic society. This is no easy task for us because we are all called to tolerate beliefs that as individuals we may personally find very troubling and disagree with strongly. This is a challenge for us around this table. Like many benchers, I am deeply troubled and offended by the community covenant but you must accept the constitutional rights of TWU to believe in what they believe and in their religious freedom. How then do we reconcile conflicting rights and freedoms? More specifically, and like TWU's community covenant, how do we protect the equality rights of the LGBTQ

community by also honoring the religious freedom of TWU? Well the Supreme Court of Canada in 2001 addressed this very question. The Court held that neither freedom or religion nor the guarantee against discrimination based on sexual orientation is absolute. Further, when these rights conflict, says the Court, they must be balanced. And specifically, the Court reasons as follows, and I quote: 'students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others'. Further, the Court also acknowledged, and I quote: 'a homosexual student would not be tempted to apply for admission and could only sign, sorry, and can only sign the so-called student contract at considerable personal cost'. The Court considered that cost yet the Court focused on the fact that TWU was a private religious institution that was not a fit for everyone and that ultimately students were free to apply to TWU or choose to go elsewhere for their education. TWU's students choose to go to TWU knowing the beliefs that are espoused by the university. This is a matter of choice, not an imposition. The Court then reasons that TWU and I quote: 'The restriction on freedom of religion must be justified by evidence that the exercise of freedom of religion will in the circumstances of the case, have a detrimental impact'. The proper place to draw the line in cases such as this, reasons the Court, is quote, and again I quote 'between belief and conduct, that freedom to hold beliefs is broader that the freedom to act on them' and the Court found in TWU the code of conduct was a belief not an action that led to harm. Further the Court concluded that absent concrete evidence that TWU's religious beliefs and code of behaviour caused actual harm, that freedoms of individuals to adhere to such religious beliefs while at TWU should be respected. That is what the Court found and that is the law that we must follow. The Court concluded that the College of Teachers erred when it denied TWU's accreditation because it had no evidence before it of actual harm caused by TWU's code of conduct. The Law Society of British Columbia must not make the same mistake. In the final analysis, the Supreme Court of Canada ruled that TWU and graduates of TWU ought to be judged not by what they believe and not by their code of conduct, but what they actually do. If their conduct is discriminatory and harmful,

they will be held accountable. If a TWU graduate discriminates in their practice of law, they are accountable to the Law Society and to our code of conduct. Likewise, if TWU does not for example respect gay marriages by attempting to discipline gay students for breaching the code of conduct, then it would also be held accountable. It is our expectation, it is my expectation of course that TWU's law school will honour the rule of law and respect the dignity and sexual orientation of all individuals. We simply cannot assume however that TWU or the view of their graduates will break the law and that they will choose to act in a way that's discriminatory once the law school is up and running. Our Charter of Rules and Freedoms are grounded in a deep and abiding respect for the dignity and worth of every person, including each individual's religious beliefs and their sexual orientation. Our challenge is to protect and uphold the equality rights and freedoms of both the minority groups before us today and to intervene only when the conduct of one harms the other. I too found the submissions of the BC Liberties Association persuasive and helpful. I do not support the motion. I do hope that one day the covenant [inaudible].

JL: Thank you Ms. Morellato. Mr. Crossin, it is your turn on the list so can that be activated? Thank you.

DC: Can you hear me?

JL: Yes we can.

DC: All right. Well thank you Madame President. I only have a few points. Now as much as I've covered in the oral presentation, I certainly could improve on many of the points that have been made. I will tell you immediately that I am opposed to the motion. Let me begin this way however, and I say this with the greatest of respect, I think TWU could easily have approached this issue in a more sensible and sensitive way without sacrificing any principles at all. They could well have simply urged a respectful consideration of Christian values instead of demanding compliance but they didn't do that. Instead, to me frankly inexplicably, it chose a path that is effectively discriminatory, certainly hurtful, and to many highly hypocritical. In my view however, notwithstanding these choices, the law and the

public interest demand a recognition of TWU's right to conduct their affairs in this way, on these facts, in these particular circumstances. In my view, the jurisprudence, and you've all had an opportunity to read that, makes it clear as [inaudible] and I've heard nothing that persuades me that the analysis of logic of the teachers case many years ago would now be seen as flawed. It is also my view that the covenant could in fact raise issues that engage our public interest mandate. But as I see it anyway, there is no evidence the ability of the teachers to properly teach would be compromised. There is no evidence the ability of the students to learn and think will be improperly [stunted??]. There is no evidence the graduates will be unable or unwilling to properly serve the public in the administration of justice. And of course [inaudible] involved that falls within our mandate. We will deal with it. For me, the overarching issue that engages the public interest on these facts in the context of the jurisprudence as it now stands is the recognition of the right to assemble and the right to freely and openly practice religious belief. It is a fundamental right in this country that is to be jealously guarded, not on behalf of TWU but for and on behalf of the public and the citizens of this province. It is no doubt true too that some or many or most find the goals of TWU in the exercise of this fundamental right to be out of step and offensive and ultimate exercise of inevitable self-marginalization. And in my opinion, that does not justify a response that sidesteps that fundamental Canadian freedom in order to either punish TWU for its value system or force it to replace it. In my view, to do so would risk undermining freedom of religion for all and to do so would be a dangerous overextension of institutional power. Freedom of religion and of assembly and of thought are protected, not because of the goals of TWU but they are protected in spite of those goals and I suppose I would just conclude this way, that I do believe that TWU will travel a more charitable path in the future but at the moment I think the public requires that however this moves forward, it moves forward with the freedom of religion and belief in thought and of opinion fully and completely intact. Thank you.

JL: Well-timed, Mr. Crossin. I don't know whether you know this but we have monitors that are keeping track of the five minutes and you were perfect. Thank

you for your comments. Mr. Van Ommen and then I have Ms. Ongman, Mr. Ferris, and Mr. Walker. Thank you, and Mr. Van Ommen.

HVO: Thank you Madame President. I am in favour of approving TWU and will be voting against the motion. I should know better than to follow my good friend Mr. Crossin and so having listened to him, I really have nothing to add. I simply adopt his comments. They were extremely thoughtful and well-spoken and so I associate myself entirely with his remark.

JL: Thank you Mr. Van Ommen. I'm looking at, I'm looking at the time, it's 20 after, we've been sitting for a bit. I'm thinking, and we have, not to cut you off but we will be done by 10:30 and so I'm inclined to break now. What's the will of the table?

Several at once: Yes.

JL: All right, perfect. All right, we'll take our health break, 15 minutes please, thank you.

[Meeting breaks up at 1:55:35 - transcription paused

[Meeting resumes at 2:10:31 - transcription resumes]

JL: Okay. So I'm going to say something at the end of the meeting too, I am just so in awe of the work that people have put into this, the energy, their deliveries, and the thoughtfulness, we are, I think we are looking great to the world and the world is a thousand plus, so not to put any more pressure on the remaining speakers but be mindful, there are apparently a thousand people, more than a thousand people who are interested in this discussion and it is a terrific discussion, I'm so pleased it's going so well. Anyway, all right, so five seconds, ten seconds... Welcome back and with everyone is refreshed. So I have on my list Ms. Ongman, Mr. Ferris, Mr. Walker, and Ms. Cheema before we – no more hands? Oh, thank you very much Ms. Dhaliwal. So when your [inaudible] Ms. Ongman [inaudible].

LO: Thank you. I'd like to say also quickly my appreciation for all the submissions, both the personal opinions and the legal opinions that we've received over the months and how helpful they've been to me as the different thoughts on the

Charter of Rights and our job at the Law Society swirled through my mind. And but just I'm very, I'm certain I'll be within my, within my time limit, I just have a couple of points to make, and the first is that I want to say that I have absolutely no doubt that the law school at Trinity Western will produce students that will make fine lawyers and that there are fine lawyers at this table that are Christians and can do their job and I would certainly would never have any fault with the students from TWU. However, I'm also feeling very lonely in my view of this debate and I'm thinking that it's a good thing that we live in Canada where there are two sides to every question and if only I could be as eloquent and perhaps even hire someone like Mr. Crossin to speak for me, I would be delighted. And Mr. Crossin's points, solemn and direct, hit the nail on the head for me. I think that the Law Society of British Columbia has to stand up because who else will? Certainly the government has had their opportunity, the Supreme Court, and I think we rank up there where we have to speak up for our, for the rights of those that need to be protected. When we talk about protecting, the Charter talks about protecting the rights of minorities and religious freedoms and freedom of speech et cetera, I've always looked as that as, and some of the others have mentioned it, I've looked at that as a shield when we are protecting. But in this particular case I think that with the banner, I mean what seems like an attack on a certain small segment of the population, the gay section of our population, I find that is more of a sword. Nobody is saying, is denying TWU the right to have the right to religious beliefs, but there is an attack I think on a minority and I think that I am persuaded by the oath that I've taken for the Law Society to protect all persons. I'm persuaded that the Charter can work in our [inaudible] that the Law Society rules to consider the public interest. And I think it is, for me it is in the public interest to shield that part of the population. I think there is harm, there's harm in just that the bar, the door is closed to a segment of the population that are gay and that are married and it's closed to them. And so therefore I'm, and of all the legal opinions and submissions that we've heard, I'm drawn to the Canadian Bar Association's comments, and I keep coming back to that, and so in summary, I want to say that I think that it's the Law Society of BC, if nobody else is going to stand up for them, that we have to remember that that is our role as well in protecting all of the people of British Columbia and I would say that's where we can take a stand. And again, as I say, I feel very lonesome, what I'm hearing in here in the room today, however I will be voting in favour of the resolution. Thanks very much.

JL: Thank you Ms. Ongman. Mr. Ferris.

CF: Thank you Madame President. I'm going to be brief because I also, like Mr. Van Ommen, would like to adopt the comments of Mr. Crossin which I thought were quite eloquent. I, so I will be voting against the resolution and I do so with a very heavy heart. I see the faces of our colleagues and friends who are members of the LGBT community and I think about them in making this decision. But I'm making the decision and I truly see it as a balance of Charter rights and I think we have to be guided and the ultimate public interest is to follow the law of Canada. And I think until that law is changed, we are bound to follow the TWU case and I think that calls upon us to balance these rights in a way which requires us to approve the TWU University in this instance. That being said, I would like to remind TWU of the rule which President Lindsay read at the beginning of this meeting, that the accreditation of the university is potentially not forever, that the Law Society retains jurisdiction to remove accreditation in the future if there is actual proof of harm caused by the graduates of this school. And so that is, that remains our jurisdiction and this issue can be revisited in the future. Thank you.

JL: Thank you Mr. Ferris. Mr. Walker.

KW: Thank you. I've been listening carefully to my colleagues at this table. I have been guided by the many submissions that were made by the public and members of the bar. I am thankful for the help that the lawyers have given us and I'm thankful for our staff for working so hard to put everything together for us so we can have this meeting today. The covenant. There is one offensive paragraph in that covenant and there are many good values in the covenant that we all share and we want members of our profession to adopt in one fashion or another. But there is an offensive paragraph, and I agree with all of my colleagues, and just so

you have it, I've purchased the four minutes and 30 seconds that Mr. Ommen didn't use so that I can carry on at length.

JL: No you didn't.

So the chair has confirmed I don't have those minutes. Our country is a mess. It's large in size, it's large in diversity. Traveling across our country, even from province to province, there are regional differences and language differences and religious differences. The diversity makes us stronger. Our profession is based upon a few basic principles, treating people equally, treating clients fairly, the independent thought with a right to attack government legislation, our obligation to pursue the Charter values of this country. Our profession continues to attract and wishes to attract men and women who share our professional values and wish to pursue them. I will be voting no to this motion. I therefore will be supporting TWU as a university teaching lawyers. However, my vote should not be taken as a vote favoring the controversial part of the covenant. My vote should not also be taken as a vote against those who have a sexual orientation different from what is considered to be mainstream Canadian sexual orientation. Let it be clear, I support diversity and equality and tolerance. My vote can be considered a vote in favour of balancing the two Charter rights in conflict here. My vote can be taken as a vote supporting diversity and diversity in our profession. We need diversity. The Law Society of British Columbia is not a belief regulator, we are a conduct regulator and we will be regulating conduct and conduct that is discriminatory. To TWU, I have 56 seconds left, I urge you that this process should in fact inform and educate you. I agree with Mr. Mossop but I do not hope that his timeline is correct; 8 to 15 years is way too long. I ask you to go back to your community of smart educators and students and together work to fix this covenant. It's your belief, I cannot change your beliefs, but I hope that you and your community will gather together using this informed process to look at this covenant again. It's probably a living covenant. I will be voting no.

JL: Thank you Mr. Walker. Ms. Cheema.

Thank you. Thank you Madame, thank you Madame President, fellow benchers. PC: And I would like to thank all of those who took the time to write and provide your input to us on both sides of this very important, potentially divisive issue. I speak from a personal perspective. The issue of discrimination is not a foreign topic to me. I am well aware that if I had been born in Canada at an earlier time as a South Asian woman, I would have been excluded from the practice of law on two fronts. as a woman and as a brown person. At this point in time, as a person who was born into the Sikh faith, I am not at all certain I would now be granted acceptance as a TWU applicant. In my opinion, TWU's perspective is antithetical to Canadian values of tolerance and respect that are enshrined in our Charter. I find this covenant abhorrent and objectionable and it saddens me greatly that TWU has persisted in this outdated, outmoded view. However, as has been echoed by a number of my fellow benchers, it is our obligation above all else to uphold the rule of law. The opinions we have received to date, which support the applicability of TWU BCCT today [govern??]. As benchers we are obliged to act in the public interest and we must balance various competing interests. I will not be supporting the motion. I adopt Mr. Crossin's careful, measured, and nuanced words. I echo Mr. Mossop's words. Your students in the years to come will be identified and marked by the offensive aspect of the community covenant. That reputation will follow them into practice. As leaders of the new law school you have a unique opportunity to demonstrate equality and tolerance. You need to review the fundamental principle of tolerance in establishing your law school. It does not stand you in good stead and it is not a good omen for your school if you fail to do so. Thank you Madame President.

JL: Thank you Ms. Cheema. Ms. Dhaliwal.

JD: Madame President I will be brief because much of what I would want to say has been said before, particularly just now before me in my colleague Ms. Cheema's comments. My colleagues have [inaudible] summarized points for and against the motion that is tabled now. I was elected by my peers to sit at this table, in part from the representative view that I bring as a female, visible minority belonging to a minority religion. I know full well what it feels like to be discriminated

against and it does not feel good. This is a very, very difficult decision to make as a result of that. I reviewed the submissions before us, both for and against the motion. I adopt and I support the comments of my colleague Mr. Crossin and others. And although those who would vote for the motion before us make some very compelling arguments, these are one of the circumstances in which I am able and I must put aside my own personal beliefs to rely on my legal education and my training as a lawyer to make my decision today. I am hopeful that the TWU future grads will be able to do the same. I am bound as a decision maker and a critically thinking lawyer to apply the current law. I cannot distinguish the decision of the Supreme Court of Canada in TWU one and therefore I will vote against the motion as tabled. Thank you very much.

- JL: Thank you Ms. Dhaliwal. That brings us to the end of the, my list for first time speeches. Is there anyone else who would like to speak for the first time? I should add that I don't think there is anyone who hasn't. Oh, sorry, Mr. Corey, you are on line, do you wish to speak?
- DC: Thank you Madame Chair, no, I don't think that I have anything else to add other than what has been said already. The ground has been covered very sufficiently in my estimation. Thank you.
- JL: Thank you sir. I do not see any hands. I will now move to second reading. Now some went over their five minutes and I've taken them off the second list. However, I'm sure that if we were very precise, there might be some moments left. Does anyone wish to speak for a second time other than Mr. Arvay, Mr. Finch, or Ms. Matthews? Mr. Mclaren, is there anyone else, Mr. Lloyd, Ms. Rowbotham, [inaudible] all right, I'll hear from Mr. Mclaren.
- JM: Thank you Madame President. I have only two points in making this opportunity to reply to the well-reasoned and respectful submissions made by my colleagues this morning. First is my view of the harm of TWU discriminatory covenant resides in the denial of the full participation of the LGBTQ community in legal academic life and future professional life and not in what future TWU law graduates may do while serving as members of our profession. It is TWU's

institutional and apparently non-negotiable act, in other words conduct of discrimination, that is an affront to the human dignity of LGBTQ people and it diminishes their public standing that demands our disapproval in the name of equity and fairness. Second, I am not aware of any religious conditions that require attendance at a law school at which there are no gays and lesbians who are able to express their full identity in the defense of law. I am unaware of any faith that requires the specific kind of social isolation or educational enclave that [cuts??] against our society's general goals of great diversity, inclusion, and social integration. In light of that I ask myself and I ask this table where exactly is the untenable [limitation??] of religious freedom in the resolution before us? Thank you.

JL: Thank you Mr. Mclaren. Mr. Lloyd.

PL: Madame President, if I may, I'd like to use some of my three minutes to pass on a few comments from Patrick Kelly who is a Life Bencher not able to be here today but who is a friend of mine and who, as you may well, some will remember, was a very able and our first aboriginal bencher and I must say often heard at this table in a way with much more respect that I usually generate. The Law Society of BC is created by and operates under the law of British Columbia according to the judicial authority [inaudible] from the Legal Profession Act. In terms of the division of powers, the Law Society of BC would be considered an executive body that has the power to implement law. It is also a secular organization with no duties or authorities connected with religious or spiritual matters. I don't intend, this is Patrick, to enter the debate on the rights of TWU or its students to espouse or practice their religious faith. Legal minds have analyzed and assessed this area quite well. However my concern from the public interest perspective, is that the TWU decision does not alter or undermine the Law Society's secular role by the way of TWU's or TWU law graduates sectarian religious principles. In the public interest, the Law Society's secular role is best safeguarded from any and all sectarian religious influences, whether they are Islam, Hindu, Judaism, Shintoist, Sikhism or any other religion or faith. The British Columbia [public??] is made up of more than 50 different cultures of the world and its citizens practice as many or

more different religions and faiths. It would be a very unfortunate consequence if addressing an impressive Christian sectarian proposal to the Law Society alienates the interests of those citizens that are not Christians. Thank you.

JL: Thank you Mr. Lloyd and Mr. Kelly. Ms. Rowbotham.

ER: I would like to thank my fellow benchers for their submissions and with the ideas and the discussion that we've had today, I particularly would like to thank Ms. Matthews for hers and Mr. Crossin for his [inaudible]. I would just like to point out that in my comments, I tried to and perhaps I did not succeed, but I tried to be very careful to, not saying whether or not Trinity Western University's covenant was or was not legal, and whether or not BCTF was or was not rightly decided. I think that the Supreme Court of Canada did not consider the community covenant in the context of the BC Human Rights Code. It seemed to have made a presumption that it did comply with it or was exempted from it as opposed to strict analytical reading of the BC Human Rights legislation. So I think there is an open legal question as to whether or not the covenant is legal and is protected by the BC Human Rights Code. I just wanted to make that thought clear. It's also been, informs my comments around views that we do not necessarily have jurisdiction, we do not have jurisdiction to consider the BC Human Rights Code underneath our legislation and sort of why I think this is not the correct [inaudible]. Thank you Madame President.

JL: Thank you Ms. Rowbotham. Oh, I'm sorry, Mr. Crossin has asked to speak for a second time so can that be arranged?

DC: Yes, can you hear me?

JL: Yes we can.

DC: All right, well I am sorry to tell you because you're making such great headway, I thought I would fill in some time. Over the years that I've been at the table, various benchers have, from time to time, invoked their respective mothers or grandmothers in addressing one issue or another. And I've always thought that to be odd and couldn't imagine doing that until today. So in the late eighties or early

parts of the early nineties, my mother was a regular member of a certain Protestant congregation, in fact, she often gave sermons on Sundays. The Church was an important part of her life like the rest of us, but she left that congregation because she got into a debate concerning a position they took back then that homosexuality was a sin. And the debate within the Church around that time revolved around the same kind of harsh language that was contained in the original or at least the TWU covenant at the time of the teachers case. And she left that Church over that debate because her son, my youngest brother, is gay and he was a very young gay man back then and it broke her heart. But she would tell you that she singlehandedly brought the United Church around over the next couple of decades to see the light. But she always maintained a couple of principles during that time. One was the Church had every right to take that position and from her perspective, full stop. And the second position she maintained was you don't meet intolerance with intolerance. So that's a very small story for such a big stage but I thought you might find that interesting. So [inaudible].

JL: Thank you Mr. Crossin. We are learning more about you every day. Does anyone else want to speak again? Mr. Wilson, Mr. Arvay, so Mr. Arvay, we've done our math and we think that you'd have at least a minute or a maybe minute but I'll hear Mr. Wilson first.

TW: Madame President, this doesn't really have so much to do with TWU as it has to do with the process of which we have adopted here. I've received about ten emails from people all across Canada that are watching this right now. There's apparently 1230 people watching this. I've received one email from the Northwest Territories, another one from Alberta. People are saying various things but one of the things that they're saying is that they are very appreciative of the openness and the debate that is going on and the transparency and I wanted to say it's very good for our Law Society to have done it this way and I thank you Madame President for orchestrating that.

JL: Thank you Mr. Wilson. Mr. Arvay.

- JA: Thank you Madame President and fellow benchers. While I respect everyone's opinion around this table, and very thoughtful opinions, I am nonetheless very troubled by the very many comments to the effect that the community covenant, it's repugnant, it's hurtful, it's discriminatory, it's hypocritical, it's heartless, but we're bound by the law. I don't recognize that law, that kind of law in this country. I don't recognize a law that is so divorced from justice that we are bound by it. We are the law, we are the law-making body charged with making a decision at that hand. So long as that decision is a reasonable one and that reflects both the objects of our statute and the Charter values we are bound to embrace, it will be a law that the Supreme Court of Canada respects. The law is never frozen in time, it is always evolving and notwithstanding all of the compelling arguments that I've heard from all of you and I know they are all heartfelt, I urge you, in the dying moments of this process, to reconsider your decision and make sure that the law that you are applying is a just law. Thank you.
- JL: Mr. Ward, [inaudible], Mr. Ward.
- CW: Thank you. I'd just like to endorse and echo Mr. Arvay's comments and add one comment of my own, and that is that those of us who were elected by members of this profession were elected to be leaders and not followers. And with the greatest of respect to those who have offered different views, I agree with what I understand to be the thrust of Mr. Arvay's submission to you that a case decided by the Supreme Court of Canada 13 years ago may well be decided differently today in 2014 or perhaps a couple of years from now if the issue is considered. Thank you.
- JL: Thank you Mr. Ward. I think we are to a common question, I am not sorry, Mr. Fellhauer? Mr. Fellhauer. On my record, you are first time speaking so you have five minutes.
- TF: Thank you Madame Chair. I didn't mean to speak at the end of the discussion here. I just wanted to add some comments, and this is regardless of the vote. One of the things that I've been very impressed with, having been elected a bencher, is the spirit of what I would say cooperation, collaboration, and communication that

the Law Society has adopted with various other members of the legal community, and from my perspective, it has been proved to be a very positive process, experience, than many other very divisive issues. Trinity Western wishes to join that legal community and I urge Trinity Western to consider what it will, what will happen when they join the legal community and perhaps adopt some of the practices and principles that the other players in the legal community have adopted, such as the Law Society, and consider perhaps striking a committee together with other players in our community to review the covenant. The community covenant, as Mr. Walker has said, contains many positive ideals that we all support. And it has a very, very small portion that has caused a lot of debate and a lot of divisiveness and I would actually say there, when I listen to the arguments, there's quite a bit of common ground. I do think there are some very positive things that can come from Trinity Western working with the rest of the legal community as opposed to in opposition or outside the legal community. And so I do urge Trinity Western to reach out regardless of the vote, work with the rest of the legal community to encourage a very open and frank review of their community covenant and hopefully bring more people onside. And perhaps create some, or eliminate some of the concerns about the institution but also enhance the reputation of the institution as a law firm or as a trainer of lawyers going forward. So those are my comments, I just, I would like to see a positive outcome from this experience and this process regardless of the vote. Thank you.

JL: Thank you Mr. Fellhauer. I'll ask you to turn your microphone off. I see no more hands, hearing nothing more, I'm going to call the question – sorry Ms. Morellato.

MM: I simply wanted to say that a lot of balances that oppose freedom of religion and equality rights isn't just law and that's what we're all trying to achieve today. It takes courage to tolerate intolerance and I am confident however that the Law Society will not tolerate any discriminatory conduct by TWU or their students in the future. They will all be held accountable by the rule of law.

JL: Thank you. Okay. We're ready to call the vote or call the motion. I want to remind you that this is a negative motion and so those voting in favour of the motion will be voting against the accreditation of Trinity Western's proposed law school. I will call the question, I'm going to read the motion again. I'll call for those in favour, I'll count the votes by show of hands, I will make sure I've got the number right, Mr. Hoskins will make sure that I have the number right. And then I will call for those opposed and I will call for abstentions at the end. I will ask the people on the phone to vote after I've announced the first count. Right, so the motion is pursuant to Law Society Rule 2-27 (4.1) benchers declare that notwithstanding the preliminary approval granted to Trinity Western University on December 16, 2013, by the Federation of Law Societies Canadian Common Law Program Approval Committee, the proposed Faculty of Law at Trinity Western University is not an approved Faculty of Law. So those in favour of the motion please raise your hands. One, two, three, four, five, six. I'm counting six. Mr. Crossin, do you vote in favour of the motion?

DC: Opposed.

JL: Mr. Corey, are you in favour of the motion?

DC: I am also opposed.

JL: Right, so I have the votes in favour at six. Those opposed please raise your hand, one, two, three, four, five, six, 18, I count 18, I count 18. Mr. Crossin, are you opposed to the motion? We didn't hear you say that, are [inaudible]?

New Speaker: Yes.

And Mr. Corey is also opposed so I have the votes opposed at 20. The motion fails, oh, sorry any abstentions? No abstentions, the motion fails. I have to thank everyone. I'll try not to be emotional. Firstly, to the Management Team, [inaudible] and Mr. Hoskins, we have [inaudible] with your part. They have made sure that we have conducted an open and transparent discussion and arrived at a fair decision. I thank them for the work that they've put in and the direction that they've given us all. And I thank each and every bencher for their careful and

thoughtful comments. We had much material to consider. This is a heavy burden on your time in your first, and for many of you in your first three months as a bencher. This is unfortunately one of those decisions that we were not going to be able to reach a consensus and although we like to conduct ourselves by reaching consensus, this is not capable of that but we have conducted a respectful and very thoughtful discussion. As president, I am so proud of our process and this discussion and each and every one of you. [Inaudible] a little bit emotional. Oh, so I don't know, does anybody have any more stories, Mr. Crossin? Maybe we should just adjourn, thank you so much all. [Applause]

New Speaker: On behalf of all the benchers we'd like to thank you. [Applause]

JL: This was where I was going to take off my wig and light it on fire but I... [laughter] [casual conversation not transcribed] I'm sorry, I also should thank the Trinity representatives from attending, thank you very much.

[Transcription ends at 2:50:30]

Transcribed by Regent Office Services

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Notice to the Profession

Special General Meeting Of the Law Society of British Columbia Exhibit * K * referred to in the affidavit of Timothy Emisse C

Tuesday, June 10, 2014

Registration: Starts at 11:00 am

Call to order: 12:30 pm

this 15th day of January 2015

Commissioner for taking Affidavits for British Columbia

Main location: Vancouver Convention Centre East, Exhibition Hall A
999 Canada Place, Vancouver

Audio-conference locations: Abbotsford; Castlegar; Cranbrook; Dawson Creek; Kamloops; Kelowna; Nanaimo; New Westminster, Prince George; Prince Rupert; Smithers; Surrey; Terrace; Victoria; and Williams Lake

Member request

Having received a written request that meets the requirements of Rule 1-9(2), the Benchers hereby provide notice that all Law Society members in good standing and articled students are invited to attend a Special General Meeting of the Law Society of BC on Tuesday, June 10, 2014, commencing at 12:30 pm at the locations set out above and in page 4 of this notice.

Business

Pursuant to Rule 1-9(7), the business of the Special General Meeting will be limited to the following resolution:

WHEREAS:

- Section 28 of the *Legal Profession Act* permits the Benchers to take steps to promote and improve the standard of practice by lawyers, including by the establishment, maintenance and support of a system of legal education;
- Trinity Western University requires students and faculty to enter into a covenant that prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman";
- The Barristers' and Solicitors' Oath requires Barristers and Solicitors to uphold the rights and freedoms of all persons according to the laws of Canada and of British Columbia;
- There is no compelling evidence that the approval of a law school premised on principles of discrimination and intolerance will serve to promote and improve the standard of practice of lawyers as required by section 28 of the *Legal Profession Act*; and

The approval of Trinity Western University, while it maintains and promotes the discriminatory policy reflected in the covenant, would not serve to promote and improve the standard of practice by lawyers;

THEREFORE:

The Benchers are directed to declare, pursuant to Law Society Rule 2-27(4.1), that Trinity Western University is not an approved faculty of law.

Message from the Benchers

Nature of the Business of the Meeting

The resolution presented for consideration at this special general meeting, if passed, would direct the Benchers to reverse their decision on the approval of a faculty of law at Trinity Western University for the purposes of our admission program.

The Benchers' Decision

Under Rule 2-27(4.1), 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. On April 11, a resolution that the proposed faculty of law at TWU is not an approved faculty of law was defeated by a 20 - 7 vote. The webcast of the discussion and decision is available at http://www.lawsociety.be.ca/docs/newsroom/TWU-transcript.pdf

The decision was made after a thoughtful and sometimes emotional expression of views and careful consideration of two Federation reports on the Trinity Western University application, nearly 800 pages of submissions from the public and the profession and a submission from TWU, and after thoroughly considering the judgment of the Supreme Court of Canada in *Trinity Western University of British Columbia College of Teachers* 2001. SCC 31 http://www.canlii.org/en/ca/scc/doc/2001/2001scc31/2001scc31.html and its applicability to the TWU application. In addition, the Benchers considered a memorandum from former Chief Justice Finch on the relevant considerations and additional legal opinions as follows:

- 1: Finch/Banks Overview Brief re: Relevant Considerations for the Law Society in Relation to the Proposed Faculty of Law at TWU
- 2. Laskin Opinion on Applicability of SCC Decision in TWU v-BCCT
 - Gomery Opinion on Academic Qualifications
- 4. Gomery Opinion on Application of the Charter
 - Gomery Opinion on Scope of Law Society's Discretion under Rule 2-27(4.1)
- Thomas/Foy Opinion on Application of the Labour Mobility Act and the Agreement on Internal Trade

All of the opinions are available on the Law Society website at http://www.lawsociety.be.ca/docs/newsroom/TWU-opinions.pdf. Members are encouraged to review the material that was before the Benchers and watch the webcast or review the transcript.

The Legal Profession Act, section 28

The recitals to the resolution proposed for the special general meeting reference s. 28 of the Legal Profession Act as the basis for the Benchers' consideration of the application of TWU. The wording of s. 28 describes the Benchers' authority to establish a system of legal education for lawyers and articled students. It does not appear on its face to define the academic requirements necessary to become a lawyer or articled student. In this regard the members may find instructive the opinion of Mr. Gomery on the Law Society's discretion under Rule 2-27(4.1). He observes that Rule 2-27(4.1) flows from the Benchers' authority under ss. 20(1)(a) and (21)(1)(b) of the Legal Profession Act to make rules establishing academic requirements.

Meeting Arrangements

The Benchers have made significant efforts to accommodate members interest in attending and voting on the special general meeting resolution. The Benchers have approved the Vancouver Convention Centre East's Exhibition Hall A (2.300 seats) for the meeting in Vancouver, and have approved 15 other locations around the province, to be linked by telephone to the main meeting and providing about 2.475 additional seats. The decision to start the meeting at 12:30 pm was based on previous experience with a special general meeting and our general practice at annual general meetings. The Benchers understand that both the timing and the locations may not accommodate all those who might wish to attend and vote on the resolution. The Benchers will consider looking at a range of different options for future general meetings but the current special general meeting must, due to the very short time limits imposed by the current Rules and the date of the member request, comply with and be conducted in accordance with the Rules and procedures in place at the time the request was received.

Proposed Rules for the Meeting

The Benchers are also mindful that a significant number of members may attend at the 16 locations they have set for the special general meeting. In order to maximize the opportunity for those who may wish to speak at the meeting and still hold the vote in a timely manner, the Chair intends to call for a motion that:

- Registration will begin at 11:00 am and close when the vote is called on the resolution:
 - There will be a time limit of three minutes for member speeches;
 - Members will not be allowed to speak for a second time on the same matter; and
- 4. The vote will take place as determined by the meeting, but in any event, not later than 5:00 pm.

The Benchers wish to remind everyone that this is a meeting called by members and interested members should attend to vote on the issue.

2014 Special General Meeting Locations

Your RSVP response is wegently requested. Please RSVP by Friday, May 30, 2014 to the small address beside the location you plan to attend. If responding for others as well, please note in your email the total number of expected attendees.

City/town	Location	RSVP-by email to:
Vancouver	Vancouver Convention Centre East, Exhibition Hall A 999 Canada Place, Vancouver, BC	vancouver@lsbc.org
Abbotsford	University of the Fraser Valley, Theatre B101 33844 King Road, Abbotsford, BC	abbotsford@lsbc.org
Castlegar	Quality Inn Castlegar, Monte Carlo Room 1935 Columbia Avenue, Castlegar, BC	castlegar@lsbc.org
Cranbrook	Best Western Cranbrook Hotel, DW Krocker Room 1019 Cranbrook Street N, Cranbrook, BC	cranbrook@lsbc.org
Dawson Creek	Holiday Inn Express Hotel, Ballroom 12217 4 th Street, Dawson Creek, BC	dawson_creek@lsbc.org
Kamloops	The Plaza Heritage Hotel, Blackwell Hall 405 Victoria Street, Kamloops, BC	kamloops@lsbc.org
Kelowna	The Coast Capri Hotel, Ballroom 1171 Harvey Avenue, Kelowna, BC	kelowna@lsbc.org
Nanaimo	The Coast Bastion Inn, Ballroom 11 Bastion Street, Nanaimo, BC	nanaimo@lsbc.org
New Westminster	The Metro Banquet Hall and Events Centre, Ballroom 759 Carnarvon St, New Westminster, BC	new_westminster@lsbc.org
Prince George	The Coast Inn of the North, George Evenoff Room 770 Brunswick Street, Prince George, BC	prince_george@lsbc.org
Prince Rupert	The Crest Hotel, British Columbia Room 222 1 Ave W, Prince Rupert, BC	prince_rupert@lsbc.org
Smithers	Perry & Company, Boardroom Unit 2, 3842 3 rd Avenue, Smithers, BC	smithers@lsbc.org
Surrey	New City Hall, Centre Stage 13450 104 Avenue, Surrey, BC	surrey@lsbc.org
Terrace	Best Western Plus Terrace Inn, Skeena 2 Room 4553 Greig Avenue, Terrace, BC	terrace@lsbc.org
Victoria	McPherson Playhouse 3 Centennial Square, Victoria, BC	victoria@lsbc.org
Williams Lake	Williams Lake Courthouse, Courtroom 410 540 Borland Street, Williams Lake, BC	williams_lake@lsbc.org



845 Camble Street Vancouver, British Columbia Canada V6B 429

Notice of Special General Meeting of the Law Society of BC – TIME SENSITIVE



This is Exhibit" — "referred to in the affidavit of Timothy E male oc sworn before me at Vancouver this 15"day of January 20.15

A Commissioner for taking Affidavits for British Columbia

Law Society of British Columbia Special General Meeting DATE: June 10, 2014

JL: Welcome to the Law Society members, articled students, members of the public and the media to this Law Society of British Columbia Special General Meeting. My name is Jan Lindsay. I am honoured to be the President of the Law Society for 2014 and to serve as chair for this meeting. I would like to acknowledge the Coast Salish people, in particular the Squamish, Musqueam, and Tsleil-Waututh First Nations, on whose traditional territories we are holding this meeting. And on behalf of the Law Society, I want to thank them for their hospitality. I also want to acknowledge and thank those First Nations on whose traditional territories we have arranged an additional 15 teleconference locations for today's meeting. This Special General Meeting of the members of the Law Society has been convened by the Benchers in accordance with Law Society Rules following receipt of a written request that satisfies the requirements of Rule 1-9(2). The sole purpose of this meeting is to consider and vote on the following resolution, as set out in the notice that was mailed to the profession and posted to the Law Society website. The motion is: "The Benchers are directed to declare, pursuant to Rule 2-27(4.1) that Trinity Western University is not an approved faculty of law." I will refer to that as the Member Resolution. I want to introduce our head table. Closest to me is David Crossin, Second Vice-President. Beside him, Jeff Hoskins, QC, Tribunal and Legislative Counsel. I'm in the empty chair. Beside me, on the other side Mr. McGee, [inaudible] McGee, QC, Chief Executive Officer and Executive Director, and at the far end of the table Bill McIntosh, Manager, Executive Support. I also want to recognize our First Vice-President, Ken Walker. Ken is chairing the

Kamloops meeting today. I'm now going to introduce our other meeting locations and their local chairs. Victoria, the meeting is chaired by County, sorry, Victoria County Bencher Dean Lawton. Nanaimo, the meeting is chaired by Nanaimo County Bencher Nancy Merrill. In Abbotsford, the meeting is chaired by Westminster County Bencher Martin Finch, in New Westminster the meeting is chaired by Westminster County Life Bencher Carol Hickman, QC. In Surrey, the meeting is chaired by Count, Westminster County Bencher Phil Riddell. Castlegar, the meeting is chaired by Kootenay County Life Bencher and Past President of the Law Society Bruce LeRose, QC. In Cranbrook, the meeting is chaired by Kootenay County Bencher Lynal Doerksen. In Kelowna, the meeting is chaired by Okanagan District Bencher Tom Fellhauer. In Dawson Creek, the meeting is chaired by Cariboo County, Cariboo County member Clint Sadlemeyer, QC. In Prince George, the meeting is chaired by County, Cariboo County Bencher Lee Ongman. In Williams Lake, the meeting is chaired by Cariboo County member Angela Ammann. In Prince Rupert, the meeting is chaired by Prince Rupert County member Sam McLean. In Smithers, the meeting is chaired by Prince Rupert County member Sean Rowell. In Terrace, the meeting is chaired by Prince Rupert County member and former Bencher Barry Zacharias. And in Kamloops, last but not least, that meeting is chaired by, as I said already, our First Vice-President, Kamloops District Bencher Ken Walker, QC. Operator, we are going to now conduct a roll call of the meeting locations for attendance reports by the Local Chairs. Local Chairs, please prepare to report the number of Law Society members and articled students present at your location.

OP: So before we [inaudible] for the number of Law Society members and articled students [inaudible] locations, we do seem to have an issue with Castlegar, President, they are not able to hear Vancouver's line at all. So if we can just hold for a couple of moments, we're just going to have to do one little [inaudible] before we go to the Local Chairs.

JL: I think I need my binoculars to see to the end of the room.

- OP: Hello everyone, so we just had Castlegar disconnect from the call. They will reconnect in a few moments. Would you like me to start with the attendance and then we'll get to Castlegar as well by then?
- JL: Start, yes, please.
- OP: Perfect, so Local Chairs, please prepare to report the number of Law Society members and articled students present at your locations. Victoria, please report your attendance of Law Society members and articled students.
- **DL:** This is Dean Lawton in Victoria. We have 182 lawyers, 1 student, 7 members of the public and a few more coming in.
- **OP:** Thank you very much Dean. Nanaimo, please report your attendance of Law Society members and articled students.
- **NM:** Nanaimo has 60 lawyers and no articled students.
- **OP:** I'm sorry Nanaimo, we're just going to ask you to repeat, if you could please raise the volume or maybe speak a little bit louder.
- NM: Nanaimo has 60 lawyers and no articling students.
- **OP:** Thank you very much. Abbotsford, please report your attendance of Law Society members and articled students.
- **MF:** Abbotsford has 52 lawyers, 1 articling student, no public or media persons in attendance.
- OP: Thank you very much. New Westminster, please report your attendance of Law Society members and articled students.
- CH: New Westminster has 31 lawyers, no students, and 1 member of the public.
- **OP:** If you don't mind just repeating that and maybe speaking a little bit further from the microphone.
- CH: New Westminster has 31 lawyers, no students, 1 member of the public.
- OP: Thank you very much. Surrey, please report your attendance of Law Society members and articled students.

- PR: Surrey has 40 lawyers, 1 articled student, 1 member of the public.
- **OP:** Thank you very much. Castlegar, welcome back to the call, and please report your attendance of Law Society members and articled students.
- **BL:** There are 19 members and 1 articled student.
- **OP:** Thank you very much. Cranbrook, please report your attendance of Law Society members and articled students.
- LD: Cranbrook has 16 lawyers and no students.
- **OP:** Thank you very much. Kelowna, please report your attendance of Law Society members and articled students.
- **TF:** We have 73 members, 1 student, and 2 members of the public.
- **OP:** Thank you very much. Dawson Creek, please report your attendance of Law Society members and articled students.
- CS: Here in Dawson Creek we have 9 members and 1 student.
- **OP:** Thank you very much sir. Prince George, please report your attendance of Law Society members and articled students.
- **LO:** In Prince George we have 19 members, 0 students.
- OP: Thank you very much. Williams Lake, please report your attendance of Law Society members and articled students.
- AA: Williams Lake has 5 lawyers and 0 students.
- OP: Thank you very much. Prince Rupert, please report your attendance of Law Society members and articled students.
- **SM:** We have 6 members, 0 students, 0 members of the public, 0 media and anticipate hopefully some more lawyers will attend later on.
- **OP:** Thank you very much. Smithers, please report your attendance of Law Society members and articled students.
- **SR:** 11 members, 0 students.

- **OP:** Thank you very much. Terrace, please report your attendance of Law Society members and articled students.
- **BZ:** In Terrace we have 12 members and 0 students.
- **OP:** Thank you very much. Kamloops, please report your attendance of Law Society members and articled students.
- **KW:** We have 47 members registered, 5 students, 2 members from the media were present, 1 is still here.
- **OP:** Thank you very much. Vancouver, please report your attendance of Law Society members and articled students.
- JL: Vancouver has 642 lawyers registered and 22 students. So plus or minus 1, the total, the lawyers registered for this Special General Meeting 1241 and articled students 33, and that's in the several locations around the province. Total attendance is well more than 50 and I declare a quorum for this meeting. So just some preliminary matters. All members in good standing, including nonpracticing members, retired members, and articled students are entitled to be present and speak. Others may address the meeting only with the permission of the President. Given the number of members who have confirmed their intention to speak at this meeting, I do not expect to allow, to call for statements from the public. We will see how that shakes down. Members, [inaudible] and students who wish to address the meeting should line up at the floor microphones, or in locations not equipped with floor microphones, members and students who wish to speak to the main meeting should raise their hand where a Local Chair will then notify the Operator that a speaker at that location wishes to address the main meeting. You probably have appreciated the resolution, the microphones on this end of the building is on my right, is the 'Yes' microphone in favor of the resolution. The microphone and podium on the far left is the 'No' opposed to the resolution, and the microphone and podium in the middle is for undeclared. The Operator will record the locations with speakers waiting to address the meeting, although we are having some difficulty with the queuing and so we may have to be more flexible about how we go around the province. I'm going to remind you

Robert's Rules of Order limit speakers to two speeches of 10 minutes on the same matter on the same day. You all heard the roll call and you can do the math. You can see how long we'll be here if we all take advantage of that rule. I'm going to ask each speaker to organize your thoughts, try to be brief, and to try avoiding repeating what has already been said. I should also remind speakers and I will try through the meeting, identify yourselves for the [inaudible]. Considerable numbers have indicated an intention to speak so I've identified the microphones. The plan, my plan is that during the debate we will alternate between speakers in the Vancouver and speakers in other locations, and we will also alternate between speakers for and against the resolution. I originally suggested a 5 o'clock end of debate and moving to voting. There were a number of questions or requests to extend that, so we've agreed to extend that time to 6. That should allow at least 5 hours for debate. I hope to call the question, when we have exhausted our supply of speakers, and in any event, no later than 5 to allow us to roll through and get to the 6 o'clock deadline. The 6 o'clock deadline has to stand because we don't have the meeting venues after 7 in many locations like this one. I'm talked about who can vote. I will now, sorry, we've come to the, when we come to the vote, I will call for scrutineers. Those interested in watching the vote should identify themselves to me and to the Local Chairs and the Local Chairs will determine the scrutineers, if any, and how many. I think that brings us to the business of the meeting. Rule 1-9(7) requires that the business conducted at this Special General Meeting be limited to the resolution set out in the motion mailed to the Profession and posted to the Law Society last month. The operative, the clause in the resolution that we are here to decide, the resolution is: the Members, sorry the Benchers are directed to declare, pursuant to Law Society Rule 2-27(4.1) that Trinity Western University is not an approved faculty of law. I'm going to ask Ms. Barbara Finlay to present the motion. There will be [inaudible] seconds and then we will go to the other mike for speeches. Again, please identify yourself for the meeting.

BF: My name is Barbara Finlay. I move the adoption of the resolution proposed by [inaudible] by [inaudible] QC that the Benchers be directed to declare that Trinity

Western University is not an approved faculty of law. I'm a lesbian lawyer. I've been practicing law for 37 years. I am very proud to be standing here for the first time in the history of the Western world, that an entire legal profession is here to consider the rights of lesbian, gay, bisexual and transgendered lawyers. To those of you who are here because you oppose the motion, because you believe your religious freedoms will be impaired if I attend your law school, or because you think the Benchers were correct in deciding in favor of a discriminatory regime, to you I say we are all some of you and you are all some of us. Some of your children will be lesbian, gay or transgendered. Some of our queer members are deeply religious, many of them profoundly Christian. Some of all of our children. we hope, are going to want to go to law school. So this is not a case of us versus them. When I started law school in 1973, it was four years after homosexuality had been taken out of the Criminal Code. It was the very year the American Psychiatric Association delisted homosexuality from their bible of mental illness. the bible on the basis of which many lesbians including me were locked up in mental hospitals in the sixties because we were lesbians. That was the reason that I had to get what you probably didn't need, a sanity certificate, to practice law. As a lawyer in this province, I had no human rights at all until 1992. 25 percent of the country's laws discriminated explicitly against us. I watched the Supreme Court of Canada three times say no to rights for my community. In 1979, the Vancouver Sun refused to run an add which was [inaudible] to Gay Pride, \$1, 1946 Yew Street on the grounds of public decency. The Supreme Court of Canada decided ah, the classified ads section, not a public service. In 1993, in the [Moffatt??] Case, that was fought under the Canadian Human Rights Act and it was a spousal benefits case. In that case, though it was brought under the ground of family status, the Supreme Court of Canada said uh-uhn, there's no sexual orientation protection in the Canadian Human Rights Act. In [inaudible], 1995, another spousal benefits case, this time under the Charter. And finally, we won the war and lost the battle. The Supreme Court of Canada said yes, sexual orientation is protected as an analogous ground under the Charter but no, we can't have a spousal pension because it's refusal is justified by Section 1. I support religious

freedom. You have every right to believe that I am a sinner. But when your discriminatory beliefs turn into actions that discriminate against me, then that's where you've crossed the line. The Benchers thought they were bound to decide as they did, and they decided in good faith. Many expressed repugnance at TWU's covenant restricting my right to attend there or to teach there as I did in the Faculty of Law at UBC. But as Nova Scotia and Ontario Law Societies have courageously demonstrated, the role of the Benchers and the role of this meeting is to take leadership. It is, it is terrifying to me to consider that the hard-won equality rights for gay, lesbian, bisexual, transgendered people can be turned back in the name of religious freedom. But I propose another law school. It will be called Queer Western University. Its faculty and staff will be exclusively lesbian, gay, bisexual or transgendered people, and any one will be free to attend the university provided that they restrict their sexual activity to sexual activities between two people of the same sex. We will be requiring a community covenant signed by every student and every staff to ensure rigorous compliance with that covenant. We insist on that covenant in order to demonstrate that we live lives which are exemplary, which are characterized by honesty, civility, truthfulness, generosity, and integrity, that we treat all persons with respect, respect and dignity, and that we uphold their right and their human worth from the time they are born 'til the time they die. I respectfully request that each of you in this room vote yes to the motion proposed by Mike Mulligan, vote yes to say we support religious freedom including the right to hold discriminatory beliefs, vote yes to saying we support the equality rights of lesbian, gay, bisexual and transgendered people including the right to be free from discriminatory action based on anyone's religious beliefs. Thank you.

JL: Thank you. Seconder?

MM: Sorry, it's Michael Mulligan that's actually [inaudible] the resolution as well. In our...

JL: Sorry, Mr. Mulligan, I'm going to ask for a second, then I'm going to try to go to the other microphone and then I will come back to you.

MM: Okay.

JL: I should just say, that for the people who are standing, my plan is to call for, call on four speakers in this meeting and then go to probably Nanaimo I think that there are speakers in line in Nanaimo then to come back and then to go out again. So it will be a long stand but you will see that we have a number of chairs marked off and you won't lose your place in the line. Please try to make yourself comfortable. Thank you. So a seconder?

MM: I will second that.

JL: Thank you Mr. Mulligan. Someone speaking opposed to the motion, and please remember to identify yourself.

BK: My name is Bob Kuhn and I have practiced in the province for 34 years. I consider it a great privilege and responsibility to be a member of this profession. While I'm also the President, and an alumnus, of Trinity Western University, that entity has no standing here despite it being the ultimate subject of these proceedings so I speak as a practicing lawyer. Let me be the first to acknowledge that the conflict under consideration today, properly characterized, is the interface between sexuality and faith. It is extremely personal, potentially emotional, and complex [often??]. I apologize for any hurt caused by the words spoken or actions taken by those who hold themselves out as supporters of Trinity Western's School of Law. I know the debate over this issue has often been heated, and if I have been guilty of any [inaudible] or lack of civility, I seek forgiveness to those whom I may have offended.

OP: I am very sorry to interrupt the meeting, and we just have Castlegar who are not able to hear anything [inaudible]. If you don't mind pausing for a bit, once again I'm very sorry for the interruption. Castlegar is able to hear me when I'm speaking but they are not able to hear Jan or any of [inaudible].

JL: Mr. Kuhn, I think we'll just have you, please carry on and technicians will work on Castlegar, is that fair?

Yes, Madame Chair. While I am the President of, and an alumnus of Trinity Western University, that entity has no standing here despite the ultimate subject of these proceedings so I will speak as a practicing lawyer. And [inaudible] let me be the first to acknowledge that the conflict under consideration today, properly characterized, is the interface between sexuality and faith. It is extremely personal, potentially emotional, and often complex. I apologize for any hurt caused by words spoken or actions taken by those who hold themselves out as supporters of Trinity Western's law school. I know the debate over this issue has often been heated, and if I have been guilty of any intemperance or lack of civility, I seek forgiveness to those whom I may have offended. Regardless of what happens today, the dialogue must go on. I remain committed to that dialogue. However, today we are here to consider Trinity Western University's School of Law. This unprecedented gathering of lawyers in British Columbia is here to judge the correctness of the 20 to 7 decision made by our elected leaders. I urge you to consider this question carefully. If we as lawyers of this province purport to replace our judgment as the will of the Benchers, we must consider the matter as carefully as they have done. This is not a matter of personal preference. political persuasion, or even popular opinion. As Mr. Mulligan told the Metro News yesterday, and I quote, "as lawyers we have a duty to ensure the rights and freedoms of all persons are protected." I share Mr. Mulligan's characterization of what we're about. Those rights, those freedoms, include those of TWU and its law school graduates. In the time allowed, I propose to make a few statements and ask a few questions. First, have we carefully considered the application of the Supreme Court of Canada judgment in Trinity Western versus the BC College of Teachers. I suggest that that analysis of the 200, the 2001 decision is critical given the fact of the case and dealing as it did with Trinity Western in the very similar situation. It cannot be ignored. Both the Federation and the Benchers have legal opinions that concluded this case remains good law. I suggest that in order to vote yes today, you would have to be confident that those opinions are wrong and the decision would be reversed. Second, you all know the facts necessary to enable to make this decision. Trinity Western is a provincially chartered Christian

BK:

university by reason of its legislated mandate which reads: "The University shall provide an education with an underlying philosophy and viewpoint that is Christian." TWU has been part of the higher education landscape in this country for over 50 years. The main reason students, staff, and faculty members come to Trinity Western is because of what it is, an evangelical Christian community of higher education. As an academic learning environment, it ranks among the best in Canada based on objective criteria. It is the largest Christian university in Canada and has 4000 students, 300 faculty members, and offers [42??] undergraduate programs, 17 graduate programs, plus an interdenominational seminary and adult degree completion and extension courses. Among other professional schools, TWU has a highly acclaimed School of Nursing and a wellrespected School of Education. As with many other Christian universities and colleges, TWU maintains its community ethos by documenting the beliefs upon which the community is grounded. Relevant to today's consideration is a document called The Community Covenant which read in its entirety, reflects the deeply held religious beliefs of the University community. After years of preparation, including discussions with [inaudible] 15 law schools, TWU made application to both the Ministry of Advanced Education and the Federation of Law Societies of Canada. After 18 months of rigorous assessment, including assessment of TWU's faith-based nature and the Community Covenant, both the Federation and the Ministry approved TWU's School of Law. The approval by the Federation resulted in the Law Society deciding to engage in an unprecedented consultation process open to anyone who had any views on TWU's School of Law. After reviewing some 300 submissions, obtaining and considering a fistful of legal opinions from well-respected lawyers including the former Chief Justice of the province, the Benchers made their decision in favor of TWU's law school graduates. [Inaudible] for the conclusions of the Benchers, it was clear that their decision was made on the basis of fact and law, and in many cases it was contrary to their personal views. In fact, the Benchers inquired of a number of professional bodies and universities seeking to determine whether there were any reported incidents of TWU alumni acting in a discriminatory manner.

There were none. I would ask you to consider the preamble in Section 3.1 of the Civil Marriage Act. That is the legislation that created legal same-sex marriages. The preamble reads [inaudible] whereas it is not against the public interest to hold and publicly express diverse views on marriage, [inaudible] reads no person or organization shall be deprived of any benefit or [inaudible] any obligation or sanction under any law of the Parliament of Canada solely by reason of their exercise in respect of marriage between persons of the same sex, of the freedom of [inaudible] and religion guaranteed under the Charter or the expression of their beliefs in respect with marriage as the union of a man and a woman to the exclusion of all others based on that guaranteed freedom. This is how the anticipated conflict that we speak about today was intended to be resolved between religious communities and same-sex marriages. TWU is simply asking that that same resolution of conflict be applied here. Trinity Western University is not asking our Law Society to approve or agree with its religious beliefs and standards. It would not be their role to do so. Neither is it the role of the Members in this meeting to pass judgment on sincerely held religious beliefs. What is at stake here is the right to hold a belief, unpopular as it may be, and maintain it as a standard, as an ethos, for its university environment, its university community. A vote in favor of the motion to disapprove TWU's law school communicates to TWU, its religious community and many other men and women of faith that they are not welcome to engage in the public square of Canadian pluralistic society. The freedom of religion means anything in Canada that must [inaudible] with the former Chief Justice [inaudible] words in Big M Drug Mart, words which you will be familiar with but let me say them again: "A truly free society is one that can accommodate a wide variety of beliefs, diversity of [inaudible] customs and codes of conduct." The Supreme Court of Canada refers to this as the [inaudible] of the events which occurred in that case in 2001. And in that vein let me quote [Kevin Kindred??], a Nova Scotia gay activist lawyer, who made a submission dated January 28, 2014 to the Nova Scotia Barristers Society. He said: "In my view, the opposition to TWU's law school program is wrong minded, both of law and in strategy. A moral or religious opposition to homosexuality does not, in my

opinion or experience, disqualify a person from the practice of law. [Inaudible] commitment [inaudible] that the law should reflect that moral stance. I would be frightened for the state of the law and the profession if this were not the case. In my time advocating for clear causes, I have become more and more concerned that we lose sight of the values of pluralism and accomodation that in my view make Canada strong and make it a legal system that is one of the greatest in the world." Let me close with the words of the Supreme Court of Canada in the TWU BC Teachers, "TWU is not for everybody. It is designed to direct the need of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood under Section 15 [inaudible]. It is important to note that this is a private institution that is exempted in part from the BC Human Rights legislation under which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs in a private institution is sufficient to engage Section 15 would be inconsistent with the freedom of conscience and religion [inaudible] this with the right to equality." I urge you to accept the decision of the Supreme Court of Canada, the decision of the Parliament of Canada, the decision of the Province of British Columbia and the Benchers and vote no.

JL: Thank you. [Inaudible] a speaker in favor of the motion, speaker, identify yourself.

MM: Yes, it's Michael Mulligan speaking in favor of the resolution. In our time, we are just coming out of a long, dark history of wrongful discrimination on the basis of sexual orientation. Some relief has come in our time but we are not yet done rectifying this terrible injustice. As with other struggles such as [inaudible] racism, we will not be able to rest on seeing some even great progress if we do not continue to stand up against ignorance and bigotry, they will take us back and the historical wrongs will be repeated. In the case of discrimination on the basis of sexual orientation, we need to remember that our brothers and sisters, sons and daughters, neighbours and colleagues, fellow human beings, have been banished, blacklisted and [inaudible], denied dignity, [inaudible] and opportunity,

criminalized and condemned, persecuted and punished, shamed, shunned, and stigmatized, required to hide their very essence. They suffered unspeakably as one of the horrors of the Holocaust. And here is another critical [truth??], much of this horrible history has been derived from or justified by religious [preferences??]. In the present context, there is no moral or legal equivalency between religious freedom and the right to be free from discrimination on the basis of sexual orientation. One is about freedom of belief and dogma, even rooted in ignorance and sometimes resulting in bigotry. The other is a right to be free from harm. Some speak of the rule of law, precedence [inaudible]. This is not [inaudible]. Much has happened in the years since that judgment including wider recognition of what is necessary to correcting this wrongful discrimination. Against the [inaudible] is this request for us to take a step back and approving a discriminatory law school. Our Law Society mandates to decide whether or not to approve a law school is different than the legal framework in the teachers' case. The key word in the [inaudible] rule for us is [inaudible]. We are mandated to consider the public interest and in so doing, ensure the honor of the profession while protecting the rights and freedoms of all persons. As a matter of both legal obligation and high principle, we need to refuse to approve TWU so long as it engages in wrongful discrimination. We are not just dealing with academic qualifications and curriculum. This is something much more important. While TWU is desperate to claim that we are here to consider an application [inaudible] student for admission by reference to their religious beliefs, this is simply not the case. [Inaudible] about future conduct. Beliefs are not the concern. Our concern is with the conduct of the university as an institution and not the religious views of the faculty or students. Our task is to assess the conduct of the university in order to determine its approval would further the object and duties of the Law Society. On that score, there is no need for speculation and the answer is no. In addition, as we know, past judgments are sometimes seen as distinguishable. Previous interpretations and legal doctrine are developed and refined. Once in a while, they are even found to be wrong and abandoned. Separate but equal is no longer accepted and [within them??] are now persons. As recently as 1967, the Supreme

Court of Canada upheld a life sentence for a man convicted of four counts of gross indecency who had been engaging in consensual sexual activity with other men. We are not an inferior court trying to apply a decision from another time. Our task is to act reasonably in accordance with our statutory mandates and the Charter. If called upon to defend our decision in court, we will do so. TWU is seeking our stamp of approval for [emotional??] discriminatory banner to be hung on a new law school. The courts and legislatures will probably [inaudible] speak again on our issue. Today, we get to say where we stand. That stand will be one of the many influences on social, political, and legal development. Let's refuse to step back in the continuing difficult fight for human dignity and civil rights. Let's refuse to approve what we know is wrong in our time.

JL: Could I hear from the speaker at the microphone opposed to the motion and again please identify yourself.

New Speaker: [Inaudible] spelled a-s-u-n-t-i-a-o-a. I am originally from the Philippines, called to the bar there in 1956 and called to the bar in British Columbia in 1992. I was one of those affected by the discriminatory [inaudible] of the Law Society [inaudible] Rules and Law Society [inaudible] decision that required [inaudible] to be a barrister in British Columbia. I had studied law [inaudible] in 1972 but the common law [inaudible] and the Law Society says I cannot article until after January 1976 because [inaudible] then required five years of residence. Anyways, I'm here and [inaudible]. I submit that a decision of the Benchers to allow graduates from Trinity University to become lawyers in BC on the basis of religious freedom is correct. Most students have a choice to go to different universities, it's like elementary and high school students have a choice of going to private school or public school. If the members disapprove graduates from Trinity Western from becoming lawyers in BC, it is a form of reverse discrimination. In effect, you will be saying that all lawyers in BC must believe in adultery and must believe in same-sex marriage otherwise they cannot be a lawyer in British Columbia. We do not want a repeat of history of St. Thomas More, English lawyer, Lord Chancellor and important councilor of King Henry the 8th He was beheaded because he refused to accept Henry as Supreme Head of the

Church of England as a result of Henry's dispute with the Pope for Henry's subsequent marriage to Catharine of Aragon. I therefore urge our members to vote against the resolution. Thank you.

JL: Thank you. To the woman who is standing at the microphone in support of the resolution, I was approached at the beginning of the meeting by Mr. Berger who has requested to bump the line. I'm not [inaudible] myself but I'm sure he well-positioned.

New Speaker: Absolutely.

JL: And he would ask that you [inaudible] or [inaudible].

New Speaker: Yes Madame President, I have no problem at all with that.

JL: So I will call on Mr. Berger. He promises to be three minutes. We will then hear from another speaker opposed to the motion and then I will go to Nanaimo where we will call on two speakers, one in favour and one opposed, and then we will come back to Vancouver and we have many other locations waiting to speak. So I am telling those who are standing, it will be a while. Is Mr. Berger in sight? All right go ahead, to the woman was standing, go ahead.

CM: Thank you very much. And I'll be three minutes, I believe that's our limit. My name is Carolyn McCool. I was called to the bar in this province in 1977, graduated from UBC in [Session Four??] for those of you who know what that means, in 1976 along with other people who are present today. I urge upon the Law Society a decision not to approve the application of Trinity Western University. I've written a comment which I've sent to all of the Benchers, and to the best of my ability, to members of the profession as well although I haven't gotten it out to everybody. My argument is I think very, very simple. I have not presented my comment as a formal legal opinion of the law is this in this court, the law is that from that authority, I have argued that there is a correctness in this situation and that we have passion [inaudible] that will lead us forward. What did Ralph Waldo Emerson say? "Do not go where the path may lead, create the path, leave a trail." This is a question of what I think of as [inaudible] which must be

fashioned in accordance with the mandate given under Section 3 of the Legal Profession Act. We are under one of the highest moral codes which can be envisioned in human society. We are mandated to protect the public interest in the administration of justice, to preserve the freedoms of all people. There can be no higher duty in my view. So that's what we're talking about. This case is not about freedom of religion. People who believe as [inaudible] does have my deepest respect. In the interests of full disclosure, I have followed a spiritual path myself for many years that some of you know about. But that's neither here nor there. This case is not about freedom of religion. This case is about whether the Law Society, and I'm quoting from myself, can lawfully approve a faculty of law, which has as a stated goal and an aim, the violation of constitutionally guaranteed, fundamental rights and liberties and human rights, by actively and systematically denying the equality of gay and lesbian individuals. Clearly, the Law Society cannot, in my respectful view, do that. This is not like [inaudible] one argument. I can't even articulate the Section 1 argument in this case. There are several issues that are extremely interesting. Is TWU a private institution? In the context of this case, it is in my view not, you cannot say that when what you're doing is training people to enter the public practice of law through a publicly regulated higher institution. A degree granting institution and that's a whole argument there. It is not exempt from the Charter, it's not exempt from the Human Rights Code of British Columbia and the TWU Teachers case in 2001 is in the first place distinguishable because teachers are not lawyers and they do not have the mandate we do. And secondly, it's dated law and I bet you that our Chief Justice would be very interested in that argument. So you know things have changed in the last 13 years. There is a lot to be said, and I believe that the legal arguments are cogent and coherent. In addition, I say this because I have worked internationally and I'm very interested in international human rights. Arguably, TWU law school with the covenant in place would be in violation of international human rights standard including the basic instruments that govern free and democratic societies in this, in the late 20th and the 21st century, [inaudible] Declaration of Human Rights, [inaudible] covenant. The court rules are not

binding on the courts but the courts are very interested in what those bodies have to say. What some of you may not realize as well is that what TWU is proposing would in some cases at least amount to persecution under the Immigration and Refugee Protection Rights of Canada [inaudible]. Sexual orientation [inaudible] the past member of the Immigration and Refugee Board, sexual orientation can constitute good grounds for accepting a refugee claim and we do it regularly, as well as credibility, identity, and nationality are established, blah, blah, blah, we have a good refugee claim. So what is being proposed is something which would actually rise to [inaudible] persecution in some cases. We can't do it, we cannot go there. The three minutes are up I'm sure. I thank you very much. I encourage people to consider as well a case I didn't mention, it's been brought to my attention, [inaudible] et le Barreau du Quebec, Supreme Court of Canada 2012 which deals with the responsibility of administrative bodies such as the Law Society to carry out the Charter [inaudible]. Thank you all.

- JL: Thank you. I am keeping track and that was seven and a half. A speaker at the microphone opposed to the motion, and then I should tell you I'm going to go to Nanaimo and call for two speakers, one in favor and one opposed, then I will come back to Vancouver, call for two speakers, one in favor, one opposed. Then I will go to Abbotsford, come back to Vancouver, go to Victoria, come back to Vancouver, go to Prince George, come back to Vancouver, go to Castlegar, back to Vancouver, Cranbrook, Vancouver, Kelowna, Vancouver, Kamloops, so you've gotta do the math. Go ahead please and identify yourself.
- LL: Thank you Madame President. My name is Lindsay Lister and like all of you I'm a member of the Law Society of British Columbia. I am also the President of the British Columbia Civil Liberties Association. Many of you will know that the BCCLA made submissions to the Law Society of British Columbia in which we urged the Benchers to accept TWU's application for an accredited law school. Those submissions are available and I invite you to review on the Law Society's website. Those submissions explain in detail why the BCCLA, and I emphasize this is a view with which I share personally, believe that it would be contrary to the Canadian Charter of Rights and Freedoms to deny TWU accreditation on the

basis of its community covenant and the choice of those who attend TWU to abide by it. There are a great many things in life of which I am happy to admit I agree with my colleague Barbara Finlay. The accreditation of TWU is not one of them. However, there was one thing in particular that Barbara said when she spoke earlier with which I wholeheartedly agree and that that is that this is not an us versus them issue. There are LGBTQ people in the lineup to urge you to vote no. I'm one of them. I'm confident there are people of faith in the lineup to urge you vote yes. This is not, and we must not allow it to be, an us versus them issue. There are a great many things which you can and of course have been said and written about this important issue, and I won't try to cover them all. I speak to you now however to urge you to vote no to the resolution which is before the membership. In my submission, to vote in favor of the resolution would be to direct the Benchers to discriminate against TWU, its faculty and students on the basis of their conscientiously held religious belief. To vote in favor of the resolution would deny the would-be graduates of TWU a public good, entry into the legal profession, and to do so on the basis of their conscientiously held religious belief. To vote in favor of the resolution would be to deny the faculty and students of TWU their fundamental freedom. That includes their freedom to associate in accordance with their conscientiously held religious beliefs and to express those beliefs in the manner in which they choose to undertake to live while students and faculty at TWU. The freedoms enshrined in Section 2 of the Charter are called fundamental for a reason. Without them, we, none of us, would have the right to hold and express our belief, religious or not, to celebrate, to educate, to demonstrate, to create art or to act together, to work together for political or social change. The right to equality guaranteed under Section 15 of the Charter is of vital importance in a free and democratic society. But one group's right to equality and non-discrimination should not be bought at the price of intolerance for the fundamental freedoms of others. You have already had cited to you the decision of Chief Justice [inaudible] in the Queen and Big M Drug Mart. I'd like to draw your attention to another passage from his judgment where he said "what may appear good and true to a majoritarian religious group or

[inaudible] may not for religious reasons be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of the tyranny of the majority and I would add that it's true whether the majority is motivated by religion or any other conscientiously held belief." Fundamental rights and freedoms are not properly subject to determination by majority vote. Today, we have come to a hard and incredibly difficult struggle fought by people like Barbara Finlay to recognize the human dignity and right to equality of all LGBTQ people. That is a good thing of which all of us should be justly proud. Permitting graduates of TWU to enter the legal profession does not, in my respectful submission, send the message that LGBTQ people are less worthy of respect than others, nor does it deny them any rights or freedoms. Our commitment to a society in which LGBTQ people are equal does not and cannot give us license to discriminate against others on the basis of their religious beliefs. My friends and colleagues, I urge you to vote no to the resolution.

JL: Thank you. I'm going to Nanaimo, can Ms. Merrill please arrange for a speaker in favor and a speaker opposed and then we'll come back to Vancouver.

New Speaker: [Inaudible] from Nanaimo. After having reviewed the transcript of the Benchers debate and ultimate decision on this issue last night, I prepared a short legal discussion. I also searched the Internet to see how the press were handling the issue, what they thought of the decision, and our reaction to it, and also how the public was reacting to the decisions of the Ontario and Nova Scotia's Law Societies decision not to allow Trinity Western University law school graduates to article or practice law in their provinces. In my wanderings, I came across articles regarding the upcoming lawsuit [inaudible] against those Law Societies by Trinity Western University as well as a lawsuit brought by Clayton Ruby against the British Columbia government for approving TWU's application for the law school. And I realized at that point that it was highly presumptuous of me to purport to school, a gathering of over a thousand lawyers and articled students, many of which are immersed in the intricacies of constitutional law on this question. It also became glaringly evident that the legal question as to whether or not Trinity Western University has the right, under the Canadian Charter of

Rights and Freedoms, to discriminate against the LGBT community under the protection of religious freedom is not settled. In fact, there are very persuasive arguments that in fact they are breaking the law under this covenant. Having said that, it gives us a great deal of freedom today, and it gives us a great deal of responsibility as we have no choice but to face the morality of the situation and acknowledge that whatever decision we make today will be the moral space of the Law Society in years to come. We cannot hide behind the words of the law ladies and gentleman as the law is not settled. My submission to you is that our only task in this meeting are twofold; the Law Society is tasked, amongst other roles, to make sure that the law school in their jurisdiction will teach law graduates the laws of their particular province and of Canada. Our Law Society is not obliged to accept all schools for accreditation. This is a pragmatic law school to say the least. I submit that we have an obligation in the public interest to make sure that the schooling of our lawyers takes place in institutions of the highest caliber in places that [inaudible] the current state of the law, not an institution that violates the Charter of Rights and Freedoms. This university as a private body may be exempt from falling under the Charter, but just because they are able to force discriminatory practices upon their student body and faculty does not mean that we as a society should then be forced to accept the product of their teaching. The other issue that we are tasked with today to determine how we wish to present ourselves to the general public in the years to come. In my opinion, the transcript that I read was a moral debate couched in legal terminology. There are many of the Benchers that talked about how the LGBT community is [respected??]. Many Benchers were [pained??] to say how they have lesbian and gay friends and colleagues, but I believe the root of it is that they chose the politically easy way out, they [inaudible] the religious lobby rather than the minority LGBT community but we do not have to do that and we should not do that. I expect one way or the other this decision will place the Society on trial. If we deny Trinity Western the right to have their graduates admitted to the BC bar, they will likely [sue??] us just like they are doing to the Ontario and Nova Scotia Bar Associations. They are a very strong lobbying force with a lot of money behind

them, we will be sued. But if we vote the other way to support the Benchers' decision, I expect the Society will be joined by Clayton Ruby against the province of British Columbia who are suing on behalf of the gay and lesbian student or teacher who cannot attend this institution because although legally [inaudible], would literally be harassed out of the community because of what they are allowed to be under the law of Canada. And even if we are not tried in a court of law, we will and we are right now being tried in the court of public opinion. So we have to ask ourselves, do we want to be on the side of this university having to stay as a Bencher said in the transcript [inaudible] you know that [inaudible] document and we know it violates the equality standards of the Charter, but we as a Law Society are so shackled by the case that was rendered how many ever years ago that we must stand on the sidelines until someone much more brave than ourselves will make new law, or will we go forth and do the right thing, making sure that schools that we approve reflect the values that we want our lawyers to uphold, that being that all men and women are created equal under the eyes of the law. You know lawyers have a long history of challenging unjust laws. If indeed there has to be a weighing of the Charter of Rights between freedom of religion and equality, then so be it. The law does not remain static. The law changes every day. You are looking right now, some of you anyway, at a no-name lawyer from Nanaimo who changed the wording of legislation because it offended the Charter of Rights and Freedoms because it was discriminatory against gay and lesbian people. Surely if the will of the Law Society of British Columbia, with all the great legal minds that we have as members was to fight on behalf of equality, we would be able to succeed. The question that each member of this Society has to ask him or herself now is what side of the courtroom do you want to stand, not [inaudible] privacy or not in this room, in the court of public opinion, what do you want the Law Society to stand for? The Benchers as a whole acknowledge that this covenant was improper, morally reprehensible. Do you want a law society to champion the right to discriminate against the LGBT community under the guise of religious freedom or do you want to support the equality of the LGBT

community? The question is do we have the will? I vote to approve this motion. Thank you.

New Speaker: This is [inaudible]. I have been a member of this Law Society since 1957 and I've been a practicing lawyer since 1957 so as you can gauge, I am a pretty old man. I have also been three times elected a Bencher of the Law Society of British Columbia from this County, something of which I am extremely proud. I only want to speak about one aspect of this controversy, and that's the assumption that is being made by those who support this resolution that somehow or other the graduates of a university that has what they describe as discriminatory policies but which I do not for one minute accept as being discriminating, but they describe as being discriminating, that the lawyers who will graduate from this institution will in some way be seen, will some way be not real lawyers, will in some carry on these beliefs into the practice of law. That is of course absolute nonsense and I'm going to give you this analogy. There's been discrimination on the grounds of race, there's been discrimination against, on the grounds of gender for generations. I want to remind you that there are graduates of schools, of very famous schools which were purely discriminatory, who turned out some of the finest lawyers that we know. Lord Mansfield is a graduate of Oxford. Oxford denied admission to Catholics, to Jews, and to Quakers to within historical times. I want to refer you to Justice Oliver Wendell Holmes who was a graduate of Harvard College which discriminated against blacks and women. And I want to speak, if I may, personally as a South African, on the basis that discrimination in South African universities was rampant. I was one of the lucky ones, I went to one of the few universities in South Africa that did not discriminate on the grounds of race. But I'd defy you to distinguish between those South African lawyers who went to segregated universities and those who went to unsegregated universities like [myself??], I defy you to tell any difference between us in the way we practice law or in the morals codes that we upheld. What I'm saying to you is live and let live. You cannot judge what a person is going to be from the fact that a university is 'discriminatory' in its admission policies. The two have nothing to do with each other and I beg you to vote against this resolution.

JL: Thank you Nanaimo, Nancy, you should put Nanaimo back in the queue, I understand there's more speakers waiting to speak. So back to Vancouver, in favor of the motion, identify yourself please.

RB: My name's Richard Bell, I've been practicing since 1981. I will, Madame Chair, keep this to two minutes. First I believe that the Supreme Court of Canada decision in the BC Teachers Federation case, although helpful in the discussion, [will??] certainly not determine [inaudible]. The Law Society will be very different from the BCTF. The BCTF is a union and focused on protecting and promoting their members as opposed to protecting the interests of the public. Second, I believe that the interpretation of protecting the interests of the public should not be viewed as whether or not students graduating from Trinity Western law school would be good lawyers. The interests of the public should be viewed in the broadest terms and I cannot accept that the interests of the public are best served by supporting an educational institution that discriminates against students based on sexual orientation. The infamous covenant can only be interpreted as banning gays, lesbians, bisexual and transgendered students from attending Trinity Western. The governance policies of the Law Society include language using the following words: equity, diversity, accessibility, and inclusiveness. Surely the Benchers decision, I would respectably submit, falls short on achieving the high standards set by this language, inclusiveness, equity, diversity and accessibility. [Inaudible] there were numerous comments by the Benchers about the thoughtful and respectful discussion around this issue prior to reaching their decision. I would have expected nothing less from the Benchers. However, there are many examples of intelligent, thoughtful and respectful discussions that have led to bad decisions and bad laws and subsequently shown to be wrong, subsequently shown to be on the wrong side of history. Think women's suffrage, the Chinese head tax, residential schools to name a few. I believe the decision of the Benchers legitimizes the covenant and is in fact on the wrong side of history and that decision should be reversed as quickly as possible. Thank you very much.

JL: Next speaker.

GT: Thank you Madame Chair, honorable Benchers, esteemed colleagues. My name is Geoffrey Trotter! I'm a sole practitioner here in Vancouver. I'm a five-year call and 32 years old. We are gathered here today to determine how our Law Society can best discharge its statutory mandate to uphold the public interest in the administration of justice to preserving and protecting the rights and freedoms of all persons and ensuring the independent integrity, honor, and competence of lawyers. Our Society is governed by dedicated Benchers who take diversity within the bar seriously. Many initiatives in recent years have sought to increase retention of women lawyers, to increase law student applicants from aboriginal communities and other forms of diversity. So how is it that they could vote the way they did in April? What did they understand [inaudible] not to grasp? Two things come to mind today. First, and in contrast to [inaudible] of Mr. Mulligan, I think the Benchers are clear in their mind that accrediting TWU is not a stamp of public approval of the community covenant. The Benchers understand that their jurisdiction is over applicants to the Law Society, not over universities. We would not say that giving municipal zoning approval for a Catholic church means that the municipality is approving an all-male clergy. It is simply approving that there is enough parking, that the building is suitable. If a health inspector gives it a pass, [inaudible] sanction of the groups [inaudible]. It is confirmation that its kitchen meets [inaudible] regulations. The Benchers understand that to permit TWU law graduates to apply to become lawyers like all other law graduates [inaudible] that in Canada we will not presume that they are unable to be good lawyers because of how they choose to live their lives or with whom they choose to associate. Secondly, I think the Benchers recognize that diversity, and in the long run the freedoms of all, are best assured by the course they have taken. We lawyers do not exist for ourselves. The only reason why we have our jealously guarded independence is so that we can serve our clients with undivided loyalty. [Inaudible] gay and straight, they are Asian, Muslim, New Agers, Christians, Jews and others, they are right wing, left wing, they are the main [inaudible] majority, they are the minorities, they are those on the margins. They are all the people of our province and they are entitled to know that they will be able to choose a

lawyer in whom they have confidence and with whom they are comfortable. If this meeting votes to [inaudible] graduates of a law school which meets all the academic standards on the basis that its students have voluntarily decided to study in a university shaped by their religious world view, in which they have decided to practice what they preach, what message does that send to the hundreds of thousands of our clients in this province who hold to a similar religion and conscientious belief to a similar [inaudible] ethic. Surely it says to them that their views are so unacceptable, so dangerous, that they cannot be countenanced, and the very ones we lawyers are charged with upholding their rights. How then can you face those clients with a straight face that we are committed to protecting the rights and freedoms of all persons, even the unpopular as the Legal Profession Act requires? For the LGBTQ community who is on the minority side of public opinion, it was often said on their behalf, the members in their right should not be the subject of a majority vote but careful deliberation such as can occur in a courtroom. Trinity Western University, in my submission certainly [inaudible] and the students who wish to sign the community covenant as [inaudible] there, are now the minority [inaudible] from the media coverage of this issue, from the rights of [inaudible], from the volume of the applause, the Benchers are the ones who took those hundreds of hours of careful deliberation, who obtained the best legal advice available, who weighed the competing interests carefully. It is their careful deliberation, not a political decision such as [inaudible]. It seems that, as was suggested by the member from Nanaimo, that some supporters of these resolutions do so because they fear that to vote no will bring the administration of justice into jeopardy because they think that the public will perceive the Benchers decision as homophobic and anti-gay. But if that is our concern, it is a concern that the public may misunderstand the Benchers decision which is in fact a principled one to preserve the rights and freedoms of all. And if the public misunderstands and rather than seeking to overrule the Benchers, surely it is our duty to instead make a compelling case for why true diversity and freedom, the kind which will safeguard the entire public's freedom, looks at times like the Benchers decision of April 11th because at the end of the day, the legal task is that

there is nothing illegal about the Trinity Western law school proposal. Everything that has been [inaudible] to you about the community covenant is lawful. No court has found Trinity Western [inaudible] the Charter. The Human Rights tribunal has had 13 debate of Section 1, Section 41 does not apply, and has never said that. But to be clear, and in response to one of the previous [inaudible], the Supreme Court of Canada upheld at paragraph 36 of the teachers' case that [inaudible] the community covenant protected religious beliefs, not conduct. There has been no change in the [inaudible] of law in the last 13 years relative to that, relevant to that [inaudible]. The community covenant is clearly [inaudible]. While those who advocate for this motion can come up with legal arguments about why it could be or should be otherwise, the reality is that both the Federation and our Society's own lawyers have given legal opinions to that effect. The community covenant is not unlawful and yet this motion [inaudible] whether it's coercive power of the state to be brought to bear against a minority religious institution and its students by denying it a benefit for which it otherwise qualifies on the sole basis that it is doing something unpopular which it has the express legal authority to do. To deny the benefit to someone for exercising a legal right is a quintessential breach of the principle of the rule of law which we are all charged with upholding. It is acting in this way, sorting through what we [inaudible] or what we believe will be popular and rule of law be damned, that the administration of justice will be brought into disrepute. I am a relatively young lawyer, just five years call. I hope to have a long and satisfying career in this profession, to serve my clients with skill and integrity, whatever their sexual orientation. But since this firestorm blew up in January, I have on occasion been quite afraid that this might not be possible, that there may come a time in the course of my career where I will be required to make certain declarations or disclosures on my annual practice declaration which will result in me losing [inaudible] to practice, not for any reason related to my competence, professionalism, but related rather to my religion or political views or my associations. Many of our own members are fearful to identify themselves as supportive of the Benchers decision in April because of the terrible consequences of being labeled homophobic. But for the reasons previously stated,

the Benchers decision is not homophobic, it is principled and is for the protection of all. So I am standing here before you, my fellow lawyers, to appeal to the best traditions of the bar, to civility, understanding the other point of view, the commitment to the service of the entire public, even those minorities who may be [inaudible] to a majority of us here and I invite you to join me in doing what may be unpopular but what I believe is the right thing in voting no to this notion. Thank you.

- JL: Thank you. I'm now going to Abbotsford, and again I would call for two speakers, one in favor and one opposed.
- JC: John Conroy, I have been practicing since 1972. Like one of the previous speakers, Mr. Horne, I too grew up in Africa and I too experienced the type of discrimination that he spoke about in relation to black people. I was also a student at a Jesuit boys boarding school, so I also know how homophobic conduct, what damage it can cause within the context of the school. But one of the things that has really impacted me significantly is a case that I did several years ago involving a man who was convicted of first degree murder. I represented at his faint hope clause or 15-year review when he came up to be considered to try and reduce his parole and eligibility period. He was serving of course a sentence of life imprisonment subject to a minimum of 25 years. It turns out that he had been born out of wedlock to a 16-year-old who was unmarried and was within three weeks adopted into a Pentecostal family which involved a minister of the Pentecostal Church and his wife. It could have been any religion, Catholic or other, but this premise, like the covenant, was applied to this person at an early age, and it wasn't long before he found himself to be gay or bi and he struggled at a very early age in relation to that. And the evidence at the hearing brought out through psychiatrists and psychologists, all of the turmoil and conflict that he experienced throughout his life, particularly as a teenager, bullied by others as a result of his effeminate behavior or his voice, attracted to men but also attracted to women, doing everything that he could in order to try and gain acceptance within the community and often failing because of his mannerisms. So he went on and married his girlfriend and did all sorts of things in order to try and prove that he

was not homosexual in order to be accepted. And ultimately, he failed in doing that and became a drug and alcohol addict and ended up becoming a male prostitute on the streets of one of our cities. It was as a result of what had been done to him and the conflict that he had within him that led him into this existence, according to the experts who analyzed him and according to the evidence. And ultimately, he flipped out and he stabbed a woman 99 times and that's what resulted in his conviction. So my concern is that this covenant goes beyond belief, it is more than belief. If it was only belief, then I think the University would have agreed to the request of the Law Society to remove the requirements of having to sign the covenant. Everybody can have their beliefs, but as I understand the facts here, and I determined upon a recent opinion of Dr. [inaudible] Buckley and [inaudible] in which they point out that not only do the students have to have this belief, but they required to take steps to uphold and hold each other accountable. And this is the part that troubles me. This is the part that makes me concerned about what will happen to the people from the gay, lesbian, and bi community who will be in this university. The Supreme Court of Canada considered that people of this orientation won't apply, and that seems to make sense. But there will be people in the community at Trinity who will be lesbian, gay or bi and they will be conflicted and tormented by others within the community. Unfortunately, that seems to be the way that human beings act or react in these circumstances. So my concern is that that part, is the requirement that people have to sign the covenant. And I say I've read the BC teachers' case and I've tried to read as much of the opinions that are online as possible, and I do think that the teachers' case is different because not only the subsequent cases in the Supreme Court of Canada including [inaudible], but in addition it seems to me that there is a fundamental difference, as other speakers have said, between becoming a teacher and becoming a lawyer, especially since 1982 when we became a constitutional [inaudible]. The judges are chosen from the legal profession, the people who enforce and adjudicate the Charter are members of the legal profession. They are the ones who are called upon to uphold Section 15. Section 15 is the supreme law of the land. It requires no discrimination. It requires

the equal protection and the equal benefit of the law without any type of discrimination. Accordingly to the opinion of [inaudible] the Law Society Act requires to uphold and protect the public interest in the administration of justice by, among other things, preserving and protecting the rights and freedoms of all persons. I'm glad this is not a we versus them. It seems to me that freedom of religion can continue to be practiced by all of those who believe in this covenant or other similar covenants, without requiring people to sign it and to write it down. And I say it would be even worse to make it [voluntary??] because then you will clearly differentiate between the two different groups. So in my submission, you should consider amending the resolution or voting against the resolution or in favor of this resolution does not approve Trinity as a law school or that other option of removing the requirement that people have to sign the covenant. Those are my submissions.

New Speaker: My name is Ken [inaudible]. I was called in 1988. I do not support the proposed motion and my position is not based on what I feel about the covenant [inaudible] in my view my feelings about the covenant are irrelevant. My position is based on the principle that freedom ought to be restricted only when it can be demonstrated that to fail to do so produces a greater harm. There is no evidence before us that those who go to Trinity and agree to this provision [inaudible] in ways that are [inaudible] to the people in same-sex [inaudible]. The story my friend Mr. Conroy told us about is indeed tragic but why do you assume it applies to Trinity? In 2001 in the teachers' case, it was, a similar argument was made [inaudible] there is no evidence to support. Now, 13 years later, there is still no evidence to support it. I have heard over and over today from those in favor of the resolution that the resolution or that the covenant is in fact discriminatory. And again, this was dealt with in 2001. In fact, in law, the covenant is not discriminatory. This is what the Supreme Court of Canada said. The admission policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our Section 15 jurisprudence. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs in a private institution is sufficient to engage Section 15 would be inconsistent with freedom

of conscience and religion which coexist with the right to equality. It is an inconvenient [inaudible] to those who insist that this is discriminatory but in fact it's the law. On the other hand, denying Trinity accreditation is clearly discriminatory. It is based on nothing more than Trinity's view of the nature of sexuality and marriage. We have heard nothing today to indicate the curriculum is lacking or the staff are lacking or that the admission standards are so poor that poorly trained lawyers will be produced. It is pure speculation that the students that are trained at Trinity will not be a credit to the profession and this is clearly a form of prejudice based on preconceived notions of those who belong to a certain group, i.e. Trinity graduates [inaudible] in the future. Let us not forget that the Charter protects the fundamental freedoms of [inaudible], belief, conscience, opinion and religion. One's [inaudible] on the nature of sexuality and marriage clearly is a matter of fundamental freedom protected by the Charter. The proposed motion simply ignores these fundamental freedoms and seeks to abolish them in the case of Trinity. All of us have to think very carefully before we [inaudible] the freedoms of those we do not agree with. This is particularly true because we are lawyers and one of the most noble traditions of the bar is to stand up and courageously defend those that are of opinions that differ from the popular view. This motion runs afoul of this noble and honorable tradition. Finally, this motion will lead to absurd results. If we believe that sexual intimacy is reserved for traditional marriage is ipso facto enough to deny accreditation to TWU's proposed school [inaudible] of their position leads to the exclusion of any member or the non-admission of any lawyer or article student who holds this same belief. How could that logic not be fair? The only reason given that Trinity should not be accredited is this position regarding sexuality and marriage. Should there now be a motion on the floor that all those whose beliefs are similar to Trinity's should be ferreted out and banned from the profession? [Inaudible] the President of Trinity, a member of this bar, are we to kick him out? Should all Catholic lawyers whose church is open about its views of sexuality and marriage be excluded from practicing law? [Inaudible] of a logical consequence of the motion. This was recognized by the Supreme Court in the 2001 teachers' case and the Court said

yes, indeed, [inaudible] standards could be sufficient in themselves to justify denying accreditation, it was difficult to see how the same logic would not resolve in the denial of accreditation to members of a particular church. At one time, this Law Society would not allow communists to become members of the bar. At one time, the Law Society of Upper Canada put [inaudible] on the number of Jews that were admitted to the bar. This [inaudible] thinking that this motion seeks to [inaudible], limit those and exclude those with different views. I [inaudible] the position that all of us should reject. In concluding, this difficult issue is concerned with the balancing of rights of those who have different world views. The troubling part, the part I found particularly troubling of this debate is despite the claims that the Trinity covenant is discriminatory and will lead to discriminatory behavior, the Supreme Court of Canada has already said in law it is not discriminatory and there is [inaudible] no evidence that those who graduate from Trinity will, will act in a manner contrary to the [inaudible]. Given those two findings, [inaudible] to our free society to prohibit those with different beliefs from fully participating in public life, whether by administrating a faith-based law school or [inaudible]. In addition, if one can be prohibited from opening a law school because of one's beliefs or not allowed entry into the profession because one attended such an institution, and that's what the people who vote yes are asking for, there is no logical reason to [allow??] anyone with the same beliefs to practice law no matter where they receive their degree. So I urge all of you, I urge all of you to vote no and my final comment is [inaudible], if you open your Queer law school, Lecrtainly will not oppose it.

JL: All right, we're back to Vancouver but I just want to give the remote locations an idea of where we are, knowing that we're going to come back to Vancouver. After these two speakers we'll be in Victoria then Vancouver for sure, then Vancouver then Castlegar and Cranbrook and we have an email on that list. There is 20 people standing in Vancouver. We have two speakers from many remote locations. That last speaker was close to 10 minutes, do the math. We could, if you could shorten it up a little bit, that would I'm sure be appreciated by many. In favor of the motion, please identify yourself.

New Speaker: My name is Stuart [inaudible], I'll be voting yes. There are certain religious rights which you'd fight to the death to protect such as the right to openly express religion, to express religious beliefs, [inaudible] for people to assemble and to gather together to worship without any fear of reprisal. Those are religious rights that are quite rightly protected and we should continue to defend. But those are not the types of religious rights, in my submission, that are at stake in this Trinity Western law school approval debate. Religious rights at stake here is the right to impose actions on others to control what goes on in their bedrooms. That's not the type of religious right that we should fight to defend. My right to spin my arm around freely ends at your nose. There's no way that a covenant that discriminates against homosexual couples is necessary or even remotely useful for protecting the religious right of expression or assembly. You can imagine having to assemble and then going home because someone had sex breaking the covenant. That doesn't make any sense. [Inaudible] the Charter and other rights don't really specify anything to do with imposing actions on other people, it's all about using it as a shield to protect you, not [inaudible] religion [inaudible] in their bedrooms. I submit that there's no [inaudible] balancing act between religious rights on one hand and the right, the civil rights of homosexuals and common-law couples on the other. So in my view, the religious right is not properly triggered. The only civil right being threatened is the homosexual's, the right of homosexuals and common-law couples. Keep in mind, nobody's trying to stop anyone from praying here, nobody's trying to stop anyone from being religious, telling people who and when they can [inaudible] someone is not an important religious right worthy of our defense, especially when it infringes other people's rights. Many have argued that homophobic beliefs do not affect actions. If that were true then surely the homophobic belief would never have resulted in the creation of a homophobic and discriminatory covenant in the first place. The creation of the covenant was an action that actually stemmed from belief. Some have said where's the harm from the covenant? Well if we look at the past in the United States, black people were not allowed at the front of the bus, they still had a place to sit, where was the harm there? They were not injured, they were

allowed to move and be transported. Well the harm comes from the double standard which reminds them that they're inferior and second class citizens. So don't tell me the double standards against homosexuals don't cause any harm. Homosexuals are allowed to attend Trinity Western, there are some openly gay and lesbian students who attend. They, some people argue that proves there's no discrimination, they're there, they go to class, what's the big deal? Someone argued, [inaudible] argued that Jews were only allowed to go to a school if they promised not to go to synagogue while Christians were allowed to go to church, the Jews were not allowed to celebrate Hanukkah but Christians are allowed to celebrate Christmas, they said hey, we're not discriminating against you, you can still go, that's a pretty disingenuous argument. And I think that the same sort of discrimination and double standards against homosexuals appears equally disingenuous if you're [inaudible] that that's not discrimination. Many will argue today, and you're going to hear this if there's a lot more people speaking, that while they're personally offended by the covenant, that they shouldn't let their personal beliefs affect the debate, as if they're rising above something and being more objective. But since when were civil rights really personal beliefs? I'll give you an example of a personal belief. If I believed [sideways hats??] were offensive, that's a personal belief. I may have, I might be offended, I might be really angry, but I don't have a right to be offended by other people wearing [sideways hats??]. These are civil rights, they're not just personal beliefs. You don't just have a right to be offended when people's civil rights are violated, you have an obligation to be offended. [Inaudible].

JL: Next speaker.

WW: My name is Warren Wilson. I've been practicing for 46 years. I speak against this resolution. Almost everybody that has spoken in favor of the resolution has spoken against the community covenant and I would also speak against the community covenant. I don't think this is an issue relating to the community covenant and it has surprised me that as far as I can tell, nobody has yet spoken in favor of those that aren't in the room, the students who would be studying law at Trinity Western and would find at the end of their three years of studies that the

Law Society of British Columbia would say we have a standard for admission, and that standard is that you must be of good character [inaudible] and fit to practice law and you must not have attended Trinity Western. That, to me, is a very serious change to what we should be looking for in terms of members who practice in our profession. I think [inaudible], good character [inaudible] and fit to practice law. And I know the Benchers uphold it, I know they have hearings and they ensure that people who join our profession and who stay in our profession are members who are of good character [inaudible] and fit to practice law. And personally, I do not see that ascribing to the covenant has anything to do with being of good character and [inaudible] and fit to practice law. I think that what we're doing here is picking on those that aren't here, those students who will spend three years studying and who will told sorry, you can't come in. And when I was a kid you know I always was told pick on somebody your own size. I would exhort all of you to pick on someone your own size.

- JL: Thank you [inaudible]. We're going to Victoria please, two speakers.
- DL: Thank you Madame Chair, this is Dean Lawton speaking, the Chair of the Victoria meeting. I had provided to me a list of speakers or those who would like to speak and I'm going to begin with those who first identified themselves and are on this list and I'll go to the other [inaudible] for a minute. Patrick Kelly please.
- PK: Thank you, Mister, Madame Chair. My name is Patrick Kelly. I'm a life-appointed Bencher. I served as Bencher, I was appointed Bencher for the Law Society for 2002 to 2010. The Law Society has a profound responsibility to protect the public interest. Its authority to regulate the practice of law and to administer justice derives from the social contract that it has with the British Columbia citizenry as embodied in the Legal Profession Act. The Law Society is responsible for a regulatory system for the administration of justice in British Columbia, justice for all citizens. The Law Society of British Columbia, through its actions, must champion principles of equality and inclusion, core principles of the Charter of Rights and Freedoms 1982. The Law Society has a critical choice to make, exercise its responsibilities for the administration of justice within the

larger frame of the rights and freedoms of all citizens or instead opt for a smaller frame in which only religious freedom is protected. If the Law Society chooses the narrower frame, the social license that the Law Society enjoys for the protection of the public interest may be appropriately questioned. The Law Society would best avoid being conscripted by TWU into a position that would in effect use the authority of the Law Society as a bulwark to shield the discriminatory provisions of the TWU covenant against the rights of citizens that appropriately enjoy the protection of Canada's Charter of Rights and freedoms. It is ironic and unfortunate that TWU expects the Law Society to treat TWU on the basis of equality and inclusion, standards that TWU itself cannot meet due to its religious beliefs. Some hold the view that the Law Society must uphold the rule of law. Even this proposition must be considered in context. Consider for example that the constitution of the United States of America holds that all men are created equal, yet for much of the 18th and the 19th century, slavery was a common practice with [inaudible] population of some 4 million souls. The 13th Amendment of 1865 finally made the practice illegal. Sometimes the rule of law must be considered in the context of human principles higher than law, whether written or decided by learned adjudicators. Closer to home, from 1880 to 1951, it was illegal in Canada for First Nations to practice the potlatch and the related ceremonies. These are central institutions for them, equivalent to the law courts, the church, the hospital, the government and anything important to First Nations' life. The Government of Canada potlatch ban was the rule of law, but was it right? The TWU covenant discriminates on the basis of sexual orientation. TWU argues that its religious freedom permits such discrimination. The current situation is that it is the rule of law but is that the last word on the issue against other provisions of the Charter of Rights and Freedoms? To the matter at hand, I would argue that the Law Society of British Columbia, rather than merely observing the rule of law, has the responsibility for the wellbeing of the overall system of the administration of justice for the whole society, even if the particularly, the particular TWU issue before us today may be morally vexing. I'm not sure that sacrificing the rights of sexual orientation at the altar of religious freedom is in the public interest. I would

urge the Benchers to reconsider the decision regarding TWU's request for the Law Society approval of the law school as long as TWU's discriminatory provision remains in its covenant. The onus is more appropriately on TWU to take action that is consistent with the rights and freedoms of all citizens rather than put the Law Society in the untenable position of having to pick which class of rights and freedoms wins over the other. Thank you Madame Chair.

JL: Would [inaudible] from Victoria please?

SP: Thank you, a speaker in opposition.

DL: If you would state your name please sir?

My name is [Father??] Steven Payne. I have been called to the bar of Ontario as SP: well as the bar of British Columbia. I practiced law for over 10 years, was proud of the work I did, and I did it with a crucifix on my wall as an indication to my clients that when they came, I would put them before all else. I rise in opposition to the motion for the resolution for a number of reasons. The first is the danger that poses as the criteria for being a lawyer has changed. When we took the oath, as is mentioned in the preamble, the [inaudible] of the barristers and solicitors oath, I took that oath and I was required to act ethically, to defend my clients to the best of my ability and knowledge, and never to break the law [inaudible]. I fulfilled those requirements and there was never a complaint against me in those years. Those values I held as a lawyer, those values I hold now. One of the questions I'm frequently asked is why did I become a priest after practicing law? And my answer, part humorous, is I have the same clientele but in addition to that, it allows me to speak to the heart of those people who come to me because I'm using greater care in their needs. The problem with this resolution is that it adds to the requirement of ethical behavior, obedience to the law and advancing the [cause??] of a client, it adds to it that you must now hold the laws in place as sacrosanct and unchangeable. It conflates the duties of a lawyer with the rights of citizens, these students have rights, the students have rights to their beliefs, they have rights to view the laws as right or wrong, as good or bad, as [needing amendment??] or [inaudible] or needing change. They are citizens who may act in

the public square through the electoral and democratic process. But what this resolution now requires is in addition to the previous requirements, they must now hold with the law in a certain state [inaudible]. The preamble does not require that nor can it because ultimately that would require essentially party membership or membership in an ideological group. The second is my objections include the contradiction implicit in the resolution. It suggests that those who graduate from Trinity Western University will have an expressed [inaudible] by means of the covenant, will have the inability to represent their client competently and well and ethically. But by the same token, those who have brought forth this motion have expressed an intolerance, and we've heard it very strongly stated today, of an intolerance against many religious groups. And when the question arises, how can they represent their clients well when they've expressed an intolerance, how can I in good faith, having worked with [inaudible], how can I now in good faith [inaudible] Christians [inaudible] law firm, be it in their expression of such intolerance? Finally, an aside but relevant, we have heard a lot of homophobia [inaudible] religious group. I want to relate to you an incident [inaudible] today. In San Francisco is a group of nuns who are penniless, who have given their lives to the service of God and their fellow men, and they spend their lives in obedience to the Church's teaching on homosexuality and the love of neighbour where they run an AIDS hospice. And there they care for those who are dying by cleansing them, feeding them, nurturing them, holding their hands, and being with them as they [inaudible] to the moment of their death. And then in love, they cleanse the bodies, they buy a plot, they buy a coffin, they hold a requiem mass, and in the greatest show of love as they can do, they bury their beloved brothers and sisters. That is not homophobia, that is love of neighbour.

- JL: The speaker at the microphone in support of the motion, I will recognize you third in this go around, all right?
- NB: Thank you Madame President. My name is Nick Bower, last name spelled b-o-w-e-r. Where is the evidence of harm? The sheer and simple math. Graduates from Trinity Western will not be discriminatory but the covenant itself requiring agreement to the covenant is discriminatory because law school admission is a

gatekeeper to the practice of law, an honorable calling, and it is a very limited calling. Last year, UBC had 180 seats for 1800 applications. UVic had 110 seats for 1100 applications. 1 in 10 students who apply were able to get in, 9 in 10 were rejected. Thompson Rivers has a law school of 100 seats, Trinity Western would have 60 seats. That would be 1 in 8 seats, 13 percent, which would, on a practical level, not be open to LGBTQ students because if you had to ask me to choose between law school and my spouse, I would have to chose my spouse. Without my spouse's support, I would not have been able to get through law school. Allowing Trinity Western University to put in the way of potential students and potential lawyers, of potential judges this additional barrier specific to LGBTQ students is discriminatory. That's all there is to it. It's not a question of balancing rights. UBC has a Christian Law Students Association. I'm sure UVic and Thompson Rivers do too. No other university requires you to disclaim a fundamental part of yourself before you can attend there. That's not a barrier that should be in the way of our future judges and lawyers and is a practical, real discriminatory effect of the Charter. Nothing against the faculty, staff or students or graduates of Trinity Western, but that it does further limit what is already a very limited and very sought after position. That's all I have to say.

JL: Could we hear from the next speaker at the microphone opposed to the motion?

New Speaker: Yes Madame Chairman, my name's [inaudible] and I haven't been around in the courts for a few years but I've made an impression when I was around, apart from judges finding against me. I'm amazed, I'm thinking that I'm in the wrong room. The speaker on the left [inaudible] is talking about this as if the Supreme Court of Canada had never given the judgment in 2001, it's extraordinary. They address his points, they dismissed his points, that he relied upon, upon the covenant, the language of the covenant, the same covenant. [Inaudible] that was 14 years ago, so what? What's wrong with their reasons? Why do you just forget about it? So I thought I'd treat you, if I may, not to my views but to the judgment of the language of the Supreme Court of Canada. And I do so despite the anger, my anger at this, but I want you to know that I go so far as to say the Benchers were to be [inaudible] of their duty if they decided it any

other way. They are supposed to apply and be guided by the law, not your version sir of discrimination, but the Supreme Court of Canada's version. Our Supreme Court has upheld our civil liberties. I want to read, and I'll confine my speech to the language of the judgments which I [inaudible]. The majority, as to the concrete evidence the training teachers that TWU fosters discrimination in the public schools in BC, the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. [Inaudible] respects to the institution that you're [inaudible] and it's wrong. That's what you should be doing, respecting the format, the formula rather of this, of this school while the students are there. It's something that isn't, by the way, in the Supreme Court of Canada [inaudible]; do you think for a moment that anybody who teaches law at that university, who teaches the Charter of Rights, that they will ignore the Charter of Rights? They'd be fired and the professors that teach the Charter of Rights and the history of rights and the history of religious institutions of our country, the history of our country all [inaudible] Supreme Court of Canada, that would govern. That's not going to disappear. Anyway, acting on these beliefs the majority said, however is a different matter. Acting is distinct from what the judges said where the precepts of the philosophy. It's a different matter. The teacher in the public school engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings. And that's where the balance is achieved, not by words, but by action, by conduct, conduct that I would hope we'd all decry. I am not confident with decrying the, what seems to be the logical conclusion of because you have ideas, beliefs, that you can [jump to??] conduct, you cannot. And the law doesn't permit you to as counsel. Going on, there is nothing in the TWU community standards that indicates the graduates of TWU will not treat homosexuals fairly and respectfully. That must come as a surprise to the people here, to some of the people here. There's nothing there that says they will not be, that's the finding of the Court. That's the finding based on the same covenant. And considering the religious precepts instead of, in considering the religious precepts of TWU instead of actual impact of these beliefs on the public school environment, the BCCT acted on the basis of irrelevant considerations. It acted

unfairly. It's not good enough, the Court clearly says, the majority of the Court, even the majority, even the [inaudible] day. The words or philosophy isn't enough but action is required and for good reason. Boy, this institution can't proceed, the students can't go to that institution, [inaudible] consequence. I mean incredible and so you come here, those who are favoring [inaudible] today, you come here full of talk of discrimination and you impose your own view of discrimination. And the law, that's not the law's view and I thought we were all lawyers. You don't want to read, if you're not going to read the damned judgment then don't, just carry on the way you're going, those people who are here and are going to say yes, just carry on. You're lawyers [inaudible] and I'm all [inaudible]. Page 25 of 50, consideration of human rights values in these circumstances encompasses consideration of the place of private institutions in our society. I had only been here a short time, I don't know what, about the history in Canada of private institutions and they should be given, that history shouldn't be ignored and that's what this judgment, these judgments are saying. Freedom of religion [inaudible] an association coexists with the right to be free of discrimination. Of course, and so the Court is saying that, but not discrimination as defined by the gentleman on the left of that panel, but discrimination in law, discrimination on the covenant and unanimously the [inaudible] of the judgment. And here again is the language, instead, in considering the religious precept of TWU instead of the actual impact of these beliefs in the school environment, to shorten this, it's not good enough. The quote is correct up to that point. So that's what I think, and I'm just a, I'm a member, I don't claim any kind of monopoly on good ideas. I do have a background in civil rights, I gave, I have a scholarship in the University of Victoria in that [inaudible]. I was on the Gender Bias Committee. I knew little about homosexuality, but by God I [inaudible] the right of the member of that committee [inaudible] discrimination and I'm alive to it, but I'm alive to what it isn't and that's [inaudible] today, don't get carried away, it's discrimination in law, always remember that. Thank you.

JL: Now there is a speaker who's been waiting to speak at the third microphone in Vancouver. My understanding sir is that you are proposing to call the previous

question. I'm sorry, just before I hear from — [inaudible] I'm correct? So before I hear from you, I just want to remind everyone remotely and locally, that there are still 10 names on the remote list of locations with speakers waiting to speak. There are easily, probably still 20 people standing in Vancouver waiting to speak. We have been through, on my count, 18 speakers and we have been just, or just coming up two hours of discussion. If you do call the question, then we will, and there is a second, we will call for a vote and that will take away some time as well. So — all right, I will hear from the fellow in the, at the middle microphone in Vancouver.

DR: Dennis Richardson, and I move that the question be put.

JL: So, second?

New Speaker: Second.

JL: So now I have to, okay, so we do have to conduct a vote. You all have your voting cards.

New Speaker: [Inaudible].

JL: Go ahead.

New Speaker: I move that we have the vote on the question by a show of hands and not a ballot. My name is Adrienne Smith, I'm a member from Vancouver.

Yes, my, the proposal is to call the question, to vote on the motion to call the question by a show of hands but you have to hold your voting cards up and we have staff who are assigned by section and will be counting the votes. Local Chairs, you will have to count the votes and then we will have to tally the votes at the conclusion of the vote. So this is a vote, by show of hands and lift your voting cards, on whether we are to call the main motion or the resolution that is the subject matter of this meeting, recognizing that there are a number of speakers not yet spoken. All right, those in favor of the motion to call the question, keep your hands up so that we can count the votes. Is that all right?

New Speaker: Do you need to count them?

JL: Yes.

New Speaker: [Inaudible].

JL: Okay, sorry staff, a suggestion from Mr. Hoskins and others is that we call for those opposed and see whether it is any kind of a number.

New Speaker: Strongly opposed [inaudible].

JL: Right, so, right staff, I'm sorry, you're going to have to count.

New Speaker: [Inaudible].

Yes, so we'll go around? We're counting nays right now, count nays. When Michelle is finished tell me when she has that counted there. [Inaudible]. Should I go around the province first? [President discusses with others in low voice — inaudible] Can I get some indication that staff have been able to count the nays? Yes? Thank you Michelle. All right. So the question is whether we, should we count those in favor of the motion and then go around the province? Michelle, can I have indication from you? Is that doable? All right, all those in favor of the motion are...

New Speaker: Pardon me, point of order, Jim Quayle with a point of order, this is just a process suggestion. It's going to take a long time to count of the yays here because it's most of the hall and you know the Chair can take cognizance of sort of the relative rate of things. Why not get the tallies from the other centers, which should be a much faster process, and it may be quite obvious then without having to go through a numerical count that the motion is carried, it's simply a binary question.

JL: Okay, so we can go, I mean I am quite content to do that, we'll go around the province her, [inaudible] we're still going to end up counting but all right, we'll go around the province then, Mr. Operator, could you please...?

OP: Of course. So we'll start off with Victoria. Victoria, please report your voting results.

DL: In Victoria 12 nay and at least 70 in favor, 7-0.

OP: Thank you Victoria.

JL: Sorry, can we have for and against?

OP: Please go ahead again Victoria, please, if you can repeat?

DL: 12 against and at least 70 for, we have an odd number of people moving about so 7-0.

JL: Thank you.

OP: Thank you. Nanaimo, please report your voting results.

NM: 2 opposed, 50 in favor.

OP: Thank you very much. Abbotsford, please report your voting results.

MIF: 5 against, 26 for.

OP: Thank you. New Westminster, please report your voting results.

CH: 26 for, 0 against.

JL: I'm sorry, I didn't hear New Westminster.

CH: 26 for, and 0 against.

JL: Thank you.

OP: Thank you. Surrey, please report your voting results.

PR: 31 for, 0 against.

OP: Thank you. Castlegar, please report your voting results.

BL: It's unanimous here as well, 24 in favor and 0 opposed.

OP: Thank you Castlegar. Cranbrook, please report your voting results.

LD: 9 in favor, 0 against.

OP: Thank you. Kelowna, please report your voting results.

TF: 22 for, 6 against.

OP: Thank you. Dawson Creek, please report your voting results.

CS: 11 for, 1 against.

OP: Thank you. Prince George, please report your voting results.

LO: 4 against, 1 in favor.

OP: Thank you. Williams Lake, please report your voting results.

AA: 5 for, 0 against.

OP: Thank you. Prince Rupert, please report your voting results.

SM: 3 in favor, 1 against.

OP: Thank you. Smithers, please report your voting results.

SR: 8 for, 0 against.

OP: Thank you. Terrace, please report your voting results.

BZ: 2 in, 2 for, and 2 against. Sorry, that is 2 in favor, 2 against.

OP: Thank you. Kamloops, please report your voting results.

KW: 8 in favor, 0 against.

OP: Thank you Kamloops. And Vancouver, please report your attendance of Law Society members and articled students.

JL: I can tell you that I've been given a number 168 in favor and 42 against. So, wouldn't think that was, I think it's fair to say the motion is carried, we call the question. So we now come to the vote. The vote is on the motion which was the Benchers, this is the motion...

New Speaker: Point of order.

JL: Yes?

New Speaker: For the clarity of the delegates present, my name is Adrienne Smith, I'm a Vancouver member, the members of the profession have been given the assurance that voting will remain open until some point this evening. Could we clarify what time that will be for members who are not able to be with us in the room today please?

JL: 6 o'clock. The notice and the information to the membership has been that the vote will be open 'til 6 and they can still attend the meeting although I think it's fair to say that discussion is over. The voting will remain open until 6.

New Speaker: Thank you.

JL: So the motion that is before you, and what will happen is you will exchange your voting card for a ballot. You need to mark your ballot and put it in one of the voting boxes in this room.

New Speaker: [Inaudible].

Yeah, in this room and in all of the remote locations. You have to exchange your voting card for a ballot. It will be pink. The resolution that you are voting on: the members, sorry, the Benchers are directed to declare pursuant to Law Society Rule 2-27(4.1) that Trinity Western University is not an approved faculty of law. Yes in favor of the motion, no opposed to the motion.

New Speaker: [Inaudible].

JL: Right, yes, your voting card or any of the ballots attached to it will not be counted. You need to exchange your voting card for a pink ballot and the pink ballot is to be marked and put in a ballot box. The ballot boxes will remain open until six and we will then move them and count them. Staff will have the ballots, please identify yourself clearly for the members. Sorry, there's a bit of a delay, I'm told that the ballots are just coming up and so we will have to wait a minute.

[Recording ends]

Transcribed by Regent Office Services

The Law Society of British Columbia

Minutes

This is Exhibit "M" referred to in the affidavit of Timothy E. mcEte Oc sworn before me at Vancouver this 5 day of January 20.15

A Commissioner for taking Affidavits for British Columbia

Benchers

Date:

Friday, July 11, 2014

Present:

Jan Lindsay, QC, President

Ken Walker, QC, 1st Vice-President

Joseph Arvay, QC Satwinder Bains Pinder Cheema, QC

David Corey Jeevyn Dhaliwal Lynal Doerksen Thomas Fellhauer

Craig Ferris
Martin Finch, QC

Miriam Kresivo, QC

Dean Lawton Peter Lloyd, FCA Sharon Matthews, QC

Jamie Maclaren

Ben Meisner Nancy Merrill

Maria Morellato, QC David Mossop, QC

Lee Ongman Greg Petrisor Phil Riddell

Elizabeth Rowbotham Herman Van Ommen, QC

Sarah Westwood Tony Wilson

Richard Fyfe, QC, Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General

Excused:

Haydn Acheson

David Crossin, QC, 2nd Vice-President

Claude Richmond Cameron Ward

Staff Present:

Tim McGee, QC
Taylore Ashlie
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC

Ryan Lee

Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe

Guests: Dom Bautista Executive Director, Law Courts Center

Mark Benton, QC Executive Director, Legal Services Society

Johanne Blenkin Chief Executive Officer, Courthouse Libraries BC

Kari Boyle Executive Director, Mediate BC Society

Micaela Carlson Associate, Kuhn LLP

Maureen Cameron Director of Membership and Communications, Canadian Bar

Association, BC Branch

Anne Chopra Equity Ombudsperson

Dean Crawford President, Canadian Bar Association, BC Branch

barbara findlay, QC Member, Law Society of BC

Ron Friesen CEO, Continuing Legal Education Society of BC

Jeremy Hainsworth Reporter, Lawyers Weekly

Derek LaCroix, QC Executive Director, Lawyers Assistance Program

Michael Mulligan Member, Law Society of BC

Anne Pappas, JD Interim Dean of Law, Thompson Rivers University

Richard Parsons President, Trial Lawyers Association of BC Rose Singh Vice-President, BC Paralegal Association

Prof. Jeremy Webber Dean of Law, University of Victoria

1. Presentation of the 2014 Law Society Aboriginal Scholarship

President Lindsay presented the 2014 Law Society of BC Aboriginal Scholarship to the recipient, Ms. Kinwa Bluesky. Ms. Bluesky is a member of the Sandy Lake First Nation, an independent Oji-Cree First Nation in the Kenora district of northern Ontario. A graduate of the Faculty of Law at the University of Victoria (J.D., 2004 and LL.M., 2006), Ms. Bluesky is currently in the final year of her Ph.D. in the Faculty of Law at the University of British Columbia. Her dissertation focuses on "The Art of Indigenous Law – The Law of Indigenous Art."

Ms. Bluesky's research builds on the hypothesis that Indigenous artists are active agents in their respective legal traditions. Her research falls in line with legal scholarship that is exploring Indigenous legal traditions from a normative perspective. Ms. Kinwa's dissertation compares ideas about Indigenous legal theory set out in the works of Indigenous legal scholars, framing those ideas against the background of Western legal theory.

Ms. Bluesky's career objective is to be a leader in serving Indigenous legal education by re-defining Aboriginal legal issues within BC and Canada through the enhancement of Aboriginal involvement in all areas of the legal profession.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on June 13, 2014 were approved as circulated.

The in camera minutes of the meeting held on June 13, 2014 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

 Ethics Committee: Recommended Amendments to Rule 5-7 of the Code of Professional Conduct of British Columbia (Lawyers and Mediators)

BE IT RESOLVED to amend the Code of Professional Conduct of British Columbia as set out in the attached red-line version of Rule 5-7 (Appendix 1 to these minutes)

Appointment to the Justice Education Society Board of Directors

BE IT RESOLVED to renew the appointment of Leon Getz, QC as a member and director of the Justice Education Society, for a term of two years, effective September 1, 2014.

DISCUSSION/ DECISION

3. Law Firm Regulation Task Force Mandate

Ms. Lindsay introduced this matter, referring the Benchers to the Executive Committee's memorandum at page 78 of the meeting materials for background:

When the Legal Profession Act was amended [in 2012], the Law Society was given legislative authority to regulate "law firms" in addition to "lawyers" whom the Law Society has regulated since its inception. Consequently, where the Act gave the Law Society authority to make rules governing lawyers, it now also gives the Law Society the authority to do likewise for law firms. "Law firm" means a "legal entity or a combination of legal entities carrying on the practice of law."

These new provisions of the *Act* are not yet in force, and some have not been implemented by enacting rules, as they await the Bencher's determination about how to exercise this new authority.

The Executive Committee has given some preliminary consideration to the rationale and perceived advantages of regulating law firms, and determined last year that a staff working group should be created to gather information about law firm regulation in other jurisdictions, together with possible models for regulation that includes their advantages and disadvantages. A staff group has been preparing this material, and it has now largely been collected.

Therefore, it is time to create a Bencher Task Force to consider the work that the staff group has collected. The Task Force will also be expected to consult broadly with the membership of the Law Society, other regulatory experts, and legal regulatory bodies in other jurisdictions. It will use all the information it has gathered and analysed to recommend a framework for the regulation of law firms. The Task Force can be supported by further work from the staff group as required.

Mr. Mossop moved (seconded by Mr. Lloyd) that the Benchers adopt the following resolution:

BE IT RESOLVED to create the Law Firm Regulation Task Force, whose mandate is to recommend a framework for the regulation of law firms.

The motion was carried unanimously.

Ms. Lindsay confirmed that the Law Firm Regulation Task Force will be chaired by Mr. Van Ommen, and that the other members of the new task force will be appointed in the coming weeks.

4. Benchers' Consideration of Special General Meeting Resolution

Ms. Lindsay confirmed that at the Law Society Special General Meeting on June 10, 2014 (the SGM), the following resolution was passed (3,210 in favour and 968 opposed) by the attending members (the SGM Resolution):

... THEREFORE:

The Benchers are directed to declare, pursuant to Law Society Rule 2-27(4.1), that Trinity Western University is not an approved faculty of law.

She reminded the Benchers that at their June 13 meeting:

- Mr. Maclaren confirmed his intention to present a motion at the July 11 Bencher meeting, calling for the Benchers' timely implementation of the SGM Resolution
- the Benchers agreed that Mr. Maclaren's motion should be presented at the July 11
 Bencher meeting and then tabled for consideration at the September 26 Bencher meeting

Ms. Lindsay reported on developments in this matter since the June 13 Bencher meeting. She advised that the Executive Committee has been briefed by Mr. Wilson regarding a motion he intends to present at the September 26 Bencher meeting, calling for a Bencher-initiated referendum of the membership of the Law Society on the issue of implementation of the SGM Resolution. Ms. Lindsay noted the importance of ensuring that Trinity Western University (TWU) be provided with adequate notice of and opportunity to respond to any Bencher motion pertaining to the outcome of the SGM and particularly implementation of the SGM Resolution.

Ms. Lindsay confirmed the Executive Committee's determination that any such Bencher motions and their deliberation raise the same considerations of administrative fairness and public interest as at the April 11 Bencher meeting. Accordingly, the September 26 Bencher meeting will be webcast; Law Society members and the public will have the opportunity to make written

submissions (by September 3); and TWU will have the opportunity to make written submissions (by September 17).

Ms. Lindsay invited Mr. Maclaren to state the motion he intends to present at the September 26 Bencher meeting.

Mr. Maclaren confirmed that at the September 26 meeting he intends to present a motion calling on the Benchers to adopt the following resolution:

"BE IT RESOLVED THAT the Benchers implement the resolution of the members passed at the June 10, 2014 Special General Meeting, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purposes of the Law Society's admissions program."

Ms. Lindsay then invited Mr. Wilson to state the motion he intends to present at the September 26 Bencher meeting.

Mr. Wilson confirmed that at the September 26 meeting he intends to present a motion (the Wilson Motion) calling on the Benchers to adopt the following resolution:

"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.
- 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.

4. The Referendum be conducted as soon as possible and that the results of the Referendum be provided to the members by no later than October 30, 2014."

Ms. Kresivo confirmed that she intends to second the Wilson Motion at the September 26 meeting.

Mr. Hoskins advised that the Law Society Rules governing elections apply to the conduct of membership referenda, mutatis mutandis. Accordingly, under Rule 1-25 the voters list for a referendum of the Law Society membership to be completed on October 30, 2014 must be closed on September 24, 2014 (Rule 1-25).

In the ensuing discussion the Benchers expressed a range of views on the following issues:

- legal and strategic implications of passage of the Maclaren Motion or the Wilson Motion
- legal and strategic implications of a Bencher-initiated referendum of the Law Society membership
- legal and strategic implications of pre-determination by the Benchers regarding whether their future decision(s) regarding implementation of the SGM Resolution might or might not breach their "statutory duties" under section 13(4) of the Legal Profession Act
- legal and strategic implications of deferring action by the Law Society in relation to the SGM Resolution, pending determination of the TWU-accreditation litigation presently underway in Ontario, Nova Scotia and BC

Mr. Finch advised the Benchers that he may present a motion for adoption of the following resolution at the September 26 Bencher meeting:

BE IT RESOLVED to suspend implementation of the decision of the Benchers made on April 11, pending determination by the Supreme Court of Canada of the constitutionality of the issue.

Mr. Finch confirmed that by Friday, July 25, he will advise the President whether he intends to proceed with his motion.

Ms. Kresivo moved, seconded by Mr. Riddell, that if the Wilson Motion is passed at the September 26 Bencher meeting, the voters list for the membership referendum called for by that motion shall be closed as at September 24, 2014.

The motion was carried.

The Benchers discussed the structure of the debate of TWU-related motions at the September 26 Bencher meeting.

Mr. Walker moved (seconded by Mr. Petrisor) that all TWU-related motions presented at the September 26 Bencher meeting be moved and seconded consecutively, debated concurrently and voted on separately.

The motion was carried unanimously.

The Benchers <u>agreed</u> that the order of voting on the TWU-related motions presented and seconded at the September 26 meeting will be determined by the Benchers at that meeting.

The Benchers discussed limiting the number and length of Benchers' speeches during the debate of any TWU-related motions presented and seconded at the September 26 Bencher meeting.

Mr. Meisner moved (seconded by Ms. Merrill) that the Benchers be limited to a total of two speeches during the concurrent debate of any TWU-related motions presented and seconded at the September 26 Bencher meeting, with the first speech limited to 5 minutes and the second speech limited to 3 minutes.

The motion was carried by a two-thirds majority.

The Benchers <u>agreed</u> that any Bencher's permitted speaking time may be combined into a single speech of 8 minutes, at the Bencher's request and at the call of the Chair.

5. CBABC REAL Program: 2014/2015 Funding

Mr. Walker briefed the Benchers for the Executive Committee regarding a proposal by the BC Branch of the Canadian Bar Association (CBABC), seeking a Law Society contribution of \$75,000 to 2014-2015 funding of the CBABC Rural Education and Access to Lawyers (REAL) Initiative. Mr. Walker confirmed the Executive Committee's understanding that the Law Foundation has committed \$75,000 to REAL funding for 2014-2015, not contingent on a matching contribution by the Law Society. Mr. Walker noted that CBABC will continue to provide administrative and in-kind support to REAL, despite being unable to make a financial contribution to REAL funding for 2014-2015.

Mr. Walker confirmed that the Executive Committee has reviewed CBABC's proposal and considers the REAL initiative to be a worthwhile program. He advised that the Executive Committee recommends continuation of the Law Society's annual contribution of \$50,000 to REAL funding for 2014-2015, with the hope that as much as possible, that funding be allocated to student placement rather than administration.

Mr. Walker moved (seconded by Mr. Petrisor) that the Law Society contribute \$50,000 to REAL funding for 2014-2015.

In the ensuing discussion the value of the contribution of REAL's part-time manager to the effectiveness of the program was noted, particularly in the context of addressing the apparent urban focus of some law students and articled students. The importance of focusing REAL resources on supporting student placements, rather than program administration, was also noted.

The motion was carried.

REPORTS

6. President's Report

Ms. Lindsay briefed the Benchers on various Law Society matters to which she has directed her attention since the last meeting, including:

a. External Appointment Updates

CBA National & Provincial Councils (President's Nominee as Law Society Representative)

Ms. Lindsay and Mr. Walker have jointly appointed Prince Rupert County Bencher Sarah Westwood to replace Maria Morellato, QC as the Law Society's representative to the CBA National & Provincial Councils, effective September 1, 2014. Ms. Morellato was thanked for her dedicated and effective service in these important liaison roles over the past two years.

Provincial Court Family Rules Project (President's Appointee as Law Society Representative)

The Law Society has been asked to appoint a representative to this two-year initiative being undertaken jointly by the Ministry of Justice and the Provincial Court, with the following mandate:

"[T]ransform the family court process, rules and forms to embrace the vision and direction articulated in the National Action Committee on Access to Justice Report on Access to Civil and Family Justice. Specifically, the project aims to improve the efficiency and effectiveness of the family court process for people who take their legal issues to family court, and to reflect that process in court rules and forms that are easy for the public to understand and use."

Deputy Attorney General Richard Fyfe, QC confirmed the transformational nature of the project's mandate and goals, emphasizing the importance of technology and new approaches.

Ms. Lindsay confirmed that she will make the requested appointment in the coming weeks, with the advice of the Appointments Subcommittee. 1

2014 Queen's Counsel Advisory Committee (Benchers' Appointment of Two Law Society Representatives)

Traditionally the Benchers appoint the President and First Vice-President to represent the Law Society on the annual Queen's Counsel Advisory Committee.

Ms. Merrill moved (seconded by Ms. Westwood) that the Benchers appoint Ms. Lindsay and Mr. Walker to the 2014 Queen's Counsel Advisory Committee.

The motion was <u>carried unanimously</u>.

b. 2014 Harry Rankin Pro Bono Award

Vancouver Bencher Jamie Maclaren was congratulated on being named the recipient of the CBABC's 2014 Harry Rankin Pro Bono Award, in recognition of his significant contributions of: pro bono legal services to a client; community organizing in establishing pro bono clinics; coordinating pro bono services, and education and advocacy work to promote pro bono culture.

c. 2014 Commemorative Certificate Luncheon

Ms. Lindsay thanked the Benchers who attended the 2014 Commemorative Certificate Luncheon. She noted that 22 senior members of the legal profession were honoured at yesterday's luncheon, and commented on the honourees' appreciation: of both the Law Society's formal recognition of their long service, and the Benchers' attendance at the luncheon.

d. 2014 BC Civil Liberties Association (BCCLA) Liberty Awards Gala

Ms. Lindsay attended last month's BCCLA Gala on behalf of the Law Society to observe the presentation of the 2014 Liberty Awards, recognizing outstanding leadership to promote human rights and freedoms in Canada by: John Conway, QC (Excellence in Legal Advocacy (Individual); JFK Law Corporation (Excellence in Legal Advocacy (Firm); Ewen MacAskill, Laura Poitras, Barton D. Gellman, and Glenn Greenwald (Excellence in Journalism); Franke James (Excellence in the Arts); and the Fraser Valley Youth Society (Excellence in Youth Activism).

¹ Nanaimo Bencher Nancy Merrill has since been appointed, and Cariboo Bencher Gregory Petrisor has been named first alternate.

e. BC Provincial Court and BC Supreme Court Welcoming Ceremonies

Ms. Lindsay represented the Law Society at the recent welcoming ceremonies for the Honourable Steven Point, OBE, former Lieutenant Governor of BC (re-appointed a BC Provincial Court Judge effective March 3, 2014²) and the Honourable Emily Burke (appointed to the BC Supreme Court effective May 13, 2014).

f. BC Supreme Court Rules Revision Committee Notice to the Profession: Inviting Comment on Proposed Amendments to Rule 7-6 (audio recording of Independent Medical Examinations)

The BC Supreme Court Rules Revision Committee has issued an invitation to the legal profession to comment on a submission from the Trial Lawyers Association of British Columbia proposing a rule change to permit a person who is being examined under Rule 7-6 to audio record the examination. The deadline for comments is October 31, 2014.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 2 to these minutes) including the following matters:

- Introduction
- Process for Developing new 2015-2017 Strategic Plan
- Federation of Law Societies of Canada Update
- May 2014 Financial Statements
- 2015 Budget and Fees Planning Update

8. Financial Report to May 31, 2014

Mr. Walker introduced this matter as chair of the Finance and Audit Committee and invited Chief Financial Officer Jeanette McPhee to update the Benchers on the Law Society's finances through May 31, 2014. Ms. McPhee reported that the Law Society is continuing to track close to budget for 2014, with the financial forecast for the balance of the year unchanged from her last report: a positive variance of about \$150,000 is expected. Ms. McPhee referred the Benchers to her written report at page 112 of the meeting materials for details.

² The Honourable Judge Steven L. Point, OBE was first appointed to the BC Provincial Court in 1999.

9. 2015-2017 Strategic Plan: Preparation Update

Mr. McGee covered this matter in his CEO's Report to the Benchers (Appendix 2, bullet 2).

10. Report on the Outstanding Hearing & Review Decisions

Written reports on outstanding hearing decisions and conduct review reports were <u>received and reviewed</u> by the Benchers.

11. Mid-year Reports from the 2014 Advisory Committees

a. Access to Legal Services Advisory Committee

Mr. Mossop reported as chair: providing highlights of the committee's work in the first half of 2014 and outlining the committee's focus for the balance of the year (see the written report at page 125 of the meeting materials for details). Mr. Mossop acknowledged the hard work of the committee members, and thanked Staff Lawyer Doug Munro for his valuable assistance and guidance to the committee and its members.

b. Equity and Diversity Advisory Committee

Ms. Morellato reported as chair: providing highlights of the committee's work in the first half of 2014 and outlining the committee's focus for the balance of the year (see the written report at page 133 of the meeting materials for details). Ms. Morellato acknowledged the hard work of the committee members, and thanked Staff Lawyer Andrea Hilland for her valuable assistance and guidance to the committee and its members.

Ms. Bains reported for the Diversity on the Bench Subcommittee. She outlined the subcommittee's three recommendations (see pages 144-147 of the meeting materials)

Ms. Bains presented a motion on behalf of the subcommittee: moved (seconded by Mr. Maclaren) that a letter be signed by the President and sent on behalf of the Law Society to the federal Minister of Justice, including the following statement:

The Law Society of British Columbia recommends a review of the criteria used for appointments to the Judicial Advisory Committee for BC, with the goal to identify and remove real and perceived barriers for equity-seeking groups. We also recommend greater transparency in the appointment process, as has been accomplished at the Provincial Court level in BC.

Following a discussion the motion was carried.

c. Rule of Law Advisory Committee

Mr. Van Ommen reported as Vice-Chair in the absence of Mr. Crossin (Chair): providing highlights of the committee's work in the first half of 2014 and outlining the committee's focus for the balance of the year (see the written report at page 150 of the meeting materials for details). Mr. Van Ommen acknowledged the hard work of the committee members, and thanked Manager of Policy & Legal Services Michael Lucas for his valuable assistance and guidance to the committee and its members.

d. Lawyer Education Advisory Committee

Mr. Wilson reported as chair: providing highlights of the committee's work in the first half of 2014 and outlining the committee's focus for the balance of the year (see the written report at page 157 of the meeting materials for details). Mr. Wilson acknowledged the hard work of the committee members, and thanked Director of Education Alan Treleaven for his valuable assistance and guidance to the committee and its members.

12. Mid-year Report from the 2014 Governance Committee

Ms. Kresivo reported as chair of the Governance Committee: providing highlights of the committee's work in the first half of 2014 and outlining the committee's focus for the balance of the year (see the written report at page 161 of the meeting materials for details). Ms. Kresivo acknowledged the hard work of the committee members, and thanked Chief Information and Planning Officer Adam Whitcombe for his valuable assistance and guidance to the committee and its members.

Ms. Kresivo focused on the committee's recent review of the Law Society's current procedures and rules for general meetings. She noted that this work has been undertaken in response to widespread membership feedback to the Law Society's June 10, 2014 Special General Meeting: calling for electronic or online participation and voting at general meetings.

In the ensuing discussion several Benchers commented on the importance of utilizing modern technology to facilitate online participation and voting in Law Society general meetings. The value of in-person participation in general meetings was also noted.

Ms. Kresivo confirmed that the Governance Committee intends to continue its work on conflict of interest recommendations, to review the Law Society's rules for general meetings, and to research electronic and online options for participation and voting at general meetings. The Committee plans to report later in the year with specific recommendations for changes to the general meeting Rules, and with a proposal for seeking membership approval.

The Benchers discussed other matters in camera.

WKM 2014-07-29



Minutes

This is Exhibit "N "referred to in the affidavit of Timothy E McGee QU sworn before me at Vancouver this 15" day of Tangary 20.15

A Commissioner for taking Affidavits for British Columbia

Benchers

Date:

Friday, September 26, 2014

Present:

Jan Lindsay, QC, President

Ken Walker, QC, 1st Vice-President

David Crossin, QC, 2nd Vice-President

(by telephone)

Haydn Acheson

Joseph Arvay, QC

Satwinder Bains

Pinder Cheema, QC

David Corey

Jeevyn Dhaliwal

Lynal Doerksen

Thomas Fellhauer

Craig Ferris

Martin Finch, QC

Miriam Kresivo, QC

Dean Lawton

Peter Lloyd, FCA

Jamie Maclaren

Sharon Matthews, QC (by telephone)

Ben Meisner

Nancy Merrill

Maria Morellato, QC

David Mossop, QC (by telephone)

Lee Ongman

Greg Petrisor

Claude Richmond

Phil Riddell

Elizabeth Rowbotham

Herman Van Ommen, QC

Cameron Ward

Sarah Westwood

Tony Wilson

Excused:

Not Applicable

Staff Present:

Tim McGee, QC

Deborah Armour

Jeffrey Hoskins, QC

Bill McIntosh

Jeanette McPhee

Adam Whitcombe

Guests: Kevin Boonstra Legal Counsel, Trinity Western University

barbara findlay, QC Member, Law Society of BC

Gavin Hume, QC Life Bencher

Leonard Krog MLA, Nanaimo and Justice Critic Bob Kuhn, J.D. President, Trinity Western University

Derek LaCroix, QC Executive Director, Lawyers Assistance Program

Michael Mulligan Member, Law Society of BC

Alex Shorten President, Canadian Bar Association, BC Branch

Geoffrey Trotter Law Society Member, Geoffrey Trotter Law Corporation

Art Vertlieb, QC Life Bencher

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on July 11, 2014 were approved as circulated.

The in camera minutes of the meeting held on July 11, 2014 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

Amendment of Rule 5-10: Application to Vary Orders

BE IT RESOLVED to amend the Law Society Rules as follows:

By rescinding Rule 5-10 and substituting the following:

Application to vary certain orders

- 5-10(1) An applicant or respondent may apply in writing to the Executive Director for
 - (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-9 [Costs of hearings], or
 - (ii) to fulfill a condition imposed under section 22 [Credentials hearings], 38 [Discipline hearings] or 47 [Review on the record],
 - (b) a variation of a condition referred to in paragraph (a)(ii), or
 - (c) a change in the start date for a suspension imposed under section 38 [Discipline hearings] or 47 [Review on the record].
 - (1.1) An application under subrule (1)(c) must be made at least 7 days before the start date set for the suspension.
 - (1.2) The Executive Director must promptly notify the President of an application under subrule (1).
 - (2) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:
 - (a) the same panel that made the order;
 - (b) a new panel;
 - (c) the Discipline Committee;
 - (d) the Credentials Committee.

- (3) The panel or Committee that hears an application under subrule (1) must
 - (a) dismiss it,
 - (b) extend to a specified date the time for payment,
 - (c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or
 - (d) specify a new date for the start of a period of suspension imposed under section 38 [Discipline hearings] or 47 [Review on the record].
- (3.1) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (2)(c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (3).
 - (6) An application under this Rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

- **5-10.1**(1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-10 [Application to vary certain orders]:
 - (a) pay in full a fine or the amount owing under Rule 5-9 [Costs of hearings];
 - (b) fulfill a practice condition as imposed under section 21 [Admission, reinstatement and requalification], 22 [Credentials hearings], 27 [Practice standards], 32 [Financial responsibility], 38 [Discipline hearings] or 47 [Review on the record], as accepted under section 19 [Applications for enrollment, call and admission, or reinstatement], or as varied under these Rules.
 - (2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.
- 2014 Law Society of Award Recommendation to Benchers

BE IT RESOLVED that John Hunter, QC be named as the recipient of the 2014 Law Society Award.

DISCUSSION/ DECISION

2. 2015 Fees and Budgets: Finance and Audit Committee Recommendations to the Benchers

2014 Finance & Audit Committee Chair Ken Walker, QC introduced the other Committee members¹ and addressed the Benchers. Mr. Walker confirmed the Committee's 2015 fee recommendations and outlined the budget preparation and review process that was employed by senior management and the Committee in arriving at those recommendations.² CEO Tim McGee, QC provided further background on management's budgeting process.

Mr. Walker moved (seconded by Mr. Lloyd) that the following resolutions be adopted by the Benchers:

BE IT RESOLVED THAT, commencing January 1, 2015, the practice fee be set at 1,992.00, pursuant to section 23(1)(a) of the Legal Profession Act, consisting of the following amounts:

General Fund	\$1,605.46
Federation of Law Societies contribution	30.00
Canadian Legal Information Institute contribution	36.98
Pro Bono contribution	30.06
Courthouse Libraries BC contribution	195.00
Lawyers' Assistance Plan contribution	67.00
Advocate subscription fee	27.50

BE IT RESOLVED THAT:

Practice Fee

• the insurance fee for 2015 pursuant to section 30(3) of the *Legal Profession*Act be set at \$1,750;

\$1,992.00

- the part-time insurance fee for 2015 pursuant to Rule 3-22(2) be set at \$875; and
- the insurance surcharge for 2015 pursuant to Rule 3-26(2) be set at \$1,000.

¹ Peter Lloyd, FCA (Vice-Chair), Thomas Fellhauer, Craig Ferris, Peter Kelly, Miriam Kresivo, QC and Bill Maclagan, QC.

² See page 57 of the meeting materials for the Finance and Audit Committee's presentation to the Benchers (2015 Fees and Budget: Effective and Innovative Regulation).

BE IT RESOLVED THAT:

- effective September 1, 2015, the training course registration fee be set at \$2,500, pursuant to Rule 2-44(4)(a); and
- effective September 1, 2015, the registration fee for repeating the training course be set at \$3,900, pursuant to Rule 2-44(4)(a).

Following discussion, the motion was carried unanimously.

Mr. Walker thanked CFO Jeanette McPhee for her valuable support to the Law Society and the Committee.

REPORTS

3. Legal Services Regulatory Framework Task Force Update

Art Vertlieb, QC addressed the Benchers as Chair of the Legal Services Regulatory Task Force. Mr. Vertlieb introduced the other task force members³ and noted that the body was created early this year, following the Benchers' adoption of the recommendations of the Legal Service Providers Task Force in December 2013. Mr. Vertlieb outlined the mandate of the current task force⁴ and provided highlights of its work through 2014, including consultations with the Chief Justices of the BC Court of Appeal and Supreme Court, the Chief Judge and two Associate Chief Judges of the BC Provincial Court, the Chairs of BC's administrative tribunals, and representatives of the Law Society of Upper Canada and the Washington State Bar Association. Mr. Vertlieb noted that following consultation with the legal profession and the public in the fall, the task force expects to report with recommendations to the Benchers at their December meeting. Mr. Vertlieb thanked Mr. McGee, Mr. Lucas and Mr. Munro for their valuable assistance and support to the task force throughout the year.

4. President's Report

Ms. Lindsay briefed the Benchers on various events she has attended and matters she has undertaken on behalf of the Law Society since the last meeting, including:

- a. The Canadian Bar Association Mid-year Meeting in St. John's, NL.
- b. Welcoming Ceremonies for First Year Law Students at UBC and University of Victoria

³ Benchers David Crossin, QC (Vice-Chair), Satwinder Bains, Jeevyn Dhaliwal, Lee Ongman, and non-Benchers Karey Brooks, Nancy Carter, Dean Crawford, Carmen Marolla, Wayne Robertson, QC and Ken Sherk.

See: http://www.lawsociety.bc.ca/page.cfm?cid=3902&t=Legal-Services-Regulatory-Framework-Task-Force.

- c. Civil Review Tribunal Update
- d. Judicial Access Centre (JAC) Open Houses in Vancouver and Victoria

Ms. Lindsay attended in Vancouver and Mr. McGee attended in Victoria. Ms. Lindsay noted that about 50 people per day attend the Vancouver JAC.

e. Law Firm Regulation Task Force Update

Ms. Lindsay introduced the members⁵ of the Law Firm Regulation Task Force⁶ and confirmed that the work of this new body is underway.

5. CEO's Report

Mr. McGee reported orally to the Benchers on the following matters:

a. 2015-2017 Strategic Plan Development

Mr. McGee thanked the Benchers for their attendance and valuable contributions at yesterday's 'environmental scan' strategic planning session, facilitated by Nic Tsangarakis, principal of Kwela Leadership and Talent Management. The strategic issues identified at that session will be mapped against the elements of the Law Society's statutory mandate, for review by the Executive Committee, with the goal of presenting a draft outline of the Society's next three-year strategic plan for the Benchers' review and discussion at their October 31 meeting.

b. Discipline Counsel Advocacy Workshop

This important training session for Law Society Discipline Counsel also took place yesterday. Led by Deborah Armour, Chief Legal Officer, and Jaia Rai, Manager, Discipline, the workshop featured conduct of simulated hearings, with three preeminent BC counsel (Ian Donaldson, QC, Leonard Doust, QC and Glen Ridgway, QC) volunteering their time to attend – answering questions, providing feedback and generally supporting the professional development of the Law Society's Discipline Counsel.

c. Guest Lecture at the University of Victoria, Faculty of Law

Mr. McGee recently delivered a guest lecture to a Legal Ethics and Professionalism class at the University of Victoria law school. The level of engagement and interest shown by the

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⁵ Benchers: Herman Van Ommen, QC (Chair), Martin Finch, QC, Peter Lloyd, FCA, Sharon Matthews, QC; and non-Benchers: Jan Christiansen, Lori Mathison, Angela Westamacott, QC and Henry Wood, QC.

⁶ For the task force's mandate, see: http://www.lawsociety.bc.ca/page.cfm?cid=3966&t=Law-Firm-Regulation-Task-Force.

attending students was noteworthy, and validates the decision by the Federation of Law Societies to include this course in the 'nation requirement' – i.e. a mandatory element of the Canadian law schools' curricula. Mr. McGee thanked Dean Jeremy Webber and Professors Martha O'Brien and Andrew Pirie for the invitation to attend.

6. Briefing by the Law Society's Member of the Federation Council

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Council of the Federation of Law Societies of Canada. Mr. Hume reported on the following matters:

a. Recent Conferences

In July Mr. Hume represented the Federation at two international conferences: a gathering of legal regulatory bodies, and a meeting on legal ethics.

b. Federation Council Meeting (June 2014)

Decisions were made to proceed with three significant initiatives:

- a national requirements review regarding the curricula of Canada's law schools
- a Federation governance review
- development of the Federation's next strategic plan
- c. Federation Council Meeting and Conference (October 9-10, 2014, Halifax)

Council agenda matters will include:

- National Requirement Review Committee or Task Force
 - o Among the issues to be considered by this new body will be the matter of a non-discrimination requirement, including but not limited to the recommendation of the Federation's special advisory committee on Trinity Western University's application for accreditation of its proposed School of Law
- Federation Governance Review Update
 - The Task Force conducting the review will provide a preliminary progress report

Model Code Standing Committee Update

o The Federation's Standing Committee on the Model Code of Professional Conduct (chaired by Mr. Hume) will propose several amendments to the Code, having engaged in extensive consultation with law societies across the country

Strategic Planning

o The Conference theme will be access to legal services. The program will include a presentation by the United Way on the effects of poverty on access, and site visits to several organizations in Halifax that deliver probono legal services to persons in need.

7. Report on the Outstanding Hearing & Review Decisions

Written reports on outstanding hearing decisions and conduct review reports were <u>received and reviewed</u> by the Benchers.

DISCUSSION/ DECISION

8. Consideration of Special General Meeting Members' Resolution

Ms. Lindsay reviewed the meeting protocol⁷ for presentation, discussion and voting on motions relating to implementation of the members' resolution passed at the special general meeting of the members of the Law Society held on June 10, 2014.

Motion 1 – Jamie Maclaren

Mr. Maclaren moved (seconded by Ms. Bains) that the Benchers adopt the following resolution:

BE IT RESOLVED that the Benchers implement the resolution of the members passed at the June 10, 2014 special general meeting, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purposes of the Law Society's admissions program.

⁷ See the minutes of the July 11 Bencher meeting (item 4) regarding the protocol for presentation and debate of motions, and the minute of the Benchers' September 17, 2014 email approval regarding order of voting on motions.

Motion 2 – Tony Wilson

Mr. Wilson moved (seconded by Ms. Kresivo) that the Benchers adopt the following resolution:

BE IT RESOLVED THAT:

 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.
- 4. The Referendum be conducted as soon as possible and that the results of the Referendum be provided to the members by no later than October 30, 2014.

• Motion 3 - David Mossop, QC

Mr. Mossop moved (seconded by Mr. Walker) that the Benchers adopt the following resolution:

WHEREAS:

- 1. The Benchers have before them for consideration at the September 26 meeting two motions in relation to the proposed law school at Trinity Western University;
- 2. There is currently litigation in British Columbia, Ontario and Nova Scotia that relates directly to approval of the proposed law school and the proceedings are expected to be heard before the end of this year; and
- 3. The Benchers have the discretion under Rule 2-27(4.1) to make a decision at any time on whether to adopt a resolution declaring that the proposed law school is not an approved faculty of law;

THEREFORE BE IT RESOLVED that consideration of the motions before the Benchers for decision at the September 26 meeting be postponed until the next regular meeting of the Benchers at least 14 days after the Benchers and the members of the bar have had an opportunity to consider the reasons of a trial decision in one of the legal actions now before the courts.

The Benchers then addressed Motions 1, 2 and 3 concurrently, speaking in the following order⁸:

Round 1

o Jamie Maclaren, Satwinder Bains, Tony Wilson, Miriam Kresivo, QC, David Mossop, QC, Ken Walker, QC, David Crossin, QC, Joseph Arvay, QC, Cameron Ward, Lee Ongman, Craig Ferris, Phil Riddell, Ben Meisner, Claude Richmond, Dean Lawton, Pinder Cheema, QC, Lynal Doerksen, Martin Finch, QC, Greg Petrisor, Sharon Matthews, QC, Maria Morellato, QC, Herman Van Ommen, QC, Elizabeth Rowbotham, Peter Lloyd, FCA, Nancy Merrill, Jeevyn Dhaliwal and David Corey.

⁸ For the webcast of the September 26 Bencher meeting, including the Benchers' debate of these three motions, see: http://new.livestream.com/mediaco/lsbc09262014

• Round 2

o Jamie Maclaren, Joseph Arvay, QC and Tony Wilson.

Ms. Lindsay confirmed the conclusion of discussion of the three motions before the meeting, was concluded, and called for voting in the order that the Benchers had received notice of the motions.⁹

Voting on Motion 1 (Implement SGM Resolution):

The motion was <u>defeated</u> (9 in favour and 21 opposed).

Voting on Motion 2 (Hold Binding Referendum):

The motion was <u>carried</u> (20 in favour and 10 opposed).

Motion 3 was <u>withdrawn</u> by Mr. Mossop and Mr. Walker; Ms. Lindsay confirmed that no vote was required.

The Benchers discussed other matters in camera.

WKM 2014-10-20

⁹ Pursuant to the following Bencher resolution adopted as of September 17, 2014:

BE IT RESOLVED that the order of voting on any TWU-related motions presented and seconded at the Bencher meeting to be held on September 26, 2014 shall be the order in which notice of such motions have been provided to the Benchers; Mr. Maclaren's motion shall be voted on first, followed by Mr. Wilson's motion, followed by Mr. Mossop's motion.



This is Exhibit" U "referred to in the affidavit of Timothy E: MCGLC, CC sworn before me at Vancouver this 15 day of January 20,15

Commissioner for taking Affidavits for British Columbia

Law Society of British Columbia Bencher Meeting DATE: September 26, 2014

[Transcription begins at 4:33]

JL: Good morning everyone. It seems like we just did this but here we are again. [Inaudible]. I want to thank everyone for attending and to make a special welcome to some of the guests we know are here. They are from Trinity Western, Mr. Kuhns and Boomstra. We have life benchers Gavin Hume and Art Vertlieb. We have members, Mr. Mulligan, Ms. Findlay, Mr. Trower, Mr. [??] and Mr. Lacroix. I don't think I've missed anybody. We have some staff but lots of empty seats so lots of room for people to join us. Welcome all. I should tell you, Sharon Matthews is abroad but is planning to call in. She has managed to secure a landline that she, we expect her to be ringing in around 5, or sorry, around 9, and Bill is monitoring the [inaudible], he'll let us know when she's able to call in. And [inaudible] is here, [inaudible] are you with us?

??: Yeah, on the line.

JL: [Inaudible] at home today but he is with us [inaudible] as they say. Oh, and Mr. Crossin, Mr. Crossin, are you [inaudible] or not yet?

DC: Yes, I'm here, thanks.

JL: [Inaudible] so we have a couple on the line. All right. So now I need to [inaudible] along with and a basic agenda. You've all got the [inaudible] and we'll get the mics when people are speaking. Remember you have to hold the button down or push the button before you speak, and when you're finished speaking, push it again so that you're off. The [inaudible] agenda items, I have

not heard anything from anyone so we will move through that. The first item on the agenda then is the [inaudible] finance audit [inaudible] or the fees for 2015. Mr. [Walker??]?

KW: Hello everyone. I want to first of all thank my committee comprised of Peter Lloyd, public representative [inaudible] which is of great help to our committee, Tom Fellhauer, bencher, Craig Ferris, bencher, Miriam Kresivo, a bencher, Phil [??] former bencher and public at large, and member of the profession, Peter [??]. Our [inaudible] team is led by [inaudible] as well with [inaudible]. They worked hard on our recommendations. So you have in your material the 2015 recommendations made by our committee and they are included in your materials. The recommendation is that the practice fee be set at \$1992, that's an increase of \$52 from the last year. The lawyers insurance fee will remain stable from last year at \$1750. As you can see, the mandatory fees will increase by 1.4 percent for a full time practicing member or insured lawyers. One of the things that you have to bear in mind is that the benchers' objective in setting the amount of the fee is to ensure that the operations of the Law Society and supported organizations are properly and appropriately funded to enable the Law Society to efficiently and effectively fulfill its mandatory mandate of protecting the public interest. I'm going to turn this over to Tim to talk about how management approached this process and then we'll talk to you a little bit about how finance [inaudible].

TF: Thank you Ken. The process for staff involvement in the preparation of the budget starts early in the year, almost after the approval of one budget by benchers, we start considering the subsequent year. The reason for that is we are in a dynamic process and we also work from what we call a zero based budgeting process which means that we need to look at every line item and look at every aspect of our operations and that takes time. Folks that know about this are department heads and managers and staff, and so we do a very detailed process starting early in the year that looked at each of these line items and asked questions such as is this activity one that is going to continue at the current level? Is it going to increase, is it going to decrease, have we looked at different ways to deliver, how is technology being used, how are you know, what's your staff

complement and so on. So that is [inaudible] revenue and that takes place over two or three months. It leads up to an April session where we meet with the Finance and Audit Committee to give what we call a preliminary view of key drivers for the following year. Much of this has to be done in real time, that is we don't know exactly where we're at until the end of any one year on final numbers but we have a pretty good idea of what is coming down the pipe, if you will, and we raise that with the Finance Committee. By that point though, we've pretty much created pro forma, just department by department, both on the expense side in particular, staffing requirements, changing in orientation of groups, and all that information is put together so that it can be brought to the Finance Committee. So I just wanted the benchers to be aware of that process at the staff level and I'll turn it back to Ken as the Chair of Finance and Audit Committee to take you through what happens after that. Thank you Ken.

KW: So then the Finance and Audit Committee [inaudible] senior management [inaudible] and we meet several times to review the draft fees and budget. The process is very much like a second sober thought. The Committee is very engaged and tries to challenge and make sure that management has thought about other ways to reduce fees. And this was a very engaged process this time as well. As the bottom line, of course, is that the Finance Committee is recommending the resolutions, and we believe that the underlying budgets are in fact sound. We also believe that the fees and budgets presented support the co-regulation, coregulatory operations of the Law Society and will help us meet our key performance measures and support our strategic plan. I'm going to highlight a few of the assumptions used in setting these fees. First of all, the general practice. As mentioned, the recommendation is the annual practice fee for this year should be \$1992. \$1605 of that fee contributes to Law Society operations. The remainder of the practice fee is the money that we collect of behalf of the organizations [inaudible] Law Society fund. These include the Corporate Library and the Federation of Law Societies. The revenues. We forecast that the practicing membership revenue will increase by about 1.75 percent from 2014 levels. In other words, we are assuming we will have about 11,310 members. This

assumption has, is historical and we've consistently had a continuing small increase in numbers. The second area I'd like to talk about is the PLTC revenues. They're budgeted at around 1.25 million dollars based on 485 students, and again we've increased, we believe, because of Thompson Rivers University, we'll have an increase in students of about 35 over the 2014 budget. I have to [inaudible] and you'll hear a little more about this is that PLTC in the past historically has received about \$257,000 from the Law Foundation. It's been a budget that we've used and the Law Foundation has helped us with that. They've withdrawn that funding and that's put some pressure on the PLTC. The Law Foundation has said specifically that this funding that we've historically had will not be available and that results in obviously a decrease in revenue for this important program. So our Committee reviewed the program and we reviewed the [inaudible] revenue. Historically, the students' fee revenue has been set at \$2250. The loss of that \$257,000 is, as I've said, a bit of a pressure [inaudible]. The overall, the membership has always supported PLTC to some extent, but this \$257,000, again, puts pressure on us. So the Committee discussed a number of fee options to make up the deficit. And one of the things we considered, and have recommended, is that PLTC fee be increased by \$250. [Inaudible] sensitive to the fact that students who are enrolled in the upcoming or [inaudible] already enrolled and have paid so the Finance Committee suggested that the \$2250 apply only to September students, those enrolling for the September PLTC. That lessens the pressure but it's sensitive to the students. [Inaudible] the Committee is recommending that the PLTC fee be increased by \$250 to a total of \$2500. [Inaudible] to note that PLTC fees have not increased since 2003, it's a small increase and we think it's [inaudible]. So as a consequence of that, the recommended retake PLTC fees are increased proportionately and it'll increase from [inaudible] to a total of \$3900. That affects very few students. It should also be noted that even with this increase, the increase we propose, there will still be a significant deficit maintained by the membership but that's been historical. Turning to another positive, perhaps different but positive note, is that the external leasing revenues are increased by \$184,000 because we have some new tenants on the second and third floor of

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[inaudible], and we've also had some increased revenue in the Atrium Café [inaudible]. So I want to now turn to the expense. The operating expenses relating to Law Society operations are budgeted to increase by 3.84 percent. The increases were reviewed by the Finance and Audit Committee. The two, the increase is mainly due to two factors. The first is that there is a market base salary adjustment made to staff salaries to ensure that the staff at the Law Society are paid at a midpoint in the market, and these salaries are benchmarked to similar organizations in the Vancouver area. [Inaudible] compensation policy ensures that the Law Society [inaudible] staff are fairly paid and comparable to [inaudible]. Secondly, the [inaudible] to support regulatory and practice advice purposes. These are being added in order to appropriately staff our co-regulatory functions, especially in light of the increased complexity of the professional conduct files and the increase in practice advice activity assisting lawyers. The capital plan is funded by a portion of the practice fee and the allocation of this funding remains the same as last year. These funds, this fund, the capital needs of both the Law Society operations and the required maintenance of [inaudible]. We do use reserve on one-time costs and there are a few this year as well. There are three items from reserve. First of all, there's \$65,000 to review current practice standards program to improve the program and look at ways of being more proactive. The second item is \$58,000 to fund a second year of an articling student pilot program. We will receiving a report about first year in December of this year. The third thing is the Real Program which we've agreed to fund for \$50,000, and those are the items that come out of reserve. I should touch upon the organizations which we fund through, and are included in the practice fee. The Federation of Law Societies continues to provide national [inaudible] important national and international issues. The fee has been increased this year by \$5 from 25 to \$30. [Inaudible] is a primary source of Canadian law accessible [inaudible] website. The contribution is a slight increase, just under \$3 to \$36.98. Pro bono. You will remember last year we increased pro bono almost by double and its going to remain stable this year at \$340,000 for access to legal services through the pro bono [inaudible] program. Courthouse libraries. They also are being challenged because funding is

drying up and - but the Courthouse Library BC provides lawyers and the public with access to legal information. The library fee will increase by \$5 and it will increase to \$195 per member. We support that as well. I mentioned about the challenges of the Law Foundation and CLBC, or the Courthouse Library, saw reductions of almost \$492,000, so they have done their part and we're satisfied that could be our contribution. The contribution to Lawyer's Assistance Program, this program [inaudible] program for our profession and we think it is so good. There is an increase of \$7 there to \$67 per member. This is to allow some market based salary adjustments to their staff and providing support for succession planning for senior management. The Advocate subscription fee will remain at \$27.50. We have had ongoing discussions with the Advocate and have asked for additional information on the Advocate's business plan on a go-forward basis. We want to make sure that there are areas of improvement including perhaps electronic publication and advertising rates which are being reviewed to ensure that the subscription remains at reasonable levels in the future. These discussions will continue through 2015. The Trust Administration fee. It was bumped to \$15 per transaction last year. The intention is to remain there. The number of transactions on tap have been tabled in 2013 and 14, but [inaudible] reserve is projected to be three months at the end of 2014. The [inaudible] reserves will continued to be monitored on an annual basis to ensure that the fund, the program is being funded and has appropriate reserve [inaudible]. Special Compensation fund, there's no fee on that but we still have some money and we're waiting a little bit for some [inaudible]. Once the final claims and recoveries are resolved, the reserve will be transferred in accordance with the Legal Profession Act Amendment Act to the Lawyers Insurance fund. The Lawyers Insurance fund. As I mentioned, the fee remains unchanged at \$1760. That's the fifth year in a row that it has remained that way and there are good reasons for that. The net assets were reviewed by the Finance and Audit Committee. Those net assets remain at 59.4 million dollars which include both part A and part B coverage. And according to our actuary's advice, that reserve level is considered appropriate. So, with that, I would ask you to turn to your material and look to the resolutions, and

if I can find those, I think my electronic material, they're found at electronic 71 or page 71 of the hard copy. And so I will move, and I'm hoping [inaudible] is still on the phone, or sorry, I'm going to ask Peter Lloyd to second this motion. Be it resolved commencing January 1st, 2015, the Practice Fee be set at \$1992 pursuant to section 23 of the Legal Profession Act, consisting of the amounts set out on that page.

PL: I second that resolution.

KW: [Inaudible]. We need to pass that resolution.

JL: Does anyone have any questions for Ken or Peter or anyone on the Finance Committee? All in favor, oh, sorry, Cameron?

CW: I do. I appreciate the hard work that went into preparing these budget documents and the work of the Committee and staff members who participated. I just want to express a concern on behalf of sole practitioners and those in small firms that fees seem to [inaudible] annually every year. And my question is just whether every effort was made to try to hold the line on members' fees?

JL: Mr. Walker?

KW: Thank you Mr. Ward. Absolutely, I mean that is one of our functions, and it's a balancing function between keeping the fee as low as possible and also recognizing that we have to do the co-regulatory functions. For an example, staff came to us and asked for these three new positions, and we asked them a question about why they were needed, and we talked about that at length. We need to do that stuff [inaudible]. There – we have a lot of employees but are employees in fact work extraordinarily hard and in the public interest to support our organization and show the public that in fact we are doing our job. So yes, Mr. Ward, we are vigilant and careful and scrutinize. [Inaudible] question.

JL: Mr. Finch?

MF: Madame President, I follow on Mr. Ward's question and I share his concerns that we maintain a very vigilant approach to setting fees. In our province, sole practitioners and small firms have great difficulty in facing the economic

challenges of operating successful and prosperous law practices. That said I can't help but observe that it's only \$500 more that we in British Columbia pay than those in Saskatchewan and it would appear that we are at the low end of the scale of fees for the country when one compares our position to that of Alberta and over \$6000 per member there. And so in conclusion, I endorse Mr. Ward's notion about concerns, I urge continued vigilance, I also congratulate you. Thank you.

JL: Thank you Mr. Finch. Any other comments, questions? So we'll call the question.

All those in favor of the resolution at page 71? Any opposed? That motion carries, thank you very much.

KW: So we have two more motions. The first one relates to the Lawyers Insurance Fund, and it requires us to – and it's found at electronic page 72 and I think it's page [inaudible] materials. And I'll make the motion and I'll look for a seconder. Be it resolved that the insurance fee for 2015 pursuant to section 30 (3) of the Act be set at \$1750, that the part time insurance fee for that year be set at \$875, and the insurance surcharge for 2015 pursuant to the rule be set at \$1000. Do I have a seconder?

PL: Yeah, I second that motion.

KW: Thank you Mr. Lloyd.

JL: Any questions or concerns on that motion? Seeing none I call question, all those in favor? [Inaudible], any opposed? The motion is carried. Mr. Walker?

KW: The third and final motion, and thank you for your patience, is relating to PLTC [inaudible] and upon this motion I know this was debated at the Credentials Committee last night and I want to thank them for their support, and I'm hoping that David Mossop on the phone will second this motion.

DM: Yes.

KW: Be it resolved, effective September 1st, 2015, the training course registration fee be set at \$2500 pursuant to rule 2-24 4A and that effective September 1st, 2015, the registration for repeating the training course be set at \$3900 pursuant to that same rule. Mr. Mossop?

DM: Yes.

KW: I take that yup to be a second.

Mell [inaudible] a second on the motion. Any questions or concerns on the third motion on the PLTC fees? Okay, I'll call the question. All those in favor? Again, anyone opposed? That motion also carries, that's terrific. Just before we leave this topic, I want to [inaudible] sitting in our guest chair, she was [inaudible] and would have been most capable of answering any questions Ken couldn't field and I want to thank her for her continued support. So Mr. Vertlieb, please join us at the table. You'll all recognize Mr. Vertlieb for [inaudible] the past Pres [inaudible]. As you are aware, Mr. Vertlieb is chairing the LSRFT force, Legal Services Regulatory Framework Taskforce. The taskforce has been meeting and attending presentations and Mr. Vertlieb is here to update us on the work to date. Thank you.

AV: Thank you very much Madame President. It's a pleasure to be here and I know you have other matters so I will be brief. This taskforce was formed by you in April of this year and the members of the taskforce, four of them from this table, David Crossin who is the Vice Chair, Lee Ongman, the [inaudible] on the taskforce. In addition, Mr. Terry Brooks who's a member of Trial Lawyers, Dean Crawford, the past president of the CBA, Nancy Carter who's [inaudible] with the Ministry of Justice, Ken [??], a very well respected notary public and Carmen Marollo who is a paralegal [inaudible] and part of a previous taskforce that presented to this table. The same taskforce was created [inaudible] of the Legal Service Provider taskforce which was chaired by Bruce [??]. That recommendation passed unanimously by this table in December of 2013. The mandate was to develop a regulatory framework by which other existing legal service providers and new [inaudible] potential legal service providers who were not notaries or lawyers could be involved in the provision of legal service in the credentialed and regulated way. All of this recognizing the importance to the public interest of having [inaudible] in legal matters which of course is paramount to the members of this table. So with our introduction in April, creation, we

started our work in May, we've had a number of meetings and what we've carried on is an extensive consultation process including the Chief Justice of British Columbia, the Chief Justice of the Supreme Court, the Chief Justice of the Provincial Court and his two facilitators, the Chairs of the Administrative Tribunals of British Columbia, and representatives of the Law Society of Upper Canada and Washington State Bar Association. The purpose of that part of the work, the consultative approach, was to find out what areas right now are either unmet in legal assistance or under serviced, and also to learn where selfrepresented people are regularly appearing in tribunals, and also to learn where non-lawyers are already appearing in these tribunals. And finally, the [inaudible] jurisdiction [inaudible] of what models are available for our view and recommendation. It's clear from everything we're hearing, that there is a strong benefit to the public in having non-lawyers appear in tribunals and courts to assist people who have legal problems. In fact, I think it can be said there is a real enthusiasm for this new way of helping people [inaudible]. And so we are now going to move to the next phase of consultation and that is to go to the profession and go to the public and invite input on the survey that has been prepared by our staff. That survey's going to be on the web by the end of the weekend. But I really say to you, from everything we're hearing, I think it's likely that we will report back to you in December of this year that we should recognize the value of people who are non-lawyers and non-notaries, and that we should move to credential and regulate those people, all in the public interest to make sure the people who have issues of importance to them can be better served in the courts and administrative tribunals in the province. Now to do that, we need legislative approval for amendments because we presently, under our legislation, could not do this. And so the next phase, assuming the benchers decide to move forward, just to give you the next step that will be likely, would then be in December seeking approval to go to the government to see if the government will embrace this initiative because frankly if the government won't embrace it, then there's no more effort that should be put into the concept. And so what I'm anticipating our taskforce will be asking you to do is to give us the ability to go to the government to seek

legislative amendments which will then allow the benchers to develop rules and regulations around credentialing and the ultimate regulation of people who are not presently graduates of law school or the notarial program. So Madame President, that's the update I wanted to bring on behalf of the taskforce. I think our group is doing an extremely good job in appreciating what's out there and what needs to be done. We've got a ten-member taskforce, it's large, but everyone brings their own unique perspective [inaudible] and I think the taskforce has been very well created by you, Madame President, and members of the [inaudible]. And we're receiving excellent support from Doug Munroe and Mike [inaudible] and Adam [inaudible] who attend the meetings [inaudible] so there's a very strong interest from the top down in the Law Society administration to give us all the support we need, we're getting everything we need from them. So that is the report Madame President, I do appreciate the time, I know you have other matters.

JL: Thank you so much for bringing us up to speed or up-to-date on your work. Does anyone have any questions for Mr. Vertlieb? And I want to just give our technology people a little heads up [inaudible]. [Inaudible] we will continue to move it forward and come back [inaudible] with the answer.

AV: [Inaudible].

JL: All right. So Mr. Vertlieb, you know you're welcome to stay?

[Laughter]

AV: I think I'll take a pass on this one.

[Laughter]

JL: I thought for sure he would stay, at least listen to the President's Report. [Inaudible] how difficult it is to pull together activities that seem to be endless but the [inaudible] some semblance of order so that you have some appreciation of the work that I'm doing and the issue that [inaudible] that you may not see. So I'm going to start with my holidays because it was a long summer break. I hope everyone enjoyed the beautiful weather we had here, lots of sunshine, I hope you all did a better job of attending to your gardens [inaudible]. The summer was not

without its events. You will recall there was [inaudible] that generated much activity, emails, letters, and we responded to each of them. And basically the Law Society does indeed recognize and support contingency fee agreements and recognize the role in the access continuum, and one decision on specific facts does not change Law Society policy. That [inaudible] and I think that furor has died down. Continuing on with the holiday theme, I traveled and went to St. John's, Newfoundland, for the [inaudible] National conference. I got to see [inaudible] of Great Big Sea, I went to the Duke for those of you who are CBC watchers, and saw Mr. [inaudible], also known as [inaudible] outside the Duke racing around in a car, it was very Newfoundland, had lots of fish and chips, it's the best fish and chips in the world. I don't know that I'll have [inaudible] anymore but that was a highlight [inaudible]. There were so many meetings, so many attending, so many [inaudible]. The [inaudible] activities was pages and pages that were multiple sessions all at the same time. It was impossible to do all of them. I tried to attend [inaudible] many sessions, although I will confess to being focused on those that interested me more than any others. I was able to travel to Kaslo, British Columbia, having never been to Kaslo. It was so impressive that whole part of our province. I think [inaudible]. I flew into Castlegar, drove to Nelson, beautiful [inaudible] and then to Kaslo, although with that lovely, historic [inaudible] Kootenay Lake and you come down the highway, it's a bit of a winding road but very pleasant, and you come over the crest and there's a big white church on the side and [inaudible] Community Center and then down the street is Kootenay Lake and it's blue and it's beautiful and then nothing but mountains [inaudible]. And then [inaudible] for a short walk that turned into an off road excursion extraordinaire and [inaudible] that Mr. [inaudible] and I weren't able to manage. And I'm sure that Mr. [inaudible] somewhat disappointed [inaudible] but it was lovely. It was beautiful. We did see [inaudible], we [inaudible] looked down on Slocan Lake and saw New Denver [inaudible]. Also, we saw [inaudible] but he didn't come on the hike. We saw the value of strong bar associations. Kootenay Bar Association really is active. They [inaudible] talking about the challenge of getting more than half their members to join the

Kootenay Bar Association [inaudible] voluntary organization but [inaudible] half of the area members belong to the Kootenay Bar [inaudible] they do a very good job given their geography and [inaudible] and even time challenges. Half of the Kootenays is in a different time zone. But they bring it together, they have meetings back and forth and they really have good relationships, you can see the strength of that organization, the camaraderie [inaudible]. Also [inaudible] we attended [inaudible] and Mr. Waddell and Mr. Finch regularly attend those meetings and know the strength of that organization. There's almost 120 members [inaudible] bar meeting [inaudible] Chief Justice [inaudible] was there and many, many members. And again the value of lawyers getting together in a nonadversarial, non-confrontational way to socialize, to visit, to share stories and to support each other in a professional way. I had opportunity to speak with the [inaudible] at [inaudible]. [Inaudible] was the week before the end of summer. They start [inaudible]. I attended UNBC and spoke to the first-year class and they were all very [inaudible] red t-shirts and [inaudible]. And then I had the opportunity to go to UVic. It was a different looking group and in the crowd was my daughter. So I was able to speak as the first mother from the Law Society to address [inaudible] at the opening of a law school class. I only cried a little bit but I did get through it, and then Ken was good enough to attend at the Thompson Rivers opening and I don't know if he cried but I'm sure he represented us well.

KW: [Inaudible].

JL: [Inaudible] expressing how proud I was of my daughter and then I added to the rest of them I know all of your parents and your family are equally proud of you too. But anyway, so, then I had the opportunity to speak [inaudible] another opportunity to speak [inaudible] and to try to inspire and to challenge. I love that opportunity but I have to comment on the [inaudible]. Now I know there was a review, seven-person, seven-bencher review panel going on that day and so [inaudible] scheduling was challenged on that. But the ceremony is not particularly well attended by benchers and [inaudible] encourage anyone who can [inaudible]. It's really only an hour of [inaudible] meetings rescheduled for an hour one way or the other or ask the court [inaudible] just a few minutes while

you finish off the ceremony. I think it matters to the young students who are looking up at the representative of the Law Society, their Law Society [inaudible] ceremonies [inaudible]. I think I'd like to see a few benchers there. [Inaudible] and I have attended at [inaudible] in there at the Legal Services Society. We listened to [inaudible] research on webspace platforms around legal [inaudible] support. And he's [inaudible] and he focused on, he was speaking [inaudible] but he [inaudible] kudos to BC. He said they've been at all [inaudible] reference to [inaudible] platforms like [inaudible] that join people, that connect people or direct people to very [inaudible] and support. [Inaudible] platform that will on the [inaudible] and design [inaudible] information and guidance. [Inaudible] will be a live person on that web or on that [inaudible] platform who will answer some questions [inaudible]. We came away from that realizing there's so much potential, the web is going to allow us to provide access and information to so many more people, offering a more convenient way for them. One of the things that I did take away, [inaudible] underrepresented groups in terms of access to the web, generally most people have access to the web, but one of the groups that doesn't have it, doesn't have the same kind of access are people who have disabilities and one would have thought that they would have better access, [inaudible] intuitively, but he says that's not the case. And so there's something that we need to, because they say that segment of the population will need more support and [inaudible] providing support more and more on the web, [inaudible]. That ties into the [inaudible] the resolution in front of people that the BC government has introduced, not yet implemented, but I should tell you that there is a [inaudible] appointed chair and she take [inaudible] with the CRT in providing web-based support services and dispute resolution service for BC citizens. It's not there yet and [inaudible] the difference between web-based dispute resolution, which is voluntary and [inaudible] consensual and web-based dispute [inaudible] making which has [inaudible] other particular challenges and we have, the Law Society is continuing to remind the CRT of our concerns about the legislation specifically around lack of representation or direct [inaudible] representation [inaudible] section 83, [inaudible] and trying to make sure that that

is [inaudible]. And just continuing on with that access and public support theme, [inaudible] and I both attended at the [inaudible]. I attended in Vancouver, Mr. [??] attended with me. I should tell you that I won the draw so I have a little gift basket courtesy of [Mediate??] BC [inaudible]. I think it's a Law Society asset so I'll probably bring it here. [Inaudible] the open house in Victoria. The two [inaudible], the [inaudible] in Vancouver and the [inaudible] in Victoria are [inaudible] models and they're both [inaudible] those open houses feeling that these are very vibrant, active centers where people, it's on the ground good work. People come in, in Vancouver, [inaudible] people [inaudible] are going through the [inaudible]. It's aptly, it's physically located near the Robson Square, or in Robson Square, near the courthouse at Robson Square. People who are in court or referred by the court to cross the hall and go and get some advice, there are people there advising on theft and rental, there's family counselors, there's a self-help center that's got a bunch of computers and a person, it's manned so there's someone there to walk you through [inaudible]. You can prepare your documents and then go down and meet with a lawyer and have them reviewed. There's a couple of lawyers issued by, sponsored by Legal Services, Access Probono is there, there's a civil resource [inaudible] and there's Mediate BC and there's a little plug for my good friend Kerry Boyle. Next week, October 11th to 18th, Mediate BC is declaring, determining it to be conflict resolution week. Everyone is supposed to, I don't know how [inaudible] or settle something in that week. So all of you [inaudible] but at the [inaudible], you really got a sense that people come in with complex problems. They think it's legal probably, it might not be a legal problem, they think it's an employment problem but it might not be and you [inaudible], they spend a long time on [inaudible] you and because they've got so many resources available that it's an opportunity for collaboration and for [inaudible] around helping the person [inaudible] issues. So it struck me that these [inaudible] are on the ground doing good work and providing real support for people who need access to not just legal service but [inaudible] social problems. Okay, and that [inaudible] what I've done over the last, since our last meeting. I want to rest assured that I'm continuing to work hard, I've finished [inaudible].

I'm not done yet. I'm going to Halifax [inaudible], the federation semi-annual meeting is in Halifax in [inaudible] so the focus of this meeting is on access and so Ken and are going to be attending but we'll also determine to bring two of our Access people, Nancy and Will, [inaudible] to participate in the training sessions that are going to be offered in Halifax with a view to bringing back to this table what we learned on the presentation [inaudible] Halifax. And on that, does anyone have any questions? That's my report. Thank you all. Now, we'll go to Mr. [??], pick up on all the pieces I missed.

New Speaker: Thank you Jan. A few things on my report which is an oral report this month. A couple of federation matters which Gavin [inaudible] is here, council representative we'll refer to. The second item is I just wanted to thank you all for your participation in the strategic environmental [inaudible] session we had yesterday. I know for some of you you're quite grateful that that doesn't happen more than every three years or four years, but just a couple of observations. Those sessions are never easy, depending upon wherever you're coming from, whether you do this as part of the organization that you're in or your professional, they're never easy and the reason is because you're dealing with ambiguity and you're dealing with lack of precision and you're dealing with lack of definition and concepts at the front end and [inaudible] particularly for lawyers in the room, including myself, those are often awkward spaces to be in. That's not, by their nature, what we, what we deal with. Having said that, it is a really, really important first step and I think that what you have given us in terms of staff to work with to help prepare your next ordering to this will be extraordinarily helpful and I think that what you will find is that the getting into detail and getting into the concrete [inaudible] will happen shortly. It is a tight timetable and I think the observation I took away that I think we validated that much of what we're doing and we're emphasizing today is we're on track, and that's something that you would all support. There are, clearly doors have been opened as a result of the discussion yesterday in some areas. Some of this is emphasis, some of it is timing, and we'll be looking at all of that so that we can ensure that the public interest is well served in our plan. The next thing I just wanted to mention was yesterday

while you all were busy in that project, there was, across the hall, you may have noticed, there was a discipline council advocacy workshop that was taking place. You may recall I referred to this at the retreat we had, the bencher retreat earlier this year, that this was being planned and it took place yesterday. This is the idea of Deb Armor and Jaya Rai in our, Deb of course is our Chief Legal Offiecr and Jaya Rai is the head of our Discipline Council group which I think is just a fantastic initiative. What they, what they did yesterday was conduct a workshop for the discipline council, interactive based on simulated hearings, and most importantly, they had the, working with them were three eminent, preeminent counsel, Len Doust QC, Glen Ridgway QC, and Ian Donaldson QC. And those gentleman volunteered their time to provide feedback, to listen, to answer questions, and basically to deal with a professional development aspect which really goes to the core of what we aspire to do as well as we possibly can. It's the workshop, I believe it's one of the first of its kind for law societies, I can't be totally sure of that, but in any event, something that I think we can build on, and by all accounts, from what I heard, it was very well received and very successful. So I just wanted to mention that and thank those that participated. And lastly, just a note, I was, participated, had the privilege of speaking to a UVic law class last week or perhaps the week before as a guest lecturer on the legal ethics and professionalism course, and many of you do do that at the law schools. I can tell you that as you know, when I first was invited to do these, it was an optional course at the school and now it's part of the national requirement, it's mandatory. And I can tell you that the group that I spoke to there were approximately 40 or 50 in the class, they were very engaged, the questions I had both during and after really indicated and validated for me that the decision to make this a core part of legal education was a very, very solid decision. And I would just like to publicly thank Professors O'Brien and Pyri who have extended that invitation. They do a terrific job and they've embraced this. And there are others of course at the other law schools, and Dean Jeremy Webber of course at UVic who is behind this. So from a personal experience point of view, it was extraordinarily positive and I just

think it's something that we all need to continue to emphasize. That's my report Madame President.

JL: Thanks, whoopsie, thank you Mr. McGee. I'm reminded by Mr. [??] that I forgot to tell you, I forgot to mention, just to confirm that we have populated the Regulation of Law Firm taskforce. Herman is of course chair. The other benchers on the taskforce are Martin Finch, QC, Peter Lloyd, SEA, and Sharon Matthews, QC. Nonbenchers are Jan Christiansen from Prince George, Angela Westlicott from Victoria, and Ken [??] from Vancouver, and work is underway on that, from that group. And we move just to the next item, Mr. Hume, we're going to have a briefing from Mr. Hume about the federation meeting. He will also [inaudible] in Halifax. Just before we, before you start Gavin, I just want to clarify who's on. I'm hearing beeps, all three are on. David, David and Sharon are all on, are all hearing us?

New Speaker: Mostly.

SM: I am, Sharon.

JL: Thanks Gavin.

GH: Thank you Madame President. [Feedback – inaudible] So I was unable to attend the July meeting of this group because I was representing the federation at two conferences, the first dealing with a conference of legal regulators around the world. It's the third conference that's been held and that pulls legal regulators together for the purposes of talking about common issues and what the future might hold. I anticipate that that conference will be held in Canada next year. And then I attended an international legal ethics conference which largely involves ethics [inaudible] from around the world, plus I was interested in ethics topics. Therefore just very briefly with respect to the June meeting, there were three significant topics discussed and decisions taken. One was to proceed with a national requirements review for the law schools. I'll speak a bit more about that in a minute. Secondly was to proceed with a governance review, and thirdly to start in the strategic planning process. First of all dealing – and then that takes us to the conference that's going to occur, as Jan had said, in July or in October,

October 9 and 10, in Halifax. At that conference and at the council meeting, the topics that we'll be dealing with will include a national requirements review. The national requirements of course are the requirements set for the law schools and they set the competencies that need to be taught, as Tim has suggested, indicated, that includes ethics and those are the competencies that the law societies across the country require to be taught in order to permit those candidates to graduate from those schools to enter our credentialing or articling program. The first review has taken place of essentially all law schools. The program will be in full force as of 2015 with the graduates coming out in 2018 with the necessary training. The review, the actual review that's going to occur, is going to deal with, amongst other things, the [inaudible] discrimination issue. That was a recommendation from the Special Advisory Committee but there are a number of other issues that have arisen both from the Law Deans and just from the Approval Committee. So they'll take a look at those issues. We're going to be dealing with the process to deal with that [inaudible] recommendations before us on how to engage in consultation but technical support will be required and the composition of the committee, the first part already of that committee will be, a taskforce will be [inaudible] the non-discrimination provision and then requirement. We're going to go from there to get an update on the governance review that the federation is engaging in. Governance was last looked at in a very structured way in 2002. There have been adjustments of the governance process, all [inaudible] the federation, and it's succeeding here but it's time to stand back and take a fresh look at how the federation governs the governance itself. It's consistent with the work that was done at this table on governance and the Law Society of Upper Canada and a couple of other law societies. So we're going to receive a report on the progress made with respect to that governance review. Tim is a member of that committee. The next item that we'll be dealing with in terms of decision making will be a report from my standing committee on the [inaudible] proposing a number of amendments to the [inaudible]. And if those amendments are coming forward from the council after an extensive consultation across the country with respect to what changes should be made. And then last of all, at the council

meeting, we'll be dealing with strategic planning that we need to engage in but we'll I'm sure continue with the national initiatives such as the [inaudible] standards but we'll probably add to the strategic plan requirement to continue with the governance review and requirement to continue looking at the national requirements for law schools. The conference is or has [inaudible] is going to deal with access and it looks like a very innovative program. We're going to start off by hearing from United Way representatives about the effect of poverty on legal access and from there we're going to engage in a series of site visits in Halifax to look at the organizations that provide legal advice, legal services to those who can't afford a lawyer. So we're going to spend some time with those organizations and then a chunk of the conference will be spent looking at innovative ideas, ways that the law societies might pursue access to legal services. That's my report Madame Chairman.

- It: Thank you Mr. Hume. Anyone have any questions for Gavin? I'm again reminded I missed something else. I forgot to mention Mr. Wilson attending for us at the provincial meeting, provincial council meeting of the CBA last week in Delta or Richmond or something like that, Richmond, thank you Mr. Wilson. All right, we come to, [inaudible] agenda the report on outstanding hearing and review sessions. The good news is there are no conduct [inaudible] or meetings [inaudible] even listed, let alone [inaudible]. [Inaudible] under [inaudible] Mr. Doerksen, can you tell us where we are?
- LD: Moving along... well we had a number of applications the morning of the hearing so we had to deal with that, and that's been completed and we're on to the next decision. So it's required more time than expected but we're getting there.
- JL: And on the second page, Johnson, Mr. Wilson, you were busy last week.
- TW: It's coming, I can talk about that in camera.
- JL: Okay. Thank you. And the last one [inaudible] is sorry, [inaudible]. I just want everyone to know that the Lindsay on there is not me.

New Speaker: But we actually have circulated a draft, we're very, very close, [inaudible] being and that was a bit problematic but we're on it and we'll get it done soon.

JL: Thank you very much. Thank you all. All right, we, [inaudible] we move to the resolutions that arise from the special general meeting in June. We have circulated and got approval for the basic process here. The three motions will be introduced, seconded, without speeches, but then the suggested speaking order is to go back to the movers and seconders of the three motions, so that will take us through six speakers and then Mr. Hoskins and I will record hands and names that I will read out in advance for the technical people [inaudible] anticipate speaking. So just for the record for everyone in the other room, we are going to hear from Mr. McLaren, Ms. Bains, Mr. Wilson, Ms. Kresivo, Mr. Mossop, and Mr. Walker as the, to read and second the motions without speeches, and then in that same order for speeches. And we are all agreed that the speeches will be limited to five minutes and you've all got access to the timers that will keep you, eyes on. All right. Are we good to go? Okay, Mr. McLaren, can we please hear from you on motion number one?

JM: Thank you Madame President. I move as follows: Be it resolved that the Benchers implement the resolution of the members passed at the June 10th, 2014 Special general meeting and declare that the proposed law school at Trinity Western University is not an approved Faculty of Law for the purposes of the Law Society's admissions program. Thank you.

JL: Second it? Ms. Bains?

SB: Madame President, I second the motion.

JL: Thank you. Mr. Wilson?

TW: My motion, seconded by Ms. Kresivo is as follows: Be it resolved that a referendum, the referendum, be conducted of all members of the Law Society of British Columbia to vote on the following resolution: Resolved that the Benchers implement the resolution of the members passed at the Special general meeting

the Law Society held on June 10th, 2014 and declare that the proposed law school at Trinity Western University is not an approved Faculty of Law for the purposes of the Law Society's admissions program; yes or no. We call it the resolution. The resolution will be binding and will be implemented by the Benchers if at least one third of all members in good standing of the Law Society vote in the referendum and two thirds of those voting in favor of the resolution, sorry and two thirds of those vote in favor of the resolution. The Benchers hereby determine the implementation of the resolution does not constitute a breach of their statutory duties regardless of the results of the referendum. And lastly, the referendum be conducted as soon as possible and results of the referendum be provided to the members by no later than October 30th, 2014.

JL: Ms. Kresivo?

MK: I second that motion.

JL: Thank you. Now, Mr. Mossop.

Inaudible] one, the Benchers [inaudible] two motions in relation to the proposed law school at Trinity Western University. Two, there is a current, currently litigation in British Columbia, Ontario and Nova Scotia that relates directly to approval of the proposed law school and [inaudible] are expected [inaudible] before the end of this year. And three, the Benchers have a discretion under the rule 2-27 (441) to make a decision [inaudible] to adopt a resolution [inaudible] the proposed law school is not an approved Faculty of Law. Therefore be it resolved that in consideration of the motion before the Benchers [inaudible] be postponed until the next regular meeting of the Benchers [inaudible] 14 days after the Benchers and the member of the bar have an opportunity [inaudible] decision in one of the legal actions now before the courts.

JL: Thank you Mr. Mossop. Mr. Walker?

KW: I second that motion.

JL: All right. Go back to the same order. Mr. McLaren.

Thank you Madame President. [Inaudible] to keep an open mind in our discussions of this issue. I strongly believe that both the legal and practical implications of our current situation compel us to reverse our previous decision to accredit TWU's prospective law school. I begin with the legal implications as I see them. We know that stable and predictable application of law promotes the rule of law. This value underlies the common law principle of [inaudible], providing much of the reluctant justification for granting TWU's accreditation on April 11th. But as the Supreme Court us in a [inaudible] reference, the rule of law also operates in symbiosis with other values like constitutionalism, fairness and human dignity. That is to say that the rule of law is dynamic and must respond to changing circumstances within society. The law's ability to adapt to changes and the substantive experience of Canadians is what sustain this relevance. Public confidence depends on it. We differ from the College of Teachers in that we are specifically charged with protecting the public interest and the administration of justice by preserving and protecting the rights and freedoms of all persons. This takes our task beyond that of merely ensuring that appropriate educational standards are met. We also differ from the College of Teachers in that we are tasked with accrediting a much more exclusive form of education. Admission to Canadian law schools is increasingly competitive and successful admission grants access to a degree that in turn grants access to privilege, influence, prosperity and status. Indeed, a law degree is a condition for entry to the judicial branch of government. Consider for a second the effects of TWU's discriminatory conduct on the dignity of prospective LGTBQ students deprived of one precious educational opportunity and the many [inaudible] prospects that follow all because of the fact of identity [inaudible] than skin colour, LGTBQ students will suffer loss of human dignity, social inclusion, and public standing. In at least a few circumstances, they'll be regarded as inferior, treated as inferior, and made to feel inferior for simply being who they are. So the legal issue before us is not whether or not TWU law graduates would become good lawyers and judges who do not discriminate against LGTBQ people, I'm certain that the vast majority of them would become good lawyers and judges [inaudible] discriminatory beliefs,

JM:

but whether or not the discriminatory conduct of TW law is an acceptable infringement of the equality rights of LGTBQ people would be consistent with an evolved public interest. Same sex marriage was legalized in BC in 2003 and public acceptance of LGTBO relationships has greatly progressed since then. From what I heard on April 11th, most of the votes in favor of TWU stem from the view that accreditation is required by law despite being contrary to the public interest. TWU's covenant was described as abhorrent, repugnant and regrettable, among other things. Our monumental Special general meeting informed us that the vast majority of our members also view TWU's accreditation as contrary to the public interest. We received 3210 legal opinions advising us to lead on this issue by keeping legal education and the administration of justice in line with what the rule of demands of us in 2014 and not 2001 under different circumstances. To me, this means that we cannot fetter our discretion or remain passive bystanders in this great debate. We must be purposeful in our actions because here today, as Mr. Arvay will surely remind us, we are the law. Thank you Madame President.

JL: Thank you Mr. McLaren. Ms. Bains – I'm sorry, I've been asked to just clarify that Mr. Crossin is still on line, can still hear us and Ms. Matthews and we've heard from David, David, Mr. Mossop, I don't need to hear from you but I do need to hear from Ms. Matthews and Mr. Mossop, sorry, Mr. Crossin.

New Speaker: Madame President, I can tell you that Sharon Matthews emailed me one minute ago to say that she was on the line and the sound was good for her.

JL: Okay. Thank you. All right, Ms. Bains?

SB: Madame President, I second the motion in support of the resolution as [inaudible] and my support is based on my position to keep the public interest [inaudible] through this motion. As I sit here as an appointed Bencher, I realize I carry the weight of the public on my shoulders along with all of you, in my case, preserving the rights of all people and the responsibility of the Law Society. Reserving the decision of June 10th is [inaudible] undertake. Anti-discrimination laws are the hallmark of being a Canadian citizen. In all good conscious, I cannot support a

discriminatory law or process with the law school that has been proposed. That's why I second the motion.

JL: Thank you Ms. Bains. Please remember to turn off your microphone. Now I have Mr. Wilson.

TW: Thank you Madame President. I might take a little more than five minutes but I won't speak again. My fellow Benchers, we're here again today to vote on one of three resolutions respecting Trinity Western University and our decision of April the 11th to effectively approve a law school at that institution. Now what's happened since our April 11th meeting has been nothing short of profound. Not only did the Law Societies of Upper Canada, Nova Scotia, and now recently New Brunswick vote against accreditation of TWU's proposed law school, a Special general meeting was held in British Columbia on June 10th where lawyers across the province voted on this very important issue. The results of the SGM were historic, they were overwhelming, and they cannot be ignored. Out of a membership of approximately 13,000, 4178 attended the SGM, 3210 members voted to direct the Benchers to reverse their decision with respect to TWU, and only 968 members voted in support of the Benchers' decision, but in many ways this is really no longer an issue that deals with the accreditation of a law school. This has become an issue that affects the relationship that British Columbia lawyers have with their law society and with their benchers. And I believe it has become an issue that affects the governance of our law society. Now with respect to motion three, I know that there are some whose opinion I very much respect who believe that we've made our decision and that we should wait for the courts to make a ruling. And that, as I understand it, is the essence of motion three. However, waiting I believe ignores how unprecedented and indeed how overwhelming the members' vote was at the SGM. Waiting I believe sends the wrong message to members who expect something more from their benchers. Waiting makes us look unresponsive, undemocratic, and indifferent. I say that because of the emails that all of us have received since June the 10th. And as we all know, this may only be resolved in the Supreme Court of Canada and it may take years to get there. Now to quote my friend Sharon Matthews, who I think is

on the other line and she allowed me to quote her, she said, I think at the last meeting, the Law Society is a leadership organization, not a waiting around for someone else to make a decision kind of organization and I agree with her. So with great respect to our fellow Benchers, I can't support motion three which brings us to motion one. There are many in the profession, including some of my colleagues at this table, who believe that we should reverse our decision based upon the overwhelming results of the SGM and comply with the will of the majority, and I do respect that view. But people like Jennifer Chou, now Vice President of the Canadian Bar Association BC branch, and Charlotte [??] provincial counsel and many other lawyers in the province gave me a lesson in democracy and reminded me that that vote on June the 10th was non-binding and 9000 lawyers in BC relied on it being non-binding. For whatever reason, they didn't vote. I've been told by many lawyers that they were in court that day or they were out of the office that day or they were in the office but couldn't get away that day. I myself was in Mexico that day and I think other people at the table were away on holidays that day. One lawyer said to me that she worked in Quesnel. She couldn't drive two hours to Williams Lake or two hours to Prince George to vote. So when I've raised this issue with some lawyers, including some in my own office, I made the point of turning a non-binding vote into a binding vote effectively disenfranchises approximately 9000 lawyers who for good or for bad, for right or for wrong, relied on the non-binding nature of the special meeting and didn't vote. And I've been told by more than a few who cares about them, they should have voted. I care about them and many of my colleagues care about them. Although federal, provincial and municipal elections are won by those who vote as opposed to those who don't, federal, provincial and municipal elections are binding. The vote by our membership was not binding and I believe it's unfair to [inaudible] franchise 9000 lawyers who had other things to do on June the 10th. So let's fix that. Let's have a binding referendum, and that's what Ms. Kresivo and I have put forth for your consideration today in motion two. A binding referendum held by way of mail in vote and held immediately expedites the referendum process already available under our legislation. It allows every lawyer

in British Columbia to vote on this very, very important issue without leaving their offices. Every lawyer will know that there will be consequences to their vote. There will be no excuse not to vote, and every vote will count. Now some lawyers have emailed me and suggested that a Bencher-initiated referendum is undemocratic. I'm not sure how including the entire profession in such an important decision by way of a binding referendum is undemocratic. Others have emailed me and suggested that a binding referendum is an intent to gerrymander the process. Well the referendum asks the same question that was a put to the membership in the SGM and I don't know how that is gerrymandering. Still others have said that the Benchers can't be trusted to implement the results of a binding referendum that they initiated. Well I say to all my colleagues, don't vote for this motion if you're not prepared to implement. And finally, it's been claimed that we don't' have the authority to initiate a binding referendum. Well to that I say we are the Law Society of British Columbia regulating the legal profession in the public interest. If resolving the accreditation of TWU by way of a referendum isn't something that we can do in the public interest, I don't know what is. Again, a referendum while, or rather the motion that Miriam Kresivo and I put forward expedites the process already permitted under the Legal Profession Act under section 13. We don't want to wait until a referendum brought in July 2015, let's have it now, and I would urge everyone at the table to adopt motion two. Thank you.

JL: Thank you Mr. Wilson, don't forget your mic. Ms. Kresivo?

MK: Thank you Madame President. As a seconder of motion two, obviously I'm a strong proponent of calling for a referendum. But before I go into the motion, just let me start by saying the issues regarding the accreditation of TWU students are very difficult issues, difficult legal, personal, and emotional issues. I personally want to commend all my fellow Benchers for the gravity with which they have approached the issue, the time and effort in considering the submissions and determining the outcome, and eloquently voicing their positions [inaudible] how to be part of the debate at this table. Having said that, I must say that I believe that a referendum of the members is the right path forward, it may not be the perfect

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path forward, but it is the right path forward. And I believe that because it is responsive and recognizes the significance of the issue to the membership. It is the most democratic in that it allows everyone to vote, understanding that it should be binding. And I believe it is principled, and I believe only motion two provides for all three. I'll turn to responsive. Let me talk about why this is important. In an unprecedented meeting, approximately 4000 Law Society members attended a Special general meeting and voted, the majority not to accredit TWU. This was clearly an issue that many members of the Law Society had and have serious concerns about and wanted to be heard. What does that mean or should that mean to the Law Society and to the Benchers at this table? In my view it means it needs to be recognized. It means that a significant portion of the membership has spoken. It means that therefore doing nothing is inappropriate. It means that waiting is inappropriate, and it means that failing to recognize what's happened that is serious is inappropriate. I'll turn now to the second issue. What does it mean to be responsive as Benchers? In my view, it means that we simply cannot just implement the decision of the members as the proponents of motion one have suggested. Why? I believe the answer is simple. 4000 of approximately 13,000 members voted. Is that significant? Obviously yes. Is it sufficient for the Benchers to say the full membership has spoken? No. There were members who were unable to vote. Personally, I was out of the country on the day of the vote and therefore couldn't vote. There are many members in remote communities who could not vote. As well as being responsive, we need to be democratic. We must ensure that we allow the entire profession, all of the members of the Law Society, to vote. We need to provide for a referendum with ballots mailed to all members of the profession, setting out the questions to be determined. I have heard some say that those who failed to vote quote don't deserve to vote since they didn't care enough to attend or vote. In my view, that is far too narrow a view of what the Law Society stands for and the concerns we have for our membership. We need to provide a forum which allows all to vote. As Winston Churchill once said, democracy is the worst form of government except for everything else that has been tried. And therefore what should we do?

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What did our members understand might happen as a result of the vote? In my view they could not believe it was binding because if you look at the Legal Profession Act, it states that a resolution of the general meeting is not binding on the Benchers except as provided and the provision provides for a referendum of all members to be conducted if the resolution has not been substantially implemented by the Benchers within 12 months, which would be June of 2015, and certain thresholds are met. This is important, the fact that the Act requires a referendum is important to me because it says that we Benchers, some say we Benchers must determine the issue without looking to the membership. It is not an issue for which a membership should have issue. And I say if the Act didn't provide for it, we perhaps would consider that. But we must look at what the Act provides for which is a referendum. What is proposed is motion two is merely bringing it forward. There are comments in the legal opinions in TWU's submissions that the proposed referendum is not the referendum. I say that is irrelevant. The Benchers of the Law Society have a right to decide and conduct a referendum. There is no question about that, and to consider whether it will be binding. That is what we're asking you to do. If I can indulge for one more moment, I will [inaudible] a rebuttal. I do not – there are some that say that we are fettering our discretion, and I say we are considering both potential outcomes of the resolution and whether in future we would be willing to vote for either of the outcomes and the Benchers will have to consider it at this table once the results of a referendum are taken. And finally I say this is principled. It would be inappropriate to disregard the response from the membership and I believe it would be inappropriate to simply vote to adopt the members' resolution. By allowing for a referendum, we acknowledge the unprecedented vote and we reconsider the underpinnings of the vote and the applicable case law. We consider whether we as Benchers have truly put our minds correctly to the application of the case law. We may have strongly held views but without the benefit of a Supreme Court of Canada case on the merits, there is not really one right answer. If there were, the entire profession would not be in such a conflict over this issue. For that reason, I say we have to consider the views of the membership. Finally,

there are some that would argue that we should wait until the Supreme Court renders a decision in December. I say that the only decision that will provide guidance in this area is the decision of the Supreme Court of Canada, and even if that is expedited, it will take some time. In the interim, we should allow the membership to vote on the issue in a referendum and adopt the results. That is responsive, democratic and principled. Thank you for your indulgence.

JL: Thank you Ms. Kresivo, don't forget your mic. Mr. Mossop, are you with us?

DM: Yes, thank you. First of all, I'd like to say I don't think there are two things that the Benchers [inaudible]. The first is that none of the Benchers support the controversial [inaudible]. So let's get that out of the way, even those who supported [inaudible]. The second thing is the final arbitrator in this is going to be the courts. The members and the Benchers have some say in it but [inaudible] the final arbiter [inaudible] in this kind of [inaudible] the courts. There are three resolutions in front [inaudible] at this time. The first resolution asks [inaudible]. Many members of the Benchers are reluctant to reverse the decision and that is because they've studied [inaudible] extensively and made their decision on April [inaudible] 2014. This decision [inaudible]. There's nothing about the General Meeting that changes that. If you had the view then, you have the view now. But at the same time, [inaudible] recognize that the membership is greatly upset about it. And this is where we come to resolution two which is the referendum. And my concern about the referendum, and originally I thought it was a good idea, but if you look at the date we have to complete it by, we have to complete it by October the 30th, 2000 and 14. That is one month before the [inaudible] cases in front of Ontario, British Columbia, Nova Scotia that will [inaudible] at the trial level, whether Trinity Western is [inaudible]. Why does it have to be October 30th? [Inaudible]. A [inaudible] sometimes in September of 2016, and even that I think is wishful thinking [inaudible] litigation that's going to go forward. So this is the most, out of fairness of that, not only [inaudible] to the members because if the members are going to [inaudible] a referendum, they should have all the possible [inaudible] in front of them and they should have the opportunity of at least having one decision from the [inaudible] courts in the three provinces. So from a

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policy point of view, that's a fatal flaw in this referendum accept [inaudible] and there's no prejudice to anybody to have it put off until we have at least one decision from the trial court. Then there are other problems. Among them is I don't think this is going to satisfy those who [inaudible]. They don't want any referendum. They want the decision reversed and I don't, [inaudible] September 30th, I think putting a referendum in front of them is not going to satisfy them and we're just going to have [inaudible]. And so, and finally [inaudible], I [inaudible] the opinion on this issue of the referendum, and I have severe doubts whether we have the authority. And I think we can't delegate [inaudible] to the membership on this issue. [Inaudible] for the members to decide [inaudible] it doesn't matter what I believe, I think there's a very good chance litigation will stem from this and that [inaudible]. Now my resolution, you know [inaudible] the one thing that occurred, that struck me is no one mentioned the litigation, the [inaudible] litigation. I've got emails from people and I've talked to people and when you talk to them and explain to them about the litigation going on and that [inaudible] are set for December, [inaudible] surprise and [inaudible] in my opinion to wait and see what the courts say on this matter. And so I think we, if [inaudible] and we can tell it to the membership on [inaudible], we the Benchers are not going to do anything at least until we get one decision from the [inaudible]. And that can be circulated to the Benchers and to the members and there's no prejudice for anyone [inaudible]. [Inaudible] in to this process. The other thing [inaudible] is [inaudible] the lawyers representing Trinity Western and the lawyers that are upholding Trinity Western, it may be possible to speed up this thing significantly. There is an obscure section of the Supreme Court Act, the Federal Supreme Court Act, section 38, that allows, if all the parties consent, to bypass the Court of Appeal and go directly past so that a judge [inaudible] a trial judge [inaudible] Supreme Court of Canada. It's rarely used [inaudible] if, I think most of the parties in the litigation want this resolved. This matter could be speeded significantly and that's something [inaudible] could look into. I know there's a lot of members at the Bencher table who wish [inaudible] resolution to and [inaudible] to that, but I would hope that they would consider what I have to say

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and [inaudible] the other Benchers. [Inaudible] a little pause and allow the courts to proceed with their decision making process. And I'm sure the Chief Justices [inaudible] judge [inaudible] knowledge [inaudible] and those are my comments, thank you very much.

JL: Thank you Mr. Mossop. You should know that you went through your five minutes and your three so, not that you're done but you're done. Just for the table, I want to hear from Mr. Walker then we are going to hear from Mr. Crossin, and I haven't seen any other hands and so I'll call for hands as this is going on. Mr. Walker.

KW: [Inaudible] had another 30 seconds. So wow, what an issue, what an issue for us to have to revisit. I called my little speech as I prepared April revisited. We voted to accredit TWU in April. The membership, at their Special general meeting, passed a resolution to discredit and asked us to reverse. The statute, our statute, gives us the right to call, the right to consider and the membership has an absolute right, it is their right to call for the referendum. But they only have that right one year after the Special general meeting. And I tried to think about why there's that one year, and I'll come back. Now that happens, that one year happens to be in the middle of the year that I'm to be president of this organization, and many at this table, out of this table, have urged me just do anything, do anything, to get it off the table, get it out of your year. We've got other stuff to do, any cost, reverse, referendum, do anything. I'm not [inaudible]. Why are we given a year? It's to reflect, not to wait, not to sit on the sidelines, but to think how should we implement, when should we implement, should we? What's new? So in our thinking, I said okay, well Mr. Mossop has mentioned there's actions right before the courts in Ontario, in British Columbia, in Nova Scotia, and I agree with him, they're set in December and we have reason to believe that we'll have reasons from one or all of those during my year for this table to consider. Accreditation has been treated differently in different jurisdictions. We know that we and New Brunswick Law Society has moved to accredit. We know that Ontario has moved to discredit. We know that Nova Scotia is, has said we accredit if the covenant was changed. We know that some jurisdictions have just adopted the position of

the federation to accredit. We know some jurisdictions have said we're not going to make any decision, we're just going to sit on the sidelines and wait. This is headed towards the Supreme Court of Canada. It's really of national importance, there's no issue about that. I've looked at the news and tried to follow the news to see what the news looks like. And the news is divided in my view. Some say we were right to accredit, some say no, you shouldn't accredit for all of the reasons people wish to do that. I considered our mandate which requires the Benchers to decide this issue in the public interest. I've also thought about the cost and necessity of litigation. I've thought about timing it. We accredit in April, we expect one or some or all of the reasons will come out in early 2015 at the original, originating court. I have reason to think it could get to the Court of Appeal within a year, that's in 2016, and it would probably be in the Supreme Court of Canada likely in 2017. So it seemed to me that you have to put that in context of when TWU will have its first class started, September of '16, so they won't have graduated. I really do think that I will be guided by the reasons of one or all of the Supreme Court decisions. I believe that our membership will be guided or informed by those reasons, and that's the reason why we should wait. I have 12 seconds, I'm not done, I'll continue on for maybe 2 minutes and 30 seconds. So on the covenant, I agree with Mr. Mossop, the Benchers, our membership and the Benchers are not divided on this, we're not divided on whether the covenant is controversial or a portion of the covenant is controversial. We all agree on that. I was kind of hoping that Trinity might change their beliefs but they have a right to believe, that's what the law says. So I'm in favor of reviewing this matter again when we get reasons from one or more of the originating courts in 2015, right in the middle of my year. I support adjourning this issue. I say to you, if those original if those original reasons say that my analysis of the law was wrong, our legal opinion was wrong, I will vote for motion one because that's the law of the land. I won't wait for the Court of Appeal, I won't wait for the Supreme Court of Canada. I ask those of you who are seeking a referendum to also wait. A final comment to our membership. I want our membership to know, all of my fellows at this table and those on the phone

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worked really, really hard in April. We read, we reviewed, we thought, we considered and we voted. We worked hard again today and we will continue to work hard on your behalf, and we ask you to do the same. When the time comes, I have, this should remain with the table, but do the work, thanks very much Madame President. I have a minute.

JL: Thank you Mr. Walker. I just want to get a sense. I've had an email that the webcast is not very clear and I'm wondering are we, would it be advantageous to reboot, take a, to turn it off and turn it on again or should we just press on? [Casual conversation not transcribed] All right, the next speaker I have is Mr. Crossin. Mr. Crossin, are you still with us?

DC: I am, can you hear me?

JL: Yes, you're loud and clear.

All right, it's been a bit of a struggle this morning and I should apologize that I DC: haven't been able to hear some of the things [inaudible] so I may not be able to address all the comments but let me just say this. You know since our last meeting in April, [inaudible] members have essentially declared they want a say in determining the outcome of this issue. And they want that say collectively as [inaudible] representation. You know I personally believe this to be a very healthy, very inspiring engagement by the membership. Frankly, I hope it continues on a number of issues concerning the justice system. The speakers I have heard, and this is typical of my struggle, I agree with the substance of everyone's comments and it has been a struggle for me. But I think the best way forward and the best way [inaudible] properly and fully served, that circumstance is to proceed with the suggested referendum. For me, the public will have its interest well-served and vigorously protected by the collective good will and conscious reflection of our membership, and I believe my duty is fulfilled by endorsing this suggested process. You know my thoughts on this really boil down to first principles. We, and when I say we I mean the lawyers of this province are a self-governing profession. We well know that in order to maintain our independence and guard against [inaudible] by the state or otherwise, it is critical

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in our decision making to ensure and foster public confidence in our profession and in the administration of justice. Section 3 of our Legal Profession Act applies to that [inaudible]. Section 3 isn't the voice of the government and it's not the voice of the courts and it's not the voice of the public, and it's not merely the voice of the Benchers. Section 3 is the voice of the lawyers and the members recognize it as fundamental, that any erosion of the public trust or surrender of the public interest, you know places our profession as we know it in jeopardy. And so in order to carry out that mandate, we, the members, settled on a democratic construct of governing. I'm elected by the members to govern their affairs, to make decisions to ensure the public is well-served by a [inaudible] that is ethical, an independent bar. So my duty, as I see it, the vote is a matter of statute and [inaudible] of membership is to do what I believe serves the public and to do so with reflection, good faith, and a clear conscience. And my duty is not circumscribed, you know [inaudible] simply by resting my decision making on a personal view without regard to the circumstances. My duty is necessarily driven by the [inaudible] and it's always an assessment of all the circumstances that best determines the course that serves the public perspective. And so [inaudible] evolving, the factual [inaudible], I think from the point of view of my statutory duty and logic and democratic process that the issue should be determined, frankly by the hearts and minds of the many and not [inaudible]. And certainly there are important aspects of this decision that are fundamentally legal in nature but we are not a court. How that legal issue will be determined will be decided by the court. Also [inaudible] many of the [inaudible], many of our members will be disappointed that the court will not arrive at the right answer from their perspective. The courts will give out the answer, not necessarily what we think is the right answer, and that's just how it works. So for the moment, I think it is fair to say how the legal issues will be decided are unknown and uncertain, but I'm confident [inaudible] beyond [inaudible] the members will blend their collective voice and [inaudible] on all of these issues to determine the public interest as it relates to TWU. Of course, look I have [inaudible] to the fact that a good many members took the opportunity to speak at the vote. I appreciate many did not,

either unable or unwilling to attend that meeting. They had their chance but they didn't take it. I very much appreciate those points from a, you know from an advocacy point of view. But I don't, I hope we don't see ourselves dealing with this in an adversarial form. The question now is how to best maintain [inaudible] that our profession, our Law Society is doing all it [inaudible] concerning this important issue. We must be as far reaching [inaudible]. And there is a very good argument to be made that we have now done enough but I think we must do everything that is reasonable to fulfill our obligation and for the public [inaudible] to do everything we can reasonably do. And I also have regard to David Mossop and Ken's remarks. It has an unassailable pragmatic attraction. The fact is the ultimate fate of TWU will be decided in Ottawa, not in Vancouver, and we know that and the members know that. But I think we must respect the fact the members, the public want [inaudible] whatever the future court processes may bring in years to come. And I think we should proceed to conclude a process that best [inaudible] public confidence [inaudible]. And on balance, [inaudible] a referendum [inaudible]. And I'd like to conclude this way, if I may, I want to say this publicly, the process to date has proceeded I think in a democratic structure [inaudible]. It has unfolded in a [inaudible] as a [inaudible] of the leadership of our president. And wahtever we decide our next steps to be, can I just say that her leadership with continue with that singular goal and that singular goal [inaudible] is to uphold the integrity of our Law Society and integrity of our [inaudible]. And so those [inaudible] my remarks. I'm only going to speak once, I'm sorry I'm not there, something at the last minute came up [inaudible] a venue that some of you may be familiar with, a phone booth [inaudible]. So thank you for that, but that's what I [inaudible].

JL: Thank you Mr. Crossin, your comment about being in the phone booth [inaudible] drew a chuckle. We're going to take a health break but I cannot help but note that five minute speeches have turned into eight minute speeches and I just want to remind people that there are consequences and I don't have anyone wanting to speak after Mr. Crossin although I'm sure there are. So I will quickly put together my list and then let's take a 10, 15 minute break. [Inaudible].

New Speaker: Can I make one comment?

JL: Please.

New Speaker: I [inaudible] note for the record that everybody in this room voted for five minutes speeches except me.

JL: Sorry, 10 minutes.

[Transcription resumes at 2:12:48]

JL: Welcome back. We have a new guest that I want to recognize. When I had an opportunity to visit his place of work I was recognized and so it gives me great pleasure to introduce Leonard Krog who is the MLA for Nanaimo and Justice Critic in the House. Welcome Mr. Krog. All right, I have a list. It starts with Mr. Arvay, Mr. Acheson, Mr. Ward, Ms. Ongman, Mr. Ferris, Mr. Riddell, Mr. Meisner, that's [inaudible] enough, are we good? We'll start with Mr. Arvay please.

JA: This is not the occasion to repeat what I said at the April where I argued unsuccessfully that the Benchers should not approve TWU's law faculty. My argument, in a nutshell, was that the community covenant was discriminatory and that there was no countervailing argument based on freedom of religion or anything else that could somehow justify it. That remains my view today. The question today is no longer about rights and freedoms. The question today is about governance, it is about democracy. As Benchers, our role is to govern the profession in the public interest. On April 11th, each of us tried to carry out that fundamental duty in the best way we could. To borrow from Edmund Burke for a moment, I think each of us had taken the view that we were elected by the members to exercise our best judgment as to what was in the public interest, and in particular to do what our governing statute required of us and not what our members are telling us to do. But the Legal Profession Act has not changed our role from what it was on April 11th. The Act allowed our members to consider our decision and in very significant numbers rejected it. At this point, the resolution is not strictly binding on us but because it represents more than one third of the

profession voting, and more than two thirds of which who voted to reverse our April 11th decision, it is deserving of the highest degree of deference and indeed as much as [inaudible] that would occur were there to be a referendum. Indeed, in my view, there has in effect been that referendum. The only way we would not be bound by that resolution of the members or a referendum would be if the members were asking us to do something that would be contrary to our statutory duty. Whatever that phrase means in our Act, it cannot apply to this matter. I cannot be said that if you now give effect to the members' wishes that you would be acting contrary to your statutory duty. All you would be acting contrary to is your opinion, your belief that the Supreme Court of Canada decision in the teachers' college case was [inaudible]. Acting contrary to your opinion about the binding nature of the Supreme Court of Canada case is not the same as acting contrary to your duty, your statutory duty. Indeed, for those of you who may be intending to support the motion of Tony Wilson to order a referendum now, you will be acknowledging that whatever the outcome, you would not be acting contrary to your statutory duty. And for others, I ask you this, why would we have wasted the more than \$100,000 on a special meeting if it was a foregone conclusion that any decision of the members to disagree with our decision on [inaudible] was contrary to our statutory duty. Hence, if we agree that there is nothing in our Act that precludes us from giving effect to the recommendation of the members at the last special meeting, the question is why would you put the Law Society and our members through the time, expense, the turmoil, of yet another referendum? Some of you might say because you're not satisfied that all the members have spoken, but surely enough have. By my estimate, there were, there was approximately 36 percent of the members eligible to vote who voted at the referendum, which is almost exactly the same percentage who voted for all of us in the last Benchers election and more than voted in the previous two elections. In the last election, we were voted in by approximately 36, 30 percent of the members eligible to vote. In 2011, by 29 percent, in 2009 by 31 percent. If that percentage of the members voting for us as Benchers gave us the legitimacy to be Benchers, then surely that same percentage is enough to give our members the

legitimacy to override our decision. Some of you may be unpersuaded and you would say that there are still out there, members out there who would vote, who didn't participate in the June meeting. That may or may not be the case but in my view that's really beside the point. Those of you who voted in June are the members of our profession who care deeply about this issue, and I refer to those who voted either pro or con. Their vote took considerable effort. They left their offices and their practices and spent the good part of the day to listen to the debate and cast their vote. It is truly fanciful in my respectful opinion, if indeed not just ingenuous, to suggest that there are 9000 lawyers who were disenfranchised on that June day. Well there might be a few who had no ability to vote. The vast majority simply chose to stay home and they must accept the consequences of that decision, just as they must accept the consequences of staying home when it was their decision whether to vote me in as a Bencher. I also think that it's quite offensive to order another referendum. Requiring yet another referendum smacks to me as a kind of [judge??] shopping, or if not that then simply appealing. The Benchers will be seen to be calling for another referendum because you don't like losing, a trait most of us lawyers happen to share, but this is not the time to be advocates, this is the time to be governors. Hence ordering yet another referendum will strike our members as highly disrespectful of their views and simply gamesmanship. Given that so many of you found the community covenant abhorrent, Mr. Walker says we all did, I simply don't understand why you would not now take the opportunity to do the right thing when the way is now clear to do so. The members have spoken. It is our duty now to give effect to their wishes. It is that simple. It is also time to put the TWU issue behind us and move on to more important business. I support Jamie's motion and urge you to do the same.

JL: Thank you Mr. Arvay, don't forget your mic. Mr. Acheson please.

HA: Thank you. I will be brief. I certainly respect the [inaudible] resolution from the members at the Special general meeting and I'm guided accordingly as I review the three motions going forward. I had the opportunity to speak to a cross-section of my fellow Benchers representing all three motions, and I must say that there are merits for all three motions, but my duty today is to vote on a particular

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motion and I support the resolution on the referendum. I do so because I believe it's most democratic, it's most timely, it also meets the test of the public interest.

JL: Thank you Mr. Acheson. I have Mr. Ward then Ms. Ongman, Mr. Ferris, Mr. Riddell. Mr. Ward?

CW: Thank you Madame President. I'd like to address the resolutions two and one in that order. Firstly, a few words about my friend Tony's resolution number two [inaudible] saying that we hold a referendum by mail out ballot. We've done that before and frankly the track record on such referenda isn't very good. By way of example, in 2003, we held a referendum by mail out ballot that dealt with amending our rules with respect to various matters, webcasting the AGM, conducting Special general meetings, Bencher term limits and [inaudible] for life Benchers. And I know that then, about a decade ago, question one was webcasting general meetings, are you in favor of the Benchers amending the rules respecting general meetings to allow members to attend and vote by way of the Internet? There were, the answer was yes, 2714 or 88 percent of the votes cast. There were 2867 votes cast out of 10,614 members that year, which is a return of about 27 percent. By the way, Annual General Meetings are still not being webcast and voting isn't done over the Internet. So with the greatest of respect, resolution two is well intentioned in that it reaches out to all the members, it's still likely that only a tiny fraction of members will exercise their franchise in any event and it's unclear what effect the resolution might ultimately have. I support resolution one and I will again proudly vote in favor of it and I urge my colleagues to do the same. In my view, our members have spoken with great clarity and force at the Special general meeting, and I feel that we should respect their views, pass resolution one and move forward. Our members say, and I say, British Columbia should not have a law school that discriminates against members of the LGBTQ community. With the greatest of respect to those who may have different views, this debate has nothing to do, in my opinion, with the exercise of religious freedom. It has everything to do with assessing whether a discriminatory institution should be educating our future lawyers and judges, who themselves will have professional obligations to respect the constitutional values set out in

our Charter of Rights and Freedoms. We've been told recently that we the Benchers face a critical choice today, and I quote, whether to go forward with noble principles in defense of all or step backward into a past laced with prejudice, suspicion, and marginalization. I agree with that being the nature of our decision and I find that it's ironic that those words were written by the President of TWU this week in a Vancouver Sun editorial. I believe that defeating resolution number one, the resolution that calls for implementing the vote of our membership, would be disrespectful of our members and be a giant step backward into a past that would indeed be laced with prejudice, suspicion and marginalization. Thank you.

- JL: Thank you Mr. Ward [inaudible]. Ms. Ongman, then Mr. Ferris, Mr. Riddell, Mr. Meisner. Lee?
- LO: Thank you Madame President. My name is Lee Ongman, I am the Bencher, one of the Benchers from the Cariboo and I'm happy to have this opportunity to speak to you today. Today, we're here to consider the three resolutions that have been described. And before I tell you where I stand on it, I want to once again take the opportunity to thank all of the experts and the lawyers and folks out there that provided their opinions and their submissions. I want to congratulate and tell the members of the Society of how very proud I am of them in the way they stood up to be counted on this issue of discrimination, and that's the issue for me, it's clear in that community covenant that that's what we're talking about. And it's a difficult issue, and we've struggled for months about it. I know that...
- JL: [Inaudible].
- LO: Section 3, as it was before, and still is now, has been addressed again today by several members, Mr. Crossin, Mr. McLaren, and I share all of those comments and rather than repeating them entirely I just want to, I think for the record, would be nice to talk about the statutory duty and objects. Section 3 says that these are the duties and those are the statutory duties and objects of the Law Society. And that is is the object and the duty of the Society 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 intent, independence, integrity, honor and competence of lawyers. And that is as equally important, the integrity, the honor and competence of lawyers cannot be talked about without realizing the education of lawyers, the training, the training in non-discrimination. And that is inherent and should be inherent to students as they learn to become lawyers. Mr. Walker thinks we should hold on and wait for, wait for a while and an abundance of caution, that is something that I am familiar with doing over time, delay sometimes is a victory. But we are governors, as has been pointed out by Mr. Arvay and Mr. Ward. It is time to govern. We've heard from the members, we have a process, that process is working right now. It worked as soon as the members, a few days after our decision, started that process in motion. And so the referendum will happen by the members if we don't act and govern. They will take over that responsibility, they have, however in this particular case, I don't think that we need to wait. I don't see the reason for the delay. The delay is hurtful to all, it causes, it keeps this festering and it is hurtful to TWU. The government, in its wisdom, gave them a conditional approval to operate a law school if, and some say there isn't even a need for another law school, but in any event, it was conditional, it was conditional upon receiving the approval of the federation and the approval of the Law Society of British Columbia. And I, you can see where this is leading, they do not have, at this point, in my respectful opinion, the approval of the majority of the members of the legal profession in British Columbia. That's not going to get better for TWU, it's only going to get worse, and it's going to just continue to turn on the same vein for another year. I don't want to see that happen. I think we can govern, I think we can make a decision today, and I think that it's fair to TWU to have that decision. Some of the members, I believe, have noticed and are very aware that during this period of time, TWU has our approval. They have met the conditions, although I'm sure the government is very aware that that may, that may change. And they need to be prepared to change their conditional, act on that conditional approval. So in all fairness, let's [inaudible] an institution begins hiring teachers, making plans for this new law school, starting to invite prospective students, and certainly those

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students will not include a certain segment of our population, that the sign says please do not apply. So that, that momentum that TWU has, at this point in time, in getting ready to open the law school in 2015, needs to be addressed and we can only address this now, not a year from now. We can easily address that as governors and not put our members through the continuing torture and have to raise another referendum that they, that then we must [inaudible] Legal Profession Act act upon. So I think, if I could predict the future, I would say that the dissenting opinion in the college teachers' case is the one that ultimately will prevail. And those are my comments, thank you.

- JL: Thank you Ms.Ongman. Mr. Ferris then Mr. Riddell, Mr. Meisner, Mr. Richmond. Mr. Ferris?
- CF: Thank you Madame President. I'd just like to start by saying I'm privileged to be part [inaudible] and then thank everybody for their respectful comments. I would like to start by saying I agree with much of what Mr. Arvay has said. I think our role has changed since the April meeting. I think our legislation that governs us is a mixture of us governing but also the, it's a democratic situation where the members can have their say. And the members have had their say. I agree with Mr. Wilson that their say in June was powerful and what is required of this table is a response to what the members have had to say. And so this is where I begin to differ from Mr. Arvay is the question of what is that response to what the members have said. And there's been three responses that have been put forward. One is to delay the decision, and I'm not in favor of that because I think the members deserve a response to their vote in June. The second is to overturn our decision that we came to in April. I have, I have reached into the depths of my conscience, I have reread many opinions, and I remain of the view that I expressed in April that the public interest, the main public interest that I serve as a Bencher is to follow what I think the law is, and I continue to believe that the teachers' case is currently the law until change. I don't believe the law changes because it gets old. I don't, I acknowledge that there's valid arguments that it would not apply, but I have come to the personal conclusion that that remains the law. So I'm not in support of my friend Mr. McLaren's motion because I don't

believe I can reverse myself in good conscience. So that takes me to Mr. Wilson's motion which I support. I think the members have spoken. We are ultimately a democratic organization and it deserves a response, and the response is let's let the members have their say and let's do it quickly, that deals with the issue of responding quickly. And if the members want to finally speaking as a group, meeting the requirements in the statute that, on quorum and approval, then this table I believe should reverse their decision. If they don't speak in that loud voice, then I don't think we should. Now I'd like to respond to a couple of things that have been said about the referendum which I personally think are not correct. The one is that it's judge shopping and it's a process which looks like we're sort of gerrymandering. That's not my intention. My intention is to follow as closely as we can the statutory process the referendum has provided in our act. It's not to look for a different result. It's to look for a result which everybody knows will be binding and which meets the requirements which everybody has accepted through our legislation. The second is Mr. Ward's comment that the mail out ballots don't work. I think this is an historic issue for the Law Society and I personally believe we can't compare it to a mail out ballot about whether we televise meetings, that this will generate huge public interest and my expectation is that we will far exceed the quorum required for the referendum. And then the final thing is that I think this was Mr. Ward's comment as well, is that we should do the right thing. I agree we should do the right thing but I think the right thing is to, is to put this to the members in a way that they know that their answer will be decisive and in a way that we can respect the opinion because there's no question about whether or not [it's supposed to be decisive??]. So I'll be supporting Mr. Wilson and Ms. Kresivo's resolution.

JL: Thank you Mr. Ferris. Mr. Riddell?

PR: My position begins simply that ultimately, whether TWU has a law school or does not have a law school, it's not a decision that can be made at this table. It's a decision which will made by the Supreme Court of Canada. So really what we're dealing with today is governance. How do we accept or how do we deal with the membership vote from June of this year? It was a huge turnout for a Law Society

event. 36 percent of the eligible voters showed up to vote. There was a 70 percent plus vote against TWU. That cannot be ignored. But that vote took place as part of a process. It was a nonbinding resolution that comes to the Bencher table. If we think about what we're doing today, we are accelerating by looking at our motion, you're dealing with certain ways with Section 13 of the Legal Profession Act. The Act says the Bencher table has one year to act upon special resolutions. If we don't act upon it, the membership can bring a referendum. That would be June of next year. If you look at the order of our resolutions today, resolution one is do we accept, do we adopt the nonbinding resolution of the members? If we do, it ends the issue. If we don't, there's very little [inaudible] cause to change our mind between now and next June. There are three pieces of litigation before the courts right now, and there's the British Columbia piece with regard to the decision of the Minister of Advanced Education to accredit, there's the piece where review is being sought by Trinity Western and the Law Society of Upper Canada's decision, and again these, the Nova Scotia piece dealing with the same issues as the Law Society of Upper Canada legislation. One or all three of those pieces of legislation will progress to the Supreme Court of Canada. But if we are lucky we might get a trial decision by next June. We might get a trial decision out of British Columbia that doesn't deal with the underlying issue of the balancing of right. It may deal with the issue of fettering, administering and properly fettering [inaudible] and it goes back to the minister. With all due respect to the trial decisions, this [inaudible] really made [inaudible] out there. So what we're really doing is, in my mind, by the way of Mr. Wilson's resolution, accelerating the section 13. We're telling the membership there will be a binding resolution, referendum, we are following the procedures set out in the Legal Profession Act, we're doing it eight months early, nine months early, but we're following the same rules, we're going down the path that the legislation sets out. And everyone will know what they're voting for, [inaudible] what I believe the members are voting for is they want a voice in the litigation. They are upset with the TWU covenant, and really, I look at a voice to disaccredit TWU by the membership, it's a vote saying we want to be an active part of the litigation because quite clearly, if

TWU is disapproved by the Law Society, we will be subject to a review, we will be part of a litigation. A vote, to my mind, in favor of keeping TWU's accreditation, would be a vote by the membership in which they are saying maybe we sit on the sidelines. I don't know where the membership's going to go. I do want the membership to have a voice in knowing there is a, they are voting in a binding referendum that follows the spirit of the Act and that will have real consequences. The other referendums Mr. Ward refers to, Madame President, I'll rub over a bit but I won't, I [inaudible]. The other referendums that Mr. Ward referred to were not binding and did not have the same divisive effect on the profession that this issue has. Realistically, I anticipate a huge return and I will say one thing about the process in June, at our special general meeting. We should really consider a change in that process with webcasting and Internet voting. [Inaudible] during the summer, I had occasion to be in the north and I was [inaudible] some prosecutors asking about the TWU issue, they were asking me about it. And I asked some Crown in Dawson Creek did you vote? And they said no, we couldn't because we had to drive to Fort St. John, court shut down at 4:30. it's an hour, an hour and five minutes to Fort St. John, we couldn't make it, we weren't going to go, we weren't going to make it and it was nonbinding. To me, that had a real effect. I support the Wilson resolution for a referendum. I believe it leads to good governance, it gives the membership a voice, and it gives the membership a voice on an issue it's clear, they know that their decision will be binding. Thank you Madame President.

JL: Thank you Mr. Riddell. Mr. Meisner, then I have Mr. Richmond, Mr. Lawton, Ms. Cheema. Mr. Meisner?

BM: Thank you Madame Chair. May I start by saying that the Law Society of BC, indeed Canada, have been involved in the decision to accredit TWU, it's been expensive, divisive, to this time and into the future, nonbinding on either party. I have heard numerous times around this bench earlier today that they're saying that this decision will ultimately be made by the courts, the Supreme Court of Canada, and I made a note to myself that says no, the decision as to whether TWU has a law school or not can be made by TWU. It doesn't have to go to the

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Supreme Court. What a shame that the two parties, that the two parties involved in this, the Gay Pride and TWU, who espouse tolerance, continue to dig in. looking for a solution that favors them rather than trying to sit down and work towards a common ground, a positive step for both of them, that would not only save the expense for the people of Canada, the expense of the law societies of Canada, but would show that tolerance, that each party says they believe so strongly in. I just want to address this if I may. Unless there are people specific to this discussion today, who are at this table who possess heretofore unknown powers, anything, anything past at this table is meaningless in the final decision of TWU. Indeed, the law societies of all of Canada, those 3210 people who voted to change our minds, asking us to do this, none of them, not one single person has the ability to change that which will come from the courts. We talk about a binding referendum, there is no such thing as a binding referendum that's going to take place that has to come in by the end of October. In fact, it's not binding on anyone, it's not binding on the final decision, it's not even binding on the lower courts. Speaking of the significance of those people who are involved in this issue, I still, and to this point, I'm holding my mind open towards resolution two or three, I have the sense that if I support resolution two I'm committing the membership to expense but at the same time I'm saying if you want to vote on this issue, if you want to have a say in an issue which is really nonbinding, go ahead, it's your money. I'm an appointed Bencher, it doesn't affect me. I appreciate, I appreciate the direction you're going in, I appreciate your efforts. I would say that if somebody said that we will have the Charter of Rights, we have to change, times are changing, indeed they are changing, indeed they are changing, but we don't know until we have a decision in the courts as to what direction they're changing and I am still left, I am still left with the decision of the Supreme Court in 2001. So I go back and say I do wish, I do wish in this eleventh hour, that the people of TWU would sit down with those people from the opposing party and come to a common ground. Let's both show some tolerance, let's show that we are concerned about not only the cost of this litigation but

concerned for all people in Canada. That's my decision. Thank you Madame Chairman.

JL: Thank you Mr. Meisner. I have Mr. Richmond, then Mr. Lawton, Ms. Cheema, Mr. Doerksen.

CR: Thank you Madame President. And first of all, let me say that I thank everyone for their views on this issue. I respect their views and speak my mind with no animosity towards anyone. I share many of the points that I've heard around the table, not all, but we've all thought very long and very hard about this issue and it hasn't been easy. I can think of many reasons why TWU should have the law school and I really can't think of any why they shouldn't. I have no problem with same sex marriage or the rights of the LGBTQ people, none at all. Neither do I have a problem with those who hold Christian beliefs. The Supreme Court made it clear the beliefs of one interest group should not trump those of another, it is a balancing act. We made our decision in April and I can't think of one good reason why we should revisit our decision. Are we going to change our mind? Were you not sure of the decision we made in April? I was. I think we made the right decision so why should we be changing it now? As many learned people here have said, there are several court cases pending, why don't we just let the issue unfold as it should? Secondly, or thirdly, do the members of the New Brunswick Law Society and others really believe that lawyers who graduate from TWU will be inferior to those who attend other law schools? I think that's absurd. There are faith-based universities in many countries and they seem to function very well. Why is TWU any different? As I ask myself, if this were a university of any faith other than Christian, would we be having this discussion? I think not. I understand the reasoning behind the motions and the motion to change our position, however, my position as a lay Bencher or appointed Bencher is different from yours and with the greatest of respect to all of you lawyers, and I mean it sincerely, I do not represent lawyers and am not elected by them so my opinion will be different from yours. I was appointed by the provincial government to represent the views of the public as I see it and I hear from different people than you do. I do remind you that the provincial government approved Trinity Western's application for a

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law school. It is the law of the land. We have made our decision, let's leave it alone and I think that ultimately the courts will decide the issue. Thank you very much.

- JL: Thank you Mr. Richmond. I just want to read the list as I have it, just so that people know that I have your name. Mr. Lawton, Ms. Cheema, Mr. Doerksen, Mr. Finch, Mr. Petrisor, Ms. Matthews, Ms. Morellato and Mr. Van Ommen. I have [inaudible] names and we will go to Mr. Lawton please.
- DL: Thank you Madame President. I acknowledge receiving very many email communications both from members of the public and members of the bar. And I tried my best to respond to all of them with the exception of those that came in yesterday morning and at 6 am today. I take this matter very seriously, I see that we are in a process that doesn't simply include today's meeting but rather what happened in April, what happened again in June with the special general meeting. and what will happen after today. I agree with my colleagues who say you've had an opportunity to contribute a great deal of intellectual time and energy to the main question. We did that in April. My submission of what we're dealing with now is what comes next and what is appropriate in accordance with our [inaudible] under the Legal Profession Act and our governance obligations. Now, I simply cannot forget the fact that 3210 members voted in favor of rescinding the accreditation of Trinity Western University and 968 voted against it at the special general meeting. That was an overwhelming communication. Nevertheless, we have 11000 practicing members, 13000 members in total. In the result, 8000 of us did not vote in the special general meeting. We don't know why, and from my perspective, I think it would be presumptuous on my part to criticize them for not doing so at that time. They may have been reserving their opinions and participation for a number of reasons that have been raised today. In my opinion however, the 4000 members who voted cannot be ignored just as the 8000 who did not vote cannot be ignored. So where does that leave us? I suggest the controversy over Trinity Western University and its faculty of law and its covenant as treated by our Law Society, as voiced by the public, as seen in the media, and as treated by other law societies in Canada demonstrates the balancing

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of equality rights is a national concern reflecting divergence of opinion about this issue for lawyers [inaudible]. And indeed, that divergence of opinion, I suggest, has flowed energetically around this table. Given the importance of this issue, I believe that the Benchers should ensure a process gets followed that is both fair and complete. And I emphasize the word complete because we've had some of our colleagues reference section 13 of the Legal Profession Act, and embedded in that is a process and procedure to invoke a referendum. In circumstances, I suggest that the legislature may not have envisaged immediately but had enough thoughtfulness to predict might occur one day. And so I turn to the motions. I cannot support motion number one because in my view its outcome would truncate the remainder of the members who have not yet voted. Similarly, I cannot support motion three because although I agree it's a very logical perspective, and I very much respect the opinions of those who have advanced it, in this instance, I believe that the Benchers should move to a process that incorporates the collective voice of the membership. So for these reasons, I am in support of Mr. Wilson's motion for a referendum. And in closing, I would simply like to say that whatever the result of the voting today, this issue, I believe, will be resolved by the Supreme Court of Canada, and I would like to think that with a referendum our membership and the public would be satisfied that we have completed our duty to see that a fair and complete process has been undertaken. I'd like to leave one final comment if I may. I disagree, Mr. Arvay, with your suggestion that some of us may be judge shopping, to use a metaphor, or engaged in gamesmanship, that would never be my objective. My objective is to see that I fulfill my obligations of the public as I have promised to do.

JL: Thank you Mr. Lawton. Ms. Cheema, then Mr. Doerksen, Mr. Finch and Mr. Petrisor.

PC: Thank you Madame President. I am grateful to all of those who have put forward their time, their effort and their energy to get us to this point today. I will be supporting the Wilson motion for a number of reasons, and I acknowledge the comments of everyone who has put forward their views. I believe that the call for a referendum as framed in the Wilson resolution balances competing interests and

objectives. I start with the principle that as governors of the Law Society it is our 'obligation to take action to fulfill our statutory objectives. Given the unprecedented 4000 plus responses by our members at the SGM, we as governors are obligated to respond. The question is what form does that response take given our primary role as governors? Should we wait and see what the Supreme Court does? In my respectful opinion, while we can defer the legal decision to the Supreme Court of Canada, we cannot defer our governance function. As governors, we have to fulfill our statutory mandate and in voting for the Wilson motion to hold the referendum, we are seen to be taking action on this issue and we are deciding what subsequent action is to be taken. That is good government. The Wilson motion is also fair. It gives notice and apprises TWU of the purpose, the function of the referendum, and of our intention as to how we will utilize the results of the referendum. That is good government. And finally, and perhaps most importantly, it gives notice to our members that we are holding our referendum, what it's purpose is, and how it will be utilized in our ongoing governance function. That is good government. The Wilson motion proposes a clear, defined course of action in the face of ongoing legal certainty. It conforms to our statutory mandate, it proposes a transparent determinative and proactive response, it gives notice to everyone who is affected of what we are doing, when we are doing it, how we are doing it. I am mindful of the comments that the quality of the participation or the results of the methodology may impact the referendum, but in my view, it is the adherence to the principles of good governance that ought to rule the day and not the ultimate participation or quality of the methodology. In summary, I support the Wilson motion. Thank you Madame President.

- JL: Thank you Ms. Cheema. Mr. Doerksen then Mr. Finch, Mr. Petrisor, Ms. Matthews.
- LD: Thank you Madame President. I'll likely go to my [inaudible] time. We made a legal decision on April 11th yet our legislation allows our membership to overrule us. I'm not aware of any other administrative group that has this kind of appeal process. We as lawyers are generally dispassionate and objective but this issue

has become emotional and divisive. I'm not being critical of the membership for this. It speaks to how this is not a legal issue or not just a legal issue, but a social one and the process we embarked upon and the legislation we operate under lends itself to this politicization of this issue. This has to stop. My worry is that this issue will continue to evolve as a political one and not a legal one. This organization, this table, cannot become politicized. If we become politicized, we put in jeopardy our ability to self-regulate this profession. In June, our meeting felt like we were a parliament with a majority and minority and I didn't like it. And I'm not blaming anyone for that, I'm saying that's what this decision or this issue has done to this table and I want it back to what I consider normal. So where do we go from here? I cannot change my vote because I'm not persuaded I'm wrong or that the law needs to be changed, and the few voices that seem to get all the media attention telling me that my April vote was cowardly, homophobic, akin to racism, or that I'll be voted out at the next election is not persuasive. If I had to rely only on what I hear in the media, I would be very discouraged. Thankfully, the vast majority of voices I have heard from have been thoughtful and respectful even though they may disagree with me. I want to thank all the people who took the time to send me their emails or to call me or talk to me at the courthouse about their thoughts on this issue. Whatever the end result of this matter, I am encouraged that this profession is populated by good and wellmeaning people. I have read all the submissions we've received, and again we've received very few. And the majority of these tells me to stand firm or reverse our decision, yet the majority of the membership that I have spoken with directly tell us we need to move on, get this issue off, off the Bencher table and the best way to do this is by referendum. And I've heard this from both people, from both sides of the issue. I also hear that it's not you, we don't dislike you, we don't dislike, we know you have a job to do, but we just think you shouldn't be the final arbiters of this. This should be moved to the court. In my view, a referendum now is the best of all the available options. If the referendum succeeds, this matter will be moved out of this political realm into the courts which are immune from such considerations, if it fails, then we wait for this matter to unfold in other

jurisdictions. Obviously, we will be following whatever the Supreme Court of Canada decides when this issue finally gets there, however it gets there. With respect to Trinity Western, I feel that this, that they cannot possibly win in the court of public opinion [inaudible] level playing field in the courts. I reject the notion that we as Benchers should not hold referendum because the membership has already spoken and those that did not show up to vote on June 10th had forfeited their right to be heard. Frankly, I think this is discriminatory to our rural lawyers. And what is the wrong, what is wrong with more democracy especially with an issue that is clearly very important to everybody. I adopt the submissions of Professor Foster at the University of Victoria Law School who said the reason [inaudible] in good faith and based on the law as it presently stands is to be reversed, better be by substantial majority of those eligible to vote, not the fraction that voted to reverse on June 10th. I [inaudible] that those who suggest that a referendum is too costly should ask about the cost of litigation. We just spent this morning talking about our budget and how we need to be concerned about rising costs. Well litigation would make our costs go up. If costs were truly a concern, we would be doing nothing and waiting for Ontario, Nova Scotia, and the other litigation to unfold. So one final thing I'd like to add, and I don't think it's been talked about much. I am a descendent of a small Christian minority that has been in existence for almost 500 years. For many years in Europe, my ancestors suffered through persecution, torture, and murder for their beliefs. Fortunately, they had good skills and they were good farmers. In the 1870s, the Canadian government invited and provided many incentives for my forefathers and mothers to immigrate to Canada to settle and farm this land. They were promised by the government of the day that they could follow their religion without government interference. For 40 years all was well. My ancestors lived in peace, they prospered and contributed to the growth and wealth of this country. Then suddenly, society changed. Overnight, public opinion turned against them. Before, my ancestors were viewed as industrious and hardworking, and suddenly they were viewed by the general public as aliens with peculiar habits and dangerous ideas. They were viewed with suspicion, as unpatriotic and disloyal.

They did not share the same values as everyone else. Derogatory statements were made in parliament about them, editorials in the newspapers of the day advocated for the confiscation of their property, the ban on any further immigration, and other discriminatory practices. The government acted on this and while their land was not taken from them, they were no longer permitted to immigrate to this country for many years, especially when they mostly needed it when they became refugees in Europe. In fact, in this province, from 1931 to 1948, my ancestors were not allowed to vote. Now what was the [inaudible] of this insignificant bunch of farmers that was such a threat to this country? They believed and still do that it is morally wrong to kill another human being so they would not enlist and fight in World War 1, they were pacifists. It seems to be popular today to see Christianity as the dominant and sometimes oppressive religion in this country because Trinity Western is identified as Christian, it must therefore be part of the majority. My ancestors were Christian but they were certainly not a part of the majority. The special meeting June 10th, I believe, shows that Trinity Western is not a part of the majority either. It has been argued that since 2001 society has changed and the Charter values should change with it. Well then what do we need a Charter for if we can decide the rights of all by public opinion? In every age, the majority always believes it's acting in the best interests of everyone. What we need is a Charter that will protect rights and freedoms precisely because public opinion changes. If we have a referendum, there may be an ironic result. The more successful one is, the more it may show that Trinity Western is a needed protection from us. Some has said that the integrity of the profession is at stake in this issue, I agree it is. But ask yourself what will the integrity of the profession look like if at the end of the day the Supreme Court of Canada disagrees with the majority of lawyers in this province and in this country? What if the court finds that we have acted in a discriminatory manner and upholds its decision of 2001? How will this look to the public? Saying to the membership there are consequences to your vote, please continue to think about it and take great care. Thank you Madame President.

JL: Thank you Mr. Doerksen. Mr. Finch and Mr. Petrisor and Ms. Matthews and Ms. Morellato.

MF: Thank you Madame President. At this hour, it's a good lesson in learning to put your hand up early. I have to compliment my friend Mr. Doerksen for his most recent comments which I believe are very thoughtful about the situation we find ourselves in. This is a historic process in which we've been engaged and it wasn't a single step or a single day that would determine this matter. And we have made a decision, we made that decision predicated upon careful consideration of expert opinion and our own efforts as lawyers to discern the law. Following upon our decision, we found that our membership drew [inaudible] vote made clear that not all were in accordance with our view. This has occasioned amongst the members of the bar and the general public, and certainly in the media, an extraordinary level of focus on the Benchers and the conduct of the Benchers. It draws into question governance, certainly not the general governance, but governance on this particular question as to how we as a group of lawyers elected by our colleagues, will attempt to do what I daresay seems impossible. How do we square the circle? How do we here resolve the, what has clearly been accepted as an impossible task of accurately predicting with certainty the future? We cannot know what the Supreme Court of Canada will do and no matter what we do from here forth, it will still be out of our hands at the end of the day. The proper answer to this question isn't then what is what the Supreme Court of Canada will do. The answer isn't driven by a particular moral persuasion or religious persuasion of belief. It is simply the need for us, as a group of governors, to recognize and respond to the strong voice of our membership. I'm a new Bencher, and I was surprised at the very strong and voluminous responses that our membership made following our decision. I, along with the rest of you, have received numerous emails, I've had the benefit of talking with our colleagues, I've been struck by the passion of the thought, I've been struck by their sometimes dispassionate thought, and I've also been struck occasionally with their complete disregard and disrespect for what has become a very, very difficult question for the entire membership and the public at large. I want at this time to remark to the

membership that as a new Bencher, I have been extraordinarily impressed by the dedication, the determination, and the continued energetic effort to try to resolve this problem of squaring the circle, satisfying all, and finding the right thing that I've witnessed each of you attempt to do, and I want the membership to know that the people at this table have clearly worked very hard and struggled to find the right answer, knowing that there is no right answer and that only the Supreme Court of Canada will have an answer. I'm very proud of being at this table with you [inaudible]. The motion to delay is an attractive motion, it's a motion which is consonant with careful, considered steps, but I cannot agree with that motion today. I would like to and I deeply respect the thought that went in to it and as you may recall, I was the first person that actually voiced that option, but I don't believe that's the right motion for these times. These are times where we must, as governors, be responsive to the membership and the public. We may, on our own, enjoy the capacity for calm reflection and patience. I don't believe though, excuse me, I don't believe though that all quarters would have those qualities and I think it is important that the membership know that they are respected and that the matter is moving forward [inaudible]. I have listened to the suggestions that not passing motion one would constitute disrespect to the membership, and with respect, I cannot agree with that. I say that because I have practiced in the interior of this province, I've been out in places like Alexis Creek and [inaudible] and up in the north where you get stuck in the snow and you can't get out. I've been in places where you were late for court because of delays inherent in the geography of our province. I've been stuck in traffic in the city of Vancouver and been late for court. I know that lawyers don't all have the ability to attend to a meeting or an election when they would like to. I have also observed that that election resolution was not ever indicated to have been binding. I credit our members with having an appropriate level of dispassionate objectivity allowing them to stand back perhaps and observe the process. As a result, I think that a referendum is the only mechanism available that will satisfy the need to be seen to be moving forward and to actually move forward. And I don't believe that asking the membership as a whole to consider the matter further is in any way disrespectful.

It [inaudible] a brilliance to democracy and Madame President, I will take my additional moments at this time and not have further [inaudible]. The referendum as I say...

JL: Mr. Finch, just to be clear, you already have taken your eight minutes.

MF: Oh, I'm sorry, then I will conclude [inaudible]. I believe that the voice of our membership will speak most loudly and I agree with the remarks of Mr. Riddell and Mr. Wilson. Thank you.

JL: Sorry, thank you Mr. Finch. Mr. Petrisor then Ms. Matthews, Ms. Morrelato and Mr. [inaudible]. Mr. Petrisor?

GP: Thank you Madame President. I'm speaking in support of Mr. Mossop's motion [inaudible]. When this matter came before us in April we had, for our consideration, a good deal of thoughtful and well-reasoned submissions and opinions. We also had, speaking for myself, consideration of the academic program and its approval by the Federation of Law Societies of Canada, our obligations under the National [??] Agreement and also our obligations under the provincial agreement on internal trade. Since then, since our decision in April, we've had some further submissions, but more importantly, the results of the special general meeting which I agree with Mr. Wilson's description, was unprecedented and overwhelming. The results of that meeting made two things very clear I think. First, our members think, a significant number of our members think we decided this wrongly. Second, a significant number of our members are very upset with us. I don't think a referendum is needed to make those points again. I think this matter will ultimately be decided by the courts. Central to my analysis was the current state of the law and the BC teachers' case, and I think it's fair to say that uncertainty regarding whether that decision still applies, whether that judicial authority will change, is really the central issue that's still under debate and subject of disagreement within our group of Benchers and within the profession as a whole. In my view, the petition that's currently before the Supreme Court of British Columbia does squarely address Trinity Western University covenant and its affect on GLBT people. A decision from a court, from

our Supreme Court certainly would be an important factor for me in any consideration or reconsideration of our decision in April. And I think it's fair to say that it could safely be expected that that decision and other decisions will come well in advance of a statutory requirement to deal with the results from the special general meeting. And that decision, or those decisions may ultimately and effectively answer the differences of opinion around this table and in the profession as well. I think we should wait for those decisions or at least a decision. Mr. Mossop's motion, I think, allows for us to consider new developments that probably will come in the law and likewise the motion doesn't deprive the membership of its say but it allows any future decisions to be based on the best available information and that is good governance. And I think that's consistent with the unprecedented openness and transparency that this entire process is [inaudible] and I think your efforts, Madame President, have been a large part of that and I thank you for that, and those are my comments.

JL: Thank you Mr. Petrisor. Ms. Matthews, sorry, Ms. Matthews.

SM: Thank you very much Madame President, and thank you for allowing me to participate. I have a better reason for not being there than Mr. Crossin, my plans were made over a year ago and I'm enjoying a holiday or the end of a holiday which involves cycling in Provence and drinking wine in Bordeaux, so you can all [inaudible] in a hotel room. I have three points to make about the debate today, and I'm going to start with a quote from one of our members who like many around the table, around our table [inaudible] letters supporting TWU's accreditation despite his views on the covenant. And that member said, had written and said those who will invoke religious freedom as an excuse to discriminate should not assume they will forever enjoy the protection of our law. And I think what we have seen [inaudible] that our members have spoken loudly and clearly and they have overwhelmingly said that so far as they are concerned. the time to end discrimination is now. [Inaudible] you and the vision of our profession is well within our mandate under Section 3 of the Legal Profession Act, and it is my view that we should accept it. It has been said, and this is my second point, that the members' resolution is the popular or politically correct

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thing to do, and to this I say to you, we should not belittle the history of hatred and discrimination which the LBGTQ persons have endured and still endure [inaudible] the will of the profession to stand against further discrimination as popular or politically correct. In saying this, I recognize that TWU is certain that it is the victim of discrimination, and I just do not accept that although there [inaudible] historical and [inaudible] examples of discrimination based on religion and Mr. Doerksen has poignantly described one. This issue is not an issue of discrimination against TWU. I cannot find any impingement of a religious belief or right if TWU removes the portions of the covenant which effectively exclude LGBTQ persons from the proposed law school. [Inaudible] they would ask if they would consider doing that and the answer was in the negative, very firmly in the negative. Third, I hope the [inaudible] is not [inaudible] because SGM vote was nonbinding. That is not the way I read the room I was in at the SGM. There was no talk of a nonbinding vote. Anyone who attended any of the SGM meeting rooms, meeting locations know that the members took it seriously and they behaved as though they were involved in a historic motion, not one to be dismissed as nonbinding. So in the end, of our three resolutions [inaudible] my mind [inaudible]. Number one takes us forward, we will fulfill our duty to lead in a manner which is consistent with our legislative mandate. Motion number two is flawed because it causes us to sidestep our responsibility to address the conflict between our decision and the members' special resolution head on. Motion number three is fatally flawed as it is an abdication of our responsibility which I believe jeopardizes our actual and moral authority to lead a self-governing profession. Just because we are permitted to wait a year does not mean it is the right thing to do. So for these reasons, I support the resolution brought by Mr. McLaren and seconded by Ms. Bains. Thank you Madame President.

JL: Thank you Ms. Matthews, thank you for taking the time to be, out of your holiday, to be with us in spirit at least, or at least [inaudible]. Ms. Morellato then Mr. Van Ommen, Ms. Rowbotham and Mr. Lloyd. And that's the end of my list.

MM: Madame Chair and Benchers, the issue before us is a fundamental and very important question of constitutional law. This is not a political question and it

ought not be, and is more than a governance issue. At stake is the protection of Charter values and principles that lie at the heart of our democracy, a democracy that embraces diversity and protects competing minority rights. As challenging as the last few months have been, the good news is that this question has mobilized and engaged our profession in a good way in this very important sense. On June 10th, a very significant majority of the members in attendance spoke out about the importance of protecting the rights of gay and lesbian persons. This support and this concern reflects the strength and the integrity of our members and our profession. Also on June 10th, many persons spoke out about the importance of religious freedom and freedom of association. This also speaks to the strength and integrity of our members and our profession. [Inaudible] around this table on April the 11th, regardless of how each of us voted on that day, it is patent that we are all dedicated to upholding the Charter rights of gay and lesbian persons as well as the religious freedom of TWU and its students. This much is clear. The palpable irony here is despite sharing this important common ground, division exists within the profession and around this table regarding how we actually balance competing minority rights and how we accommodate them. The Benchers have had the privilege, the benefit and the responsibility of hearing from our members on June 10th and since, and their voices have been heard and indeed that's what today is all about. We are and will continue to be responsive and to lead in this regard. The challenge we now face is how we faithfully apply the law in ways that honors the spirit and intent and the substance of Charter rights and values. What is also very clear is that minority rights cannot be determined by majority rule. Minority rights such as those of gay and lesbian law students and the freedom of religion of TWU's students must be protected as a matter of constitutional law and principle. This is not a question, in my view, that can be decided by a referendum. The courts will and must ultimately decide the question and it is a legal one. I am also of the view that allowing minority rights to be determined by majority rule would be in violation of our statutory duty. That's why we have Charter rights to protect minority rights. The Supreme Court of Canada in 2001 said that one Charter right cannot trump another and that there's

no hierarchy of rights and that they must be balanced. I have read the applicable case law, I've read all the many submissions, good submissions, persuasive decisions, and rather submissions, on both sides of the equation, on the debate, and I have also read various legal opinions from scholars and very bright, experienced experts in constitutional law, and these have all really informed our decision, informed my decision [inaudible] for them and helped in the discernment process. And I remain of the view, at the end of the day, that the 2001 TWU decision is binding. This is not to say that I do not respect the views of my colleagues who disagree with me, I very much respect your views. That's not to say I don't respect the views of the members who voted on June 10th against the accreditation of TWU, I very much respect your views and I respect the process. And we are all committed here to [inaudible] of that diversity as is the staff and leadership of the Law Society and the Benchers around this table. And many of use have spent a good deal of our professional lives working towards the advancement and protection of minority rights. In this light, and particularly in lgiht of the June 10th meeting, the most sensible and pragmatic approach is not in my view to have yet another vote, but rather to diffuse the divisiveness about how we balance these rights, to honor each other's views, to disagree without being disagreeable, and to allow the courts to do their good and necessary work. That's why the court is there. Ultimately, this issue will be decided by the Supreme Court of British Columbia and probably by the Supreme Court of Canada, but once the Supreme Court of British Columbia issues its decision it will be the law and we are honor-bound by it and it will provide guidance. We've heard from our members and so I support the third motion, I adopt the comments of Mr. Mossop and Mr. Walker and [inaudible] I believe our members and our Benchers will benefit from the decision and reasons of a Supreme Court judgment. I believe that our members will be given a voice in light of that judgment, and I would ask my fellow Benchers not to preempt their opportunity to benefit from that Supreme Court decision. Let's take a bit of a timeout, let's reflect, let's see what the court says and then let's try to work out some form of consensus. And who knows, when we take that pause, then perhaps it'll provide an opportunity for a

conciliation resolution in a way that is not adversarial. Perhaps the Christian way will see a resolution. So that's, those are my comments, I really would, I do want to underscore how much I respect the leadership around the table of our president, and all of my fellow Benchers, even though we passionately disagree. I am proud to be a lawyer today and I do believe that the rights of minority groups in this country is in good and safe hands and that we'll continue to push for protecting the rights of all minorities. Thank you.

JL: Thank you Ms. Morellato. Mr. Van Ommen, Ms. Rowbotham, Mr. Lloyd and then Ms. Merrill. And that's my list. Mr. Van Ommen.

HVO: Thank you. I will be brief. I support sending this to a binding referendum, In April I voted in support of TWU. Since then, it's, a significant number of our members have made it clear to us that a law school operating with this type of covenant is intolerable, that in their view, it is not in the public interest for us to permit that. To me that is a very significant factor for us to consider. The decision we made around this table has to be a decision made in the public interest, not solely on our personal view. I'm not able to go as far as Mr. Arvay and Mr. McLaren wish us to go today, not out of lack of respect for all those members who attended those meetings and spoke and voted. It is more out of respect to the people who didn't show up and didn't vote on those days that I hold back. Many people that have, that I have spoken with did not attend. They were unable to vote for many reasons, and you may criticize them for that, that was their opportunity to express their views and they should have gone but they didn't. But in fairness to them, it was never intended to be a binding process, and that's what they relied on. I do not think it's fair to say now it was in effect a referendum because it was not. We will have a referendum if this resolution passes, and I will have no difficulty implementing that resolution. I think it will be a powerful expression of the profession's view that the public interest requires that in the area of legal education discrimination must, must take a greater, or let me put it the other way, that freedom of religion must yield to the right to be not discriminated against. I think that will also, if the referendum passes, that will be a factor that will weigh in the court's decisions because the legal profession will have considered this

issue, will have said in our view, the public interest require that there not be any discrimination in legal education. I will have no difficulty implementing that. I support the idea of the referendum. Thank you.

JL: Thank you Mr. Van Ommen. Ms. Rowbotham.

ER: Thank you Ms. Lindsay. I will be brief [inaudible]. I have read all the submissions and materials and I respect the views expressed in the submissions. My comments today are mine alone. I just want to make one clear comment before turning to the motions. I would like to correct a misapprehension of the April 11th vote, since it's reaffirmed in the TWU submissions. I found the issue before us on April 11th nuanced and complex and I ultimately, based on views expressed by others and, both in favor and against, I ultimately voted against approving TWU's faculty of law. I appreciate that I'm quoted as saying that [inaudible] is the law in Canada, I should have said it appears to be the law. I have many comments I have written down but frankly anything I have to say has been ably and eloquently expressed by my fellow Benchers today and I do not believe I have anything further or useful to add. Thank you.

JL: Thank you Ms. Rowbotham. Mr. Lloyd.

PL: Madame President, my fellow Benchers, friends. I shall first detour into the world of marine mammals. Recently, the Vancouver Parks Board engaged in a debate about whether they should prohibit the Vancouver Aquarium from keeping whales in captivity. Submissions were called for and passionate opinions expressed on both sides. A compromise was reached. Mammals could be kept in captivity but not allowed to breed. [Inaudible] to that. A fine compromise you might think but on reflection, as with many compromises in matters of principle, it satisfies nobody. Worse, the only effective way of achieving this compromise is to separate the boy whales from the girl whales, that's very different from their social group in the wild. The reality is there is no compromise possible in that debate about whales in captivity. And so it is with us. I very much respect the architects of the referendum motion for attempting to find a compromise. But our members have already made their views known. But asking them in effect make

this decision for us through a referendum is just not on. We are either appointed or elected to make these difficult decisions in the public interest and we should not try to abdicate that responsibility. On that basis, I must ask you to oppose the motion number two. Now the delay motion is simply that, yes there will be a court decision in one or two places, but how will that decision better inform us when bluntly it's just a speed bump on the road to Ottawa. It's our decision to make and delaying that decision is no solution at all. So likewise I would ask you to vote against motion three. A recent past president, Gordon Turiff, advocated strongly for the independence of lawyers and their right to self-governance. I support that position but lawyers need to carry the trust and respect of ordinary citizens if they are to continue to enjoy that independence and self-governance. The work of this Law Society as a regulator is a key component in maintaining this trust and respect for lawyers and judges, and in particular of course we are responsible for the training of new lawyers. I do not dispute that many law students who might be trained at TWU might turn out to be excellent lawyers. After all, we have some wonderful members who trained in apartheid era South Africa, even perhaps in Canada in an era where women, as an example, did not enjoy equality. But that is not an argument for the Law Society itself to endorse an institution which openly discriminates against group in society. Many of you in April talked of your abhorrence of TWU's mandatory covenant, nevertheless you felt bound by legal precedent to allow TWU accreditation. What's changed since then? Well over 4000 of our members attended the special meeting in person, and by the way, as has been said, that would be considered a very good number of members voting even in a mailed in referendum. We're not bound by their vote, nor should we be. But surely we can be informed by the opinion delivered by 77 percent of that very large gathering of lawyers. There is no compromise here. I'm going to conclude as I did in April. This is 2014, this is Canada, and we at the Law Society of British Columbia do not tolerate discrimination. Thank you.

JL: Thank you Mr. Lloyd. Ms. Merrill?

NM: Thank you Madame President. I was not able to attend the April 11th meeting. Had I been able to attend, I would have voted not to approve Trinity Western Law

School. I do not see it as being in the public interest. I also cannot condone or endorse their community covenant and I do not want to see religion equated with intolerance, and certainly I never understood religious freedom to be synonymous with this [inaudible]. Having said that, I am in favor of the referendum motion. I have every confidence in the members that they will participate in a referendum and will guide us further. The results will come back to this table to be ratified. For me, the appeal of the referendum is that it allows all of the members of the Law Society an opportunity to be heard. As Mr. Crossin has said, this should be the voices of the many and not the few, and as Mr. Lawton has said, the process must be fair and complete. And in my view, the referendum option meets these ends and I support it. Thank you.

JL: Thank you Ms. Merrill. Sorry, anymore who weren't on the list? I have Ms. Dhaliwal, Mr. Corey, Ms Dhaliwal?

JD: Thank you Madame President. I was trying to go for the recency effect which is why I thought I would be last but I truly will be brief. I really don't have anything to add and I am taken by all of your comments and they all resonate with me in some respect. We are all doing our best here to come to a decision that will be the right decision based on the constraints that we find ourselves within today. I don't expect, personally, that the referendum, if passed and if proceeded with, will amount to any difference in where we are today. I fully expect the referendum not to be different. But I do believe in following the process that's set out in our [inaudible] legislation. What I can do today is to try to expedite that process and it's for that reason that I'll be putting my support behind [inaudible] motion. Thank you Madame President.

JL: Thank you Ms. Dhaliwal. Mr. Corey.

DC: Thank you Madame Chair. My comments will be briefed. It appears that I may be the last to speak and perhaps that is not by accident, just like the meeting in April. I've listened with an open mind to the various comments that have been made today. Like Mr. Finch I'm appreciative of and respect, sorry, I'm appreciative of and impressed by the passion, depth and respectful debate that has been applied to

this very important issue. I found compelling arguments made in support of all three motions. That said, in my end analysis, my thoughts remain aligned with the comments made by Mr. Wilson, Ms. Kresivo and Mr. Crossin, and accordingly I will be supporting Mr. Wilson's motion. Thank you Madame Chair.

JL: Thank you Mr. Corey. Do I have any more speakers for the first list? I see none. I'm going to open it to, open this for second speeches. Now some have used some or all of their time and so it seems we'll get into a little bit of a measure, but it is only 10 after 12 and I'm going to remind people we do have an in camera list as well, but I have Mr. McLaren already for the second list. Anyone else want to put their name on the list? Mr. Arvay, Mr. Wilson, all right. Mr. McLaren then Mr. Arvay then Mr. Wilson.

JM: Thank you Madame President, in the first [inaudible] my submissions I covered what I thought was the legal issues at play, and now I suggest, I propose to consider some practical implications. So what has transpired since April 11th and give you cause to reconsider our prior decision to accredit TWU's proposed law school. Well, thanks to the initiative of our members, you're provided with a massive learning moment in the form of the special general meeting. We have provided a clear window to reality outside of this room. The reality is that public opinion about LGBTQ relationships has made a quantum leap since 2001. A lesbian woman was elected premier of Ontario. City halls throughout the country fly rainbow flags without a whiff of descent. Same sex marriage has been legalized in conservative American states. Here, 3210 of our members took an hour or more out of their busy workday to cast a ballot condemning TWU's discriminatory covenant. Think of the opportunity costs of such an historic expression of democracy. It amounts to a few million dollars in lost billable time for the win side alone. That tells us all we need to know about our members' resolve in the face of threatening litigation. The higher cost has already been borne. There is something close to universal acknowledgement that the issue of TWU law's accreditation will eventually rise to the Supreme Court of Canada. Implicit in this acknowledgment is the realization that this case is substantially different from the college of teachers' case of 2001. So [inaudible] to go there

regardless of what we decide today, is it not better to choose a path of inclusion and equality, that is to say the non-abhorrent path and thus position the Law Society on the right side of history. We were elected to steer this ship so I urge all of us to grab the wheel and steer. Thank you.

JL: Thank you Mr. McLaren. Now we have two minutes left for Mr. Arvay, is that fair?

JA; Yes, as long as Mr. Wilson has only 30 seconds.

[Several speak at once – inaudible]

JL: [Inaudible] two minutes.

JA: Pardon me?

JL: Our records are that you each have two minutes.

JA: Your records are incorrect, with respect. Mr. Wilson used everything except 30 seconds, I wrote it down.

JL: All right.

TW: I didn't keep track [inaudible] Joe.

JL: Anyway, two minutes Mr. Arvay.

JA: Thank you. I'd like to think about what's going to happen at the Supreme Court of Canada and what our role's going to be. Presumably, we're going to want to be there, applying to intervene or we may be there as a respondent because whatever happens, we're going to be sued, notwithstanding what Mr. Doerksen said. But let's think about what's going to happen at the Supreme Court of Canada. What is our position going to be before the Supreme Court of Canada? Is our position going to be that TWU should be approved or not? We should know that now, what our position's going to be. And I would like to think, given the collective conscience around this table about the abhorrence of that community covenant, that our position before the Supreme Court of Canada is going to be not to approve TWU. And if that's going to be our position, then surely we should make that decision now, not a few years from now. For one thing, we will be very poor

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advocates if we go to the Supreme court of Canada and argue against TWU having found in favor of them here. At the Supreme Court of Canada, you don't start off by saying that you need to reverse yourself. You start off by saying you need to distinguish the earlier decision, and if you can't distinguish it then reverse yourself. I would like to think, as a member of this table, that we all agree that when this, we go to the Supreme Court of Canada, we are going to argue in favor, we are going to take the position that TWU should not be approved, and if that's going to be our position, then that should be the decision now. And I have to say that I would hate to think that we would take any other position at the Supreme Court of Canada. I find it quite ironic that some of you have argued, I think it was Mr. Riddell, that the referendum meets the spirit of the Act, well it doesn't meet the letter of the Act. What also met the spirit of the Act was the June meeting. Why are we giving effect to one spirit but not the other one? There's only two, there's only two legal options and that's number three or number one, number two is not a legal option. Number one is the only principled option. Thank you.

JL: Thank you Mr. Arvay. Well Mr. Wilson, off you go.

TW: Off I go.

JA: I'd like to see the clock changed please.

TW: Oh Joe.

JL: Sorry, I should rule. I don't know whether, I don't know whether anyone else kept time. We were keeping time, Mr. Arvay is disputing our record of time. Mr. Wilson, can you keep it to a minute?

TW: I will split the difference in the interest of the Bencher [inaudible]?

JL: Thank you.

TW: I would say this, when we were having our meetings in June, the person I talked to almost the most other than Ms. Kresivo is Jamie McLaren, and he and I were trying to work out some solution to this because we all know how difficult it was in June. And I saw that there was a spirit between us of working together and trying to resolve that. And I would simply invite the people who are in support of

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motion one, if that does not pass, please come on board the referendum motion because I believe the referendum will [inaudible] all votes and you're going to get the same result in 35 days. Thank you.

JL: All right. [Inaudible]. No other speakers, no other hands? That portion of the discussion is over. We come to voting and I need to get myself to where I need to be. Sorry. We have an email vote and it passed by two thirds but the order of voting would be in the order that the motions were presented and so accordingly, I'm going to call for the vote on motion number one which is the [inaudible] referred to as the McLaren motion, be it resolved that the Benchers implement the resolution of the members passed at the June 10 special general meeting and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purposes of the Law Society's admission program. What I'm going to do is call for those in favor. I am going to record the votes, sorry the names, I will call out and record the names of the hands that are up, parties that belong to the hands that are up, and then I will call for those opposed, and I will call for abstentions. I want 31 on each vote because I count everyone...

New Speaker: Are you planning to vote?

JL: Oh, I'm not voting, 30 on each vote. All right. Motion number one, those in favor, please raise your hands and hold them high. Mr. Harskins, Lee Ongman, Cameron Ward, Elizabeth Rowbotham, Tom Fellhauer, Peter Lloyd, Joe Arvay, Satwinder Bains, Jamie McLaren. Have I called everyone's name?

New Speaker: What about Sharon?

JL: Oh, sorry, those on line, Sharon?

SM: [Inaudible].

JL: Number one. Mr. Mossop?

DM: Motion number one I vote no.

JL: And Mr. Crossin?

DC: [Inaudible].

JL: I heard opposed. So now we're going to count the votes for opposed. Did you get Ms. Matthews as in favor?

New Speaker: Yes.

JL: All right, those opposed to motion number one, please hold up your hand. Ken Walker, Miriam Kresivo, Claude Richmond, Pinder Cheema, Lynal Doerksen, Jeevyn Dhaliwal, Herman Van Ommen, Greg Petrisor, Phil Riddell, this is a test of my knowledge. Tony Wilson, Haydn Acheson, Nancy Merrill, Sarah Westwood, David Corey, Maria Morellato, Dean Lawton, Craig Ferris, Claude Richmond, no, that's Ben Meisner. Sorry Ben, and Martin Finch, also online Mr. Mossop and Mr. Crossin was opposed. So the, the tally for Mr. Harskins, nine in favor, 21 opposed, the motion fails, sorry, no abstentions because those two add up to 30. Motion number two, the Wilson motion. Be it resolved that 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 purposes of the Law Society's admissions program. Yes and no. The resolution will be binding and will be implemented by the Benchers if at least one third of all members in good standing of the Law Society vote in the referendum and B, two thirds of those will vote in favor of the resolution. 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 for the referendum should be conducted as soon as possible and that the results of the referendum be provided to the members by no later than October 30, 2014. That's the motion, everyone understands, those in favor, please raise your hand.

New Speaker: In favor?

JL: In favor. Yeah, Miriam Kresivo, Pinder Cheema, Lynal Doerksen, Lee Ongman, Jeevyn Dhaliwal, Herman Van Ommen, Phil Riddell, Tony Wilson, Elizabeth Rowbotham, Tom Fellhauer, Haydn Acheson, Nancy Merrill, Sarah Westwood, David Corey, Dean Lawton...

DL: Thank you Madame President.

JL: I'm failing the test. Craig Ferris, Jamie McLaren, Ben Meisner, Martin Finch, and online, Ms. Matthews?

SM: Opposed.

JL: Mr. Crossin?

DC: I'm in favor.

JL: And Mr. Mossop?

DM: Opposed.

M: Now I'll call for those opposed. So we have Ms. Matthews and Mr. Mossop opposed, all those opposed to motion two? Mr. Walker, Ken Walker, Claude Richmond, Greg Petrisor, Cameron Ward, Peter Lloyd, Joe Arvay, Satwinder Bains, Maria Morellato, that's the hands I've counted. Mr. Harskins has 20 to 10, that totals 30, no abstentions, the motion carries. Now, do we need to vote on the third motion?

KW: David would you be, David, I think in view of that, I think our motion fails, do you agree? And so we should just pull, agree to pull the motion off, what do you think David?

DM: [Inaudible] take a different point of view, I think it's [inaudible].

KW: [Inaudible].

JL: Right, so just to confirm, that the mover and seconder of the third motion are prepared, intent to withdraw the motion and we won't be voting on it. All right. Let me just try to say a few words. I am again so pleased and proud with all of the hard work that everyone has put into this discussion and debate, [inaudible] of debate but it was a good discussion. It's clear that everyone is doing their best, trying to do the right thing, and we're all engaged in the rights and freedoms of all people and we, all of you have passionately expressed your views. I want to just

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repeat some of Maria's comments only because, I can't get to them but that we are all doing our best, we're trying to do the right thing, that these are issues and topics on which we feel passionately and clearly so do the members, so does the profession and so does the public. It is in the best traditions of our profession that we can advocate different points of view, and even opposing points of view and still remain respectful with those who disagree. Our decision to hold a referendum will ensure that all members, those who came out to the special meeting and those who were unable to attend the special meeting and those who didn't come out because of, because they appreciated that the result was not binding will now have a chance to be heard and provide direction to the Benchers. We all recognize that the issue before us today will ultimately be decided by the courts. I still want to thank each and every one of you for the work that you put into today and for the last several months and for your contribution to the discussion. Thank you. All right. Should we take a little break or should we – can we reconvene very quickly? Is five minutes enough? Five minutes.

[Transcription resumes at 4:11:55]

JL: Okay. I did find my notes of Maria's [inaudible] and I just wanted to repeat that we've clearly seen the population or the membership and the public engaged on this issue and that is indeed the good news. We're going to go in camera and so the webcast has come to an end.

New Speaker: Are you sure?

JL: I'm supposed to count to three.

New Speaker: Sharon, David and David are still with us?

JL: Sharon, David, and David, are you still with us?

Several: They're gone, they've had enough of that.

JL: So is there any possibility of turning the lights off?

[Casual conversation not transcribed]

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- So you'll all be pleased to know that staff at the Law Society have continued to work away and you will have in front of you the form of enclosure that will go with the referendum ballot. The ballot is the motion that is proposed and has passed, and the second page is the information sheet that goes with. You'll see that it is as neutral as we could keep it. There is the one, yeah, so the one, my concern is that we did hear some confusion at the, there was some confusion in June about well does yes mean no or does no mean yes, or does it mean and so I think that we should add, by way of, at the end of, underneath the sorry, in front of the referendum process and perhaps underneath the referendum process, for clarity, a yes vote means that you do not approve the approval, you do not approve the law school at Trinity Western and then another line, a no vote means that you do approve the law because it's [inaudible].
- New Speaker: I think that would be very helpful. I know that with all of the members, we pretty much asked each one, [inaudible] do you need to see it again, would you like that explained, and 90 percent wanted to go over it again.
- JL: So yes means no and no means yes and I think it's two lines [inaudible].

[Several speak at once - inaudible]

- JL: Sorry, the other thing, the microphone is handy. The other thing that this will have is a reference to the material, selection of information on the website so you know for further information, please visit the website [inaudible]. And the link to this maybe will also be on the web. Mr. Arvay?
- JA: Wouldn't it just be more straightforward to change the wording of the motion so they don't have this conundrum? I mean I like, I actually like the way it's worded right now but if we actually change it to describe oh, never mind.
- JL: The resolution that has just passed, this is exactly the resolution so we have to [inaudible]. We've all worked on this wording.

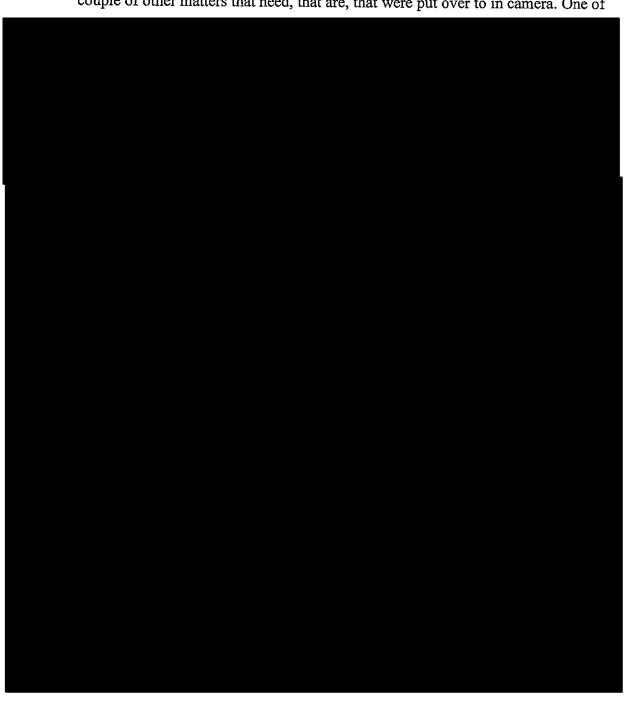
New Speaker: Joe, it's also the resolution of the SGM so we don't want to change that.

JL: So two lines clarifying yes means no, no means yes, and a reference to this meeting being, having been webcast and archived on the web and all of the other

information that continues to be on the web. All right. And so you've all had a chance to see that. We can move on to the next issue. Mr. McGee, please – sorry?

New Speaker: Can I just make one suggestion, and again sort of an editorial comment, at the beginning of this document, at their September 26 meeting, could we put September 26, 2014 just to clarify the date and make it consistent with the first line under the referendum process?

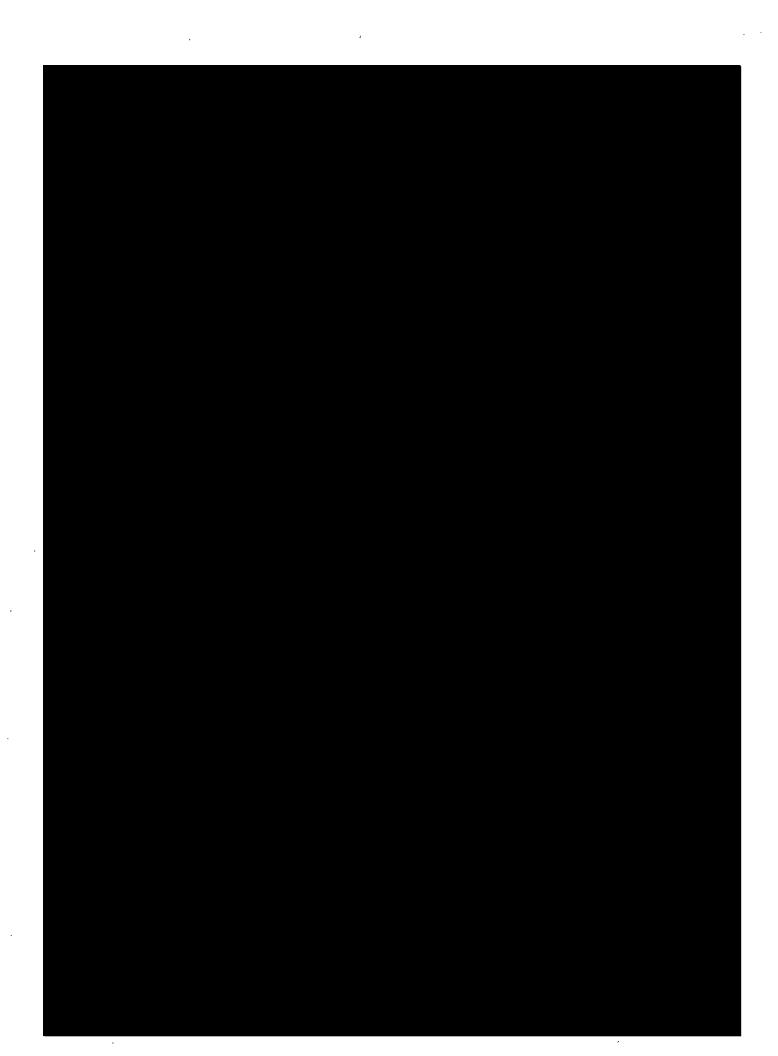
JL: Yes, I'll accept that but no more without a very good reason. All right. There are a couple of other matters that need, that are, that were put over to in camera. One of



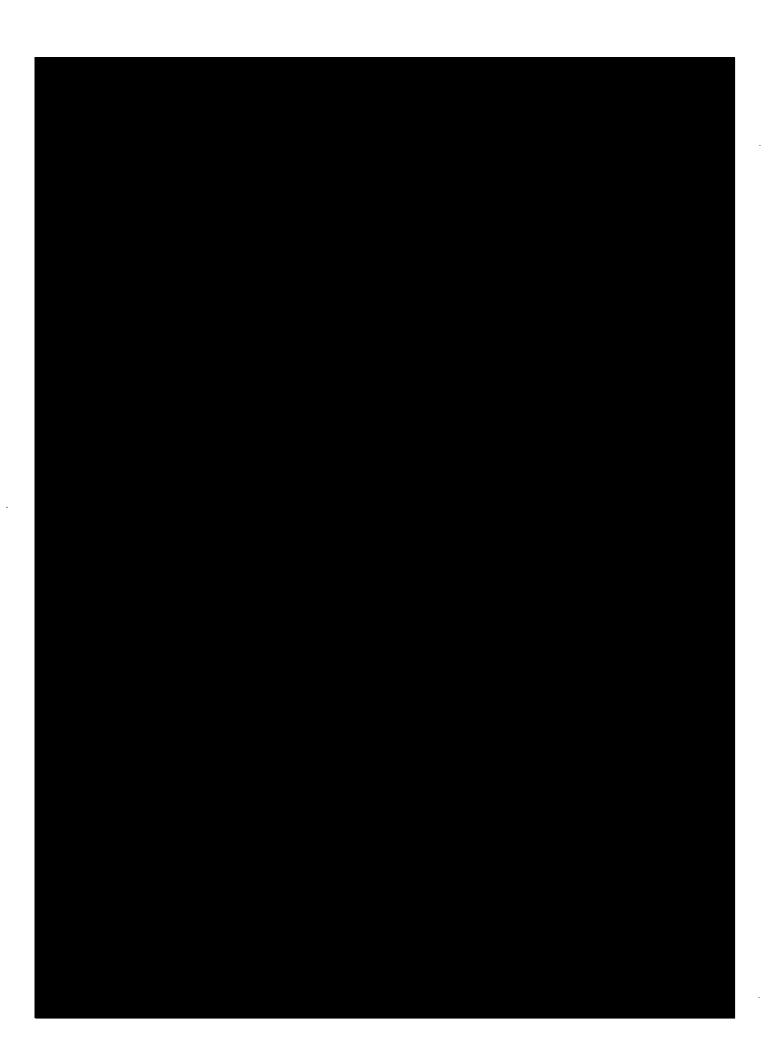


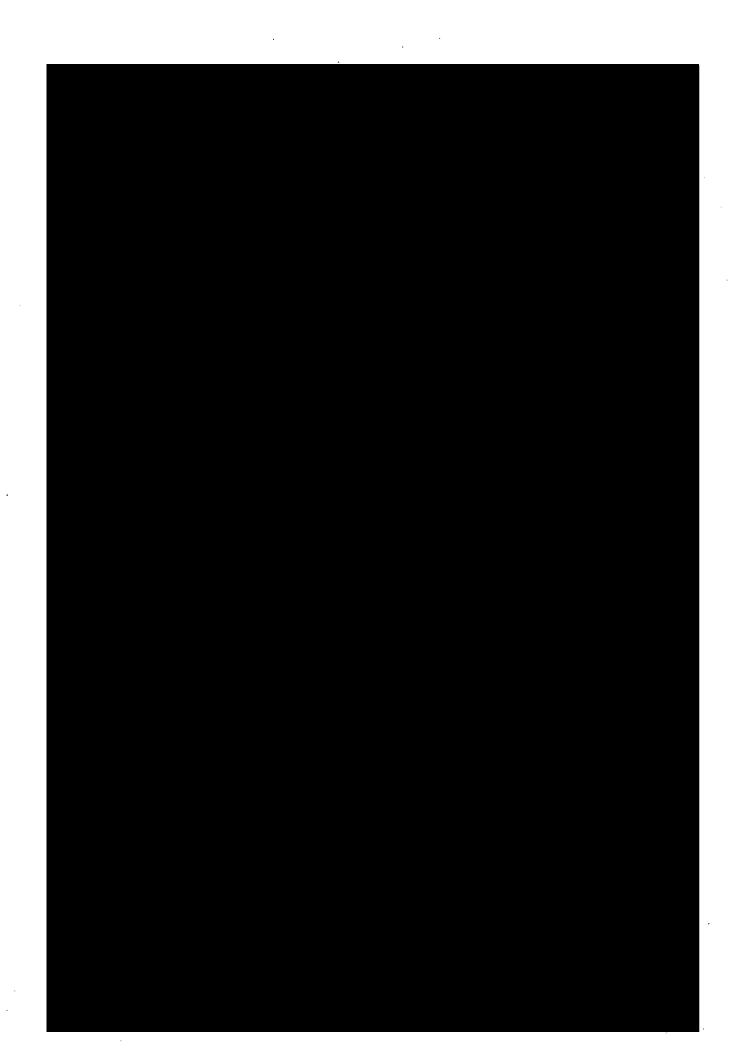


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This is Exhibit" "referred to in the	
This is Exhibit ** referred to in the affidavit of Timethy E. m.Gee. Q	K
sworn before me at Vancouve	
this 15th day of January 2015)
Som:	
A Commissioner for taking Affidavits for British Columbia	
Notice to the Profession	

2014 Referendum: Whether the Law Society should not approve Trinity Western University's proposed School of Law

The Referendum Question

At their September 26, 2014 meeting the Benchers resolved to conduct a referendum of all members of the Law Society of British Columbia, as follows:

BE IT RESOLVED THAT:

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"

For clarity, a "Yes" vote supports disapproval, and a "No" vote supports approval of Trinity Western University's proposed School of Law as an accredited faculty of law for the purpose of the Law Society's admissions program.

The Referendum Process

The motion passed by the Benchers on September 26, 2014 further resolved that:

The Resolution will be binding and will be implemented by the Benchers if at least:

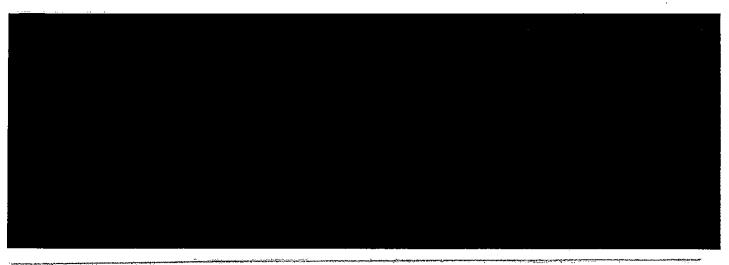
- (a) 1/3 of all members in good standing of the Law Society vote in the Referendum; and
- (b) 2/3 of those voting vote in favour of the Resolution.

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.

The Referendum be conducted as soon as possible and that the results of the Referendum be provided to the members by no later than October 30, 2014.

For more information about consideration of the proposed law school at TWU, see the Law Society website (www.lawsociety.bc.ca).

Referendum ballots that are completed and returned to the Executive Director of the Law Society by 5:00 pm on Wednesday, October 29, 2014 will be reviewed and counted (under the supervision of two independent scrutineers) on Thursday, October 30, 2014, and the voting results will be announced on the Law Society website later that day.



From: Earl Phillips [mailto:earl.phillips=twu;ca@mail145.atl81.rsgsv:net] On Behalf Of Earl Phillips

Sent: Thursday, October 02, 2014 10:56 AM

To: Deborah Armour

Subject: A prospective TWU law student speaks out

Dear Colleagues:

Trinity. Western University has argued that there should not be a referendum, and that a referendum result will not be valid.

But the referendum is upon us and the only-way to avoid the negative consequences is to vote "No." I urge you to read and consider the following tetter from a prospective law student who will be affected by the referendum.

Sincerely,

Earl Phillips, LL.B.

Executive Director, TWU School of Law

JIS EXHIBIT Q "referred to IN THE Affidavit of TIMOTHY E. MESE OC SWORN before me at UANCOUVER this 15 day of JANUARY 2015

A Commissioner for taking Affidavits for British Columbia

LSBC members:

I plan to graduate from TWU's School of Law in 2019. As a TWU alum and prospective law student, I have read most of the public submissions made to the Law Societies across the country, followed the media, social media, and message board coverage, and read all of the numerous legal opinions.

October's referendum will determine whether or not, as a law graduate of TWU, Lwill be welcome as a fellow member of the LSBC. Most of the members voting on this issue do not know what my beliefs on marriage are, what my marital status or orientation is, what my religious affiliation is, or what my competency as a lawyer will be. Despite this, many want to vote "yes" to the motion and prevent me from being called to the bar in BC.

By voting "yes" members will say because I signed the Community Covenant and studied law at TWU. I am unlit to practice law in BC. I believe this decision would discriminate against me simply because of my association with TWU and my desire to attend its School of Law. A while ago I read a comment orline that said it doesn't matter if TWU graduates lawyers or not because no one will hire them anyway. This type of commentary is huntral and disrespectful to me and many of the other 25,000 alumni of TWU.

I believe the diversity of the student body at TWU would surprise many of you. Students' opinions are not suppressed nor is anyone marginalized. In fact, that would be distinctly contiary to the essence of the Community Covenant. Furthermore, many of my fellow students who would identify as LGBTQ have expressed grafflude for the safe environment and acceptance they experienced when they came out at TWU.

Lencourage everyone who intends to vote in the referendum to read this month's article from Walrus magazine about TWU student Brian Sandberg. Brian carrierout to his dorm mates and was met with love and acceptance. If Brian and other LGBTQ students at TWU wanted to attend law school I'm certain they would apply to Trinity Western. If there is no law school at TWU because of the referendum, those who vote "yes" will have removed an option for some LGBTQ students, who currently study there. This is tronic given that they are also members of the group that those wanting to vote "yes" are alming to protect.

Some of the strongest opinions on this whole issue have been provided by the <u>BC</u>
<u>Civil Liberties Association</u> as well as <u>Kevin Kindred</u>, a well-known LGBTQ lawyer and advocate in Nova Scotla, I also concur with comments I read on a blog from one of your fellow members of the Law Society who attended the SGM:

"I want to see those vilro choose to agree to the covenant and attend TWU for law school free to practice in our Ber... As a LGBTQ member of the Bar, I do not feel threatened, dispriminated against or isolated by the Benchers' decision... I hope we can work together to create an environment where we are all free to practice regardless of our diverse beliefs."

The Community Covenant at TWU is already before the courts in BC and these cases have involved the appropriate parties. The courts will ultimately decide whether or not TWU can have a community covenant. Until the Supreme Court of Canada makes a contrary decision to TWU v BCGT 2001, the Community Covenant remains lawful.

A "yes" vote says "no" to me simply because I attended TWU. Before each lawyer casts a vote in this referendum, I hope that each one of them seriously considers all of the future lawyers that will graduate from TWU School of Law. If they really think about us, I am confident they will vote "no" in the referendum.

Thank you for your consideration.

Brayden Volkenant

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The Law Society

of British Columbia

Minutes

This is Exhibit R "referred to in the affidavit of Timothy E mcGle oc sworn before me at Vancouver this 5 day of Taman 2015

A Commissioner for taking Affidavits for British Columbia

Benchers

Date:

Friday, October 31, 2014

Present:

Jan Lindsay, QC, President

Ken Walker, QC, 1st Vice-President

David Crossin, QC, 2nd Vice-President

Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Pinder Cheema, QC

David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris

Martin Finch, QC Miriam Kresivo, QC

Dean Lawton Peter Lloyd, FCA Jamie Maclaren

Sharon Matthews, QC

Ben Meisner Nancy Merrill

Maria Morellato, QC David Mossop, QC

Lee Ongman Greg Petrisor Claude Richmond

Phil Riddell

Elizabeth Rowbotham Herman Van Ommen, OC

Cameron Ward Sarah Westwood Tony Wilson

Excused:

Not applicable

Staff Present:

Tim McGee, QC
Deborah Armour
Taylore Ashlie
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC

Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe

<u></u>	4	
vи	ests:	

Dom Bautista Executive Director, Law Courts Center

Johanne Blenkin Chief Executive Officer, Courthouse Libraries BC

Kevin Boonstra

Legal Counsel, Trinity Western University
Kari Boyle

Executive Director, Mediate BC Society
Anne Chopra

Equity Ombudsperson, Law Society of BC

barbara findlay, QC Member, Law Society of BC

Ron Friesen CEO, Continuing Legal Education Society of BC Richard Fyfe, QC Deputy Attorney General of BC, Ministry of Justice,

representing the Attorney General

Jeremy Hainsworth Reporter, Lawyers Weekly

Gavin Hume, QC Law Society of BC Member, Council of the Federation of

Law Societies of Canada

Tamara Hunter Board Chair, Law Foundation of BC
Bob Kuhn President, Trinity Western University
Dominique Marcotte Director, BC Paralegal Association

Michael Mulligan Member, Law Society of BC

Lorna O'Grady Director of Administration, Human Resources and Public

Programs, Canadian Bar Association, BC Branch

Earl Phillips Executive Director, Trinity Western University
Wayne Robertson, QC Executive Director, Law Foundation of BC

Alan Ross Board Chair, Courthouse Libraries BC

Alex Shorten Vice President, Canadian Bar Association, BC Branch

Geoffrey Trotter Member, Law Society of BC

Prof. Jeremy Webber Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minute of the September 17, 2014 email authorization was approved as circulated.

The minute of the meeting held on September 26, 2014 was approved as circulated.

The in camera minute of the meeting held on September 26, 2014 was approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

 Federation of Law Societies of Canada: Deferral of National Requirement for Joint and Dual Law Degree Programs until 2017

BE IT RESOLVED to approve the deferral of the application of the National Requirement to joint and dual law degree programs to January 2017.

Land Title and Survey Authority of BC Board of Directors: Law Society Nomination

BE IT RESOLVED to re-nominate William (Bill) Cottick for appointment to the Land Title and Survey Authority Board of Directors, for a second three-year term commencing April 1, 2015.

Proposed Rules Amendments (Cloud Computing and Retention and Security of Records)

BE IT RESOLVED to amend the Law Society Rules as follows:

- 1. In Rule 1, by adding the following definitions:
 - "metadata" includes the following information generated in respect of an electronic record:
 - (a) creation date;
 - (b) modification dates;
 - (c) printing information;
 - (d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"record" includes metadata associated with an electronic record;.

2. By adding the following rule:

Failure to produce records on complaint investigation

- 3-5.01(1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 [Investigation of complaints] or 4-43 [Investigation of books and accounts] to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.
 - (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
 - (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this Rule be delayed for a specified period of time.
 - (3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
 - (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.
- 3. By rescinding Rule 3-43.1 and substituting the following:

Standards of financial responsibility

- **3-43.1** Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:
 - (a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;
 - (b) a lawyer is an insolvent lawyer;
 - (c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) [Compliance audit of books, records and accounts];
 - (d) a lawyer does not deliver a trust report as required under Rule 3-72 [Trust report] or 3-75(4) [Report of accountant when required];

- (e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-72.2 [Trust administration fee];
- (f) a lawyer does not produce electronic accounting records when required under the Act or these Rules in a form required under Rule 10-4(2) [Records].

4. In Rule 3-59:

- (a) by adding the following subrules:
- (0.1) In this Rule, "supporting document" includes
 - (a) validated deposit receipts,
 - (b) periodic bank statements,
 - (c) passbooks,
 - (d) cancelled and voided cheques,
 - (e) bank vouchers and similar documents,
 - (f) vendor invoices, and
 - (g) bills for fees, charges and disbursements.
- (2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that
 - (a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2) [Records],
 - (b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and
 - (c) there is a clear indication, with respect to each financial transaction, of
 - (i) the date of the transaction,
 - (ii) the individual who performed the transaction, and
 - (iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.;
- (b) in subrule (2), by rescinding the preamble and paragraph (c) and substituting the following:
- (2) A lawyer must maintain accounting records, including supporting documents, in
 - (c) an electronic form in compliance with subrule (2.1)., and

- (c) by rescinding subrule (4) and substituting the following:
- (4) A lawyer must retain all supporting documents for both trust and general accounts.
- 5. In Rule 3-61.1:
 - (a) in subrule (2) by:
 - (i) striking out "and" at the end of paragraph (a)(ii),
 - (ii) striking out the period at the end of paragraph (b)(v) and substituting ", and", and
 - (iii) adding the following paragraph:
 - (c) indicate all dates on which the receipt was created or modified., and
 - (b) in subrule (3) by:
 - (i) striking out "and" at the end of paragraph (d),
 - (ii) striking out the period at the end of paragraph (e) and substituting ", and", and
 - (iii) adding the following paragraph:
 - (f) all dates on which the receipt was created or modified.
- 6. In Rule 3-62(1), by adding the following paragraph:
 - (a.1) indicating all dates on which the bill was created or modified.
- 7. In Rule 3-65, by rescinding subrule (3) and substituting the following:
 - (2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.
 - (3) A lawyer must retain for at least 10 years
 - (a) each monthly trust reconciliation prepared under subrule (1), and
 - (b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.
- 8. By rescinding Rule 3-68 and substituting the following:

Retention of records

- **3-68** (0.1) This Rule applies to records referred to in Rules 3-59 to 3-62.
 - A lawyer must keep his or her records for as long as the records apply to money held in trust and for at least 10 years from the final accounting transaction.

(2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.

9. In Rule 4-43, by adding the following subrule:

(1.4) A request under subrule (1.1) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

10. By adding the following rules:

Records

- 10-4 (1) In this Rule, "storage provider" means any entity storing or processing records outside of a lawyer's office, whether or not for payment.
 - (2) When required under the Act or these Rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:
 - (a) printed in a comprehensible format;
 - (b) accessed on a read-only basis;
 - (c) exported to an electronic format that allows access to the records in a comprehensible format.
 - (3) A lawyer who is required to produce records under the Act or these Rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.
 - (4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer
 - (a) retains custody and control of the records,
 - (b) ensures that ownership of the records does not pass to another party,
 - (c) is capable of complying with a demand under the Act or these Rules to produce the records and provide access to them,
 - (d) ensures that the storage provider maintains the records securely without
 - (i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,
 - (ii) allowing unauthorized access to or copying or acquisition of the records, or

- (iii) failing to destroy the records completely and permanently on instructions from the lawyer, and
- (e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these Rules.
- (5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this Rule, no lawyer is permitted to maintain records of any kind with that entity.

Security of records

- 10-5(1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.
 - (2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that
 - (a) he or she has lost custody or control of any of the lawyer's records for any reason,
 - (b) anyone has improperly accessed or copied any of the lawyer's records, or
 - (c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Ms. Lindsay noted that the work of the Cloud Computing Working Group is now completed. The Benchers then decided by consensus to dissolve the Cloud Computing Working Group.

• Ethics Committee: Rule 4.2-6 – Possible Elimination of Rule

BE IT RESOLVED to rescind Law Society Rule 4.2-6:

-Former firm of current judge or master

4.2-6 [rescinded10/2014] Alawyermustnotstateonanyletterheadorbusinesseardorinany other marketingaetivitythenameofajudgeormasterasbeingapredecessororformermember ofthelawyer's firm.

DISCUSSION/ DECISION

2. Consideration of the October 30, 2014 Referendum Result

Ms. Lindsay reported that a referendum of the members of the Law Society has been conducted 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.

On October 30, 2014 the votes on 8,039 valid ballots were counted, with 5,951 (74%) in favour and 2,088 (26%) opposed. Thirteen thousand, five hundred thirty practising, non-practising and retired lawyers were entitled to vote.

Ms. Lindsay referred the Benchers to a letter dated October 30, 2014 from Trinity Western University (TWU) President Robert Kuhn, received by email (with a number of attachments) following communication of the referendum results to TWU, and circulated by Ms. Lindsay's email (with the attachments) to the Benchers during the evening of October 30. Ms. Lindsay confirmed that subject to a request by a Bencher or Benchers for additional time to review and consider the TWU letter and attachments, a motion to implement the referendum result will be presented on behalf of the Executive Committee.

Mr. Crossin moved (seconded by Mr. Van Ommen) that the Benchers declare, pursuant to Law Society Rule 2-27 (4.1), Trinity Western University's proposed School of Law is not an approved faculty of law.

Mr. Crossin invited TWU President Robert Kuhn to address the Benchers. Mr. Kuhn declined the invitation. Mr. Crossin confirmed that the Benchers' duty is to determine the appropriate response of the Law Society to any issue that may arise, such that the public interest in the administration of justice is protected.

Mr. Crossin also confirmed that the Law Society remains ready and willing to enter into discussion with TWU regarding amendment of TWU's community covenant.

There being no further discussion, Ms. Lindsay called for a vote on the motion by show of hands.

The following Benchers voted for the motion: Haydn Acheson, Joseph Arvay, QC, Satwinder Bains, Pinder Cheema, QC, David Corey, David Crossin, QC, Jeevyn Dhaliwal, Lynal Doerksen, Thomas Fellhauer, Craig Ferris, Martin Finch, QC, Miriam Kresivo, QC, Dean Lawton, Peter Lloyd, FCA, Jamie Maclaren, Sharon Matthews, QC, Ben Meisner, Nancy Merrill, Lee Ongman,

Phil Riddell, Elizabeth Rowbotham, Herman Van Ommen, QC, Cameron Ward, Sarah Westwood and Tony Wilson.

The following Bencher voted against the motion: Claude Richmond.

The following Benchers abstained: Maria Morellato, QC, David Mossop, QC, Greg Petrisor and Ken Walker, QC.

The motion was <u>carried</u> (25 in favour, one opposed and four abstained).

3. Governance Committee Recommendations: Amendments to General Meeting Rules Regarding Webcasting and Electronic Voting

Governance Committee Chair Miriam Kresivo, QC briefed the Benchers on the Committee's recent review of the Rules and procedures governing the Law Society's conduct of general meetings. She noted that a number of complaints have been received by the Law Society from BC lawyers in relation to various restrictions in the current Rules regarding participation and voting at general meeting—including the requirement to attend at one of the designated meeting locations to participate in discussions and to vote on motions and resolutions.

Ms. Kresivo confirmed the Governance Committee's recommendation that the strongly positive results of a 1993 referendum of the Law Society membership can and should be relied upon by the Benchers as authority to request the Act and Rules Committee to proceed with appropriate Rules amendments to permit online participation and electronic voting at general meetings. Ms. Kresivo also confirmed the Committee's recommendations that:

- those changes will be in addition to the current Rules regarding in-person attendance at designated general meeting locations, and telephone connection of satellite locations to the main meeting
- following further deliberation, the Committee expects to report to the Benchers in early 2015 regarding seeking member approval for amendments to provide for only one physical location for general meetings and electronic distribution of notices and other meeting materials

The Benchers agreed with the Committee's recommendations.

GUEST PRESENTATIONS

4. Law Foundation of BC Annual Review

Board Chair Tamara Hunter briefed the Benchers on the affairs of the Law Foundation of BC. She reviewed the Foundation's history, financial situation, governance structure, grant-making principles and strategic priorities. Ms. Hunter noted the Law Society's financial contribution to the Foundation's support for the provision of pro bono legal services in BC.

Ms. Hunter's PowerPoint presentation is attached as Appendix 1 to these minutes.

Ms. Lindsay thanked Ms. Hunter for her presentation, and for her valuable contributions to the governance of the Foundation as Chair of the Board of Governors for the past year, as a Governor since 2010. Ms. Lindsay also noted the distinguished service record of the Law Foundation's Executive Director, Wayne Robertson, QC.

5. Courthouse Libraries BC (CLBC) Biennial Review

CLBC Board Chair Alan Ross addressed the Benchers, providing historical background and context and then an assessment of CLBC's current financial situation.

Mr. Ross stressed the significance of the imminent 18% reduction of the Law Foundation's annual operating grant to CLBC for 2015, which will reduce CLBC's funding envelope by about \$500,000 (from \$4.7 million to \$4.2 million). He outlined a number of cost-reduction measures already implemented by CLBC and confirmed that further reductions will require cutting core services. CEO Johanne Blenkin added that CLBC eliminated 142 print editions from its service offering in 2014; she pointed out that many of those are not available as digital editions.

Mr. Ross confirmed that in 2015 CLBC will request the Law Society to increase the current CLBC levy of \$190 in the annual practice fee for 2016. He noted that replacing the lost Law Foundation funding would require a levy increase of about \$50.

Mr. Ross commented on the importance of the access to justice aspect of CLBC's work, noting that about half of the service requests received by CLBC in 2014 were from the public.

REPORTS

6. 2015-2017 Strategic Planning Update

Mr. McGee updated the Benchers on progress in development of the 2015-2015 Strategic Plan. He noted that the Executive Committee has reviewed the results of the Benchers' September 25 environmental scan session, referring to his memorandum (at page 127 of the agenda package) for an outline of four thematic areas and related potential initiatives identified at that session. Mr. McGee outlined the Executive Committee's plan to have staff circulate a survey to the Benchers following the October 31 meeting: asking them to identify their top two or three strategies and initiatives under each of these four themes:

- Access to Legal Services
- Alternative Business Structures (ABSs)
- Public opinion of/confidence in the justice system
- Admission program reform

Mr. McGee noted that the Executive Committee recognizes that the Benchers may have additional ideas, and that the survey will include a 'verbatim comments' section. He confirmed that the Executive Committee will review the Benchers' survey responses at their November 20 meeting, and that staff will then develop a draft 2015-2017 Strategic Plan for the Benchers' consideration at their December 5 meeting.

7. Interim Report of the Tribunal Program Review Task Force

Ken Walker, QC briefed the Benchers as Chair of the Tribunal Program Review Task Force. After introducing the task force members and Law Society staff contact, Mr. Walker outlined issues that the task force has been considering, including difficulties experienced by the Law Society's Hearing Administrator in overcoming Bencher conflicts in setting hearing panels, and the challenges encountered endeavouring to enhance both continuity and renewal of the membership of hearing panel pools.

Mr. Walker noted that all current hearing panel pools will dissolve at the end of 2014. He will present the task force's written interim report at the December 5 Bencher meeting, including a recommendation to extend the current pools through 2015. Mr. Walker expects the task force will also recommend that in the event a panel is reduced from three members to two, the two remaining panel members may carry on at the discretion of the President.

¹ Benchers: Ken Walker, QC (Chair) Haydn Acheson, Pinder Cheema, QC and David Mossop, QC. Non-Benchers: David Layton and Linda Michaluk. Staff contact: Jeffrey Hoskins, QC.

8. Financial Report to September 30, 2014 – Q3 Year-to-date Financial Results

Finance and Audit Committee Chair Ken Walker, QC referred the Benchers to the written report prepared by Jeanette McPhee, CFO & Director of Trust Regulation (at page 133 of the agenda package) and asked Ms. McPhee to provide highlights.

Ms. McPhee reported that the Law Society's 2014 operating expenses to September 30 total \$654,000 (4.5% over budget): due primarily to costs associated with the TWU law school application process as well as higher than expected external counsel fees. These excess costs were partially offset by compensation and staff-related savings and forensic accounting fee savings. Ms. McPhee also reported that Law Society's 2014 revenue to September 30 is \$346,000 (2.2% ahead of budget): due to an increase in PLTC students, unbudgeted recoveries, and increased interest income, offset by lower than expected practice fees.

Ms. McPhee confirmed that the Law Society is forecasting a 2014 negative variance of \$430,000 for the General Fund (excluding capital and the Trust Administration Fee). She noted that explanatory notes for that forecast are included in her written report—at page 134 of the agenda package:

Operating Revenue

Revenues are projected to be ahead of budget by \$255,000 (1.3%). Practicing membership revenue is projected at 11,115 members, 75 below the 2014 budget, a negative variance of \$105,000. PLTC revenues are projected at 470 students, a positive variance of \$50,000. We are also projecting higher recoveries of \$155,000 and \$40,000 of additional interest income.

Lease revenues will have a positive variance of approximately \$100,000 for the year, with a new lease on the third floor of 835 Cambie and the renewal of the atrium café lease.

Operating Expenses

Operating expenses are projected to have a negative variance to budget of \$684,000 (3.4%). This variance excludes those expenses that were to be funded from the reserve in 2014, as approved by the Benchers during the 2014 budgeting process.

There are three main areas of unanticipated costs:

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- 1) The unbudgeted costs related to the TWU application process are projected at \$366,000, including meeting costs, legal opinions, and referendum costs.
- 2) External counsel fees are projected at \$575,000 over budget, with the increase due to a number of factors. There have been a higher percentage of complex files, including an increased number of 4-43 forensic files. In addition, there have been a number of files handled by the investigations and discipline departments that have been much more challenging than normal, causing a significant increase in workload for a number of staff members. Also, with the staff vacancies that occurred in 2013, and into 2014, there were a number of professional conduct files sent out to external counsel to ensure file timelines were addressed. The increase in external counsel fees is also reflective of the projected increase in number of hearing/review days in 2014. For 2014, the estimate is 80 hearing/review days, compared to an average of 44 per year over the past four years.
- 3) Building occupancy costs have increased, mainly related to an increase in property taxes and utilities.

We should note that some of these costs will be partially offset by savings related to staff compensation savings of \$175,000 and forensic accounting fee savings of \$155,000.

Mr. McGee noted that projecting external counsel fees for the coming year is an exercise in judgment, and is a core element of the budgeting process. He also confirmed that management always assesses carefully whether in-house counsel capacity can carry more load, and that assessment will be a key aspect of the 2016 budget-setting process to be conducted next year.

9. President's Report

Ms. Lindsay reported on various Law Society matters which have arisen since the last Bencher meeting, including:

- a. Federation of Law Societies of Canada Conference and Council Meeting (October 7 10, Halifax)
 - i. Conference Theme: Access to Legal Services

Ms. Lindsay asked Mr. Riddell to brief the Benchers regarding his participation in a poverty simulation exercise and a tour of legal service provider organizations in the Halifax area. He did so, noting that considerable innovation and resourcefulness was evident in the operations he visited.

ii. National Committee on Accreditation (NCA)

Ms. Lindsay noted the value of NCA in assessing law schools and the quality of their curricula.

iii. 2014 Annual General Meeting (AGM) Member Resolution

Ms. Lindsay confirmed that the Executive Committee is considering the issues raised by the member resolution passed at the 2014 AGM, and will report to the Benchers in that regard at an upcoming meeting:

BE IT RESOLVED THAT the Law Society of British Columbia require all legal education programs recognized by it for admission to the bar to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education — including faculty, administrators and employees (in hiring continuation, promotion and continuing faculty status), applicants for admission, enrolled students and graduates of those educational programs.

Dean Jeremy Webber of the University of Victoria Faculty of Law commented on the pace of development, range and urgency of issues currently faced by the Federation of Law Societies.

iv. 2014 International Bar Association (IBA) Annual Conference (October 19 – 24, Tokyo, Japan)

Ms. Lindsay represented the Law Society at the 2014 IBA Annual Conference. Ms. Lindsay briefed the Benchers on several policy sessions she attended, on topics including:

- retention of lawyers in the profession, focusing on both generational and gender issues
- access to justice and legal services issues
- substance abuse in the legal profession
- legal regulation and compliance issues
- human rights in Zimbabwe

• Rule of Law issues, focusing on freedom of expression and freedom of the press

10.CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 2 to these minutes) including the following matters:

- Introduction
- · Federation of Law Society Matters
- Update on Process for Developing New 2015 2017 Strategic Plan
- International Institute of Law Association Chief Executives Annual Conference

11. Briefing by the Law Society's Member of the Federation Council

Gavin Hume, QC reported as the Law Society's member of the FLSC Council. He briefed the Benchers on matters addressed at the October 10 Council meeting in Halifax, including:

a. National Requirement Review Committee

The Federation Council has approved the establishment of a National Requirement Review Committee, with a mandate to consider, among other issues, whether a "non-discrimination" provision should be included in the <u>National Requirement</u> for approving law degrees.

b. Standing Committee on the Model Code of Professional Conduct

The Standing Committee presented a number of Model Code amendments for the Council's approval, on topics including: conflicts of interest, short-term legal services and incriminating physical evidence in criminal law. The Federation's member societies now need to consider if they should implement the changes made to the Model Code. The Standing Committee is consulting with the Federation's member law societies—among other bodies—on various topics, including consulting with witnesses, and duty to report.

c. Federation Budget Review

The Council approved an increase of \$3.50 in the Federation's annual full-time fee equivalent assessment to the law societies, from \$25.00 to \$28.50.

d. Federation Governance Review Committee

A major review of the Federation's governance policies, processes and structure is underway. Considerable consultation with the Federation's member societies will be entailed in the review.

e. Report by the National Committee on Accreditation (NCA)

The NCA processes about 1,300 applications per year. Significant progress has been made toward aligning the NCA's curriculum with the Federation's national standards, with, more work still to be done in that regard.

f. National Admission Standards

Work continues on implementation of the Federation's national competency indicators by the member law societies. Work also continues on the challenging process of developing standards for the "good character" requirement set out in the enabling legislation of the Federation's various member societies.

12. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were <u>received and reviewed</u> by the Benchers.

The Benchers discussed other matters in camera.

WKM 2014-11-24



STATEMENT

For Immediate Release 2014AVED0074-001880 December 11, 2014 Ministry of Advanced Education

Statement on Trinity Western University's school of law

VICTORIA – Advanced Education Minister Amrik Virk has made the following statement following a letter to Trinity Western University's president outlining the decision of the minister to revoke approval for the university's proposed school of law:

"Based on the current situation, I have decided to revoke my approval of the proposed law school at Trinity Western University. This means the university cannot enroll any students in its proposed program.

"The current uncertainty over the status of the regulatory body approval means prospective graduates may not be able to be called to the bar, or practise law, in British Columbia. This is a significant change to the context in which I made my original decision.

"Once the legal issues are resolved, TWU will have the option to renew its request for consent."

Media Contact:

Rodney Porter Ministry of Advanced Education 250 889-7494

Connect with the Province of B.C. at: www.gov.bc.ca/connect

This is Exhibit" S "referred to in the affidavit of Tim other E make of sworn before me at Vancouver this 15 day of January 20.15

A Commissioner for taking Affidavits for British Columbia



TOWARDS A MORE REPRESENTATIVE LEGAL PROFESSION: Better practices, better workplaces, better results

THE LAW SOCIETY OF BRITISH COLUMBIA June 2012

This is Exhibit "T" referred to in the affidavit of Timothy E INCALL (SC sworn before me at VACCOUVE this 15 day of Junuary 20.15

A Commissioner for taking Affidavits for British Columbia



New lawyers at the September 23, 2011 call ceremony in Vancouver.

Report and appendix prepared on behalf of the Equity and Diversity Advisory Committee by

Susanna Tam, Staff Lawyer, Policy & Legal Services, Law Society of British Columbia Adam Whitcombe, Chief Information and Planning Officer, Law Society of British Columbia

with the assistance of

Dana Bales, Communications Officer, Law Society of British Columbia

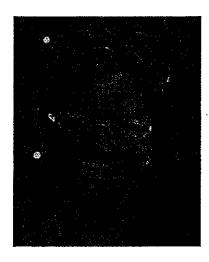
Denise Findlay, Communications Coordinator, Law Society of British Columbia

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Demographic Report on Aboriginal and Visible Minority Lawyers in BC





I am pleased to present Towards a More Representative Legal Profession: Better practices, better workplaces, better results.

The Law Society believes the public is best served by a more representative and inclusive legal profession that reflects the diversity of British Columbia. In support of this vision, the Equity and Diversity Advisory Committee prepared this report, which provides research and best practices for consideration by the legal profession. In addition, this report promotes workplaces where all lawyers have equal opportunities to succeed. The appendix provides a demographic snapshot of BC's legal profession, which highlights the under-representation of both Aboriginal and visible minority lawyers. The report also strives to raise awareness of the benefits of creating strategies to overcome the often unintentional barriers that some lawyers may face.

When providing legal advice, lawyers need to be able to see all sides of an issue – diversity enables multiple perspectives, which can result in enhanced creativity in problem-solving. Moreover, firms can realize the many competitive advantages of diversity when recruiting talent, attracting clients, and avoiding turnover costs.

I would like to thank the committee members for their commitment to this project, which began in 2011 under the leadership of Robert Brun, QC (then Chair), Catherine Sas, QC, Elizabeth Hunt, Jennifer Chow, Patrick Kelly, June Preston, Karen Whonnock and me; and continuing this year with the current committee of myself, Satwinder Bains, Maria Morellato, QC, Barry Zacharias, Amyn Lalji, Suzette Narbonne and returning committee member Elizabeth Hunt.

We hope our report will form the foundation to get the legal community working together to create effective solutions. As the regulator we're only one piece of the puzzle, so we can't fix this on our own. As a profession, we can do better. Not just because it's the right thing to do, but because everyone benefits from it. We all have an interest in ensuring the legal profession continues its long-held tradition of striving to serve the public the best way it can. I encourage you to read this report and consider how your firm can develop and implement solutions to advance diversity in the legal profession.

Thelma O'Grady

Chair, Equity and Diversity Advisory Committee

TOWARDS A MORE DIVERSE LEGAL PROFESSION: BETTER PRACTICES, BETTER WORKPLACES, BETTER RESULTS

MAKING THE CASE FOR DIVERSITY

The Law Society of British Columbia is committed to the principles of equity and diversity and believes the public is best served by a more inclusive and representative profession. The demographics of the population in BC have shifted dramatically in past decades. The demographics of the legal profession, however, do not reflect these changes. Visible minority lawyers and Aboriginal lawyers continue to be under-represented in BC.

Law firms are encouraged to consider the competitive advantages of increasing diversity, in order to meet clients' demands for diversity in legal representation, to better serve an increasingly diverse society, and to attract, retain and advance the best and brightest lawyers, particularly young lawyers from a generation with expectations of equality.¹

Law firms are also encouraged to understand and address barriers often faced by visible minority lawyers and Aboriginal lawyers,² and to consider best practices for creating more inclusive work environments in which all lawyers have equal opportunities to contribute and succeed, maximizing performance for better results.

Competing for clients

In today's global business environment, corporate counsel clients more than ever seek greater diversity in the legal teams they engage. Most recently, Canada's general counsel community introduced a new initiative, Legal Leaders for Diversity: A Statement of Support for Diversity and Inclusion by General Counsel in Canada.³ Through this initiative, almost 60 signatories have committed to practising and advancing diversity and inclusion by promoting diversity within their own departments, considering diversity in their hiring and purchasing practices and, among other actions, encouraging Canadian law firms to follow their examples. Signatories include general counsel from DuPont, Deloitte, Bell, Royal Bank of Canada and Bombardier. Another legal diversity initiative, A Call to Action Canada, also highlights the commitment of corporate counsel to promote diversity in the legal profession and includes Accenture, Ernst & Young and GlaxoSmithKline amongst its signatories.⁴ Firms competing for corporate clients are increasingly being expected to demonstrate their commitment to diversity.

Responding to a changing society

According to Statistics Canada projections, the demographics of both Canada and BC will continue to shift dramatically. By 2031, about one third of Canada's population will be from visible minority communities. In Vancouver, the visible minority population is projected to reach 59 percent, up from 42 percent in 2006.⁵ Aboriginal populations are also growing significantly. In 2006, Aboriginal peoples surpassed the one million mark in Canada, up 45 percent from the previous decade. The Aboriginal population is also growing at a rate six times greater than the non-Aboriginal population.⁶ BC is home to the second largest Aboriginal population in Canada, and the age profile of this population is much younger than the non-Aboriginal population. In 2006, the median age of the Aboriginal population in BC was 28 years compared to 41 years in the non-Aboriginal population.⁷

Vying for talent

Law firms aim to have the best lawyers in order to meet their clients' needs effectively, particularly in an increasingly competitive market. With the aging of the legal profession in BC, firms are recruiting from the "millennial" generation, young lawyers who are more diverse and have different expectations regarding the practice of law. These women and men believe in equality and expect equal opportunities for advancement. They are more likely to seek work-life balance and flexibility, and they are more likely to consider diversity and representation when evaluating firms. When it comes to effectively recruiting and retaining talent, law firms should also be aware of the enormous costs of lawyer turnover and attrition, which has been estimated at anywhere between \$250,000 to \$315,000 per lawyer who leaves a firm.

Firms competing for corporate clients are increasingly being expected to demonstrate their commitment to diversity.



Attendees at "Inspiring stories connecting future leaders." The June 16, 2010 Law Society event allowed Aboriginal leaders to share their inspirational stories and strategies for success in the legal profession.

Despite dramatic shifts in the population demographics in BC, the legal profession lags significantly behind.

UNDERSTANDING THE CHANGING PROFESSION

Despite dramatic shifts in the population demographics in BC, the legal profession lags significantly behind. The proportion of visible minority lawyers in the profession is a little over half of the visible minority share of the total population. Moreover, Aboriginal peoples represent only one third of the proportion of lawyers compared to their proportion of the total population.¹⁰

Recognizing the representation of visible minority lawyers

Only 14.6 percent of lawyers are members of visible minorities, compared with 25.3 percent of the total population in BC.¹¹ However, visible minorities represent 32.6 percent of university graduates with an occupation, which suggests that their under-representation in the legal profession is not related to an inability to access university education. The data suggest there may be other reasons affecting the participation of visible minorities.¹²

One reason might be found in research from the US, which suggests that visible minorities are not advancing to leadership positions in the legal profession. A recent survey showed that minority lawyers represent almost 20 percent of associates, but only six percent of law firm partners. Another study found that, while lawyers of colour have been awarded about 20 percent of all JD degrees for over 10 years, in the average US firm men of colour account for only eight percent of associates and four percent of equity partners. For women of colour, the situation is worse; in the average US firm visible minority women account for about 11 percent of associates, but represent only 1.4 percent of equity partners. Recent research in the Greater Toronto Area (GTA) shows similar under-representation, with visible minorities representing 14.4 percent of all lawyers in the GTA, but only 6.8 percent of those in leadership roles in the legal sector. 15

Raising concerns regarding the participation of Aboriginal lawyers

Aboriginal lawyers represent only 1.5 percent of the profession while Aboriginal peoples represent 4.6 percent of the total population in BC. More concerning, the percentage of Aboriginal lawyers did not increase from 1996 to 2006. However, the 1.5 percent of Aboriginal lawyers is slightly above the 1.3 percent of Aboriginal university graduates with an occupation, which suggests that one of the many factors involved in the under-representation of Aboriginal lawyers may be related to social and economic conditions that may limit access to university education for Aboriginal peoples. For Aboriginal lawyers, however, the concern regarding their significant under-representation is much more than a pipeline issue. Aboriginal lawyers have spoken to the Law Society about the many systemic barriers they face, including racism and isolation and lack of mentors, role models and access to networks.

FACING THE CHALLENGES IN FIRMS

While overt discrimination based on race and gender is arguably less prevalent today than 30 years ago, it still occurs and demands an appropriate response. However, visible minority lawyers and Aboriginal lawyers also continue to face systemic barriers in the profession created by unconscious bias, resulting in more insidious, albeit unintended, forms of discrimination.

Identifying unconscious bias

Research in the US has identified how unconscious bias based on gender and race impacts lawyers in the profession. For example, women lawyers face "attribution bias," in which a woman's success is assumed to be based on external circumstances and luck, compared with a man's success, which is assumed to be based on personal skill and competence. In other words, he's skilled and she's lucky. More importantly, men benefit from an assumption of competence (until proven otherwise) while women need to prove their competence again and again. Unconscious bias based on race also creates a negative competence assumption. For women lawyers of colour, the intersection of both race and gender bias results in a multiplication of bias effects rather than an addition. This can create significant career obstacles. 20

Racism and unconscious bias based on race plays out differently for different lawyers. In the US,



The then Chair of the Equity and Diversity
Advisory Committee Robert Brun, QC, with
some of the approximately 50 people who
attended a gathering for Aboriginal lawyers
that was organized by an Indigenous lawyer and
held in Vancouver on September 17, 2010.

Only 14.6 percent of lawyers are members of visible minorities, compared with 25.3 percent of the total population in BC.

Aboriginal lawyers represent only 1.5 percent of the profession while Aboriginal peoples represent 4.6 percent of the total population in BC.

for example, research shows that African American lawyers, particularly women, are perceived as less intelligent, less qualified (benefitting from affirmative action) and more aggressive. Asian American lawyers, stereotyped as part of a "model minority," may be perceived as smart and diligent, but are considered not sufficiently assertive to be effective.²¹ In BC, Aboriginal lawyers have identified biased perceptions of being less qualified and less competent, and only participating in the profession because of special treatment rather than merit.

Reinforcing and exacerbating unconscious bias is the tendency of people to notice and remember incidents and behaviour that correspond with their biases, and reject those that counter or conflict (stereotype-consistent information is recalled better than stereotype-inconsistent information). For example, a person holding the unconscious bias that mothers are less committed to their careers will notice every time a mother leaves the office early and not remember all the times she stays late.²² For visible minority lawyers and Aboriginal lawyers who may face stereotypes and negative competence assumptions, this leaves little room for mistakes.

Uncovering systemic barriers

The legal profession is grounded in the belief that individual effort, competence, talent and skill are the keys to success. Lawyers are assumed to be recruited, retained and advanced based on objective merit criteria, with the most deserving rising to the top. While this may be the case in some environments, research has shown that in-group bias (based on the tendency to favour people like oneself) can create discriminatory barriers within seemingly neutral and objective law firm processes. These barriers can negatively impact visible minority lawyers and Aboriginal lawyers.

In-group bias ("like choosing like") can be reflected in formal and informal law firm processes. For example, with informal work assignment systems, senior lawyers may give interesting, career-advancing files to lawyers with whom they feel most comfortable—lawyers most like themselves.²³ Given the lack of diversity at senior levels in law firms, informal work assignment systems may serve to exclude lawyers of colour and Aboriginal lawyers.

Similarly, in-group bias can also be reflected in the development of informal networks and mentoring relationships. Research has shown that women and visible minority lawyers are often excluded from these networks and relationships, with negative impacts on their retention and advancement.²⁴ In addition, recent research has uncovered the importance of having access to mentors and networks in order to understand and properly navigate the "unwritten rules" of organizations.²⁵ Lack of understanding of unwritten rules can seriously hamper success.

Unconscious bias and in-group favouritism may be reflected in formal processes as well, such as performance review and evaluation systems. While these systems may appear, on face value, to be objective and neutral, bias can be unintentionally integrated through subjective processes, for example, by relying on subjective merit criteria in job reviews such as "leadership," without using more competence and behaviour-based actions.²⁶ Research has also shown how in-group favouritism can seep into subjective considerations related to broader compensation structures.²⁷

TAKING LEADERSHIP TO PROMOTE DIVERSITY

Law firms aiming to recruit, retain and advance the best and brightest lawyers and to realize the competitive advantages of diversity should strive to create more inclusive work environments. Research related to lawyer retention identifies many best practices for law firms to consider. A few are highlighted here.²⁸

Raising awareness of and correcting unconscious bias

Firms can demonstrate commitment to diversity and inclusion by implementing meaningful workplace equality policies and developing clear processes for addressing discrimination and harassment.²⁹ Firms may also consider raising awareness about gender and racial stereotypes and unconscious bias by promoting diversity-related resources. Lawyers should also be supported in developing skills and competencies in addressing bias, and responsibility for dealing with discrimination should be shared by everyone, not left to visible minority lawyers and Ab-

Visible minority lawyers and Aboriginal lawyers also continue to face systemic barriers in the profession created by unconscious bias, resulting in more insidious, albeit unintended, forms of discrimination.

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The experience of some US firms has shown that developing bias-free systems is a best practice that demonstrates results.



Grand Chief Edward John, retired Judge Alfred Scow and Elizabeth Hunt at "Inspiring stories connecting future leaders."

original lawyers. Unconscious bias is difficult to identify for both individuals and systems. Once awareness is raised, however, biases can be corrected.

Developing bias-free performance evaluation and work assignment systems

The experience of some US firms has shown that developing bias-free systems is a best practice that demonstrates results. For example, some firms have revised their evaluation systems to focus on competencies and behaviours rather than subjective impressions: for example, "can conduct dispositions with minimal supervision," instead of more ambiguous attributes, such as, "shows initiative." These evaluation systems work best when one person is trained with respect to cognitive bias and serves to review all evaluations based on identified competencies to look for trends. "While implementing bias-free evaluation processes takes more time and resources, it has been suggested that failing to do so may lead to other "significantly greater costs, including attrition, poor morale, diminished productivity, lower client satisfaction and exposure to discrimination claims." "32

Formal work assignment systems are also showing results as a best practice. Some firms have developed assignment systems through which associates can indicate their availability and the skills and experience they wish to gain, which can be matched by partners assigning files. This type of system may also help handle workflow and volume.³³

Promoting flexibility

The Project for Attorney Retention (PAR) has recently focused its research on the evidence-based link between diversity and flexibility. Results to date suggest that more inclusive work environments are not likely to be developed without balanced hours programs and more workplace flexibility, particularly for women and women of colour lawyers, who often carry disproportionate family and community responsibilities.³⁴ Best practices include developing non-stigmatized flexible work policies and ensuring that work is referred to lawyers working balanced hours.

Promoting mentoring and sponsoring

Mentoring can be a powerful tool for lawyer retention. Mentors can provide advice and support related to practice management, meeting client needs and managing workload. Mentors can also provide critical access to informal networks and intelligence regarding the "unwritten rules" in a work environment that can significantly impact advancement. In the US, women of colour have identified the lack of influential mentors as an important barrier to advancement. Mentors may not be enough; while mentors can provide access to networks and information, sponsors can be powerful and influential voices at leadership and decision-making tables.

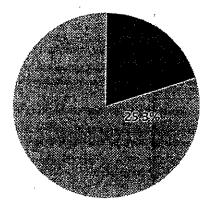
For visible minority and Aboriginal lawyers, mentors can be an invaluable resource for sharing experiences and for seeking advice related to navigating the racism and unconscious bias that they encounter in their firms and in the profession.³⁸

CONCLUSION

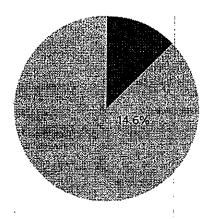
The Law Society believes that everyone in the legal community shares responsibility for promoting equality and diversity in the profession and hopes that this report will contribute to the discussion and to the development of effective strategies to break down unintentional barriers. The Law Society recognizes that everyone holds unconscious biases; identifying them and understanding how they might inadvertently be integrated into law firms' systems is the first challenge. Uncovering these barriers and finding ways to overcome them will help lawyers and law firms succeed in today's legal marketplace.

Members of the legal community need to work together to create equal opportunities for all lawyers to succeed. There is no one-size-fits-all solution and there is always room for improvement. Together, the Law Society, law firms and lawyers can consider the research and best practices and develop tailored solutions to fit unique environments. Enhancing diversity is not just the right thing to do; a more diverse legal profession benefits everyone—lawyers, law firms and clients.

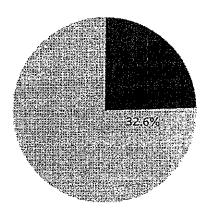
REPRESENTATION OF VISIBLE MINORITY LAWYERS¹



VISIBLE MINORITIES % OF TOTAL POPULATION

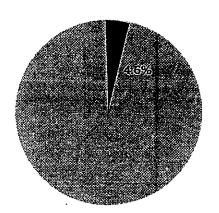


VISIBLE MINORITIES
% OF LAWYERS

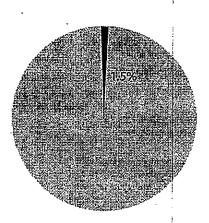


VISIBLE MINORITIES
% OF UNIVERSITY GRADUATES
WITH AN OCCUPATION

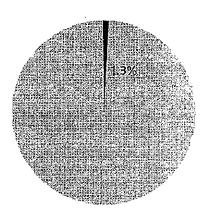
REPRESENTATION OF ABORIGINAL LAWYERS¹



ABORIGINAL PEOPLES
% OF THE POPULATION OF BC



ABORIGINAL PEOPLES
% OF LAWYERS



ABORIGINAL PEOPLES
% OF UNIVERSITY GRADUATES
WITH AN OCCUPATION

1. Based on 2006 census data provided by Statistics Canada.

ENDNOTES

- The Law Society has already considered the costs and implications of failing to retain women lawyers: The Law Society of BC, The business case for retaining and advancing women lawyers in private practice (2009). Here, the Law Society examines the under-representation of Aboriginal and visible minority lawyers and considers best practices for enhancing diversity within the profession.
- 2. In this report, the term "visible minority lawyers" is used to reflect the definition of "visible minority" in the Canadian census, rather than the terms "lawyers of colour" or "racialized lawyers." The term "Aboriginal lawyers" is also used to reflect the definition of "Aboriginal" in the census, to include First Nations, Métis and Inuit lawyers, rather than the term "Indigenous." For more information regarding language use in this context, see the Law Society's Respectful Language Guideline: lawsociety.bc.ca.
- 3. ryerson.ca/content/dam/about/generalcounsel/pdfs/LLDUpdated.pdf
- 4. acalltoactioncanada.com
- 5. Statistics Canada, The Daily, March 9, 2010.
- Statistics Canada, The Daily, January 15, 2008.
- BC Stats, "The Aboriginal Population of BC: Highlights from the Statistical Profiles of Aboriginal Peoples in BC", Business Indicators, August 2009, p. 1.
- 8. In the US, firms are rated on diversity metrics. Vault and the Minority Corporate Counsel Association have partnered to develop the Law Firm Diversity Database (mcca.vault.com). Anecdotally, young women in Ontario are considering firms who participate in Justicia, a project led by the Law Society of Upper Canada, which is focused on developing strategies for retaining and advancing women in private practice.
- 9. Supra, note 1, p. 6.
- The Law Society of BC, Demographic Report on Aboriginal and Visible Minority Lawyers in BC (2012), appended to this report, pp. 11 and 15.
- 11. *Ibid*, p.14. Note that the percentage of visible minority lawyers doubled from 7.3% in 1996 to 14.6% in 2006.
- 12. Ibid. p.15
- NALP The Association for Legal Career Professionals, "Law Firm Diversity Demographics Show Little Change, Despite Economic Downturn" (2009 Women & Minorities Press Release), October 21, 2009, p. 4.
- National Association of Women Lawyers (NAWL), Report of the Third Annual National Survey on Retention and Promotion of Women in Law Firms (2008), op. 7-9. Later annual reports do not specifically address lawyers of colour.
- DiverseCity: The Greater Toronto Leadership Project, DiverseCity Counts 3 A Snapshot of Diverse Leadership in the GTA (2011), pp. 24-26.
- 16. Supra, note 10, p. 11 and appendix endnote 5.
- The Law Society of BC's Equity Ombudsperson is available to address issues
 of workplace discrimination and to promote respectful workplaces: lawsociety.bc.ca.
- American Bar Association Commission on Women in the Profession, Fair Measure: Toward Effective Attorney Evaluations (2008), Second Edition (Joan C. Williams and Consuela A. Pinto), p. 20. Chapter 2 provides a summary of how hidden bias affects workplace interactions.
- Project for Attorney Retention (PAR), "Patterns of underlying gender bias", found in conference materials from PAR second annual conference, Strategies for Advancing Women Lawyers in Turbulent Times, March 5, 2009, Washington, DC.
- Ibid. The concept of "intersectionality" is also explained in Catalyst, Women of Color in US Law Firms, (2009), pp. 2 and 4.
- Deborah L. Rhode, "From Platitudes to Priorities: Diversity and Gender Equity in Law Firms," Georgetown Journal of Legal Ethics, Vol. 24 No. 4 (Fall 2011), p. 1050.

- Supra, note 19. Leniency bias includes men being given the benefit of the doubt, men's mistakes being forgotten, and rules being applied less rigidly to men.
- 23. Research in the US has shown that such informal "hey you" assignments systems and networks serve to exclude, or fail to include, those outside of the majority group, leading to a lack of equal access to high-quality training and assignments, networking, business development opportunities and relationships with rainmakers and champions: Women's Bar Association of the District of Columbia (WBA), Creating Pathways to Success for All Advancing and Retaining Women of Colour in Today's Law Firms (2008), pp. 11-12.
- Minority Corporate Counsel Association, Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms (2009), pp. 21-24.
- 25. Catalyst, Unwritten Rules: Why Doing a Good Job Might Not Be Enough (2010).
- Supra, note 18, provides comprehensive analysis of hidden bias in performance evaluations, as well as best practices for bias-free processes.
- Project for Attorney Retention and Minority Corporate Counsel Association, New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women (2010).
- There are many more best practices identified in the research related to lawyer retention. A select list of diversity resources is included in this report.
- For example, the Law Society of 8C has developed a number of model policies, including a Workplace Equality policy. See also the Equity Ombudsperson program, note 17.
- 30. See list of diversity-related resources.
- Best practices as described by participants at PAR annual conference, As the Legal Profession Turns: New Challenges for Diversity & Flexibility, March 30, 2011, Washington, DC.
- 32. Supra, note 18, p. 14.
- Supra, note 31. One conference participant described the firm's system as a "dashboard" where lawyers can indicate "red light/green light" availability for work.
- Project for Attorney Retention, Diversity and Flexibility Connection: Best Practices (2009). See also PAR, Flex Success: The Lawyer's Guide to Balanced Hours (2011), Cynthia Thomas Calvert & Joan C. Williams.
- 35. Supra, note 25.
- 36. Supra, note 20, p. 27.
- 37. Catalyst, Sponsoring Women to Success (2011).
- Aboriginal and visible minority lawyers have spoken to the Law Society about the importance of this component in a mentoring relationship.

SELECT DIVERSITY RESOURCES

American Bar Association Commission on Women in the Profession. Fair Measure: Towards Effective Attorney Evaluations, Second Edition (2008), Joan C. Williams and Consuela A. Pinto.

American Bar Association Commission on Women in the Profession. From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms (2008).

American Bar Association Commission on Women in the Profession. Visible Invisibility: Women of Color in Law Firms (2006).

American Bar Association Presidential Initiative Commission on Diversity. Diversity in the Legal Profession: The Next Steps (2010).

Canadian Bar Association. The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations (2007).

Catalyst. Sponsoring Women to Success (2011).

Catalyst. Women of Color in US Law Firms (2009).

Minority Corporate Counsel Association. Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms (2009).

NALP The Association for Legal Career Professionals. 2009 Diversity Best Practices Guide (2009).

Project for Attorney Retention. Diversity and Flexibility Connection: Best Practices (2009).

Project for Attorney Retention. Flex Success: The Lawyer's Guide to Balanced Hours (2011), Cynthia Thomas Calvert and Joan C. Williams.

Project for Attorney Retention and Minority Corporate Counsel Association. New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women (2010), Joan C. Williams and Veta T. Richardson.

Women's Bar Association of the District of Columbia. Creating Pathways to Success for All: Advancing and Retaining Women of Colour in Today's Law Firms (2008).



The BC Chapter of the Canadian Association of Black Lawyers met on February 23, 2012 to mark Black History Month. Among those attending the event were (L-R): Satwinder Bains (Law Society Appointed Bencher), Arlene Henry, QC, Rashida Usman (Secretary, CABL BC), Zahra Jimale (Vice President, CABL BC), Karen Ameyaw (President, CABL BC), Natasha Allen (Treasurer, CABL BC), Susanna Tam (Law Society Staff Lawyer, Policy & Legal Services) and Bruce LeRose, QC (Law Society President).

APPENDIX:

Demographic Report on Aboriginal and Visible Minority Lawyers in BC

Introduction

The Law Society of British Columbia values the principles of equity, diversity, accessibility and inclusiveness. In the face of shifting demographic trends and an aging profession, the public is best served by a more inclusive and representative profession. The Law Society supports the promotion of a profession that reflects the diversity of the province, and presents this *Demographic Report on Aboriginal and Visible Minority Lawyers in BC* to prompt greater discussion within the profession.¹

The Law Society has a very good understanding of the representation of women lawyers, based on demographic data gathered over time. Women have been entering the BC legal profession in numbers equal to or greater than men for more than a decade, and in substantial numbers for 30 years, yet they are under-represented in private practice. The society has studied this issue and has developed and promoted a resource to support the retention of women lawyers.²

The Law Society is now working to better understand the representation of Aboriginal and visible minority lawyers. This Demographic Report on Aboriginal and Visible Minority Lawyers in BC is the result of an extensive examination of 2006 census data, and is specifically intended to provide an objective, fact-based "snapshot" that benchmarks the diversity of the profession. The Law Society will continue to gather demographic data related to diversity in order to track progress.

The Law Society believes that the findings of this demographic report will advance discussion about the importance of diversity, and will support initiatives that promote equity. The Law Society will use these critical data to inform its strategy and policy development. Further, the society encourages concerned groups and organizations to use the data to inform their own specific and collaborative efforts. Supporting Aboriginal lawyers and promoting diversity within the profession are responsibilities we all share.

This demographic report

This demographic report provides a study of Aboriginal and visible minority lawyers in BC to further our understanding of the participation of these groups within the legal profession. Our objective is to facilitate consideration of the barriers to entry into and participation in the legal profession.

This assessment of the Aboriginal and visible minority participation in the BC legal community involves four comparisons. First, a comparison to the population of BC measures the profession's capacity to serve and represent Aboriginal and visible minority communities. Second, a comparison to the number of university graduates with occupations measures equity in access to the profession. And, third and fourth, we can contextualize the degree of diversity in the legal profession in the province with comparisons to lawyers in other provinces and territories and to other professions and managers in BC.³

This demographic report is based mainly on the long form 2006 census, which collected detailed information about one in every five Canadian households, including approximately 2,100 BC lawyers. Since each person completing the long form census questionnaire represents an average of five people, this statistical treatment of the census returns means that a figure in a table indicating that there are 100 people in a particular group does not mean that there are exactly 100 such persons in the population or that the estimate is based on counting exactly 20 persons in the census sample.

While the Canadian census data are of excellent quality, they are not perfect. Respondents make occasional errors in answering questions, some do not answer all questions and, despite the legal requirement to do so, some households do not complete the form. Using a specialized survey for comparison, Statistics Canada found that the 2006 census missed about three percent of the Canadian population. This demographic report follows Statistics Canada's practice of not compensating for this "under count" in reporting findings.

In this demographic report, a lawyer is anyone who enters "lawyer" as her or his occupation on the census form. For a person to have a valid occupation, he or she must have worked in the profession at some time in 2005 or in January to May of 2006. While almost all lawyers were employed at the time the 2006 census was conducted, an instruction on the form asks persons who are not working at the time to indicate the occupation of "the job of longest duration since January 1, 2005." Lawyers in this study also include a small number of law professors, who chose to give their main occupation as "lawyer" rather than "professor."

In BC, as in a number of other provinces, the 2006 census was not able to carry out a complete enumeration on some Indian reserves. As a result, Statistics Canada reports on Aboriginal persons in BC, and in a number of other provinces, include the statement that each figure "excludes census data for one or more incompletely enumerated Indian reserves or Indian settlements." In addition, there is some evidence that the rate of under-reporting of the Aboriginal population in on- and off-reserve areas that were enumerated is higher than average. While no exact estimate is available, a good guess is that between 10 and 15 percent of the total Aboriginal population of BC may have been missed by the census, with the missed rate much higher for the population living on reserves. The size of the Aboriginal populations reported here is likely to be 10 to 12 percent lower than the true value. The estimate of the number of Aboriginal lawyers will hardly be affected, since most do not live on reserve, but estimates of the number of Aboriginal lawyers relative to the population will be too optimistic by 10 to 12 percent.

This difference is quite small relative to differences between Aboriginal peoples and other sectors of the population in BC.

The terminology in this demographic report follows Statistics Canada's practice. "Aboriginal" refers to all First Nations, Inuit and Métis people, irrespective of their legal status. The sample is not large enough to provide separate figures for First Nations, Inuit and Métis people without breaching confidentiality. Members of a "visible minority" are people who are not of European origin and not Aboriginal, while "White" refers to people of European origin.

Statistics Canada distinguishes ten visible minority groups: Blacks, South Asians, Chinese, Japanese, Koreans, Southeast Asians, Filipinos, Arabs, West Asians and Latin Americans. These categories vary in specificity. For example, persons of Vietnamese, Laotian and Khmer origin are included in the "Southeast Asian" group, while the Japanese and Korean populations are counted separately.

Aboriginal peoples in the BC legal profession

In 1996, an estimated 130 lawyers in BC identified as Aboriginal. By 2006, that number had increased to an estimated 160, which would amount to a 2.1 percent net annual increase over this period.

 Percentage of Lawyers
 Number of Lawyers

 1996
 2006

 Aboriginalism
 195%

 935%
 985%

 38,295
 10525

 1004
 1006

Table 1 - Aboriginal lawyers in British Columbia 1996 and 2006

As Table 1 shows, while the estimated total number of Aboriginal lawyers increased from 130 to 160 between 1996 and 2006, the proportion of Aboriginal lawyers within the legal profession in BC did not increase.

		University graduates with an	Population with an	Total	:		Total	Persons
	Lawyers	occupation	occupation	population	Li	awyers	population	per lawyer
Aborigitell .	1,39%	1:3%	4%	46%		ୀୟ	186950	1,168
Other	2 100 C 10 10 4 10 10 10 10 10 10 10 10 10 10 10 10 10	987%	96%	n 95.4%	dige:	10,525	5,888,240	369
[ora]	100%	1009:	1,0063	100%		10/585	4,075,190	381

Table 2 - Aboriginal lawyers compared to population with an occupation, British Columbia 2006

Comparing the number of Aboriginal lawyers to the total population of Aboriginal peoples in BC provides some measure of the availability of legal services for Aboriginal people by an Aboriginal lawyer. Comparing the proportion of Aboriginal lawyers with the proportion of Aboriginal peoples with an occupation and with a university degree with an occupation provides a comparison of the relative access to a career in the profession.⁴

While 1.5 percent of BC lawyers are Aboriginal, slightly above the 1.3 percent of university graduates with an occupation who are Aboriginal, it is only one-third the Aboriginal share of the total population of BC.⁵

High-level Middle
Lawyer Physician Engineer Academic managers managers
Aborging) 1,5% .0.5% 0,8% 1,7% 2,19% 2,29%
Gines In 1,5% 1,5% 2,50% 3,385 2,4570 1,7246,704

Table 3 - Aboriginal lawyers compared to other professions and managers, British Columba 2006

Compared to 1.5 percent of BC lawyers who are Aboriginal, Table 3 shows that only 0.3 percent of BC physicians are Aboriginal, as were 0.8 percent of BC engineers. Aboriginal representation is higher for academics, 1.7 percent, high-level managers, 2.1 percent and middle managers, 2.3 percent.

Table 4 - Aboriginal lawyers by age, British Columbia 1996 and 2006

Number of lawyers and percentage of group by age								
		25-34		35-44	45-54	55-64	Totals	
Aboriginal 1996	60	46%		31%.	. 30 . 23%	0 0%	130%	
Other 1996:	2,205	27%	3,040	38%	2250 28%	565 2 7%	8,060 100%	
Aboriginal 2006	235	117/9%	- 60	4.0%	45 50%	20 19%	150 100%	
Other 2006	167.4.0985	20%	2,785	28%		1,935 20%	9,880 100%	
Total-1996(2:4:1)	2265	28%	3(080)	38%	22 3 0 28%	565 (57%)	8.190 = 100%	
Total 2006	2,010	20.0%	2845	28%	3/220 32%	120%	10,030; 100%	

The age distribution of a profession affects the prospects of all its members, not only new entrants. There is considerable evidence of a demographic transformation of the entire legal profession over the last 20 years.

Table 5 - Practising lawyers in British Columbia 1990 - 2010

Age	1990	1995	2000	2005	2010
25=84 1	1,862	1,724	(15 a. let 18 c. c. c. a c. fath) in Epillo, (16 clar) et B. Januaria (16 fath) father (16 fath) et a	445174852	PSI W 1712
45°-54	1,229	2.267	37 5 5	3)0559	282
55 - 64		1 573	: 0.00 (0.00	1,911	2,520
>= 65 = 10 = 20 = 20 = 20	. 168	204	309 5	/28	7,02
Total	6866128	7,905	in Jan Ojida ka Kalilili	9,666	10,402

Source: Law Society of BC membership information

Between 1990 and 2010, the number of lawyers between ages 25 and 34 declined by about eight percent. In the same period the number of lawyers between ages 55 and 64 increased by more than 400 percent. The approximately equal numbers of lawyers in the 35 to 44, 45 to 54 and 55 to 64 age groups in 2010 is evidence that, while new lawyers have continued to enter the profession over the past 20 years, younger lawyers have not remained in the profession at the same rate as their older colleagues. Barring an increase in the number of new lawyers or transfers from other jurisdictions or a change in the retention patterns, in a few years the profession will no longer be growing.

Comparing the age distribution of Aboriginal lawyers from the census data, we can see that 46 percent of Aboriginal lawyers in 1996 were between the ages of 25 and 34 and none were over 55. By 2006, fewer than 17 percent were between age 25 and 34, while slightly more than 13 percent were now between 55 and 64. The trend overall among Aboriginal lawyers is similar to that of the entire BC legal profession. However, the much smaller number of younger Aboriginal lawyers in 2006 suggests that efforts to support and encourage Aboriginal recruitment and retention in the legal profession are not resulting in greater recruitment of younger Aboriginal lawyers, although they may be supporting retention. If this pattern continues, we will not see an increase in the proportion of Aboriginal lawyers in the BC legal profession.

Table 6 - Aboriginal lawyers by location, British Columbia 2006

Lawyers	University gra	aduates with an	occupation		Population occupation	Total	population
Vancouver	All other	Vancouver	All other	Vancouver	All other	Vancouver	All other
CMA	BC (2:8%)	CMA	BC	CMA	BC	CMA	BC Kathanga en
	PA THAT ICHOZANA 677 7 CV	90-90X	#####################################	CALEMIANOM			os vo
		\$2,620				2 10/1720	107076

As defined by Statistics Canada, a Census Metropolitan Area (CMA) covers the commuting radius of a city. The Vancouver CMA extends as far into the Fraser Valley as Langley and Maple Ridge and includes Bowen Island and Lions Bay. Approximately 73 percent of all lawyers in BC live in the Vancouver CMA, compared to 67.1 percent of all university graduates with occupations and 52.2 percent of all persons with occupations.

The number of Aboriginal lawyers in BC is equally divided between the Vancouver CMA and the rest of the province, with an estimated 80 lawyers within the CMA and 80 outside. In terms of the proportion of Aboriginal lawyers to the rest of the legal profession, 2.8 percent of all lawyers outside of the Vancouver CMA are Aboriginal, compared to one percent of lawyers in the CMA. Aboriginal people as a whole account for only 1.8 percent of the population of the Vancouver CMA but 7.6 percent of the population in the rest of the province. As a result, there is about one Aboriginal lawyer for every 461 Aboriginal persons within the Vancouver CMA but only one Aboriginal lawyer for every 1,875 Aboriginal persons outside the CMA. While this discrepancy reflects the general distribution of the legal profession around BC, with one lawyer for every 270 persons in the Vancouver CMA compared to one lawyer for every 683 persons outside the CMA, the gap inside the Vancouver CMA and outside the CMA is much greater for Aboriginal persons.

Table 7 - Comparison of Aboriginal lawyers with other provinces and territories, 2006

			Aboriginal	1		Total
	Lawyers	University graduates with an occupation	Population with an occupation	Lawyers	University graduates with an occupation	Population with an occupation
Province			Percentage			Number
British Columbia	115	eggillings	4.0	10,680	528/120	2;420;135
Mevioundland	3:0	12	3.9	830	42 .6 45	274525
Nova Scotia	22	14	41-25	10805	105320	522,240
Orchec.	0/4	0.5	12	19205	857.405	44,245 62 5
Opero State Relation	i dize e filoz			al <u>- 32,010</u> -	1,706,595	7,097,720
Mantioba	: : : : : : : : : : : : : : : : : : : :	49 8	15.51	2,016	1118,146	652,105
Saskatchewan	48	500	96	1,520	87,275	561,360
Alberia	ig.	(6)		77725	: 4074,160	2 079915

Table 6 shows the proportion of lawyers in each province and the territories who are Aboriginal. Manitoba and Saskatchewan have the highest proportion of Aboriginal lawyers, at 4.7 and 4.9 percent respectively, which corresponds well with the proportion of Aboriginal university graduates with an occupation and the Aboriginal population with an occupation generally in those provinces. In most provinces and territories, however, the proportion of Aboriginal lawyers is roughly one-half the proportion of Aboriginal peoples with an occupation, although in most provinces and territories the proportion of Aboriginal lawyers is higher than the proportion of Aboriginal university graduates with an occupation.

Visible minorities in the BC legal profession

Between 1996 and 2006, the proportion of visible minority lawyers grew at an annual rate of 9.7 percent, the total number of visible minority lawyers increased from 615 in 1996 to 1,560 in 2006 and the proportion of visible minority lawyers in the BC legal profession doubled from 7.3 to 14.6 percent.

Table 8 - Visible minority lawyers, British Columbia 1996 and 2006

	Percenta	ge of lawyers	Number of lawyers		
	1996	2006	1996	2006	
Potal visible minority.	78. j	146	615	1:560	
Chinese 25 25 25 25 25 25 25 25 25 25 25 25 25		65 46	310.01	690	
SouthiAsian 2 22 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	17	92	126	E 12 450	
Blackson describing as a supplication of the second		100005	3516	551	
japanese :	10 <i>2</i> 1 :	69	30	95,	
Koreant Line and State of the S		0.06		60:	
Southers Asian	Paragolisan in 🕳 Status	0.3		35	
Filipinos (2. 1. 1992) (1812) (2. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.		04		45	
Araband West Asian	- 10,41	. 0∠r	30	13 and 45 45	
Latin American		03		935 945 (4) (4) (4) (4)	
Other are multiple violate minority	0.7	.05		50	
Other:	927	854	7,810	9,125	
ioni'.	1(00)	100	8425	10,685	

^{*} Statistics not available for 1996

Nearly three-quarters of all visible minority lawyers in 2006 were from one of the two largest visible minority communities: 690 were Chinese and 450 were South Asian. The number of members from the other visible minorities ranges between 35 and 95 and they account for just over 20 percent of the lawyers who self-identify as a visible minority. An additional 50 lawyers belonged to a visible minority group other than the ten listed on the census form or described themselves as belonging to two or more groups (a category that also includes individuals who indicate they are White and a member of a visible minority group). Of course, looking only at the legal profession, the numbers of visible minority lawyers reflect both differences in the access of groups to the profession and the size of each group. By a wide margin, the Chinese and South Asian groups are the largest visible minority groups in BC.

Table 9 - Visible minority lawyers compared to the population, British Columbia 2006

	Lawyers	University graduates with an occupation	Population with an occupation	Total population	Lawyers	Total population
in the contraction of the contra	i B. Creiminia edifica e coloni beri niste p. Protino e protinci a per coloni	Principle of the property and the second		Percentage		Number
iotal visible minority	14.6	32.6	227	253	1/560	1,029,820
Crii _n ese	6.5	íŠÍ.	0.7	i0iz	690	44141870
South Asian	42	6.5	65	68	450	275,375
Black	0.5	077	9,0	\$,0	55	32,195
Japanese 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			08.	0.8	95.	33,655
(orean	9.6	177	929:	13	60	52,040
SoutheasrAsian	in market jobs	05.	110	10	35	40,125
(ilipino	6.4	38	23	2.1	2 5	86 205
Arabiand West Asian Page 1999	0.4	14	8.0	0.8	45	31,905
Ladin American	6.0	0.7	108	08	35	37710
Other and imultiple visible minor	iya ka 1105 - 1105		0.71	0.8	50	31,740
Not visible infinitivy:	85A	6740	768	7/257	9 1725	3,045,370
Total and the second se	1000	100.03	100/01	1000	10,685	4,075,190

For the individual visible minority groups, Table 9 provides the same comparisons as shown above for Aboriginal peoples.

In 2006, 14.6 percent of BC lawyers were members of a visible minority group compared with 25.3 percent of the BC population. This compares, however, with the 32.6 percent of university graduates with an occupation who are members of a visible minority. Clearly, the underrepresentation of visible minorities in the legal profession is not related to their inability to access university education. Quite the opposite; the data suggest there are reasons other than access to university education that are affecting the participation of visible minorities in the legal profession. More information is required regarding the reasons against, or barriers to, choosing law as a career.

A measure of access to the legal profession can be obtained by dividing a group's share of all lawyers by its share of BC university graduates with occupations. So, a *lower* ratio indicates *greater* access to the profession.

Table 10 - Ratio of visible minority lawyers to visible minority university graduates with occupations, British Columbia 2006

	Ratio proportion of lawyers to university graduates with an occupation
Total visible importy	1402/24
Chinese	
Souti Asten	
Black	an sura di 1900 di 190
llapanese:	
Korean (a. 1). Propins in the latest the lat	146 3.07.
Southeast Asian	2 3 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Arebrand West Astan Billion and State of the Comment of the Commen	The state of the s
Latin/American III all particular in the	Economic 18 18 18 18 18 18 18 18 18 18 18 18 18
@diarandamuldiple visible iminority	110/213

The ratio for Whites is 1 to 0.79, indicating that those persons who identify as White on the national census are more likely to enter the legal profession than other groups.

Not surprisingly, there is also considerable variation in the numbers of visible minority lawyers relative to the size of their communities. With about 10,685 lawyers for the BC population of 4.07 million in 2006, there is one lawyer for every 381 people. For visible minority communities, Table 11 shows that the Southeast Asian and Filipino communities have the fewest lawyers relative to community size, while the Chinese and South Asian communities do not have the most lawyers relative to community size, despite having the largest visible minority population ratios.

Table 11 Ratio of visible minority lawyers to population of visible minority communities, British Columbia 2006

	Number of community members per lawyer
ioslivislaemnoity	(650)
Chinese Chinese	
South Asian, a shall be a salar and the salar and s	
Black	
(lapanese), http://doi.org/10.100/10.100/10.100/10.100/10.100/10.100/10.100/10.100/10.100/10.100/10.100/10.100	354
Korean and the state of the sta	86/
Southeast Asian	
Filipino	
Arab and West Asten	30
Latin American	906
Other and multiple visible minority	635

Compared to 14.6 percent of BC lawyers from visible minority groups, 26.1 percent of BC physicians and 30.2 percent of BC engineers identify as members of a visible minority. Visible minorities make up 17.6 percent of BC academics and 20.2 percent of high-level managers and 21.7 percent of middle-level managers.

Table 12 - Visible minority lawyers compared to other professions and managers, British Columbia 2006

AND INCOME.	Lawyers	Physicians	Engineers	University professors	High-level managers	Middle managers
Total visible minority	14.1%	26.1%	80.2%	17.2%	20.2%	4217%
Gimese 2 / 10 2 10 10 10 10 10 10 10 10 10 10 10 10 10	6,5%	717%	16.6%	7,3%	9.8%	4.119.9%
South Asian:	4.2%	69%	45%	3.6%	3.8%	4.9%
Black	0.59%	0.598	0.4%	0.5%	0.4%	0.4%
Japanese as succession in the same succession and same	0.9%	10%	10%	0.6%	113%	0.8%
(oreanse) steer en anna anna an an	0,5%	14%	0.9%	*#### ##113%	1778	##E###119%X
Southeast Asian County	03%	0.7%	0.4%	0.4%	0.2%	-0.6%
eilipino s, acie nda par _{eile} s su se sus	0,49%	0.7%	i1 3 %	0725%	0.39%	1.2%
Arab and West Asian	03%	0.4%	112%	321 (551)0%	03%	0.6%
latin American and a sure in the	0,495	7.4%	2.7%	16967	17%	09%
Other and multiple visible minority	0.5%	0.4%	0.6%	0.7%	0.6%	0.7%
Notavisible miliority	85,9%	78. 9 %	69.8%	6248%	79.8%	###78:3%
Number	10,680	10/565	257/60	8,385 m	24,540	216,705

Table 12 illustrates the considerable variation among visible minorities in terms of professions. Members of the Chinese and South Asian visible minorities account for 18.6 percent of all BC physicians and 21.1 percent of BC engineers compared to only 10.7% of all BC lawyers. There are similar differences among the proportion of members of the Arab and West Asian and Korean visible minorities who are lawyers, physicians and engineers.

Table 13 Visible minority lawyers by age, for lawyers aged 25-64, British Columbia 1996 and 2006

	Number	of lawyers and perc	entage of group by age		
	25-34	35-44	45-54	55-64	Totals
Veilete minority brygge 1996	3 <u>8</u> 8 588%	135 2216	150 248%	0 0% (10 100%
Other:1996	2/205 27.4%	31040 1137,7%	2250 4279% 35	65 11 - 7% IZ 8	060 100%
Visible minority/ewwer-2006	500 80,2%	316 3486%	-255 172% 1	25 11 8 5% 12	175 - 100%
Other 2006	i/430. (†167%)	12 330 - 27 2%	2,965 - 84,7% - 16,8	50 2 2029/2 FR	355 100%

Table 13 shows the dramatically changing age profile of visible minority lawyers, in significant measure due to their much increased presence in the profession. Of course, for both visible minority and non-visible minority lawyers, the effect of aging moves individual lawyers who remain in the profession from each ten-year age category to the next. It should be no surprise that the 3,040 non-visible minority lawyers aged 35 to 44 in 1996 are similar in number to the 2,965 non-visible minority lawyers aged 44 to 54 in 2006. The translation is not exact because of latecomers to the profession, exits from the profession and sampling error in the surveys.

Overall, the entire profession aged significantly in the ten years, as the percentage of all lawyers aged 55 to 64 grew from 6.5 to 19.5 percent of the total. The continuing increase in the number of and also maturation of visible minority lawyers in the profession can be seen in the significant drop, from a remarkable 53.3 percent of all visible minority lawyers who were aged 25 to 34 in 1996, to 39.3 percent in 2006, while at the same time the number of lawyers increased from 325 to 580. A question that should be addressed in depth, with the growing number of visible minority lawyers with the seniority able to assume major roles in the profession, is whether they achieve the same recognition and financial rewards as their non-visible minority peers.

Table 14 Visible minority lawyers by location, British Columbia 2006

	Lawyers	University graduates with an occupation	Populati with an occupati	tion tion Total population
CALL CONTROL OF THE CALL C	ouver All other Va CMA BC	ncouver All other		ther Vancouver All othe BC CMA BC
Visible minority 1		228% 15 9e%	888% E E 7,	0% 12 42 B% 17.1%
Not visible animority 8	2.0% 95.1% MAS CHANGE AND MILE	56.2% 91.1% 52.620 1172.56	6),2% 98) 1912,24 20 255	6% 577% 9299

As noted above, the Vancouver Census Metropolitan Area extends as far into the Fraser Valley as Langley and Maple Ridge and includes Bowen Island and Lions Bay. As Table 14 shows, 73 percent of all lawyers in BC live in the Vancouver CMA, compared to 67.1 percent of all university graduates with occupations and 52.2 percent of all persons with occupations.

Nearly 10 times as many visible minority lawyers live within the Vancouver CMA as live in the rest of the province, with 1,400 visible minority lawyers within the CMA and only 155 outside. Despite this, the proportion of visible minority lawyers is only 18 percent of the lawyers within the Vancouver CMA compared with visible minorities accounting for 42.3 percent of the total population of the Vancouver CMA.

As a result, there is about one visible minority lawyer for every 636 visible minority persons within the Vancouver CMA and only one visible minority lawyer for every 898 visible minority persons outside the CMA. This discrepancy reflects the general distribution of the legal profession around the province, but is actually less that the overall difference between there being one lawyer for every 270 persons in the Vancouver CMA compared with one lawyer for every 683 persons outside the CMA, the gap between visible minority lawyers within the Vancouver CMA and the visible minority population of the Vancouver CMA is much greater than we might expect.

Conclusion

This demographic report provides critical data to benchmark diversity within the profession and to highlight the representation of Aboriginal and visible minority lawyers in BC. The data reveal a particular cause for concern – the significant under-representation of Aboriginal lawyers in the BC legal community. Aboriginal participation in the legal profession is just one third of the Aboriginal share of the total population in BC, and that proportion did not change between 1996 and 2006. In addition, there are fewer Aboriginal lawyers in the younger age range, which suggests the need to increase recruitment efforts. Over time, increased recruitment of younger Aboriginal lawyers and retention of Aboriginal lawyers in the older age ranges should help increase the proportion of Aboriginal lawyers in the profession.

The data indicate that visible minority lawyers are also under-represented in the profession. While visible minority participation in the legal profession is more than half of the visible minority share of the population in BC, the proportion of visible minority lawyers is less than half of the visible minority share of university graduates with an occupation, which suggests that there may be barriers to members of visible minorities choosing law as a career.

Quantitative data are necessary for establishing baselines and benchmarks. However, the Law Society also understands that qualitative data are required to complement our understanding of diversity within the profession and to inform our policy and strategy development. The Law Society will continue to gather and disseminate relevant information, in order to measure progress and to work in collaboration with other concerned groups to support Aboriginal and visible minority lawyers and to promote diversity within the legal profession.

ENDNOTES TO THE APPENDIX

- 1. The Law Society of BC would like to acknowledge Michael Ornstein, York University, for his expertise in analyzing the data and providing advice on this demographic report.
- 2. The Business Case for Retaining at d Advancing Women Lawyers in Private Practice, lawsociety.bc.ca
- 3. With permission, this demographic report follows the structure and analysis of the Law Society of Upper Canada's report: Michael Omstein, Racialization and Gender of Lawyers in Ontario A Report for the Law Society of Upper Canada (2010).
- 4. For the purposes of our comparis on, occupation refers to the job a person held when the census was taken in May 2006 or, if he or she was not employed, the last job she or he held since January 2005. Using the population with an occupation for comparison, rather than the more conventional labour force measure compares lawyers and the rest of the population in the same way. The intention is to include in our statistics people who are temporarily out of the labour force, such as those on maternity leave.
- 5. This data suggests that social and economic conditions that can limit access to university education for Aboriginal peoples may be one of the many factors involved in the under-representation of Aboriginal lawyers. However, qualitative data suggests that Aboriginal lawyers also encounter systemic barriers during the process of becoming lawyers and even after they are called to the bar.



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