



**SUBMISSION OF**

**TRINITY WESTERN UNIVERSITY (“TWU”)**

**To**

**THE LAW SOCIETY OF BRITISH COLUMBIA (“LSBC”)**

---

**WRITTEN SUBMISSION WITH RESPECT TO PROPOSED LSBC MOTION TO  
REFUSE APPROVAL OF TWU GRADUATES**

---

**Date: April 3, 2014**

## CONTENTS

	<u>PAGE</u>
1. INTRODUCTION AND EXECUTIVE SUMMARY .....	3
2. TRINITY WESTERN UNIVERSITY .....	5
(a) Introduction .....	5
(b) Academic Excellence .....	6
(c) Community Engagement: Making a Difference .....	7
(d) Private Religious Educational Community .....	9
3. THE SCHOOL OF LAW PROPOSAL .....	11
(a) The Proposal for a School of Law .....	12
(b) The Federation Process and Approval .....	13
(c) The Federation’s Special Advisory Committee .....	15
(d) The Ministry Process and Approval .....	16
(e) Conclusions from the Reviews .....	17
4. MAINTAINING THE NATIONAL STANDARD .....	18
(a) The National Standard is an Important Aspect of Public Interest Regulation .....	18
(b) Harm to National Standards and Labour Mobility Obligations .....	22
5. NATURE OF THE DECISION BEFORE THE LSBC .....	23
6. SHOULD THE LSBC DENY TWU GRADUATES THE RIGHT TO PRACTICE LAW? .....	25
A. Legal Considerations: <i>TWU v. BCCT</i> is Binding Law .....	26
B. Evidentiary Considerations: No Evidence of Harm .....	32
C. Policy Considerations: Allegations of Discrimination, Freedom of Religion, Diversity and Academic Freedom .....	36
D. Practical Considerations .....	41
7. COMMUNITY COVENANT QUESTIONS AND POSSIBILITY OF A CONDITIONAL APPROVAL .....	45
8. SUMMARY AND CONCLUSION .....	48

## 1. INTRODUCTION AND EXECUTIVE SUMMARY

TWU has been working for many years to establish a School of Law that will educate its students to the highest educational and ethical standards and equip them to serve their communities. TWU's efforts have produced a proposed School of Law that has been carefully assessed and approved by those with the responsibility to evaluate it.

On April 11, 2014, the Benchers will consider a motion (the "Motion") declaring that TWU's School of Law is not approved as a common law faculty of law under LSBC Rule 2-27(4.1).

TWU is a religiously based educational community, as mandated by the Legislature of BC. TWU maintains a Community Covenant that implements its religious faith and objectives. TWU has established a reputation for academic excellence and successfully operates a number of other professional programs.

While the LSBC is charged with regulating the legal profession in British Columbia in the public interest, the scope of the Motion is with respect to the academic qualifications of graduates from TWU's School of Law. This is because Rule 2-27(4.1) was promulgated under ss.20(1)(a) and 21(1)(b) of the *Legal Profession Act* and specifically to determine whether applicants have academic qualifications under Rules 2-27(3)(b) and (4).

The LSBC, together with all other law societies in Canada, approved a national requirement that reflects their collective view as to what is necessary to ensure that graduates of law degree programs in Canada are competent to practice and meet their professional and ethical obligations.

TWU has established beyond any question that its School of Law meets all applicable academic requirements and that students will receive a high quality education that includes both substantive and ethical components. TWU has met all of the criteria of the national requirement. Its proposed School of Law has also been approved by a Special Advisory Committee of the Federation of Law Societies of Canada (the "Federation") that was charged with considering aspects of its Community Covenant. The School of Law has also received approval after extensive review by the Ministry of Advanced Education (the "Ministry").

TWU respectfully suggests that appropriate regard be paid to the substantial work carried out by the Federation and the Ministry. Other law societies have indicated that they will recognize and enrol TWU graduates. As a result:

- (a) A refusal by the LSBC to do the same has the potential to seriously damage and undermine the considerable work done by all of the law societies and the Federation to establish and accept a uniform national requirement; and

- (b) The LSBC will be obligated to recognize TWU graduates that become lawyers elsewhere in Canada as a result of its obligations under labour mobility agreements and the *Labour Mobility Act*.

There is no legitimate public interest in passing the Motion to refuse accreditation of TWU graduates. TWU embraces its obligations to teach Canadian equality law and professional ethics, including equality based on sexual orientation. All of the evidence unequivocally indicates that graduates from TWU's School of Law will be properly educated in substantive law and prepared to meet their professional and ethical obligations.

In any event, the Federation's process involves annual monitoring to ensure that TWU continues to meet the national requirement and lives up to its commitments and obligations

TWU urges the LSBC to protect the values of a truly free Canada in which a wide variety of beliefs, "customs and codes of conducts"<sup>1</sup> are accommodated and respected. Much of the opposition to TWU's proposal is based on prejudicial caricatures and unfair assumptions about TWU and the members of its religious community. The objections to TWU's Community Covenant are in many cases based on intolerance towards the Christian beliefs that TWU's community seeks to uphold. The underlying notion that a student agreeing to maintain a Christian code of conduct cannot learn to be an excellent lawyer should be offensive to anyone who values the freedom of religion and religious equality rights in Canada.

By implementing its religious beliefs and mandate, TWU is only doing what it has been legislatively chartered to do, and in a manner authorized by law. A refusal to recognize TWU graduates because of the Community Covenant would violate *Charter* rights and values, including those rights and freedoms guaranteed under s.2(a) (freedom of religion), s.2(d) (freedom of association) and s.15 (equality and non-discrimination on the basis of religion).

With as many as 100 TWU graduates already practicing law, it has already been proven that students can become excellent lawyers without abandoning their Christian faith or compromising the profession's ethical standards.

The history of this application and of TWU's previous struggle to overcome objections to its education degree granting program should cause the LSBC to be very reluctant to overturn the substantial process that has already occurred. Giving effect to the opposition would repeat the very wrong that occurred in the case involving the British Columbia College of Teachers with no legitimate purpose or effect.

---

<sup>1</sup> These terms are taken from the leading decision on freedom of religion by the Supreme Court of Canada in *Big M Drug Mart* [1984] S.C.R. 295 at 336.

## 2. TRINITY WESTERN UNIVERSITY

### (a) *Introduction*

TWU was originally founded in 1962 as a junior college. In 1969, the B.C. Legislature passed the *Trinity Junior College Act*<sup>2</sup>, mandating that TWU's education would be provided "with an underlying philosophy and viewpoint that is Christian". The Legislature gave TWU the privilege to grant degrees in 1979<sup>3</sup> and in 1984 TWU became a member of the Association of Universities and Colleges of Canada.

In 1985, the Legislature changed the name of the college to TWU and granted it authority to offer graduate degrees<sup>4</sup>.

TWU now offers 42 undergraduate majors. It has 17 graduate programs. It serves approximately 4,000 students per year and it has over 22,000 alumni. It is a vibrant and successful religious educational community.

Many of TWU's students are in its professional programs. TWU has a professional School of Nursing (M.Sc.N., B.Sc.N.), which was established in 1993 and is approved by the College of Registered Nurses of British Columbia<sup>5</sup>.

It also has a School of Education (B. Ed.) and its teacher education program leads to a British Columbia Professional Teaching Certificate issued by the B.C. Teacher Regulation Branch. The School of Education was recently approved to offer an M.A. degree in Education Studies (Special Education).

TWU has other professional programs including Business (M.B.A., B.B.A., B.A.), Leadership (M.A.) and Counselling Psychology (M.A.).

TWU's main campus is in Langley, British Columbia. It offers all of the facilities and services of a modern, advanced and sophisticated university setting. It has residences, food services, fitness facilities, advanced laboratories, and performing arts facilities. It operates a highly successful C.I.S. Athletics program that has won eight national team championships in the last decade.

TWU operates an extension campus in Washington State and the Laurentian Leadership Centre in Ottawa. It also has two ecological research areas (Crow's Nest Ecological Research Area on Salt Spring Island and Blaauw's Eco Forest in Langley, BC). TWU was also recently granted

---

<sup>2</sup> S.B.C. 1969, c.44

<sup>3</sup> *Trinity Western College Amendment Act, 1979*, S.B.C. 1979, c.37

<sup>4</sup> *Trinity Western College Amendment Act, 1985*, S.B.C. 1985, c. 63

<sup>5</sup> TWU is a member of the Canadian Association of Schools of Nursing

approval by both the Ministry and the Chinese government to offer an M.B.A. program in Tianjin, China.

**(b) Academic Excellence**

There is little dispute that TWU and its students perform exceptionally well academically. This is in part because over 80% of TWU full-time faculty have doctorates.

TWU has built a reputation for academic quality, earning an A+ for “Quality of Teaching and Learning” (formerly called “Quality of Education”) seven years in a row in the Globe and Mail University Report Card. TWU is consistently ranked among the top universities in Canada for Educational Experience by the National Survey of Student Engagement and the Canadian University Survey Consortium (“CUSC”), as reported in *Maclean's* magazine. The 2013 CUSC survey placed TWU first in six categories covering university experience, professor accessibility, and quality of teaching.

Similar to some of the public universities in British Columbia, TWU has been granted “exempt” status by the Ministry. In order to obtain this status, a university must demonstrate that it has “appropriate governance mechanisms, demonstrated organizational capacity for degree granting and a proven track record.”<sup>6</sup> Having achieved exempt status, TWU is able to use an expedited process for approval of most new undergraduate and graduate (masters) level programs. (This expedited process did not apply to the J.D. program, which received a full and complete review by the Ministry as described below).

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. This same successful formula will be used in the School of Law.

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. The Office of Research holds regular professional development workshops to assist faculty in obtaining grants, publishing their research results and engaging in collaborative research.

---

<sup>6</sup> “Institutions with Exempt Status would still require Ministerial consent / approval for each new degree. However, once the institution achieves Exempt Status, the quality assessment process would be expedited so that new degree proposals, up to the degree level of exemption specified, would be forwarded directly to the Minister for review and consent / approval. As such, Exempt Status represents an exceptional condition. For these reasons, Degree Quality Assessment Board (DQAB) applies the highest standards and expectations of quality in its review of applications for Exempt Status.” *Exempt Status Criteria and Guidelines*, p.1: [http://www.aved.gov.bc.ca/degree-authorization/documents/exempt\\_status.pdf](http://www.aved.gov.bc.ca/degree-authorization/documents/exempt_status.pdf)

TWU has three Canada Research Council Chairs and is currently developing a fourth. TWU has been a member of the Royal Society of Canada since 2009.

TWU has seven academic Institutes and four Centres of Excellence and its faculty collaborate with academics throughout Canada and around the world. These include the Gender Studies Institute<sup>7</sup> and the Religion in Canada Institute.<sup>8</sup> 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.

### ***(c) Community Engagement: Making a Difference***

TWU has a strong record of being a good neighbour in both the local and global communities. Faculty and staff members organize a variety of opportunities for students to engage communities at home and abroad - from working with the homeless in Vancouver’s Downtown Eastside to serving in hospitals in Zambia. TWU also helps students engage in community work individually by connecting them with non-profit organizations.

Over 57% of TWU undergraduate students volunteer in local communities or participate in humanitarian work internationally. TWU believes that this is significantly higher than any other university in Canada. This integration of learning and service transforms students into thoughtful, globally-aware citizens.

A number of TWU graduates have made submissions to the LSBC and in doing so have exemplified the citizenship qualities and commitment that TWU seeks to instill in its students:

- “I graduated valedictorian from TWU and was the gold medalist at the University of Victoria ... It would be a mistake to assume that I somehow had to divest myself of my TWU experience in order to succeed in law; quite the opposite. My TWU education has been foundational to my understanding of legal practice. At TWU, I was imprinted with a profound respect for others’ views that is rooted in recognition of the contingency of my own. My time at TWU made me more sensitive to diversity of belief and, as a result, has made me a better lawyer.”<sup>9</sup>

---

<sup>7</sup> The Gender Studies Institute fosters interdisciplinary teaching, intellectual dialogue, research and collaboration in all areas of gender studies. The interdisciplinary nature of the institute enables TWU scholars to collaboratively address gender issues that come out of every discipline, such as domestic violence, child abuse, and gendered visions of care, exploring how categories such as class, race, and gender intersect, to train leaders who will enjoy and foster restorative gendered relationships. See: <http://twu.ca/research/institutes-and-centres/university-institutes/gender-studies-institute/default.html>

<sup>8</sup> The Religion in Canada Institute (RCI) is an interdisciplinary research centre and intellectual community of scholars at Trinity Western University committed to understanding the multifaceted role of religion in Canada for culture, individuals, and social institutions. See: <http://www.twu.ca/research/institutes-and-centres/university-institutes/religion-in-canada-institute/>

<sup>9</sup> Lauren Witten, March 2, 2014

- “The TWU students I knew were passionate about making a difference in the world and deeply committed to social justice issues.”<sup>10</sup>
- “While you are deliberating the various significant issues at play within this debate, I would urge you to look past the caricatures presented of the fictional TWU law school graduate. Behind those caricatures are faces like mine. I have excelled at law school and competitive moots. I have secured articles and will be clerking for our province’s Supreme Court. I have enjoyed mutually respectful and dynamic relationships with professors and fellow students at law school. These accomplishments have been made, not *in spite of* my status as a TWU alumni, but *because* of all that my education and experience has provided thus far.”<sup>11</sup>
- “...my experience at TWU enhanced my competency by instilling in me a deep love for all people and desire to serve humanity through advocacy... My values as a future Christian lawyer compel me to respect the law, respect my clients and respect my colleagues, as well as to be a venerable advocate who is held to the highest of ethical standards. These are qualities infused in the servant leadership taught at TWU, and would benefit rather than harm the legal profession.”<sup>12</sup>

A lawyer (not a TWU alumnus) working with the homeless and disadvantaged in the Downtown Eastside of Vancouver wrote this of TWU graduates:

I have had occasion to speak with several students from TWU who also volunteer there. I was inspired by their spirit of service and enthusiastic participation in outreach programs among the underprivileged. They told me of the many programs TWU offers to encourage students to work in community service initiatives throughout Greater Vancouver and abroad. It was therefore with optimism that I heard about the plans of TWU to establish a law school, recognizing the critical demand for lawyers interested in pro bono work as well as in addressing the desperate need for access to justice among the poor and marginalized in our communities.<sup>13</sup>

TWU is understandably very proud of these graduates. They exhibit the precise results that TWU strives to achieve through its educational programs. Our society is the beneficiary of the many historical social justice movements that were motivated by Christian beliefs.<sup>14</sup> This is, in part, why TWU’s School of Law will offer a specialization in Charities and Social Justice Law. As described in its proposal:

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 practical requirements in placements related to social innovation. Many charities and not-for-profit organizations have a focus on social justice; for example, shelters for the homeless, international development agencies and food banks.

---

<sup>10</sup> Mark Witten, March 2, 2014

<sup>11</sup> Rebecca Stanley, February 23, 2014

<sup>12</sup> Jessie Legaree, J.D. Candidate 2015, University of Toronto, March 3, 2014

<sup>13</sup> Kim Thorpe, February 27, 2014

<sup>14</sup> These include the anti-slavery movement led by William Wilberforce, the abolition movement (in which John Wesley and Sojourner Truth were leaders), along with the YMCA and others



Students pursuing 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.<sup>15</sup>

The opponents of TWU's School of Law have impugned and sharply criticized evangelical Christian beliefs pertaining to sexual relationships. This is only one aspect of the Christian ethos at TWU, which is primarily directed at creating Christian leaders capable of doing great good for society as a whole.

**(d) *Private Religious Educational Community***

TWU is a religiously based educational community. It makes no apologies for that and strongly believes that its success in developing students into service-oriented citizens is partially the result of its religious character.

It is private, and does not rely on government monies to fund its educational programs.

In those respects, TWU is distinct from the public universities that already offer law programs in Canada.

TWU was founded on religious principles and was always intended to be a religious community. This was and continues to be recognized by the B.C. Legislature. As noted, subsection 3(2) of the *Trinity Western University Act* charters TWU to offer university education "with an underlying philosophy and viewpoint that is Christian".

As recognized by the Supreme Court of Canada: "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."<sup>16</sup> There is no rational argument that such a religious educational community is somehow against the public interest and virtually all of TWU's opponents properly concede this point.

TWU's religious character and objectives are summarized in the introductory words of its 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,

---

<sup>15</sup> Proposal, pages 10-11

<sup>16</sup> *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 ("TWU v. BCCT") at para. 35.

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.

...

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.

Too much attention has been paid to, and severe criticism leveled against, one narrow aspect of the Community Covenant. This has been entirely unfair and unbalanced, in part because it has ignored the most important and overarching commitment of members of TWU's community to "treat people and ideas with charity and respect", "demonstrate concern for the well-being of others" and "model service-oriented citizenship", consistent with "the person and work of Jesus Christ." Opponents of TWU's School of Law have also conveniently ignored the Community Covenant requirement that TWU's community members:

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

One TWU graduate, who is now a public high school teacher in Nova Scotia, very ably explained this in his submissions to the Nova Scotia Barristers' Society on February 13, 2014:

However, it's not excusable to replace the lack of knowledge of the school with speculation, assumptions based on preconceived ideas, and as I heard earlier false analogies to Nazi Germany and Vladimir Putin's Russia ...

...

The idea that a graduate of Trinity is predisposed to discrimination is something I find difficult to understand.

...

***And if I was to behave in a discriminatory way to a gay or lesbian student or co-worker or anyone else, I would be betraying the very ideals of my education,*** which taught me that my personal beliefs do not interfere or override my public responsibilities. ***And if I want to be a person of character, it means I treat all people with dignity, respect and equality, regardless of our differences.***

...

Instead of trying to understand the truth of what it means to be a member of the Trinity Community, people have chosen to focus on one aspect of the community covenant without trying to look at the school and its community as a whole. People it seems are attempting to marginalize the school based on one element of its beliefs that they disagree with.

...

So what sustains the belief that Trinity the community fosters discrimination against gays and lesbians? It is a prejudice rooted in the belief that because Trinity maintains its traditional beliefs regarding marriage and sexuality, they should forfeit their place in the public arena. ...

We have long since given up on the belief of trying to assimilate all Canadians to a single point of view.<sup>17</sup>  
[emphasis added]

There is no question that TWU has a right to exist as a religiously based educational community and that this right is protected by the *Charter of Rights and Freedoms*. There is also no question that the members of TWU's community have the right to freely express and affirm their religious beliefs and to associate together to put them into practice<sup>18</sup>.

In the United States, the rights of religiously based law schools are recognized. While the American Bar Association maintains Standard 211, which prohibits discrimination in law school admission and hiring practices, it expressly does not apply in the context of religiously affiliated schools that maintain codes of conduct consistent with their religious beliefs<sup>19</sup>. Consistent with that Standard, there are a number of ABA approved law schools that maintain a religiously motivated standard regarding sexual behaviour, similar to TWU.<sup>20</sup> (As noted below (page 42) students graduating from these law schools can be accredited to practice law in Canada through the Federation's National Committee on Accreditation.)

The question to be answered by the LSBC is whether, in light of these rights, there is a demonstrably justifiable reason for denying TWU's graduates the right to enrol as articulated students or otherwise be admitted to the practice of law in British Columbia. For the reasons set out below, TWU respectfully submits that on a proper analysis, no such reason exists.

### 3. THE SCHOOL OF LAW PROPOSAL

TWU's proposal for a School of Law started as early as 1993, when it became part of TWU's long term plan. TWU established a task force of lawyers, judges and academics to further consider the issue in 2008. From 2009 through 2012, TWU engaged in wide and detailed consultation with many interested people and constituencies, including:

- President and Vice President of Law Society of B.C.
- Law Deans (B.C. Law Deans and Canadian Council of Law Deans)
- Fraser Valley Bar Association
- B.C. Branch of C.B.A.
- Numerous Lawyers, Judges and Legal Academics
- Premier of B.C.

---

<sup>17</sup> Oral submissions of Chris Roper, February 13, 2014 (pp. 210, 211, 212 and 217) [http://nsbs.org/sites/default/files/ftp/TWU\\_Submissions/2014-02-13\\_NSBSTrinityWesternU.pdf](http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-13_NSBSTrinityWesternU.pdf)

<sup>18</sup> *TWU v. BCCT*, para. 32

<sup>19</sup> Special Advisory Committee on Trinity Western's Proposed School of Law Final Report, December 2013 ("Special Advisory Committee Report"), paras.54-56.

<sup>20</sup> LSBC Memo from Policy and Legal Services Department to Benchers, March 31, 2014 (the "LSBC March 31 Memo"), Appendices 10 -15 in relation to Baylor University, Brigham Young University, Boston College, Liberty University, Fordham University and Notre Dame University.

- Minister of Advanced Education
- Numerous MLAs

TWU was very encouraged by these consultations. No one, including the law deans of all of B.C.'s existing law schools, expressed any opposition to TWU proceeding with a law school proposal. In 2011, TWU formed a Law School Advisory Council to provide further advice, which included lawyers, academics and judiciary from across the country. There was also a curriculum committee involving additional legal academics, which assisted in preparing the curriculum plan and course outlines that formed part of TWU's proposal.

TWU also conducted market research in 2012 to ensure that there was adequate demand for lawyers and articling students graduating from a TWU School of Law.

When these processes were completed, TWU's proposal was thoroughly reviewed and approved by the University Senate and Board of Governors.

TWU then finalized and submitted the formal proposal for its School of Law to the Federation and Ministry in June of 2012.

#### ***(a) The Proposal for a School of Law***

TWU has assembled a very strong and very solid proposal for a new School of Law. The School of Law will have a 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 TWU, specializations will be offered in charities and social justice law and in small business and entrepreneurial law.

TWU's School of Law is not intended to be a large one. Consistent with TWU's philosophy of smaller class sizes, the proposed first year class will be only 60 students, with a total student body growing to 170 students by the third year of operation.

The focus of the proposed curriculum, set out in great detail in the proposal, is on the development of core competencies required for the practice of law, including a strong and comprehensive ethics and professionalism component.

The background, impetus and rationale for establishing a law school at TWU were articulated in great detail in its proposal. Particulars of the proposed admissions policy, curriculum, library plan, and faculty/staff requirements were also provided, in detail, as were operational particulars, including the facilities plan. A course outline for every course to be provided by the School of Law was prepared and provided as part of the proposal.

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 (LAW 602), Ethics and Professionalism. A summary description of Law 602 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]

Before the proposal was submitted to the Federation and the Ministry, it was comprehensively reviewed by two highly 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 were included with the proposal. Both concluded that the proposed program was a good one. Mr. Oosterhoff concluded that "the proposal is a sound one and highly relevant in the current Canadian market." Mr. Robinson specifically complimented the program's "emphasis on ethical standards and professionalism and the development of the legal skills and competencies".

All of the detail of the proposal, laid out in over 160 pages, cannot be adequately summarized here. TWU has provided or offered to provide a copy of the proposal to all law societies in Canada, including LSBC, updated to implement all of the recommendations of the Federation and Ministry.

TWU respectfully submits that no Bencher should consider voting in favour the Motion before she or he first reads and understands the full proposal, together with the Federation's reports on the proposal. Without doing so, Benchers cannot understand the quality and strength of TWU's proposed School of Law.

***(b) The Federation Process and Approval***

As noted, TWU submitted its proposal to both the Federation and the Ministry on June 15, 2012. At the same time, TWU formally advised the Canadian Council of Law Deans, the British Columbia law deans and the Law Society of B.C. of the formal proposal and offered to provide a copy.

The Federation's approval committee was comprised of senior members of the bar from across the country, each of whom possesses specific qualifications and experience relevant to the role of assessing TWU's proposal and law school programs.

The committee's review began during a teleconference in September of 2012. It continued during six days of in-person meetings and five conference calls between January and December of 2013 (see para. 34 of the final report). The committee was assisted in its work by Professor Bruce Elman of the University of Windsor's Faculty of Law, who provided advice on the administration of the proposed law school and the teaching of law (see para. 41 of the final report). Professor Elman is a former law dean.

On June 28, 2013, the Federation's Common Law Program Approval Committee requested further information on certain aspects of the proposal, including contingency plans, funding, facilities and admissions. TWU provided a detailed response on August 13, 2013.

On October 30, 2013, the committee sought further information on certain aspects of the proposal, including particulars of the criminal law courses and legal research competency. TWU responded on November 1, 2013.

On December 16, 2013, after eighteen months of study, the Federation granted preliminary approval to the proposal and TWU's School of Law. The full report can be found here: <http://www.flsc.ca/documents/ApprovalCommitteeFINAL.pdf>.

The committee concluded that TWU's proposal was "comprehensive and is designed to ensure that students acquire each competency included in the national requirement" (para. 47). The committee expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching. It found that TWU met that issue and that it was not a deficiency in the proposal. It specifically referenced and relied on TWU's statements that:

- TWU is committed to fully and appropriately addressing ethics and professionalism;
- TWU recognizes and acknowledges its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of both substantive law and ethics and professionalism;
- TWU acknowledges that human rights laws and Section 15 of the *Charter* 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."

TWU completely stands behind all of these statements (see paras. 50-52 of the Federation's report).

The only other issues raised by the committee were relatively minor points with respect to the annual budget and library acquisitions budget.

There were only two possible outcomes of the committee's work: "preliminary approval" and "not approved". TWU was very pleased that its proposal received "preliminary approval".

This preliminary approval will be followed by an annual review process so that TWU will be scrutinized through all phases of the School of Law's establishment, as it hires a dean and faculty, as students enter and progress through the curriculum and as it produces its first graduates. That process will ensure that the national standard is met and that TWU lives up to its commitments. The Federation has a careful and comprehensive process that individual law societies can, and should, trust and depend on.

*(c) The Federation's Special Advisory Committee*

In response to submissions from a variety of organizations and people opposed to TWU's proposal, the Federation established its Special Advisory Committee, chaired by John Hunter, QC to advise on the implications of the Community Covenant. TWU made submissions to the Special Advisory Committee on May 17, 2013. Those submissions are appended to the report of the Special Advisory Committee, which can be found here: [http://www.flsc.ca/\\_documents/SpecialAdvisoryReportFinal.pdf](http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf).

There were significant public representations and submissions made to the Federation, addressing all of the same issues raised in submissions to the LSBC by opponents of TWU's School of Law.

The Special Advisory Committee reviewed all of the submissions made to the Federation, together with TWU's response.<sup>21</sup> It should be noted that these submissions included the same arguments, from many of the same opponents, as are now presented to law societies across Canada in opposition to TWU's School of Law.

The Special Advisory Committee also considered the relevant law, including the Supreme Court of Canada's decision in *TWU v. BCCT*. It obtained a legal opinion from John Laskin of Tory's, who reviewed the arguments made against TWU's proposal, including the paper published by Professor Elaine Craig. After thorough review, he concluded that *TWU v. BCCT* is binding law and applicable in these circumstances. Specifically, he opined that "if the TWU teachers program could be relied on 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." TWU agrees with this conclusion as it is consistent with its commitment to do exactly that.

---

<sup>21</sup> Special Advisory Committee Report, para. 8

To quote Mr. Laskin:

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.” 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. 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*. [Emphasis added]

The Special Advisory Committee, after detailed consideration, concluded that there was no valid public interest reason to refuse approval to TWU’s proposal. Specifically, it concluded at paras. 65-66:

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

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

***(d) The Ministry Process and Approval***

In addition to the Federation’s process, the Ministry undertook a comprehensive review of TWU’s proposal. As noted, it received the proposal on the same date as the Federation (June 15, 2012).

The Ministry’s review was done through its Degree Quality Assessment Board (“DQAB”) under the *Degree Authorization Act*. The DQAB is an advisory board to the Minister of Advanced Education. Under the DQAB process, submissions for new degree programs are posted online for public review and comment. No concerns were raised during the public review process. The DQAB secretariat then appointed an expert review panel to review the proposal, review all supporting documents and do a thorough site visit.

The expert review panel consisted of former and existing faculty of the law schools at Queen’s University, University of British Columbia, University of Victoria, University of Alberta, University of Windsor and Thompson Rivers University. Among these panel members were



former deans of the law schools of University of Alberta, Queen's, UBC, and Windsor. The composition of this review panel eviscerates the arguments made by some opponents that the proposal was not sufficiently reviewed by legal academics.<sup>22</sup>

The site visit occurred on March 26, 2013 and allowed TWU to elaborate on its proposal and provided an opportunity for direct dialogue with the expert panel.

On April 17, 2013, the expert review panel provided its report to the Ministry. This report is not public, but was provided on a confidential basis to TWU. TWU responded in confidence to the report on May 17, 2013. The expert panel provided its advice and the DQAB found that TWU's proposal would meet all quality assessment criteria. In reaching this decision, the expert panel and thus the DQAB considered the specific character of TWU as a religious educational community, including consideration of the Community Covenant.

On December 17, 2013, the Minister granted approval to the J.D. program at TWU.

*(e) Conclusions from the Reviews*

TWU's proposal for its School of Law has undergone numerous and comprehensive reviews by those with significant expertise and law school experience. This has been a long and detailed process, which was started by TWU in 1993. The formal review process alone took 18 months and involved significant dialogue and, in the case of the Ministry, a detailed site visit. All aspects of the proposal have been considered in detail, including all aspects of the "public interest".

The Federation took the additional step of appointing the Special Advisory Committee. It did so anticipating the same issues that have been addressed by various parties making representations to the LSBC. That committee, which was comprised of exceptionally knowledgeable and respected lawyers with significant experience in regulation by law societies in Canada, concluded that there is no public interest justification to refuse admission of TWU's School of Law graduates to the practice of law.

Nothing has been omitted from contemplation by the various committees and experts that reviewed TWU's proposal. The only reasonable conclusion is that TWU's proposal is a very strong one and there is no reasonable basis to refuse approval of it.

---

<sup>22</sup> See, for example, page 8 of the UBC Submissions to Disapprove TWU

#### 4. MAINTAINING THE NATIONAL STANDARD

Each of Canada's law societies is mandated by provincial or territorial statutes to regulate the legal profession in the public interest. An important aspect of this mandate is to determine the criteria for admission to the profession, including the academic framework for entry into law society bar admission or licensing programs.

Recognizing the need to have a common standard among law societies, in 2007 the Federation established a task force to recommend national academic requirements for Canadian common law degrees. The task force released its report and made recommendations for the national requirement in October of 2009. The national requirement was approved by Canada's law societies in 2010.

The Federation then established the Common Law Degree Implementation Committee to make recommendations on how to measure compliance with the national requirement. It released its report in August of 2011, recommending that the Federation establish its Approval Committee, mandated to determine whether existing or proposed law school programs meet the national requirement. The composition of the Approval Committee and the manner in which the Approval Committee should assess compliance was prescribed in detail. The recommendations of the Common Law Degree Implementation Committee were approved by each of the law societies and the Approval Committee was established in January, 2012.

TWU followed the Approval Committee's compliance process for new common law programs and has received approval by the Federation. Additionally, as noted, the Federation went beyond this national requirement to specifically address concerns and opposition to TWU based on its religious character and foundation.

Some law societies, notably Alberta and Saskatchewan, have recognized the considerable work of the Federation and have already indicated that they will accept its determinations.

Given that TWU's proposal has received approval by the Ministry, this presents the possibility that graduates from a TWU School of Law will be admitted to practice in some, but not necessarily all, law societies in Canada. This has the potential to seriously damage and undermine the considerable work done by all of the law societies and the Federation to establish and accept a national requirement. It also may cause unacceptable lawyer mobility issues in the future and may, in fact, create infringements of labour mobility agreements and statutes, as described below.

***(a) The National Standard is an Important Aspect of Public Interest Regulation***

The Federation's application of the national standard to TWU's School of Law, and its findings, should not be lightly ignored or dismissed. The work of the Federation in reviewing proposed

faculties of law at Canadian universities is not merely an issue of delegation of authority by law societies. There are formal agreements in place between law societies and governments establishing lawyer mobility, as well as legislation implementing such agreements.

The law societies of each Canadian province entered into the National Mobility Agreement (“NMA”) in 2002 (this was complemented by the Territorial Mobility Agreement in 2006)<sup>23</sup>, aimed at facilitating temporary and permanent mobility of lawyers between common law provinces.

Section 32<sup>24</sup> of the NMA provides that each law society “will require no further qualifications for a member of another governing body to be eligible for membership” other than: (a) entitlement to practice in the lawyer’s home jurisdiction; (b) good character and fitness on the standard ordinarily applied to applicants for membership; and (c) other qualifications that ordinarily apply. Under the NMA, TWU School of Law graduates will have the right to have their qualifications recognized across all common law jurisdictions once they have been admitted to practice by any law society in Canada, as can now occur in at least Alberta and Saskatchewan.

This is not merely a matter of agreement by the law societies. While Canadian law societies and the Federation were ahead of other government agreements and legislation that enhanced labour mobility in Canada, subsequent agreements and legislation have given additional force of law to the substance of the NMA requirements.

In 2009, the Agreement on Internal Trade (“AIT”)<sup>25</sup> was amended to address barriers to labour mobility in professions in Canada. Chapter 7 of the AIT now requires mutual recognition of the certification of workers in regulated occupations<sup>26</sup>, subject to narrow exceptions. Each province is required by the AIT to ensure compliance with Chapter 7 by “governmental bodies and by non-governmental bodies that exercise authority delegated by law”, including law societies.<sup>27</sup>

Article 706(1) of the AIT expressly states:

Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

While article 706(3) and article 706(4) permit regulators, as a condition of certification of any worker, to impose certain requirements related to payment of fees, background checks, evidence

---

<sup>23</sup> The 2013 NMA was signed by all law societies and the Chambre des notaires du Quebec to replace the existing NMA and the Quebec Mobility Agreement. It will come into effect once implemented by each law society.

<sup>24</sup> The same provision is s.33 of the 2013 NMA.

<sup>25</sup> The AIT is an agreement between the Federal government, all provincial governments and all territorial governments except Nunavut.

<sup>26</sup> *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at [http://www.ait-aci.ca/labour\\_en/LM\\_Backgrounder-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Backgrounder-draft_090302revised.pdf)

<sup>27</sup> Article 703(1)

of good character and demonstration of knowledge, such requirements must be the same as or substantially similar to, but no more onerous than, requirements imposed by the regulatory authority as part of its normal certification process. Such requirements must “not create a disguised restriction on labour mobility”.<sup>28</sup>

Article 708 allows parties to impose additional measures of certification, provided that “the purpose of the measure is to achieve a legitimate objective; the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and the measure does not create a disguised restriction to labour mobility”.<sup>29</sup> Such measures ***cannot be approved by regulatory authorities***. They must be approved by the applicable provincial or territorial government.<sup>30</sup>

“Legitimate objective” is defined in Article 711, meaning one or more of:

- public security and safety;
- public order;
- protection of human, animal or plant life or health;
- protection of the environment;
- consumer protection;
- protection of the health, safety and well-being of workers;
- provision of adequate social and health services to all its geographic regions; and
- programs for disadvantaged groups.<sup>31</sup>

Article 708(2) cautions that “a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective”.<sup>32</sup>

In an Article 1703 Panel decision regarding a complaint by Manitoba regarding Ontario’s imposition of additional requirements for certified general accountants seeking certification to practice public accounting in Ontario, the Panel considered the objectives of the AIT and the

---

<sup>28</sup> Article 706(3)(i) and Article 706(4)(f)

<sup>29</sup> Article 708(1)

<sup>30</sup> Article 708(3)

<sup>31</sup> Article 711(1)

<sup>32</sup> Article 708(2)

2009 amendments to Chapter 7 and made several findings with respect to the application of Article 708, including:

- The use of Article 708 is an exception to the obligations of Chapter 7 and specifically Article 706(1), and “should be narrowly construed and strictly applied”;<sup>33</sup>
- the bar to justify exceptions to the objective of labour mobility is a “high one”;<sup>34</sup> and
- the onus is on the party seeking to impose the additional requirement to establish that a legitimate objective exists and that the measure is necessary to meet the legitimate objective.<sup>35</sup>

The British Columbia legislature enacted the *Labour Mobility Act* (“LMA”) which imposes a requirement on British Columbia regulatory authorities to operate in a manner consistent with British Columbia’s obligations relating to labour mobility under the AIT, thereby allowing British Columbia to “hold regulators to account for labour mobility”.<sup>36</sup>

Section 3 of the LMA provides that a worker who is certified in relation to an occupation in another province may apply to the applicable British Columbia regulator for certification in relation to that occupation, or equivalent occupation, in British Columbia.<sup>37</sup> Upon receiving such an application, the regulatory authority must “consider and determine the application in a manner consistent with the government’s obligations under Chapter Seven of the [AIT]... [and] issue any certification required by Chapter Seven of the [AIT]”.<sup>38</sup>

The regulatory authority may only impose additional terms, conditions or requirements that the regulatory authority is authorized to impose in accordance with Chapter 7 of the AIT, the LMA, the act governing the occupation, or any regulation, bylaw, rule, resolution or measure under the LMA or the act governing the occupation, “to the extent that those terms, conditions or requirements are not inconsistent with the government’s obligations under Chapter Seven of the [AIT]”.<sup>39</sup>

Additionally, pursuant to section 2 of the LMA, a regulatory authority “must not propose or apply, in relation to an occupation or an application for certification in relation to an occupation, a measure that constitutes an inconsistent measure referred to in paragraph 1 of Article 708 of the [AIT], unless that measure is approved by both the minister charged with administration of [the

---

<sup>33</sup> *Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario’s Notice of Measure with respect to Public Accountants* at p. 10, available at [http://www.ait-aci.ca/index\\_en/dispute.htm](http://www.ait-aci.ca/index_en/dispute.htm)

<sup>34</sup> *Ibid.* at p. 14

<sup>35</sup> *Ibid.* at p. 11

<sup>36</sup> *Labour Mobility Q & A*, Ministry of Jobs, Tourism and Skills Training and Responsible for Labour at p. 4, available at [http://www.jtst.gov.bc.ca/labourmobility/docs/qa\\_labourmobility.pdf](http://www.jtst.gov.bc.ca/labourmobility/docs/qa_labourmobility.pdf).

<sup>37</sup> *Labour Mobility Act*, S.B.C. 2009, c. 20, s. 3(1).

<sup>38</sup> *Ibid.*, s. 3(4)(a) and (b).

<sup>39</sup> *Ibid.*, s. 3(4)(c).

LMA] and the minister responsible for the Act under which the occupation is or may be regulated”<sup>40</sup>.

As a result, the LSBC should only ignore the approval granted by the Federation in very narrow circumstances and for legitimate and demonstrably justifiable reasons. To the extent that a decision by the LSBC seeks to impose additional measures of certification as contemplated under Article 708 of AIT, those measures must be approved by both of British Columbia’s Minister of Jobs, Tourism and Skills Training and Minister Responsible for Labour and British Columbia’s Minister of Justice.

***(b) Harm to National Standards and Labour Mobility Obligations***

If a law society were to refuse to certify a lawyer applying to transfer from another Canadian jurisdiction on the basis that the lawyer had obtained his or her law degree from TWU, that law society would be acting contrary to the requirement of mutual recognition of the certification of workers under Article 706(1) of the AIT and s. 32 of the NMA. It is difficult to see how such a law society could frame an additional measure to address this and justify it as a legitimate objective exception under Article 708 of the AIT. This conclusion was confirmed by Messrs. Foy QC and Thomas in their opinion to the LSBC dated March 17, 2014:

Such action would clearly involve LSBC “looking behind” the applicant’s existing certification obtained in another Province so as to directly assess the applicant’s education. In our view there is no question that such an individual assessment of the transfer applicant’s educational credentials would be inconsistent with Article 706(1).<sup>41</sup>

...

Not only do we believe that it will be inherently difficult to demonstrate that such deficiencies in educational outcomes actually exist, but the LSBC may be taking disapproval action now, before operation of the Law School has even commenced and before any graduates (with or without such deficiencies) have been produced, meaning that the LSBC would be making its initial disapproval decision unsupported by any positive evidence that such alleged educational deficiencies actually exist.<sup>42</sup>

...

In other words, there is no question that, when the LSBC receives an application for certification from a lawyer certified (called to the bar) in another province, it is, by law, required to process that application and issue certification in accordance with the Province’s obligations under AIT Chapter Seven.<sup>43</sup>

---

<sup>40</sup> *Ibid.*, s. 2.

<sup>41</sup> March 17, 2014 letter from Borden Ladner Gervais, page 14

<sup>42</sup> *Ibid.*, page 15

<sup>43</sup> *Ibid.*, page 17

If a TWU law degree is acceptable for a transferring lawyer, it cannot reasonably be concluded that a TWU law degree is insufficient for admission as an articulated student in British Columbia. This would be an absurd result.

Additionally, a law society that refuses to recognize a degree from TWU's School of Law, despite the Federations' approval in accordance with the Federation's national standards, and despite other Canadian law societies' acceptance of the sufficiency of the Federation's approval, is adopting an occupational standard in a manner that is not conducive to labour mobility, which is arguably contrary to Article 707 of the AIT.<sup>44</sup>

The LSBC has been asked by many opponents of TWU's School of Law to refuse approval of TWU graduates based on the religious beliefs on which TWU is founded, regardless of the calibre of education offered.

Such an approach would seriously damage the national approach to approval of legal education and mobility rights of lawyers in Canada. Additionally, the LSBC cannot properly take that approach without due regard to its obligations under the NMA and the LMA. It certainly cannot take such an approach that would impose additional restrictions on TWU educated lawyers and articulated students unless they specifically meet a "legitimate objective" as defined in Article 711 of the AIT.

In short, it is not legally appropriate for the LSBC to disapprove of TWU's School of Law because it does not agree with tenets of the religious beliefs on which TWU is founded or how those beliefs are realized through the Community Covenant. This is quite apart from the fact that the relevant matters to be considered by the LSBC in considering the Motion are limited to academic qualifications, as discussed in the next section.

## **5. NATURE OF THE DECISION BEFORE THE LSBC**

For the reasons articulated, the statutory authority of the LSBC with respect to the protection of the public interest should be read and understood in conjunction with the LMA and the specific question before the Benchers, namely whether TWU's School of Law will provide graduates with adequate academic qualifications to become lawyers.

---

<sup>44</sup> Occupational standards are addressed in Article 707 of AIT. While each party to AIT maintains its right to adopt occupational standards and to establish the level of protection it considers appropriate in the circumstances, the "[p]arties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards". As explained in the Backgrounder, "[w]hen changing a standard or creating a new standard, provinces and territories shall adopt, to the extent possible and where practical, occupational standards based on common interprovincial standards or, at least, in a manner conducive to labour mobility. They shall notify and afford other provinces and territories the opportunity to comment on proposed new or revised standards." *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at [http://www.ait-aci.ca/labour\\_en/LM\\_Backgrounder-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Backgrounder-draft_090302revised.pdf)

Under subsection 20(1)(a) of the *Legal Profession Act*, the Benchers are authorized to make rules to:

- (a) establish requirements, including *academic requirements*, and procedures for the enrollment of articulated students; [emphasis added]

Under subsection 21(1)(b), the Benchers are also authorized to make rules to:

- (b) establish requirements, including *academic requirements*, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court; [emphasis added]

These provisions are consistent with the purpose of the LSBC in s.3(c) of the *Legal Profession Act* to “uphold and protect the public interest ... by ... (c) *establishing standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission*” [emphasis added].

The LSBC has established rules under these specific statutory provisions. In particular, the LSBC has established Rule 2-27 for “Enrolment in the Admission Program”. Under Rule 2-27(3), applicants for enrolment, including any TWU School of Law graduate, will have to deliver certain listed items to the Executive Director, including: (b) *proof of academic qualification* under subrule (4)” [emphasis added].

Rule 2-27(4) lists what constitutes “*academic qualification*”, which includes the successful completion of a J.D. or LL.B. from an “approved common law faculty of law.”

Under the Motion, the LSBC will consider whether, under Rule 2-27(4.1), TWU’s School of Law should be declared not to be “an approved faculty of law”.

The statutory authority of the LSBC is to establish requirements, including academic requirements. Mr. Gomery, in his opinion of May 8, 2013 (prior to the creation of Rule 2-27(4.1)), notes that ss.20(1)(a) and 21(1)(b) of the *Legal Profession Act* *could* allow the Law Society to promulgate rules that are not limited to academic qualifications.

However, Rules 2-27(4) and (4.1) are with respect to *only academic requirements* for enrolment in the LSBC admission program. In the opinion Mr. Gomery provided on March 15, 2014, he acknowledges that Subrule 2-27(4.1) is limited to only academic requirements and that the Law Society’s decision must be limited to only matters relevant to academic qualifications:

[U]nder Rule 2-27(4.1), the Law Society is confined to acting on grounds that are related to the academic qualifications to be offered by the proposed law program...<sup>45</sup>

As such, only issues relevant to academic qualifications may properly be considered in relation to the Motion. The LSBC may consider whether TWU School of Law graduates will be academically qualified to become articulated students and, eventually, lawyers called to the Bar in

---

<sup>45</sup> March 15, 2014 letter from Nathanson, Schacter & Thompson LLP, page 2



British Columbia. Other considerations are extraneous to the LSBC's decision of whether to pass the Motion.

In their letter of March 17, 2014, Messrs. Finch QC and Bank of Guild Yule LLP ("Guild Yule") make a list of "Matters for the Benchers to Consider".<sup>46</sup> In doing so, they only make reference to section 3 of the *Legal Profession Act*. They do not cite or reference either ss.20(1)(a) or 21(1)(b) of the *Legal Profession Act* or otherwise acknowledge that Rule 2-27(4.1) and the Motion are properly limited to only matters pertaining to academic qualifications. As noted by Mr. Gomery:

To the extent that the argument [sic] against TWU are not in substance arguments relating to academic qualification, they should not be relied upon as grounds for disapproval under Rule 2-27(4.1), nor could they be relied upon as grounds for the imposition of the community covenant condition.<sup>47</sup>

In the result, many of the points and arguments summarized by Guild Yule can be considered by the Benchers, but only to the extent that they legitimately impact on academic qualifications. Some arguments advanced by opponents of TWU's School of Law and referenced by Guild Yule are not directed at the issue of, and are simply irrelevant to, academic qualifications of TWU graduates.

Stated another way, and much as in the *TWU v. BCCT* case, the Community Covenant is relevant to the Motion if, and only if, it has an impact on the academic program that will be offered at TWU's School of Law. As succinctly noted by Mr. Gomery QC in his opinion to the LSBC dated February 25, 2014:

Focusing on the expected conduct of prospective lawyers following graduation, [the Benchers] should consider whether there is evidence, as opposed to assumption or general perceptions, bearing on whether graduates of TWU will be inadequately qualified.<sup>48</sup>

The Ministry and the Federation have already found that graduates from the TWU School of Law will be adequately trained. They will meet all relevant academic qualifications. None of the opponents have provided any evidence to the contrary.

## **6. SHOULD THE LSBC DENY TWU GRADUATES THE RIGHT TO PRACTICE LAW?**

It will come as no surprise that TWU strongly submits that there is no legitimate basis to deny its graduates the right to become full members of the LSBC and to practice law in British Columbia. There is no basis to conclude that TWU graduates will not have sufficient academic qualifications for the practice of law. The Federation, through its Approval Committee and

---

<sup>46</sup> March 17, 2014 letter from Guild Yule, pages 7 and following

<sup>47</sup> March 15, 2014 letter from Nathanson, Schacter & Thompson LLP, page 4

<sup>48</sup> Page 2.

Special Advisory Committee, and the Ministry, have both concluded that TWU's proposal should be approved.

As explained above, under the NMA, the AIT and the LMA, the Federation's conclusions should not be treated as merely advisory in nature. In the modern context of lawyer mobility, the Federation's conclusion should only be ignored for legitimate reasons within the confines of those agreements and statutes.

The Federation considered all of the same issues raised before the LSBC in great detail. There is no new basis upon which the LSBC should deny accreditation of TWU graduates.

TWU did not ask the Federation or the Ministry to endorse or agree with the religious beliefs on which it is based. It is similarly not asking any law society to endorse or agree with them. That is not the question before the LSBC.

TWU asks only that the religious beliefs of its community be respected and tolerated as they should be in any equal, just and pluralistic society.

Neither the LSBC nor the courts are qualified or entitled to consider the merits or validity of the religious beliefs on which TWU is founded (*R .v Jones*, [1986] 2 S.C.R. 284 at 295; *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para.51). Many of the submissions opposed to TWU exhibit a profound misunderstanding of religious belief and practice. Others exhibit a motivation to entirely discredit and delegitimize religious belief about the morality of certain sexual practices. It is simply not appropriate and worse, discriminatory on the basis of religion, to target such religious beliefs for moral disapprobation.

As should be clear to all law societies, many lawyers practicing in Canada today hold religious beliefs similar to those on which TWU is founded. None of them are or should be disqualified from the practice of law, provided that they continue to display professional competence and ethical behaviour. That same measure of respect, tolerance and understanding must be shown to graduates of TWU's School of Law.

TWU submits that there is no basis upon which the LSBC may deny TWU graduates the ability to practice law in British Columbia. While not all issues summarized in the Guild Yule letter of March 17, 2014 are relevant to the issue before the LSBC, these submissions will generally follow the format laid out by Guild Yule, for ease of reference:

**A. *Legal Considerations: 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.

(i) *Statutory Mandate*

Some point to the fact that the LSBC operates under a different statutory framework. The BCCT had as its object “to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members”.

The Motion is with respect to the academic standards applicable to TWU graduates, a matter that the LSBC can consider having regard to upholding the public interest. These mandates, and the matters under contemplation by the BCCT then and the LSBC now, are therefore very similar. As such, the statements and findings of the Supreme Court of Canada as quoted by Guild Yule at pages 21-24 of their letter are directly applicable to the consideration of the Motion.

(ii) *The Same Considerations Apply*

Many opponents attempt to avoid the binding result of *TWU v. BCCT* because “the issue here is whether it is contrary to the public interest”<sup>49</sup> to accredit graduates of TWU. With respect, that was exactly the issue and argument advanced by the BCCT. The BCCT decided not to approve TWU’s program “because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest...”<sup>50</sup> The Court held that while the BCCT could consider alleged discriminatory practices as part of its review of the public interest, it also had to consider religious freedom and was wrong to have “inferred without any concrete evidence that such views will limit consideration of social issues ...[or] have a detrimental impact on the learning environment...”<sup>51</sup> The case is directly applicable to, and clearly undermines, the reasoning advocated by TWU’s opponents.

The arguments advanced by the opponents of TWU’s proposal were made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. 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.

This is the same conclusion reached by John Laskin, who specifically reviewed and rejected the arguments of Professor Craig in concluding that the grounds advocated by her for refusing approval “would be highly questionable.” It is also the same conclusion reached by Mr. Gomery QC noting that the Supreme Court of Canada in *Whatcott* and *Doré* “reaffirmed its commitment to an analytical approach that balances equality rights against other rights protected under the *Charter*.”<sup>52</sup>

---

<sup>49</sup> Ronald J. MacDonald and Amy Sakulauskas, February 10, 2014 submission

<sup>50</sup> *TWU v. BCCT*, para. 5

<sup>51</sup> Paras. 26 and 32

<sup>52</sup> May 8, 2013 letter, page 9

Other TWU opponents suggest that the decision was specific to British Columbia law and that, as a result, acknowledging TWU's freedom of religion and association rights to maintain the Community Covenant is unnecessary because 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 merely a finding that TWU is in compliance with B.C. legislation. These submissions are incorrect for reasons detailed below.

(iii) *Societal Changes Do Not Undermine the Rights of TWU and its Community Members*

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 religious community. A number of opponents of TWU's School of Law emphasize the recognition of same-sex marriage in Canada as a societal change since 2001, which it certainly is, but they conveniently ignore or entirely dismiss the preamble and s.3.1 of the legislation that created same-sex marriage in Canada.

The preamble and section 3.1 of the *Civil Marriage Act*<sup>53</sup> state:

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;

...

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 and expressing religious beliefs that marriage is "the union of a man and woman to the exclusion of all others". The portion of the Community Covenant to which TWU's opponents object indicates nothing beyond the recognition of such religious beliefs within a religious educational community.

It has always been recognized and acknowledged in the *Civil Marriage Act* and in human rights legislation that there must be a balancing to ensure that freedom of religion and equality on the

<sup>53</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html>

basis of religion are protected. The Supreme Court of Canada has already determined how that balancing is to occur in these circumstances.

(iv) *Decision in Whatcott*

There are two points that should be made, both of which demonstrate that the decision in *Whatcott* does not undermine the result in *TWU v. BCCT*:

1. As noted by all of Mr. Laskin, Mr. Gomery QC and Guild Yule, the Supreme Court of Canada confirmed that courts are required to balance equality and freedom of religion values to the point at which conduct linked to religious belief ***results in actual harm***. This was exactly the approach taken in *TWU v. BCCT*. Perceptions and unsubstantiated anticipation of harm are simply not sufficient.

Both Mr. Laskin and Mr. Gomery QC agree that any decision rooted in assumptions, as opposed to concrete evidence of actual harm, would be struck down.

2. *Whatcott* does ***not*** say that there is no remaining valid legal distinction to be drawn between sexual orientation and sexual conduct. In fact, at para. 122, the Court said the opposite:

“I agree that sexual orientation and sexual behaviour can be differentiated for certain purposes.”

*Whatcott* dealt with hate speech and the Court rightly rejected an artificial distinction between hate directed toward persons and toward behaviour “in an effort to mask the true target”. It does not stand for the proposition that TWU cannot have a Community Covenant proscribing a variety of behaviour that is contrary to the religious beliefs and practices of its community.

The attempt of opponents to link TWU with the behaviour of Mr. Whatcott is offensive. Hate directed towards any person is directly contrary to TWU’s religious values as articulated in the Community Covenant.

(v) *Perception that TWU Graduates May Discriminate or that LSBC is Sanctioning TWU’s Religious Beliefs*

As noted above, TWU does not seek affirmation or approval of its religious beliefs with respect to the morality of sexual behaviour. In fact, LSBC is not entitled to opine on the validity of the religious beliefs of the TWU community.<sup>54</sup> A decision to acknowledge that TWU’s School of

---

<sup>54</sup> *R. v Jones*, [1986] 2 S.C.R. 284 at 295; *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para.51

Law will adequately prepare students for the practice of law *cannot* be legitimately seen as an imprimatur or approval of such beliefs.

TWU's opponents ask the LSBC to deny recognition of the graduates for admission to the practice of law simply because of one narrow aspect of TWU's Community Covenant with respect to a traditional Christian view of marriage and sexual relationships.

Opponents articulate this objection in a variety of ways, but it amounts to the same thing: they ask the LSBC not to accredit or recognize TWU graduates because of the nature of TWU as a religious educational community including a traditional Christian view of marriage. This is not, as suggested by some, merely a separate "institutional test", that is distinct from an assessment of the quality and qualifications of graduates. It is all about (and certainly should be about) whether TWU can adequately and appropriately educate lawyers. TWU is not seeking agreement with, or approval of, the religious beliefs of its community. Neither should the LSBC withhold recognition of TWU graduates simply because some of its members do not agree with or approve of the religious beliefs of TWU.

The B.C. College of Teachers also argued strongly that because of the perception of "discriminatory practices", it should not approve TWU's program. The Supreme Court of Canada carefully and properly explained that there is an important difference between perceptions based on improper conduct by individuals and perceptions founded on religious principles on which TWU is established:

All this to say that even if it was open to the BCCT to base its decision on perception rather than evidence of actual discrimination or of a real risk of discrimination, there is no reason to give any deference to that decision.<sup>55</sup>

...

For the BCCT to have properly denied accreditation to TWU, it should have based its concerns on specific evidence. It could have asked for reports on student teachers, or opinions of school principals and superintendents. It could have examined discipline files involving TWU graduates and other teachers affiliated with a Christian school of that nature. Any concerns should go to risk, not general perceptions.<sup>56</sup>

The analysis of the Federation and the Ministry focused appropriately on whether graduates from TWU's School of Law will be properly educated and adequately prepared to act as lawyers. The Federation specifically and exhaustively considered whether the Community Covenant undermines the ability of TWU to educate lawyers. Quite rightly, they found that it does not.

It is simply inappropriate to deny accreditation of graduates based on perceptions. TWU does not ask the LSBC or any other regulatory body to agree with or endorse its religious principles.

---

<sup>55</sup> *TWU v. BCCT*, para. 19

<sup>56</sup> *TWU v. BCCT*, para. 38

It would be inappropriate to do so. It is equally inappropriate for the LSBC to express disagreement with TWU's religious beliefs.

TWU asks only that its program be assessed on proper criteria, not a general sense that the religious beliefs on which it is founded are wrong or "skewed"<sup>57</sup>. TWU's opponents are entitled to their views on TWU's religious beliefs, as TWU and the members of its community are entitled to theirs. But such views are not a proper basis upon which TWU's graduates should be refused admission to the practice of law in British Columbia.

It is not appropriate to link religious beliefs of TWU or the members of its community with anticipated unethical conduct by lawyers in the future. This is what a number of opponents do, including in the UBC Submissions to Disapprove TWU. They take this to an extreme, expressly indicating that "a practicing lawyer who is employed by TWU and in a position to make employment or disciplinary decisions may be forced to choose between fulfilling their contractual duty to enforce the Community Covenant Agreement and complying with the *Code of Professional Conduct*"<sup>58</sup>. This wrongly presupposes that requiring compliance with the Community Covenant is somehow illegal. Additionally, rather than presuming such a lawyer would act unethically, it should be presumed that the lawyer will comply with her or his ethical obligations and advise TWU as to its legal obligations.

In any event, such submissions embody a false dichotomy between maintaining one's religious beliefs and acting in an ethical manner. As stated by some opponents:

- "However, the public may *perceive* that a TWU law student is incapable of exercising impartiality..."<sup>59</sup>
- "...give rise to the *appearance* of bias among all TWU graduates..."<sup>60</sup>

All lawyers are required, from time to time, to reconcile their personal beliefs and professional obligations. It cannot be properly assumed that TWU graduates will be less able than other lawyers to do so. To make such an assumption is to stereotype TWU graduates as discriminatory and unprofessional. It would be wrong to rely on such stereotyping to rob them of professional accreditation.

To paraphrase the Supreme Court of Canada, the freedom of religion of TWU and its students is not accommodated if the consequence of its exercise is the denial of the right to full participation in the bar of British Columbia.<sup>61</sup>

---

<sup>57</sup> Melissa Harrison, March 4, 2014

<sup>58</sup> Page 36

<sup>59</sup> Sandra Kovacs, February 25, 2014

<sup>60</sup> Chad McCarthy, January 31, 2014

<sup>61</sup> *TWU v. BCCT*, para. 35

**B. Evidentiary Considerations: No Evidence of Harm**

A review of the summary of submissions provided in the letter from Guild Yule shows that there is no evidence of any real risk of actual harm arising from a TWU School of Law. There is absolutely no evidence that TWU graduates would engage in harmful or discriminatory conduct. In its letter of March 7, 2014, TWU followed up on and requested responses to questions asked by one Bencher as to:

1. Whether other law schools have had difficulties with TWU graduates in terms of “anti-gay activities”; or
2. Whether any lawyers who attended or receive a degree from TWU had ever been disciplined by the Law Society for “anti-gay” activity.

There is no such evidence. In fact, the evidence and materials received by the LSBC indicates that TWU graduates have *not* engaged in harmful or discriminatory conduct:

- (a) Other law schools have not identified any discrimination issues involving TWU graduates.<sup>62</sup> The Dean of UVic’s law school specifically indicated that TWU graduates are “valued members of our community – indeed, in 2011 our gold medalist had previously studied at TWU...”<sup>63</sup>
- (b) The reports from the British Columbia Human Rights Tribunal for the years 2009-2010 through 2012-2013 raise no issues with respect to TWU;<sup>64</sup>
- (c) Neither the Teachers Regulation Branch nor the College of Registered Nurses of British Columbia indicate any difficulty or issues with TWU graduates;<sup>65</sup> and
- (d) There is no indication that TWU graduates who have become lawyers have been the subject of complaints regarding discrimination.<sup>66</sup>

Some opponents assume, without evidence, that TWU classrooms will be impoverished of critical thinking. The fact that a TWU graduate was recently the gold medalist at UVic’s law

---

<sup>62</sup> LSBC March 31 Memo, pp.1-2; LSBC Memo from Policy and Legal Services Department to Benchers, April 2, 2014 confirming no TWU graduate student misconduct hearings at UBC Law.

<sup>63</sup> LSBC March 31 Memo, Appendix 9

<sup>64</sup> LSBC March 31 Memo, Appendices 1-4

<sup>65</sup> LSBC March 31 Memo, pp.2-3

<sup>66</sup> LSBC March 31 Memo, p.3 and Appendices 5-8 (Annual Reports of the Law Society Equity Ombudsperson for the years 2009 – 2012)



school<sup>67</sup> strongly suggests otherwise. So do the experiences of other people who actually attended TWU:

I do note that while I attended school there I took a course where our professor invited an individual who had undergone the sex change process to speak to our class about the whole situation, and that individual actually spoke to that class over several different years. That always sticks out in my mind because that individual applauded the students of TWU for the respect that they provided her, even though they may not have agreed with her choice from their own moral standpoint.<sup>68</sup>

It is not appropriate to ask TWU to prove the negative (i.e. the lack of harm). To deny accreditation of TWU graduates there must be an evidentiary and factual foundation to do so.

(i) *Compatibility of the Covenant with Training in Equality Law and/or Ethics and Professionalism*

A number of opponents have suggested that TWU is not able to train future lawyers in ethics and professionalism. Others have said that legal education at TWU with respect to equality and human rights will be inherently flawed. They suggest that the fact that TWU maintains a religiously-based Community Covenant is incompatible with the ethical and legal training appropriately required of those seeking entry into the legal profession.

A sampling of the submissions made to the LSBC in this regard include:

- “The graduates of a TWU law program are, unfortunately, likely to adopt and promote the same discriminatory practices as TWU itself”<sup>69</sup>
- “Yet how can we expect graduates from TWU to do anything but discriminate?”<sup>70</sup>
- “I worry that TWU law graduates will not be able to treat all of their colleagues and peers with the courtesy and respect that should be expected of a member of the profession in this day and age.”<sup>71</sup>
- “Students of TWU will not be able to knowledgeably assist people who are gay, lesbian, transgendered, and bisexual who are married to, or wish to marry, a person of the same sex with any matter that pertains to matrimonial issues, as well as matters concerning wills for same-sex spouses, real estate transactions for a marital home between same-sex spouses, pension issues for the surviving spouse of a same-sex marriage, and child support and custody issues for children of same-sex marriages”<sup>72</sup>

---

<sup>67</sup> Lauren Witten, March 2, 2014; LSBC March 31 Memo, Appendix 9

<sup>68</sup> Natalie Hebert, January 30, 2014

<sup>69</sup> Kevin Hisko and Mia Bacic, February 28, 2014

<sup>70</sup> Suzanne Bizon, February 1, 2014

<sup>71</sup> Jacqueline Fehr, February 18, 2014

<sup>72</sup> Joan Rush, February 1, 2014

- "...will produce like-minded graduates who will not advance the principles of equality and fairness upon which our country and legal system are founded."<sup>73</sup>

These statements are made without any evidentiary or factual foundation. They are perceptions and presumptions of the authors and are inconsistent with the behaviour of graduates of TWU's existing programs. They are also wrong at law, intellectually flawed and deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

TWU has consistently and expressly recognized that human rights laws and section 15 of the Charter protect against and prohibit discrimination on the basis of sexual orientation. TWU has no desire to teach against these important protections.

The courses that will be offered at the TWU School of Law will ensure that students understand the scope of these protections in the public and private spheres of Canadian life. You will note from the course outlines in TWU's proposal that standard texts are proposed for such topics, all of which cover and include the historical inequality afforded homosexuals. No course on section 15 of the Charter or on provincial human rights protections would be complete without addressing cases such as *Vriend v. Alberta*, *Egan v. Canada*, and *Reference re Same-Sex Marriage*.

As noted above, TWU's program of study has two required courses on professionalism and ethics (LAW 508 and LAW 602), the latter of which will specifically challenge 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".<sup>74</sup> This is, of course, the obligation of every practicing lawyer in Canada.

TWU has offered to encourage all of its law students to become members of the Canadian Bar Association upon enrollment and to cover the cost of such membership during enrollment in the School of Law. TWU has also offered to cooperate with the BC Branch of the CBA by facilitating annual information sessions to acquaint TWU law students with the CBA. TWU has expressly suggested that one such annual session could be utilized, in whole or in part, by SOGIC or such other section that the BC Branch may designate.

The opponents cannot legitimately complain that TWU will fail to adequately and appropriately address substantive equality or ethics and professionalism. The Federation's two committees and the Ministry agreed that these topics will be properly and appropriately covered.

These opponents suggest that *the fact of* the Community Covenant undermines 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

---

<sup>73</sup> Katherine Wellburn, February 11, 2014

<sup>74</sup> TWU Proposal, page 22. See also full description of course at page 93

would not be “equipped to deal with students” and unable to “offer comfort and support to the students”<sup>75</sup>. 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.<sup>76</sup>

TWU recognizes its duty to teach equality and meet its obligation with respect to promulgating non-discriminatory principles in its teaching of ethics and professionalism. TWU unreservedly affirms the dignity and value of all individuals irrespective of their sexual orientation and agrees that this principle forms 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 Community Covenant.

As evident from the submissions received by the Federation and the LSBC, there are many students currently at public law schools that hold these same religious beliefs.<sup>77</sup> They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one can seriously suggest otherwise. However, if the opponents’ line of reasoning prevails, it opens the door to denying accreditation to individuals on the basis of religious belief. While some may suggest this is alarmist, 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.<sup>78</sup>

...

---

<sup>75</sup> 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

<sup>76</sup> *TWU v. BCCT*, paras. 32-33

<sup>77</sup> See letter from Jessie Legaree, J.D. Candidate 2015, University of Toronto – March 3, 2014. The Federation also received a 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” and a 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.”

<sup>78</sup> *TWU v. BCCT*, para. 33

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.<sup>79</sup>

It would clearly be abhorrent to suggest that lawyers holding similar religious views to those addressed in the Community 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 beliefs.<sup>80</sup>

While the opponents of TWU's proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Community Covenant is a basis upon which TWU's graduates should be denied admission as lawyers. As found by the Supreme Court of Canada, those beliefs are not a basis upon which anyone should anticipate that graduates will fail to meet their professional and ethical obligations.

***C. Policy Considerations: Allegations of Discrimination, Freedom of Religion, Diversity and Academic Freedom***

*(i) Allegations of Discrimination*

Many opponents that accuse TWU of discrimination ignore the fact that there is no legal prohibition to the Community Covenant. As noted above, this issue is only relevant to the Motion if there is an impact on the question of academic qualification of TWU graduates. Since there is no evidence that the Community Covenant negatively impacts on the education to the provided at the TWU School of Law, the allegations of discrimination by TWU are entirely beside the point. However, it is worthwhile to point out that many opponents of TWU, including the UBC Submissions to Disapprove TWU, support an unjustifiably narrow and penurious view of the human rights of the members of the TWU community.

The question of "discrimination" should not be considered in the abstract. It must be anchored by the question of whether impugned conduct is legal or not. Legal counsel obtained by the LSBC

---

<sup>79</sup> *TWU v. BCCT*, para. 36

<sup>80</sup> 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.

and the Federation agree that the Community Covenant does not contravene applicable human rights laws.<sup>81</sup> Mr. Gomery QC specifically advised that:

In my opinion, while a range of Christian creeds and doctrines may be accommodated within TWU's evangelical Christian perspective, it is nevertheless an organization established for the promotion of the interests and welfare of Christian students as contemplated by [section 41 of the *Human Rights Code*]. Following full argument, the court is likely to conclude that, pursuant to the exemption, TWU is not in violation of the prohibition on discrimination contained in the *Human Rights Code*.<sup>82</sup>

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 institution.<sup>83</sup> These were passing references, but the Court's analysis was much broader, based on the preservation of the values of human rights legislation and the *Charter* in acknowledging TWU's right to a teacher education program, which 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.<sup>84</sup>

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*,<sup>85</sup> the Supreme Court of Canada expressly wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion".<sup>86</sup> In *Brossard (Town) v. Quebec (Commission des droits de la personne)*<sup>87</sup> 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

---

<sup>81</sup> March 17, 2014 letter from Guild Yule, page 62, heading 15; John Laskin Memo, March 21, 2013, page 5

<sup>82</sup> Letter of May 8, 2013, page 9

<sup>83</sup> *TWU v. BCCT*, paras. 32 and 35

<sup>84</sup> *TWU v. BCCT*, paras. 34-35

<sup>85</sup> [1984] 2 S.C.R. 603

<sup>86</sup> At 626 (S.C.R.)

<sup>87</sup> [1988] 2 S.C.R. 279

engaging in particular pursuits”.<sup>88</sup> 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.<sup>89</sup>

Based on the noted Supreme Court of Canada jurisprudence, these provisions should be interpreted to recognize and accommodate religious expression within the TWU educational community.

It would be curious indeed if the LSBC, which is required by section 3 of the *Legal Profession Act* to uphold and protect the public interest by “preserving and protecting the rights and freedoms of all persons”, denied TWU graduates the right to practice law because of the lawful and constitutionally protected beliefs and conduct of the university they attended.

(ii) *Hindering Freedom of Religion, Freedom of Association and Equality Rights*

Some opponents have argued that denying approval of TWU’s school of law proposal because of the Community Covenant will not impair the constitutional rights of TWU and the individuals comprising its community. They promote an impoverished view of these *Charter* rights.

Citing *Whatcott*,<sup>90</sup> some opponents argue that denying TWU’s graduates accreditation 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 Canada in *Whatcott* also relied on the oft-cited words of Dickson J. (as he then was) in *R. v. Big M Drug Mart* that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and ***without fear of hindrance or reprisal...***” (emphasis added).<sup>91</sup>

In *Alberta v. Hutterian Brethren of Wilson Colony*,<sup>92</sup> the majority accepted that Alberta’s mandatory photo requirement for driver’s licensing breached the s.2(a) rights of the Hutterian Brethren as they had a 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.

---

<sup>88</sup> 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

<sup>89</sup> *Gillis v. United Nations Native Society*, [2005] BCHRT 301 at para. 21, *Sahota*, *supra.* at para. 37

<sup>90</sup> 2013 SCC 11

<sup>91</sup> At p. 336

<sup>92</sup> [2009] SCC 37

The denial of approval of TWU's graduates because of the Community 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.

All of the opponents of TWU's proposal focus solely on the Community Covenant. This is, in fact, a focus by them on TWU's Christian nature. Please carefully 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.<sup>93</sup> [Emphasis added]

If there are pedagogical or other problems with the education to be provided at TWU's proposed School of Law, they would have been detected by the Federation, the Ministry, or both. As a matter of constitutional and human rights values, it is not open for the LSBC to now focus solely on the Christian nature of TWU, as articulated in the Community Covenant, to undermine the normal approval processes. The LSBC is not permitted to express, or base its decision on, moral disapprobation of the particular Christian beliefs on which TWU is founded.

Some of TWU's opponents have cited the Supreme Court of Canada's decision in *Doré v. Barreau du Québec*<sup>94</sup> with respect to the standard of judicial review for LSBC decisions, clearly suggesting that breaches on the *Charter* rights of TWU and the members of its religious community are warranted. It is of particular note that at paragraph 32 of that decision, the Court adopted the approach in *TWU v. BCCT*. Given the lack of any evidence of harm created by a TWU School of Law, and for the reasons articulated by Mr. Gomery QC and Mr. Laskin in their opinions, a failure to recognize TWU graduates' academic qualifications would not withstand a court challenge.

### (iii) *Diversity 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 the 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 Community Covenant. Its contents are to be expected in the context of an evangelical Christian organization. As noted by

---

<sup>93</sup> *TWU v. BCCT*, para. 42

<sup>94</sup> [2012] 1 SCR 395

a number of others, the Community 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”. The legal profession can always use lawyers inculcated in all of these values. All opponents focus on only one aspect of the Community Covenant, ignoring the balance of its contents and thereby intimating that they are unobjectionable.

As stated by Dickson J. (as he then was) 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”.<sup>95</sup> 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”.<sup>96</sup> A TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

Much of the debate around TWU’s School of Law has assumed that academic discussion and inquiry would be limited. There is no evidence that such would be the case. Even if there were such evidence, the LSBC should then equally ensure that other law schools are completely and fully welcoming of all opinions and perspectives. In this regard, note the following statement of a UVic law graduate:

I do not know if I would have chosen to attend TWU law school, but I certainly would have appreciated the option. I had several great professors at UVIC, and I would not characterize the experience as a negative one. However, I did often feel marginalized as a result of my religious beliefs and, at times, the classroom environment felt hostile towards Christianity. ... I do not say this to criticize UVIC, but to illustrate that secular legal education is far from neutral. I experienced my legal education as being taught from a distinct ideological perspective. There is nothing inherently wrong with this perspective, but similarly, there is nothing wrong with teaching from a religious perspective. We are a tolerant and diverse enough nation to accommodate both.<sup>97</sup>

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

Some opponents have also questioned academic freedom at TWU. TWU maintains a strong policy on academic freedom that was affirmed by British Columbia’s Degree Quality Assessment Board in 2004. TWU is a member of 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

---

<sup>95</sup> [1985] 1 S.C.R. 295 at p. 336

<sup>96</sup> *TWU v. BCCT*, para. 33

<sup>97</sup> Mark Witten, March 2, 2014



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. The statements made by TWU alumni, some of which are referenced above, show the fulsome and extensive debate and inquiry within the TWU community. There will equally be a full range of academic inquiry and debate within TWU's School of Law.

#### ***D. Practical Considerations***

Guild Yule identifies a number of other practical considerations:

*(i) No Principled Reason to Depart from the Federation's Conclusions*

The Federation concluded that there is “no 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”.<sup>98</sup> There is no principled reason to depart from this conclusion, particularly in the context of considering the issue of academic qualifications, which is the subject of the Motion.

Reference is made to Resolution 14-04-M passed by the national Council of the Canadian Bar Association that all law societies be urged to “require all legal education programs ... to provide equal opportunity without discrimination.” The LSBC should be aware that the national Council rejected a proposed amendment to this resolution that would have precluded only “unlawful” discrimination. Without anchoring allegations of discrimination in the law, how can anyone know what is included and excluded from such a requirement? As lawyers, the CBA should have been concerned with what is lawful.

Note in particular the words of Professor Mary Anne Waldron QC, of the Faculty of Law at UVic:

The first important point is that no court or legislature in Canada has ever found it to be discrimination to hold or to express the view that homosexual relationships are immoral or that marriage ought to be confined to one man and one woman.

...

Is it discriminatory for a group to define itself in a way that would make some other groups, and in particular, protected groups under human rights legislation, likely to avoid membership? I think that the answer has to be negative. ... In fact, to decide otherwise would seriously impair freedom of association by prohibiting organizations that adopted principles or agendas that were disliked or found offensive by others.

...

What you, as benchers of the Law Society are being asked to do by those who would have you deny access to the profession of properly trained graduates of Trinity Western University is to deny those students their freedom to be trained in an institution that reflects their religious beliefs and their right to associate with

---

<sup>98</sup> Special Advisory Committee Report, para. 65

one another in the expression and pursuit of those beliefs. You are not, in this case, being asked to strike a balance between the rights of two groups. ...

You are, in fact, being asked to set aside the freedom of conscience and religion and the freedom of association of staff and students at TWU and to impose upon them one side of a contested moral issue...<sup>99</sup>

For the reasons articulated herein, TWU agrees with and adopts Professor Waldron's statements.

(ii) *Possibility of Non-Uniformity Across Canada*

For the reasons set out in section 4 of these submissions, TWU submits that the LSBC should be very concerned about any decision it makes that would undermine the National Standard. If the Motion passes, the LSBC will be deciding that TWU graduates cannot be enrolled as articulated students in BC. However, under the NMA, the ATI and the LMA, it cannot justifiably preclude these same graduates from practicing in BC if they are called to the bar elsewhere. This was also the conclusion of Messrs. Foy QC and Thomas in their opinion of March 17, 2014.

(iii) *Implications with Respect for Foreign Students Who Have Attended Faith Based Law Schools in Other Countries.*

Such students can be admitted to the practice of law through the Federation's National Committee on Accreditation ("NCA").

As far as TWU is aware, the NCA has never inquired into the individual religious beliefs of applicants or the community codes of conduct of any university from which such applicants have obtained their law degrees, whether in Canada, the USA or elsewhere. Such inquiries are not material to, or the appropriate subject matter of, the NCA's approval of individual applicants. The same standard ought to be applied when law societies consider whether to approve all graduates from TWU.

(iv) *Approving TWU Graduates will Enhance Diversity*

For the reason articulated above, and as set out in the submissions summarized by Guild Yule (pages 58-60), the existence and operation of a TWU School of Law will enhance, not detract from, diversity in legal education in Canada.

---

<sup>99</sup> Professor Mary Anne Waldron QC, February 21, 2014

(v) *Additional Requirement for TWU Graduates?*

Some opponents have suggested that TWU graduates should be admitted to the practice of law, but only after completing further study and entrance requirements, possibly through the PLTC program.

This suggestion and the reasoning behind it is deeply offensive to lawyers and law students holding religious beliefs similar to those embodied in the Community 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, or be subjected to an additional entrance requirement, in order that they be able to practice law.

There is also a serious logical flaw in the argument. Existing law schools: (1) have 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. Lawyers need not all believe the same way concerning issues of sexual morality, provided their conduct is ethical and professional.

Again, this point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to complete additional requirements outside of TWU.<sup>100</sup> 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.***<sup>101</sup>  
[Emphasis added]

These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. If commitment to Biblical principles results in the denial of a private institution as capable of teaching law, it implicates law students having similar views about sexual relationship in terms of their competence as future lawyers.

Adhering to religious beliefs does not equate to future discriminatory conduct. The Supreme Court of Canada agrees with this point:

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.<sup>102</sup>

...

---

<sup>100</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118

<sup>101</sup> *TWU v. BCCT*, para. 32

<sup>102</sup> *TWU v. BCCT*, para. 19

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.<sup>103</sup>

...

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.<sup>104</sup>

...

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.<sup>105</sup>

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 determinative in the LSBC's deliberations.

(vi) *LSBC's Role as Disciplinary Authority*

For the reasons articulated herein, it is inappropriate to presume that all TWU graduates will be unable to fulfil their ethical and professional obligations. As with graduates of all other law schools, if any graduate acts unethically, including by engaging in unlawful discrimination, she or he will be properly disciplined by the LSBC.

(vii) *Application of Other Human Rights Legislation*

As noted above, the Community Covenant is not precluded by human rights legislation in BC. This is in part a consequence of section 41 of the *Human Rights Code*, but also a natural corollary of the application of the *Charter*. 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.

---

<sup>103</sup> *TWU v. BCCT*, para. 33

<sup>104</sup> *TWU v. BCCT*, para. 35

<sup>105</sup> *TWU v. BCCT*, para. 36

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada.<sup>106</sup> It is trite to point out that all human rights legislation in Canada 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 could only exist as a religious educational community 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.

In any event, it would not be appropriate for the LSBC to apply laws applicable only in other provinces to persons that are not subject to them. Otherwise, the LSBC should also review every other law program in Canada to ensure that they comply with the particular requirements and protections of the *BC Human Rights Code* and/or all other human rights legislation in Canada, as opposed to the human rights legislation applicable in their own jurisdictions.

## 7. COMMUNITY COVENANT QUESTIONS AND POSSIBILITY OF A CONDITIONAL APPROVAL

LSBC sought a legal opinion from Mr. Gomery QC on whether it would be open for the Benchers to reject the Motion, but on the condition that TWU abandon the Community Covenant. TWU agrees with Mr. Gomery's conclusions and advice in his letter of March 15, 2014 that:

- (a) Imposing such a condition “must be considered as equivalent to an outright disapproval”.<sup>107</sup> To require TWU to abandon its Community Covenant is to undermine a significant component of its character as a religious community.
- (b) The LSBC is “confined to acting on grounds that are related to the academic qualification to be offered by the proposed law program and it is not authorized to impose the community covenant condition on unrelated grounds”.<sup>108</sup> For the reasons set out in this submission, it would not be legitimate for the LSBC to require TWU to abandon the evangelical Christian character of its community in order to deliver an academically sound legal education.

---

<sup>106</sup> 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.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

<sup>107</sup> Page 5

<sup>108</sup> Page 2

In the result, TWU strongly opposes the LSBC seeking to impose a condition that it abandon the Community Covenant. Doing so would be an impermissible intrusion into the religious beliefs on which TWU is founded.

In the LSBC's letter to TWU of March 3, 2014, it asked a number of questions pertaining to the Community Covenant. In TWU's submission, the answers to these questions do not assist in determining whether TWU graduates will have sufficient academic qualifications and, in that respect, the questions and their answers are not strictly relevant. That said, TWU is prepared to provide answers in a spirit of openness, but within the confines of its obligations under the *Personal Information Protection Act*.

*1. To what extent is the Community Covenant actually enforced?*

TWU does not seek out instances of non-compliance with the Community Covenant, or with any other of its policies/guidelines. In circumstances where wilful infractions of the Community Covenant are made known (usually by a complaint from another person), there is an accountability process in which TWU works together with a student to prayerfully and objectively assess what has occurred, demonstrate care and acceptance for the individual (if not her/his behaviour) and educate her/him on the reasons for the Community Covenant and/or the policies and guidelines of TWU.

Consistent with the fact that they have voluntarily joined a religious educational community, students are invited to consider whether they are still prepared to abide by the terms of their original commitment to the TWU community through the Community Covenant. Students are encouraged to reflect upon their own goals and values to ensure that they are not in conflict with the religious educational environment in which they have chosen to learn. Students who find themselves unable to maintain the integrity of their commitment are invited to seek a living-learning situation more acceptable to them. This very rarely happens as described below.

*2. What are Trinity Western University's major areas of discipline, as compared to other universities?*

The top four issues of discipline at any university, including TWU, are: (1) academic dishonesty and plagiarism; (2) abuse of alcohol (underage consumption, public consumption and alcohol related inappropriate behaviour); (3) use of illegal drugs and drug-related inappropriate behaviours; and (4) sexual harassment, assault and/or unwanted sexual advances.

Public universities will often refer many behavioural issues pertaining to misuse of alcohol and drugs to local law enforcement. TWU will do the same, but its mission, core values and spiritual formation outcomes call for a higher standard in these areas. As a result, TWU will also engage the accountability process in these circumstances.

In light of the requirements of the Community Covenant to treat everyone with dignity and respect, TWU takes a very firm position on sexual harassment and unwanted sexual advances towards others. The religiously motivated restrictions on certain sexual behaviour has created a particularly safe and welcoming environment for members of the TWU community and, notably, one that is much less sexually charged than in many public universities. Please note the comments of TWU alumnus Sabrina Ferrari, now a lawyer practicing in BC:

Lastly I would like to speak to my experience at Trinity Western in the hopes it may add some perspective and refocus the framing of perceived concerns. While at Trinity Western I came to realize the atmosphere of sanctuary the community values were able to create for its students. I personally spoke in confidence with a number of students who came from backgrounds of abuse and trauma. ... There have also been in the past and will be in the future, students at Trinity Western that have been victims of sexual abuse. For many this is a trauma that one does not like to share causing some victims to suffer in silence. One may even take judicial notice that sexual abuse and trauma does not respect one's sexual orientation. University life can be one of the most sexually charged times in a young person's life.

I can personally attest to the fact that the community created at Trinity Western which calls for abstinence, may not eliminate, but does greatly reduce the sexual charge on whole at the university. I have never personally experience [sic] more sexual harassment than upon attending law school at a secular Canadian institution. I was at one time advised by a group of individuals not to walk to dorms alone as they perceived a genuine concern for my safety due to sexual fantasies another student on campus was sharing about me with the populous. ... Juxtaposing my experience at Trinity Western however, I cannot recall being sexual [sic] harassed while there. Nor did I experience at Trinity Western such intolerance from people when asked to express my perspective on certain matter as I did at secular universities.

I believe Trinity Western through its Community Covenant succeeded in fostering a community whereby requiring abstinence, the sexes learn a healthy and respectful way to interact with each other. It has created an atmosphere where one may attend and not be subjected to the smiling faces of youth as they shout out sexually derogatory chants, where women have to pause to recall a moment of sexual harassment from campus life. Trinity Western has created a safe haven for those with sexually traumatic experiences to heal by creating an atmosphere that has succeeded in minimizing the sexual charge at campus in a manner no secular campus has come close to recreating. In my opinion the practical application of the Community Covenant is not to discriminate against anyone with an alternative belief system, but to support and edify the community as a whole; something that any individual who attends Trinity Western can reap the benefits from regardless of their faith, gender, race, or sexual orientation. It may in fact do well for secular universities to adopt a community standard of their own for its students to sign to assist in recreating the sense of community and safe haven that Trinity Western has been able to create. Of course, secular universities could choose any set of principles to set this standard from. Trinity Western being a faith based institution chose to exercise its freedom of religion and draw from biblical principles in creating this standard.<sup>109</sup>

3. *How many faculty, students and staff have been disciplined for engaging in sexual conduct proscribed under the Community Covenant?*

Over the past 10 years, there has been an average of fewer than three instances of “sexual misconduct” by students per year, which includes instances of unwelcome sexual advances towards others (sexual harassment). It also includes circumstances in which there were a number of concurrent offences (e.g. alcohol abuse combined with sexual misconduct). In most

<sup>109</sup> [http://nsbs.org/sites/default/files/ftp/TWU\\_Submissions/2014-02-08\\_Ferrari\\_TWU.pdf](http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-08_Ferrari_TWU.pdf)

circumstances, the matters did not proceed beyond an accountability discussion or warning. In two circumstances, the students withdrew from TWU. While there were occasional decisions to suspend students or place them on probation, none resulted in expulsion from TWU.

In the same time period, only two members of the faculty/staff were disciplined for matters pertaining to sexual behaviour and they both dealt with instances of sexual harassment.

## **8. SUMMARY AND CONCLUSION**

For the reasons articulated, TWU respectfully submits that this matter is about whether the graduates of its School of Law will be adequately prepared to practice law in Canada, both from the perspective of understanding substantive law and in terms of their professional and ethical obligations. The Federation and the Ministry put considerable time and effort into assessing that issue and concluded that TWU's proposal is sound.

The Motion should only be passed if the LSBC, on a proper evidentiary foundation, concludes that the education provided by TWU will be insufficient to prepare graduates for the practice of law. TWU respectfully submits that, properly considered, the Motion must be rejected such that TWU's School of Law will continue to be an "approved common law faculty of law" under Subrule 2-27(4). This is for the following reasons:

- (a) The LSBC can only limit recognition of TWU graduates as lawyers in a manner permitted by the NMA and the AIT, as made applicable in British Columbia under the LMA.
- (b) The Federation's conclusions should not be treated lightly or rejected, both for reasons of lawyer mobility and because of the extensive work it has done. Its work in evaluating TWU's proposal included consideration of the precise issues that continue to be raised by TWU's opponents.
- (c) The only reasons raised by TWU's opponents for refusing accreditation of its J.D. graduates in British Columbia are directly related to the religious beliefs on which the TWU religious educational community is founded. That community is protected under the *Charter* and is able to define for itself the religious precepts on which it is based. Other than relying on prejudicial stereotypes about Christians and their beliefs, TWU's opponents have not pointed to anything that undermines the conclusion of the Federation and the Ministry that TWU will properly educate lawyers.
- (d) TWU embraces its obligations to teach Canadian equality law and professional ethics, including equality based on sexual orientation. TWU's opponents have



said that they do not believe TWU when it willingly undertakes this obligation or, more perniciously, argue that its Christian principles make it incapable of doing so. There is no legitimate basis for either position. In any event, the School of Law will be subjected to annual reviews by the Federation to ensure that the national standard is met and that TWU lives up to its commitments.

- (e) To paraphrase the Supreme Court of Canada, the continuing focus on “discriminatory practices” is a focus on TWU’s religious nature and is “disturbing”<sup>110</sup>. A decision to reject TWU graduates, or place additional burdens on them based solely on the one impugned element of the Community Covenant, ought not be adopted or even countenanced by the LSBC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

---

<sup>110</sup> *TWU v. BCCT*, para. 42