



1 **Jan Lindsay, QC** Welcome everyone to April 11, 2014, a day that we've all been working
2 very hard toward. The table looks a little bit different than usual. You will note that Geoff
3 Gomery, QC, our counsel, sitting at the table with us, but we don't have anyone in the
4 guest chair beside Mr. Mossop, to speak if recognized. You've all got a microphone in
5 front of you, you've got the notes on how to the microphone works. We're going to try to
6 run this meeting as we run all meetings, call for speakers and call for show of hands. Jeff
7 Hoskins and I will keep a speakers list and I will, from time to time, announce the list so
8 that the technical people can line up the cameras in anticipation. But as much as we can,
9 we want to run the meeting as we do. When you are called upon, when you're recognized
10 to speak, then you have to activate your microphone, and then when you're finished
11 speaking then you're to turn off your microphone or I can turn it off for you if that
12 becomes difficult.

13 I want to just make a couple of comments. We have, attending the meeting today by
14 telephone, David Crossin and David Corey. Hello, gentlemen. Excused from the meeting,
15 Satwinder Bains and Nancy Merrill. Nancy had a family emergency. I want to make a
16 special welcome to our guests, representatives from Trinity Western University, Mr. Bob
17 Kuhn, President, Mr. Kevin Sawatsky, Vice Provost Business, and Kevin Boonstra, Legal
18 Counsel. Thank you, gentlemen, for attending. We have virtually a full table other than
19 the excused that we've mentioned. We have also at the table, which is not unusual, our
20 CEO, Tim McGee, QC and Tribunal & Legislative Counsel Jeff Hoskins, QC. We've
21 invited Law Society members and articled students to attend and I am pleased to
22 welcome Alex Shorten, CBABC Vice-President, Jeff Trotter, Krista Simon, Anne
23 Chopra, the Law Society's Equity Ombudsperson, Sandra Wilkinson, Cedric Hughes,
24 Gavin Hume, QC, Life Bencher, and Wayne Robertson, QC, Executive Director of the
25 Law Foundation of BC. Thank you all for attending.

26 I'm going to give a President's report and then we'll hear from our CEO, Tim McGee,
27 QC and then we will hear from Gavin Hume, QC on recent Federation meetings in
28 Regina, and then we will move to discussion of the main matter of the meeting. You've



1 all taken a look at the material and you've been sent an agenda. You'll appreciate that we
2 now have a task force struck arising from the Legal Services Providers Task Force
3 recommendations made by Bruce and his committee at the meeting at the end of 2013.
4 Given that we now have a mandate, I have appointed the task force, or populated the task
5 force with Art Vertlieb, who will Chair, David Crossin is Vice-Chair, Benchers
6 Satwinder Bains, Jeevyn Dhaliwal and Lee Ongman. Thank you, both, or all. Non-
7 Benchers Karey Brooks, Nancy Carter, Dean Crawford, Carmen Marolla and Wayne
8 Robertson, QC. Thank you again, and from the Society of Notaries Public, Ken Sherk.
9 Most of the work recently has been on the big issue of the day, but the Law Society is
10 continuing to work and we are continuing to be called on a number of matters. You will
11 have seen that the Supreme Court is looking for a new Master and a new Registrar and
12 has asked the CBABC and also the Law Society to participate in the assessment panels,
13 so Mr. Ken Walker and myself will participate in those assessment panels for the
14 selection of new Master and new Registrar. You will hear from Gavin Hume about the
15 Federation meeting in Regina last weekend. I just want to remind all of you that we are
16 very well-represented by Mr. Hume. He is well respected at the Federation, he is listened
17 to, he is an effective member and speaks on all of our behalf at Federation meetings. We
18 thank him for that and we should be pleased and comforted that we are well-represented.
19 The other thing arising from the Regina Federation meetings was a dinner meeting at the
20 MacKenzie museum.

21 I just also want to remind everyone that Barry Zacharias has resigned as our Prince
22 Rupert County Bencher. We're sorry to lose Barry. He was a valuable member of this
23 table and a friend to many. However, it goes on and David Mossop, QC has kindly
24 agreed to step up as Chair of the Access to Legal Services Advisory Committee, and
25 Nancy Merrill will step up as Vice-Chair of that group. Mr. Zacharias's other duties will
26 be, I think, replaced by the new Bencher arriving from Prince Rupert, probably in early
27 June, hopefully in time for the June meeting. We've set the wheels in motion for a June 6
28 Prince Rupert Bencher by-election, with May 6 as the deadline for nominations. The

1 result will be, I believe, the Friday before our meeting in June. With any luck, someone
2 will be able to attend. We'll see.

3 We continue to have access top of mind. I'm attending meetings around the formation of
4 a justice commission, in which multi-party interest groups, stakeholders, participate in
5 figuring out how we can move forward and what can we do. You know that it's the topic
6 of our retreat and we have generated a fair bit of interest across the country. There are
7 attendees from many of the law societies coming to our retreat to hear us and to share
8 with us on access issues. You've seen copies of my correspondence and Art's
9 correspondence with the Attorney General on the issue of funding for Legal Services
10 Society, and of course we are continuing to work on that topic.

11 Now I want to speak about some recent honorees. You all remember Bruce LeRose,
12 immediate, no, two-times past president. Bruce is being recognized by the city of Trail in
13 May for his distinguished record of public service and, most notably, for his bringing
14 Trail to the provincial spotlight through his position as President of this Society. He's
15 pleased to be honoured and I think we should be proud of the good work he did here that
16 brought him that honour. I also want to recognize Joe Arvay, who is the recipient of the
17 2014 Robert Litvack Award from the University of McGill Centre for Human Rights and
18 Legal Pluralism. Finally, I want to recognize the Law Society's Justicia Project, which
19 has been nominated for the provincial Nasika Award for the project's efforts to promote
20 diversity and equality in the legal profession over the past year. The nomination came
21 from a member of the public. Nasika is Chinook for "we," "us" or "our," and comes from
22 a trade language used by many different Aboriginal linguistic groups along the west coast
23 of North America. Nasika Award started in 2008 to recognize the people, organizations
24 or businesses whose exceptional work help bring our diverse cultures together. I think we
25 should all be proud of the work being done by Equity and, specifically, the Justicia
26 Project who received the nomination. That brings me to the end of the things that I need
27 to say. So, that is my report. Anyone have any questions? Mr. McGee?

1 **Tim McGee, QC** Thank you, Madam President. My report is very brief. There isn't one, but
2 I would just like to point out, obviously, the preparations for today have occupied most of
3 my time and much staff time and just want to thank all of you for your cooperation and
4 patience in all of this planning. There are a number of things going on at the Law Society.
5 What I've decided to do, with the approval of the President, is to carry those over to my
6 report at the retreat on May 9th and 10th, so there will be a further report that will
7 combine both those. The only thing I'd mention this morning is that there is a spring
8 justice summit. This is the third in the series of justice summits that we are involved with
9 the Ministry of Justice. This is on access in family law. That is taking place on May 4th
10 and 5th here in Vancouver. Our own Michael Lucas is on the planning committee. I will
11 act as moderator for the conference again, and a number of Law Society members and
12 others will be involved on that important day. So, if you are particularly interested in that
13 topic, please see me or Michael and we can give you a fuller update on the planning for
14 that. Thank you, Madam President.

15 **JL:** Thank you, Mr. McGee. Mr. Hume, could you brief us on Regina?

16 **Gavin Hume, QC** Thank you, Madam President, and thank you for your embarrassing but
17 kind remarks. I'll be brief. We met in Regina on April 3rd through 5th. April 3rd was the
18 Council meeting where we received the usual reports dealing with the various committees
19 and groups that are working on Council and Federation matters. There was one decision
20 of significance: the decision involving the pilot project on the National Discipline
21 Standards – a project that our Deb Armour has been very actively involved in. The
22 discipline standards were approved, flowing from that pilot project, and they are now
23 being referred to the various law societies across the country for final acceptance. I think
24 it's fair to say that the consensus was, at that meeting and in the subsequent conference,
25 that the discipline standards had very much contributed to raising the standards that law
26 societies across the country have with respect to the administration of our discipline
27 processes. Separate and apart from that, there was also the creation of a standing
28 committee to monitor how those discipline standards are, in fact, working with the view

1 and in recognition of the fact that, from time to time, those standards will have to be
2 adjusted as issues arise and they work their way through the process. The conference
3 focused on discipline. This is obviously the highest profile work that our law societies
4 engage in – the profile from the public’s perspective – so the focus of the day-and-a-half
5 conference was on discipline. The theme was understanding today’s risks and preparing
6 for tomorrow’s challenges in discipline, and there was a lot of appropriate emphasis, in
7 my view, on proactive discipline: how do we, instead of just being responsive and
8 reactive to disciplinary problems, how do we move proactively in order to avoid the need
9 to have reactive disciplinary sanctions? That included presentations from the senior legal
10 officers of various professions – physicians, security commission – all of which were
11 quite instructive and I think provided the various members of the law societies who were
12 in attendance with some ideas as to how we might be more proactive and consistent with
13 one of the projects I know we’re working on here at our Law Society. Our Deb Armour
14 did a presentation on the Law Society of BC’s Sanctioning Guidelines Project that she
15 and others are working on, and I think that was well received. As I said, the consensus
16 during the discussion was that the discipline standards, the pilot project discipline
17 standards, resulted in an upping of the game of all the law societies across the country,
18 and of course there are challenges in that regard because of the disparity in size of those
19 various law societies.

20 We also heard from Fred Headon, the President of the Canadian Bar Association, and he
21 had three themes which are, in my view, of significance to the law societies. First of all,
22 he commented on our Model Code process and the fact that the CBA will no longer be
23 pursuing the ongoing development of their Code of Conduct, recognizing, I think, the
24 good work that the Federation has done to develop a standard and consistent approach to
25 ethical issues in Canada. He spoke about the access report that the CBA had worked on
26 and encouraged collaboration with the Federation on those topics. He also discussed the
27 Futures project that they’re engaged in and made specific comment on the regulation
28 portion of that Futures project, and again invited the Federation and the various law
29 societies to participate with them as they look at the impact of regulation on the future of



1 the legal profession. In addition to that, our President signed, along with the other
2 presidents of the law societies, the Territorial Mobility Agreement, another step forward
3 for the profession in Canada to permit national mobility. Our President participated in the
4 regular Presidents meeting with the President of the Federation and the other presidents
5 and vice-presidents from across the country where there was a good discussion of
6 presidential rotation. We have a structured process to who becomes the President of the
7 Federation We also began a discussion with respect to our strategic plan, because in the
8 next year or two we have to develop a new strategic plan. The consensus appeared to be,
9 preliminary consensus obviously, was that going forward we should continue to focus on
10 national standards for the law societies across the country, flowing, of course, largely
11 from the mobility processes that we have in place. So Madam President, that's my report
12 and I'm happy to answer any questions. Seeing none, I'll retire from the seat.

13 **JL:** Thank you, Mr. Hume. The next thing on the agenda is the report on outstanding hearing
14 and review reports, and in keeping with the comments on national standards, and
15 specifically discipline standards, we circulated this list to make sure that we are
16 complying with the standards and that we have all of our reports and processes well
17 under way and there's no grey on this report so that's good news

18 We move now to the discussion and decision on the Trinity Western University proposed
19 school of law. I'm going to have a few introductory comments. So today, the Benchers of
20 the Law Society are being asked to determine whether Trinity Western University law
21 school is an approved faculty of law for the purposes of the Law Society's Admission
22 Program. In December 2013, the Federation of Law Societies announced the Canadian
23 Common Law Program Approval Committee had completed its work and gave
24 preliminary approval to the proposed law school at Trinity Western. Shortly thereafter,
25 the BC Ministry of Advanced Education authorized the institution to grant law degrees.
26 On January 24, the Law Society invited the public and lawyers to make written
27 submissions regarding the proposed law school. The deadline for submissions passed on
28 March 3rd, at which point close to 300 letters and submissions had been received for us

1 to consider. On February 28, at our last meeting, a notice of the motion to be made at
2 today's meeting was provided to the Benchers. I made it clear at that time that, in giving
3 the notice of motion, there was no intention to express any opinion on the merits and that
4 the notice was being given basically by the Executive in order that the question might be
5 properly and fairly considered by the Benchers at this meeting. Law Society Rule 2-27
6 (4.1) provides: for the purposes of this rule, a common law faculty is approved if it has
7 been approved by the Federation of Law Societies of Canada unless the Benchers adopt a
8 resolution declaring that it is not or has ceased to be an approved faculty of law. That's
9 what gives rise to the motion we are considering today. The notice of motion was
10 circulated at the February meeting. The recitals have made it clear that the sole intention
11 of the motion is to provide the Benchers with the opportunity to consider thoroughly,
12 carefully, and in a manner that's fair, whether to exercise their discretion under 2-27(4.1)
13 in the public interest. The motion is "Pursuant to Law Society Rule 2-27(4.1), the
14 Benchers declare that, notwithstanding the preliminary approval granted to Trinity
15 Western University on December 16, 2013 by the Federation of Law Societies' Canadian
16 Common Law Program Approval Committee, the proposed Faculty of Law at Trinity
17 Western is not an approved faculty of law. Mr. Walker?

18 **Ken Walker, QC** Madam President, I make the motion.

19 **JL:** And so I call on Mr. Crossin

20 **David Crossin, QC** Yes, I second the motion.

21 **JL:** All right. There we have it. The motion's on the table. The plan is to proceed as much as
22 we can in the way we usually do. I will keep a list of speakers, and ask you to show your
23 hand if you want to speak. From time to time, I will review the list for the purposes of the
24 technical people so that they can know where to point the camera in anticipation. When
25 you are called on to speak, then please activate your microphone and turn it off when
26 you're finished. Mr. Hoskins reminds me that we have virtually all agree that limits for
27 speeches will be five minutes for first speeches and three minutes for second. I want to
28 just thank everyone for your quick response to that proposal and I'm sure that five



1 minutes is enough for everyone. I will call for speakers. Mr. Arvay, Mr. Maclaren, Mr.
2 Doerksen, Mr. Wilson, Mr. Riddell, Mr. Lloyd. This isn't the only chance you can show
3 your hand. Kresivo, Richmond, thank you. Mr. Lawton, Mr. Mossop, Mr. Lawton, Mr.
4 Meisner, thank you. Mr. Finch, Ms. Rowbotham, and Mr. Ward, Ms. Matthews. I'm sure
5 that we will have speakers from the phone too. What we've asked is that you email Mr.
6 McIntosh if you want to be added to the list and he will let us know The order of the list
7 of names I have so far: Mr. Arvay, Mr. Maclaren, Mr. Doerksen, Mr. Wilson, Mr.
8 Riddell, Mr. Lloyd, Mr. Mossop, Ms. Kresivo, Mr. Richmond, Mr. Lawton, Mr. Meisner,
9 Mr. Finch, Ms. Rowbotham, Mr. Ward, Ms. Matthews, Ms. Morellato. As I say, this is
10 not the end of the list, but one speech only in this time round. Mr. Arvay.

11 **Joe Arvay, QC** Madam President, fellow Benchers, I speak to support the resolution not to
12 approve the TWU law faculty. In my opinion, it is not in the public interest for the Law
13 Society to approve this law school and I say that this is the ultimate issue that is before
14 us, and not simply whether its students will be academically qualified to be lawyers. This
15 is the view of Chief Justice Finch, and to the extent that others say otherwise, I
16 respectfully disagree. My main objection to this law school is what I see as
17 discriminatory conduct by the administration of the law school. I object to what I say is
18 the metaphorical sign at the gate of the law school which says, "No LGBT students,
19 faculty or staff are welcome." It is this act or conduct of the administration of TWU that
20 is discriminatory and per se harmful and it is the reason that the Law Society, which is
21 charged with respecting the rights and freedoms of all persons in British Columbia, must
22 refuse to approve this law school. The Federation's Special Advisory Report, which also
23 by the way considered it appropriate to consider the wider public interest and not only the
24 academic program, acknowledged that the community covenant would make the law
25 school an unwelcome place for LGBT students and faculty even if it was not a complete
26 ban. That committee concluded that the community covenant would likely discourage
27 most from applying to a law school at the university. In my view, a sign that says "LGBT
28 are not welcome" is as bad as a sign that says "you cannot apply." The Federation, in
29 considering whether the proposed law school should be approved, adopted the distinction



1 that has been relied on in the United States law schools between the status of being gay,
2 lesbian or transgendered and the conduct of such a person. The Federation says that it is
3 impermissible to have a rule that denies or discourages entry based on status, but it is
4 okay if it is about conduct. This was a surprising and disturbing distinction to have
5 drawn. It is simply a euphemistic way of embracing the aphorism that we love the sinner
6 but hate the sin, and it is indeed the very proposition that is at the core of TWU's
7 community covenant and why I say it should not be approved as a law school. What is
8 even more surprising about the Federation's Special Advisory Report is that, while it
9 acknowledged the most recent decision of the Supreme Court of Canada on the topic,
10 being the *Whatcott* decision, it failed to point out that the Supreme Court of Canada not
11 only unanimously and soundly rejected the sin/sinner distinction, but it did so by
12 adopting the dissenting opinion of Madam Justice L'Heureux-Dubé in the *Trinity*
13 *Western* case. This leads me to the relevance of the Supreme Court of Canada in the
14 *Trinity Western* case. In light of the Supreme Court of Canada's adoption of Justice
15 L'Heureux-Dubé's dissent, one must now question whether the Supreme Court of Canada
16 would decide that case the same today that it did 13 years ago. In my view, it would not.
17 But even if it might, in my view the focus of that case was very different than what ought
18 to be the focus of the matter before us. As the Supreme Court of Canada said most
19 recently in the *Bedford* case, even lower courts can refuse to follow a decision of the
20 Supreme Court of Canada if there has been "change in the circumstances that
21 fundamentally shifts the parameters of the debate." And this debate has not only been
22 unprecedented, but has fundamentally shifted from what was before the Supreme Court
23 of Canada. The focus of the Supreme Court of Canada was the view of the College that
24 graduates from a teachers college at TWU would discriminate against their future
25 students. The Supreme Court of Canada said that should not be presumed and drew the
26 sensible distinction between what such a graduate might believe and how such a graduate
27 might behave, and said that in the absence of evidence of such harmful behaviour, there
28 is no reason to deny the graduate a teaching certificate. There was but passing reference
29 in the Supreme Court of Canada to what I say is now the real issue before us, and that is



1 what I call the sign at the gate. All the Supreme Court of Canada said about that was that
2 the admissions policy of TWU alone is not in itself sufficient to establish discrimination
3 as it is understood in our section 15 jurisprudence and that, as a private institution, it is
4 exempt from the BC *Human Rights Act*. In my view, the evolving jurisprudence of the
5 Supreme Court of Canada section 15, and I don't have time to elaborate, would now
6 condemn this admission policy were it enacted by a governing body and it would uphold
7 the decision of this Law Society as a body subject to the *Charter* which refused to
8 sanction such a discriminatory policy. That admission and hiring policy perpetuate
9 prejudice against LGBT students and faculty and it is irrelevant that this may not be the
10 motive or purpose of the community covenant; all that matters is that it has this effect or
11 impact. Nor, in my opinion, could TWU take any refuge in the exemption allowed to
12 religious organizations under the BC Human Rights Code. The problem with TWU
13 seeking to rely on this exemption is that it does not seek to give preference to persons of
14 the same religious belief, since it says anyone regardless of their religious belief can
15 attend. Instead of using belief as the criteria of admission, TWU uses a code of conduct
16 and there is nothing in the *Human Rights Act* that allows discrimination based on such
17 conduct. Once we understand that there cannot be a distinction between the status of
18 being gay and the conduct that defines your sexual orientation, then what TWU is doing
19 is discriminating based on sexual orientation and not religious belief. They are not
20 permitted, under the Human Rights Code, to give a preference to heterosexuals since
21 even they would concede that being a homosexual is not inconsistent with their religious
22 belief. Hence, in my opinion, the community covenant would be a breach of the Human
23 Rights Code. If I can have one more minute Madam Chairman. The Federation referred
24 to the decision of the Supreme Court of Canada in *Whatcott* as somehow justifying its
25 decision when it said that it was simply trying to balance freedom of religion and
26 equality. What I fail to understand is how approving this law school in any way balances
27 the rights of religious freedom and the rights of equality. I take no issue with there being
28 a religious law school. I would take no issue with that law school having as one of its
29 core beliefs that same-sex marriage and sexual intimacy that this entails being a sin. What

1 I take issue with is that belief being imposed on those who do not share that belief. No
2 one is asking any of their religious students or faculty to abandon their beliefs. How is it
3 even possible to say that if we refuse to give our imprimatur, the state's imprimatur, to
4 this law school that we interfere with any of those religious beliefs or for that matter
5 religious practises? But TWU in requiring LGBT students and faculty as an effective
6 condition of entry to the law school to hide their sexual orientation and to re-enter the
7 closet that they have been told by the Supreme Court of Canada they no longer need to
8 hide in. The decision of the Federation is not in any way balanced, it is horribly skewed
9 in favour of religion without any regard to equality. Balance would have said that the law
10 school can be approved, but only if it removed the requirement that those seeking
11 admission or hiring must adhere to the community covenant which prevents them from,
12 not only being true to their own selves, but actually prevents them from being married by
13 the State, a right that was hard fought and hard won and came into existence only after
14 the TWU decision. Thirty seconds please, 30 seconds.

15 **JL:** I think this will have to be at sacrifice of your three-minute response.

16 **JA:** I accept that.

17 I am always reluctant to invoke the race card when arguing the equality race, but I am
18 afraid there is no way to avoid asking that question as to what this Law Society would do
19 if the community covenant related to interracial marriage, even if that precept was based
20 on religion as it was in the case of the Bob Jones University. I have no doubt what your
21 decision would be. It should be no different when the issue is same-sex marriage. This is
22 a momentous moment for the Law Society. I urge you to resolutely support this
23 resolution and be confident that you will be on the right side of history when the courts
24 uphold your decision. Thank you.

25 **JL:** Thank you Mr. Arvay. I can't help but note that you went overtime, so we will deal with
26 that in your second response.

27 **JA:** Thank you.



1 **JL:** The next speaker I have is Mr. Maclaren.

2 **Jamie Maclaren** Thank you, Madam President. This is a most difficult and serious task,
3 weighing the rights and freedoms of one identity group against another. And so I will
4 read from my notes in the aim of being clear and unequivocal for the record. As I see it,
5 the major difficulty of our task lies in justifying tolerance for institutional intolerance,
6 adopting a position of non-discrimination in the face of pointed discrimination. In as
7 many ways as I've tried to reconcile the paradox, I cannot. The discriminatory message
8 and effects of TWU's community covenant are clear. LGBTQ students are not welcome
9 at TWU unless they essentially renounce their identity and agree not to engage in any
10 form of same-sex relationship or intimacy, even within a legal marriage. At the same
11 time, heterosexual students are free to engage in intimacy within the sanctity of marriage
12 between a man and a woman. Now we know that a Canadian legal education is a scarce
13 good. Admission to Canadian law schools is increasingly competitive and successful
14 admission grants access to a degree that in turn grants access to privilege, affluence,
15 interesting careers and status. Indeed, a law degree is a condition for entry to the judicial
16 branch of government. It is within this competitive market that TWU proposes to mete
17 out disadvantage to the LGBTQ community, an equity-seeking group that has historically
18 faced stereotyping, ridicule, assault, imprisonment and execution because of their
19 identity. It is informative to consider whether we would have the same debate over
20 discrimination against other equity-seeking groups, like women, people with disabilities
21 or racial minorities. Is sexual orientation a somehow more acceptable basis for
22 discrimination? This table has a duty to uphold and protect the public interest in the
23 administration of justice by preserving and protecting the rights and freedoms of all
24 persons, and we as Benchers may take any action considered necessary for the
25 promotion, protection, interest or welfare of the Law Society. In seeking to retain the
26 public's trust and to remain an important and respected institution within our civil
27 society, the Law Society must take every opportunity to condemn discrimination against
28 marginalized people. Freedom of religion is not unlimited and must sometimes yield to
29 the important goals of a civil society. Our refusal to approve TWU would not unduly

1 infringe upon the freedom of religion of its students or staff. It would not circumscribe
2 their beliefs nor prohibit their religious rights or practices. It would not stop them from
3 living by the terms of the covenant or from holding views about homosexuality. It would
4 not prevent TWU from operating a law school and issuing law degrees. It would only
5 deny our profession's approval and endorsement of discrimination involved in the
6 covenant. I therefore urge this table to approve this motion and deny approval of TWU's
7 law school until it removes the current provisions relating to intimacy and traditional
8 marriage. I submit that this approach provides the just and proportionate balance
9 necessary when rights and freedoms conflict. Thank you.

10 **JL:** Thank you Mr. Maclaren. Next, I have Mr. Doerksen.

11 **Lynal Doerksen** Thank you, Madam President. I am not in favour of this motion. With
12 respect to the academic requirements of Trinity Western's proposed law school program,
13 I see no merit to going behind the findings of the Federation of Law Societies, and I will
14 not do so here. But with respect to the issue of discrimination, the belief that marriage is
15 only between a man and a woman is not a novel or unusual belief, it is a belief that is
16 ancient and held by most of the religions of this world. In and of itself, this belief is not
17 offensive. It has been suggested by many that Trinity Western's practice of insisting that
18 students and faculty must respect this belief is akin to the former practice of Bob Jones
19 University in the United States, which banned interracial relationships. This comparison
20 is neither direct nor apt, for three reasons. First, the belief such as was held at Bob Jones
21 is offensive in and of itself. Second, the belief that marriage is only meant between
22 people of the same race is not a tenet of the majority or any of the world's major
23 religions. Third, the belief that marriage is between a man and a woman is recognized
24 and explicitly condoned in legislation. I refer of course to the *Civil Marriage Act*, and
25 specifically section 3.1. Of all the submissions against Trinity Western's application, only
26 one I noted referred to section 3.1 of the *Civil Marriage Act*. There is no legislation in
27 Canada that I am aware of that condones the belief that marriage is only meant for people
28 of the same race. Unfortunately, the use of Bob Jones as an example only serves to



1 inflame emotions on this issue and detracts from the legal analysis we must carry out. I
2 appreciate this is an emotional issue and that people do not like the effect of Trinity
3 Western's community covenant on the LGBT community. However, I need to conduct
4 this test dispassionately and regardless of my personal views. Here is my brief, legal
5 analysis. We have a university that has a belief that is not only lawful, but is explicitly
6 recognized in federal legislation. This legislation, the *Civil Marriage Act*, is itself
7 compliant with the *Charter*. This Madam President is good law. The BC Human Rights
8 Code applies in this province and it explicitly exempts private religious institutions like
9 Trinity Western from some of its provisions. Again, the BC Human Rights Code is, as far
10 as I'm aware, compliant with the *Charter*. We also recognize that the *Charter*, as stated
11 in section 32, does not apply to private institutions, only governments or those carrying
12 out a government function. The *Charter* does not apply to Trinity Western but it does
13 apply to the Law Society of BC. So although the community covenant is lawful and the
14 legislation that Trinity Western operates under is *Charter*-compliant, and the *Charter*
15 does not apply to a private institution, I am being asked to deny Trinity Western's law
16 grads from becoming lawyers because their institution does not comply with *Charter*
17 values. I believe that when people talk about *Charter* values, they are in fact referring to
18 societal values or social norms. Social values and the *Charter* should not be conflated.
19 Social norms have changed, but just because someone or some group is out of step with
20 these changes does not mean the *Charter* should be used as a sword to force everyone to
21 fall into line. I have always understood the *Charter* to be an instrument to protect citizens
22 from the abuses or unfair practices of their government, not from other citizens. Further,
23 it seems odd since we have never before looked behind the foreign law degree to see if an
24 applicant has ever been bound by a religious covenant to do so now. With respect to our
25 role as Benchers, I believe we are here to apply the law as it is, not as you may wish it to
26 be. I freely concede that the Supreme Court of Canada can and does alter, amend and
27 sometimes reverse previous rulings. I am not convinced that this is one of those
28 occasions. In any event, if we the Law Society of British Columbia were to end up before
29 the Supreme Court of Canada, my preference is to argue that we applied the law, and not

1 be admonished by the courts for failing to do so. I am sure there will a lot of interveners
2 more motivated than us to argue that the Court should decide differently. Finally, I have
3 always understood the phrase “public interest” to mean as a Law Society we are to
4 protect the public from dishonest and incompetent lawyers, not to protect the public from
5 lawyers who have different societal values. To refuse Trinity Western’s law school
6 accreditation on the basis their exercise of their belief in a traditional marriage is not in
7 the public interest is, in my view, a very shaky legal foundation which will not stand up
8 in court. If we cannot do something directly to Trinity Western because the *Charter* does
9 not apply to it, then we should not attempt to do so indirectly by invoking the public
10 interest. If I’m permitted, I found the reasoning of the submissions of the BC Civil
11 Liberties Association more persuasive and succinct and I adopt theirs as my own. Madam
12 President, I want to express my appreciation to you and the Executive for the manner in
13 which you’ve guided us through this most challenging issue. I have had the pleasure of
14 speaking with some of my colleagues at this table and the discussion has been vigorous
15 but always respectful and I look forward to doing that still with my colleagues here.
16 Thank you.

17 **JL:** Thank you Mr. Doerksen. Please remember to turn off your microphone. Next, I have
18 Mr. Wilson and just before you start, I’m just going to remind the technicians, following
19 Mr. Wilson, Mr. Riddell, Mr. Lloyd, Mr. Mossop, Ms. Kresivo.

20 **Tony Wilson** Thank you, Madam President. At the outset, I intend to use all of my time and I’m
21 not in a position of selling my unused minutes to Mr. Ward so he that he can resell them
22 to other Benchers. I wish to state that I have no horse in this race. I’m an atheist and I
23 have no difficulty telling people of faith that I don’t believe in their God. But I’m also
24 respectful of the right of all Canadians to believe in something spiritual if they so desire.
25 Indeed, for many of faith, the belief in the Divine is an indispensable component of who
26 they are as human beings and how they carry on their relationships with others. I’m sure
27 there are many atheists and agnostics who would like God to go away forever in a puff of
28 logic, but that’s not going to happen. God and the freedom to believe in God are



1 enshrined in the *Canadian Charter of Rights and Freedoms*, but so is the rule of law.
2 Despite the desires of some Canadians who would prefer that God go away and mind her
3 own business, enforced secularism is a risky and, dare I say, discriminatory public policy.
4 We saw on Monday the defeat of a Quebec government that tried to impose an offensive
5 secular orthodoxy on its citizens, particularly citizens of faith. According to the
6 politicians and policy makers, I must tread carefully when there are issues of faith at
7 stake, there has to be a balancing of interests. I have read all of the public submissions
8 and all the numerous opinions rendered. I have had, over the past six months, a number
9 of interesting and spirited discussions with colleagues at this table, with other lawyers in
10 Canada, and with non-lawyers who have learned about the issue in the media and have
11 told me how much they oppose the idea of a law school at Trinity Western University.
12 Arguments such as, how can you approve a law school that obviously discriminates
13 against members of the LGBT community? Or, denying one's sexuality is like denying
14 one's race, and discrimination based on sexual orientation is equivalent to discrimination
15 based on race. Or that we have a public duty as Benchers to uphold and protect the public
16 interest in the administration of justice by preserving and protecting the rights and
17 freedoms of all persons, including homosexuals. Or it's repugnant discrimination thinly
18 disguised and shielded by religious protection and incompatible with Canadian law. Or
19 it's contrary to the *Canadian Charter of Rights and Freedoms*. And there were these
20 arguments: TWU will produce lawyers and potentially judges who will discriminate
21 against gays and lesbians. TWU law professors will not be able to competently teach
22 legal ethics and constitution law, particularly the lawfulness of gay marriage. Or critical
23 thinking about legal issues cannot adequately be taught by a law school that violates
24 academic freedom and requires that all teaching be done from the perspective that the
25 Bible is the ultimate and authoritative source of all truth for ethical decision-making. Or
26 no individual lawyer who adheres to a set of religious principles could engage in critical
27 thinking about ethical issues. Many of these arguments are debatable; others are simply
28 opinions without any evidence whatsoever, but to suggest that a future law school at
29 TWU and students at that law school will be taught to discriminate against homosexuals



1 or that a person of faith can't teach law or think critically about ethical issues is, to my
2 mind, absurd. Does it mean that people of faith who happen to be law professors
3 shouldn't even be able to teach ethics at Canada's existing law schools? We, as Benchers,
4 must uphold the rule of law with respect to this issue and I believe we are still bound by
5 the Supreme Court of Canada's decision in the *Trinity Western University v. BC College*
6 *of Teachers* decision. We have all read the case. We've all seen the opinions, particularly
7 John Laskin's persuasive opinion that the *Teachers* case is still a law of Canada and
8 unlikely to be overturned. I am also persuaded by my colleague and friend Peter
9 Anderson who, in his submission, substituted the word lawyers and courts for teachers in
10 schools, and I'll quote with the substituted words. To paraphrase Chief Justice
11 McLaughlin, "absent concrete evidence that training lawyers at TWU fosters
12 discrimination in the courts of BC, the freedom of individuals to adhere to certain
13 religious beliefs while at TWU should be respected." And for those who may believe that
14 the *Teachers* case is either wrongly decided or that societal norms have changed, I am
15 further persuaded by the BC Civil Liberties Association's submission on this topic.
16 Finally, I would echo Professor Benson's argument from *The Advocate* and in his
17 submission, to deny TWU a law school is at odds with the principles of free, pluralistic
18 and tolerant society because, among other reasons, it would be discriminating against the
19 Christian community and others of faith. Until the Supreme Court of Canada says
20 otherwise, I believe we, as Benchers of the Law Society of British Columbia, are bound
21 to comply with the rule of law and that the *Trinity Western University v. BC College of*
22 *Teachers* case is still a law and that the motion should be defeated.

23 **JL:** Good timing, Mr. Wilson, thank you very much. Mr. Riddell?

24 **Phil Riddell** I oppose the resolution and, in my view, we are involved in the assessment of a
25 legal question and accordingly we have to follow the law. For the reasons stated by Mr.
26 Wilson, I am of the view that the *Trinity Western University v. BC College of Teachers*
27 case is still the law in Canada and, until we are told otherwise, that is a law that we are
28 bound to follow. We have been provided with a number of legal opinions, which appear

1 and justify the belief that TWU and the College is still the law. We have also requested
2 information with regard to an evidentiary basis to show that there is some connection
3 between a belief system and the actions. This was an issue raised by the Supreme Court
4 of Canada in the *College* case in which there was no evidence. We've received
5 information with respect to discriminatory claims or absence of discriminatory claims
6 from TWU graduates in the nursing and teaching programs. There is no connection. We
7 are now in a system in which the practice of law occurs on a national basis. We have a
8 National Mobility Agreement in place. We are bound by legislation such as the *Labour*
9 *Mobility Act* and the Agreement on Internal Trade. We are in a situation in which there is
10 no justification, legally, to bar a TWU graduate from academic qualification for the Law
11 Society. My personal experience as a Bencher has been in conducting articulated student
12 interviews in Westminister County, that probably a third or half of our articulated students
13 are foreign-trained. In no way a scientific survey as to the foreign-trained law students
14 who apply for entry to our Law Society, but based upon what I have seen, I have seen
15 foreign law school graduates who graduated from law schools throughout the United
16 States, England and Wales, Australia, South Africa and in India. Their entry on an
17 academic basis to our Law Society is based upon the Federation of Law Societies looking
18 at their training and determining what courses they have to take through the NCA
19 program to upgrade. There is no examination as to any covenants or rules of those law
20 schools. We seem to have no difficulty admitting foreign-trained lawyers without looking
21 behind their law degrees. We look at whether or not they've met their academic
22 requirements. We do not look at the belief system at the law school, the existence of
23 covenants. We look at their academic training. If we end up in a situation in which we
24 find law students who are not of good character, the credentialling process of the Law
25 Society is the place at which that issue is decided. On a pure academic acceptance, do
26 they have the law degree that ticks all our boxes? TWU has that. If there were problems
27 aside from that issue, that is dealt with in the credentialling process. Thank you, Madam
28 President.

29 **JL:** Thank you, Mr. Riddell. I have Mr. Lloyd, Mr. Mossop, Ms. Kresivo. Mr. Lloyd?

1 **Peter Lloyd** Madam President, fellow Benchers. Some, including my friend Mr. Riddell, have
2 said this is certainly a legal matter. I must, not surprisingly, respectfully disagree. This is
3 not a hearing panel. We sit as governors of the Law Society and our mandate is to
4 regulate in the public interest. Surely that requires each of us to discern, as best we can,
5 what is the public interest in this case. A plain reading of the TWU community covenant
6 could only be interpreted as offensive to gay people. It is plainly a discriminatory barrier
7 to entry. But is there a persuasive argument that outweighs discrimination. I have heard
8 four. They are, in my words, it's not our fight, why don't you just go to UBC, Alberta
9 may become the back door and what I call teacher-teacher. First, it's not our fight. What
10 makes law students so special? Let somebody else take this case. But we're not
11 commenting on the general right of TWU to operate their institution as they see fit. We
12 are specifically examining an application to accredit a law school in BC. That is our fight.
13 It may be annoying that it distracts us from other more strategic issues. But look around.
14 The decision today will define the Law Society of BC for years to come. Argument
15 dismissed. Next, why not just go to UBC? If a law student doesn't like the conditions for
16 entry to TWU, they can always apply elsewhere. Sounds a bit like, we don't allow black
17 people in our golf club, but they can play somewhere else. But we're asked to approve
18 this law school as being a civil place to train future lawyers. TWU asserts that the
19 training provided will occur in an environment of respect for Canadian equality law, so
20 why will they not even consider amending the offensive clause? Argument dismissed.
21 Alberta may become the back door. This argument asserts that our refusal to approve this
22 law school will cause a problem with national mobility agreements. Well, yeah, life is
23 messy but a matter of convenience should not outweigh principle. This proposed law
24 school is in BC, it's for others to follow our lead, not vice versa. Argument dismissed.
25 Finally, TWU accepts gay students, but only if they sign a document with which they
26 plainly cannot agree. Others, too, would have difficulty. A great start to a career in law,
27 don't you think? How can it be in the public interest to accept discrimination in a law
28 school? This time it's about gay students. Another prospective law school might tell us
29 well they accept women but only if they agree to sit separately at the back of the class.

1 Where will we draw the line? The *BC College of Teachers* case is often quoted, but much
2 has changed since that time, not just because of the law on gay marriage, but also I say
3 Canadian public opinion has become dramatically more inclusive in the last 10 or 15
4 years. The belief that the Supreme Court in its efforts to balance competing rights can
5 never move its opinion in any way provides a very gloomy view of justice. Jan Brewer,
6 the Governor of Arizona, recently vetoed a bill that would have allowed anti-gay
7 discrimination if based on religious belief. If she could find the courage to do so in
8 Arizona, surely we can do the same here. This is 2014, this is Canada, and we at the Law
9 Society of BC do not tolerate discrimination. Please join me in voting for the motion.
10 Thank you.

11 **JL:** Thank you Mr. Lloyd. Mr. Mossop.

12 **David Mossop, QC** Thank you, Madam President. I'd like to make three preliminary points.
13 First, my views are my personal views, they don't represent any organization. I am in
14 favour of gay marriage and find the offending provisions of the covenant inconsistent
15 with my personal views. Thirdly, I will vote against the motion, in other words, I support
16 the approval of Trinity Western University's school of law. In my view, the Supreme
17 Court of Canada decision in *Trinity Western University v. The BC College of Teachers* is
18 binding on the Law Society. I come to this conclusion despite the creative arguments
19 presented on the other side. In my view, they are not convincing in law. I agree with the
20 opinions of Mr. Gomery and Mr. Laskin. The simple result of the *Trinity Western* case is
21 the covenant is discriminatory in a common-sense way, but the Supreme Court of Canada
22 says they can do it and we just basically have to accept that. It's also important to
23 remember that religion and education is guaranteed in our constitution for
24 denominational schools and the *Charter* does not apply to denominational schools:
25 they're exempted under section 29. We have a whole bunch of Christian and other
26 religious independent schools that are partially funded by the government that are
27 exempted from the Human Rights Code. They all have various forms of covenants so the
28 issue is not just limited to this law school, it's a broader issue. What I consider of some



1 significance is that the existing law schools in British Columbia have been accepting
2 Trinity Western graduates, undergraduates, for years, and these law schools have never
3 looked at the community covenant. What they do is they look at a student, they look at
4 their marks, they look at what they got in the LSATs, they look at the references, and
5 make a decision. The information we got from the law schools here in British Columbia
6 was there was never a problem with Trinity Western graduates, and I think that's of some
7 significance. That goes to the harm that has to be proven. Now I'm going to say
8 something else to our representatives from Trinity Western in my last two and a half
9 minutes. You have a right to have the covenant, that's a matter of law, but just because
10 you have a right to do it doesn't mean you should do it. The present trend in Christian
11 churches is to accept gay marriage, it's happened in the Anglican Church. Recently, one
12 of the largest Protestant denominations in the United States, United Methodists, were
13 going to defrock an 80-year-old minister for performing a gay marriage. He used to head
14 the School of Divinity at Yale University and then the trial was set for March 11th or
15 12th, and it was called off. And who was he going to marry? He was going to marry his
16 son. This stopped the trial; the Bishop stopped the trial and stated we have to have a
17 dialogue in the Church. I'm sure the three representatives will disagree with me, they'll
18 never change their views, but maybe their children and grandchildren may change their
19 views. The other thing I wanted to say to the Trinity Western representatives is, you have
20 a great curriculum. I was really impressed by it, but to be a successful law school in
21 British Columbia or in Canada, you have to have broad support within the legal
22 community. You do not have that broad support. There are significant members of this
23 profession who are against your approval. There is nothing the Law Society can do about
24 that. That's an individual thing for individual lawyers. That will be, if I could use the
25 biblical example, a millstone around your neck. And over time, the pressure will come
26 from the faculty and from the student bodies at the law school to change the covenant.
27 Maybe eight to 15 years from now, you will change the covenant and at that time, those
28 people in charge will say, why did we ever do this in the first place? But that's something



1 internally for Trinity Western to deal with. Today, I'm going to vote against the motion
2 and vote for the approval. Thank you.

3 **JL:** Thank you, Mr. Mossop. Please turn your microphone off. Ms. Kresivo.

4 **Miriam Kresivo, QC** Thank you, Madam Chairman, and thank you to all Benchers. My
5 remarks will be somewhat truncated because others have expressed many of my views.
6 Let me say that, in my view, the resolution should be defeated. This is a very difficult
7 decision for me. I have to say my personal feelings about this are very strong. I am not a
8 fan of religion, I don't have religious beliefs. I think that religion often leads to
9 intolerance. It troubles me, but if I applied my own personal views, I would vote for the
10 motion. I am not here to apply my personal views, as others have said. I am here as a
11 Bencher to apply the law and, as a Bencher, I have to remove my personal feelings and
12 say what is the law. I adopt the comments of Mr. Doerksen and Mr. Wilson that we have
13 very good, very impartial legal opinions which indicate that the Supreme Court of
14 Canada *TWU* case still applies and is good law, and it is not our discretion to say that we
15 would prefer it to be different. We do not apply our own personal standards, we are
16 applying the law, and we, as Benchers, of all people, should apply the law. The Supreme
17 Court of Canada has clearly held that private educational institutions formed by religious
18 groups can have their Constitutional rights recognized and we have to balance equality
19 rights and religious beliefs. I'm strongly persuaded, as was Mr. Doerksen, by the BC
20 Civil Liberties Association's submission on how that should be done and that we look at
21 belief versus conduct, that we look at actual harm versus what people might believe.
22 Some people here have said things have changed, we must change with societal mores. I
23 do not believe what the Supreme Court of Canada stated in the *TWU* case has changed,
24 that that balancing, notwithstanding, that there is greater recognition of LGB rights, but
25 those rights, which I support fully, that that changes the basic premise of the Supreme
26 Court of Canada case. I do not think that we can bar TWU from a law school because of
27 the covenant, although the covenant may be abhorrent to me. I think we have to follow
28 the law. We have to assume that TWU graduates will be able to distinguish between their

1 personal views and apply the law. That is exactly the position that I am in and we are in,
2 which is we are expected to put aside our personal views and apply the law. The law is
3 clear, I believe, and I think we should be able to meet the expectation even if the decision
4 is very unpopular and very difficult. Thank you.

5 **JL:** Thank you, Ms. Kresivo. Mr. Richmond, and just for the record, I have Mr. Richmond,
6 Mr. Lawton, Mr. Meisner, Mr. Finch. Mr. Richmond.

7 **Claude Richmond** Thank you, Madam President. My name is Claude Richmond and I'm a
8 lay Bencher, now called an Appointed Bencher. The decision we are to make here today
9 is not one that should be made because we are concerned with what the fallout might be
10 or whether some people will be disappointed with our decision or how history will view
11 us. It should be based on what we feel is the right thing to do, whatever you perceive that
12 to be. The Supreme Court of Canada has said the rights of one group should not trump
13 the rights of other groups, and they ruled in favour of TWUs application for a law school.
14 The lawmakers in Victoria have ruled in favour of Trinity Western's law school. Whether
15 we agree or not, it is the law of the land. The Ministry of Advanced Education also gave
16 TWU their approval, as did the Federation of Law Societies of Canada. Trinity Western
17 now has the right, under the law, to have a law school. We are talking about whether or
18 not the Law Society of British Columbia will recognize the graduates of TWU or deny
19 them the right to practise in British Columbia. This would truly be a case of
20 discrimination. There are many faith-based universities and they seem to operate very
21 well. There are also many secular universities and they also seem to operate very well.
22 People are able to make choices as to which they will attend and that, to me, is the way it
23 should be. I take the freedom of speech and the freedom of ideas very seriously, and I
24 take umbrage with those who disagree and resort to the argument that I am not
25 enlightened or I just don't understand. It is the last refuge of those who are bereft of
26 arguments. Madam President and fellow Benchers, we must not trample on the rights of
27 one group in society to satisfy the rights of another. I am in favour of the Trinity Western
28 University having a law school and will be voting against this motion.

1 **JL:** Thank you, Mr. Richmond. Mr. Lawton.

2 **Dean Lawton** Thank you, Madam President. I was very impressed with the energy and
3 thoughtfulness, and in some cases the passion put into the many submissions to us for
4 consideration of this motion. I thank the individuals and organizations who have provided
5 their views; I have read them all. I remind myself, in considering the submissions and the
6 resolution, especially in the context of being a recently elected Bencher, that the
7 obligation of the Law Society of British Columbia and the Benchers is to uphold and
8 protect the public interest in the administration of justice, and this includes protecting the
9 rights and freedoms of all persons. This includes as well, in my opinion, the mandate to
10 consider legal education program delivery. It is in the context of this environment that the
11 Law Society of British Columbia, in my view, has the jurisdiction to decline accreditation
12 to the Trinity Western University JD degree. One of the opponents to accreditation has
13 written the following, quote: Trinity Western University should not be permitted to
14 impose upon the public a religiously grounded program, that it is incompetent to deliver a
15 legal education consistent with what the regulators of the law profession in Canada have
16 identified as necessary to protect the public. The basis for this criticism appears to be the
17 community covenant agreement which has adherents pledge they shall reserve sexual
18 expressions of intimacy for marriage and that marriage is reserved between a man and a
19 woman. I suspect why this caused so much concern among those opposed to accreditation
20 is not the pledge of celibacy, but the statement of marriage being sacred exclusively
21 between a man and a woman. Were it not for the statement about marriage, I expect we
22 would not be considering this matter today. What we have then, in my opinion, is a
23 conflict between views of faith-based evangelical Christian adherence and those who
24 govern their lives, and behaviours from a secular foundation informed by a political or
25 social philosophy. These different beliefs and perspectives are unlikely to disappear and
26 one set is not superior to the other, one correct and the other not. Indeed, from a legal
27 perspective, the Supreme Court of Canada has rejected the hierarchical approach to rights
28 and values which places some over others. And, in this regard, I am very alive to the
29 2001 decision of *Trinity Western University v. The British Columbia College of*



1 *Teachers.* In that case, the Supreme Court of Canada provided pragmatic and clear
2 direction that there is a difference between belief and conduct. In my opinion, there needs
3 to be evidence of harm having occurred or likely to occur as a result of the Trinity
4 Western community covenant agreement being embraced by law students. In this
5 approach, a fellow Bencher has asked for data with respect to any past discipline histories
6 relating to discrimination by Trinity Western University teacher graduates or
7 undergraduates who have gone on to BC law schools. None were reported. While I do not
8 agree with the soundness of Trinity Western University's perspectives on sexual
9 expression or marriage, these are nevertheless a legitimate faith-based catechism. There
10 are lawyers practising in British Columbia who are graduates of Trinity Western
11 University. There are lawyers practising in British Columbia who are Mormons,
12 Catholics, Anglicans, Muslims, Jews. There are lawyers practising in British Columbia
13 who are agnostics, atheists, existentialists and secular humanists. All these lawyers
14 recognize their professional responsibilities and adhere to them in the practice of law. I
15 suggest that the Law Society of British Columbia must be careful not to become
16 Pharisees of secularism, but at the same time, it will need to be assured that the sanctity
17 of even treatment before the law trumps the sanctity of the lawyer by the standards of
18 Trinity Western University. That can only occur over time. If empirical evidence
19 demonstrates going forward that Trinity Western University students or graduates are not
20 meeting professional and ethical standards of conduct, then the Law Society can use its
21 discipline authority accordingly. I graduated from law school over 30 years ago. For me,
22 it was an expansive, invigorating experience. I've had the benefit of being a sessional
23 lecturer in law school at the University of Victoria since that time. It continued to an
24 expansive and enriching environment. I heard one of my fellow Benchers earlier say that
25 maybe over time this covenant will be modified. I suspect it will. I suspect ironically
26 we're dealing with a Trojan horse environment. In other words, when students go to that
27 faculty, they will over time become more enlightened, they will learn to balance the
28 interests of all. And so, fellow Benchers, I am opposed to this resolution. Thank you.

1 **JL:** Thank you very much Mr. Lawton. I have Mr. Meisner, then Mr. Finch, then Ms.
2 Rowbotham.

3 **Ben Meisner** Madam Chair, fellow Benchers. I am a lay Bencher appointed by the province.
4 My submission is not about the legal aspects of the decision, but rather, how does the
5 public view this matter and what are the best interests of the public? Trinity Western
6 seeks to establish a faculty of law at their private institution. The faculty will be funded
7 entirely by the faculty and the facility and students. I am of the opinion there appears to
8 be a lot of head-butting in the issue of Trinity Western, arguing that the provision of
9 sexual intimacy is reserved for one man and one woman within marriage. On the other
10 hand, various groups are seeking same-sex unions. I have no personal or family issues in
11 this matter. My loyalty sits with what I believe is the best interest of the public. Section
12 15 and section 15.1 of the *Charter*, in my mind, speaks the case on behalf of both of these
13 groups in an equal manner, so I am left with a decision to make on what harm would a
14 faculty of this type do at Trinity Western and how would it foster in the general
15 population of this province? The barrister and solicitor's oath, which must be sworn in
16 order to become a lawyer in BC, is very straightforward. Let me refresh your memory on
17 the words contained in that oath: "Do you sincerely promise and swear or affirm that you
18 will diligently, faithfully, and to the best of your ability, execute the offices of barrister
19 and solicitor, that you will not promote suits upon frivolous pretences, that you will not
20 pervert the law to favour or prejudice anyone, but in all things, conduct yourselves truly
21 and with integrity and that you will uphold the rule of law and the rights and freedoms of
22 all persons according to the laws of Canada and the province of British Columbia?" If a
23 student is not prepared to swear that oath of office, they'll not be permitted to practise,
24 and that's what we are as regulators. One takes from that oath the obligation to uphold
25 the rule of law. The Law Society of BC has within its rules and regulations the checks
26 and balances necessary to ensure that this oath is maintained. It would seem reasonable
27 that this is where the individual should be judged if they do not conform to that oath.
28 There are consequences for violating that oath in the rules and regulations of the Law
29 Society of BC. The consequences include losing one's licence to practise law in this

1 province. While the forces for same-sex unions argue that the proviso contradicts the
2 *Charter* and therefore approval should not be granted, I boil the issue down to one of
3 common sense. What harm will come from a lawyer who graduates from Trinity, who
4 swears to uphold and conduct themselves in a manner that reflects all of society by their
5 oath in office? The issue has received little attention outside of these two factions in
6 disagreement to a point that, in my region of the province, you'd be hard pressed to find
7 someone who not only knows about the issue but who can speak with any authority on
8 the matter. That suggests to me that this is not an issue that is troubling for the people of
9 the province of British Columbia. So, I am back, looking at the harm that could come
10 from such a facility being established. Students are free to apply and enroll in any
11 university across Canada. Simply put, if you don't like what Trinity is offering, why
12 would you seek admission? If there is a facility that tends to attract students who strongly
13 believe in their views of same-sex unions, by all means, that's where you should seek
14 admission. Trinity students would simply have no reason to apply. What was acceptable
15 by society and the Church over the past five decades has changed dramatically. All
16 segments of society would agree that further change is only a matter of time. In voting,
17 we have to have an eye on the future, but we must represent the law of the land as it
18 exists today. I will be voting against the resolution. Thank you.

19 **JL:** Thank you, Mr. Meisner. Mr. Finch.

20 **Martin Finch, QC** Thank you, Madam President, ladies and gentlemen. I was humbled at the
21 challenge of addressing this particularly complex problem, that is peculiarly a product of
22 our contemporary age. I recognize the breadth of thoughtful and compelling submissions
23 from all quarters that have been presented to us. The perceived conflicts and the genuine
24 concerns voiced evidence the seriousness with which we as Canadians value our rights
25 and our freedoms. It is not possible to give full response to the broad compass of opinions
26 that were provided to us in our over 2,000 pages of written materials and I've read those
27 materials. Each of us can articulate only a broad answer to what some consider a
28 complicated question, or indeed a set of complicated questions. I've struggled to do



1 justice to this task, for it appears to some an impossible exercise in resolving apparent
2 conflicts of right. The Law Society must be deeply committed to equality rights of all
3 kinds. Those rights protect the fundamental fabric of our country. It is in our diversity
4 that we can inspire each other, and learn from each other, and progress into the future as a
5 single people with multiple facets. I am also, however, particularly alive to the hard-
6 fought and often begrudgingly granted recognition of true equality rights due to members
7 of the LGBT community. I totally support those rights. A step to exclude or limit those
8 rights and to exclude or limit those members of our family of Canadian people from full
9 participation in the fullness of Canadian life would, in my view, be discriminatory and
10 fundamentally wrong. The question however for us is not one that requires the possible
11 limitation of the section 15 *Charter* right for the LGBT community. We're being asked
12 whether the training of students at a lawfully created university law school should be
13 recognized as fit for the purpose of satisfying the requirements of the Law Society in its
14 responsibility to ensure only properly trained students should be granted the privilege of
15 practising law. The subject covenant is a voluntary one that is undertaken by TWU
16 students. Participation in the TWU academic community is a matter of choice. As the
17 Supreme Court of Canada has observed, it may not be for everyone and it may not be to
18 everyone's taste. Our country has a rich, intellectual tradition of secularism with a
19 longstanding separation of Church and state. But these worlds coexist and they must. It is
20 entirely consistent with our multicultural society that sectarianism, even of the kind
21 voiced by TWU, can easily coexist with broadly based secularism. The expression of
22 freedom of religion requires that. We have, in the intellectual history of our country, and
23 indeed the intellectual history of the western world, a longstanding dynamic tension
24 between secularism and sectarianism and it is one that we cannot simply, through the
25 adoption of secular humanism, disregard or cause to be disregarded in the long complex
26 history of our culture and civilization. TWU is a privately funded institution. It does not
27 reduce the number of spaces for potential law students. It expands them. Any person who
28 doesn't want to abide by their covenant need not attend. They will still have all of the
29 available positions that are presently provided through publicly funded law schools. By

1 certification of TWU, we add choice, we don't exclude options for persons who would
2 not want to abide by the covenant. Mind you, it is a mistake, in the absence of compelling
3 evidence, of which I've seen none, to suppose that religious sectarianism will by itself
4 result in a form of legal training that is not objective and broad-ranging in its
5 consideration. In order to understand contemporary Canadian law, students will
6 necessarily need to study significant constitutional cases. Ironically, one of those cases
7 will be the *TWU v. BC College of Teachers* case. Trust is an important component in
8 human activity. In the absence of evidence to the contrary, there is no reason, in my view,
9 to suppose the worst for TWU based on stereotypes of intellectual propensities. Lawyers
10 take an oath, as my friend Mr. Meisner has observed, to act impartially in the interests of
11 clients. Every day, Canadian lawyers of many different intellectual persuasions and
12 beliefs exquisitely conduct the difficult task of acting in a professional manner for
13 persons and causes of which they may personally have great distaste. If they are capable
14 of doing that, I can see no reason why, in the absence of evidence, that TWU-trained
15 persons would not be able to do that. I oppose the motion.

16 **JL:** Mr. Finch, I'm going to take this time off of your second speech.

17 **MF:** Thank you, Madam President.

18 **JL:** Please conclude.

19 **MF:** Thank you. I, in conclusion, rely on the opinions of Mr. Gomery and also the submissions
20 of the BC Civil Liberties Association as being accurate articulations of the law. I believe
21 the law, as stated by the Supreme Court of Canada in the *TWU v. BC College of Teachers*
22 TWU case, effected the complex task of balancing apparently competing rights. There
23 was great wisdom in the judgment of Mr. Justice Iacobucci, and I believe that opposition
24 to the motion is consonant with that wisdom. Those are my submissions.

25 **JL:** Thank you, Mr. Finch. I have Ms. Rowbotham, Mr. Ward, Ms. Matthews, Ms. Morellato.

26 **Elizabeth Rowbotham** Thank you, Madam President. I will begin by stating that I, too,
27 have read all of the submissions and materials and that the comments that I am making



1 today are my own. I would like to thank everybody who made submissions for their
2 submissions, and for participating in the discussion. I appreciate the issue we are debating
3 today has generated a considerable amount of interest among our members. I also
4 appreciate that there are strongly held views on either side of the issue, and so I want to
5 acknowledge the professionalism and the respectfulness of the discussion that has taken
6 place. I would also like to pause here just for one moment to acknowledge how fortunate
7 we are to be able to live in a country and a society where we can have this debate. One
8 final comment I would like to make is that I have had and I continue to have the pleasure
9 of working with ethical and skilled lawyers who are part of the LGBT community and I
10 have also had the pleasure of working with other equally skilled and ethical lawyers who
11 have strong ties to their faith.

12 So to turn to the motion, I respect the views of Mr. Arvay and Mr. Maclaren, but I concur
13 with many of the comments made by Mr. Doerksen, in particular, and Mr. Richmond. In
14 my view, there are two primary issues underlying the motion. The first is whether TWU
15 can properly educate and instruct students on ethics, and the second issue is whether it's
16 in the public interest to approve a law school whose mandatory community covenant
17 operates as a barrier to entry on the basis of sexual orientation. With respect to the first
18 issue, the ability of TWU to educate its students properly, I agree with others, I do not see
19 much merit in this issue. I don't see any reason why a faith-based university cannot
20 properly instruct students. I note the description of TWU's ethics course states that it will
21 discuss reconciling professional and personal beliefs with its students. I think this is
22 probably not something restricted solely to Christian-based students. Other faith students
23 may also have similar issues in other schools. The more problematic issue is the second
24 issue and whether it's in the public interest to approve a private law school. I share Ms.
25 Kresivo's comments. I struggled very hard on this. I find it very disturbing that people
26 can be discriminated against on the basis of sexual orientation simply because an
27 institution is a private institution. However, that is our law in Canada and I think that if
28 it's to be challenged, this is not the forum to do so. I considered at great length our *Legal*
29 *Profession Act*, and where our jurisdiction lies. I appreciate that some would argue that

1 section 3 of our Act gives us the jurisdiction to disapprove or approve a law school on the
2 basis of the covenant. I'm not so sure that that is how far our jurisdiction extends. I do not
3 think it necessarily extends so far as to exclude applicants, and that's who we would be
4 excluding, applicants who are graduates from a particular school based solely on the
5 characteristics of a school and not on the quality of the education provided in the school
6 or the competency of the graduate. I also note that the Ministry of Advanced Education
7 has approved the law school; doesn't that mean that the law school exists? It just needs a
8 few bricks and mortar and some faculty and some students. So, what we are really
9 focusing on is banning of the graduates from that school from admission to the Law
10 Society of BC, based on the characteristics of the school. Those are my comments for
11 now. Thank you, Madam.

12 **JL:** Thank you very much Ms. Rowbotham. Mr. Ward, Ms. Matthews, and Ms. Morellato.
13 Mr. Ward.

14 **Cameron Ward** Thank you, Madam Speaker, Madam President. I've considered the many
15 submissions before us and I, too, appreciate the considerable thought and effort that went
16 in to them. I paid particular attention to the December 2013 final report of the Federation
17 of Law Societies of Canada's Special Advisory Committee, because that committee
18 thoroughly considered an extensive body of material similar to the material that's before
19 us. The Special Advisory Committee stated in two places in its final report, at paragraphs
20 36 and 53, that Trinity Western University's community covenant would make LGBT
21 students feel unwelcome there. I remember that in the 1960s some people in the deep
22 south of the United States were made to feel unwelcome at lunch counters, at the fronts
23 of buses and, indeed, in some universities, simply because of a characteristic they were
24 born with and could not change, namely the colour of their skin. In my view, making
25 people feel unwelcome anywhere because of their personal characteristics is a
26 particularly repugnant form of discrimination. As a Bencher, as a lawyer, and as a
27 Canadian citizen, I feel I have the duty to oppose such discrimination, not to promote or
28 to condone it. In my opinion, TWU's community covenant is an anachronism, a

1 throwback that wouldn't be out of place in the 1960s. The Law Society recently invited
2 the university to amend it, to remove its discriminatory language. TWU refused. The
3 Trinity Western University is stubborn enough to stick to its principles, I'm stubborn
4 enough to stick to mine. I will proudly be voting in favour of the resolution.

5 **JL:** Thank you, Mr. Ward. Ms. Matthews.

6 **Sharon Matthews, QC** Thank you, Madam President. I found this issue terribly vexing. I
7 have lost sleep over this issue, but I also share the comment made by one of my
8 colleagues that we are truly privileged to live in a society and a country where we have
9 this form of debate and we are honoured and privileged to be around this table where the
10 debate is so respectful.

11 I open my comments with saying that I agree that we must act in the public interest and
12 that that is our overriding duty. And that in acting in the public interest, I also share the
13 comments observed that we must apply the law. But, as I think will become clear, I
14 believe some of the articulation of how we must apply the law has, in my respectful
15 opinion, been too narrowly viewed. In that regard, I say that simply saying because the
16 2001 *TWU* case was decided the way it was decided, is saying that our decision is
17 essentially made for us. So, what I did was I reviewed the law. I reviewed all of the
18 opinions, and then I went and read all of the cases as well as the submissions that were
19 made. I had a number of questions and I started with this: first of all I would say that it is
20 obvious that we have two *Charter*-protected rights that are coming into contact with each
21 other here and are in conflict, and one obviously is freedom of religion and the other is
22 equality or freedom from discrimination, to put it that way, and they must be balanced.
23 You will hear me say that I think that the balancing that must be done must be done under
24 section 1 of the *Charter*, which is not what happened in *TWU* 2001. But I started with
25 freedom of religion and I first asked myself about religion, because a number of the
26 comments that have been made to me during discussions over this debate were people
27 actually disputing the content of the religious beliefs of TWU, the content of religious
28 beliefs in the covenant, and saying that their version of Christianity didn't agree with that



1 content. Of course there are versions of Christianity that don't agree with that content, but
2 my firm view is that the believer defines their beliefs, that we are not here to say that
3 TWU shouldn't hold those beliefs or the students and faculty of TWU shouldn't hold
4 those beliefs or shouldn't put them at the centre of their community. The other part of
5 freedom of religion of course is, what is freedom? The question I've been asking myself
6 from the beginning is, and it's a very basic question, is it necessary for one to enjoy
7 freedom of religion, to be concerned about what the person sitting next to them in torts
8 class is doing within the confines of their intimate relationship? That takes me to the
9 covenant and it takes me to what *TWU* 2001 decided. *TWU* 2001 decided that, in
10 balancing these rights, we must look at whether a belief becomes conduct; as long as you
11 stay on the belief side of the line, your freedom of religion must be respected. But if it
12 becomes conduct, and the conduct is harmful, then the balance switches to protecting
13 against discrimination. In my view, one of the things that we must appreciate about the
14 2001 *TWU* case is that the majority, which was written, contrary to Mr. Anderson, not by
15 Chief Justice McLaughlin but by Justices Iacobucci and Bastarache, didn't undertake a
16 typical *Charter* analysis where they asked whether or not TWU had been the subject of a
17 discriminatory decision and then asked whether section 1 saved that decision. They just
18 got right into the balancing outside of the whole *Charter* structure analysis, which
19 generates all of the other *Charter* cases, or is generated by all of the other *Charter* cases.
20 The minority or the dissent actually, Justice L'Heureux-Dubé said, "No, the majority's
21 got it wrong, you have to do it under section 1." That was the driver of her decision.
22 *Whatcott*, which comes very recently and many years later, makes it clear that that
23 balancing has to be done under section 1. So, while I don't dispute what *TWU* 2001 says
24 about belief and conduct, I do dispute that, if it was properly applied to this covenant, the
25 result would be the same because of the cases that have decided freedom of religion
26 balanced against other rights under section 1 analyses, and in particular the parts of the
27 covenant which, as Mr. Arvay said, just got passing reference by the majority in *TWU*,
28 number one, starting with discrimination on admissions. That, in my view, is conduct, not
29 belief. The community covenant implies that there can be sanctions up to dismissal for

1 breaches of the covenant. I understand that to be very important to TWU, that it is a
2 covenant, not simply an articulation of beliefs. I think if it was simply an articulation of
3 beliefs we may not be having this debate, or at least the same debate. So, I say that is
4 coercive conduct. It is conduct and not belief, and the covenant also calls other members
5 of the community into action in policing the covenant. Again, I say that is conduct and
6 not belief and I would say that, of those three, my greatest concerns would be the
7 admissions conduct, as have been echoed in several of the submissions made to us. I also
8 paid close attention to the fact, in several of the submissions, that the covenant contains
9 some very not just neutral but positive things, including respecting the dignity and the
10 worth of all human beings. I have to say with great respect that...

11 **JL:** Ms. Matthews, I'm interrupting you because you've run your five minutes and also your
12 three.

13 **SM:** Oh, I'm sorry.

14 **JL:** So, you need to wrap up.

15 **SM:** I apologize. I'll just say in closing, I agree we have to apply the law, but we have to do it
16 in a fulsome way, we have to do it as leaders, and we have to do it with courage.

17 **JL:** Thank you, Ms. Matthews. As I've done with Mr. Arvay and Mr. Finch, you've now had
18 your second speech. Thank you. Ms. Morellato, then I have Mr. Crossin, then Mr. Van
19 Ommen. Are there any more names? Ms. Morellato.

20 **Maria Morellato, QC** Madam President, fellow Benchers and guests. In our role as
21 regulators, we are guided by and we must follow the rulings of the Supreme Court of
22 Canada. That court has emphasized the imperative of protecting both equality rights and
23 freedom of religion. In the *Big M Drug Mart* case, Chief Justice Dickson reasoned, and I
24 quote: "A truly free society is one which can accommodate a wide variety of beliefs,
25 diversity of taste and pursuits, customs, and codes of conduct." The Supreme Court of
26 Canada has repeatedly underscored that tolerance of divergent beliefs is the hallmark of
27 our free and democratic society. This is no easy task for us because we are all called to



1 tolerate beliefs that, as individuals, we may personally find very troubling and disagree
2 with strongly. This is a challenge for us around this table. Like many Benchers, I am
3 deeply troubled and offended by the community covenant, but you must accept the
4 constitutional rights of TWU to believe in what they believe and in their religious
5 freedom. How then do we reconcile conflicting rights and freedoms? More specifically,
6 and light of TWU’s community covenant, how do we protect the equality rights of the
7 LGBTQ community, but also honoring the religious freedom of TWU? Well, the
8 Supreme Court of Canada in 2001 addressed this very question. The Court held that
9 neither freedom of religion nor the guarantee against discrimination based on sexual
10 orientation is absolute. Further, when these rights conflict, says the Court, they must be
11 balanced. Specifically, the Court reasoned as follows, and I quote: “students attending
12 TWU are free to adopt personal rules of conduct based on their religious beliefs provided
13 they do not interfere with the rights of others.” Further, the Court also acknowledged, and
14 I quote: “a homosexual student would not be tempted to apply for admission and could
15 only sign the so-called student contract at considerable personal cost.” The Court
16 considered that cost, yet the Court focused on the fact that TWU was a private religious
17 institution that was not fit for everyone, and that ultimately students were free to apply to
18 TWU or choose to go elsewhere for their education. TWU’s students choose to go to
19 TWU knowing the beliefs that are espoused by the university. This is a matter of choice,
20 not imposition. The Court then reasons that TWU, and I quote: “The restriction on
21 freedom of religion must be justified by evidence that the exercise of freedom of religion
22 will in the circumstances of the case, have a detrimental impact.” The proper place to
23 draw the line in cases such as this, reasons the Court, is, and again I quote: “between
24 belief and conduct, the freedom to hold beliefs is broader than the freedom to act on
25 them.” The Court found in TWU the code of conduct was a belief, not an action that led
26 to harm. Further, the Court concluded that, absent concrete evidence that TWU’s
27 religious beliefs and code of behaviour caused actual harm, the freedoms of individuals to
28 adhere to such religious beliefs while at TWU should be respected. That is what the Court
29 found and that is the law that we must follow. The Court concluded that the College of



1 Teachers erred when it denied TWU's accreditation because it had no evidence before it
2 of actual harm caused by TWU's code of conduct. The Law Society of British Columbia
3 must not make the same mistake. In the final analysis, the Supreme Court of Canada
4 ruled that TWU and graduates of TWU ought to be judged, not by what they believe and
5 not by their code of conduct, but what they actually do. If their conduct is discriminatory
6 and harmful, they will be held accountable. If a TWU graduate discriminates in their
7 practice of law, they are accountable to the Law Society and to our code of conduct.
8 Likewise, if TWU does not, for example, respect gay marriages by attempting to
9 discipline gay students for breaching the code of conduct, then it would also be held
10 accountable. It is our expectation, it is my expectation of course, that TWU's law school
11 will honour the rule of law and respect the dignity and sexual orientation of all
12 individuals. We simply cannot assume, however, that TWU or the view of their graduates
13 will break the law and that they will choose to act in a way that's discriminatory once the
14 law school is up and running. Our *Charter of Rights and Freedoms* is grounded in a deep
15 and abiding respect for the dignity and worth of every person, including each individual's
16 religious beliefs and their sexual orientation. Our challenge is to protect and uphold the
17 equality rights and freedoms of both the minority groups before us today, and to
18 intervene only when the conduct of one harms the other. I, too, found the submissions of
19 the BC Liberties Association persuasive and helpful. I do not support the motion. I do
20 hope that one day the covenant will change.

21 **JL:** Thank you, Ms. Morellato. Mr. Crossin, it is your turn on the list, so can that be
22 activated? Thank you.

23 **David Crossin, QC** Can you hear me?

24 **JL:** Yes we can.

25 **DC:** All right. Well, thank you, Madam President. I only have a few points. Now, as much has
26 been covered in the oral presentations, I certainly couldn't improve on many of the points
27 that have been made. I will tell you immediately that I am opposed to the motion. Let me
28 begin this way, however, and I say this with the greatest of respect: I think TWU could



1 easily have approached this issue in a more sensible and sensitive way without sacrificing
2 any principles at all. They could well have simply urged a respectful consideration of
3 Christian values instead of demanding compliance, but it didn't do that. Instead, to me,
4 frankly, inexplicably, it chose a path that is effectively discriminatory, certainly hurtful,
5 and to many highly hypocritical. In my view, however, notwithstanding these choices, the
6 law and the public interest demand recognition of TWU's right to conduct their affairs in
7 this way, on these facts, in these particular circumstances. In my view, the jurisprudence,
8 and you've all had an opportunity to read that, makes it clear the conduct is lawful, and
9 I've heard nothing that persuades me that the analysis of logic of the *Teachers* case many
10 years ago would now be seen as flawed. It is also my view that the covenant could, in
11 fact, raise issues that engage our public interest mandate, but as I see it anyway, there is
12 no evidence the ability of the teachers to properly teach would be compromised. There is
13 no evidence the ability of the students to learn and think will be improperly stunted.
14 There is no evidence the graduates will be unable or unwilling to properly serve the
15 public in the administration of justice, and of course as such evidence evolves that falls
16 within our mandate, we will deal with it. For me, the overarching issue that engages the
17 public interest on these facts in the context of the jurisprudence as it now stands is the
18 recognition of the right to assemble and the right to freely and openly practise religious
19 belief. It is a fundamental right in this country that is to be jealously guarded, not on
20 behalf of TWU, but for and on behalf of the public and the citizens of this province. It is
21 no doubt true that some or many or most find the goals of TWU in the exercise of this
22 fundamental right to be out of step and offensive. It is almost an exercise of inevitable
23 self-marginalization, but and in my opinion, that does not justify a response that sidesteps
24 that fundamental Canadian freedom in order to either punish TWU for its value system or
25 force it to replace it. In my view, to do so would risk undermining freedom of religion for
26 all and to do so would be a dangerous over-extension of institutional power. Freedom of
27 religion and of assembly and of thought are protected, not because of the goals of TWU,
28 but they are protected in spite of those goals. I suppose I would just conclude this way,
29 that I do believe that TWU will travel a more charitable path in the future, but at the



1 moment I think the public requires that, however this moves forward, it moves forward
2 with the freedom of religion and belief in thought and of opinion fully and completely
3 intact. Thank you.

4 **JL:** Well timed, Mr. Crossin. I don't know whether you know this, but we have monitors that
5 are keeping track of the five minutes and you were perfect. Thank you for your
6 comments. Mr. Van Ommen, and then I have Ms. Ongman, Mr. Ferris and Mr. Walker.
7 Thank you, and Mr. Van Ommen.

8 **Herman Van Ommen, QC** Thank you, Madam President. I am in favour of approving TWU
9 and will be voting against the motion. I should know better than to follow my good friend
10 Mr. Crossin and so, having listened to him, I really have nothing to add. I simply adopt
11 his comments. They were extremely thoughtful and well-spoken and so I associate
12 myself entirely with his remarks.

13 **JL:** Thank you, Mr. Van Ommen. I'm looking at the time. It's 20 after. We've been sitting
14 for a bit. I'm thinking, and not to cut you off, but we won't be done by 10:30 and so I'm
15 inclined to break now. What's the will of the table?

16 **Several at once:** Yes.

17 **JL:** All right, perfect. We'll take our health break, 15 minutes please, thank you.

18 [Break]

19 **JL:** Welcome back and I hope everyone is refreshed. So I have on my list Ms. Ongman, Mr.
20 Ferris, Mr. Walker and Ms. Cheema. No more hands? Thank you very much, Ms.
21 Dhaliwal. So, we'll hear from Ms. Ongman please.

22 **Lee Ongman** Thank you. I'd like to say also quickly my appreciation for all the submissions,
23 both the personal opinions and the legal opinions that we've received over the months
24 and how helpful they've been to me as the different thoughts on the *Charter of Rights* and
25 our job at the Law Society swirled through my mind. I'm very certain I'll be within my
26 time limit, I just have a couple of points to make. The first is that I want to say that I have
27 absolutely no doubt that the law school at Trinity Western will produce students that will



1 make fine lawyers and, as there are fine lawyers at this table that are Christians and can
2 do their job, and I would certainly would never have any fault with the students from
3 TWU. However, I'm also feeling very lonely in my view of this debate and I'm thinking
4 that it's a good thing that we live in Canada where there are two sides to every question
5 and if only I could be as eloquent and perhaps even hire someone like Mr. Crossin to
6 speak for me, I would be delighted. Mr. Crossin's points, solemn and direct, hit the nail
7 on the head for me. I think that the Law Society of British Columbia has to stand up
8 because who else will? Certainly the government has had their opportunity, the Supreme
9 Court, and I think we rank up there where we have to speak up for the rights of those that
10 need to be protected. When we talk about protecting, the *Charter* talks about protecting
11 the rights of minorities and religious freedoms and freedom of speech, et cetera. I've
12 always looked at that, as some of the others have mentioned it, I've looked at that as a
13 shield and we are protecting them, but in this particular case I think that, with the banner,
14 in what seems like an attack on a certain small segment of the population, the gay section
15 of our population, I find that is more of a sword. Nobody is denying TWU the right to
16 have the right to religious beliefs, but there is an attack, I think, on a minority, and I think
17 that I am persuaded by the oath that I've taken for the Law Society to protect all persons.
18 I'm persuaded that the *Charter* can't be ignored in our duty to consider the public interest
19 in applying the Law Society rules. I think it is, for me, in the public interest to shield that
20 part of the population. I think there is harm. There's harm in just that the bar, the door is
21 closed to a segment of the population that are gay and that are married, and it's closed to
22 them. So, therefore, in all the legal opinions and submissions that we've heard, I'm drawn
23 to the Canadian Bar Association's comments, and I keep coming back to that. So, in
24 summary, I want to say that I think that as the Law Society of BC, if nobody else is going
25 to stand up for them, that we have to remember that that is our role as well in protecting
26 all of the people of British Columbia, and I would say that's where we can take a stand.
27 Again, as I say, I feel very lonesome, what I'm hearing in here in the room today.
28 However I will be voting in favour of the resolution. Thanks very much.

29 **JL:** Thank you, Ms. Ongman. Mr. Ferris.



1 **Craig Ferris, QC** Thank you, President Lindsay. I'm going to be brief because I also, like
2 Mr. Van Ommen, would like to adopt the comments of Mr. Crossin, which I thought
3 were quite eloquent. So, I will be voting against the resolution and I do so with a very
4 heavy heart. I see the faces of my colleagues and friends who are members of the LGBT
5 community and I think about them in making this decision, but I'm making the decision,
6 and I truly see it as a balance of *Charter* rights, and I think we have to be guided – the
7 ultimate public interest is to follow the law of Canada. I think until that law is changed,
8 we are bound to follow the *TWU* case, and I think that calls upon us to balance these
9 rights in a way which requires us to approve the TWU university in this instance. That
10 being said, I would like to remind TWU of the rule, which President Lindsay read at the
11 beginning of this meeting, that the accreditation of the university is potentially not
12 forever, that the Law Society retains jurisdiction to remove accreditation in the future if
13 there is actual proof of harm caused by the graduates of this school. That remains our
14 jurisdiction and this issue can be revisited in the future. Thank you.

15 **JL:** Thank you, Mr. Ferris. Mr. Walker.

16 **Ken Walker, QC** Thank you. I've been listening carefully to my colleagues at this table. I
17 have been guided by the many submissions that were made by the public and members of
18 the bar. I am thankful for the help that the lawyers have given us and I'm thankful for our
19 staff for working so hard to put everything together for us so that we can have this
20 meeting today. The covenant: there is one offensive paragraph in that covenant and there
21 are many good values in the covenant that we all share and we want members of our
22 profession to adopt in one fashion or another. But there is an offensive paragraph, and I
23 agree with all of my colleagues, and just so you have it, I've purchased the four minutes
24 and 30 seconds that Mr. Ommen didn't use so that I can carry on at length.

25 **JL:** No you didn't.

26 **KW:** So the chair has confirmed I don't have those minutes. Our country is immense. It's large
27 in size. It's large in diversity. Travelling across our country, even from province to
28 province, there are regional differences, language differences and religious differences.

1 The diversity makes us stronger. Our profession is based upon a few basic principles:
2 treating people equally, treating clients fairly, the independent bar, the right to attack
3 government legislation, our obligation to pursue the *Charter* values of this country. Our
4 profession continues to attract and wishes to attract men and women who share our
5 professional values and wish to pursue them. I will be voting no to this motion. I
6 therefore will be supporting TWU as a university teaching lawyers. However, my vote
7 should not be taken as a vote favouring the controversial part of the covenant. My vote
8 should not also be taken as a vote against those who have a sexual orientation different
9 from what is considered to be mainstream Canadian sexual orientation. Let it be clear, I
10 support diversity and equality and tolerance. My vote can be considered a vote in favour
11 of balancing the two *Charter* rights in conflict here. My vote can be taken as a vote
12 supporting diversity and diversity in our profession. We need diversity. The Law Society
13 of British Columbia is not a belief regulator. We are a conduct regulator and we will be
14 regulating conduct and conduct that is discriminatory. To TWU, I have 56 seconds left, I
15 urge you that this process should in fact inform and educate you. I agree with Mr.
16 Mossop, but I do not hope that his timeline is correct; eight to 15 years is way too long. I
17 ask you to go back to your community of smart educators and students and together work
18 to fix this covenant. It's your belief; I cannot change your beliefs, but I hope that you and
19 your community will gather together using this informed process to look at this covenant
20 again. It's probably a living covenant. I will be voting no.

21 **JL:** Thank you, Mr. Walker. Ms. Cheema.

22 **Pinder Cheema, QC** Thank you, Madam President, fellow Benchers. I would like to
23 thank all of those who took the time to write and provide their input to us on both sides of
24 this very important, potentially divisive issue. I speak from a personal perspective. The
25 issue of discrimination is not a foreign topic to me. I am well aware that, if I had been
26 born in Canada at an earlier time as a South Asian woman, I would have been excluded
27 from the practice of law on two fronts: as a woman and as a brown person. At this point
28 in time, as a person who was born into the Sikh faith, I am not at all certain I would now



1 be granted acceptance as a TWU applicant. In my opinion, TWU's perspective is
2 antithetical to Canadian values of tolerance and respect that are enshrined in our *Charter*.
3 I find this covenant abhorrent and objectionable and it saddens me greatly that TWU has
4 persisted in this outdated, outmoded view. However, as has been echoed by a number of
5 my fellow Benchers, it is our obligation above all else to uphold the rule of law. The
6 opinions we have received to date, which support the applicability of *TWU BCCT* today,
7 govern. As Benchers, we are obliged to act in the public interest and we must balance
8 various competing interests. I will not be supporting the motion. I adopt Mr. Crossin's
9 careful, measured, and nuanced words. I echo Mr. Mossop's words. Your students in the
10 years to come will be identified and marked by the offensive aspect of the community
11 covenant. That reputation will follow them into practice. As leaders of the new law
12 school, you have a unique opportunity to demonstrate equality and tolerance. You need to
13 review the fundamental principle of tolerance in establishing your law school. It does not
14 stand you in good stead and it is not a good omen for your school if you fail to do so.
15 Thank you, Madam President.

16 **JL:** Thank you, Ms. Cheema. Ms. Dhaliwal.

17 **Jeevyn Dhaliwal** Madam President, I will be brief because much of what I would want to
18 say has been said before, particularly just now before me in my colleague Ms. Cheema's
19 comments. My colleagues have fairly ably summarized points for and against the motion
20 that is tabled now. I was elected by my peers to sit at this table, in part from the
21 representative view that I bring. As a female, visible minority belonging to a minority
22 religion, I know full well what it feels like to be discriminated against and it does not feel
23 good. This is a very, very difficult decision to make as a result of that. I've reviewed the
24 submissions before us, both for and against the motion. I adopt and I support the
25 comments of my colleague Mr. Crossin and others. And, although those who would vote
26 for the motion before us make some very compelling arguments, these are one of the
27 circumstances in which I am able and I must put aside my own personal beliefs to rely on
28 my legal education and my training as a lawyer to make my decision today. I am hopeful



1 that the TWU future grads will be able to do the same. I am bound as a decision-maker
2 and a critically thinking lawyer to apply the current law. I cannot distinguish the decision
3 of the Supreme Court of Canada in *TWU* one and therefore I will vote against the motion
4 as tabled. Thank you very much.

5 **JL:** Thank you, Ms. Dhaliwal. That brings us to the end of my list for first-time speeches. Is
6 there anyone else who would like to speak for a first time? I should add that I don't think
7 there are many who haven't. Mr. Corey, you are on line, do you wish to speak?

8 **David Corey** Thank you, Madam Chair. No, I don't believe that I have anything else to add
9 other than what has been said already. The ground has been covered very sufficiently in
10 my estimation. Thank you.

11 **JL:** Thank you, sir. I do not see any hands. I will now move to second reading. Now, some
12 went over their five minutes and I've taken them off the second list. However, I'm sure
13 that if we were very precise, there might be some moments left. Does anyone wish to
14 speak for a second time, other than Mr. Arvay, Mr. Finch or Ms. Matthews? Mr.
15 Maclaren. Is there anyone else? Mr. Lloyd, Ms. Rowbotham. I'll hear from Mr.
16 Maclaren.

17 **Jamie Maclaren** Thank you, Madam President. I have only two points to make in this
18 opportunity to reply to the well-reasoned and respectful submissions made by my
19 colleagues this morning. First, it is my view that the harm of TWU's discriminatory
20 covenant resides in the denial of the full participation of the LGBTQ community in legal
21 academic life and in future professional life, and not in what future TWU law graduates
22 may do while serving as members of our profession. It is TWU's institutional and
23 apparently non-negotiable act, in other words conduct of discrimination, that is an affront
24 to the human dignity of LGBTQ people and it diminishes their public standing, that
25 demands our disapproval in the name of equity and fairness. Second, I am unaware of
26 any religious convictions that require attendance at a law school, which there are no gays
27 and lesbians who are able to express their full identities within the bounds of law. I am
28 unaware of any faith that requires the specific kind of social isolation or educational



1 enclave that [cuts??] against our society's general goals of great diversity, inclusion and
2 social integration. In light of that I ask myself and I ask this table: where exactly is the
3 untenable limitation to religious freedom in the resolution before us? Thank you.

4 **JL:** Thank you Mr. Maclaren. Mr. Lloyd.

5 **Peter Lloyd** Madam President, if I may, I'd like to use some of my three minutes to pass on a
6 few comments from Patrick Kelly, who is a Life Bencher not able to be here today. He is
7 a friend of mine and who, as you may well, some will remember, was a very able and our
8 first Aboriginal Bencher. I must say he was often heard at this table with much more
9 respect that I usually generate.

10 "The Law Society of BC is created by and operates under the law of British Columbia
11 according to the judicial authority as spelled out in the *Legal Profession Act*. In terms of
12 the division of powers, the Law Society of BC would be considered an executive body
13 that has the power to implement law. It is also a secular organization with no duties or
14 authorities connected with religious or spiritual matters. I don't intend to enter the debate
15 on the rights of TWU or its students to espouse or practise their religious faith. Legal
16 minds have analyzed and assessed this area quite well. However, my concern from the
17 public interest perspective, is that the TWU decision does not alter or undermine the Law
18 Society's secular role by the way of TWU's or TWU law graduates sectarian religious
19 principles. In the public interest, the Law Society's secular role is best safeguarded from
20 any and all sectarian religious influences, whether they are Islam, Hindu, Judaism,
21 Shinto, Sikhism or any other religion or faith. The British Columbia public is made up of
22 more than 50 different cultures of the world and its citizens practise as many or more
23 different religions and faiths. It would be a very unfortunate consequence if addressing an
24 aggressive Christian sectarian proposal to the Law Society alienates the interests of those
25 citizens that are not Christians. Thank you."

26 **JL:** Thank you, Mr. Lloyd and Mr. Kelly. Ms. Rowbotham.



1 **Elizabeth Rowbotham** I would like to thank my fellow Benchers for their submissions and
2 with the ideas and the discussion that we've had today. I, particularly, would like to thank
3 Ms. Matthews for hers and Mr. Crossin for his somewhat different views. I would just
4 like to point out that, in my comments, I tried to and perhaps I did not succeed, but I tried
5 to be very careful not to say whether or not Trinity Western University's covenant was or
6 was not legal, and whether or not BCTF was or was not rightly decided. I think that the
7 Supreme Court of Canada did not consider the community covenant in the context of the
8 BC Human Rights Code. It seemed to have made a presumption that it did comply with it
9 or was exempted from it as opposed to strict analytical reading of the BC Human Rights
10 legislation. So I think there is an open legal question as to whether or not the covenant is
11 legal and is protected by the BC Human Rights Code. I just wanted to make that point
12 clear, because it informs my comments around views over which we do not necessarily
13 have jurisdiction. We do not have jurisdiction to consider the BC Human Rights Code
14 underneath our legislation and why I think this is not the correct forum for this debate.
15 Thank you, Madam President.

16 **JL:** Thank you, Ms. Rowbotham. Mr. Crossin has asked to speak for a second time so can
17 that be arranged?

18 **David Crossin, QC** Yes, can you hear me?

19 **JL:** Yes, we can.

20 **DC** I have a story to tell you because you're making such great headway; I thought I would
21 fill in some time. Over the years that I've been at this table, various Benchers have, from
22 time to time, invoked their respective mothers or grandmothers in addressing one issue or
23 another. I've always thought that to be odd and couldn't imagine doing that until today.
24 So, in the late eighties or early parts of the early nineties, my mother was a regular
25 member of a certain Protestant congregation. In fact, she often gave sermons on Sundays.
26 The Church was an important part of her life, unlike the rest of us, but she left that
27 congregation because she got into a debate concerning a position they took back then that
28 homosexuality was a sin. The debate within the Church around that time revolved around



1 the same kind of harsh language that was contained in the original, or at least the TWU
2 covenant at the time of the *Teachers* case. She left that Church over that debate because
3 her son, my youngest brother, is gay and he was a very young gay man back then. It
4 broke her heart, but she would tell you that she singlehandedly brought the United
5 Church around over the next couple of decades to see the light. She always maintained a
6 couple of principles during that time. One was the Church had every right to take that
7 position and, from her perspective: full stop. The second position she maintained was,
8 “you don’t meet intolerance with intolerance.” So, that’s a very small story for such a big
9 stage, but I thought you might find that interesting.

10 **JL:** Thank you, Mr. Crossin. We are learning more about you every day. Does anyone else
11 want to speak again? Mr. Wilson, Mr. Arvay. Mr. Arvay, we’ve done our math and we
12 think that you have at least a minute or maybe a minute, but I’ll hear Mr. Wilson first.

13 **Tony Wilson** Madam President, this doesn’t really have so much to do with TWU as it has to
14 do with the process of which we have adopted here. I’ve received about 10 emails from
15 people all across Canada that are watching this right now. There’s apparently 1230
16 people watching this. I’ve received one email from the Northwest Territories, another one
17 from Alberta. People are saying various things, but one of the things that they’re saying is
18 that they are very appreciative of the openness and the debate that is going on and the
19 transparency, and I wanted to say it’s very good for our Law Society to have done it this
20 way. I thank you, Madam President, for orchestrating that.

21 **JL:** Thank you, Mr. Wilson. Mr. Arvay.

22 **Joe Arvay, QC** Thank you, Madam President and fellow Benchers. While I respect
23 everyone’s opinion around this table, and very thoughtful opinions, I am nonetheless very
24 troubled by the very many comments to the effect that the community covenant is
25 repugnant, it’s hurtful, it’s discriminatory, it’s hypocritical, it’s heartless, but we’re bound
26 by the law. I don’t recognize that law, that kind of law in this country. I don’t recognize a
27 law that is so divorced from justice that we are bound by it. We are the law; we are the
28 law-making body charged with making a decision at hand. So long as that decision is a



1 reasonable one and that reflects both the objects of our statute and the *Charter* values we
2 are bound to embrace, it will be a law that the Supreme Court of Canada respects. The
3 law is never frozen in time. It is always evolving, and notwithstanding all of the
4 compelling arguments that I've heard from all of you – and I know they are all heartfelt –
5 I urge you, in the dying moments of this process, to reconsider your decision and make
6 sure that the law that you are applying is a just law. Thank you.

7 **JL:** Mr. Ward.

8 **Cameron Ward** Thank you. I'd just like to endorse and echo Mr. Arvay's comments and
9 add one comment of my own, that is that those of us who were elected by members of
10 this profession were elected to be leaders and not followers. With the greatest of respect
11 to those who have offered different views, I agree with what I understand to be the thrust
12 of Mr. Arvay's submission to you that a case decided by the Supreme Court of Canada 13
13 years ago may well be decided differently today in 2014 or perhaps a couple of years
14 from now if the issue is considered. Thank you.

15 **JL:** Thank you, Mr. Ward. I think we are to call the question. I am sorry. Mr. Fellhauer? Mr.
16 Fellhauer. On my record, you are first-time speaking, so you have five minutes.

17 **Tom Fellhauer** Thank you, Madam Chair. I didn't mean to speak at the end of the
18 discussion here. I just wanted to add some comments, and this is regardless of the vote.
19 One of the things that I've been very impressed with, having been elected a Bencher, is
20 the spirit of cooperation, collaboration, and communication that the Law Society has
21 adopted with various other members of the legal community, and from my perspective, it
22 has been proved to be a very positive process, experience, than many other very divisive
23 issues. Trinity Western wishes to join that legal community, and I urge Trinity Western to
24 consider what will happen when they join the legal community and perhaps adopt some
25 of the practices and principles that the other players in the legal community have adopted,
26 such as the Law Society, and consider perhaps striking a committee together with other
27 players in our community to review the covenant. The community covenant, as Mr.
28 Walker has said, contains many positive ideals that we all support and it has a very, very

1 small portion that has caused a lot of debate and a lot of divisiveness. I would actually
2 say when I listen to the arguments, there's quite a bit of common ground. I do think there
3 are some very positive things that can come from Trinity Western working with the rest
4 of the legal community as opposed to in opposition or outside the legal community. So, I
5 do urge Trinity Western to reach out, regardless of the vote, work with the rest of the
6 legal community to encourage a very open and frank review of their community covenant
7 and hopefully bring more people onside. And perhaps eliminate some of the concerns
8 about the institution, but also enhance the reputation of the institution as a trainer of
9 lawyers going forward. So, those are my comments. I would like to see a positive
10 outcome from this experience and this process regardless of the vote. Thank you.

11 **JL:** Thank you, Mr. Fellhauer. I'll ask you to turn your microphone off. Seeing no more
12 hands, hearing nothing more, I'm going to call the question – sorry. Ms. Morellato.

13 **MM** I simply wanted to say that a law that balances and upholds freedom of religion and
14 equality rights is a just law, and that's what we're all trying to achieve today. It takes
15 courage to tolerate intolerance and I am confident, however, that the Law Society will not
16 tolerate any discriminatory conduct by TWU or their students in the future. They will all
17 be held accountable under the rule of law.

18 **JL:** Thank you. We're ready to vote on the motion. I want to remind you that this is a
19 negative motion and so those voting in favour of the motion will be voting against the
20 accreditation of Trinity Western's proposed law school. I will call the question. I'm going
21 to read the motion again. I'll call for those in favour. I'll count the votes by show of
22 hands. I will make sure I've got the number right. Mr. Hoskins will make sure that I have
23 the number right. Then I will call for those opposed and I will call for abstentions, if any.
24 I will ask the people on the phone to vote after I've announced the first count. So, the
25 motion is: "Pursuant to Law Society Rule 2-27(4.1), the Benchers declare that,
26 notwithstanding the preliminary approval granted to Trinity Western University on
27 December 16, 2013 by the Federation of Law Societies' Canadian Common Law

1 Program Approval Committee, the proposed Faculty of Law at Trinity Western
2 University is not an approved faculty of law.”

3 So, those in favour of the motion please raise your hands. I’m counting six. Mr. Crossin,
4 do you vote in favour of the motion?

5 **David Crossin, QC** I’m opposed.

6 **JL:** Mr. Corey, are you in favour of the motion?

7 **David Corey** I am also opposed.

8 **JL:** So, I have the votes in favour at six. Those opposed please raise your hand. I count 18.
9 Mr. Crossin, are you opposed to the motion? We did hear him say that earlier. Is
10 everyone agreed?

11 **Several speakers:** Yes.

12 **JL:** Mr. Corey is also opposed. So, I have the votes opposed at 20. The motion fails. Any
13 abstentions? No abstentions. The motion fails. I have to thank everyone. Firstly, to the
14 management team, led by Mr. McGee, Mr. Whitcombe and Mr. Hoskins, we have
15 worked very hard. They have ensured that we have conducted an open and transparent
16 discussion, and arrived at a fair decision. I thank them for the work that they’ve put in
17 and the direction that they’ve given us all. I thank each and every Bencher for your
18 careful and thoughtful comments. We had much material to consider. This was a heavy
19 burden on your time, and for many of you, in your first three months as a Bencher. This
20 is, unfortunately, one of those decisions that we were not going to be able to reach a
21 consensus, and although we like to conduct ourselves by reaching consensus, this was not
22 capable of that, but we have conducted a respectful and very thoughtful discussion. As
23 President, I am so proud of our process and this discussion, and each and every one of
24 you. Thank you so much.

25 Does anybody have any more stories, maybe? Mr. Crossin? Maybe we should just
26 adjourn? Motion accepted. Thank you so much all.