Tab 3.3

OTHER BACKGROUND MATERIAL

Français

Law Society Act

R.S.O. 1990, CHAPTER L.8

Consolidation Period: From December 12, 2013 to the e-Laws currency date.

Last amendment: 2013, c. 17, ss. 1-26.

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PART 0.I

Interpretation

1. (1) In this Act,

"adjudicative body" means any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person's legal interests, rights or responsibilities and, without limiting the generality of the foregoing, includes,

(a) a federal or provincial court,

(b) a tribunal established under an Act of Parliament or under an Act of the Legislature of Ontario,

(c) a commission or board appointed under an Act of Parliament or under an Act of the Legislature of Ontario to conduct an inquiry or inquest, and

(d) an arbitrator; ("organisme juridictionnel")

Note: On March 12, 2014, subsection (1) is amended by adding the following definition: (See: 2013, c. 17, ss. 1 (1), 28 (2))

"Appeal Division" means the Law Society Appeal Division continued under Part II; ("Section d'appel")

"Appeal Panel" means the Law Society Appeal Panel continued under Part II; ("Comité d'appel")

Note: On March 12, 2014, the definition of "Appeal Panel" is repealed. (See: 2013, c. 17, ss. 1 (2), 28 (2))

"bencher" means a bencher of the Society, other than an honorary bencher; ("conseiller")

"by-laws" means the by-laws made under this Act; ("règlements administratifs")

"certificate of authorization" means a certificate of authorization issued under this Act authorizing the corporation named in it to practise law in Ontario, to provide legal services in Ontario or to do both; ("certificat d'autorisation")

"Chief Executive Officer" means the Chief Executive Officer of the Society; ("chef de la direction")

"Convocation" means a regular or special meeting of the benchers convened for the purpose of transacting business of the Society; ("Conseil")

"document" includes a paper, book, record, account, sound recording, videotape, film, photograph, chart, graph, map, plan, survey and information recorded or stored by computer or by means of any other device; ("document")

"elected bencher" means a person who is elected as a bencher under subsection 15 (1) or 16 (1) or becomes a bencher under subsection 15 (3) or 16 (3); ("conseiller élu")

Note: On March 12, 2014, subsection (1) is amended by adding the following definition: (See: 2013, c. 17, ss. 1 (4), 28 (2))

"Hearing Division" means the Law Society Hearing Division continued under Part II; ("Section de première instance")

"Hearing Panel" means the Law Society Hearing Panel continued under Part II; ("Comité d'audition")

Note: On March 12, 2014, the definition of "Hearing Panel" is repealed. (See: 2013, c. 17, ss. 1 (5), 28 (2))

"lay bencher" means a person appointed as a bencher by the Lieutenant Governor in Council under section 23; ("conseiller non juriste")

"licence" means a licence issued under this Act; ("permis")

"licensed" means licensed under this Act; ("pourvu d'un permis")

"licensee" means,

(a) a person licensed to practise law in Ontario as a barrister and solicitor, or

(b) a person licensed to provide legal services in Ontario; ("titulaire de permis")

"life bencher" means a person who is a bencher under paragraph 3 of subsection 12 (1); ("conseiller à vie")

"person who is authorized to practise law in Ontario" means,

(a) a person who is licensed to practise law in Ontario as a barrister and solicitor and whose licence is not suspended, or

(b) a person who is not a licensee but is permitted by the by-laws to practise law as a barrister and solicitor in Ontario; ("personne autorisée à pratiquer le droit en Ontario")

"person who is authorized to provide legal services in Ontario" means,

(a) a person who is licensed to provide legal services in Ontario and whose licence is not suspended, or

(b) a person who is not a licensee but is permitted by the by-laws to provide legal services in Ontario; ("personne autorisée à fournir des services juridiques en Ontario")

"physician" means a member of the College of Physicians and Surgeons of Ontario or a person who is authorized to practise medicine in another province or territory of Canada; ("médecin")

"professional business" means,

(a) in the case of a person licensed to practise law in Ontario as a barrister and solicitor, the practice of law and the business operations relating to it,

(b) in the case of a person licensed to provide legal services in Ontario, the provision of legal services and the business operations relating to it; ("activités professionnelles")

"professional corporation" means a corporation incorporated or continued under the *Business Corporations Act* that holds a valid certificate of authorization; ("société professionnelle")

"psychologist" means a member of the College of Psychologists of Ontario or a person who is authorized to practise psychology in another province or territory of Canada; ("psychologue")

"regulations" means the regulations made under this Act; ("règlements")

"rules of practice and procedure" means the rules of practice and procedure made under this Act; ("règles de pratique et de procédure")

"Society" means The Law Society of Upper Canada; ("Barreau")

"Treasurer" means the Treasurer of the Society. ("trésorier") R.S.O. 1990, c. L.8, s. 1; 1991, c. 41, s. 1; 1998, c. 21, s. 1 (1-5); 2000, c. 42, Sched., s. 20; 2006, c. 21, Sched. C, s. 2 (1-9); 2013, c. 17, s. 1 (3).

Note: On March 12, 2014, subsection (1) is amended by adding the following definition: (See: 2013, c. 17, ss. 1 (6), 28 (2))

"Tribunal" means the Law Society Tribunal established under Part II. ("Tribunal")

Documents in possession or control

(2) For the purposes of this Act, a document is in the possession or control of a person if the person is entitled to obtain the original document or a copy of it. 1998, c. 21, s. 1 (6).

Hearings

(3) A hearing is not required before making any decision under this Act, the regulations, the by-laws or the rules of practice and procedure unless the Act, regulations, by-laws or rules of practice and procedure specifically require a hearing. 1998, c. 21, s. 1 (6).

Licensee

(4) For greater certainty, a person whose licence is suspended or is in abeyance is a licensee, but a person whose licence has been revoked, whose application to surrender his or her licence has been accepted under section 30 or whose licence is deemed to have been surrendered under section 31 is not a licensee. 2006, c. 21, Sched. C, s. 2 (10).

Provision of legal services

(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person. 2006, c. 21, Sched. C, s. 2 (10).

Same

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.
2. Selects, drafts, completes or revises, on behalf of a person,
    i. a document that affects a person's interests in or rights to or in real or personal property,
    ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,
    iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,
    iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),

v. a document that relates to the custody of or access to children,

vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or

vii. a document for use in a proceeding before an adjudicative body.

3. Represents a person in a proceeding before an adjudicative body.

4. Negotiates the legal interests, rights or responsibilities of a person. 2006, c. 21, Sched. C, s. 2 (10).

Representation in a proceeding

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

2. Conducting an examination for discovery.

3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10).

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.

3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.

4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.

5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws. 2006, c. 21, Sched. C, s. 2 (10).

Terms, conditions, etc.

(9) For the purposes of this Act, a term, condition, limitation or restriction shall be considered to be imposed on a licensee, regardless of whether it is imposed on the licensee or on the licensee's licence and regardless of whether it is imposed by the by-laws on all licences of the class held by the licensee or is imposed on the particular licensee or on his or her licence by an order made under this Act. 2006, c. 21, Sched. C, s. 2 (10).

Internal references

(10) A reference in this Act to something done or omitted to be done under this Act, a Part of this Act or a provision of this Act shall be interpreted as referring to the Act, the Part or the provision, as it read on the day the thing was done or omitted to be done. 2006, c. 21, Sched. C, s. 2 (10).

Transition

Definitions

1.1 (1) In this section,

"amendment day" means the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* comes into force; ("jour de la modification")

"member" means a member as defined in section 1, as it reads immediately before the amendment day, and "membership" has a corresponding meaning. ("membre", "qualité de membre") 2006, c. 21, Sched. C, s. 3.

Members deemed licensees

(2) Every person who is a member immediately before the amendment day shall be deemed to become, on the amendment day, a person licensed to practise law in Ontario as a barrister and solicitor and to hold the class of licence determined under the by-laws. 2006, c. 21, Sched. C, s. 3.

Abeyance

(3) If a person's membership in the Society is in abeyance under section 31 immediately before the amendment day, the person's licence shall be deemed to be in abeyance under section 31 on the amendment day. 2006, c. 21, Sched. C, s. 3.

(4)-(7) Repealed: 2013, c. 17, s. 2.

Order imposing term, condition, etc.

(8) If an order imposing a term, condition, limitation or restriction on a person's rights and privileges as a member is in effect immediately before the amendment day, the order shall be deemed to become, on the amendment day, an order imposing the same term, condition, limitation or restriction on the person's licence. 2006, c. 21, Sched. C, s. 3.

Order suspending rights and privileges deemed order suspending licence

(9) If an order suspending a person's rights and privileges as a member is in effect immediately before the amendment day, the order shall be deemed to become, on the amendment day, an order suspending the person's licence. 2006, c. 21, Sched. C, s. 3.

Prohibition order

(10) If an order under section 50.2 prohibiting a person from contravening section 50 is in effect immediately before the amendment day, the order shall be deemed to become, on the amendment day, an order under clause 26.3 (1) (a) prohibiting the person from contravening subsection 26.1 (1) or (2), as the case may be. 2006, c. 21, Sched. C, s. 3.

(11) Repealed: 2013, c. 17, s. 2.

Licence deemed permit

(12) Any of the following licences that is in effect immediately before the amendment day shall be deemed to become, on the amendment day, a permit authorizing the holder to do the same things that were authorized by the licence:

1. A licence authorizing a limited liability partnership to practise law.
2. A licence authorizing a person to give legal advice respecting the law of a jurisdiction outside Canada.
3. A licence authorizing a partnership, corporation or other organization to engage in a practice of law whereby it maintains one or more offices outside Ontario and one or more offices in Ontario.
4. A licence authorizing a person, partnership, corporation or other organization to practise another profession in addition to practising law. 2006, c. 21, Sched. C, s. 3.

PART I

The Society

Law Society continued

2. (1) The Law Society of Upper Canada (previously referred to in French as Société du barreau du Haut-Canada) is continued under the name of The Law Society of Upper Canada in English and Barreau du Haut-Canada in French. R.S.O. 1990, c. L.8, s. 2 (1).

Status

(2) The Society is a corporation without share capital and its members at a point in time are,

(a) the person who is the Treasurer at that time;

(b) the persons who are benchers at that time;

(c) the persons who are at that time licensed to practise law in Ontario as barristers and solicitors; and

(d) the persons who are at that time licensed to provide legal services in Ontario, who shall be referred to as paralegal

members. 2006, c. 21, Sched. C, s. 5.

Annual meeting

3. A meeting of the members of the Society shall be held annually at such place and at such time as is determined from time to time in Convocation, notice of which shall be given by publication as provided by the by-laws. R.S.O. 1990, c. L.8, s. 3; 1998, c. 21, s. 2; 2006, c. 21, Sched. C, s. 6.

Seat

4. The permanent seat of the Society shall continue to be at Osgoode Hall in the City of Toronto. R.S.O. 1990, c. L.8, s. 4.

Function of the Society

4.1 It is a function of the Society to ensure that,

(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario. 2006, c. 21, Sched. C, s. 7.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. 2006, c. 21, Sched. C, s. 7.

Powers of society

Acquisition and disposition of property

5. (1) The Society may purchase, acquire, take by gift, bequest, devise, donation or otherwise any real or personal property for its purposes, and it may hold, sell, mortgage, lease or dispose of any of its real or personal property. R.S.O. 1990, c. L.8, s. 5 (1).

Trustee powers

(2) The Society has and may exercise all powers of trustees under the laws of Ontario. R.S.O. 1990, c. L.8, s. 5 (2).

Borrowing power

(3) The Society may borrow money for its purposes. R.S.O. 1990, c. L.8, s. 5 (3).

Capacity to hold an interest in an insurance corporation

(4) The Society may own shares of or hold a membership interest in an insurance corporation incorporated for the purpose of providing professional liability insurance to licensees and to persons qualified to practise law outside Ontario in Canada. R.S.O. 1990, c. L.8, s. 5 (4); 2006, c. 21, Sched. C, s. 8.

Application of *Corporations Act*

6. (1) Section 84, subsections 129 (2) and (3) and section 317 of the *Corporations Act* do not apply to the Society. 2006, c. 21, Sched. C, s. 9.

Conflict

(2) In the event of conflict between any provision of this Act and any provision of the *Corporations Act*, the provision of this Act prevails. R.S.O. 1990, c. L.8, s. 6 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 6 is repealed and the following substituted:

Application of *Not-for-Profit Corporations Act, 2010*

6. The *Not-for-Profit Corporations Act, 2010* does not apply to the Society, except as may be prescribed by regulation. 2010, c. 15, s. 230 (1).

See: 2010, c. 15, ss. 230 (1), 249.

Treasurer

7. The Treasurer is the president and head of the Society. 1998, c. 21, s. 3.

Chief Executive Officer

8. (1) The Chief Executive Officer shall, under the direction of Convocation, manage the affairs and functions of the Society. 1998, c. 21, s. 3.

(2) Repealed: 2006, c. 21, Sched. C, s. 10.

Liability of benchers, officers and employees

9. No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1990, c. L.8, s. 9; 1998, c. 21, s. 4.

BENCHERS

Government of the Society

10. The benchers shall govern the affairs of the Society. 2006, c. 21, Sched. C, s. 11.

Honorary benchers

11. Every person,

(a) who is an honorary bencher on the 1st day of October, 1970; or

(b) who after that day is made an honorary bencher,

is an honorary bencher but as such has only the rights and privileges prescribed by the by-laws. R.S.O. 1990, c. L.8, s. 11; 1998, c. 21, s. 5.

Benchers by virtue of their office

12. (1) The following, if and while they are licensees, are benchers by virtue of their office:

1. The Minister of Justice and Attorney General for Canada.

2. The Solicitor General for Canada.

3. Every person who, by June 1, 2015, held the office of elected bencher for at least 16 years. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (1); 2010, c. 1, Sched. 12, s. 2 (1).

Same: attorneys general

(2) The following are benchers by virtue of their office:

1. The Attorney General for Ontario.

2. Every person who held the office of Attorney General for Ontario at any time before January 1, 2010. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (2); 2010, c. 1, Sched. 12, s. 2 (2).

Same

(3) Subsections (1) and (2) do not apply to a person whose licence is in abeyance under section 31. 2006, c. 21, Sched. C, s. 12 (3).

Rights and privileges

(4) Benchers by virtue of their office under subsection (1) or (2) have the rights and privileges prescribed by the by-laws but, except as provided in subsection (5), may not vote in Convocation or in committees. 1998, c. 21, s. 6.

Voting

(5) The following voting rights apply:

1. The Attorney General for Ontario may vote in Convocation and in committees.
2. Benchers by virtue of their office under paragraph 3 of subsection (1) or paragraph 2 of subsection (2) may vote in committees. 1998, c. 21, s. 6.

If elected bencher is eligible to become bencher by virtue of office

(6) An elected bencher who becomes qualified as a bencher under subsection (1) or (2) continues in office as an elected bencher despite the qualification. 2010, c. 1, Sched. 12, s. 2 (3).

(7), (8) Repealed: 2010, c. 1, Sched. 12, s. 2 (3).

Attorney General, guardian of the public interest

13. (1) The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do in any way with the practice of law in Ontario or the provision of legal services in Ontario, and for this purpose he or she may at any time require the production of any document or thing pertaining to the affairs of the Society. R.S.O. 1990, c. L.8, s. 13 (1); 1998, c. 21, s. 7 (1); 2006, c. 21, Sched. C, s. 13.

Admissions

(2) No admission of any person in any document or thing produced under subsection (1) is admissible in evidence against that person in any proceedings other than proceedings under this Act. R.S.O. 1990, c. L.8, s. 13 (2); 1998, c. 21, s. 7 (2).

Protection of Minister

(3) No person who is or has been the Attorney General for Ontario is subject to any proceedings of the Society or to any penalty imposed under this Act for anything done by him or her while exercising the functions of such office. R.S.O. 1990, c. L.8, s. 13 (3); 1998, c. 21, s. 7 (3).

Former Treasurers

14. Every licensee who held the office of Treasurer at any time before January 1, 2010 is a bencher by virtue of his or her office. 2010, c. 1, Sched. 12, s. 3.

Benchers licensed to practise law

15. (1) Forty persons who are licensed to practise law in Ontario as barristers and solicitors shall be elected as benchers in accordance with the by-laws. 2006, c. 21, Sched. C, s. 15.

Regions

(2) The benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 2006, c. 21, Sched. C, s. 15.

Vacancies

(3) Any vacancies in the offices of benchers who are licensed to practise law in Ontario as barristers and solicitors may be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 15.

Ceasing to be bencher

(4) A person who is elected as a bencher under subsection (1) or who holds the office of elected bencher under subsection (3) ceases to be a bencher if the person ceases to be licensed to practise law in Ontario as a barrister and solicitor. 2006, c. 21, Sched. C, s. 15.

Benchers licensed to provide legal services

16. (1) Two persons who are licensed to provide legal services in Ontario shall be elected as benchers in accordance with the by-laws. 2006, c. 21, Sched. C, s. 16.

Note: On April 7, 2014, subsection (1) is amended by striking out "Two" at the beginning and substituting "Five". (See: 2013, c. 17, ss. 3 (1), 28 (3))

Regions

(2) If the by-laws so require, the benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 2006, c. 21, Sched. C, s. 16.

Vacancies

(3) Any vacancies in the offices of benchers who are licensed to provide legal services in Ontario may be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 16.

Ceasing to be bencher

(4) A person who is elected as a bencher under subsection (1) or who holds the office of elected bencher under subsection (3) ceases to be a bencher if the person ceases to be licensed to provide legal services in Ontario. 2006, c. 21, Sched. C, s. 16.

(5)-(7) Repealed: 2013, c. 17, s. 3 (2).

Note: On April 7, 2014, section 16 is amended by adding the following subsections: (See: 2013, c. 17, ss. 3 (3), 28 (3))

Transition

(5) If subsection 3 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force after the conclusion of the election under subsection 25.1 (4) that the by-laws require to be held in 2014, and before an election under subsection (1) in that year,

(a) an election under subsection (1) shall not be held in that year; and

(b) the five members of the Committee elected under subsection 25.1 (4) shall be deemed to have been elected as benchers under subsection (1) in that year. 2013, c. 17, s. 3 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed. (See: 2013, c. 17, ss. 3 (4), 28 (4))

Same

(6) If subsection 3 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force after the conclusion of both the election under subsection 25.1 (4) and the election under subsection (1) that the by-laws require to be held in 2014,

(a) the terms of the persons elected as benchers under subsection (1) expire on the day subsection 3 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force; and

(b) the five members of the Committee elected under subsection 25.1 (4) shall hold office as benchers as if they had been elected under subsection (1), until the next election under subsection (1). 2013, c. 17, s. 3 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed. (See: 2013, c. 17, ss. 3 (4), 28 (4))

Same

(7) At any time during which subsection (5) or (6) applies, subsection (3) does not apply, and any vacancy filled for the purposes of subsection 25.1 (11) also applies for the purpose of filling vacancies in the offices of persons who are benchers under clause (5) (b) or (6) (b). 2013, c. 17, s. 3 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed. (See: 2013, c. 17, ss. 3 (4), 28 (4))

17.**-21.** Repealed: 1998, c. 21, s. 11.

Removal for non-attendance

22. The benchers may remove from office any elected bencher who fails to attend six consecutive regular Convocations. R.S.O. 1990, c. L.8, s. 22.

Lay benchers

23. (1) The Lieutenant Governor in Council may appoint eight persons who are not licensees as benchers. 2006, c. 21, Sched. C, s. 17 (1).

Term of office

(2) Every appointment under subsection (1) expires immediately before the first regular Convocation following the first election of benchers under subsection 15 (1) that takes place after the effective date of the appointment. 2006, c. 21, Sched. C, s. 17 (2).

Reappointment

(3) A person appointed under this section is eligible for reappointment. 1998, c. 21, s. 12.

Deemed reappointment

(4) A person whose appointment expires under subsection (2) shall be deemed to have been reappointed until his or her successor takes office. 1998, c. 21, s. 12.

Termination of appointment

(5) A person's appointment under this section is terminated if the person becomes a licensee. 2006, c. 21, Sched. C, s. 17 (3).

Quorum

24. Ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business. R.S.O. 1990, c. L.8, s. 24.

Election of Treasurer

25. (1) The benchers shall annually, at such time as the benchers may fix, elect an elected bencher as Treasurer. 1998, c. 21, s. 13.

Bencher by virtue of office

(2) The Treasurer is a bencher by virtue of that office and ceases to hold office as an elected bencher. 1998, c. 21, s. 13.

Re-election as Treasurer

(3) The Treasurer is eligible for re-election as Treasurer, despite having ceased to hold office as an elected bencher, but,

(a) after a new election of benchers takes place under subsection 15 (1), a Treasurer who is a person licensed to practise law in Ontario may be re-elected as Treasurer only if he or she was elected as a bencher in that election; and

(b) after a new election of benchers takes place under subsection 16 (1), a Treasurer who is a person licensed to provide legal services in Ontario may be re-elected as Treasurer only if he or she was elected as a bencher in that election. 2006, c. 21, Sched. C, s. 18.

PARALEGAL STANDING COMMITTEE

Paralegal Standing Committee

Establishment

25.1 (1) Convocation shall establish a standing committee to be known as the Paralegal Standing Committee in English and Comité permanent des parajuristes in French. 2006, c. 21, Sched. C, s. 19.

Jurisdiction

(2) The Committee shall be responsible for such matters as the by-laws specify relating to the regulation of persons who provide legal services in Ontario. 2006, c. 21, Sched. C, s. 19.

Composition

(3) The Committee shall consist of 13 persons, of whom,

(a) five shall be persons licensed to provide legal services in Ontario;

Note: On April 7, 2014, clause (a) is repealed and the following substituted: (See: 2013, c. 17, ss. 4 (1), 28 (3))

(a) five shall be the five elected benchers licensed to provide legal services in Ontario;

(b) five shall be elected benchers who are licensed to practise law in Ontario as barristers and solicitors; and

(c) three shall be lay benchers. 2006, c. 21, Sched. C, s. 19.

Committee members licensed to provide legal services

(4) The five persons referred to in clause (3) (a) shall be elected as members of the Committee in accordance with the by-laws. 2006, c. 21, Sched. C, s. 19.

Note: On April 7, 2014, subsection (4) is repealed. (See: 2013, c. 17, ss. 4 (2), 28 (3))

Vacancies

(5) Any vacancies in the offices of the five persons referred to in clause (3) (a) shall be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 19.

Note: On April 7, 2014, subsection (5) is repealed. (See: 2013, c. 17, ss. 4 (2), 28 (3))

Other Committee members

(6) The five persons referred to in clause (3) (b) and the three persons referred to in clause (3) (c) shall be appointed as members of the Committee by Convocation on the recommendation of the Treasurer. 2006, c. 21, Sched. C, s. 19.

Chair

(7) The chair of the Committee shall be one of the five persons referred to in clause (3) (a) and shall be appointed by the Committee in accordance with the by-laws. 2006, c. 21, Sched. C, s. 19.

Ceasing to be member of Committee

(8) A person referred to in clause (3) (a) who is elected as a member of the Committee under subsection (4) or who becomes a member of the Committee under subsection (5) ceases to be a member of the Committee if the person ceases to be licensed to provide legal services in Ontario. 2006, c. 21, Sched. C, s. 19.

Note: On April 7, 2014, subsection (8) is repealed and the following substituted: (See: 2013, c. 17, ss. 4 (3), 28 (3))

Ceasing to be a member of Committee

(8) A person referred to in clause (3) (a) ceases to be a member of the Committee if the person ceases to be an elected bencher licensed to provide legal services in Ontario. 2013, c. 17, s. 4 (3).

Same

(9) A person referred to in clause (3) (b) who is appointed as a member of the Committee under subsection (6) ceases to be a member of the Committee if the person ceases to be an elected bencher licensed to practise law in Ontario as a barrister and solicitor. 2006, c. 21, Sched. C, s. 19.

Same

(10) A person referred to in clause (3) (c) who is appointed as a member of the Committee under subsection (6) ceases to be a member of the Committee if the person ceases to be a lay bencher. 2006, c. 21, Sched. C, s. 19.

Note: On April 7, 2014, section 25.1 is amended by adding the following subsections: (See: 2013, c. 17, ss. 4 (4), 28 (3))

Transition

(11) Despite clause (3) (a), persons who, on the day subsection 4 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force, are members of the Committee under that clause as it read immediately before that day, continue to hold office until the first election of benchers under subsection 16 (1) that is held after 2014. 2013, c. 17, s. 4 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (11) is repealed. (See: 2013, c.

17, ss. 4 (5), 28 (4))

Same

(12) This section, as it read immediately before the day subsection 4 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force, continues to apply with respect to the members of the Committee referred to in subsection (11), until they cease to hold office under that subsection. 2013, c. 17, s. 4 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (12) is repealed. (See: 2013, c. 17, ss. 4 (5), 28 (4))

25.2 Repealed: 2013, c. 17, s. 5.

ADVISORY COUNCIL

Meeting

26. (1) The Treasurer shall convene a meeting of the following persons in each year for the purpose set out in subsection (2):

1. The chair and the vice-chair of each standing committee.
2. The president of each county or district law association, or his or her nominee, being a member of his or her association.
3. One person licensed to practise law in Ontario as a barrister and solicitor who is a full-time teacher at each law school in Ontario approved by the Society, to be appointed annually by the faculty of the law school. 2006, c. 21, Sched. C, s. 20.

Purpose

(2) The purpose of the meeting is to consider the manner in which the persons licensed to practise law in Ontario as barristers and solicitors are discharging their obligations to the public and generally matters affecting the practice of law as a whole. 2006, c. 21, Sched. C, s. 20.

PART I.1

PROHIBITIONS AND OFFENCES

Prohibitions

Non-licensee practising law or providing legal services

26.1 (1) Subject to subsection (5), no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario. 2006, c. 21, Sched. C, s. 22.

Non-licensee holding out, etc.

(2) Subject to subsections (6) and (7), no person, other than a licensee whose licence is not suspended, shall hold themself out as, or represent themself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario. 2006, c. 21, Sched. C, s. 22.

Licensee practising law or providing legal services

(3) No licensee shall practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence. 2006, c. 21, Sched. C, s. 22.

Licensee holding out, etc.

(4) No licensee shall hold themself out as, or represent themself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario, without specifying, in the course of the holding out or representation, the restrictions, if any,

(a) on the areas of law that the licensee is authorized to practise or in which the licensee is authorized to provide legal services; and

(b) on the legal services that the licensee is authorized to provide. 2006, c. 21, Sched. C, s. 22.

Exception, non-licensee practising law or providing legal services

(5) A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the by-laws. 2006, c. 21, Sched. C, s. 22.

Exception, non-licensee holding out, etc.

(6) A person who is not a licensee may hold themself out as, or represent themself to be, a person who may practise law in Ontario, if,

(a) the by-laws permit the person to practise law in Ontario; and

(b) the person specifies, in the course of the holding out or representation, the restrictions, if any, on the areas of law that the person is authorized to practise. 2006, c. 21, Sched. C, s. 22.

Same

(7) A person who is not a licensee may hold themself out as, or represent themself to be, a person who may provide legal services in Ontario, if,

(a) the by-laws permit the person to provide legal services in Ontario; and

(b) the person specifies, in the course of the holding out or representation, the restrictions, if any,

(i) on the areas of law in which the person is authorized to provide legal services, and

(ii) on the legal services that the person is authorized to provide. 2006, c. 21, Sched. C, s. 22.

Agent

(8) This section applies to a person, even if the person is acting as agent under the authority of an Act of the Legislature or an Act of Parliament. 2006, c. 21, Sched. C, s. 22.

Offences

Contravening s. 26.1

26.2 (1) Every person who contravenes section 26.1 is guilty of an offence and on conviction is liable to a fine of,

(a) not more than $25,000 for a first offence; and

(b) not more than $50,000 for each subsequent offence. 2006, c. 21, Sched. C, s. 22.

Giving foreign legal advice

(2) Every person who gives legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws is guilty of an offence and on conviction is liable to a fine of,

(a) not more than $25,000 for a first offence; and

(b) not more than $50,000 for each subsequent offence. 2006, c. 21, Sched. C, s. 22.

Condition of probation order: compensation or restitution

(3) The court that convicts a person of an offence under this section may prescribe as a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence. 2006, c. 21, Sched. C, s. 22.

Condition of probation order: not to contravene s. 26.1

(4) The court that convicts a person of an offence under subsection (1) may prescribe as a condition of a probation order that the person shall not contravene section 26.1. 2006, c. 21, Sched. C, s. 22.

Condition of probation order: not to give foreign legal advice

(5) The court that convicts a person of an offence under subsection (2) may prescribe as a condition of a probation order that the person shall not give legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws. 2006, c. 21, Sched. C, s. 22.

Order for costs

(6) Despite any other Act, the court that convicts a person of an offence under this section may order the person to pay the prosecutor costs toward fees and expenses reasonably incurred by the prosecutor in the prosecution. 2006, c. 21,

Sched. C, s. 22.

Deemed order

(7) A certified copy of an order for costs made under subsection (6) may be filed in the Superior Court of Justice by the prosecutor and, on filing, shall be deemed to be an order of that court for the purposes of enforcement. 2006, c. 21, Sched. C, s. 22.

Limitation

(8) A prosecution for an offence under this section shall not be commenced more than two years after the date on which the offence was alleged to have been committed. 2006, c. 21, Sched. C, s. 22.

Order prohibiting contravention, etc.

26.3 (1) On the application of the Society, the Superior Court of Justice may,

(a) make an order prohibiting a person from contravening section 26.1, if the court is satisfied that the person is contravening or has contravened section 26.1;

(b) make an order prohibiting a person from giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws, if the court is satisfied that the person is giving or has given legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws. 2006, c. 21, Sched. C, s. 22.

No prosecution or conviction required

(2) An order may be made,

(a) under clause (1) (a), whether or not the person has been prosecuted for or convicted of the offence of contravening section 26.1;

(b) under clause (1) (b), whether or not the person has been prosecuted for or convicted of the offence of giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws. 2006, c. 21, Sched. C, s. 22.

Order to vary or discharge

(3) Any person may apply to the Superior Court of Justice for an order varying or discharging an order made under subsection (1). 2006, c. 21, Sched. C, s. 22.

LICENSING

Licensing

Classes of licence

27. (1) The classes of licence that may be issued under this Act, the scope of activities authorized under each class of licence and any terms, conditions, limitations or restrictions imposed on each class of licence shall be as set out in the by-laws. 2006, c. 21, Sched. C, s. 23 (1).

Good character requirement

(2) It is a requirement for the issuance of every licence under this Act that the applicant be of good character. 2006, c. 21, Sched. C, s. 23 (1).

Duty to issue licence

(3) If a person who applies to the Society for a class of licence in accordance with the by-laws meets the qualifications and other requirements set out in this Act and the by-laws for the issuance of that class of licence, the Society shall issue a licence of that class to the applicant. 2006, c. 21, Sched. C, s. 23 (1).

Hearing

(4) An application for a licence may be refused only by the Hearing Panel after holding a hearing. 1998, c. 21, s. 14; 2006, c. 21, Sched. C, s. 23 (2).

Note: On March 12, 2014, subsection (4) is repealed and the following substituted: (See: 2013, c. 17, ss. 6, 28 (2))

Refusal

(4) An application for a licence may be refused only after a hearing by the Hearing Division, on referral of the matter by the Society to the Tribunal. 2013, c. 17, s. 6.

Parties

(5) The parties to a hearing under subsection (4) are the applicant, the Society and any other person added as a party by the Hearing Panel. 1998, c. 21, s. 14.

Note: On March 12, 2014, subsection (5) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Subsequent applications

(6) If an application for a licence is refused, another application may be made at any time based on fresh evidence or a material change in circumstances. 1998, c. 21, s. 14; 2006, c. 21, Sched. C, s. 23 (3).

(7) Repealed: 2006, c. 21, Sched. C, s. 23 (4).

Register

27.1 (1) The Society shall establish and maintain a register of persons who have been issued licences. 2006, c. 21, Sched. C, s. 24.

Contents of register

(2) Subject to any by-law respecting the removal of information from the register, the register shall contain the following information:

1. The name of each licensee.
2. The class of licence issued to each licensee.
3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.
4. An indication of every suspension, revocation, abeyance or surrender of a licence.
5. Any other information required by the by-laws. 2006, c. 21, Sched. C, s. 24.

Availability to public

(3) The Society shall make the register available for public inspection in accordance with the by-laws. 2006, c. 21, Sched. C, s. 24.

28., **28.1** Repealed: 2006, c. 21, Sched. C, s. 25.

Officers of the courts

29. Every person who is licensed to practise law in Ontario as a barrister and solicitor is an officer of every court of record in Ontario. 2006, c. 21, Sched. C, s. 26.

Surrender of licence

30. (1) A licensee may apply to the Society in accordance with the by-laws to surrender his or her licence. 2006, c. 21, Sched. C, s. 26.

Acceptance of surrender

(2) A licence is surrendered when the application to surrender the licence is accepted by the Society in accordance with the by-laws. 2006, c. 21, Sched. C, s. 26.

Appointment to judicial office

31. (1) The licence of a person is in abeyance while the person holds office,

(a) as a full-time judge of any federal, provincial or territorial court, as a full-time master of the Superior Court of Justice, as a full-time case management master, or as a full-time prothonotary of the Federal Court of Canada; or

(b) as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or quasi-judicial function and that is named in the regulations for the purposes of this section. R.S.O. 1990, c. L.8,

s. 31 (1); 1996, c. 25, s. 7; 1998, c. 21, s. 19 (1); 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 27 (1).

Restoration

(2) Upon ceasing to hold an office described in subsection (1), a person whose licence is in abeyance may apply to the Society to have the licence restored and, subject to subsection (3), the Society shall restore it. 2006, c. 21, Sched. C, s. 27 (2); 2010, c. 1, Sched. 12, s. 4 (1).

Note: On March 12, 2014, subsection (2) is amended by striking out "subsection (3)" and substituting "subsections (2.1) and (3)". (See: 2013, c. 17, ss. 7 (1), 28 (2))

Note: On March 12, 2014, section 31 is amended by adding the following subsection: (See: 2013, c. 17, ss. 7 (2), 28 (2))

Refusal

(2.1) An application to restore the licence of a person whose licence is in abeyance may be refused only after a hearing by the Hearing Division, on referral of the matter by the Society to the Tribunal. 2013, c. 17, s. 7 (2).

Exception

(3) The Hearing Panel may refuse to restore the licence of a person whose licence is in abeyance if, after holding a hearing, the Panel finds that the person was removed or resigned from an office described in subsection (1) because of,

Note: On March 12, 2014, subsection (3) is amended by striking out the portion before clause (a) and substituting the following: (See: 2013, c. 17, ss. 7 (3), 28 (2))

Same

(3) The Hearing Division may refuse to restore the licence of a person whose licence is in abeyance if the Division finds that the person was removed or resigned from an office described in subsection (1) because of,

(a) conduct that was incompatible with the due execution of the office;

(b) failure to perform the duties of the office; or

(c) conduct that, if done by a licensee, would be professional misconduct or conduct unbecoming a licensee. 1998, c. 21, s. 19 (2); 2006, c. 21, Sched. C, s. 27 (3, 4); 2010, c. 1, Sched. 12, s. 4 (2).

Parties

(4) The parties to a hearing under subsection (3) are the person whose licence is in abeyance, the Society and any other person added as a party by the Hearing Panel. 1998, c. 21, s. 19 (2); 2006, c. 21, Sched. C, s. 27 (5).

Note: On March 12, 2014, subsection (4) is repealed and the following substituted: (See: 2013, c. 17, ss. 7 (4), 28 (2))

Parties

(4) The parties to a hearing under subsection (2.1) are the person whose licence is in abeyance, the Society and any other person added as a party by the Hearing Division. 2013, c. 17, s. 7 (4).

Deemed surrender of licence

(5) If the Hearing Panel refuses to restore a person's licence, the person's licence shall be deemed to have been surrendered. 2006, c. 21, Sched. C, s. 27 (6); 2010, c. 1, Sched. 12, s. 4 (2).

Note: On March 12, 2014, subsection (5) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

32. Repealed: 2006, c. 21, Sched. C, s. 28.

PART II

CONDUCT

Prohibited conduct

33. A licensee shall not engage in professional misconduct or conduct unbecoming a licensee. 2006, c. 21, Sched. C,

s. 29.

Conduct application

34. (1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a licensee has contravened section 33. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 30 (1).

Note: On March 12, 2014, subsection (1) is repealed and the following substituted: (See: 2013, c. 17, ss. 8, 28 (2))

Conduct application

(1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Tribunal for a determination by the Hearing Division of whether a licensee has contravened section 33. 2013, c. 17, s. 8.

Parties

(2) The parties to the application are the Society, the licensee who is the subject of the application, and any other person added as a party by the Hearing Panel. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 30 (2).

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Restriction

(3) If a complaint is referred to the Complaints Resolution Commissioner in accordance with the by-laws, no application relating to the subject matter of the complaint may be made under this section while the Commissioner is dealing with the complaint. 1998, c. 21, s. 21.

Conduct orders

35. (1) Subject to the rules of practice and procedure, if an application is made under section 34 and the Hearing Panel determines that the licensee has contravened section 33, the Panel shall make one or more of the following orders:

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears in the portion before paragraph 1 and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

1. An order revoking the licensee's licence.
2. An order permitting the licensee to surrender his or her licence.
3. An order suspending the licensee's licence,
    i. for a definite period,
    ii. until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society, or

Note: On March 12, 2014, subparagraph ii is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

    iii. for a definite period and, after that, until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society.

Note: On March 12, 2014, subparagraph iii is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

4. An order imposing a fine on the licensee of not more than $10,000, payable to the Society.
5. An order that the licensee obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health.
6. An order that the licensee participate in specified programs of legal education or professional training or other programs to improve his or her professional competence.
7. An order restricting the areas of law that the licensee may practise or in which the licensee may provide legal services.

7.1 An order restricting the legal services that the licensee may provide.

8. An order that the licensee practise law or provide legal services only,

i. as an employee of a person approved by the Society,

ii. as an employee or partner, and under the supervision, of a licensee approved by the Society, or

iii. under the supervision of a licensee approved by the Society.

9. An order that the licensee co-operate in a review of the licensee's professional business under section 42 and implement the recommendations made by the Society.

10. An order that the licensee maintain a specified type of trust account.

11. An order that the licensee accept specified co-signing controls on the operation of his or her trust accounts.

12. An order that the licensee not maintain any trust account in connection with his or her professional business without leave of the Society.

13. An order requiring the licensee to refund to a client all or a portion of the fees and disbursements paid to the licensee by the client.

14. An order requiring the licensee to pay to the Society, for the Compensation Fund, such amount as the Hearing Panel may fix that does not exceed the total amount of grants made from the Fund as a result of dishonesty on the part of the licensee.

Note: On March 12, 2014, paragraph 14 is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

15. An order that the licensee give notice of any order made under this section to such of the following persons as the order may specify:

i. The licensee's partners or employers.

ii. Other licensees working for the same firm or employer as the licensee.

iii. Clients affected by the conduct giving rise to the order.

16., 17. Repealed: 2006, c. 21, Sched. C, s. 31 (7).

18. An order that the licensee report on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon.

19. An order that the licensee be reprimanded.

20. Repealed: 2006, c. 21, Sched. C, s. 31 (10).

21. Any other order that the Hearing Panel considers appropriate. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 31 (1-10).

Note: On March 12, 2014, paragraph 21 is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Same

(2) The failure of subsection (1) to specifically mention an order that is provided for elsewhere in this Act does not prevent an order of that kind from being made under paragraph 21 of subsection (1). 1998, c. 21, s. 21.

Test results

(3) If the Hearing Panel makes an order under paragraph 18 of subsection (1), specific results of tests performed in the course of treatment or counselling of the licensee shall be reported pursuant to the order only to a physician or psychologist selected by the Society. 2006, c. 21, Sched. C, s. 31 (11).

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" and substituting "Division". (See: 2013, c.

17, ss. 26, 28 (2))

Report to Society

(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 5 of subsection (1), the Society may require the physician or psychologist to promptly report to it his or her opinion on the licensee's compliance with the order, but the report shall not disclose the specific test results. 2006, c. 21, Sched. C, s. 31 (11).

Invitation to attend

36. (1) If an application has been made under section 34, the Hearing Panel may invite the licensee in respect of whom the application was made to attend before the Panel for the purpose of receiving advice from the Panel concerning his or her conduct. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 32 (1).

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Dismissal of application

(2) The Hearing Panel shall dismiss the application if the licensee attends before the Panel in accordance with the invitation. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 32 (2).

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

CAPACITY

Interpretation – "incapacitated"

37. (1) A licensee is incapacitated for the purposes of this Act if, by reason of physical or mental illness, other infirmity or addiction to or excessive use of alcohol or drugs, he or she is incapable of meeting any of his or her obligations as a licensee. 2006, c. 21, Sched. C, s. 33 (1).

(2) Repealed: 2006, c. 21, Sched. C, s. 33 (1).

Determinations under other Acts

(3) Subject to subsection (4), the Hearing Panel may determine that a licensee is incapacitated for the purposes of this Act if the licensee has been found under any other Act to be incapacitated within the meaning of that Act. 2006, c. 21, Sched. C, s. 33 (2).

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Conditions controlled by treatment or device

(4) The Hearing Panel shall not determine that a licensee is incapacitated for the purposes of this Act if, through compliance with a continuing course of treatment or the continuing use of an assistive device, the licensee is capable of meeting his or her obligations as a licensee. 2006, c. 21, Sched. C, s. 33 (2).

Note: On March 12, 2014, subsection (4) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(5) Repealed: 2006, c. 21, Sched. C, s. 33 (2).

Same

(6) Despite subsection (4), the Hearing Panel may determine that a licensee who is the subject of an application under section 38 is incapacitated for the purposes of this Act if,

Note: On March 12, 2014, subsection (6) is amended by striking out "Panel" in the portion before clause (a) and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(a) the licensee suffers from a condition that would render the licensee incapacitated were it not for compliance with a

continuing course of treatment or the continuing use of an assistive device; and

(b) the licensee has not complied with the continuing course of treatment or used the assistive device on one or more occasions in the year preceding the commencement of the application. 2006, c. 21, Sched. C, s. 33 (3).

Capacity application

38. (1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a licensee is or has been incapacitated. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 34 (1).

Note: On March 12, 2014, subsection (1) is repealed and the following substituted: (See: 2013, c. 17, ss. 9, 28 (2))

Capacity application

(1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Tribunal for a determination by the Hearing Division of whether a licensee is or has been incapacitated. 2013, c. 17, s. 9.

Parties

(2) The parties to the application are the Society, the licensee who is the subject of the application, and any other person added as a party by the Hearing Panel. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 34 (2).

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Medical or psychological examinations

39. (1) If an application is made under section 38, the Hearing Panel may, on motion by a party to the application or on its own motion, make an order requiring the licensee who is the subject of the application to be examined by one or more physicians or psychologists. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 35 (1).

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Panel to specify examiners

(2) The examining physicians or psychologists shall be specified by the Hearing Panel after giving the parties to the proceeding an opportunity to make recommendations. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Purpose of examination

(3) The purpose of the examination is,

(a) to assess whether the licensee is or has been incapacitated;

(b) to assess the extent of any incapacity and the prognosis for recovery; and

(c) to assist in the determination of any other medical or psychological issue in the application. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 35 (2).

Questions and answers

(4) The licensee shall answer the questions of the examining physicians or psychologists that are relevant to the examination. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 35 (3).

Same

(5) The answers given under subsection (4) are admissible in evidence in the application, including any appeal, and in any proceeding in court arising from the application, but are not admissible in any other proceeding. 1998, c. 21, s. 21.

Failure to comply

(6) If the licensee fails to comply with an order under this section, the Hearing Panel may make an order suspending his or her licence until he or she complies. 2006, c. 21, Sched. C, s. 35 (4).

Note: On March 12, 2014, subsection (6) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Appeal

(7) A party to the proceeding may appeal an order under this section or a refusal to make an order under this section to the Appeal Panel. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (7) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Grounds: parties other than Society

(8) A party other than the Society may appeal under subsection (7) on any grounds. 1998, c. 21, s. 21.

Grounds: Society

(9) The Society may appeal under subsection (7) only on a question that is not a question of fact alone. 1998, c. 21, s. 21.

Time for appeal

(10) An appeal under subsection (7) shall be commenced within the time prescribed by the rules of practice and procedure. 1998, c. 21, s. 21.

Capacity orders

40. (1) Subject to the rules of practice and procedure, if an application is made under section 38 and the Hearing Panel determines that the licensee is or has been incapacitated, the Panel may make one or more of the following orders:

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears in the portion before paragraph 1 and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

1. An order suspending the licensee's licence,

   i. for a definite period,

   ii. until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society, or

Note: On March 12, 2014, subparagraph ii is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

   iii. for a definite period and, after that, until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society.

Note: On March 12, 2014, subparagraph iii is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

2. An order that the licensee obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health.

3. An order restricting the areas of law that the licensee may practise or in which the licensee may provide legal services.

3.1 An order restricting the legal services that the licensee may provide.

4. An order that the licensee practise law or provide legal services only,

   i. as an employee of a person approved by the Society,

   ii. as an employee or partner, and under the supervision, of a licensee approved by the Society, or

   iii. under the supervision of a licensee approved by the Society.

5. An order that the licensee report on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon.

6. Any other order that the Hearing Panel considers appropriate. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 36 (1-5).

Note: On March 12, 2014, paragraph 6 is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Same

(2) The failure of subsection (1) to specifically mention an order that is provided for elsewhere in this Act does not prevent an order of that kind from being made under paragraph 6 of subsection (1). 1998, c. 21, s. 21.

Test results

(3) If the Hearing Panel makes an order under paragraph 5 of subsection (1), specific results of tests performed in the course of treatment or counselling of the licensee shall be reported pursuant to the order only to a physician or psychologist selected by the Society. 2006, c. 21, Sched. C, s. 36 (6).

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Report to Society

(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 2 of subsection (1), the Society may require the physician or psychologist to promptly report to it his or her opinion on the licensee's compliance with the order, but the report shall not disclose the specific test results. 2006, c. 21, Sched. C, s. 36 (6).

PROFESSIONAL COMPETENCE

Interpretation – standards of professional competence

41. A licensee fails to meet standards of professional competence for the purposes of this Act if,

(a) there are deficiencies in,

(i) the licensee's knowledge, skill or judgment,

(ii) the licensee's attention to the interests of clients,

(iii) the records, systems or procedures of the licensee's professional business, or

(iv) other aspects of the licensee's professional business; and

(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected. 2006, c. 21, Sched. C, s. 37.

Review: professional competence

42. (1) The Society may conduct a review of a licensee's professional business in accordance with the by-laws for the purpose of determining if the licensee is failing or has failed to meet standards of professional competence, if,

(a) the circumstances prescribed by the by-laws exist; or

(b) the licensee is required by an order under section 35 to co-operate in a review under this section. 2006, c. 21, Sched. C, s. 38 (1).

Powers

(2) A person conducting a review under this section may,

(a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;

(b) require the production of and examine documents that relate to the matters under review, including client files, and examine systems and procedures of the licensee's professional business; and

(c) require the licensee and people who work with the licensee to provide information that relates to the matters under review. 2006, c. 21, Sched. C, s. 38 (1).

Recommendations

(3) On completion of the review, the Society may make recommendations to the licensee. 2006, c. 21, Sched. C,

s. 38 (1).

Proposal for order

(4) The Society may include the recommendations in a proposal for an order. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 38 (2).

Contents of proposal

(5) A proposal for an order may include orders like those mentioned in section 44 and any other order that the Society considers appropriate. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 38 (3).

Acceptance by licensee

(6) If the Society makes a proposal for an order to the licensee and the licensee accepts the proposal within the time prescribed by the by-laws, the Society shall notify the chair or a vice-chair of the standing committee of Convocation responsible for professional competence and the chair or vice-chair shall appoint a member of the Hearing Panel to review the proposal. 2006, c. 21, Sched. C, s. 38 (4).

Note: On March 12, 2014, subsection (6) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Approval by member of Hearing Panel

(7) The member of the Hearing Panel who reviews the proposal may make an order giving effect to the proposal, if he or she is of the opinion that it is appropriate to do so. 2006, c. 21, Sched. C, s. 38 (4).

Note: On March 12, 2014, subsection (7) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Modifications to proposal

(8) The member of the Hearing Panel may include modifications to the proposal in an order under subsection (7), if the licensee and the Society consent in writing to the modifications. 2006, c. 21, Sched. C, s. 38 (4).

Note: On March 12, 2014, subsection (8) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Application of subss. (4) to (8)

(9) Subsections (4) to (8) do not apply if the licensee is required by an order under section 35 to co-operate in a review of the licensee's professional business under this section and to implement the recommendations made by the Society. 2006, c. 21, Sched. C, s. 38 (4).

Professional competence application

43. (1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a licensee is failing or has failed to meet standards of professional competence. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 39 (1).

Note: On March 12, 2014, subsection (1) is repealed and the following substituted: (See: 2013, c. 17, ss. 10, 28 (2))

Professional competence application

(1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Tribunal for a determination by the Hearing Division of whether a licensee is failing or has failed to meet standards of professional competence. 2013, c. 17, s. 10.

Parties

(2) The parties to the application are the Society, the licensee who is the subject of the application and any other person added as a party by the Hearing Panel. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 39 (2).

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Professional competence orders

44. (1) Subject to the rules of practice and procedure, if an application is made under section 43 and the Hearing Panel determines that the licensee is failing or has failed to meet standards of professional competence, the Panel may make one or more of the following orders:

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears in the portion before paragraph 1 and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

1. An order suspending the licensee's licence,

   i. for a definite period,

   ii. until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society, or

Note: On March 12, 2014, subparagraph ii is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

   iii. for a definite period and, after that, until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society.

Note: On March 12, 2014, subparagraph iii is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

2. An order that the licensee institute new records, systems or procedures in his or her professional business.

3. An order that the licensee obtain professional advice with respect to the management of his or her professional business.

4. An order that the licensee retain the services of a person qualified to assist in the administration of his or her professional business.

5. An order that the licensee obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health.

6. An order that the licensee participate in specified programs of legal education or professional training or other programs to improve his or her professional competence.

7. An order restricting the areas of law that the licensee may practise or in which the licensee may provide legal services.

7.1 An order restricting the legal services that the licensee may provide.

8. An order that the licensee practise law or provide legal services only,

   i. as an employee of a person approved by the Society,

   ii. as an employee or partner, and under the supervision, of a licensee approved by the Society, or

   iii. under the supervision of a licensee approved by the Society.

9. An order that the licensee report on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon.

10. Any other order that the Hearing Panel considers appropriate. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 40 (1-6).

Note: On March 12, 2014, paragraph 10 is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Same

(2) The failure of subsection (1) to specifically mention an order that is provided for elsewhere in this Act does not prevent an order of that kind from being made under paragraph 10 of subsection (1). 1998, c. 21, s. 21.

Test results

(3) If the Hearing Panel makes an order under paragraph 9 of subsection (1), specific results of tests performed in the

course of treatment or counselling of the licensee shall be reported pursuant to the order only to a physician or psychologist selected by the Society. 2006, c. 21, Sched. C, s. 40 (7).

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Report to Society

(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 5 of subsection (1), the Society may require the physician or psychologist to promptly report to it his or her opinion on the licensee's compliance with the order, but the report shall not disclose the specific test results. 2006, c. 21, Sched. C, s. 40 (7).

FAILURE TO COMPLY WITH ORDER

Suspension for failure to comply with order

45. (1) On application by the Society, the Hearing Panel may make an order suspending a licensee's licence if the Panel determines that the licensee has failed to comply with an order under this Part. 2006, c. 21, Sched. C, s. 41.

Parties

(2) The parties to the application are the Society, the licensee who is the subject of the application, and any other person added as a party by the Hearing Panel. 2006, c. 21, Sched. C, s. 41.

Nature of suspension

(3) An order under this section may suspend the licensee's licence,

(a) for a definite period;

(b) until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society; or

(c) for a definite period and, after that, until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Society. 2006, c. 21, Sched. C, s. 41.

Note: On March 12, 2014, section 45 is repealed and the following substituted: (See: 2013, c. 17, ss. 11, 28 (2))

Suspension for failure to comply with order

Application

45. (1) The Society may apply to the Tribunal for a determination by the Hearing Division of whether a licensee has failed to comply with an order under this Part. 2013, c. 17, s. 11.

Parties

(2) The parties to the application are the Society, the licensee who is the subject of the application, and any other person added as a party by the Hearing Division. 2013, c. 17, s. 11.

Suspension order

(3) If the Hearing Division determines that a licensee has failed to comply with an order under this Part, the Division may suspend the licensee's licence,

(a) for a definite period;

(b) until terms and conditions specified by the Hearing Division are met to the satisfaction of the Society; or

(c) for a definite period and, after that, until terms and conditions specified by the Hearing Division are met to the satisfaction of the Society. 2013, c. 17, s. 11.

Suspension for failure to comply with costs order

45.1 (1) A licensee's licence is suspended if the licensee is ordered to pay costs under section 49.28 and he or she fails to comply by the deadline for payment provided for under the order or the by-laws, as the case may be. 2013, c. 17, s. 12.

Non-application

(2) Subsection (1) does not apply unless the time for appealing the costs order has expired or, if an appeal of the costs

order is commenced, unless the appeal is finally disposed of. 2013, c. 17, s. 12.

Start of suspension

(3) A suspension under subsection (1) begins on the following date:

1. If no appeal of the costs order is commenced, the later of the day after the time for commencing an appeal expires and the day after the deadline for payment.

2. If an appeal of the costs order is commenced and is finally disposed of, the day after the deadline for payment provided for on appeal or under the by-laws, as the case may be. 2013, c. 17, s. 12.

Notice

(4) The Society shall give notice of a suspension under subsection (1) to the licensee, and shall specify in the notice the date on which the suspension began. 2013, c. 17, s. 12.

Length of suspension

(5) A suspension under subsection (1) remains in effect until the licensee pays, to the satisfaction of the Society,

(a) the costs owing; and

(b) any other amount owed by the licensee to the Society under this Act. 2013, c. 17, s. 12.

Costs payable by instalment

(6) If costs are payable by instalment, a reference in this section to a deadline for payment of costs shall be read as a reference to a deadline for payment of any instalment of the costs. 2013, c. 17, s. 12.

SUMMARY ORDERS

Summary suspension for non-payment

46. (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if, for the period prescribed by the by-laws, the licensee has been in default for failure to pay a fee or levy payable to the Society. 2006, c. 21, Sched. C, s. 41.

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

(a) a bencher; or

(b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section. 2006, c. 21, Sched. C, s. 41.

Length of suspension

(3) A suspension under this section remains in effect until the licensee pays the amount owing in accordance with the by-laws to the satisfaction of the Society. 2006, c. 21, Sched. C, s. 41.

Discharge from bankruptcy

(4) A suspension under this section is not terminated by the licensee's discharge from bankruptcy, but the licensee may apply to the Hearing Panel under subsection 49.42 (3). 2006, c. 21, Sched. C, s. 41.

Note: On March 12, 2014, subsection (4) is amended by striking out "to the Hearing Panel" and substituting "to the Tribunal". (See: 2013, c. 17, ss. 13, 28 (2))

Summary suspension for failure to complete or file

47. (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if, for the period prescribed by the by-laws,

(a) the licensee has been in default for failure to complete or file with the Society any certificate, report or other document that the licensee is required to file under the by-laws; or

(b) the licensee has been in default for failure to complete or file with the Society, or with an insurer through which indemnity for professional liability is provided under section 61, any certificate, report or other document that the

licensee is required to file under a policy for indemnity for professional liability. 2006, c. 21, Sched. C, s. 41.

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

(a) a bencher; or

(b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section. 2006, c. 21, Sched. C, s. 41.

Length of suspension

(3) A suspension under this section remains in effect until the licensee completes and files the required document in accordance with the by-laws to the satisfaction of the Society. 2006, c. 21, Sched. C, s. 41.

Summary suspension for failure to comply with indemnity requirements

47.1 (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if the licensee has failed to comply with the requirements of the by-laws with respect to indemnity for professional liability. 2006, c. 21, Sched. C, s. 41.

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

(a) a bencher; or

(b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section. 2006, c. 21, Sched. C, s. 41.

Length of suspension

(3) A suspension under this section remains in effect until the licensee complies with the requirements of the by-laws with respect to indemnity for professional liability to the satisfaction of the Society. 2006, c. 21, Sched. C, s. 41.

Summary revocation

48. (1) A person appointed for the purpose by Convocation may make an order revoking a licensee's licence if an order under section 46, clause 47 (1) (a) or section 47.1 is still in effect more than 12 months after it was made. 2006, c. 21, Sched. C, s. 42.

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

(a) a bencher; or

(b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section. 2006, c. 21, Sched. C, s. 42.

Summary suspension relating to continuing professional development

49. (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if the licensee has failed to comply with the requirements of the by-laws with respect to continuing professional development. 2006, c. 21, Sched. C, s. 42; 2010, c. 16, Sched. 2, s. 4 (1).

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

(a) a bencher; or

(b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section. 2006, c. 21, Sched. C, s. 42.

Length of suspension

(3) A suspension under this section remains in effect until the licensee complies with the requirements of the by-laws with respect to continuing professional development to the satisfaction of the Society. 2006, c. 21, Sched. C, s. 42; 2010, c. 16, Sched. 2, s. 4 (1).

49.1 Repealed: 2006, c. 21, Sched. C, s. 42.

AUDITS, INVESTIGATIONS, ETC.

Audit of financial records

49.2 (1) The Society may conduct an audit of the financial records of a licensee or group of licensees for the purpose of determining whether the financial records comply with the requirements of the by-laws. 2006, c. 21, Sched. C, s. 43.

Powers

(2) A person conducting an audit under this section may,

(a) enter the business premises of the licensee or group of licensees between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or by any licensee in the group of licensees;

(b) require the production of and examine the financial records maintained in connection with the professional business of the licensee or group of licensees and, for the purpose of understanding or substantiating those records, require the production of and examine any other documents in the possession or control of the licensee or group of licensees, including client files; and

(c) require the licensee or group of licensees, and people who work with the licensee or group of licensees, to provide information to explain the financial records and other documents examined under clause (b) and the transactions recorded in those financial records and other documents. 2006, c. 21, Sched. C, s. 43.

Investigations

Conduct

49.3 (1) The Society may conduct an investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee. 2006, c. 21, Sched. C, s. 43.

Powers

(2) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in professional misconduct or conduct unbecoming a licensee, the person conducting the investigation may,

(a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;

(b) require the production of and examine any documents that relate to the matters under investigation, including client files; and

(c) require the licensee and people who work with the licensee to provide information that relates to the matters under investigation. 2006, c. 21, Sched. C, s. 43.

Capacity

(3) The Society may conduct an investigation into a licensee's capacity if the Society receives information suggesting that the licensee may be, or may have been, incapacitated. 2006, c. 21, Sched. C, s. 43.

Powers

(4) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section is satisfied that there are reasonable grounds for believing that a licensee being investigated under subsection (3) may be, or may have been, incapacitated, the person conducting the investigation may,

(a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;

(b) require the production of and examine any documents that relate to the matters under investigation, including client files; and

(c) require the licensee and people who work with the licensee to provide information that relates to the matters under

investigation. 2006, c. 21, Sched. C, s. 43.

49.4-**49.7** Repealed: 2006, c. 21, Sched. C, s. 43.

Privilege

Disclosure despite privilege

49.8 (1) A person who is required under section 42, 49.2, 49.3 or 49.15 to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (1).

Disclosure by other person, body

(1.1) The Society or the Complaints Resolution Commissioner, as the case may be, may receive from any person or body information or documents in relation to a review under section 42, an audit under section 49.2, or an investigation under section 49.3 or 49.15, even if the information or documents are privileged or confidential. 2013, c. 17, s. 14 (1).

Admissibility despite privilege

(2) Despite clause 15 (2) (a) and section 32 of the *Statutory Powers Procedure Act*, information provided and documents produced under section 42, 49.2, 49.3 or 49.15 and information or documents described in subsection (1.1) are admissible in a proceeding under this Act even if the information or documents are privileged or confidential. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (2); 2013, c. 17, s. 14 (2).

(2.1) Repealed: 2013, c. 17, s. 14 (3).

Privilege preserved for other purposes

(3) Subsections (1), (1.1) and (2) do not negate or constitute a waiver of any privilege and, even though information or documents that are privileged must be disclosed under subsection (1) or may be received under subsection (1.1), and are admissible in a proceeding under subsection (2), the privilege continues for all other purposes. 2013, c. 17, s. 14 (4).

Removal for copying

49.9 (1) A person entitled to examine documents under section 42, 49.2, 49.3 or 49.15 may, on giving a receipt,

(a) remove the documents for the purpose of copying them; and

(b) in the case of information recorded or stored by computer or by means of any other device, remove the computer or other device for the purpose of copying the information. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (2).

Return

(2) The person shall copy the documents or information with reasonable dispatch and shall return the documents, computer or other device promptly to the person from whom they were removed. 1998, c. 21, s. 21.

Order for search and seizure

49.10 (1) On application by the Society, the Superior Court of Justice may make an order under subsection (2) if the court is satisfied that there are reasonable grounds for believing,

(a) that one of the following circumstances exists:

(i) a review of a licensee's professional business under section 42 is authorized,

(ii) an investigation into a licensee's conduct under subsection 49.3 (1) is authorized, or

(iii) a licensee whose capacity is being investigated under subsection 49.3 (3) may be, or may have been, incapacitated;

(b) that there are documents or other things that relate to the matters under review or investigation in a building, dwelling or other premises specified in the application or in a vehicle or other place specified in the application, whether the building, dwelling, premises, vehicle or place is under the control of the licensee or another person; and

(c) that an order under subsection (2) is necessary,

(i) because of urgency,

(ii) because use of the authority in subsection 42 (2) or 49.3 (2) or (4) is not possible, is not likely to be effective or has been ineffective, or

(iii) because subsection 42 (2) or 49.3 (2) or (4) does not authorize entry into the building, dwelling or other premises specified in the application or the vehicle or other place specified in the application. 2006, c. 21, Sched. C, s. 46 (1).

Contents of order

(2) The order referred to in subsection (1) may authorize the person conducting the investigation or review, or any police officer or other person acting on the direction of the person conducting the investigation or review,

(a) to enter, by force if necessary, any building, dwelling or other premises specified in the order or any vehicle or other place specified in the order, whether the building, dwelling, premises, vehicle or place is under the control of the licensee or another person;

(b) to search the building, dwelling, premises, vehicle or place;

(c) to open, by force if necessary, any safety deposit box or other receptacle; and

(d) to seize and remove any documents or other things that relate to the matters under investigation or review. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 46 (2).

Terms and conditions

(3) An order under subsection (2) may include such terms and conditions as the court considers appropriate. 1998, c. 21, s. 21.

Assistance of police

(4) An order under subsection (2) may require a police officer to accompany the person conducting the investigation or review in the execution of the order. 1998, c. 21, s. 21.

Application without notice

(5) An application for an order under subsection (2) may be made without notice. 1998, c. 21, s. 21.

Removal of seized things

(6) A person who removes any thing pursuant to an order under this section shall,

(a) at the time of removal, give a receipt to the person from whom the thing is seized; and

(b) as soon as practicable, bring the thing before or report the removal to a judge of the Superior Court of Justice. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

Order for retention

(7) If the judge referred to in clause (6) (b) is satisfied that retention of the thing is necessary for the purpose of the investigation or review or for the purpose of a proceeding under this Part, he or she may order that the thing be retained until,

(a) such date as he or she may specify; or

(b) if a proceeding under this Part has been commenced, until the proceeding, including any appeals, has been completed. 1998, c. 21, s. 21.

Extension of time

(8) A judge of the Superior Court of Justice may, before the time for retaining a thing expires, extend the time until,

(a) such later date as he or she may specify; or

(b) if a proceeding under this Part has been commenced, until the proceeding, including any appeals, has been completed. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

Return

(9) If retention of a thing is not authorized under subsection (7) or the time for retaining the thing expires, it shall be returned to the person from whom it was seized. 1998, c. 21, s. 21.

Seizure despite privilege

(10) An order under this section may authorize the seizure of a thing even if the thing is privileged or confidential. 1998, c. 21, s. 21.

Admissibility despite privilege

(11) Despite clause 15 (2) (a) and section 32 of the *Statutory Powers Procedure Act*, a thing seized under this section is admissible in a proceeding under this Act even if the thing is privileged or confidential. 1998, c. 21, s. 21.

Privilege preserved for other purposes

(12) Subsections (10) and (11) do not negate or constitute a waiver of any privilege and, even though a thing that is privileged may be seized under subsection (10) and is admissible in a proceeding under subsection (11), the privilege continues for all other purposes. 1998, c. 21, s. 21.

Identification

49.11 On request, a person conducting an audit, investigation, review, search or seizure under this Part shall produce identification and proof of his or her authority. 1998, c. 21, s. 21.

Confidentiality

49.12 (1) A bencher, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part. 1998, c. 21, s. 21.

Exceptions

(2) Subsection (1) does not prohibit,

(a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;

(b) disclosure required in connection with a proceeding under this Act;

(c) disclosure of information that is a matter of public record;

(d) disclosure by a person to his or her counsel;

(e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure; or

(f) disclosure, if there are reasonable grounds for believing that,

(i) if the disclosure is not made, there is a significant risk of harm to the person who was the subject of the audit, investigation, review, search, seizure or proceeding or to another person, and

(ii) making the disclosure is likely to reduce the risk. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 47.

Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

Disclosure to public authorities

49.13 (1) The Society may apply to the Superior Court of Justice for an order authorizing the disclosure to a public authority of any information that a bencher, officer, employee, agent or representative of the Society would otherwise be prohibited from disclosing under section 49.12. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

Restrictions

(2) The court shall not make an order under this section if the information sought to be disclosed came to the knowledge of the Society as a result of,

(a) the making of an oral or written statement by a person in the course of the audit, investigation, review, search, seizure or proceeding that may tend to criminate the person or establish the person's liability to civil proceedings;

(b) the making of an oral or written statement disclosing matters that the court determines to be subject to solicitor-

client privilege; or

(c) the examination of a document that the court determines to be subject to solicitor-client privilege. 1998, c. 21, s. 21.

Documents and other things

(3) An order under this section that authorizes the disclosure of information may also authorize the delivery of documents or other things that are in the Society's possession and that relate to the information. 1998, c. 21, s. 21.

No appeal

(4) An order of the court on an application under this section is not subject to appeal. 1998, c. 21, s. 21.

COMPLAINTS RESOLUTION COMMISSIONER

Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

Functions of Commissioner

49.15 (1) The Commissioner shall,

(a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and

(b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

Investigation by Commissioner

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

Access to information

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

(a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and

(b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

Confidentiality

49.18 (1) The Commissioner and each member of his or her staff shall not disclose,

(a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or

(b) any information that comes to his or her knowledge under subsection 49.15 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

Exceptions

(2) Subsection (1) does not prohibit,

(a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;

(b) disclosure required in connection with a proceeding under this Act;

(c) disclosure of information that is a matter of public record;

(d) disclosure by a person to his or her counsel; or

(e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

Decisions final

49.19 A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

PROCEEDINGS AUTHORIZATION COMMITTEE

Proceedings Authorization Committee

Establishment

49.20 (1) Convocation shall establish a Proceedings Authorization Committee in accordance with the by-laws. 1998, c. 21, s. 21.

Functions

(2) The Committee shall review matters referred to it in accordance with the by-laws and shall take such action as it considers appropriate in accordance with the by-laws. 1998, c. 21, s. 21.

Decisions final

(3) A decision of the Committee is final and is not subject to appeal or review. 1998, c. 21, s. 21.

Note: On March 12, 2014, the Act is amended by adding the following sections: (See: 2013, c. 17, ss. 15, 28 (2))

LAW SOCIETY TRIBUNAL

Law Society Tribunal

49.20.1 (1) The Law Society Tribunal is established under the name Law Society Tribunal in English and Tribunal du Barreau in French. 2013, c. 17, s. 15.

Divisions

(2) The Tribunal shall consist of two divisions, the Law Society Hearing Division and the Law Society Appeal Division. 2013, c. 17, s. 15.

Composition

(3) The Tribunal shall consist of,

(a) the chair of the Tribunal;

(b) the members of the Hearing Division;

(c) the members of the Appeal Division; and

(d) any temporary members of the Hearing Division or Appeal Division. 2013, c. 17, s. 15.

Cessation of membership

(4) A person who ceases to be a member or temporary member of the Hearing Division or Appeal Division, as the case may be, ceases to be a member of the Tribunal. 2013, c. 17, s. 15.

Chair

Appointment

49.20.2 (1) Convocation shall appoint as chair of the Tribunal a person who is licensed to practise law in Ontario as a barrister and solicitor and who meets the requirements set out in the by-laws. 2013, c. 17, s. 15.

Bencher not eligible

(2) A person is not eligible to be appointed as chair of the Tribunal if he or she is a bencher. 2013, c. 17, s. 15.

Term of office

(3) Subject to subsections (4) and (5), an appointment as chair of the Tribunal shall be for a term of four years. 2013, c. 17, s. 15.

Cessation of eligibility

(4) A person ceases to be a chair of the Tribunal if he or she ceases to meet the eligibility requirements in subsections (1) and (2). 2013, c. 17, s. 15.

Appointment at pleasure

(5) A person appointed as chair of the Tribunal holds office at the pleasure of Convocation. 2013, c. 17, s. 15.

Reappointment

(6) A person appointed as chair of the Tribunal is eligible for reappointment for such term, not exceeding four years, as Convocation may fix, if he or she meets the eligibility requirements in subsections (1) and (2). 2013, c. 17, s. 15.

HEARING PANEL

Hearing Panel

49.21 (1) The Law Society Hearing Panel is continued under the name Law Society Hearing Panel in English and Comité d'audition du Barreau in French. 2006, c. 21, Sched. C, s. 49.

Composition

(2) The Hearing Panel shall consist of at least three persons appointed by Convocation, of whom at least one shall be a person who is not a licensee. 2006, c. 21, Sched. C, s. 49.

Eligibility for appointment

(3) A person is not eligible to be appointed to the Hearing Panel unless he or she is,

(a) a bencher;

(b) a licensee; or

(c) a person approved by the Attorney General for Ontario. 2006, c. 21, Sched. C, s. 49.

Term of office

(4) Subject to subsections (5) and (6), an appointment as a member of the Hearing Panel shall be for such term, not exceeding four years, as Convocation may fix. 2006, c. 21, Sched. C, s. 49.

Cessation of eligibility

(5) A person ceases to be a member of the Hearing Panel if he or she ceases to meet the eligibility requirements in subsection (3). 2006, c. 21, Sched. C, s. 49.

Appointment at pleasure

(6) A person appointed as a member of the Hearing Panel holds office at the pleasure of Convocation. 2006, c. 21, Sched. C, s. 49.

Reappointment

(7) A person appointed as a member of the Hearing Panel is eligible for reappointment if he or she meets the eligibility requirements in subsection (3). 2006, c. 21, Sched. C, s. 49.

Transition

(8) The persons who are members of the Hearing Panel immediately before the day section 49 of Schedule C to the *Access to Justice Act, 2006* comes into force cease to be members on that day, unless they are reappointed under this section. 2006, c. 21, Sched. C, s. 49.

Same

(9) A person who ceases to be a member of the Hearing Panel under subsection (8) may continue to act as a member of the Hearing Panel with respect to any proceeding commenced before he or she ceases to be a member of the Hearing Panel. 2006, c. 21, Sched. C, s. 49.

Note: On March 12, 2014, section 49.21 is repealed and the following substituted: (See: 2013, c. 17, ss. 16 (1), 28 (2))

HEARING DIVISION

Hearing Division

49.21 (1) The Law Society Hearing Panel is continued as a division of the Tribunal under the name Law Society Hearing Division in English and Section de première instance du Barreau in French. 2013, c. 17, s. 16 (1).

Composition

(2) The Hearing Division shall consist of,

(a) the chair of the Tribunal; and

(b) at least three persons appointed by Convocation,

(i) at least one of whom shall be a person who is not a licensee, and

(ii) at least one of whom shall be an elected bencher. 2013, c. 17, s. 16 (1).

Eligibility for appointment

(3) A person is not eligible to be appointed to the Hearing Division unless he or she meets the requirements set out in the by-laws and is,

(a) a bencher;

(b) a licensee; or

(c) a person approved by the Attorney General for Ontario. 2013, c. 17, s. 16 (1).

Term of office

(4) Subject to subsections (5) and (6), an appointment as a member of the Hearing Division shall be for such term, not exceeding four years, as Convocation may fix. 2013, c. 17, s. 16 (1).

Cessation of eligibility

(5) A person appointed to the Hearing Division ceases to be a member of the Division if he or she ceases to meet the eligibility requirements in subsection (3). 2013, c. 17, s. 16 (1).

Appointment at pleasure

(6) A person appointed as a member of the Hearing Division holds office at the pleasure of Convocation. 2013, c. 17, s. 16 (1).

Reappointment

(7) A person appointed as a member of the Hearing Division is eligible for reappointment if he or she meets the eligibility requirements in subsection (3). 2013, c. 17, s. 16 (1).

Transition

(8) The appointments of those persons who are members of the Law Society Hearing Panel immediately before the day subsection 16 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force expire on that day. 2013, c. 17, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed. (See: 2013, c. 17, ss. 16 (2), 28 (4))

Same

(9) Every proceeding that is before the Law Society Hearing Panel immediately before the day subsection 16 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force becomes on that day a proceeding before the Hearing Division. 2013, c. 17, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is repealed. (See: 2013, c. 17, ss. 16 (2), 28 (4))

Same

(10) Despite subsection (8), a person whose appointment expires under that subsection and who is not appointed as a member of the Hearing Division under this section may act as a member of the Hearing Division with respect to any proceeding before the Hearing Division that was commenced before the expiry. 2013, c. 17, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (10) is repealed. (See: 2013, c. 17, ss. 16 (2), 28 (4))

Chair and vice-chair

49.22 (1) Convocation shall appoint one of the members of the Hearing Panel as chair, and another as vice-chair, of the Hearing Panel. 2006, c. 21, Sched. C, s. 49.

Term of office

(2) Subject to subsections (3) and (4), an appointment as chair or vice-chair of the Hearing Panel shall be for such term, not exceeding four years, as Convocation may fix. 2006, c. 21, Sched. C, s. 49.

Cessation of membership

(3) A person ceases to be the chair or vice-chair of the Hearing Panel if he or she ceases to be a member of the Hearing Panel. 2006, c. 21, Sched. C, s. 49.

Appointment at pleasure

(4) A person appointed as chair or vice-chair of the Hearing Panel holds office at the pleasure of Convocation. 2006, c. 21, Sched. C, s. 49.

Reappointment

(5) A person appointed as chair or vice-chair of the Hearing Panel is eligible for reappointment. 2006, c. 21, Sched. C, s. 49.

Transition

(6) The person who is the chair of the Hearing Panel immediately before the day section 49 of Schedule C to the *Access to Justice Act, 2006* comes into force ceases to be the chair on that day, unless he or she is reappointed under this section. 2006, c. 21, Sched. C, s. 49.

Note: On March 12, 2014, section 49.22 is repealed and the following substituted: (See: 2013, c. 17, ss. 16 (1), 28 (2))

Chair

49.22 (1) The person who is the chair of the Tribunal shall also be the chair of the Hearing Division. 2013, c. 17, s. 16 (1).

Transition

(2) The appointment of the person who is the chair of the Law Society Hearing Panel immediately before the day subsection 16 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force expires on that day. 2013, c. 17, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed. (See: 2013, c. 17, ss. 16 (3), 28 (4))

Vice-chair

49.22.1 (1) Convocation shall appoint a vice-chair of the Hearing Division. 2013, c. 17, s. 16 (1).

Eligibility for appointment

(2) A person is not eligible to be appointed as vice-chair of the Hearing Division unless he or she meets the requirements set out in the by-laws and is an elected bencher member of the Hearing Division. 2013, c. 17, s. 16 (1).

Term of office

(3) Subject to subsections (4) and (5), an appointment as vice-chair of the Hearing Division shall be for such term, not exceeding two years, as Convocation may fix. 2013, c. 17, s. 16 (1).

Cessation of eligibility

(4) A person ceases to be the vice-chair of the Hearing Division if he or she ceases to meet the eligibility requirements in subsection (2). 2013, c. 17, s. 16 (1).

Appointment at pleasure

(5) A person appointed as vice-chair of the Hearing Division holds office at the pleasure of Convocation. 2013, c. 17, s. 16 (1).

Reappointment

(6) A person appointed as vice-chair of the Hearing Division is eligible for reappointment if he or she meets the eligibility requirements in subsection (2). 2013, c. 17, s. 16 (1).

Acting vice-chair of Appeal Division

(7) The chair of the Tribunal may assign the vice-chair of the Hearing Division to act as vice-chair of the Appeal Division for the period specified by the chair and subject to such conditions or restrictions as the chair may specify. 2013, c. 17, s. 16 (1).

Transition

(8) The appointment of the person who is the vice-chair of the Law Society Hearing Panel immediately before the day subsection 16 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force expires on that day. 2013, c. 17, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed. (See: 2013, c. 17, ss. 16 (4), 28 (4))

Hearings

49.23 (1) An application to the Hearing Panel under this Part shall be determined after a hearing by the Panel. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is repealed and the following substituted: (See: 2013, c. 17, ss. 17, 28 (2))

Hearings

(1) An application to the Tribunal under this Part shall be determined after a hearing by the Hearing Division. 2013, c. 17, s. 17.

Assignment of members

(2) The chair or, in the absence of the chair, the vice-chair shall assign members of the Hearing Panel to hearings. 2006, c. 21, Sched. C, s. 50.

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Composition at hearings

(3) A hearing before the Hearing Panel shall be heard and determined by such number of members of the Panel as is prescribed by the regulations. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

French-speaking panelists

49.24 (1) A person who speaks French who is a party to a proceeding before the Hearing Panel may require that any hearing in the proceeding be heard by panelists who speak French. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(2) Repealed: 2006, c. 21, Sched. C, s. 51.

Temporary panelists

49.24.1 (1) If, in the opinion of the chair or, in the absence of the chair, the vice-chair, it is not possible or practical to assign members of the Hearing Panel to a hearing in compliance with a requirement of this Act or of the regulations or in compliance with a requirement made under subsection 49.24 (1), the chair or vice-chair may appoint one or more persons as temporary members of the Hearing Panel for the purposes of that hearing in order to comply with such requirement, and temporary members of the Hearing Panel shall be deemed to be members of the Hearing Panel for the purposes of compliance with such requirement. 2006, c. 21, Sched. C, s. 52.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Eligibility for appointment

(2) The chair or vice-chair shall not appoint a person as a temporary member of the Hearing Panel under subsection (1) unless the person is,

Note: On March 12, 2014, subsection (2) is amended by striking out the portion before clause (a) and substituting the following: (See: 2013, c. 17, ss. 18, 28 (2))

Eligibility for appointment

(2) The chair or vice-chair shall not appoint a person as a temporary member of the Hearing Division under subsection (1) unless the person meets the requirements set out in the by-laws and is,

(a) a bencher;

(b) a licensee; or

(c) a person approved by the Attorney General for Ontario. 2006, c. 21, Sched. C, s. 52.

Powers

49.25 The Hearing Panel may determine any question of fact or law that arises in a proceeding before it. 1998, c. 21, s. 21.

Note: On March 12, 2014, section 49.25 is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Terms and conditions

49.26 An order of the Hearing Panel may include such terms and conditions as the Panel considers appropriate. 1998, c. 21, s. 21.

Note: On March 12, 2014, section 49.26 is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Interlocutory orders

49.27 (1) The Hearing Panel may make an interlocutory order authorized by the rules of practice and procedure, subject to subsection (2). 2006, c. 21, Sched. C, s. 53.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Exception

(2) The Hearing Panel shall not make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, unless there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made and that making the order is likely to reduce the risk. 2006, c. 21, Sched. C, s. 53.

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Costs

49.28 (1) Subject to the rules of practice and procedure, the costs of and incidental to a proceeding or a step in a proceeding before the Hearing Panel are in the discretion of the Panel, and the Panel may determine by whom and to what extent the costs shall be paid. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Society expenses

(2) Costs awarded to the Society under subsection (1) may include,

(a) expenses incurred by the Society in providing facilities or services for the purposes of the proceeding; and

(b) expenses incurred by the Society in any audit, investigation, review, search or seizure that is related to the proceeding. 1998, c. 21, s. 21.

Where deadline unspecified

(3) If an order for costs under subsection (1) does not specify or otherwise provide for a deadline for paying the costs, the costs are payable by the deadline provided for by the by-laws. 2013, c. 17, s. 19.

Extension

(4) A deadline for paying costs may be extended in accordance with the by-laws if,

(a) the order for the costs so provides; or

(b) the deadline is set by by-law under subsection (3). 2013, c. 17, s. 19.

APPEAL PANEL

Appeal Panel

49.29 (1) The Law Society Appeal Panel is continued under the name Law Society Appeal Panel in English and Comité d'appel du Barreau in French. 2006, c. 21, Sched. C, s. 54.

Composition

(2) The Appeal Panel shall consist of at least five persons appointed by Convocation, of whom at least one shall be a person who is not a licensee. 2006, c. 21, Sched. C, s. 54.

Eligibility for appointment

(3) A person is not eligible to be appointed to the Appeal Panel unless he or she is,

(a) a bencher;

(b) a licensee; or

(c) a person approved by the Attorney General for Ontario. 2006, c. 21, Sched. C, s. 54.

Term of office

(4) Subject to subsections (5) and (6), an appointment as a member of the Appeal Panel shall be for such term, not exceeding four years, as Convocation may fix. 2006, c. 21, Sched. C, s. 54.

Cessation of eligibility

(5) A person ceases to be a member of the Appeal Panel if he or she ceases to meet the eligibility requirements in subsection (3). 2006, c. 21, Sched. C, s. 54.

Appointment at pleasure

(6) A person appointed as a member of the Appeal Panel holds office at the pleasure of Convocation. 2006, c. 21, Sched. C, s. 54.

Reappointment

(7) A person appointed as a member of the Appeal Panel is eligible for reappointment if he or she meets the eligibility requirements in subsection (3). 2006, c. 21, Sched. C, s. 54.

Transition

(8) The persons who are members of the Appeal Panel immediately before the day section 54 of Schedule C to the *Access to Justice Act, 2006* comes into force cease to be members on that day, unless they are reappointed under this section. 2006, c. 21, Sched. C, s. 54.

Same

(9) A person who ceases to be a member of the Appeal Panel under subsection (8) may continue to act as a member of the Appeal Panel with respect to any proceeding commenced before he or she ceases to be a member of the Appeal Panel. 2006, c. 21, Sched. C, s. 54.

Note: On March 12, 2014, section 49.29 is repealed and the following substituted: (See: 2013, c. 17, ss. 20 (1), 28 (2))

APPEAL DIVISION

Appeal Division

49.29 (1) The Law Society Appeal Panel is continued as a division of the Tribunal under the name Law Society Appeal Division in English and Section d'appel du Barreau in French. 2013, c. 17, s. 20 (1).

Composition

(2) The Appeal Division shall consist of,

(a) the chair of the Tribunal; and

(b) at least five persons appointed by Convocation,

(i) at least one of whom shall be a person who is not a licensee, and

(ii) at least one of whom shall be an elected bencher. 2013, c. 17, s. 20 (1).

Eligibility for appointment

(3) A person is not eligible to be appointed to the Appeal Division unless he or she meets the requirements set out in the by-laws and is,

(a) a bencher;

(b) a licensee; or

(c) a person approved by the Attorney General for Ontario. 2013, c. 17, s. 20 (1).

Term of office

(4) Subject to subsections (5) and (6), an appointment as a member of the Appeal Division shall be for such term, not exceeding four years, as Convocation may fix. 2013, c. 17, s. 20 (1).

Cessation of eligibility

(5) A person appointed to the Appeal Division ceases to be a member of the Division if he or she ceases to meet the eligibility requirements in subsection (3). 2013, c. 17, s. 20 (1).

Appointment at pleasure

(6) A person appointed as a member of the Appeal Division holds office at the pleasure of Convocation. 2013, c. 17, s. 20 (1).

Reappointment

(7) A person appointed as a member of the Appeal Division is eligible for reappointment if he or she meets the eligibility requirements in subsection (3). 2013, c. 17, s. 20 (1).

Transition

(8) The appointments of those persons who are members of the Law Society Appeal Panel immediately before the day subsection 20 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force expire on that day. 2013, c. 17, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed. (See: 2013, c. 17, ss. 20 (2), 28 (4))

Same

(9) Every proceeding that is before the Law Society Appeal Panel immediately before the day subsection 20 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force becomes on that day a proceeding before the Appeal Division. 2013, c. 17, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is repealed. (See: 2013, c. 17, ss. 20 (2), 28 (4))

Same

(10) Despite subsection (8), a person whose appointment expires under that subsection and who is not appointed as a member of the Appeal Division under this section may act as a member of the Appeal Division with respect to any proceeding before the Appeal Division that was commenced before the expiry. 2013, c. 17, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (10) is repealed. (See: 2013, c. 17, ss. 20 (2), 28 (4))

Chair and vice-chair

49.30 (1) Convocation shall appoint one of the members of the Appeal Panel as chair, and another as vice-chair, of the Appeal Panel. 2006, c. 21, Sched. C, s. 54.

Term of office

(2) Subject to subsections (3) and (4), an appointment as chair or vice-chair of the Appeal Panel shall be for such term, not exceeding four years, as Convocation may fix. 2006, c. 21, Sched. C, s. 54.

Cessation of membership

(3) A person ceases to be the chair or vice-chair of the Appeal Panel if he or she ceases to be a member of the Appeal Panel. 2006, c. 21, Sched. C, s. 54.

Appointment at pleasure

(4) A person appointed as chair or vice-chair of the Appeal Panel holds office at the pleasure of Convocation. 2006, c. 21, Sched. C, s. 54.

Reappointment

(5) A person appointed as chair or vice-chair of the Appeal Panel is eligible for reappointment. 2006, c. 21, Sched. C, s. 54.

Transition

(6) The person who is the chair of the Appeal Panel immediately before the day section 54 of Schedule C to the *Access to Justice Act, 2006* comes into force ceases to be the chair on that day, unless he or she is reappointed under this section. 2006, c. 21, Sched. C, s. 54.

Note: On March 12, 2014, section 49.30 is repealed and the following substituted: (See: 2013, c. 17, ss. 20 (1), 28 (2))

Chair

49.30 (1) The person who is the chair of the Tribunal shall also be the chair of the Appeal Division. 2013, c. 17, s. 20 (1).

Transition

(2) The appointment of the person who is the chair of the Law Society Appeal Panel immediately before the day subsection 20 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force expires on that day. 2013, c. 17, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed. (See: 2013, c. 17, ss. 20 (3), 28 (4))

Vice-chair

49.30.1 (1) Convocation shall appoint a vice-chair of the Appeal Division. 2013, c. 17, s. 20 (1).

Eligibility for appointment

(2) A person is not eligible to be appointed as vice-chair of the Appeal Division unless he or she meets the requirements set out in the by-laws and is an elected bencher member of the Appeal Division. 2013, c. 17, s. 20 (1).

Term of office

(3) Subject to subsections (4) and (5), an appointment as vice-chair of the Appeal Division shall be for such term, not exceeding two years, as Convocation may fix. 2013, c. 17, s. 20 (1).

Cessation of eligibility

(4) A person ceases to be the vice-chair of the Appeal Division if he or she ceases to meet the eligibility requirements in subsection (2). 2013, c. 17, s. 20 (1).

Appointment at pleasure

(5) A person appointed as vice-chair of the Appeal Division holds office at the pleasure of Convocation. 2013, c. 17, s. 20 (1).

Reappointment

(6) A person appointed as vice-chair of the Appeal Division is eligible for reappointment if he or she meets the eligibility requirements in subsection (2). 2013, c. 17, s. 20 (1).

Acting vice-chair of Hearing Division

(7) The chair of the Tribunal may assign the vice-chair of the Appeal Division to act as vice-chair of the Hearing Division for the period specified by the chair and subject to such conditions or restrictions as the chair may specify. 2013, c. 17, s. 20 (1).

Transition

(8) The appointment of the person who is the vice-chair of the Law Society Appeal Panel immediately before the day subsection 20 (1) of the *Modernizing Regulation of the Legal Profession Act, 2013* comes into force expires on that day. 2013, c. 17, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed. (See: 2013, c. 17, ss. 20 (4), 28 (4))

Hearing of appeals

49.31 (1) An appeal to the Appeal Panel shall be determined after a hearing by the Appeal Panel. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Assignment of members

(2) The chair or, in the absence of the chair, the vice-chair shall assign members of the Appeal Panel to hearings. 2006, c. 21, Sched. C, s. 55.

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Composition at hearings

(3) An appeal to the Appeal Panel shall be heard and determined by such number of members of the Panel as is prescribed by the regulations. 2006, c. 21, Sched. C, s. 55.

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(4), (5) Repealed: 2006, c. 21, Sched. C, s. 55.

Appeals to Appeal Panel

49.32 (1) A party to a proceeding before the Hearing Panel may appeal a final decision or order of the Hearing Panel to the Appeal Panel. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Appeal from costs order

(2) A party to a proceeding before the Hearing Panel may appeal any order of the Hearing Panel under section 49.28 to the Appeal Panel, but the appeal may not be commenced until the Hearing Panel has given a final decision or order in the proceeding. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Appeal from summary orders

(3) A person who is subject to an order under section 46, 47, 47.1, 48 or 49 may appeal the order to the Appeal Panel. 2006, c. 21, Sched. C, s. 56.

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Grounds

Grounds: parties other than Society

49.33 (1) A party other than the Society may appeal under section 49.32 on any grounds. 1998, c. 21, s. 21.

Grounds: Society

(2) The Society may appeal under section 49.32 only on a question that is not a question of fact alone, unless the appeal is from an order under section 49.28, in which case the Society may appeal on any grounds. 1998, c. 21, s. 21.

Time for appeal

49.34 An appeal under section 49.32 shall be commenced within the time prescribed by the rules of practice and procedure. 1998, c. 21, s. 21.

Jurisdiction of Appeal Panel

49.35 (1) The Appeal Panel may determine any question of fact or law that arises in a proceeding before it. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Powers on appeal

(2) After holding a hearing on an appeal, the Appeal Panel may,

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" in the portion before clause (a) and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(a) make any order or decision that ought to or could have been made by the Hearing Panel or person appealed from;

Note: On March 12, 2014, clause (a) is amended by striking out "the Hearing Panel or person appealed from" at the end and substituting "the Hearing Division or person who made the order or decision appealed from". (See: 2013, c. 17, ss. 21, 28 (2))

(b) order a new hearing before the Hearing Panel, in the case of an appeal from a decision or order of the Hearing Panel; or

Note: On March 12, 2014, clause (b) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(c) dismiss the appeal. 1998, c. 21, s. 21.

Stay

49.36 (1) An appeal to the Appeal Panel does not stay the decision or order appealed from, unless, on motion, the Appeal Panel orders otherwise. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Terms and conditions

(2) In making an order staying a decision or order, the Appeal Panel may impose such terms and conditions as it considers appropriate on the licence of a person who is subject to the decision or order. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 57.

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Application of other provisions

49.37 (1) Sections 49.24, 49.24.1, 49.26, 49.27 and 49.28 apply, with necessary modifications, to the Appeal Panel.

2006, c. 21, Sched. C, s. 58.

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(2) Repealed: 2006, c. 21, Sched. C, s. 58.

Costs

(3) The authority of the Appeal Panel under section 49.28 includes authority to make orders with respect to steps in the proceeding that took place before the Hearing Panel. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

APPEALS TO THE DIVISIONAL COURT

Appeals to Divisional Court

49.38 A party to a proceeding before the Appeal Panel may appeal to the Divisional Court from a final decision or order of the Appeal Panel if,

Note: On March 12, 2014, section 49.38 is amended by striking out "Panel" wherever it appears in the portion before clause (a) and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(a) the Appeal Panel's final decision or order was made on an appeal from a decision or order of the Hearing Panel under subsection 31 (3); or

Note: On March 12, 2014, clause (a) is amended by striking out "Panel's" and substituting "Division's" and by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(b) the proceeding was commenced under section 34 or 38. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 59.

Grounds for appeal to court

Grounds: parties other than Society

49.39 (1) A party other than the Society may appeal under section 49.38 on any grounds. 1998, c. 21, s. 21.

Grounds: Society

(2) The Society may appeal under section 49.38 only on a question that is not a question of fact alone, unless the appeal is from an order under section 49.28, in which case the Society may appeal on any grounds. 1998, c. 21, s. 21.

Payment for documents

49.40 The Society may require a party to an appeal under section 49.38 to pay the Society for providing the party with copies of the record or other documents for the purpose of the appeal. 1998, c. 21, s. 21.

Stay

49.41 (1) An appeal under section 49.38 does not stay the decision or order appealed from, unless, on motion, the Divisional Court orders otherwise. 1998, c. 21, s. 21.

Terms and conditions

(2) In making an order staying a decision or order, the court may impose such terms and conditions as it considers appropriate on the licence of a person who is subject to the decision or order. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 60.

REINSTATEMENT

Application for reinstatement

49.42 (1) If an order made under this Act suspended a licensee's licence or restricted the manner in which a licensee may practise law or provide legal services, the Hearing Panel may, on application by the licensee, make an order discharging or varying the order on the basis of fresh evidence or a material change in circumstances. 2006, c. 21, Sched. C, s. 61.

Note: On March 12, 2014, subsection (1) is repealed and the following substituted: (See: 2013, c. 17, ss. 22 (1), 28 (2))

Variation or discharge of previous order

Fresh evidence, material change

(1) If an order made under this Act suspended a licensee's licence or restricted the manner in which a licensee may practise law or provide legal services, the licensee may apply to the Tribunal for an order of the Hearing Division discharging or varying the order to suspend or restrict on the basis of fresh evidence or a material change in circumstances. 2013, c. 17, s. 22 (1).

Exceptions

(2) Subsection (1) does not apply to an interlocutory order or an order made under section 46, 47, 47.1 or 49. 2006, c. 21, Sched. C, s. 61.

Discharge from bankruptcy

(3) If an order made under section 46 suspended a licensee's licence, the Hearing Panel may, on application by the licensee, make an order discharging or varying the order on the basis that the licensee has been discharged from bankruptcy. 2006, c. 21, Sched. C, s. 61.

Note: On March 12, 2014, subsection (3) is repealed and the following substituted: (See: 2013, c. 17, ss. 22 (2), 28 (2))

Discharge from bankruptcy

(3) If an order made under section 46 suspended a licensee's licence, the licensee may apply to the Tribunal for an order of the Hearing Division discharging or varying the order to suspend on the basis that the licensee has been discharged from bankruptcy. 2013, c. 17, s. 22 (2).

Parties

(4) The parties to an application under this section are the applicant, the Society and any other person added as a party by the Hearing Panel. 2006, c. 21, Sched. C, s. 61.

Note: On March 12, 2014, subsection (4) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Dispute over satisfaction of terms and conditions

49.43 (1) A licensee may apply to the Hearing Panel for a determination of whether terms and conditions specified in an order under this Part have been met if,

Note: On March 12, 2014, subsection (1) is amended by striking out "may apply to the Hearing Panel for a determination" in the portion before clause (a) and substituting "may apply to the Tribunal for a determination by the Hearing Division". (See: 2013, c. 17, ss. 23, 28 (2))

(a) the order suspended the licensee's licence until the terms and conditions were met to the satisfaction of the Society; and

(b) the Society is not satisfied that the terms and conditions have been met. 2006, c. 21, Sched. C, s. 62.

Powers

(2) The Hearing Panel shall,

Note: On March 12, 2014, subsection (2) is amended by striking out "Panel" in the portion before clause (a) and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(a) if it determines that the terms and conditions have been met, order that the order suspending the licensee's licence cease to have effect; or

Note: On March 12, 2014, the French version of clause (a) is amended. (See: 2013, c. 17, ss. 26, 28 (2))

(b) if it determines that the terms and conditions have not been met, order that the order suspending the licensee's licence continue in effect. 2006, c. 21, Sched. C, s. 62.

Note: On March 12, 2014, the French version of clause (b) is amended. (See: 2013, c. 17, ss. 26, 28 (2))

Parties

(3) The parties to an application under this section are the applicant, the Society and any other person added as a party by the Hearing Panel. 1998, c. 21, s. 21.

Note: On March 12, 2014, subsection (3) is amended by striking out "Panel" at the end and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

FREEZING ORDERS AND TRUSTEESHIP ORDERS

Application

49.44 (1) Sections 49.45 to 49.52 apply to property that is or should be in the possession or control of a licensee in connection with,

(a) the professional business of the licensee;

(b) the business or affairs of a client or former client of the licensee;

(c) an estate for which the licensee is or was executor, administrator or administrator with the will annexed;

(d) a trust of which the licensee is or was a trustee;

(e) a power of attorney under which the licensee is or was the attorney; or

(f) a guardianship under which the licensee is or was the guardian. 2006, c. 21, Sched. C, s. 63 (1).

Same

(2) Sections 49.45 to 49.52 apply to property wherever it may be located. 1998, c. 21, s. 21.

Same

(3) An order under section 49.46 or 49.47 applies to property that is or should be in the possession or control of the licensee before or after the order is made. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 63 (2).

Grounds for order

49.45 An order may be made under section 49.46 or 49.47 with respect to property that is or should be in the possession or control of a licensee only if,

(a) the licensee's licence has been revoked;

(b) the licensee's licence is under suspension or the manner in which the licensee may practise law or provide legal services has been restricted;

(c) the licensee has died or has disappeared;

(d) the licensee has neglected or abandoned his or her professional business without making adequate provision for the protection of clients' interests;

(e) there are reasonable grounds for believing that the licensee has or may have dealt improperly with property that may be subject to an order under section 49.46 or 49.47 or with any other property; or

(f) there are reasonable grounds for believing that other circumstances exist in respect of the licensee or the licensee's professional business that make an order under section 49.46 or 49.47 necessary for the protection of the public. 2006, c. 21, Sched. C, s. 64.

Freezing order

49.46 On the application of the Society, the Superior Court of Justice may order that all or part of the property that is or should be in the possession or control of a licensee shall not be paid out or dealt with by any person without leave of the court. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 65.

Trusteeship order

49.47 (1) On the application of the Society, the Superior Court of Justice may order that all or part of the property that is or should be in the possession or control of a licensee be held in trust by the Society or another person appointed by the

court. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 66 (1).

Purpose of order

(2) An order may be made under subsection (1) only for one or more of the following purposes, as specified in the order:

1. Preserving the property.
2. Distributing the property.
3. Preserving or carrying on the licensee's professional business.
4. Winding up the licensee's professional business. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 66 (2).

Property subject to freezing order

(3) An order under subsection (1) may supersede an order under section 49.46. 1998, c. 21, s. 21.

Use of agent

(4) If the Society is appointed as trustee, it may appoint an agent to assist it or act on its behalf. 1998, c. 21, s. 21.

Search and seizure

(5) An order under subsection (1) may authorize the trustee or the sheriff, or any police officer or other person acting on the direction of the trustee or sheriff,

(a) to enter, by force if necessary, any building, dwelling or other premises, or any vehicle or other place, where there are reasonable grounds for believing that property that is or should be in the possession or control of the licensee may be found;

(b) to search the building, dwelling, premises, vehicle or place;

(c) to open, by force if necessary, any safety deposit box or other receptacle; and

(d) to seize, remove and deliver to the trustee any property that is or should be in the possession or control of the licensee. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 66 (3, 4).

Assistance of police

(6) An order under this section may require a police officer to accompany the trustee or sheriff in the execution of the order. 1998, c. 21, s. 21.

Compensation

(7) In an order under subsection (1) or on a subsequent application, the court may make such order as it considers appropriate for the compensation of the trustee and the reimbursement of the trustee's expenses out of the trust property, by the licensee or otherwise as the court may specify. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 66 (5); 2010, c. 1, Sched. 12, s. 5.

Application for directions

49.48 The Society, at the time of making an application for an order under section 49.46 or 49.47, or the trustee appointed under subsection 49.47 (1), may apply to the Superior Court of Justice for the opinion, advice or direction of the court on any question affecting the property. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

Application without notice

49.49 An application for an order under section 49.46 or 49.47 may be made without notice. 1998, c. 21, s. 21.

Requirement to account

49.50 An order under section 49.46 or 49.47 may require the licensee to account to the Society and to any other person named in the order for such property as the court may specify. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 67.

Variation or discharge

49.51 (1) The Society, the licensee or any person affected by an order under section 49.46 or 49.47 may apply to the Superior Court of Justice to vary or discharge the order. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 68.

Notice

(2) In addition to any person specified by the rules of court, notice of an application under this section shall be given to,

(a) the Society, if the Society is not the applicant; and

(b) the trustee, if an order has been made under section 49.47 and the applicant is not the trustee. 1998, c. 21, s. 21.

Former licensees or members

49.52 (1) Sections 49.44 to 49.51 also apply, with necessary modifications, in respect of,

(a) a person who was and has ceased to be a licensee; and

(b) a person who was and has ceased to be a member and has never become a licensee. 2006, c. 21, Sched. C, s. 69.

Same

(2) Sections 49.44 to 49.51 apply to property that is or should be in the possession or control of,

(a) a person described in clause (1) (a), before or after the person ceases to practise law or provide legal services; or

(b) a person described in clause (1) (b), before or after the person ceases to practise law. 2006, c. 21, Sched. C, s. 69.

Same

(3) In applying sections 49.44, 49.45 and 49.47 to a person described in clause (1) (b),

(a) a reference to a professional business shall be deemed to be a reference to a law practice;

(b) a reference to a licence having been revoked shall be deemed to be a reference to a membership having been revoked; and

(c) a reference to a licence being under suspension shall be deemed to be a reference to rights and privileges as a member being under suspension. 2006, c. 21, Sched. C, s. 69.

Definitions

(4) In this section,

"amendment day" means the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force; ("jour de la modification")

"member" means a member as defined in section 1, as it read immediately before the amendment day. ("membre") 2006, c. 21, Sched. C, s. 69.

OUTSIDE COUNSEL

Outside counsel

49.53 The Society shall be represented by a person who is not a bencher or employee of the Society in any proceeding under this Part before the Hearing Panel, the Appeal Panel or a court that concerns a bencher or employee of the Society. 1998, c. 21, s. 21.

Note: On March 12, 2014, section 49.53 is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

PART III

50.**-50.2** Repealed: 2006, c. 21, Sched. C, s. 70.

COMPENSATION FUND

Compensation Fund

51. (1) The Lawyers Fund for Client Compensation is continued as the Compensation Fund in English and Fonds d'indemnisation in French. 2006, c. 21, Sched. C, s. 71 (1).

Same

(1.1) The Society shall maintain the Fund and shall hold it in trust for the purposes of this section. 1998, c. 21, s. 25 (1).

Derivation of funds

(2) The following shall be paid into the Fund:

1. All money paid to the Society under subsection (3).
2. All money recovered by the Society under subsection (7).
3. All money contributed to the Fund by any person.
4. All money earned from the investment of money in the Fund. 2006, c. 21, Sched. C, s. 71 (2).

Fund levy

(3) Every licensee, other than those of a class exempted by the by-laws, shall pay to the Society, for the Fund, such sum as is prescribed from time to time by the by-laws. R.S.O. 1990, c. L.8, s. 51 (3); 1998, c. 21, s. 25 (3); 2006, c. 21, Sched. C, s. 71 (3).

Insurance

(4) The Society may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as Convocation considers expedient in relation to the Fund, and, in such event, the money in the Fund may be used for the payment of premiums. R.S.O. 1990, c. L.8, s. 51 (4); 1998, c. 21, s. 25 (4).

Grants

(5) Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person in consequence of,

(a) dishonesty on the part of a person, while a licensee, in connection with his or her professional business or in connection with any trust of which he or she was or is a trustee; or

(b) dishonesty, before the amendment day, on the part of a person, while a member, in connection with his or her law practice or in connection with any trust of which he or she was or is a trustee. 2006, c. 21, Sched. C, s. 71 (4).

Same

(5.1) Subsection (5) applies even if after the commission of the act of dishonesty, the dishonest person has died, has ceased to administer his or her affairs or has ceased to be a licensee or member. 2006, c. 21, Sched. C, s. 71 (4).

Limitation on grants

(5.2) Without limiting the discretion of Convocation under subsection (5),

(a) if, at the time of the commission of the act of dishonesty, the dishonest person was a member or was licensed to practise law in Ontario as a barrister and solicitor, Convocation may decide not to make a grant under subsection (5) except out of the following money in the Fund,

(i) money paid to the Society under subsection (3),

(A) after the amendment day, by persons licensed to practise law in Ontario as barristers and solicitors, and

(B) before the amendment day, by members,

(ii) money recovered by the Society under subsection (7), whether before or after the amendment day, on account of losses sustained by persons in consequence of,

(A) dishonesty, before the amendment day, on the part of members, and

(B) dishonesty, after the amendment day, on the part of persons licensed to practise law in Ontario as barristers and solicitors,

(iii) money contributed to the Fund, whether before or after the amendment day, that is not money paid to the Society under subsection (3) or money recovered by the Society under subsection (7), and

(iv) regarding money earned, whether before or after the amendment day, from the investment of money in the Fund, the proportion of the earned money that is attributable to the investment of the money referred to in subclauses (i), (ii) and (iii); and

(b) if, at the time of the commission of the act of dishonesty, the dishonest person was licensed to provide legal services in Ontario, Convocation may decide not to make a grant under subsection (5) except out of the following money in the Fund,

(i) money paid to the Society under subsection (3) by persons licensed to provide legal services in Ontario,

(ii) money recovered by the Society under subsection (7) on account of losses sustained by persons in consequence of dishonesty on the part of persons licensed to provide legal services in Ontario,

(iii) money contributed to the Fund that is not money paid to the Society under subsection (3) or money recovered by the Society under subsection (7), and

(iv) regarding money earned from the investment of money in the Fund, the proportion of the earned money that is attributable to the investment of the money referred to in subclauses (i), (ii) and (iii). 2006, c. 21, Sched. C, s. 71 (4).

Conditions of grants

(6) No grant shall be made out of the Fund unless notice in writing of the loss is received by the Society within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by Convocation. R.S.O. 1990, c. L.8, s. 51 (6); 1998, c. 21, s. 25 (6); 2006, c. 21, Sched. C, s. 71 (5).

Subrogation

(7) If a grant is made under this section, the Society is subrogated, to the extent of the amount of the grant, to all rights and remedies to which the grantee was entitled on account of the loss in respect of which the grant was made,

(a) against the dishonest person or any other person; or

(b) in the event of the death, insolvency or other disability of the dishonest person or other person, against the personal representative or other person administering the estate. 2006, c. 21, Sched. C, s. 71 (6).

Grantees' rights conditionally limited

(8) A grantee or, in the event of the death, insolvency or other disability of a grantee, the personal representative or other person administering the estate of the grantee, has no right to receive anything from the dishonest person or the dishonest person's estate, in respect of the loss in respect of which the grant was made, until the Society has been reimbursed the full amount of the grant. 2006, c. 21, Sched. C, s. 71 (6).

Reimbursement from bankrupt's estate

(9) If a grant is made under this section and the dishonest person is or becomes bankrupt, the Society is entitled,

(a) to assert and prove a claim in the bankruptcy for the amount of the grant; and

(b) to receive all dividends on the Society's claim until the Society has been reimbursed the full amount of the grant. 2006, c. 21, Sched. C, s. 71 (6).

Delegation of powers to committee or referee or both

(10) Convocation may delegate any of the powers conferred upon it by this section to a committee of Convocation and, whether or not Convocation has made any such delegation, it may appoint any licensee as a referee and delegate to the licensee any of the powers conferred upon it by this section that are not delegated to a committee. R.S.O. 1990, c. L.8, s. 51 (10); 2006, c. 21, Sched. C, s. 71 (7).

Same

(10.1) In establishing a committee for the purposes of subsection (10), Convocation may appoint to the committee one or more members of the Paralegal Standing Committee who are licensed to provide legal services in Ontario. 2010, c. 16, Sched. 2, s. 4 (2).

Reports

(11) Where Convocation has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to Convocation but, where there is a delegation to both a committee and a referee, the referee shall report as required to the committee. R.S.O. 1990, c. L.8, s. 51 (11).

Summons

(11.1) For the purposes of this section, an employee of the Society holding an office prescribed by the by-laws for the purpose of this section may require any person, by summons,

(a) to give evidence on oath or affirmation at a hearing before Convocation, a committee or a referee; and

(b) to produce in evidence at a hearing before Convocation, a committee or a referee documents and things specified by the employee. 2006, c. 21, Sched. C, s. 71 (8).

Application of *Public Inquiries Act, 2009*

(11.2) Subsections 33 (4), (5) and (16) and 34 (4) of the *Public Inquiries Act, 2009* apply, with necessary modifications, if a summons is issued under subsection (11.1). 2009, c. 33, Sched. 6, s. 64.

Costs of administration

(12) There may be paid out of the Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund. R.S.O. 1990, c. L.8, s. 51 (12); 1998, c. 21, s. 25 (8).

Definitions

(13) In this section,

"amendment day" means the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force; ("jour de la modification")

"member" means a member as defined in section 1, as it read immediately before the amendment day. ("membre") 2006, c. 21, Sched. C, s. 71 (9).

THE LAW FOUNDATION OF ONTARIO

Definitions

52. In this section and in sections 53 to 59.5,

"board" means the board of trustees of the Foundation; ("conseil")

"class proceeding" means a proceeding certified as a class proceeding on a motion made under section 2 or 3 of the *Class Proceedings Act, 1992*; ("recours collectif")

"Committee" means the Class Proceedings Committee referred to in section 59.2; ("Comité")

"defendant" includes a respondent; ("défendeur")

"Foundation" means The Law Foundation of Ontario referred to in section 53; ("Fondation")

"plaintiff" includes an applicant; ("demandeur")

"trustee" means a trustee of the board. ("administrateur") R.S.O. 1990, c. L.8, s. 52; 1992, c. 7, s. 1.

Foundation continued

53. (1) The corporation known as The Law Foundation of Ontario is continued as a corporation without share capital under the name The Law Foundation of Ontario in English and Fondation du droit de l'Ontario in French and shall consist of the trustees for the time being of the board. R.S.O. 1990, c. L.8, s. 53 (1).

***Corporations Act* inapplicable**

(2) The *Corporations Act* does not apply to the Foundation. R.S.O. 1990, c. L.8, s. 53 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Application of *Not-for-Profit Corporations Act, 2010*

(2) The *Not-for-Profit Corporations Act, 2010* does not apply to the Foundation, except as may be prescribed by regulation. 2010, c. 15, s. 230 (2).

See: 2010, c. 15, ss. 230 (2), 249.

Board of trustees

54. (1) The affairs of the Foundation shall be managed and controlled by a board of trustees consisting of five trustees of whom two shall be appointed by the Attorney General and three shall be appointed by the Society. R.S.O. 1990, c. L.8, s. 54 (1).

Quorum

(2) Three trustees constitute a quorum. R.S.O. 1990, c. L.8, s. 54 (2).

Vacancies

(3) Where there are not more than two vacancies in the membership of the board, the remaining trustees constitute the board for all purposes. R.S.O. 1990, c. L.8, s. 54 (3).

Remuneration

(4) The trustees shall serve without remuneration, but each trustee is entitled to receive his or her actual disbursements for expenses incurred for any services rendered by him or her at the direction of the board. R.S.O. 1990, c. L.8, s. 54 (4).

Audit

(5) The accounts and financial transactions of the Foundation shall be audited annually by an auditor or auditors appointed by the board. R.S.O. 1990, c. L.8, s. 54 (5).

Annual report

(6) The board shall make a report annually to the Attorney General on the activities of the Foundation, including the report of the auditor under subsection (5), and the Attorney General shall lay the report before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. L.8, s. 54 (6).

Objects and funds

Objects

55. (1) The objects of the Foundation are to establish and maintain a fund to be used for any or all of the following purposes:

1. Legal education and legal research.
2. Legal aid.
3. The establishment, maintenance and operation of law libraries.
4. The provision of costs assistance to parties to class proceedings and to proceedings commenced under the *Class Proceedings Act, 1992*. R.S.O. 1990, c. L.8, s. 55 (1); 1992, c. 7, s. 2.

Derivation of funds

(2) The funds of the Foundation shall be derived from,

(a) gifts, bequests and devises received by the Foundation under subsection 56 (2);

(b) money remitted to the Foundation under subsection 57 (3);

(c) money received by the Foundation as interest or other gain on joint accounts maintained under section 57.1;

(d) money paid to the Foundation under subsection 59.7 (3); and

(e) money resulting from the use, disposal or investment of money and other property mentioned in clause (a), (b), (c) or (d). 2006, c. 21, Sched. C, s. 72 (1).

Application of funds

(3) The board shall apply the funds of the Foundation for such of its purposes as the board considers appropriate, but at

least 75 per cent of the net revenue received in each year under clauses (2) (b), (c) and (d) shall be paid to Legal Aid Ontario established under the *Legal Aid Services Act, 1998*. 1998, c. 26, s. 106 (1, 2); 2006, c. 21, Sched. C, s. 72 (2).

Investment strategy

(4) In making investments and entering agreements under clauses 56 (1) (a), (d) and (e), the board shall use its best efforts to maximize the return to the Foundation within the bounds of prudent financial management. 1994, c. 27, s. 49 (4).

Powers of Foundation

56. (1) In addition to the powers and privileges mentioned in section 92 of Part VI (Interpretation) of the *Legislation Act, 2006*, the Foundation has power,

(a) to invest the funds of the Foundation;

(b) to pay out of the funds of the Foundation the costs, charges and expenses necessarily incurred in the administration of the Foundation and in carrying out its objects;

(c) to enter into agreements with any person and pay and apply any of its funds for the implementation of its objects;

(d) to invest the funds that it holds on joint account under section 57.1;

(e) to enter into agreements with financial institutions related to the consolidation for investment purposes of funds held on joint accounts under section 57.1 and related to the use of those funds;

(f) to borrow such funds as it considers appropriate for the purpose of making investments and entering into agreements under clauses (a), (d) and (e). R.S.O. 1990, c. L.8, s. 56 (1); 1994, c. 27, s. 49 (5); 1998, c. 18, Sched. B, s. 8 (1, 2); 1998, c. 26, s. 106 (3); 2006, c. 21, Sched. F, s. 117.

Investment

(1.1) Sections 27 to 31 of the *Trustee Act* apply, with necessary modifications, to the investment of funds under clauses (1) (a) and (d). 1998, c. 18, Sched. B, s. 8 (3); 2002, c. 18, Sched. A, s. 12 (1).

Gifts, devises, etc.

(2) The Foundation has power to receive gifts, bequests and devises of property, real or personal, and to hold, use or dispose of such property in furtherance of the objects of the Foundation, subject to the terms of any trust affecting the same. R.S.O. 1990, c. L.8, s. 56 (2).

Idem

(3) Any form of words is sufficient to constitute a gift, bequest or devise to the Foundation so long as the person making the gift, bequest or devise indicates an intention to contribute presently or prospectively to the Foundation. R.S.O. 1990, c. L.8, s. 56 (3).

Service charges

(3.1) The following rules apply to service charges and other fees charged in relation to a joint account held under section 57.1:

1. Service charges and other fees that are prescribed by the regulations shall be paid out of the funds of the Foundation.

2. Amounts charged for issuing certified cheques against the joint account shall be paid by the licensee.

3. All other service charges and fees shall be paid by the licensee. 1994, c. 27, s. 49 (6); 2006, c. 21, Sched. C, s. 73 (1, 2).

Accounting

(3.2) All interest and other profits under the investments and agreements authorized under clauses (1) (d) and (e) accrue to, and become funds of, the Foundation and not a licensee or a client of a licensee or a person claiming through a licensee or client of a licensee. 2006, c. 21, Sched. C, s. 73 (3).

Protection of joint accounts

(3.3) Despite subsection (3.2), the Foundation is responsible for all losses resulting from investments and agreements under clauses (1) (d) and (e) and shall ensure that losses in respect of particular investments are paid out of the funds of the

Foundation and not out of funds held for the benefit of any client of a licensee. 1994, c. 27, s. 49 (6); 2006, c. 21, Sched. C, s. 73 (4).

Licensee's responsibility

(3.4) A licensee is responsible to his or her clients for the operation of a joint account maintained by the licensee under section 57.1 as if it were a trust account held solely by the licensee, and the Foundation is not responsible to any person in respect of the joint account except to the extent that its exercise of its powers under clause (1) (d) or (e) has caused a loss to the person. 2006, c. 21, Sched. C, s. 73 (5).

Powers of the board

(4) The board may pass by-laws not contrary to this Act to achieve the objects of the Foundation and to regulate and govern its procedure and the conduct and administration of the affairs of the Foundation. R.S.O. 1990, c. L.8, s. 56 (4).

Interest on trust funds

Trust funds to bear interest

57. (1) Every licensee who holds money in trust for or on account of more than one client in one fund shall hold the money in an account at a bank listed in Schedule I or II to the *Bank Act* (Canada), a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation, bearing interest at a rate approved by the trustees. 2006, c. 21, Sched. C, s. 74 (1).

Interest in trust

(2) The interest accruing on money held in an account referred to in subsection (1) shall be deemed to be held in trust for the Foundation. R.S.O. 1990, c. L.8, s. 57 (2).

Payment to Foundation

(3) Every licensee to whom subsection (1) applies shall,

(a) file reports with the Foundation as to the interest referred to in subsection (2); and

(b) remit or cause to be remitted to the Foundation all interest money referred to in subsection (2),

in the manner and at the times prescribed by the regulations. R.S.O. 1990, c. L.8, s. 57 (3); 2006, c. 21, Sched. C, s. 74 (2).

Immunity

(4) Subject to subsection (5), a licensee is not liable, whether as a person practising law or providing legal services or as trustee, to account to any person, whether as client or as settlor or beneficiary of the trust, other than the Foundation, for interest on money held under subsection (1). 2006, c. 21, Sched. C, s. 74 (3).

Exceptions

(5) Nothing in this section affects,

(a) any arrangement in writing between a licensee and the person for whom the licensee holds money in trust as to the disposition of the interest accruing on the money; or

(b) any entitlement of a client to the interest accruing on money held in trust in an account separate from any other money. 2006, c. 21, Sched. C, s. 74 (3).

Joint trust accounts

57.1 (1) A licensee who maintains an account to which subsection 57 (1) applies at a financial institution designated by the regulations shall establish and maintain it as a joint account in the name of the licensee and the Foundation, and shall immediately notify the Foundation that the account has been established and provide such details as may be required by the regulations and by the Foundation. 2006, c. 21, Sched. C, s. 75 (1).

Same

(2) The licensee shall execute such documents as the Foundation considers necessary,

(a) to permit the financial institution to pay interest accruing on money held in the joint account directly to the Foundation;

(b) to permit the Foundation to consolidate the funds in the joint account with other funds in which the Foundation has

an interest. 1994, c. 27, s. 49 (7); 2006, c. 21, Sched. C, s. 75 (2).

Same

(3) The Foundation shall ensure that the licensee retains the power in his or her relationship with the financial institution in which a joint account is established to deposit funds to and make payments out of the joint account in the same manner as if it were a trust account solely in the name of the licensee. 1994, c. 27, s. 49 (7); 2006, c. 21, Sched. C, s. 75 (3).

Same

(4) Subsections 57 (4) and (5) apply to the joint accounts but subsections 57 (2) and (3) do not. 1994, c. 27, s. 49 (7).

Immunity

57.2 (1) The Foundation is not liable to any person, and no proceeding shall be commenced against the Foundation, in respect of,

(a) a dealing by a licensee with trust funds or a failure of a licensee to fulfil his or her obligations under section 57 or 57.1; or

(b) a dealing by a member with trust funds, or a failure of a member to fulfil his or her obligations under section 57, before the amendment day. 2006, c. 21, Sched. C, s. 76 (1).

Same

(2) No action or other proceeding for damages shall be commenced against a member of the board for an act done in good faith in the performance or intended performance of a duty or in the exercise or intended exercise of a power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such a duty or power. 1994, c. 27, s. 49 (7).

Definitions

(3) In this section,

"amendment day" means the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force; ("jour de la modification")

"member" means a member as defined in section 1, as it read immediately before the amendment day. ("membre") 2006, c. 21, Sched. C, s. 76 (2).

Report by Society

58. (1) The Society shall in each year report to the Foundation the name and the office or residence address shown by the records of the Society of every licensee who files a report with the Society that shows the licensee holds money on deposit in a trust account for or on account of clients. 2006, c. 21, Sched. C, s. 77 (1).

Report by member

(2) The Foundation may require a licensee whose name is contained in a report by the Society under subsection (1) to file a report with the Foundation stating whether or not the licensee has received or been credited with interest on money held in a trust account for or on account of clients. R.S.O. 1990, c. L.8, s. 58 (2); 2006, c. 21, Sched. C, s. 77 (2).

Regulations

59. Subject to the approval of the Lieutenant Governor in Council, the board may make regulations,

(a) governing the form, content and filing of the reports required under section 57;

(b) governing the time and manner of remitting the interest money referred to in section 57 to the Foundation;

(b.1) prescribing the information that must be provided to the Foundation when a joint account is established under section 57.1 and prescribing and governing information that must be provided by a licensee from time to time in respect of the joint account after it is established;

(c) prescribing the form and the time of filing of reports required under section 58. R.S.O. 1990, c. L.8, s. 59; 1994, c. 27, s. 49 (8); 2006, c. 21, Sched. C, s. 78.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 59 is amended by adding the following clause:

(d) prescribing provisions of the *Not-for-Profit Corporations Act, 2010* that apply to the Foundation.

See: 2010, c. 15, ss. 230 (3), 249.

Class Proceedings Fund

59.1 (1) The board shall,

(a) establish an account of the Foundation to be known as the Class Proceedings Fund;

(b) within sixty days after this Act comes into force, endow the Class Proceedings Fund with $300,000 from the funds of the Foundation;

(c) within one year after the day on which the endowment referred to in clause (b) is made, endow the Class Proceedings Fund with a further $200,000 from the funds of the Foundation; and

(d) administer the Class Proceedings Fund in accordance with this Act and the regulations. 1992, c. 7, s. 3.

Purposes of the Class Proceedings Fund

(2) The Class Proceedings Fund shall be used for the following purposes:

1. Financial support for plaintiffs to class proceedings and to proceedings commenced under the *Class Proceedings Act, 1992*, in respect of disbursements related to the proceeding.

2. Payments to defendants in respect of costs awards made in their favour against plaintiffs who have received financial support from the Fund. 1992, c. 7, s. 3.

Application of s. 56

(3) Funds in the Class Proceedings Fund are funds of the Foundation within the meaning of section 56, but payments out of the Class Proceedings Fund shall relate to the administration or purposes of the Fund. 1992, c. 7, s. 3.

Class Proceedings Committee

59.2 (1) The Class Proceedings Committee is established and shall be composed of,

(a) one member appointed by the Foundation;

(b) one member appointed by the Attorney General; and

(c) three members appointed jointly by the Foundation and the Attorney General. 1992, c. 7, s. 3.

Term of office

(2) Each member of the Class Proceedings Committee shall hold office for a period of three years and is eligible for re-appointment. 1992, c. 7, s. 3.

Quorum

(3) Three members of the Committee constitute a quorum. 1992, c. 7, s. 3.

Vacancies

(4) Where there are not more than two vacancies in the membership of the Committee, the remaining members constitute the Committee for all purposes. 1992, c. 7, s. 3.

Remuneration

(5) The members of the Committee shall serve without remuneration, but each member is entitled to compensation for expenses incurred in carrying out the functions of the Committee. 1992, c. 7, s. 3.

Temporary members

(6) If the number of members of the Committee available to consider an application under section 59.3 is insufficient to form a quorum under subsection (3), the Foundation may appoint the number of temporary members needed in order to form a quorum. 2009, c. 33, Sched. 2, s. 42.

Notice of appointment

(7) The Foundation shall provide notice of each appointment under subsection (6) to the Attorney General as soon as reasonably practicable, and the notice shall include the reasons for the appointment. 2009, c. 33, Sched. 2, s. 42.

Expiry of appointment

(8) The appointment of a temporary member expires on the earliest of the following dates:

1. The date on which the temporary member is no longer needed in order to form a quorum.
2. If the application is granted, the date on which the proceeding in respect of which the application is made is finally disposed of.
3. If the application is not granted, the date on which it is denied.
4. The third anniversary of the appointment. 2009, c. 33, Sched. 2, s. 42.

Reappointment

(9) A temporary member whose appointment expires under paragraph 4 of subsection (8) may be reappointed by the Foundation, and subsections (7) and (8) apply with necessary modifications in respect of the reappointment. 2009, c. 33, Sched. 2, s. 42.

Remuneration

(10) Subsection (5) applies with necessary modifications with respect to the remuneration of a temporary member. 2009, c. 33, Sched. 2, s. 42.

Applications by plaintiffs

59.3 (1) A plaintiff to a class proceeding or to a proceeding commenced under section 2 of the *Class Proceedings Act, 1992* may apply to the Committee for financial support from the Class Proceedings Fund in respect of disbursements related to the proceeding. 1992, c. 7, s. 3.

Same

(2) An application under subsection (1) shall not include a claim in respect of the fees of a person practising law or providing legal services. 2006, c. 21, Sched. C, s. 79.

Committee may authorize payment

(3) The Committee may direct the board to make payments from the Class Proceedings Fund to a plaintiff who makes an application under subsection (1), in the amount that the Committee considers appropriate. 1992, c. 7, s. 3.

Idem

(4) In making a decision under subsection (3), the Committee may have regard to,

(a) the merits of the plaintiff's case;

(b) whether the plaintiff has made reasonable efforts to raise funds from other sources;

(c) whether the plaintiff has a clear and reasonable proposal for the use of any funds awarded;

(d) whether the plaintiff has appropriate financial controls to ensure that any funds awarded are spent for the purposes of the award; and

(e) any other matter that the Committee considers relevant. 1992, c. 7, s. 3.

Supplementary funding

(5) A plaintiff who has received funding under subsection (3) may apply to the Committee at any time up to the end of the class proceeding for supplementary funding and the Committee may direct the board to make further payments from the Class Proceedings Fund to the plaintiff if the Committee is of the opinion, having regard to all the circumstances, that it is appropriate to do so. 1992, c. 7, s. 3.

Board shall make payments

(6) The board shall make payments in accordance with any directions given by the Committee under this section. 1992, c. 7, s. 3.

Applications by defendants

59.4 (1) A defendant to a proceeding may apply to the board for payment from the Class Proceedings Fund in respect of a costs award made in the proceeding in the defendant's favour against a plaintiff who has received financial support from

the Class Proceedings Fund in respect of the proceeding. 1992, c. 7, s. 3.

Board shall make payments

(2) The board shall make payments applied for in accordance with subsection (1) from the Class Proceedings Fund, subject to any limits or tariffs applicable to such payments prescribed by the regulations. 1992, c. 7, s. 3.

Plaintiff not liable

(3) A defendant who has the right to apply for payment from the Class Proceedings Fund in respect of a costs award against a plaintiff may not recover any part of the award from the plaintiff. 1992, c. 7, s. 3.

Regulations

59.5 (1) The Lieutenant Governor in Council may make regulations,

(a) respecting the administration of the Class Proceedings Fund;

(b) establishing procedures for making applications under sections 59.3 and 59.4;

(c) establishing criteria in addition to those set out in section 59.3 for decisions of the Committee under section 59.3;

(d) establishing limits and tariffs for payments under sections 59.3 and 59.4;

(e) prescribing conditions of awards under section 59.3;

(f) providing for the assessment of costs in respect of which a claim is made under section 59.4;

(g) providing for levies in favour of the Class Proceedings Fund against awards and settlement funds in proceedings in respect of which a party receives financial support from the Class Proceedings Fund. 1992, c. 7, s. 3.

Idem

(2) A regulation made under clause (1) (d) may provide for different limits and tariffs for different stages and types of proceedings. 1992, c. 7, s. 3.

Idem

(3) A regulation made under clause (1) (g) may provide for levies that exceed the amount of financial support received by the parties to a proceeding. 1992, c. 7, s. 3.

Idem

(4) A regulation made under clause (1) (g) may provide for levies based on a formula that takes the amount of an award or settlement fund into account. 1992, c. 7, s. 3.

Idem

(5) A levy under clause (1) (g) against a settlement fund or monetary award is a charge on the fund or award. 1992, c. 7, s. 3.

UNCLAIMED TRUST FUNDS

Unclaimed trust funds

59.6 (1) A licensee who has held money in trust for or on account of a person for a period of at least two years may apply in accordance with the by-laws for permission to pay the money to the Society, if,

(a) the licensee has been unable to locate the person entitled to the money despite having made reasonable efforts throughout a period of at least two years; or

(b) the licensee is unable to determine who is entitled to the money. 1998, c. 21, s. 27; 2006, c. 21, Sched. C, s. 80 (1).

Approval of application

(2) If the Society approves an application under subsection (1), the licensee may pay the money to the Society, subject to such terms and conditions as the Society may impose. 2006, c. 21, Sched. C, s. 80 (2).

Financial records

(3) A licensee who pays money to the Society under subsection (2) shall provide the Society with copies of financial records relating to the money that are in the licensee's possession or control. 2006, c. 21, Sched. C, s. 80 (2).

Licensee ’s liability

(4) Payment of money to the Society under subsection (2) extinguishes the licensee’s liability as trustee or fiduciary with respect to the amount paid to the Society. 1998, c. 21, s. 27; 2006, c. 21, Sched. C, s. 80 (3).

Society becomes trustee

59.7 (1) Money paid to the Society under section 59.6 shall be held in trust by the Society in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the money. 1998, c. 21, s. 27.

One or more accounts

(2) Money held in trust under this section may be held in one or more accounts. 1998, c. 21, s. 27.

Trust income

(3) Subject to subsections (5) and (6), all income from the money held in trust under this section shall be paid to the Law Foundation. 1998, c. 21, s. 27.

Passing accounts

(4) The Society shall from time to time apply to the Superior Court of Justice under section 23 of the *Trustee Act* to pass the accounts of the trust established by this section and the court’s order on each application shall specify a date before which the Society must make its next application to pass the accounts. 1998, c. 21, s. 27; 2002, c. 18, Sched. A, s. 12 (2).

Trustee compensation

(5) Subject to subsection (6), the Society may take compensation from the trust property in accordance with orders made under subsection 23 (2) of the *Trustee Act*. 1998, c. 21, s. 27.

Same

(6) Compensation may be taken under subsection (5) only from the income of the trust. 1998, c. 21, s. 27.

First application

(7) The Society shall make its first application under subsection (4) not later than two years after this section comes into force. 1998, c. 21, s. 27.

Transfer to trust fund

59.8 (1) Despite section 59.6, the Society may transfer to the trust established by section 59.7 any money received in trust by the Society after February 1, 1999 from a member as defined in section 1, as it read immediately before the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force, or from a licensee, if,

(a) immediately before the money was received by the Society, the member or licensee was holding the money in trust for or on account of a person; and

(b) the Society is unable to locate the person entitled to the money or to determine who is entitled to the money. 2006, c. 21, Sched. C, s. 81 (1).

Exception

(2) Money held in trust by the Society pursuant to an order made under section 49.47 shall not be transferred under subsection (1) without the approval of the Superior Court of Justice provided for in the order made under section 49.47 or obtained on an application under section 49.48 or 49.51. 1998, c. 21, s. 27; 2002, c. 18, Sched. A, s. 12 (2).

Money held before February 1, 1999

(3) The Society may transfer to the trust established by section 59.7 any money held in trust by the Society immediately before February 1, 1999, if,

(a) the money was received by the Society from a member as defined in section 1, as it read immediately before the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force, who held the money in trust for or on account of a person; and

(b) the Society is unable to locate the person entitled to the money or to determine who is entitled to the money. 2006, c. 21, Sched. C, s. 81 (2).

Transferred money to be held in trust

(4) Money transferred under this section to the trust established by section 59.7 shall be held in trust by the Society under section 59.7. 1998, c. 21, s. 27.

Liability extinguished

(5) The transfer by the Society under this section, to the trust established by section 59.7, of money received from a person extinguishes the liability of the person as trustee or fiduciary with respect to the amount transferred. 2006, c. 21, Sched. C, s. 81 (3).

Notice

59.9 (1) The Society shall publish a notice annually in *The Ontario Gazette* listing the name and last known address of every person entitled to money that, during the previous year, was paid to the Society under section 59.6 or transferred under section 59.8 to the trust established by section 59.7. 1998, c. 21, s. 27; 2006, c. 21, Sched. C, s. 82 (1).

Exception

(2) Subsection (1) does not require publication of,

(a) a name or an address of which the Society is not aware; or

(b) a name or an address of which the Society is aware, if,

(i) publication of the name or address would breach a duty of confidentiality owed by a person who was practising law or providing legal services, or

(ii) there are reasonable grounds for believing that publication of the name or address will result in a significant risk of physical or psychological harm to the person whose name or address is published or to another person. 2006, c. 21, Sched. C, s. 82 (2).

Other steps

(3) The Society shall take such other steps as it considers appropriate to locate the persons entitled to money held in trust by the Society under section 59.7. 1998, c. 21, s. 27.

Claims

59.10 (1) A person may make a claim in accordance with the by-laws for payment of money held in trust by the Society under section 59.7. 1998, c. 21, s. 27.

Payment of claims

(2) Subject to sections 59.12 and 59.13, the Society shall pay claims in accordance with the by-laws. 1998, c. 21, s. 27.

Application to court

59.11 Subject to sections 59.12 and 59.13, if a claim under section 59.10 is denied by the Society in whole or in part, the claimant may apply to the Superior Court of Justice for an order directing the Society to pay the claimant any money to which the claimant is entitled. 1998, c. 21, s. 27; 2002, c. 18, Sched. A, s. 12 (2).

No entitlement to interest

59.12 A claimant to whom money is paid under section 59.10 or 59.11 is not entitled to any interest on the money that was held in trust by the Society. 1998, c. 21, s. 27.

Limit on payments

59.13 (1) The total of all payments made to claimants under sections 59.10 and 59.11 in respect of money paid to the Society under section 59.6 by a particular person shall not exceed the amount paid to the Society under section 59.6 by that person. 2006, c. 21, Sched. C, s. 83.

Money transferred to trust fund

(2) Subsection (1) also applies, with necessary modifications, in respect of money transferred under section 59.8 to the trust established by section 59.7. 1998, c. 21, s. 27.

Former licensees and members

59.14 Sections 59.6 to 59.13 also apply, with necessary modifications, in respect of money held in trust by,

(a) a person who was and has ceased to be a licensee; and

(b) a person who was and has ceased to be a member, as defined in section 1 as it read immediately before the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force, and has never become a licensee. 2006, c. 21, Sched. C, s. 84.

LEGAL EDUCATION, DEGREES

Education programs and law degrees

Education programs

60. (1) The Society may operate programs of pre-licensing education or training and programs of continuing professional development. 2006, c. 21, Sched. C, s. 85; 2010, c. 16, Sched. 2, s. 4 (3).

Law degrees

(2) The Society may grant degrees in law. R.S.O. 1990, c. L.8, s. 60 (2).

INDEMNITY FOR PROFESSIONAL LIABILITY

Indemnity for professional liability

61. The Society,

(a) may make arrangements for licensees respecting indemnity for professional liability and respecting the payment and remission of premiums in connection with such indemnity; and

(b) may require that licensees or one or more classes of licensees pay levies to the Society in connection with such indemnity and may exempt licensees or one or more classes of licensees from the requirement to pay all or any part of the levies. 2006, c. 21, Sched. C, s. 86.

PROFESSIONAL CORPORATIONS

Professional corporations

61.0.1 (1) Subject to the by-laws,

(a) one or more persons who are licensed to practise law in Ontario as barristers and solicitors may establish a professional corporation for the purpose of practising law in Ontario;

(b) one or more persons who are licensed to provide legal services in Ontario may establish a professional corporation for the purpose of providing legal services in Ontario;

(c) one or more persons who are licensed to practise law in Ontario as barristers and solicitors and one or more persons who are licensed to provide legal services in Ontario may together establish a professional corporation for the purpose of practising law and providing legal services in Ontario. 2006, c. 21, Sched. C, s. 87 (2).

Professions governed by this Act

(2) For the purposes of section 3.1 of the *Business Corporations Act*, the following professions are governed by this Act and are permitted by this Act to be carried out by a corporation:

1. The practice of law.

2. The provision of legal services. 2006, c. 21, Sched. C, s. 87 (2).

Application of *Business Corporations Act*

(3) If provisions of the *Business Corporations Act* or of the regulations made under that Act apply to a professional corporation within the meaning of that Act, those provisions apply for the purposes of this Act, subject to subsections (4) and (5). 2006, c. 21, Sched. C, s. 87 (2).

Shareholders

(4) For the purposes of subsection 3.2 (2) of the *Business Corporations Act*, in the case of a professional corporation described in subsection (1) of this section, the following conditions apply instead of the condition set out in paragraph 1 of subsection 3.2 (2) of the *Business Corporations Act*, despite subsection 3.2 (1) of that Act:

1. All of the issued and outstanding shares of a professional corporation described in clause (1) (a) shall be legally and beneficially owned, directly or indirectly, by one or more persons who are licensed to practise law in Ontario.

2. All of the issued and outstanding shares of a professional corporation described in clause (1) (b) shall be legally and beneficially owned, directly or indirectly, by one or more persons who are licensed to provide legal services in Ontario.

3. All of the issued and outstanding shares of a professional corporation described in clause (1) (c) shall be legally and beneficially owned, directly or indirectly, by one or more persons who are licensed to practise law in Ontario or licensed to provide legal services in Ontario. 2006, c. 21, Sched. C, s. 87 (2).

Articles of incorporation

(5) For the purposes of subsection 3.2 (2) of the *Business Corporations Act*, in the case of a professional corporation described in subsection (1) of this section, the following conditions apply instead of the condition set out in paragraph 5 of subsection 3.2 (2) of the *Business Corporations Act*, despite subsection 3.2 (1) of that Act:

1. The articles of incorporation of a professional corporation described in clause (1) (a) shall provide that the corporation may not carry on a business other than the practice of law, but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practice of law, including the investment of surplus funds earned by the corporation.

2. The articles of incorporation of a professional corporation described in clause (1) (b) shall provide that the corporation may not carry on a business other than the provision of legal services, but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the provision of legal services, including the investment of surplus funds earned by the corporation.

3. The articles of incorporation of a professional corporation described in clause (1) (c) shall provide that the corporation may not carry on a business other than the practice of law and the provision of legal services, but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practice of law and the provision of legal services, including the investment of surplus funds earned by the corporation. 2006, c. 21, Sched. C, s. 87 (2).

Register

61.0.2 (1) The Society shall establish and maintain a register of corporations that have been issued certificates of authorization. 2006, c. 21, Sched. C, s. 88 (1).

Contents of registry

(2) The register shall contain the information set out in the by-laws. 2000, c. 42, Sched., s. 22.

Availability to public

(3) The Society shall make the register available for public inspection in accordance with the by-laws. 2006, c. 21, Sched. C, s. 88 (2).

Notice of change of shareholder

61.0.3 A professional corporation shall notify the Society within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation. 2000, c. 42, Sched., s. 22; 2006, c. 21, Sched. C, s. 89.

Application of Act, etc.

61.0.4 (1) Any provision of this Act, the regulations, the by-laws or the rules of practice and procedure that applies to a person who is authorized to practise law in Ontario or a person who is authorized to provide legal services in Ontario continues to apply to such person even if his or her practice of law or provision of legal services is carried on through a professional corporation. 2006, c. 21, Sched. C, s. 90.

Exercise of powers of Society against corporation

(2) Sections 33, 34, 35, 36, 45 to 48 and 49.2, subsections 49.3 (1) and (2) and sections 49.8 to 49.10, 49.44 to 49.52, 57 to 59 and 61 apply with necessary modifications to professional corporations,

(a) as if a reference in those provisions to a licensee were a reference to a professional corporation, except in the expression “conduct unbecoming a licensee”, which shall be read as it is and shall not be considered to be a reference to “conduct unbecoming a professional corporation”; and

(b) as if a reference in those provisions to a licence were a reference to a certificate of authorization. 2006, c. 21, Sched. C, s. 90.

Professional, fiduciary and ethical obligations to clients

61.0.5 (1) The professional, fiduciary and ethical obligations of a person practising law or providing legal services, to a person on whose behalf he or she is practising law or providing legal services,

(a) are not diminished by the fact that he or she is practising law or providing legal services through a professional corporation; and

(b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2006, c. 21, Sched. C, s. 90.

Audit, etc.

(2) If an action or the conduct of a person practising law or providing legal services through a professional corporation is the subject of an audit, investigation or review,

(a) any power that may be exercised under this Act in respect of the person in the course, or as a result, of the audit, investigation or review may be exercised in respect of the corporation; and

(b) the corporation is jointly and severally liable with the person for,

(i) all costs that he or she is required by the by-laws to pay in relation to the audit, investigation or review, and

(ii) all fines and costs that he or she is ordered by the Hearing Panel, the Appeal Panel or a court to pay as a result of the audit, investigation or review. 2006, c. 21, Sched. C, s. 90.

Note: On March 12, 2014, subclause (ii) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Terms, conditions, etc.

61.0.6 (1) A term, condition, limitation or restriction imposed under this Act on a person practising law or providing legal services through a professional corporation applies to the certificate of authorization of the corporation in relation to the practice of law or provision of legal services by the person. 2006, c. 21, Sched. C, s. 90.

Same

(2) A term, condition, limitation or restriction imposed under this Act on a professional corporation applies to the persons practising law or providing legal services through the corporation. 2006, c. 21, Sched. C, s. 90.

Prohibitions and offences, corporations

Requirement to be professional corporation

61.0.7 (1) No corporation, other than a corporation that has been incorporated or continued under the *Business Corporations Act* and holds a valid certificate of authorization, shall practise law in Ontario or provide legal services in Ontario. 2006, c. 21, Sched. C, s. 90.

Holding out, etc.

(2) No corporation, other than a corporation that has been incorporated or continued under the *Business Corporations Act* and holds a valid certificate of authorization, shall hold out or represent that it is a professional corporation, that it may practise law in Ontario or that it may provide legal services in Ontario. 2006, c. 21, Sched. C, s. 90.

Compliance with certificate of authorization

(3) No corporation shall practise law in Ontario or provide legal services in Ontario except to the extent permitted by the corporation's certificate of authorization. 2006, c. 21, Sched. C, s. 90.

Holding out, etc.

(4) No corporation shall hold out or represent that it may practise law in Ontario or that it may provide legal services in Ontario, without specifying, in the course of the holding out or representation, the restrictions, if any,

(a) on the areas of law that the corporation is authorized to practise or in which the corporation is authorized to provide legal services; and

(b) on the legal services that the corporation is authorized to provide. 2006, c. 21, Sched. C, s. 90.

Satisfaction of conditions

(5) No corporation shall practise law in Ontario or provide legal services in Ontario when it does not satisfy the conditions set out in paragraphs 2, 3 and 4 of subsection 3.2 (2) of the *Business Corporations Act* and subsections 61.0.1 (4) and (5) of this Act. 2006, c. 21, Sched. C, s. 90.

Offence, corporation

(6) Every corporation that contravenes this section is guilty of an offence and on conviction is liable to a fine of,

(a) not more than $25,000 for a first offence; and

(b) not more than $50,000 for each subsequent offence. 2006, c. 21, Sched. C, s. 90.

Offence, directors and officers

(7) If a corporation is guilty of an offence under subsection (6), every director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is guilty of an offence and on conviction is liable to a fine of not more than $50,000. 2006, c. 21, Sched. C, s. 90.

Condition of probation order: compensation or restitution

(8) The court that convicts a person of an offence under subsection (7) may prescribe as a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence. 2006, c. 21, Sched. C, s. 90.

Order for costs

(9) Despite any other Act, the court that convicts a corporation or person of an offence under this section may order the corporation or person to pay the prosecutor costs toward fees and expenses reasonably incurred by the prosecutor in the prosecution. 2006, c. 21, Sched. C, s. 90.

Deemed order

(10) A certified copy of an order for costs made under subsection (9) may be filed in the Superior Court of Justice by the prosecutor and, on filing, shall be deemed to be an order of that court for the purposes of enforcement. 2006, c. 21, Sched. C, s. 90.

Limitation

(11) A prosecution for an offence under this section shall not be commenced more than two years after the date on which the offence was alleged to have been committed. 2006, c. 21, Sched. C, s. 90.

Trusteeships permitted

61.0.8 Clause 213 (2) (b) of the *Loan and Trust Corporations Act* does not prevent a professional corporation from acting as a trustee in respect of services normally provided by licensees. 2000, c. 42, Sched., s. 22.; 2006, c. 21, Sched. C, s. 91.

Reference to corporation included

61.0.9 A reference in any other Act or any regulation, rule or order made under any other Act to an individual who practises law, an individual who provides legal services or an individual who is licensed under this Act shall be deemed to include a reference to a professional corporation, if any, through which the individual practises law or provides legal services. 2006, c. 21, Sched. C, s. 92.

LIMITED LIABILITY PARTNERSHIPS

Limited liability partnerships

61.1 (1) Subject to the by-laws,

(a) two or more persons who are licensed to practise law in Ontario as barristers and solicitors may form a limited liability partnership, or continue a partnership as a limited liability partnership, for the purpose of practising law in Ontario;

(b) two or more persons who are licensed to provide legal services in Ontario may form a limited liability partnership,

or continue a partnership as a limited liability partnership, for the purpose of providing legal services in Ontario;

(c) one or more persons who are licensed to practise law in Ontario as barristers and solicitors and one or more persons who are licensed to provide legal services in Ontario may together form a limited liability partnership, or continue a partnership as a limited liability partnership, for the purpose of practising law and providing legal services in Ontario;

(d) two or more professional corporations may form a limited liability partnership, or continue a partnership as a limited liability partnership, for the purpose of practising law in Ontario, providing legal services in Ontario or doing both, as authorized by their certificates of authorization. 2006, c. 21, Sched. C, s. 93.

Definition

(2) In this section,

"limited liability partnership" means a limited liability partnership as defined in the *Partnerships Act*. 2006, c. 21, Sched. C, s. 93.

RULES OF PRACTICE AND PROCEDURE

Rules

61.2 (1) Convocation may make rules of practice and procedure applicable to proceedings before the Hearing Panel and the Appeal Panel and to the making of orders under sections 46, 47, 47.1, 48 and 49. 1998, c. 21, s. 28; 2006, c. 21, Sched. C, s. 94 (1).

Note: On March 12, 2014, subsection (1) is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

Examples

(2)Without limiting the generality of subsection (1), Convocation may make rules of practice and procedure,

(a) governing the circumstances in which orders may be made under this Act;

(b) authorizing and governing interlocutory orders in a proceeding or intended proceeding, including interlocutory orders suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services;

(c) authorizing appeals from interlocutory orders;

(d) prescribing circumstances in which an interlocutory order suspending a licensee's licence may be deemed to be a final order if the licensee does not appear at the hearing of an application;

(e) governing the admissibility of evidence in proceedings, including the admissibility in evidence of documents and other information disclosed under this Act or under the regulations, by-laws or rules;

(f) authorizing orders that a hearing or part of a hearing be held in the absence of the public and authorizing orders that specified information relating to a proceeding not be disclosed;

(g) authorizing the Hearing Panel, in applications under section 34, to deal**,** with the consent of the parties, with matters that would otherwise have to be the subject of an application under section 38, and to make any order referred to in section 40;

Note: On March 12, 2014, clause (g) is amended by striking out "Panel" and substituting "Division". (See: 2013, c. 17, ss. 26, 28 (2))

(h) governing the administration of reprimands;

(i) governing the awarding of costs under section 49.28. 1998, c. 21, s. 28; 2006, c. 21, Sched. C, s. 94 (2-4).

Rules under *SPPA*

(3) Rules made under this section shall be deemed, for the purposes of the *Statutory Powers Procedure Act*, to have been made under section 25.1 of that Act. 1998, c. 21, s. 28.

Conflict with *SPPA*

(4) In the event of a conflict between the rules made under this section and the *Statutory Powers Procedure Act*, the rules made under this section prevail, despite section 32 of that Act. 1998, c. 21, s. 28.

BY-LAWS

By-laws

62. (0.1) Convocation may make by-laws,

1. relating to the affairs of the Society;
2. providing procedures for the making, amendment and revocation of the by-laws;
3. governing honorary benchers, persons who are benchers by virtue of their office and honorary members, and prescribing their rights and privileges;
3.1 for the purposes of paragraph 5 of subsection 1 (8), prescribing persons or classes of persons who shall be deemed not to be practising law or providing legal services and the circumstances in which each such person or class of persons shall be deemed not to be practising law or providing legal services;
4. prescribing the classes of licence that may be issued under this Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence;
4.1 governing the licensing of persons to practise law in Ontario as barristers and solicitors and the licensing of persons to provide legal services in Ontario, including prescribing the qualifications and other requirements for the various classes of licence and governing applications for a licence;
5. governing the handling of money and other property by licensees;
6. requiring and prescribing the financial records to be kept by licensees and providing for the exemption from such requirements of any class of licensees;
7. requiring and providing for the examination or audit of licensees' financial records and transactions and for the filing with the Society of reports with respect to such records and transactions;
8. requiring licensees to register an address with the Society and to notify the Society of any changes in the address;
9. requiring licensees or any class of licensees, or authorizing the Society to require licensees or any class of licensees, to provide the Society with information or to file certificates, reports or other documents with the Society, relating to the Society's functions under this Act;
10. authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics;
11. authorizing and providing for the preparation, publication and distribution of guidelines for professional competence;
12. respecting the reporting and publication of the decisions of the courts;
13. prescribing offices of the Society, the holders of which may exercise a power or perform a duty under this Act, the regulations, the by-laws or the rules of practice and procedure, or the holders of which may be appointed by Convocation to exercise a power or perform a duty under this Act, the regulations, the by-laws or the rules of practice and procedure, and specifying the powers they may exercise or be appointed to exercise and the duties they may perform or be appointed to perform;
14. prescribing fees and levies relating to the functions of the Society, including fees for late compliance with any obligation, that must be paid to the Society by,
    i. licensees or any class of licensees,
    ii. applicants for a licence or any class of applicants for a licence,
    iii. limited liability partnerships that practise law or provide legal services, and applicants for a permit for a

limited liability partnership to practise law or provide legal services,

iv. professional corporations and applicants for a certificate of authorization for a corporation,

v. persons who give legal advice respecting the law of a jurisdiction outside Canada, and applicants for a permit to give such advice,

vi. persons authorized to practise law or provide legal services outside Ontario who are permitted to represent one or more other persons in a specific proceeding before an adjudicative body in Ontario, and applicants for such permission,

vii. persons authorized to practise law or provide legal services in another province or territory of Canada who are permitted to engage in the occasional practice of law or provision of legal services in Ontario, and applicants for such permission,

viii. partnerships, corporations and other organizations that practise law or provide legal services and that maintain one or more offices outside Ontario and one or more offices in Ontario, and applicants for a permit to engage in such practice of law or provision of legal services, and

ix. persons, partnerships, corporations and other organizations that practise law or provide legal services and that also practise another profession or provide other services, and applicants for a permit to engage in such activities;

15. governing the payment and remission of fees and levies prescribed under paragraph 14 and exempting any class of persons from all or any part of any fee or levy;

16. providing for the payment to the Society by a licensee of the cost of an audit, investigation, review, search or seizure under Part II;

17. requiring the payment of interest on any amount owed to the Society by any person and prescribing the interest rate;

18. providing for and governing meetings of members of the Society, as set out in subsection 2 (2), or their representatives;

19. defining who is a student, prescribing classes of students and describing each class, and governing students, including,

i. governing the employment of students,

ii. making any provision of this Act, the regulations, the by-laws or the rules of practice and procedure apply to students with necessary modifications or subject to such modifications as may be specified by the by-laws, and

iii. specifying provisions of this Act, the regulations, the by-laws or the rules of practice and procedure that do not apply to students;

20. defining who is a clerk and governing the employment of clerks by persons licensed to practise law in Ontario as barristers and solicitors;

21. governing degrees in law;

22. providing and governing bursaries, scholarships, medals and prizes;

23. respecting legal education, including programs of pre-licensing education or training;

24. providing for and governing extension courses, continuing professional development and legal research, and prescribing continuing professional development requirements that must be met by licensees, subject to such exemptions as may be provided for by the by-laws;

25. prescribing, for the purposes of section 26.1, persons or classes of persons who are permitted to practise law in Ontario without being licensed to do so and persons or classes of persons who are permitted to provide legal

services in Ontario without being licensed to do so, prescribing the circumstances in which persons who are not licensees are permitted to practise law or to provide legal services in Ontario, and prescribing the extent to which persons who are not licensees are permitted to practise law or to provide legal services in Ontario, including specifying the areas of law that such persons may practise or in which such persons may provide legal services and the legal services that such persons may provide;

26. prescribing oaths and affirmations for applicants for a licence or any class of applicants for a licence;

27. providing for and governing libraries;

28. governing the practice of law and the provision of legal services by limited liability partnerships, including requiring those partnerships to maintain a minimum amount of liability insurance for the purposes of clause 44.2 (b) of the *Partnerships Act*, requiring that those partnerships hold a permit to practise law or provide legal services, governing the issuance, renewal, suspension and revocation of such permits and governing the terms and conditions that may be imposed on such permits;

28.1 governing the practice of law and the provision of legal services through professional corporations, including, without limiting the generality of the foregoing, requiring the certification of those corporations, governing the issuance, renewal, surrender, suspension and revocation of certificates of authorization, governing the terms, conditions, limitations and restrictions that may be imposed on certificates and governing the names of those corporations and the notification of a change in the shareholders of those corporations;

29. providing for persons authorized to practise law or provide legal services outside Ontario to be permitted to represent one or more other persons in a specific proceeding before an adjudicative body in Ontario, subject to the approval of the adjudicative body, governing the granting of permission and the terms and conditions to which the permission may be subject, and making any provision of this Act, the regulations, the by-laws or the rules of practice and procedure apply to those persons with necessary modifications or subject to such modifications as may be specified by the by-laws;

30. providing for persons authorized to practise law or provide legal services in another province or territory of Canada to be permitted to engage in the occasional practice of law or provision of legal services in Ontario, governing the granting of permission and the terms and conditions to which the permission may be subject, and making any provision of this Act, the regulations, the by-laws or the rules of practice and procedure apply to those persons with necessary modifications or subject to such modifications as may be specified by the by-laws;

31. governing the practice of law and the provision of legal services by any partnership, corporation or other organization that maintains one or more offices outside Ontario and one or more offices in Ontario, including requiring that those partnerships, corporations and other organizations hold a permit to practise law or provide legal services, governing the issuance, renewal, suspension and revocation of such permits and governing the terms and conditions that may be imposed on such permits;

32. governing the practice of law and the provision of legal services by any person, partnership, corporation or other organization that also practises another profession or provides other services, including requiring that those persons, partnerships, corporations and other organizations hold a permit to engage in such activities, governing the issuance, renewal, suspension and revocation of such permits and governing the terms and conditions that may be imposed on such permits;

33. regulating the giving of legal advice respecting the law of a jurisdiction outside Canada, including requiring a permit issued by the Society, governing the issuance, renewal, suspension and revocation of such permits and governing the terms and conditions that may be imposed on such permits;

34. providing for the establishment, maintenance and administration of a benevolent fund for licensees and the dependants of deceased licensees;

35. governing applications to surrender a licence under section 30 and the acceptance by the Society of such applications;

36. respecting the Compensation Fund;

37. governing applications to pay trust money to the Society under section 59.6 and the approval by the Society of such applications;

37.1 governing the making of claims under section 59.10 and the determination and payment by the Society of such claims;

38. governing the referral of complaints to the Complaints Resolution Commissioner and governing the performance of duties and the exercise of powers by the Commissioner;

39. designating offices held by employees of the Society to which the Complaints Resolution Commissioner may delegate powers or duties;

40. governing reviews under section 42, including,

    i. prescribing, for the purpose of clause 42 (1) (a), circumstances in which the Society may conduct a review under section 42, and

    ii. prescribing, for the purpose of subsection 42 (6), the time within which a licensee may accept a proposal for an order;

41. Repealed: 2006, c. 21, Sched. C, s. 95 (17).

42. governing the appointment of persons to conduct audits, investigations and reviews under Part II;

43. prescribing a period for the purposes of subsection 46 (1) and governing the payment of amounts owing for the purposes of subsection 46 (2);

44. prescribing a period for the purposes of subsection 47 (1) and governing the completion and filing of documents for the purposes of subsection 47 (2);

45. specifying a deadline for the purposes of subsection 49.28 (3), and providing for a process to extend a deadline for paying costs in the circumstances described in subsection 49.28 (4) and specifying that extended deadline;

46. Repealed: 2006, c. 21, Sched. C, s. 95 (18).

Note: On March 12, 2014, subsection (0.1) is amended by adding the following paragraphs: (See: 2013, c. 17, ss. 24 (2), 28 (2))

46. providing for additional powers, duties and functions of the Tribunal, its chair and its members;

46.1 setting out eligibility requirements for the purposes of subsections 49.20.2 (1), 49.21 (3), 49.22.1 (2), 49.24.1 (2), 49.29 (3) and 49.30.1 (2);

46.2 governing the conduct of members of the Hearing Division and members of the Appeal Division who are assigned to hear and determine matters, including providing for a code of professional conduct for such members and providing for the code's enforcement, and governing the evaluation of such members;

47. governing the implementation of agreements with the responsible authorities in other jurisdictions relating to the practice of law or the provision of legal services;

48. prescribing forms and providing for their use;

49. governing the register that the Society is required to establish and maintain under section 27.1, including prescribing information that the register must contain in addition to the information required under section 27.1, governing the removal of information from the register and governing the Society's duty under section 27.1 to make the register available for public inspection;

50. governing the register that the Society is required to establish and maintain under section 61.0.2, including prescribing information that the register must contain, governing the removal of information from the register and governing the Society's duty under section 61.0.2 to make the register available for public inspection;

51. prescribing requirements to be met by licensees with respect to indemnity for professional liability;

52. Repealed: 2013, c. 17, s. 24 (3).

1998, c. 21, s. 29 (1); 2000, c. 42, Sched., s. 23; 2001, c. 8, s. 50; 2006, c. 21, Sched. C, ss. 95 (1-20); 2010, c. 16, Sched. 2, s. 4 (4); 2013, c. 17, s. 24 (1, 3).

Same

(1) Without limiting the generality of paragraph 1 of subsection (0.1), by-laws may be made under that paragraph,

1. Repealed: 1998, c. 21, s. 29 (3).

2. prescribing the seal and the coat of arms of the Society;

3. providing for the execution of documents by the Society;

4. respecting the borrowing of money and the giving of security therefor;

5. fixing the financial year of the Society and providing for the audit of the accounts and transactions of the Society;

6. governing the election of benchers under section 15, including prescribing regions for the purpose of subsection 15 (2), prescribing the terms of office of elected benchers, prescribing the number of benchers to be elected for each region, governing the qualifications required to be a candidate or vote in elections and providing for challenges of election results;

6.1 governing the election of benchers under subsection 16 (1), including prescribing the day on which the first election of such benchers must take place, requiring such benchers to be elected for regions and prescribing the regions, prescribing the terms of office of elected benchers, governing the qualifications required to be a candidate or vote in elections and providing for challenges of election results;

6.2 governing the filling of vacancies under subsection 15 (3) and the filling of vacancies under subsection 16 (3);

7. governing the election of and removal from office of the Treasurer, the filling of a vacancy in the office of Treasurer, the appointment of an acting Treasurer to act in the Treasurer's absence or inability to act, and prescribing the Treasurer's duties;

8. providing for the appointment of and prescribing the duties of the Chief Executive Officer and such other officers as are considered appropriate;

9. respecting Convocation;

10. providing for the establishment, composition, jurisdiction and operation of the Proceedings Authorization Committee;

10.1 providing for the establishment, jurisdiction, operation, duties and powers of the Paralegal Standing Committee, including,

i. specifying the matters for which the Committee is responsible and the matters for which it is not responsible,

ii. governing the election of five persons who are licensed to provide legal services in Ontario as members of the Committee, prescribing the day on which the first election of such members must take place, prescribing their term of office and governing the filling of vacancies in their offices,

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph ii is repealed. (See: 2013, c. 17, ss. 24 (4), 28 (4))

iii. governing the appointment of five elected benchers who are licensed to practise law in Ontario and three lay benchers as members of the Committee, prescribing their term of office and governing their reappointment, and

iv. governing the appointment and reappointment of the chair of the Committee;

11. providing for the establishment, composition, jurisdiction and operation of standing and other committees, including standing committees responsible for discipline matters and for professional competence, and delegating to any committee such of the powers and duties of Convocation as may be considered expedient. R.S.O. 1990,

c. L.8, s. 62 (1); 1991, c. 41, s. 5; 1998, c. 21, s. 29 (2-11); 2006, c. 21, Sched. C, s. 95 (21-23).

General or particular

(1.1) A by-law made under this section may be general or particular in its application. 1998, c. 21, s. 29 (12).

Interpretation of by-laws

(2) The by-laws made under this section shall be interpreted as if they formed part of this Act. R.S.O. 1990, c. L.8, s. 62 (2); 1998, c. 21, s. 29 (13).

Availability of copies of by-laws

(3) The Society shall,

(a) file a copy of the by-laws, as amended from time to time, in the office of the Attorney General for Ontario; and

(b) make a copy of the by-laws, as amended from time to time, available for public inspection. 2006, c. 21, Sched. C, s. 95 (24).

REGULATIONS

Regulations

63. (1) Convocation, with the approval of the Lieutenant Governor in Council, may make regulations,

1. Repealed: 1998, c. 21, s. 30 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following paragraph:

1. prescribing provisions of the *Not-for-Profit Corporations Act, 2010* that apply to the Society;

See: 2010, c. 15, ss. 230 (4), 249.

2.-7. Repealed: 1998, c. 21, s. 30 (3).

8. providing for the establishment, operation and dissolution of county and district law associations and respecting grants and loans to such associations;

9. Repealed: 1998, c. 21, s. 30 (4).

10. Repealed: 1998, c. 18, Sched. B, s. 8 (4).

11. prescribing service charges and other fees, other than amounts charged for issuing certified cheques against the joint account, for the purpose of paragraph 1 of subsection 56 (3.1);

12. designating any or all of the following, or any class or classes thereof, as financial institutions in which joint accounts must be established for the purposes of section 57.1,

i. banks listed in Schedule I or II to the *Bank Act* (Canada),

ii. registered trust corporations,

iii. Repealed: 2006, c. 21, Sched. C, s. 96 (1).

iv. credit unions and leagues to which the *Credit Unions and Caisses Populaires Act, 1994* applies;

13. governing the appointment of the Complaints Resolution Commissioner;

14. governing the assignment of members of the Hearing Panel and members of the Appeal Panel to hearings, including the number of persons required to hear and determine different matters;

Note: On March 12, 2014, paragraph 14 is amended by striking out "Panel" wherever it appears and substituting in each case "Division". (See: 2013, c. 17, ss. 26, 28 (2))

15. naming, for the purpose of section 31, tribunals that have a judicial or quasi-judicial function. R.S.O. 1990, c. L.8, s. 63; 1991, c. 41, s. 6; 1994, c. 27, s. 49 (9, 10); 1998, c. 18, Sched. B, s. 8 (4); 1998, c. 21, s. 30 (1-5); 2006, c. 21, Sched. C, s. 96.

General or particular

(2) A regulation made under this section may be general or particular in its application. 1998, c. 21, s. 30 (6).

63.0.1**, 63.1** Repealed: 2013, c. 17, s. 25.

FRENCH NAME, TRANSITIONAL

Reference to name

64. A reference in any Act, regulation, contract or other document to Société du barreau du Haut-Canada shall be deemed to be a reference to Barreau du Haut-Canada. R.S.O. 1990, c. L.8, s. 64.

Citation of Act

65. This Act may be cited in French as *Loi sur le Barreau*. R.S.O. 1990, c. L.8, s. 65; 2010, c. 1, Sched. 12, s. 7.

66.**-71.** Repealed: 1998, c. 21, s. 31.

72. Repealed: 1998, c. 21, s. 32.

73.**, 74.** Repealed: 1998, c. 21, s. 33.

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BY-LAW 4

Made: May 1, 2007
Amended: May 25, 2007
June 28, 2007
September 20, 2007
October 25, 2007 (editorial changes)
January 24, 2008
April 24, 2008
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September 29, 2010
September 30, 2010 (editorial changes)
October 28, 2010
April 28, 2011
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June 23, 2011
September 22, 2011
November 24, 2011
October 25, 2012

LICENSING

PART I

CLASSES OF LICENCE

LICENCE TO PRACTISE LAW

Classes of licence

1. (1) There shall be the following classes of licence to practise law in Ontario as a barrister and solicitor:

1. Class L1.

2. Class L2.

3. Class L3.

Transition

Interpretation

(2) In subsections (3) and (4),

"member" means a member as defined in section 1 of the Act as it read immediately before May 1, 2007;

"temporary member" means a person admitted as a temporary member of the Society under section 28.1 of the Act as it read immediately before May 1, 2007.

Member other than temporary member

(3) Every person who is a member, other than a temporary member, immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L1 licence.

Temporary member

(4) Every person who is a temporary member immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L2 licence.

Scope of activities

Class L1

2. (1) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L1 licence is entitled to practise law in Ontario as a barrister and solicitor.

Class L2

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L2 licence is entitled to practise law in Ontario as a barrister and solicitor in the employ of the Attorney General for Ontario or, if appointed under the *Crown Attorneys Act*, as a Crown Attorney or as an assistant Crown Attorney.

Class L3

(3) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L3 licence is authorized to do any of the following:

1. Give a person advice with respect to,

   i. the laws of Quebec,

   ii. the laws of Canada, and

   iii. public international law.

2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada.

3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada.

Terms, *etc.*: Class L1 licence

Application of section

3. (1) This section applies to licensees who hold a Class L1 licence.

Over 65 years

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (1) of By-Law 5 [Annual Fee] is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is restricted to practising law in Ontario as a barrister and solicitor on a *pro bono* basis through,

   i. a program registered with Pro Bono Law Ontario, or

   ii. a clinic, within the meaning of the *Legal Aid Services Act, 1998*, funded by Legal Aid Ontario, that is approved by Pro Bono Law Ontario.

Incapacity

(3) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (2) of By-Law 5 [Annual Fee] is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor.

Exempt from payment of insurance premium levies

(4) A licensee who is required to pay the annual fee, or who would be required to pay the annual fee but for being granted an exemption from payment of the annual fee on the grounds that he or she has been entitled to practise law in Ontario as a barrister and solicitor for a period of fifty years, and who is exempt from the payment of insurance premium levies is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis,

    i. for or on behalf of non-profit organizations, or

    ii. through a program registered with Pro Bono Law Ontario.

Authorized to practise law outside Ontario

(5) A licensee who is authorized to practise law in a province or territory of Canada outside Ontario is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in that province or territory.

Duration of terms, *etc.*

(6) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 4.

Cancellation of terms, *etc.*

4. (1) A licensee who is subject to terms, conditions, limitations and restrictions under section 3 may apply to the Society to have the terms, conditions, limitations and restrictions cancelled and the Society may,

(a) cancel the terms, conditions, limitations and restrictions;

(b) require the licensee to complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions, and, if the licensee completes the education and obtains the experience, cancel the terms, conditions, limitations and restrictions; or

(c) cancel the terms, conditions, limitations and restrictions subject to the following terms, conditions, limitations and restrictions:

(i) the licensee must practise law only,

(A) as an employee of a person approved by the Society,

(B) as an employee or partner, and under the supervision, of a licensee who holds a Class L1 licence who is approved by the Society, or

(C) under the supervision of a licensee who holds a Class L1 licence who is approved by the Society,

(ii) the licensee must, within a time specified by the Society, complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions.

Breach of terms, *etc.* imposed under subs. (1)

(2) If a licensee fails to comply with a term, condition, limitation or restriction imposed on the licensee under clause (1) (c), the cancellation of terms, conditions, limitations and restrictions under clause (1) (c) is deemed thereafter to be void.

Information to be provided by licensee

(3) A licensee shall provide to the Society all documents and information, as may be required by the Society, relating to this section.

Terms, *etc.*: Class L3 licence

4.1 A licensee who holds a Class L3 licence is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in Quebec.

2. The licensee is prohibited from practising law in Ontario as a barrister and solicitor if the licensee is prohibited from practising law in Quebec.

3. The licensee is prohibited from practising law in Ontario as a barrister and solicitor if the licensee does not maintain the full mandatory professional liability insurance coverage required by the Barreau du Québec.

LICENCE TO PROVIDE LEGAL SERVICES

Classes of licence

5. There shall be the following classes of licence to provide legal services in Ontario:

1. Class P1.

Scope of activities

Class P1

Interpretation

6. (1) In this section, unless the context requires otherwise,

"claim" means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

"party" means a party to a proceeding;

"proceeding" means a proceeding or intended proceeding,

(a) in the Small Claims Court,

(b) in the Ontario Court of Justice under the *Provincial Offences Act*,

(c) in a summary conviction court under the *Criminal Code* (Canada),

(d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or

(e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*;

"Statutory Accident Benefits Schedule" means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

Activities authorized

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:

1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

2. Represent a party before,

   i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,

   ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,

   iii in the case of a proceeding under the *Criminal Code*, before a summary conviction court,

   iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and

   v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.

3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.

4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.

5. Negotiate a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

Terms, *etc.*

Over 65 years

6.1 (1) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (1.1) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

Incapacity

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (2) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

Duration of terms, *etc.*

(3) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 6.2.

Cancellation of terms, *etc.*

6.2 A licensee who is subject to a term, condition, limitation or restriction under section 6.1 may apply to the Society to have the term, condition, limitation or restriction cancelled and the Society may cancel the term, condition, limitation or restriction.

PART II

ISSUANCE OF LICENCE

INTERPRETATION

Interpretation

7. In this Part,

"accredited law school" means a law school in Canada that is accredited by the Society;

"accredited program" means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

"licensing cycle" means,

(a) for a person registering with the Society to be eligible to take a licensing examination or to enter into articles of clerkship that is a requirement for a Class L1 licence, a period running from May 1 in a year to April 30 in the following year; and

(b) for a person registering with the Society to be eligible to take a licensing examination that is a requirement for a Class P1 licence, a period running from June 1 in a year to May 31 in the following year.

GENERAL REQUIREMENTS

Requirements for issuance of any licence

8. (1) The following are the requirements for the issuance of any licence under the Act:

1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.

2. The applicant must pay the applicable fees, including the applicable application fee.

3. The applicant must be of good character.

4. The applicant must take the applicable oath.

5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

Time for submitting application

(1.1) An application for a licence shall be submitted contemporaneously with the applicant's registration form under section 18.

Submitting another application after one is deemed abandoned

(1.2) If an application for a licence is deemed to have been abandoned by the applicant under clause (4) (b), another application for a licence may not be submitted until after one year after the date on which the previous application was deemed to have been been abandoned and may only be submitted if a material change in circumstances is demonstrated to the Society.

Misrepresentations

(2) An applicant who makes any false or misleading representation or declaration on or in connection with an application for a licence, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

Documents and information re good character requirement

(3) An applicant shall provide to the Society,

(a) at the time she or he submits her or his completed application, all documents and information specified by the Society on the application form relating to the requirement that the applicant be of good character; and

(b) by the time specified by the Society, all additional documents and information specified by the Society relating to the requirement that the applicant be of good character.

Failure to do something: abandonment of application

(4) An applicant's application for a licence is deemed to have been abandoned by the applicant if the applicant,

(a) fails to do anything required to be done under subsection (3), under paragraph 2 of subsection 9 (1), under paragraph 2 of subsection 13 (1), under subclause 13 (2) (b) (iii), subclause 13 (2) (c) (iii) or subclause 13 (2) (d) (iii) or under subsection 15 (2.2) within the time specified for the thing to be done; or

(b) takes the same licensing examination three, or if entitled four, times and fails to successfully complete the licensing examination.

LICENCE TO PRACTISE LAW

Requirements for issuance of Class L1 licence

9. (1) The following are the requirements for the issuance of a Class L1 licence:

1. The applicant must have one of the following:

i. A bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.

ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

3. The applicant other than the applicant described in paragraph 4 must have,

i. successfully completed service under articles of clerkship for a period of time, not to exceed ten months, as determined by the Society,

ii. successfully completed all other requirements, as determined by the Society, that must be completed during the time of service under articles of clerkship, and

iii. if service under articles of clerkship was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.

4. An applicant who is exempt from the requirements mentioned in paragraph 3 because of clause (3)(e) must have successfully completed a professional conduct course conducted by the Society.

Exemption from degree or certificate requirement

(1.1) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

(a) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or

(b) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

Exemption from examination requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if,

(a) the applicant,

(i) is authorized to practise law in a province or territory of Canada outside Ontario where the governing body of the legal profession would authorize a licensee holding a Class L1 licence to practise law in that province or territory without requiring the licensee to successfully complete an examination,

(ii) reviews the materials that the Society, acting reasonably, determines are necessary to ensure that the applicant is familiar with current law and practice in Ontario, and

(iii) certifies that he or she has reviewed and understands the materials mentioned in sub-clause (ii), in a form provided by the Society;

(b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position;

(c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position; or

(d) the applicant was previously licensed to practise law in Ontario as a barrister and solicitor.

Exemption from articling and requirement

(3) An applicant is exempt from the requirements mentioned in paragraphs 3 and 4 of subsection (1) if,

(a) the applicant is authorized to practise law in a province or territory of Canada outside Ontario;

(b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position;

(c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position;

(d) the applicant was previously licensed to practise law in Ontario as a barrister and solicitor; or

(e) the applicant has practised law in a common law jurisdiction outside Canada for a minimum of ten months and the Society reasonably believes such practice compares to the requirements in paragraph 3.

Requirements for issuance of Class L2 licence

10. The following are the requirements for the issuance of a Class L2 licence:

1. The applicant must be authorized to practise law outside Ontario

2. The Attorney General for Ontario must request the Society to issue the licence to the applicant.

Requirements for issuance of Class L3 licence

10.0.01 The following are the requirements for the issuance of a Class L3 licence:

1. The applicant must be a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.

2. The applicant must be authorized to practise law in Quebec.

Forfeiture of Class P1

10.01. If an applicant for a Class L1 licence holds a Class P1 licence, the Class P1 licence is forfeited to the Society at the time the class L1 licence is issued.

LICENCE TO PROVIDE LEGAL SERVICES

Requirement for issuance of Class P1 licence: not otherwise licensed

10.1 It is a requirement for the issuance of a Class P1 licence that an applicant not already hold a licence to provide the legal services that a licensee who holds a Class P1 licence is authorized to provide.

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

11. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:

1. The applicant must have done any one of the following:

   i. Provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007.

   ii. Obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 6, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding.

   iii. Graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

A. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

B. a field placement of a least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: "full-time basis"

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

ii. a field placement of at least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

(a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis; or

(b) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to November 1, 2007.

Exemption from examination requirement

(3) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if the applicant was previously licensed to provide legal services in Ontario.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

(a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis; or

(b) the applicant is mentioned in subsection (4) and,

(i) has provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has provided written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant meets the requirement mentioned in subclause (i), and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

(c) the applicant is a member in good standing of the Human Resources Professionals Association of Ontario, the Ontario Professional Planners Institute, the Board of

Canadian Registered Safety Professionals or the Appraisal Institute of Canada and,

(i) has been a member in good standing of the organization for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has carried on the profession or occupation represented by the organization, including engaging in activities related to the provision of legal services that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence, and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

(d) the applicant is registered and in good standing as a collector under the Collection Agencies Act and,

(i) has been registered and in good standing as a collector under the Collection Agencies Act for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has acted as a collector, including engaging in activities related to the provision of legal services that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence, and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

(e) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to July 1, 2010;

(f) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of a member of one or more of the following entities:

(i) Agriculture, Food and Rural Affairs Appeal Tribunal,

(ii) Animal Care Review Board,

(iii) Assessment Review Board,

(iv) Board of negotiation continued under subsection 27 (1) of the *Expropriations Act*,

(v) Board of negotiation established under subsection 172 (5) of the *Environmental Protection Act*,

(vi) Building Code Commission,

(vii) Child and Family Services Review Board,

(viii) Chiropody Review Committee,

(ix) Consent and Capacity Board,

(x) Conservation Review Board,

(xi) Criminal Injuries Compensation Board,

(xii) Crown Employees Grievance Settlement Board,

(xiii) Custody Review Board,

(xiv) Dentistry Review Committee,

(xv) Environmental Review Tribunal,

(xvi) Fire Safety Commission,

(xvii) Health Professions Appeal and Review Board,

(xviii) Health Services Appeal and Review Board,

(xix) Human Rights Tribunal of Ontario,

(xx) Landlord and Tenant Board,

(xxi) Licence Appeal Tribunal,

(xxii) Medical Eligibility Committee formed under subsection 7 (1) of the *Health Insurance Act*,

(xxiii) Normal Farm Practices Protection Board,

(xxiv) Ontario Civilian Police Commission,

(xxv) Ontario Labour Relations Board,

(xxvi) Ontario Municipal Board,

(xxvii) Ontario Parole Board,

(xxviii) Ontario Review Board,

(xxix) Ontario Special Education Tribunal (English),

(xxx) Ontario Special Education Tribunal (French),

(xxxi) Optometry Review Committee,

(xxxii) Pay Equity Hearings Tribunal,

(xxxiii) Physician Payment Review Board,

(xxxiv) Public Service Grievance Board,

(xxxv) Social Benefits Tribunal,

(xxxvi) Workplace Safety and Insurance Appeals Tribunal; or

(g) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of an Appeals Resolution Officer at the Workplace Safety and Insurance Board.

Interpretation: "full-time basis"

(2.1) For the purposes of subsection (2), except clauses (2) (f) and (g), engaging in an activity or acting in a particular capacity on a full-time basis means engaging in an activity or acting in a particular capacity, on the average, 30 hours per week.

Exemption from examination requirement

(3) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if the applicant was previously licensed to provide legal services in Ontario.

Application of clause (2) (b)

(4) Clause (2) (b) applies to an applicant who engages in any one of the following activities and who, on November 1, 2007, was engaging in any one of the following activities:

1. Providing legal services without a licence under paragraph 1 of subsection 30 (1).

2. Providing legal services without a licence under paragraph 2 of subsection 30 (1) as an individual employed by a clinic, within the meaning of the Legal Aid Services Act, 1998, that is funded by Legal Aid Ontario.

3. Providing legal services without a licence under paragraph 4 of subsection 30 (1).

4. Providing legal services without a licence under section 31.

5. Providing legal services without a licence under section 32.

Application of clauses 2 (b), (c) and (d)

(5) Clauses 2 (b), (c) and (d) apply only to an applicant who submits to the Society a completed application for a Class P1 licence on or before September 30, 2011.

LICENSING EXAMINATIONS

General requirements

14. (1) A person who meets the following requirements is entitled to take a licensing examination set by the Society:

1. The person must be registered with the Society.

1.1 The person must not have taken the same licensing examination more than twice in the licensing cycle into which the person was registered.

2. The person must submit to the Society a completed examination application, for the examination that the person wishes to take, in a form provided by the Society, prior to the day of the examination, by the time specified by the Society.

3. The person must pay the applicable examination fee, prior to the day of the examination, by the time specified by the Society.

4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for taking an examination.

5. The person must not be ineligible to take the examination under this By-Law.

Entitlement to take licensing examination if same taken more than twice

(1.1) A person who meets the requirements set out in paragraphs 1, 2, 3, 4 and 5 of subsection (1) but does not meet the requirement set out in paragraph 1.1 of subsection (1) is entitled to take a licensing examination set by the Society if the person,

(a) has not taken the same licensing examination more than three times in the licensing cycle into which the person was registered; and

(b) satisfies the Society that there exist extraordinary circumstances that would affect or could be expected to affect the person's ability to successfully complete the licensing examination.

Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with an examination application, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed thereafter to be void.

Deferred voiding of examination result

(3) Where the false or misleading representation mentioned in subsection (2) relates to meeting the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of subsection 13 (1) and was made by the person in good faith, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination, and the successful completion of any licensing examination taken by the person is deemed to be void, if the person does not meet the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of subsection 13 (1), as the case may be, by the end of the licensing cycle in which the person registered with the Society to be eligible to take the applicable licensing examination.

Licensing examination for Class L1 licence

15. (1) A person who meets the requirement of paragraph 1 of subsection 9 (1) is entitled to take a licensing examination that is a requirement for the issuance of a Class L1 licence.

Licensing examination for Class P1 licence

(2) A person is entitled to take a licensing examination that is a requirement for a Class P1 licence if,

(a) in the case of an applicant who applies for a Class P1 licence prior to November 1, 2007, the person meets the requirements of paragraphs 1 and 3 of subsection 11 (1);

(b) in the case of an applicant who applies for a Class P1 after October 31, 2007 and prior to July 1, 2010, the person meets the requirement of paragraph 1 of section 12; and

(c) in the case of an applicant who applies for a Class P1 licence after June 30, 2010,

(i) the person meets the requirement of paragraph 1 of subsection 13 (1), or

(ii) the person is exempt from the requirement of paragraph 1 of subsection 13 (1) under clause 13 (2) (b), 13 (2) (c) or 13 (2) (d).

Licensing examination for Class P1 licence: permission to take examination

(2.1) Despite subclause (2) (c) (ii), an applicant mentioned in that subclause is not entitled to take a licensing examination that is a requirement for a Class P1 licence until after she or he has provided to the Society all documents and information, as may be required by the Society, relating to the requirement that an applicant for a Class P1 licence be of good character and the Society has notified the applicant that she or he is permitted to take the licensing examination.

Time requirement for successfully completing licensing examination

(2.2) Despite paragraph 2 of subsection 13 (1), an applicant who is permitted under subsection (2.1) to take a licensing examination that is a requirement for a Class P1 licence shall successfully complete the licensing examination by not later than the later of,

(a) two years after the end of the licensing cycle into which the applicant was registered; and

(b) 12 months after the date on which the Society notifies the applicant that she or he is permitted to take the licensing examination.

Failing licensing examination

(3) A person who qualified to take a licensing examination that is a requirement for a Class P1 licence by meeting the requirement of subparagraph i or ii of paragraph 1 of subsection 11 (1) and failed the examination on three occasions may no longer qualify to take the examination by meeting the requirement of subparagraph i or ii of paragraph 1 of subsection 11 (1).

ARTICLES OF CLERKSHIP

Requirements

16. A person who meets the following requirements is entitled to enter into service under articles of clerkship that is a requirement for the issuance of a Class L1 licence:

1. The person must be registered with the Society.

2. The person must meet the requirement of paragraph 1 of subsection 9 (1).

3. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for entering into service under articles of clerkship.

Student

17. (1) A person who has entered into service under articles of clerkship is a student.

Application of Act, *etc.* to students

(2) The following apply, with necessary modifications, to a student:

1. The following sections of the Act:

   i. Sections 33 to 40.

   ii. Section 45.

   iii. Section 49.3.

   iv. Sections 49.8 to 49.13.

   v. Sections 49.20 to 49.43.

2. Ontario Regulation 167/07, made under the Act.

3. Sections 2 and 3 of By-Law 8 [Reporting and Filing Requirements].

4. Parts I, II, III and VI of By-Law 11 [Regulation of Conduct, Capacity and Professional Competence].

5. The rules of practice and procedure.

PROFESSIONAL CONDUCT AND ADVOCACY COURSE

Requirements

17.1 (1) A person who meets the following requirements is entitled to take the professional conduct and advocacy course conducted by the Society the successful completion of which is a requirement for an exemption under clause 13 (2) (b), (c) or (d) from the requirement mentioned in paragraph 1 of subsection 13 (1):

1. The person must be registered with the Society.

2. The person must pay the applicable fees by the time specified by the Society.

3. The person must provide to the Society all documents and information, as may be required by the Society, relating to the taking of the course by the time specified by the Society.

REGISTRATION

General requirements

18. (1) A person who meets the following requirements is entitled to be registered with the Society:

1. The person must submit to the Society a completed registration form, as provided by the Society.

2. The person must pay the applicable registration fee.

3. The person must provide to the Society all documents and information, as may be required by the Society, relating to any registration requirement.

Registration after application for licence deemed abandoned

(1.1) Despite subsection (1), a person whose registration is cancelled because the person's application for a licence is deemed to have been abandoned by the person under clause 8 (4) (b) is not entitled to be registered with the Society again until the time when the person may submit another application for a licence under subsection 8 (1.2).

Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with registration, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for registration, the person's registration is deemed thereafter to be void, the successful completion of any licensing examination taken by the person is deemed thereafter to be void, the successful completion of any professional conduct course conducted by the Society taken by the person is deemed thereafter to be void and any service under articles of clerkship is deemed thereafter to be void.

Registration into licensing cycle

19. (1) A person who registers with the Society shall be registered into a specific licensing cycle.

Transition

Student-at-law in Bar Admission Course

(2) Every person who is, immediately before May 1, 2007, a student-at-law in the Bar Admission Course under By-Law 12 as it read immediately before May 1, 2007, is deemed, on May 1, 2007, to be registered with the Society and to have been registered into the licensing cycle that corresponds to the academic year in which the person was admitted to the Course.

Cancellation of registration

19.1 A person's registration with the Society is cancelled if the person's application for a licence is deemed to have been abandoned by the person under subsection 8 (4).

Availability of name of registrant to public

20. The Society may make available for public inspection the names of its registrants at a given point in time.

OATH

Required oath: licence to practise law in Ontario as a barrister and solicitor

21. (1) The required oath for an applicant for the issuance of a licence to practise law in Ontario as a barrister and solicitor is as follows:

> I accept the honour and privilege, duty and responsibility of practising law as a barrister and solicitor in the Province of Ontario. I shall protect and defend the rights and interests of such persons as may employ me. I shall conduct all cases faithfully and to the best of my ability. I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client. I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility. I shall seek to ensure access to justice and access to legal services. I shall seek to improve the administration of justice. I shall champion the rule of law and safeguard the rights and freedoms of all persons. I shall strictly observe and uphold the ethical standards that govern my profession. All this I do swear or affirm to observe and perform to the best of my knowledge and ability.

Required oath: licence to provide legal services in Ontario

(2) The required oath for an applicant for the issuance of a licence to provide legal services in Ontario is as follows:

> I accept the honour and privilege, duty and responsibility of providing legal services as a paralegal in the Province of Ontario. I shall protect and defend the rights and interests of such persons as may employ me. I shall conduct all cases faithfully and to the best of my ability. I shall neglect no one's interest and shall faithfully serve and diligently represent

the best interests of my client. I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility. I shall seek to ensure access to justice and access to legal services. I shall seek to improve the administration of justice. I shall champion the rule of law and safeguard the rights and freedoms of all persons. I shall strictly observe and uphold the ethical standards that govern my profession. All this I do swear or affirm to observe and perform to the best of my knowledge and ability.

Optional oath: oath of allegiance

22. An applicant for the issuance of a licence to practise law in Ontario as a barrister and solicitor or a licence to provide legal services in Ontario may take the following oath:

I swear or affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law.

PART III

SURRENDER OF LICENCE

Procedure for surrendering licence

23. (1) Subject to section 25, a licensee who wishes to surrender his or her licence shall apply in writing to the Society to do so.

Statutory declaration or affidavit

(2) An application under subsection (1) shall be accompanied by a statutory declaration or, if the applicant is not a resident of Canada, an affidavit, setting forth,

(a) the applicant's age, the date on which the applicant was issued his or her licence, the applicant's place of residence, the applicant's business address, if any, the number of years, if any, that the applicant has practised law in Ontario or provided legal services in Ontario and the reasons why the applicant wishes to surrender his or her licence;

(b) that all money or property held in trust for which the applicant was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property held in trust;

(c) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other appropriate licensee or, alternatively, that the applicant,

(i) has not practised law in Ontario as a barrister and solicitor or has not provided legal services in Ontario, or

(ii) has practised law in Ontario as a barrister and solicitor or has provided legal services in Ontario, but only in circumstances in which he or she is permitted under the Act to do so without a licence;

(d) that the applicant is not aware of any claim against him or her in his or her professional capacity, or in respect of his or her practice of law in Ontario or provision of legal services in Ontario; and

(e) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration or affidavit required under subsection (2).

Publication of notice of intention to surrender licence

24. (1) Subject to subsection (2), a licensee who wishes to surrender his or her licence shall, at least thirty days before the day on which he or she applies to the Society under subsection 23 (1), publish in the Ontario Reports a notice of intention to surrender a licence.

Exemption from requirement to publish notice

(2) Upon the written application of the licensee, the Society may exempt the licensee from the requirement to publish a notice of intention to surrender a licence.

Notice of Intention to Surrender Licence

(3) The notice of intention to surrender a licence which the licensee is required to publish under subsection (1) shall be in Form 4A [Notice of Intention to Surrender Licence].

Proof of publication of notice of intention to surrender licence

(4) Unless the licensee is exempted from the requirement to publish a notice of intention to surrender a licence, an application under subsection 23 (1) shall be accompanied by proof of publication, in accordance with subsection (1), of a notice of intention to surrender a licence.

Application by licensee's representative

25. (1) The Society may permit any person on behalf of the licensee to make an application under subsection 23 (1) if the Society is satisfied that the licensee for any reason is unable to make the application himself or herself.

Application of subss. 23 (2) and (3) and ss. 24, 26 and 27

(2) Subsections 23 (2) and (3) and sections 24, 26 and 27 apply, with necessary modifications, to an application made under subsection 23 (1) by a person on behalf of the licensee.

Society to consider application

26. (1) Subject to subsection (2), the Society shall consider every application made under subsection 23 (1) in respect of which the requirements set out in subsections 23 (2), 23 (3) and 24 (4) have been complied with, and the Society may consider an application made under subsection 23 (1) in respect of which the requirements set out in subsection 23 (2), 23 (3) and 24 (4) have not been complied with, and,

(a) the Society shall accept an application if it is satisfied,

(i) that all money or property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property held in trust,

(ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other appropriate licensee or, alternatively, that the applicant,

1. has not practised law in Ontario as a barrister and solicitor or has not provided legal services in Ontario, or

2. has practised law in Ontario as a barrister and solicitor or has provided legal services in Ontario, but only in circumstances in which he or she is permitted under the Act to do so without a licence;

(iii) that there are no claims against the applicant in his or her professional capacity or in respect of his or her practice of law in Ontario or provision of legal services in Ontario,

(iv) that, if the applicant has practised law in Ontario, the applicant has paid all insurance premium levies which he or she is required to pay and has filed all certificates, reports and other documents which he or she is required to file under any policy for indemnity for professional liability;

(v) that the applicant is no longer the subject of or has fully complied with all terms and conditions of any order made under Part II of the Act, any order made under Part II of the Act as it was before May 1, 2007, any order, other than an order cancelling membership, made under section 34 of the Act as that section read before February 1, 1999 and any order made under section 35 or 36 of the Act as those sections read before February 1, 1999; and

(vi) that the applicant if not exempted from the requirement to publish a notice of intention to surrender a licence has complied with subsection 24 (1); or

(b) subject to subsection (2), the Society shall reject an application if it is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(2) The Society may accept an application if it is not satisfied of the matter mentioned in subclause (1) (a) (iv) or (v) but is satisfied of the matters mentioned in subclauses (1) (a) (i), (ii), (iii) and (vi).

Society not to consider application

(3) The Society shall not consider an application made under subsection 23 (1) of this By-Law if the applicant is,

(a) the subject of an audit, investigation, search or seizure by the Society; or

(b) a party to a proceeding under Part II of the Act.

Documents, explanations, releases, *etc*.

(4) For the purposes of assisting the Society to consider the application, the applicant shall,

(a) provide to the Society such documents and explanations as the Society may require; and

(b) provide to the insurer of the Society's insurance plan such releases, directions and consent as may be required to permit the insurer to make available to the Society information relating to the payment by the applicant of insurance premium levies

and the filing by the applicant of any certificate, report or other document required under any policy for indemnity for professional liability.

Rejection of application

27. If the Society rejects an application under clause 26 (1) (b), the Society may specify terms and conditions to be complied with by the applicant as a condition of his or her application being accepted, and if the applicant complies with the terms and conditions to the satisfaction of the Society, the Society shall accept the application.

PART IV

NOT PRACTISING LAW OR PROVIDING LEGAL SERVICES

Not practising law or providing legal services

28. For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

Aboriginal Courtwork Program

1. A person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Ontario or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtwork Program.

Other profession or occupation

2. A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

Committee of adjustment

3. A person whose profession or occupation is not the provision of legal services or the practice of law, who, on behalf of another person, participates in hearings before a committee of adjustment constituted under section 44 of the Planning Act.

PART V

PROVIDING LEGAL SERVICES WITHOUT A LICENCE

Interpretation

29. In this Part,

"accredited law school" means a law school in Ontario that is accredited by the Society;

"accredited program" means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

"law firm" means,

(a) a partnership or other association of licensees each of whom holds a Class L1 licence,

(b) a professional corporation described in clause 61.0.1 (a) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;

"legal services firm" means,

(a) a partnership or other association of licensees each of whom holds a Class P1 licence,

(b) a professional corporation described in clause 61.0.1 (b) of the Act, or

(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence;

"licensee firm" means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

Providing Class P1 legal services without a licence

30. (1) Subject to subsection (2), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

In-house legal services provider

1. An individual who,

i. is employed by a single employer that is not a licensee or a licensee firm,

ii. provides the legal services only for and on behalf of the employer, and

iii. does not provide any legal services to any person other than the employer.

Legal clinics

2. An individual who,

i. is any one of the following:

A. An individual who is enrolled in a degree program at an accredited law school and volunteers in or is completing a clinical education course at a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,

B. An individual who is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,

C. An individual who is enrolled in an accredited program and is completing a field placement approved by the educational institution offering the program at a clinic, within the meaning of the Legal Aid Services Act, 1998, that is funded by Legal Aid Ontario,

ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Student legal aid services societies

3. An individual who,

i. is enrolled in a degree program at an accredited law school,

ii. volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*,

iii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

iv. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.

Student *pro bono* programs

3.1 An individual who,

i. is enrolled in a degree program at an accredited law school,

ii. provides the legal services through programs established by Pro Bono Students Canada, and

iii. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.

Not-for-profit organizations

4. An individual who,

i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,

ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and

iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Acting for friend or neighbour

5. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only for and on behalf of a friend or a neighbour,

iii. who provides the legal services in respect of not more than three matters per year, and

iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

5.1. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and

iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Member of Provincial Parliament

6. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who is a member of Provincial Parliament or his or her designated staff, and

iii. who provides the legal services for and on behalf of a constituent of the member.

Other profession or occupation

7. An individual,

i. whose profession or occupation is not the provision of legal services or the practice of law,

ii. who provides the legal services only occasionally,

iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and

iv. who is,

A. a member of the the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category,

B. a member of the Board of Canadian Registered Safety Professionals, or

C. a member of the Appraisal Institute of Canada in the designated membership category.

Individuals intending to apply or who have applied for a Class P1 licence

8. An individual,

i. whose profession or occupation, prior to May 1, 2007, was or included the provision of such legal services,

ii. who will apply, or has applied, by not later than October 31, 2007, to the Society for a Class P1 licence,

iii. who has professional liability insurance for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a holder of a Class L1 licence, and

iv. who complies with the Society's rules of professional conduct for licensees who hold a Class P1 licence.

Time limit on providing Class P1 legal services without a licence

(2) The individual mentioned in paragraph 8 of subsection (1) may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide only until,

(a) if the individual is granted a licence prior to May 1, 2008, the day the individual is granted a licence; or

(b) if the individual is not granted a licence prior to May 1, 2008, the later of,

(i) April 30, 2008,

(ii) the day the individual is granted a licence, and

(iii) the effective date of the final decision and order, with respect to the individual's application for a Class P1 licence,

(A) of the Hearing Panel, or

(B) of the Appeal Panel, if there is an appeal from the decision and order of the Hearing Panel.

Interpretation

31. (1) In this section,

"employer" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

"injured workers' group" means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

"public servant" has the meaning given it in the *Public Service of Ontario Act, 2006*;

"survivor" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

"worker" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

Office of the Worker Adviser

(2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:

1. Advise a worker, who is not a member of a trade union, or the worker's survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.

2. Act on behalf of a worker, who is not a member of a trade union, or the worker's survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Office of the Employer Adviser

(3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:

1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.

2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Injured workers' groups

(4) An individual who volunteers in an injured workers' group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.

2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Interpretation

32. (1) In this section,

"dependants" means each of the following persons who were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member's death or who, but for the member's incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.

2. Sibling or half-sibling.

3. Grandparent.

4. Grandchild;

"survivor" means a spouse, child or dependant of a deceased member of a trade union;

"workplace" means,

(a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and

(b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

Trade unions

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.

2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.

3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.

Review

33. Not later than May 1, 2009, the Society shall assess the extent to which permitting the individuals mentioned in sections 30, 31 and 32 to provide legal services without a licence is consistent with the function of the Society set out in section 4.1 of the Act and the principles set out in section 4.2 of the Act and determine whether the sections, in whole or in part, should be maintained or revoked.

Student under articles of clerkship

34. (1) A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society.

Other law student

(2) A law student may, without a licence, provide legal services in Ontario if the law student,

(a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the law student is employed by a licensee, through the licensee's professional business,

(ii) where the law student is employed by a law firm, through the law firm,

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or

(iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practise law as a barrister and solicitor through the professional corporation, or

(iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

Same

(3) A law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the law student,

(a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;

(b) provides the legal services,

(i) where the law student is employed by a licensee, through the licensee's professional business,

(ii) where the law student is employed by a legal services firm, through the legal services firm, or

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and

(c) provides the legal services,

(i) where the law student is employed by a licensee, under the direct supervision of the licensee,

(ii) where the law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or

(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.

Interpretation: "law student"

(4) For the purposes of subsections (2) and (3), "law student" means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society.

Paralegal student completing a field placement

34.1 A student enrolled in an accredited program and completing a field placement approved by the educational institution offering the program may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the student,

(a) is completing the field placement with a licensee who holds a Class P1 licence or a Class L1 licence, a legal services firm, a law firm, a professional corporation described in clause 61.0.1 (1) (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;

(b) provides the legal services,

(i) where the student is employed by a licensee, through the licensee's professional business,

(ii) where the student is employed by a legal services firm or a law firm, through the legal services firm or the law firm,

(iii) where the student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation, or

(iv) where the student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

(c) provides the legal services,

(i) where the field placement is with a licensee, under the direct supervision of the licensee,

(ii) where the field placement is with a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm,

(iii) where the field placement is with a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,

(iv) where the field placement is with a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,

(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or

(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation, or

(v) where the field placement is with the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence or a Class P1 licence and who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

PART VI

PRACTISING LAW WITHOUT A LICENCE

Practising law without a licence

35. The following may, without a licence, practise law in Ontario:

1. An individual who,

i. is authorized under Part VII of this By-Law to practise law in Ontario, and

ii. practises law in Ontario in accordance and in compliance with Part VII of this By-Law.

2. An individual,

i. who is authorized to practise law in a jurisdiction outside Ontario, and

ii. whose practice of law in Ontario is limited to practising law as counsel to a party to a commercial arbitration that is conducted in Ontario and that is "international" within the meaning prescribed by the *International Commercial Arbitration Act*.

PART VII

INTER-PROVINCIAL PRACTICE OF LAW

GENERAL

Insurance and defalcation coverage

36. (1) No person shall practise law in Ontario under this Part unless the person,

(a) has professional liability insurance for the person's practice of law in Ontario which is reasonably comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence; and

(b) has coverage for defalcations, other than the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a licensee who holds a Class L1 licence.

Insurance: exemption

(2) A person is exempt from the requirement contained in clause (1) (a) if the person meets any of the requirements for exemption from payment of insurance premium levies specified in By-Law 6 for licensees who hold a Class L1 licence.

Interpretation: "National Excess Plan"

(3) In clause (1) (b), "National Excess Plan" means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person

authorized to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law.

Interpretation: "Inter-Jurisdictional Practice Protocol"

(4) In subsection (3), "Inter-Jurisdictional Practice Protocol" means the agreement, as amended from time to time, entered into in and between 1994 and 1996 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, the Chambre des Notaires du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law.

Application of Act, *etc.*

37. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees who hold a Class L1 licence apply, with necessary modifications, to a person who practises law in Ontario under this Part, other than a person who practises law in Ontario under this Part,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or

(b) as counsel to a court or tribunal mentioned in clause (a).

Conflict

(2) In the event of a conflict between the provisions of this Part and the provisions of any other by-law, the provisions of this Part prevail.

Proof of Compliance

38. (1) A person who is not a licensee and who purports to practise law in Ontario under this Part shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society that he or she is in compliance with this Part.

Deemed failure to comply

(2) If the person fails to provide proof to the Society by the day specified by the Society, the person shall be deemed not to be in compliance with this Part.

Disclosure of information

39. (1) If a licensee is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the licensee's inter-provincial practice of law in the province or territory, the Society may, at the request of the governing body, provide to it such information in respect of the licensee as is reasonable for the Society to provide in the circumstances.

Same

(2) The Society may provide to the governing body of the legal profession in a province or territory of Canada outside Ontario information in respect of a licensee necessary to permit the governing body to determine if the licensee qualifies to practise law on an occasional basis, or on more than an occasional but less than a regular basis, in the province or territory.

PRIOR PERMISSION TO PRACTISE LAW

Application of section

40. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario under a section in this Part.

Application for permission

(2) A person who requires prior permission to practise law in Ontario under a section in this Part shall apply to the Society.

Application form and fee

(3) An application under subsection (2) shall be contained in a form provided by the Society and shall be accompanied by payment of an application fee, if any.

Documents, explanations, releases, *etc.*

(4) For the purposes of assisting the Society to consider an application under subsection (2), an applicant shall provide,

(a) to the Society, such documents and explanations as may be required; and

(b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society

(5) Every application under subsection (2) shall be considered by the Society.

Decision on application

(5.1) After considering an application under subsection (2), the Society shall determine, in accordance with the relevant section in this Part, that the applicant may practise law in Ontario or may not practise law in Ontario and so notify the applicant in writing.

Terms and conditions

(6) Permission to practise law in Ontario under a section in this Part granted to a person by the Society may include such terms and conditions as the Society considers appropriate.

Application to committee of benchers

(7) If the Society refuses to permit a person to practise law in Ontario under a section in this Part or includes terms and conditions in the permission, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the person may practise law in Ontario under the section or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the applicant notifying the Society in writing of the application within thirty days after the day the applicant receives notice of the Society's refusal to permit the applicant to practise law in Ontario under a section in this Part.

Parties

(9) The parties to an application under subsection (7) are the applicant and the Society.

Quorum

(10) An application under subsection (7) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(11) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (7) as if the consideration of the application were the hearing of an application for a licence under section 27 of the Act.

Same

(12) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (7).

Decision on application

(13) After considering an application under subsection (7), the committee of benchers shall determine, in accordance with the relevant section in this Part, that,

(a) the applicant may practise law in Ontario or may not practise law in Ontario; or

(b) the terms and conditions included by the Society in its permission to practise law in Ontario are or are not appropriate.

Terms and conditions

(14) Permission to practise law in Ontario under a section in this Part granted to a person by the committee of benchers, or a decision with respect to the terms and conditions included by the Society in its permission to practise law in Ontario, may include such terms and conditions as the committee of benchers considers appropriate.

Decision final

(15) The decision of the committee of benchers on an application under subsection (7) is final.

Duration of permission

(16) Permission to practise law in Ontario under a section in this Part granted to a person remains in effect until December 31 of the year in which permission is granted, unless otherwise provided for in this Part.

Permission automatically withdrawn

(17) Permission to practise law in Ontario under a section in this Part granted to a person is automatically withdrawn immediately the person,

(a) does not meet the requirements, if any, for permission to practise law in Ontario under the section;

(b) ceases to have authority to practise law in a province or territory of Canada outside Ontario on the basis of which authority the person was granted permission to practise law in Ontario under the section;

(c) does not comply with clause 36 (1) (a);

(d) is the subject of an order made against the person by any tribunal of the governing body of the legal profession in any province and territory of Canada in which the person is authorized to practise law,

(i) revoking the person's authorization to practise law, or

(ii) suspending the person's authorization to practise law; or

(e) practises law in Ontario in contravention of this Part.

Permission withdrawn

(17.1) Permission to practise law in Ontario under a section in this Part granted to a person may be withdrawn by the Society if the Society determines that continued permission to practise law in Ontario would be contrary to the public interest.

Application to committee of benchers

(17.2) If the Society, under subsection (17.1) withdraws a person's permission to practise law in Ontario under a section in this Part, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the permission was properly withdrawn.

Application of provisions to application to committee

(17.3) Subsections (8) to (15) apply, with necessary modifications, to an application under subsection (17.2).

Fee to practise law

(18) A person permitted to practise law in Ontario under a section in this Part may be required to, and if required to shall, pay a fee, to practise law in Ontario.

TEMPORARY PRACTICE OF LAW: LAWYERS FROM BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR AND PRINCE EDWARD ISLAND

Application of ss 42 to 45

41. Sections 42 to 45 apply to a person if the person is authorized to practise law in any of the following provinces:

1. British Columbia.

2. Alberta.

3. Saskatchewan.

4. Manitoba.

5. New Brunswick.

6. Nova Scotia.

7. Newfoundland and Labrador.

8. Prince Edward Island.

Definition: "day"

42. (1) In this section and in sections 43 to 45, "day" means a calendar day or part of a calendar day.

Interpretation: practice of law

(2) In this section and in sections 43 to 45.1, a person practises law in Ontario if the person,

(a) performs professional services for others in the capacity of a barrister or solicitor; or

(b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

Interpretation: occasional practice of law

(3) In sections 43 to 45, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Occasional practice of law: excluded activities

(4) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the maximum number of days a person is entitled to practise law in Ontario under subsection 43 (1) or permitted to practise law in Ontario under section 44.

Interpretation: economic nexus

(5) For the purposes of sections 43 and 45, subject to subsection (6), a person establishes an economic nexus with Ontario if the person,

(a) practises law in Ontario for more than the maximum number of days the person is entitled to practise law in Ontario under section 43 or permitted to practise law in Ontario under section 44, if the person is not granted permission to practise law in Ontario under subsection 45 (1) or (2);

(a.1) practises law in Ontario for more than the maximum number of days the person is permitted to practise law in Ontario under subsection 45 (1) or (2);

(b) opens an office in Ontario from which to practise law;

(c) opens or operates a trust account at a financial institution located in Ontario;

(d) receives money in trust for a client other than as permitted under section 45.1;

(e) becomes a resident in Ontario; or

(f) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(6) A person does not establish an economic nexus with Ontario only if the person practises law in Ontario from an office in Ontario that is affiliated with a law office in a province or territory of Canada outside Ontario in which the person is authorized to practise law.

Occasional practice of law: prior permission not required

43. (1) A person who is not a licensee may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

(a) is authorized to practise law in a province named in section 41;

(b) is not the subject of a criminal proceeding in any jurisdiction;

(c) is not the subject of a conduct, capacity or competence proceeding in any jurisdiction;

(d) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in any jurisdiction in which the person is authorized to practise law that affects the person’s authorization to practise law in the jurisdiction;

(e) has no record of any order having been made against the person by a tribunal of the governing body of the legal profession in any jurisdiction in which the person is or was authorized to practise law as a result of a conduct, capacity or competence proceeding, other than an order suspending or limiting the person's authorization to practise law for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;

(f) has no terms, conditions, limitations or restrictions on the person's authorization to practise law in any jurisdiction in which the person is authorized to practise law; and

(g) does not establish an economic nexus with Ontario.

Same

(2) A person who is not a licensee, if and so long as the person is authorized to practise law in a province mentioned in section 41 and does not establish an economic nexus with Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or

(b) as counsel to a court or tribunal mentioned in clause (a).

Occasional practice of law: prior permission required

44. (1) A person who is not a licensee and who is not entitled to practise law in Ontario on an occasional basis under subsection 43 (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Requirement for permission

(2) Permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

Practising on more than an occasional basis

45. (1) A person who is entitled under section 43 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the applicable requirements mentioned in section 43.

Same

(2) A person who was permitted under section 44 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society.

Practising on more that an occasional basis: economic nexus established

(3) A person who was entitled to practise law in Ontario under section 43 or who was permitted to practise law in Ontario under section 44, subsection (1) or subsection (2), who has established an economic nexus with Ontario and who has applied for a licence to practise law in Ontario as a barrister and solicitor may, with the prior permission of the Society, practise law in Ontario, subject to subsections 40 (17) and (17.1), until the later of,

(a) the date the person is granted a licence to practise law in Ontario as a barrister and solicitor; and

(b) the effective date of the final decision and order, with respect to the individual's application for a licence to practise law in Ontario as a barrister and solicitor, of the Hearing Panel or, if there is an appeal from the decision and order of the Hearing Panel, of the Appeal Panel.

Handling of money

45.1 A person who is entitled to practise law in Ontario under section 43 or who is permitted to practise law in Ontario under section 44 or 45 may, in relation to the person’s practice of law in Ontario, receive money in trust for a client provided that,

(a) the person pays the money into a trust account at a financial institution located in a province mentioned in section 41 in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

TEMPORARY PRACTICE OF LAW: LAWYERS FROM QUEBEC AND THE TERRITORIES OF CANADA

Application of ss 47 to 50

46. Sections 47 to 50 apply to a person if,

(a) the person is authorized to practise law in Quebec by the Barreau du Québec; or

(b) the person is authorized to practise law in any territory of Canada.

Interpretation: practice of law

47. (1) In this section and in sections 48 to 51, a person practises law in Ontario if the person,

(a) performs professional services for others in the capacity of a barrister or solicitor; or

(b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

Interpretation: occasional practice of law

(2) In sections 48 and 49, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario in respect of not more than ten matters.

Occasional practice of law: excluded activities

(3) The practice of law in Ontario as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the ten matters mentioned in subsection (2) for the purposes of subsection 49 (1).

Occasional practice of law: prior permission not required

48. A person who is not a licensee, if and so long as the person is authorized to practise law in a province or territory mentioned in section 46, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

(a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or

(b) as counsel to a court or tribunal mentioned in clause (a).

Occasional practice of law: prior permission required

49. (1) A person who is not a licensee and who is not entitled to practise law in Ontario on an occasional basis under subsection (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory mentioned in section 46;

(b) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada outside Ontario in which the person is authorized to practise law; and

(c) has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is authorized to practise law.

Additional requirement for permission

(2) Despite subsection (1), permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

Law specific to Ontario: competence

50. (1) A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Interpretation: "law specific to Ontario"

(2) In subsection (1), "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Handling of money

51. A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) any money received is only on account of fees for services not yet rendered for the client and the person immediately pays the money into a trust account at a financial institution located in a province or territory mentioned in section 46 in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

PRACTICE OF LAW IN ONTARIO BY NOTARIES FROM QUEBEC

Permission to practise law in Ontario

52. (1) A person who is not a licensee, who is a member of the Chambre des Notaires du Québec, who is authorized to practise the notarial profession in Quebec and who is of good character may, with the prior permission of the Society, do any of the following:

1. Give a person advice with respect to,

   i. the laws of Quebec,

   ii. the laws of Canada, and

   iii. public international law.

2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.

3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.

Interpretation: member of the Chambre des Notaires du Québec

(2) For the purposes of subsection (1), a member of the Chambre des Notaires du Québec does not include a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.

Additional requirement for permission

(3) Despite subsection (1), permission to practise law in Ontario under this section shall not be granted if to grant permission to practise law in Ontario would be contrary to the public interest.

CONSTITUTION ACT, 1982 [80]

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

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[80] Enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.), which came into force on April 17, 1982. The *Canada Act 1982*, other than Schedules A and B thereto, reads as follows:

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law.

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

4. This Act may be cited as the *Canada Act 1982*.

Constitution Act, 1982

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members. **(81)**

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be. **(82)**

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months. **(83)**

Mobility Rights

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(*a*) to move to and take up residence in any province; and

(*b*) to pursue the gaining of a livelihood in any province.

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(81) See section 50, and footnotes (40) and (42) to sections 85 and 88, of the *Constitution Act, 1867*.

(82) Replaces part of Class 1 of section 91 of the *Constitution Act, 1867*, which was repealed as set out in subitem 1(3) of the schedule to the *Constitution Act, 1982*.

(83) See footnotes (10), (41) and (42) to sections 20, 86 and 88 of the *Constitution Act, 1867*.

Constitution Act, 1982

Limitation

(3) The rights specified in subsection (2) are subject to

(*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

LEGAL RIGHTS

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(*a*) to be informed promptly of the reasons therefor;

(*b*) to retain and instruct counsel without delay and to be informed of that right; and

(*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(*a*) to be informed without unreasonable delay of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*e*) not to be denied reasonable bail without just cause;

(*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. **(84)**

OFFICIAL LANGUAGES OF CANADA

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

English and French linguistic communities in New Brunswick

16.1 (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Role of the legislature and government of New Brunswick

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed. **(85)**

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(84) Subsection 32(2) provides that section 15 shall not have effect until three years after section 32 comes into force. Section 32 came into force on April 17, 1982; therefore, section 15 had effect on April 17, 1985.

(85) Section 16.1 was added by the *Constitution Amendment, 1993 (New Brunswick)* (*see* SI/93-54).

Constitution Act, 1982

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. **(86)**

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick. **(87)**

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. **(88)**

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative. **(89)**

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament. **(90)**

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick. **(91)**

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

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(86) **See section 133 of the *Constitution Act, 1867* and footnote (67).**

(87) ***Ibid.***

(88) ***Ibid.***

(89) ***Ibid.***

(90) ***Ibid.***

(91) ***Ibid.***

(*a*) there is a significant demand for communications with and services from that office in such language; or

(*b*) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. **(92)**

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

MINORITY LANGUAGE EDUCATIONAL RIGHTS

Language of instruction

23. (1) Citizens of Canada

(*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province. **(93)**

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have

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(92) See, for example, section 133 of the *Constitution Act, 1867* and the reference to the *Manitoba Act, 1870* in footnote (67) to that section.

(93) Paragraph 23(1)(*a*) is not in force in respect of Quebec. See section 59, below.

all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Constitution Act, 1982

GENERAL

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(*b*) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. **(94)**

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools. **(95)**

Application to territories and territorial authorities

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

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(94) Paragraph 25(*b*) was repealed and re-enacted by the *Constitution Amendment Proclamation, 1983* (*see* SI/84-102). Paragraph 25(*b*) originally read as follows:

(*b*) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

(95) See section 93 of the *Constitution Act, 1867* and footnote (50).

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

APPLICATION OF CHARTER

Application of Charter

32. (1) This Charter applies

(*a*) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(*b*) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Constitution Act, 1982

CITATION

Citation

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

Français

Human Rights Code

R.S.O. 1990, CHAPTER H.19

Consolidation Period: From June 19, 2012 to the e-Laws currency date.

Last amendment: 2012, c. 7.

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Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I
FREEDOM FROM DISCRIMINATION

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity,

gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

Harassment in accommodation

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3); 2012, c. 7, s. 2 (2).

Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

Accommodation of person under eighteen

4. (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old. R.S.O. 1990, c. H.19, s. 4 (1).

Idem

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c. H.19, s. 4 (2).

Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (1).

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

Vocational associations

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 6; 1999, c. 6, s. 28 (7); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (7); 2012, c. 7, s. 5.

Sexual harassment

Harassment because of sex in accommodation

7. (1) Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building. R.S.O. 1990, c. H.19, s. 7 (1); 2012, c. 7, s. 6 (1).

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

Reprisals

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

Infringement prohibited

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

PART II
INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

10. (1) In Part I and in this Part,

"age" means an age that is 18 years or more; ("âge")

"disability" means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

"equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; ("égal")

"family status" means the status of being in a parent and child relationship; ("état familial")

"group insurance" means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; ("assurance-groupe")

"harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; ("harcèlement")

"marital status" means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; ("état matrimonial")

"record of offences" means a conviction for,

(a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment; ("casier judiciaire")

"services" does not include a levy, fee, tax or periodic payment imposed by law; ("services")

"spouse" means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage. ("conjoint") R.S.O. 1990, c. H.19, s. 10 (1); 1993, c. 27, Sched.; 1997, c. 16, s. 8; 1999, c. 6, s. 28 (8); 2001, c. 13, s. 19; 2001, c. 32, s. 27 (2, 3); 2005, c. 5, s. 32 (8-10); 2005, c. 29, s. 1 (1).

Pregnancy

(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c. H.19, s. 10 (2).

Past and presumed disabilities

(3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27 (4).

Constructive discrimination

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

Idem

(2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 11 (2); 1994, c. 27, s. 65 (1); 2002, c. 18, Sched. C, s. 2 (1); 2009, c. 33, Sched. 2, s. 35 (1).

Idem

(3) The Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c. H.19, s. 11 (3); 1994, c. 27, s. 65 (2); 2002, c. 18, Sched. C, s. 2 (2); 2009, c. 33, Sched. 2, s. 35 (2).

Discrimination because of association

12. A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 12.

Announced intention to discriminate

13. (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I. R.S.O. 1990, c. H.19, s. 13 (1).

Opinion

(2) Subsection (1) shall not interfere with freedom of expression of opinion. R.S.O. 1990, c. H.19, s. 13 (2).

Special programs

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I. R.S.O. 1990, c. H.19, s. 14 (1).

Application to Commission

(2) A person may apply to the Commission for a designation of a program as a special program for the purposes of subsection (1). 2006, c. 30, s. 1.

Designation by Commission

(3) Upon receipt of an application, the Commission may,

(a) designate the program as a special program if, in its opinion, the program meets the requirements of subsection (1); or

(b) designate the program as a special program on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1). 2006, c. 30, s. 1.

Inquiries initiated by Commission

(4) The Commission may, on its own initiative, inquire into one or more programs to determine whether the programs are special programs for the purposes of subsection (1). 2006, c. 30, s. 1.

End of inquiry

(5) At the conclusion of an inquiry under subsection (4), the Commission may designate as a special program any of the programs under inquiry if, in its opinion, the programs meet the requirements of subsection (1). 2006, c. 30, s. 1.

Expiry of designation

(6) A designation under subsection (3) or (5) expires five years after the day it is issued or at such earlier time as may be specified by the Commission. 2006, c. 30, s. 1.

Renewal of designation

(7) If an application for renewal of a designation of a program as a special program is made to the Commission before its expiry under subsection (6), the Commission may,

(a) renew the designation if, in its opinion, the program continues to meet the requirements of subsection (1); or

(b) renew the designation on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1). 2006, c. 30, s. 1.

Effect of designation, etc.

(8) In a proceeding,

(a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and

(b) evidence that the Commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1). 2006, c. 30, s. 1.

Crown programs

(9) Subsections (2) to (8) do not apply to a program implemented by the Crown or an agency of the Crown. 2006, c. 30, s. 1.

Tribunal finding

(10) For the purposes of a proceeding before the Tribunal, the Tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the Commission under this section, subject to clause (8) (b). 2006, c. 30, s. 1.

14.1 Repealed: 1995, c. 4, s. 3 (1).

Age sixty-five or over

15. A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over

is a requirement, qualification or consideration for preferential treatment. R.S.O. 1990, c. H.19, s. 15.

Canadian Citizenship

16. (1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law. R.S.O. 1990, c. H.19, s. 16 (1).

Idem

(2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence. R.S.O. 1990, c. H.19, s. 16 (2).

Idem

(3) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions. R.S.O. 1990, c. H.19, s. 16 (3).

Disability

17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability. R.S.O. 1990, c. H.19, s. 17 (1); 2001, c. 32, s. 27 (5).

Accommodation

(2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 17 (2); 1994, c. 27, s. 65 (2); 2002, c. 18, Sched. C, s. 3 (1); 2006, c. 30, s. 2 (1).

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 2 (2).

(4) Repealed: 2006, c. 30, s. 2 (3).

Special interest organizations

18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified. R.S.O. 1990, c. H.19, s. 18; 2006, c. 19, Sched. B, s. 10.

Solemnization of marriage by religious officials

18.1 (1) The rights under Part I to equal treatment with respect to services and facilities are not infringed where a person registered under section 20 of the *Marriage Act* refuses to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage, if to solemnize the marriage, allow the sacred place to be used or otherwise assist would be contrary to,

(a) the person's religious beliefs; or

(b) the doctrines, rites, usages or customs of the religious body to which the person belongs. 2005, c. 5, s. 32 (11).

Same

(2) Nothing in subsection (1) limits the application of section 18. 2005, c. 5, s. 32 (11).

Definition

(3) In this section,

"sacred place" includes a place of worship and any ancillary or accessory facilities. 2005, c. 5, s. 32 (11).

Separate school rights preserved

19. (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*. R.S.O. 1990, c. H.19, s. 19 (1).

Duties of teachers

(2) This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers. R.S.O. 1990, c. H.19, s. 19 (2).

Restriction of facilities by sex

20. (1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency. R.S.O. 1990, c. H.19, s. 20 (1).

Minimum drinking age

(2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the *Liquor Licence Act* and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years. R.S.O. 1990, c. H.19, s. 20 (2).

Recreational clubs

(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status. R.S.O. 1990, c. H.19, s. 20 (3); 1999, c. 6, s. 28 (9); 2005, c. 5, s. 32 (12).

Tobacco and young persons

(4) The right under section 1 to equal treatment with respect to goods without discrimination because of age is not infringed by the provisions of the *Smoke-Free Ontario Act* and the regulations under it relating to selling or supplying tobacco to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be. 1994, c. 10, s. 22; 2005, c. 18, s. 17.

Residential accommodation
Shared accommodation

21. (1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner. R.S.O. 1990, c. H.19, s. 21 (1).

Restrictions on accommodation, sex

(2) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex. R.S.O. 1990, c. H.19, s. 21 (2).

Prescribing business practices

(3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants. 1997, c. 24, s. 212 (1).

Restrictions for insurance contracts, etc.

22. The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 22; 1999, c. 6, s. 28 (10); 2001, c. 32, s. 27 (5); 2005, c. 5, s. 32 (13).

Employment

23. (1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (1).

Application for employment

(2) The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (2).

Questions at interview

(3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act. R.S.O. 1990, c. H.19, s. 23 (3).

Employment agencies

(4) The right under section 5 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer. R.S.O. 1990, c. H.19, s. 23 (4).

Special employment

24. (1) The right under section 5 to equal treatment with respect to employment is not infringed where,

(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and *bona fide* qualification because of the nature of the employment;

(b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;

(c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;

(d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;

(e) a judge or master is required to retire or cease to continue in office on reaching a specified age under the *Courts of Justice Act*;

(f) a case management master is required to retire on reaching a specified age under the *Courts of Justice Act*;

(g) the term of reappointment of a case management master expires on the case management master reaching a specified age under the *Courts of Justice Act*; or

(h) a justice of the peace is required to retire on reaching a specified age under the *Justices of the Peace Act*. R.S.O. 1990, c. H.19, s. 24 (1); 1999, c. 6, s. 28 (11); 2001, c. 32, s. 27 (5); 2005, c. 5, s. 32 (14); 2005, c. 29, s. 1 (2).

Reasonable accommodation

(2) No tribunal or court shall find that a qualification under clause (1) (b) is reasonable and *bona fide* unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 24 (2); 1994, c. 27, s. 65 (4); 2002, c. 18, Sched. C, s. 4 (1); 2006, c. 30, s. 3 (1).

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 3 (2).

Same

(4) Clauses 24 (1) (e), (f), (g) and (h) shall not be interpreted to suggest that a judge, master, case management master or justice of the peace is an employee for the purposes of this Act or any other Act or law. 2005, c. 29, s. 1 (3).

24.1 Repealed: 1995, c. 4, s. 3 (2).

Employee benefit and pension plans

25. (1) The right under section 5 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 25 (1).

Same

(2) The right under section 5 to equal treatment with respect to employment without discrimination because of sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the *Employment Standards Act, 2000* and the regulations thereunder. R.S.O. 1990, c. H.19, s. 25 (2); 1999, c. 6, s. 28 (12); 2005, c. 5, s. 32 (15); 2005, c. 29, s. 1 (4).

Same

(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the *Employment Standards Act, 2000* and the regulations thereunder. 2005, c. 29, s. 1 (5).

Same

(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer. 2005, c. 29, s. 1 (5).

Same

(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not “age”, “sex” or “marital status” in the *Employment Standards Act, 2000* or the regulations under it have the same meaning as those terms have in this Act. 2005, c. 29, s. 1 (5).

Same

(3) The right under section 5 to equal treatment with respect to employment without discrimination because of disability is not infringed,

(a) where a reasonable and *bona fide* distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing disability that substantially increases the risk;

(b) where a reasonable and *bona fide* distinction, exclusion or preference is made on the ground of a pre-existing disability in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an employer to employees if they are fewer than twenty-five in number. R.S.O. 1990, c. H.19, s. 25 (3); 2001, c. 32, s. 27 (5).

Compensation

(4) An employer shall pay to an employee who is excluded because of a disability from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a disability. R.S.O. 1990, c. H.19, s. 25 (4); 2001, c. 32, s. 27 (5).

Discrimination in employment under government contracts

26. (1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof that no right under section 5 will be infringed in the

course of performing the contract. R.S.O. 1990, c. H.19, s. 26 (1).

Idem: government grants and loans

(2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 5 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made. R.S.O. 1990, c. H.19, s. 26 (2).

Sanction

(3) Where an infringement of a right under section 5 is found by the Tribunal upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person. R.S.O. 1990, c. H.19, s. 26 (3); 2002, c. 18, Sched. C, s. 5.

PART III
THE ONTARIO HUMAN RIGHTS COMMISSION

The Commission

27. (1) The Ontario Human Rights Commission is continued under the name Ontario Human Rights Commission in English and Commission ontarienne des droits de la personne in French. 2006, c. 30, s. 4.

Composition

(2) The Commission shall be composed of such persons as are appointed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Appointment

(3) Every person appointed to the Commission shall have knowledge, experience or training with respect to human rights law and issues. 2006, c. 30, s. 4.

Criteria

(4) In the appointment of persons to the Commission under subsection (2), the importance of reflecting, in the composition of the Commission as a whole, the diversity of Ontario's population shall be recognized. 2006, c. 30, s. 4.

Chief Commissioner

(5) The Lieutenant Governor in Council shall designate a member of the Commission as Chief Commissioner. 2006, c. 30, s. 4.

Powers and duties of Chief Commissioner

(6) The Chief Commissioner shall direct the Commission and exercise the powers and perform the duties assigned to the Chief Commissioner by or under this Act. 2006, c. 30, s. 4.

Term of office

(7) The Chief Commissioner and other members of the Commission shall hold office for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Remuneration

(8) The Chief Commissioner and other members of the Commission shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Employees

(9) The Commission may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 4; 2006, c. 35, Sched. C, s. 132 (5).

Evidence obtained in performance of duties

(10) A member of the Commission shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the performance of duties under this Act. 2006, c. 30, s. 4.

Same, employees

(11) An employee of the Commission shall not be required to give testimony in a civil suit or any proceeding other than a proceeding under this Act as to information obtained in the performance of duties under this Act. 2006, c. 30, s. 4.

Delegation

(12) The Chief Commissioner may in writing delegate any of his or her powers, duties or functions under this Act to any member of the Anti-Racism Secretariat, the Disability Rights Secretariat or an advisory group or to any other member of the Commission, subject to such conditions as the Chief Commissioner may set out in the delegation. 2006, c. 30, s. 4.

Divisions

(13) The Commission may authorize any function of the Commission to be performed by a division of the Commission composed of at least three members of the Commission. 2006, c. 30, s. 4.

Acting Chief Commissioner

28. (1) If the Chief Commissioner dies, resigns or is unable or neglects to perform his or her duties, the Lieutenant Governor in Council may appoint an Acting Chief Commissioner to hold office for such period as may be specified in the appointment. 2006, c. 30, s. 4.

Same

(2) An Acting Chief Commissioner shall perform the duties and have the powers of the Chief Commissioner and shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Functions of Commission

29. The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the Commission's duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,

(a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;

(b) to develop and conduct programs of public information and education to,

(i) promote awareness and understanding of, respect for and compliance with this Act, and

(ii) prevent and eliminate discriminatory practices that infringe rights under Part I;

(c) to undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices;

(d) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;

(e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;

(f) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;

(g) to designate programs as special programs in accordance with section 14;

(h) to approve policies under section 30;

(i) to make applications to the Tribunal under section 35;

(j) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;

(k) to perform the functions assigned to the Commission under this or any other Act. 2006, c. 30, s. 4.

Commission policies

30. The Commission may approve policies prepared and published by the Commission to provide guidance in the application of Parts I and II. 2006, c. 30, s. 4.

Inquiries

31. (1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

(2) An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006, c. 30, s. 4.

Production of certificate

(3) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4.

Entry

(4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

(5) The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

(6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 4.

Powers on inquiry

(7) A person conducting an inquiry may,

(a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;

(b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

(c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

(d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

(e) take measurements or record by any means the physical dimensions of a place;

(f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

(g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

(8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 4.

Assistance

(9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

(10) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

(11) A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

(12) A person conducting an inquiry who removes any document or thing from a place under clause (7) (b) shall,

(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

(b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.

Admissibility of copies

(13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

(14) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

Search warrant

31.1 (1) The Commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,

(a) a person conducting an inquiry under section 31 has been denied entry to any place or asked to leave a place before concluding a search;

(b) a person conducting an inquiry under section 31 made a request for documents or things and the request was refused; or

(c) an inquiry under section 31 is otherwise obstructed or prevented. 2006, c. 30, s. 4.

Same

(2) Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is necessary for the purposes of carrying out the inquiry under section 31. 2006, c. 30, s. 4.

Powers

(3) A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,

(a) to enter any place specified in the warrant, including a dwelling; and

(b) to do any of the things specified in the warrant. 2006, c. 30, s. 4.

Conditions on search warrant

(4) A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2006, c. 30, s. 4.

Time of execution

(5) An entry under a warrant issued under this section shall be made at such reasonable times as may be specified in the warrant. 2006, c. 30, s. 4.

Expiry of warrant

(6) A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant. 2006, c. 30, s. 4.

Use of force

(7) The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant. 2006, c. 30, s. 4.

Obstruction prohibited

(8) No person shall obstruct or hinder a person in the execution of a warrant issued under this section. 2006, c. 30, s. 4.

Application

(9) Subsections 31 (11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section. 2006, c. 30, s. 4.

Evidence used in Tribunal proceedings

31.2 Despite any other Act, evidence obtained on an inquiry under section 31 or 31.1 may be received into evidence in a proceeding before the Tribunal. 2006, c. 30, s. 4.

Anti-Racism Secretariat

31.3 (1) The Chief Commissioner directs the Anti-Racism Secretariat which shall be established in accordance with subsection (2). 2006, c. 30, s. 4.

Composition

(2) The Anti-Racism Secretariat shall be composed of not more than six persons appointed by the Lieutenant Governor in Council on the advice of the Chief Commissioner. 2006, c. 30, s. 4.

Remuneration

(3) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the members of the Anti-Racism Secretariat. 2006, c. 30, s. 4.

Functions of the Secretariat

(4) At the direction of the Chief Commissioner, the Anti-Racism Secretariat shall,

(a) undertake, direct and encourage research into discriminatory practices that infringe rights under Part I on the basis of racism or a related ground and make recommendations to the Commission designed to prevent and eliminate such discriminatory practices;

(b) facilitate the development and provision of programs of public information and education relating to the elimination of racism; and

(c) undertake such tasks and responsibilities as may be assigned by the Chief Commissioner. 2006, c. 30, s. 4.

Disability Rights Secretariat

31.4 (1) The Chief Commissioner directs the Disability Rights Secretariat which shall be established in accordance with subsection (2). 2006, c. 30, s. 4.

Composition

(2) The Disability Rights Secretariat shall be composed of not more than six persons appointed by the Lieutenant Governor in Council on the advice of the Chief Commissioner. 2006, c. 30, s. 4.

Remuneration

(3) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the members of the Disability Rights Secretariat. 2006, c. 30, s. 4.

Functions of the Secretariat

(4) At the direction of the Chief Commissioner, the Disability Rights Secretariat shall,

(a) undertake, direct and encourage research into discriminatory practices that infringe rights under Part I on the basis of disability and make recommendations to the Commission designed to prevent and eliminate such discriminatory practices;

(b) facilitate the development and provision of programs of public information and education intended to promote the elimination of discriminatory practices that infringe rights under Part I on the basis of disability; and

(c) undertake such tasks and responsibilities as may be assigned by the Chief Commissioner. 2006, c. 30, s. 4.

Advisory groups

31.5 The Chief Commissioner may establish such advisory groups as he or she considers appropriate to advise the Commission about the elimination of discriminatory practices that infringe rights under this Act. 2006, c. 30, s. 4.

Annual report

31.6 (1) Every year, the Commission shall prepare an annual report on the affairs of the Commission that occurred during the 12-month period ending on March 31 of each year. 2006, c. 30, s. 4.

Report to Speaker

(2) The Commission shall submit the report to the Speaker of the Assembly no later than on June 30 in each year who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2006, c. 30, s. 4.

Copy to Minister

(3) The Commission shall give a copy of the report to the Minister at least 30 days before it is submitted to the Speaker under subsection (2). 2006, c. 30, s. 4.

Other reports

31.7 In addition to the annual report, the Commission may make any other reports respecting the state of human rights in Ontario and the affairs of the Commission as it considers appropriate, and may present such reports to the public or any other person it considers appropriate. 2006, c. 30, s. 4.

PART IV
HUMAN RIGHTS TRIBUNAL OF ONTARIO

Tribunal

32. (1) The Tribunal known as the Human Rights Tribunal of Ontario in English and Tribunal des droits de la personne de l'Ontario in French is continued. 2006, c. 30, s. 5.

Composition

(2) The Tribunal shall be composed of such members as are appointed by the Lieutenant Governor in Council in accordance with the selection process described in subsection (3). 2006, c. 30, s. 5.

Selection process

(3) The selection process for the appointment of members of the Tribunal shall be a competitive process and the criteria to be applied in assessing candidates shall include the following:

1. Experience, knowledge or training with respect to human rights law and issues.
2. Aptitude for impartial adjudication.
3. Aptitude for applying the alternative adjudicative practices and procedures that may be set out in the Tribunal rules. 2006, c. 30, s. 5.

Remuneration

(4) The members of the Tribunal shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Term of office

(5) A member of the Tribunal shall be appointed for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Chair, vice-chair

(6) The Lieutenant Governor in Council shall appoint a chair and may appoint one or more vice-chairs of the Tribunal from among the members of the Tribunal. 2006, c. 30, s. 5.

Alternate chair

(7) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 2006, c. 30, s. 5.

Same

(8) If the chair is unable to act, the alternate chair shall perform the duties of the chair and, for this purpose, has all the

powers of the chair. 2006, c. 30, s. 5.

Employees

(9) The Tribunal may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 5; 2006, c. 35, Sched. C, s. 132 (6).

Evidence obtained in course of proceeding

(10) A member or employee of the Tribunal shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the course of a proceeding before the Tribunal. 2006, c. 30, s. 5.

Same

(11) Despite subsection (10), an employee of the Tribunal may be required to give testimony in a proceeding before the Tribunal in the circumstances prescribed by the Tribunal rules. 2006, c. 30, s. 5.

Panels

33. (1) The chair of the Tribunal may appoint panels composed of one or more members of the Tribunal to exercise and perform the powers and duties of the Tribunal. 2006, c. 30, s. 5.

Person designated to preside over panel

(2) If a panel of the Tribunal holds a hearing, the chair of the Tribunal shall designate one member of the panel to preside over the hearing. 2006, c. 30, s. 5.

Reassignment of panel

(3) If a panel of the Tribunal is unable for any reason to exercise or perform the powers or duties of the Tribunal, the chair of the Tribunal may assign another panel in its place. 2006, c. 30, s. 5.

Application by person

34. (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series. 2006, c. 30, s. 5.

Late applications

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form

(3) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Two or more persons

(4) Two or more persons who are each entitled to make an application under subsection (1) may file the applications jointly, subject to any provision in the Tribunal rules that authorizes the Tribunal to direct that one or more of the applications be considered in a separate proceeding. 2006, c. 30, s. 5.

Application on behalf of another

(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,

(a) would have been entitled to bring an application under subsection (1); and

(b) consents to the application. 2006, c. 30, s. 5.

Participation in proceedings

(6) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Consent form

(7) A consent under clause (5) (b) shall be in a form specified in the Tribunal rules. 2006, c. 30, s. 5.

Time of application

(8) An application under subsection (5) shall be made within the time period required for making an application under subsection (1). 2006, c. 30, s. 5.

Application

(9) Subsections (2) and (3) apply to an application made under subsection (5). 2006, c. 30, s. 5.

Withdrawal of application

(10) An application under subsection (5) may be withdrawn by the person on behalf of whom the application is made in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Where application barred

(11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if,

(a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or

(b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. 2006, c. 30, s. 5.

Final determination

(12) For the purpose of subsection (11), a proceeding or issue has not been finally determined if a right of appeal exists and the time for appealing has not expired. 2006, c. 30, s. 5.

Application by Commission

35. (1) The Commission may apply to the Tribunal for an order under section 45.3 if the Commission is of the opinion that,

(a) it is in the public interest to make an application; and

(b) an order under section 45.3 could provide an appropriate remedy. 2006, c. 30, s. 5.

Form

(2) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Effect of application

(3) An application made by the Commission does not affect the right of a person to make an application under section 34 in respect of the same matter. 2006, c. 30, s. 5.

Applications dealt with together

(4) If a person or organization makes an application under section 34 and the Commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the Tribunal determines otherwise. 2006, c. 30, s. 5.

Parties

36. The parties to an application under section 34 or 35 are the following:

1. In the case of an application under subsection 34 (1), the person who made the application.
2. In the case of an application under subsection 34 (5), the person on behalf of whom the application is made.
3. In the case of an application under section 35, the Commission.
4. Any person against whom an order is sought in the application.
5. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

37. (1) The Commission may intervene in an application under section 34 on such terms as the Tribunal may

determine having regard to the role and mandate of the Commission under this Act. 2006, c. 30, s. 5.

Intervention as a party

(2) The Commission may intervene as a party to an application under section 34 if the person or organization who made the application consents to the intervention as a party. 2006, c. 30, s. 5.

Disclosure of information to Commission

38. Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of the Commission, the Tribunal shall disclose to the Commission copies of applications and responses filed with the Tribunal and may disclose to the Commission other documents in its custody or in its control. 2006, c. 30, s. 5.

Powers of Tribunal

39. The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it. 2006, c. 30, s. 5.

Disposition of applications

40. The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications. 2006, c. 30, s. 5.

Interpretation of Part and rules

41. This Part and the Tribunal rules shall be liberally construed to permit the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it. 2006, c. 30, s. 5.

Statutory Powers Procedure Act

42. (1) The provisions of the *Statutory Powers Procedure Act* apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules. 2006, c. 30, s. 5.

Conflict

(2) Despite section 32 of the *Statutory Powers Procedure Act*, this Act, the regulations and the Tribunal rules prevail over the provisions of that Act with which they conflict. 2006, c. 30, s. 5.

Tribunal rules

43. (1) The Tribunal may make rules governing the practice and procedure before it. 2006, c. 30, s. 5.

Required practices and procedures

(2) The rules shall ensure that the following requirements are met with respect to any proceeding before the Tribunal:

1. An application that is within the jurisdiction of the Tribunal shall not be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with the rules.

2. An application may not be finally disposed of without written reasons. 2006, c. 30, s. 5.

Same

(3) Without limiting the generality of subsection (1), the Tribunal rules may,

(a) provide for and require the use of hearings or of practices and procedures that are provided for under the *Statutory Powers Procedure Act* or that are alternatives to traditional adjudicative or adversarial procedures;

(b) authorize the Tribunal to,

(i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and

(ii) determine the order in which the issues and evidence in a proceeding will be presented;

(c) authorize the Tribunal to conduct examinations in chief or cross-examinations of a witness;

(d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;

(e) authorize the Tribunal to make or cause to be made such examinations of records and such other inquiries as it

considers necessary in the circumstances;

(f) authorize the Tribunal to require a party to a proceeding or another person to,

(i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,

(ii) provide a statement or oral or affidavit evidence, or

(iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party's control; and

(g) govern any matter prescribed by the regulations. 2006, c. 30, s. 5.

General or particular

(4) The rules may be of general or particular application. 2006, c. 30, s. 5.

Consistency

(5) The rules shall be consistent with this Part. 2006, c. 30, s. 5.

Not a regulation

(6) The rules made under this section are not regulations for the purposes of Part III of the *Legislation Act, 2006*. 2006, c. 30, ss. 5, 11.

Public consultations

(7) The Tribunal shall hold public consultations before making a rule under this section. 2006, c. 30, s. 5.

Failure to comply with rules

(8) Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the Tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter. 2006, c. 30, s. 5.

Adverse inference

(9) The Tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the Tribunal for the party to do anything under a rule made under clause (3) (f). 2006, c. 30, s. 5.

Tribunal inquiry

44. (1) At the request of a party to an application under this Part, the Tribunal may appoint a person to conduct an inquiry under this section if the Tribunal is satisfied that,

(a) an inquiry is required in order to obtain evidence;

(b) the evidence obtained may assist in achieving a fair, just and expeditious resolution of the merits of the application; and

(c) it is appropriate to do so in the circumstances. 2006, c. 30, s. 5.

Production of certificate

(2) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 5.

Entry

(3) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be evidence relevant to the application. 2006, c. 30, s. 5.

Time of entry

(4) The power to enter a place under subsection (3) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 5.

Dwellings

(5) A person conducting an inquiry shall not enter into a place or part of a place that is a dwelling without the consent

of the occupant. 2006, c. 30, s. 5.

Powers on inquiry

(6) A person conducting an inquiry may,

(a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;

(b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

(c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

(d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

(e) take measurements or record by any means the physical dimensions of a place;

(f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

(g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 5.

Written demand

(7) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 5.

Assistance

(8) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 5.

Use of force prohibited

(9) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 5.

Obligation to produce and assist

(10) A person who is requested to produce a document or thing under clause (6) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 5.

Return of removed things

(11) A person conducting an inquiry who removes any document or thing from a place under clause (6) (b) shall,

(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

(b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 5.

Admissibility of copies

(12) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 5.

Obstruction

(13) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 5.

Inquiry report

(14) A person conducting an inquiry shall prepare a report and submit it to the Tribunal and the parties to the application that gave rise to the inquiry in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Transfer of inquiry to Commission

(15) The Commission may, at the request of the Tribunal, appoint a person to conduct an inquiry under this section

and the person so appointed has all of the powers of a person appointed by the Tribunal under this section and shall report to the Tribunal in accordance with subsection (14). 2006, c. 30, s. 5.

Deferral of application

45. The Tribunal may defer an application in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Dismissal in accordance with rules

45.1 The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 34

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.

3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Orders under par. 3 of subs. (1)

(2) For greater certainty, an order under paragraph 3 of subsection (1),

(a) may direct a person to do anything with respect to future practices; and

(b) may be made even if no order under that paragraph was requested. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 35

45.3 (1) If, on an application under section 35, the Tribunal determines that any one or more of the parties to the application have infringed a right under Part I, the Tribunal may make an order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Same

(2) For greater certainty, an order under subsection (1) may direct a person to do anything with respect to future practices. 2006, c. 30, s. 5.

Matters referred to Commission

45.4 (1) The Tribunal may refer any matters arising out of a proceeding before it to the Commission if, in the Tribunal's opinion, they are matters of public interest or are otherwise of interest to the Commission. 2006, c. 30, s. 5.

Same

(2) The Commission may, in its discretion, decide whether to deal with a matter referred to it by the Tribunal. 2006, c. 30, s. 5.

Documents published by Commission

45.5 (1) In a proceeding under this Part, the Tribunal may consider policies approved by the Commission under section 30. 2006, c. 30, s. 5.

Same

(2) Despite subsection (1), the Tribunal shall consider a policy approved by the Commission under section 30 in a proceeding under this Part if a party to the proceeding or an intervenor requests that it do so. 2006, c. 30, s. 5.

Stated case to Divisional court

45.6 (1) If the Tribunal makes a final decision or order in a proceeding in which the Commission was a party or an intervenor, and the Commission believes that the decision or order is not consistent with a policy that has been approved by

the Commission under section 30, the Commission may apply to the Tribunal to have the Tribunal state a case to the Divisional Court. 2006, c. 30, s. 5.

Same

(2) If the Tribunal determines that the application of the Commission relates to a question of law and that it is appropriate to do so, it may state the case in writing for the opinion of the Divisional Court upon the question of law. 2006, c. 30, s. 5.

Parties

(3) The parties to a stated case under this section are the parties to the proceeding referred to in subsection (1) and, if the Commission was an intervenor in that proceeding, the Commission. 2006, c. 30, s. 5.

Submissions by Tribunal

(4) The Divisional Court may hear submissions from the Tribunal. 2006, c. 30, s. 5.

Powers of Divisional Court

(5) The Divisional Court shall hear and determine the stated case. 2006, c. 30, s. 5.

No stay

(6) Unless otherwise ordered by the Tribunal or the Divisional Court, an application by the Commission under subsection (1) or the stating of a case to the Divisional Court under subsection (2) does not operate as a stay of the final decision or order of the Tribunal. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision

(7) Within 30 days of receipt of the decision of the Divisional Court, any party to the stated case proceeding may apply to the Tribunal for a reconsideration of its original decision or order in accordance with section 45.7. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision

45.7 (1) Any party to a proceeding before the Tribunal may request that the Tribunal reconsider its decision in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Same

(2) Upon request under subsection (1) or on its own motion, the Tribunal may reconsider its decision in accordance with its rules. 2006, c. 30, s. 5.

Decisions final

45.8 Subject to section 45.7 of this Act, section 21.1 of the *Statutory Powers Procedure Act* and the Tribunal rules, a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable. 2006, c. 30, s. 5; 2009, c. 33, Sched. 2, s. 35 (3).

Settlements

45.9 (1) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the settlement is binding on the parties. 2006, c. 30, s. 5.

Consent order

(2) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the Tribunal may, on the joint motion of the parties, make an order requiring compliance with the settlement or any part of the settlement. 2006, c. 30, s. 5.

Application where contravention

(3) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8),

(a) within six months after the contravention to which the application relates; or

(b) if there was a series of contraventions, within six months after the last contravention in the series. 2006, c. 30, s. 5.

Late applications

(4) A person may apply under subsection (3) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form of application

(5) An application under subsection (3) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Parties

(6) Subject to the Tribunal rules, the parties to an application under subsection (3) are the following:

1. The parties to the settlement.
2. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

(7) Section 37 applies with necessary modifications to an application under subsection (3). 2006, c. 30, s. 5.

Order

(8) If, on an application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make any order that it considers appropriate to remedy the contravention. 2006, c. 30, s. 5.

Annual report

45.10 (1) The Tribunal shall make a report to the Minister not later than June 30 in each year upon the affairs of the Tribunal during the year ending on March 31 of that year. 2006, c. 30, s. 5.

Report laid in Assembly

(2) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2006, c. 30, s. 5.

PART IV.1
HUMAN RIGHTS LEGAL SUPPORT CENTRE

Centre established

45.11 (1) A corporation without share capital is established under the name Human Rights Legal Support Centre in English and Centre d'assistance juridique en matière de droits de la personne in French. 2006, c. 30, s. 6.

Membership

(2) The members of the Centre shall consist of its board of directors. 2006, c. 30, s. 6.

Not a Crown agency

(3) The Centre is not an agent of Her Majesty nor a Crown agent for the purposes of the *Crown Agency Act*. 2006, c. 30, s. 6.

Powers of natural person

(4) The Centre has the capacity and the rights, powers and privileges of a natural person, subject to the limitations set out in this Act or the regulations. 2006, c. 30, s. 6.

Independent from but accountable to Ontario

(5) The Centre shall be independent from, but accountable to, the Government of Ontario as set out in this Act. 2006, c. 30, s. 6.

Objects

45.12 The objects of the Centre are,

(a) to establish and administer a cost-effective and efficient system for providing support services, including legal services, respecting applications to the Tribunal under Part IV;

(b) to establish policies and priorities for the provision of support services based on its financial resources. 2006, c. 30, s. 6.

Provision of support services

45.13 (1) The Centre shall provide the following support services:

1. Advice and assistance, legal and otherwise, respecting the infringement of rights under Part I.

2. Legal services in relation to,

   i. the making of applications to the Tribunal under Part IV,

   ii. proceedings before the Tribunal under Part IV,

   iii. applications for judicial review arising from Tribunal proceedings,

   iv. stated case proceedings,

   v. the enforcement of Tribunal orders.

3. Such other services as may be prescribed by regulation. 2006, c. 30, s. 6.

Availability of services

(2) The Centre shall ensure that the support services are available throughout the Province, using such methods of delivering the services as the Centre believes are appropriate. 2006, c. 30, s. 6.

Board of directors

45.14 (1) The affairs of the Centre shall be governed and managed by its board of directors. 2006, c. 30, s. 6.

Composition and appointment

(2) The board of directors of the Centre shall consist of no fewer than five and no more than nine members appointed by the Lieutenant Governor in Council in accordance with the regulations. 2006, c. 30, s. 6.

Appointment of Chair

(3) A Chair designated by the Lieutenant Governor in Council will preside at meetings. 2006, c. 30, s. 6.

Remuneration

(4) The board of directors may be remunerated as determined by the Lieutenant Governor in Council. 2006, c. 30, s. 6.

Duties

(5) The board of directors of the Centre shall be responsible for furthering the objects of the Centre. 2006, c. 30, s. 6.

Delegation

(6) The board of directors may delegate any power or duty to any committee, to any member of a committee or to any officer or employee of the Centre. 2006, c. 30, s. 6.

Same

(7) A delegation shall be in writing and shall be on the terms and subject to the limitations, conditions or requirements specified in it. 2006, c. 30, s. 6.

Board to act responsibly

(8) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties. 2006, c. 30, s. 6.

Standard of care

(9) Members of the board of directors shall act in good faith with a view to the objects of the Centre and shall exercise the care, diligence and skill of a reasonably prudent person. 2006, c. 30, s. 6.

Government funding

45.15 (1) The Centre shall submit its annual budget to the Minister for approval every year in a manner and form, and at a time, specified in the regulations. 2006, c. 30, s. 6.

Approved budget included in estimates

(2) If approved by the Minister, the annual budget shall be submitted to Cabinet to be reviewed for inclusion in the estimates of the Ministry. 2006, c. 30, s. 6.

Appropriation by Legislature

(3) The money required for the purposes of this Act shall be paid out of such money as is appropriated therefor by the Legislature. 2006, c. 30, s. 6.

Centre's money not part of Consolidated Revenue Fund

45.16 The Centre's money and investments do not form part of the Consolidated Revenue Fund and shall be used by the Centre in carrying out its objects. 2006, c. 30, s. 6.

Annual report

45.17 (1) The Centre shall submit an annual report to the Minister within four months after the end of its fiscal year. 2006, c. 30, s. 6.

Fiscal year

(2) The fiscal year of the Centre shall be from April 1 to March 31 of the following year. 2006, c. 30, s. 6.

Audit

45.18 (1) The Centre must ensure that its books of financial account are audited annually in accordance with generally accepted accounting principles and a copy of the audit is given to the Minister. 2006, c. 30, s. 6.

Audit by Minister

(2) The Minister has the right to audit the Centre at any time that the Minister chooses. 2006, c. 30, s. 6.

PART V
GENERAL

Definitions, general

46. In this Act,

"Commission" means the Ontario Human Rights Commission; ("Commission")

"Minister" means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council; ("ministre")

"person" in addition to the extended meaning given it by Part VI (Interpretation) of the *Legislation Act, 2006*, includes an employment agency, an employers' organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality, a board of police commissioners established under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, and a police services board established under the *Police Services Act*; ("personne")

"regulations" means the regulations made under this Act; ("règlements")

"Tribunal" means the Human Rights Tribunal of Ontario continued under section 32; ("Tribunal")

"Tribunal rules" means the rules governing practice and procedure that are made by the Tribunal under section 43. ("règles du Tribunal") R.S.O. 1990, c. H.19, s. 46; 1994, c. 27, s. 65 (24); 2002, c. 18, Sched. C, s. 7; 2006, c. 21, Sched. F, s. 136 (2); 2006, c. 30, s. 7.

Civil remedy

46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect. 2006, c. 30, s. 8.

Same

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I. 2006, c. 30, s. 8.

Penalty

46.2 (1) Every person who contravenes section 9 or subsection 31 (14), 31.1 (8) or 44 (13) or an order of the Tribunal is guilty of an offence and on conviction is liable to a fine of not more than $25,000. 2006, c. 30, s. 8.

Consent to prosecution

(2) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General. 2006, c. 30, s. 8.

Acts of officers, etc.

46.3 (1) For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization. 2006, c. 30, s. 8.

Opinion re authority or acquiescence

(2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, the Tribunal in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1). 2006, c. 30, s. 8.

Act binds Crown

47. (1) This Act binds the Crown and every agency of the Crown. R.S.O. 1990, c. H.19, s. 47 (1).

Act has primacy over other Acts

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act. R.S.O. 1990, c. H.19, s. 47 (2).

Regulations

48. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing standards for assessing what is undue hardship for the purposes of section 11, 17 or 24;

(a.1) prescribing the manner in which income information, credit checks, credit references, rental history, guarantees or other similar business practices may be used by a landlord in selecting prospective tenants without infringing section 2, and prescribing other similar business practices and the manner of their use, for the purposes of subsection 21 (3);

(b) prescribing matters for the purposes of clause 43 (3) (g);

(c) respecting the Human Rights Legal Support Centre;

(d) governing any matter that is necessary or advisable for the effective enforcement and administration of this Act.

(e) Repealed: 2006, c. 30, s. 9 (1).

R.S.O. 1990, c. H.19, s. 48; 1994, c. 27, s. 65 (25); 1997, c. 24, s. 212 (2); 2006, c. 30, s. 9 (1).

Human Rights Legal Support Centre

(2) A regulation made under clause (1) (c) may,

(a) further define the Centre's constitution, management and structure as set out in Part IV.1;

(b) prescribe powers and duties of the Centre and its members;

(c) provide for limitations on the Centre's powers under subsection 45.11 (4);

(d) prescribe services for the purposes of paragraph 3 of subsection 45.13 (1);

(e) further define the nature and scope of support services referred to in subsection 45.13 (1);

(f) provide for factors to be considered in appointing members and specify the circumstances and manner in which they are to be considered;

(g) provide for the term of appointment and reappointment of the Centre's members;

(h) provide for the nature and scope of the annual report required under section 45.17;

(i) provide for reporting requirements in addition to the annual report;

(j) provide for personal information to be collected by or on behalf of the Centre other than directly from the individual to whom the information relates, and for the manner in which the information is collected;

(k) provide for the transfer from specified persons or entities of information, including personal information, that is relevant to carrying out the functions of the Centre;

(l) provide for rules governing the confidentiality and security of information, including personal information, the collection, use and disclosure of such information, the retention and disposal of such information, and access to and correction of such information, including restrictions on any of these things, for the purposes of the carrying out of the functions of the Centre;

(m) specify requirements and conditions for the funding of the Centre and for the Centre's budget;

(n) provide for audits of the statements and records of the Centre;

(o) determine whether or not the *Business Corporations Act*, the *Corporations Information Act* or the *Corporations Act* or any provisions of those Acts apply to the Centre;

(p) provide for anything necessary or advisable for the purposes of Part IV.1. 2006, c. 30, s. 9 (2).

PART VI
TRANSITIONAL PROVISIONS

Definitions

49. In this Part,

"effective date" means the day sections 4 and 5 of the *Human Rights Code Amendment Act, 2006* come into force; ("date d'effet")

"new Part IV" means Part IV as it reads on and after the effective date; ("nouvelle partie IV")

"old Part IV" means Part IV as it reads before the effective date. ("ancienne partie IV") 2006, c. 30, s. 10.

Orders respecting special programs

50. On the fifth anniversary of the effective date, all orders that were made by the Commission under subsection 14 (2) before the effective date shall be null and void. 2006, c. 30, s. 10.

Application of s. 32 (3)

51. Subsection 32 (3) applies to the selection and appointment of persons to the Tribunal on or after the day section 10 of the *Human Rights Code Amendment Act, 2006* comes into force. 2006, c. 30, s. 10.

Tribunal powers before effective date

52. (1) Despite anything to the contrary in the old Part IV, the Tribunal may, before the effective date,

(a) make rules in accordance with the new Part IV, including rules with respect to the reconsideration of Tribunal decisions; and

(b) when dealing with complaints that are referred to it under section 36 of the old Part IV,

(i) deal with the complaint in accordance with the practices and procedures set out in the rules made under clause (a),

(ii) exercise the powers described in section 39 of the new Part IV, and

(iii) dispose of the complaint in accordance with section 40 of the new Part IV. 2006, c. 30, s. 10.

Application

(2) Sections 41 and 42 of the new Part IV apply to rules made under clause (1) (a). 2006, c. 30, s. 10.

Tribunal decisions made before effective date

(3) Despite anything in the old Part IV, the following applies before the effective date with respect to a complaint that is referred to the Tribunal by the Commission under section 36 of the old Part IV on or after the day section 10 of the *Human Rights Code Amendment Act, 2006* comes into force:

1. Section 42 of the old Part IV does not apply to a decision of the Tribunal made with respect to the complaint.
2. Sections 45.7 and 45.8 of the new Part IV apply to a decision of the Tribunal made with respect to the complaint. 2006, c. 30, s. 10.

Complaints before Commission on effective date

53. (1) This section applies to a complaint filed with the Commission under subsection 32 (1) of the old Part IV or initiated by the Commission under subsection 32 (2) of the old Part IV before the effective date. 2006, c. 30, s. 10.

Commission powers continued for six months

(2) Subject to subsection (3) and despite the repeal of the old Part IV, during the six-month period that begins on the effective date, the Commission shall continue to deal with complaints referred to in subsection (1) in accordance with subsection 32 (3) and sections 33, 34, 36, 37 and 43 of the old Part IV and, for that purpose,

(a) the Commission has all the powers described in subsection 32 (3) and sections 33, 34, 36, 37 and 43 of the old Part IV; and

(b) the provisions referred to in clause (a) continue to apply with respect to the complaints, with necessary modifications. 2006, c. 30, s. 10.

Applications to Tribunal during six-month period

(3) Subject to subsection (4), at any time during the six-month period referred to in subsection (2), the person who made a complaint that is continued under that subsection may, in accordance with the Tribunal rules, elect to abandon the complaint and make an application to the Tribunal with respect to the subject-matter of the complaint. 2006, c. 30, s. 10.

Expedited process

(4) The Tribunal shall make rules with respect to the practices and procedures that apply to an application under subsection (3) in order to ensure that the applications are dealt with in an expeditious manner. 2006, c. 30, s. 10.

Applications to Tribunal after six-month period

(5) If, after the end of the six-month period referred to in subsection (2), the Commission has failed to deal with the merits of a complaint continued under that subsection and the complaint has not been withdrawn or settled, the complainant may make an application to the Tribunal with respect to the subject-matter of the complaint within a further six-month period after the end of the earlier six-month period. 2006, c. 30, s. 10.

New Part IV applies

(6) The new Part IV applies to an application made under subsections (3) and (5). 2006, c. 30, s. 10.

Disclosure of information

(7) Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of a party to an application under subsection (3) or (5), the Commission may disclose to the party any information obtained by the Commission in the course of an investigation. 2006, c. 30, s. 10.

Application barred

(8) No application, other than an application under subsection (3) or (5), may be made to the Tribunal if the subject-matter of the application is the same or substantially the same as the subject-matter of a complaint that was filed with the Commission under the old Part IV. 2006, c. 30, s. 10.

Settlements effected by Commission

54. Section 45.9 of the new Part IV applies to the enforcement of a settlement that,

(a) was effected by the Commission under the old Part IV before the effective date or during the six-month period referred to in subsection 53 (2); and

(b) was agreed to in writing, signed by the parties and approved by the Commission. 2006, c. 30, s. 10.

Where complaints referred to Tribunal

55. (1) This section applies to complaints that are referred to the Tribunal by the Commission under section 36 of the old Part IV before the effective date or during the six-month period referred to in subsection 53 (2). 2006, c. 30, s. 10.

New Part IV applies

(2) On and after the effective date, the new Part IV applies to a complaint described in subsection (1) as though it were an application made to the Tribunal under that Part and the Tribunal shall deal with the complaint in accordance with the new Part IV. 2006, c. 30, s. 10.

Parties

(3) The Commission,

(a) shall continue to be a party to a complaint that was referred to the Tribunal before the effective date; and

(b) subject to subsection (4), shall not be a party to a complaint referred to the Tribunal during the six-month period referred to in subsection 53 (2). 2006, c. 30, s. 10.

Same, exceptions

(4) The Commission shall continue as a party to a complaint that was referred to the Tribunal during the six-month period referred to in subsection 53 (2) if,

(a) the complaint was initiated by the Commission under subsection 32 (2) of the old Part IV; or

(b) the Tribunal sets a date for the parties to appear before the Tribunal before the end of the six-month period. 2006, c. 30, s. 10.

Same

(5) Nothing in subsection (3) shall prevent,

(a) the Tribunal from adding the Commission as a party to a proceeding under section 36 of the new Part IV; or

(b) the Commission from intervening in a proceeding with respect to a complaint described in subsection (1). 2006, c. 30, s. 10.

Regulations, transitional matters

56. (1) The Lieutenant Governor in Council may make regulations providing for transitional matters which, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of the *Human Rights Code Amendment Act, 2006*. 2006, c. 30, s. 10.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(a) providing for transitional matters relating to the changes to the administration and functions of the Commission;

(b) dealing with any problems or issues arising as a result of the repeal or enactment of a provision of this Act by the *Human Rights Code Amendment Act, 2006*. 2006, c. 30, s. 10.

Same

(3) A regulation under this section may be general or specific in its application. 2006, c. 30, s. 10.

Conflicts

(4) If there is a conflict between a provision in a regulation under this section and any provision of this Act or of any other regulation made under this Act, the regulation under this section prevails. 2006, c. 30, s. 10.

Review

57. (1) Three years after the effective date, the Minister shall appoint a person who shall undertake a review of the implementation and effectiveness of the changes resulting from the enactment of that Act. 2006, c. 30, s. 10.

Public consultations

(2) In conducting a review under this section, the person appointed under subsection (1) shall hold public consultations. 2006, c. 30, s. 10.

Report to Minister

(3) The person appointed under subsection (1) shall prepare a report on his or her findings and submit the report to the Minister within one year of his or her appointment. 2006, c. 30, s. 10.

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TRINITY WESTERN UNIVERSITY

Community Covenant Agreement

Our Pledge to One Another

Trinity Western University (TWU) is a Christian university of the liberal arts, sciences and professional studies with a vision for developing people of high competence and exemplary character who distinguish themselves as leaders in the marketplaces of life.

1. The TWU Community Covenant

The University's mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible. This identity and allegiance shapes an educational community in which members pursue truth and excellence with grace and diligence, treat people and ideas with charity and respect, think critically and constructively about complex issues, and willingly respond to the world's most profound needs and greatest opportunities.

The University is an interrelated academic community rooted in the evangelical Protestant tradition; it is made up of Christian administrators, faculty and staff who, along with students choosing to study at TWU, covenant together to form a community that strives to live according to biblical precepts, believing that this will optimize the University's capacity to fulfil its mission and achieve its aspirations.

The community covenant is a solemn pledge in which members place themselves under obligations on the part of the institution to its members, the members to the institution, and the members to one another. In making this pledge, members enter into a contractual agreement and a relational bond. By doing so, members accept reciprocal benefits and mutual responsibilities, and strive to achieve respectful and purposeful unity that aims for the advancement of all, recognizing the diversity of viewpoints, life journeys, stages of maturity, and roles within the TWU community. It is vital that each person who accepts the invitation to become a member of the TWU community carefully considers and sincerely embraces this community covenant.

2. Christian Community

The University's acceptance of the Bible as the divinely inspired, authoritative guide for personal and community life[1] is foundational to its affirmation that people flourish and most fully reach their potential when they delight in seeking God's purposes, and when they renounce and resist the things that stand in the way of those purposes being fulfilled.[2] This ongoing God-enabled pursuit of a holy life is an inner transformation that actualizes a life of purpose and eternal significance.[3] Such a distinctly Christian way of living finds its fullest expression in Christian love, which was exemplified fully by Jesus

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The Biblical passages cited in this document serve as points of reference for discussion or reflection on particular topics. TWU recognizes the necessity of giving careful consideration to the complexities involved in interpreting and applying biblical passages to contemporary issues and situations.

[1] Deuteronomy 6:4-9; Psalm 19:7-11; 2 Timothy 3:16
[2] Matthew 6:31-33; Romans 8:1-17; 12:1-2; 13:11-14; 16:19; Jude 20-23; 1 Peter 2:11; 2 Corinthians 7:1.
[3] 2 Peter 1:3-8; 1 Peter 2:9-12; Matthew 5:16; Luke 1:74-75; Romans 6:11-14, 22-23; 1 Thessalonians 3:12-13, 4:3, 5:23-24; Galatians 5:22; Ephesians 4:22-24, 5:8.

Christ, and is characterized by humility, self-sacrifice, mercy and justice, and mutual submission for the good of others.[4]

This biblical foundation inspires TWU to be a distinctly Christian university in which members and others observe and experience truth, compassion, reconciliation, and hope.[5] TWU envisions itself to be a community where members demonstrate concern for the well-being of others, where rigorous intellectual learning occurs in the context of whole person development, where members give priority to spiritual formation, and where service-oriented citizenship is modeled.

3. Community Life at TWU

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

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice[6]
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity[7]
- communicate in ways that build others up, according to their needs, for the benefit of all[8]
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death[9]
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society[10]
- observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce[11]
- exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others[12]
- encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another.[13]

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

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[4] Matthew 22:37-40; 1 Peter 5:5; Romans 13:8-10; 1 John 4:7-10; Philippians 2:1-5; 1 Corinthians 12:31b-13:8a; Romans 12:1-3, 9-10; John 15:12-13, 17; 1 John 3:10-11, 14-16; Ephesians 5:1-2,21.
[5] From TWU's "Envision the Century" Strategic Directions Document, p 5 ("Ends").
[6] Galatians 5:22-24; Colossians 3:12-17; Isaiah 58:6-8; Micah 6:8.
[7] Proverbs 12:19; Colossians 3:9; Ephesians 4:25; Leviticus 19:11; Exodus 20:16; Matthew 5:33-37.
[8] Ephesians 4:29; Proverbs 25:11; 1 Thessalonians 5:11.
[9] Genesis 1:27-28; Psalm 139:13-16; Matthew 19:14; Proverbs 23:22.
[10] Romans 13:1-7; 1 Peter 2:13-17; Genesis 1:28; Psalm 8:5-8; 2 Thessalonians 3:6-9.
[11] Genesis 2:24; Exodus 20:14,17; 1 Corinthians 7:2-5; Hebrews 13:4; Proverbs 5:15-19; Matthew 19:4-6; Malachi 2:16; Matthew 5:32.
[12] Proverbs 4:20-27; Romans 14:13,19; 1 Corinthians 8:9,12-13, 10:23-24; Ephesians 5:15-16.
[13] James 5:16; Jude 20-23; Romans 12:14-21; 1 Corinthians 13:5; Colossians 3:13.

- communication that is destructive to TWU community life and inter–personal relationships, including gossip, slander, vulgar/obscene language, and prejudice[14]
- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others[15]
- sexual intimacy that violates the sacredness of marriage between a man and a woman[16]
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event.

4. Areas for Careful Discernment and Sensitivity

A heightened level of discernment and sensitivity is appropriate within a Christian educational community such as TWU. In order to foster the kind of campus atmosphere most conducive to university ends, this covenant both identifies particular Christian standards and recognizes degrees of latitude for individual freedom. True freedom is not the freedom to do as one pleases, but rather empowerment to do what is best.[17] TWU rejects legalisms that mistakenly identify certain cultural practices as biblical imperatives, or that emphasize outward conduct as the measure of genuine Christian maturity apart from inward thoughts and motivations. In all respects, the TWU community expects its members to exercise wise decision-making according to biblical principles, carefully accounting for each individual's capabilities, vulnerabilities, and values, and considering the consequences of those choices to health and character, social relationships, and God's purposes in the world.

TWU is committed to assisting members who desire to face difficulties or overcome the consequences of poor personal choices by providing reasonable care, resources, and environments for safe and meaningful dialogue. TWU reserves the right to question, challenge or discipline any member in response to actions that impact personal or social welfare.

Wise and Sustainable Self-Care

The University is committed to promoting and supporting habits of healthy self-care in all its members, recognizing that each individual's actions can have a cumulative impact on the entire community. TWU encourages its members to pursue and promote: sustainable patterns of sleep, eating, exercise, and preventative health; as well as sustainable rhythms of solitude and community, personal spiritual disciplines, chapel and local church participation,[18] work, study and recreation, service and rest.

[14] Colossians 3:8; Ephesians 4:31.
[15] Exodus 20:15; Ephesians 4:28.
[16] Romans 1:26-27; Proverbs 6:23-35.
[17] Galatians 5:1,13; Romans 8:1-4; 1 Peter 2:16.
[18] Ephesians 5:19-20; Colossians 3:15-16; Hebrews 10:25.

Healthy Sexuality

People face significant challenges in practicing biblical sexual health within a highly sexualized culture. A biblical view of sexuality holds that a person's decisions regarding his or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to one's (future) spouse, to others in the community, and to oneself.[19] Further, according to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation.[20] Honouring and upholding these principles, members of the TWU community strive for purity of thought and relationship,[21] respectful modesty,[22] personal responsibility for actions taken, and avoidance of contexts where temptation to compromise would be particularly strong.[23]

Drugs, Alcohol and Tobacco

The use of illegal drugs is by definition illicit. The abuse of legal drugs has been shown to be physically and socially destructive, especially in its potential for forming life-destroying addictions. For these reasons, TWU members voluntarily abstain from the use of illegal drugs and the abuse of legal drugs at all times.

The decision whether or not to consume alcohol or use tobacco is more complex. The Bible allows for the enjoyment of alcohol in moderation,[24] but it also strongly warns against drunkenness and addiction, which overpowers wise and reasonable behaviour and hinders personal development.[25] The Bible commends leaders who abstained from, or were not addicted to, alcohol.[26] Alcohol abuse has many long-lasting negative physical, social and academic consequences. The Bible has no direct instructions regarding the use of tobacco, though many biblical principles regarding stewardship of the body offer guidance. Tobacco is clearly hazardous to the health of both users and bystanders. Many people avoid alcohol and/or tobacco as a matter of conscience, personal health, or in response to an addiction. With these concerns in mind, TWU members will exercise careful discretion, sensitivity to others' conscience/principles, moderation, compassion, and mutual responsibility. In addition, TWU strongly discourages participation in events where the primary purpose is the excessive consumption of alcohol.

Entertainment

When considering the myriad of entertainment options available, including print media, television, film, music, video games, the internet, theatre, concerts, social dancing, clubs, sports, recreation, and gambling, TWU expects its members to make personal choices according to biblical priorities, and with careful consideration for the immediate and long-term impact on one's own well-being, the well-being of others, and the well-being

[19] 1 Corinthians 6:18-19.
[20] Genesis 2:24; Exodus 20:14,17; 1 Corinthians 7:2-5; Hebrews 13:4; Proverbs 5:15-19; Matthew 19:4-6.
[21] Matthew 5:27-28; 1 Timothy 5:1-2; 1 Thessalonians 4:3-8; Job 31:1-4; Psalm 101:2-3.
[22] 1 Peter 3:3-4; 1 Timothy 2:9-10
[23] 1 Corinthians 6:18; 10:13; 2 Timothy 2:22; James 4:7.
[24] Deuteronomy 7:13, 11:14, Psalm 104:15; Proverbs 3:10; Isaiah 25:6; John 2:7-11; 1 Timothy 5:23.
[25] Genesis 9:20-21; Proverbs 20:1; 31:4; Isaiah 5:11; Habakkuk 2:4-5; Ephesians 5:18.
[26] Daniel 1:8, 10:3; Luke 1:15; 1 Timothy 3:3,8; Titus 2:3.

of the University. Entertainment choices should be guided by the pursuit of activities that are edifying, beneficial and constructive, and by a preference for those things that are "true, noble, right, pure, lovely, admirable, excellent, and praiseworthy,"[27] recognizing that truth and beauty appear in many differing forms, may be disguised, and may be seen in different ways by different people.

5. Commitment and Accountability

This covenant applies to all members of the TWU community, that is, administrators, faculty and staff employed by TWU and its affiliates, and students enrolled at TWU or any affiliate program. Unless specifically stated otherwise, expectations of this covenant apply to both on and off TWU's campus and extension sites. Sincerely embracing every part of this covenant is a requirement for employment. Employees who sign this covenant also commit themselves to abide by TWU Employment Policies. TWU welcomes all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University's Christian identity. Students sign this covenant with the commitment to abide by the expectations contained within the *Community Covenant*, and by campus policies published in the Academic Calendar and Student Handbook.

Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility. The University also provides formal accountability procedures to address actions by community members that represent a disregard for this covenant. These procedures and processes are outlined in TWU's Student Handbook and Employment Policies and will be enacted by designated representatives of the University as deemed necessary.

By my agreement below I affirm that:

I have accepted the invitation to be a member of the TWU community with all the mutual benefits and responsibilities that are involved;

I understand that by becoming a member of the TWU community I have also become an ambassador of this community and the ideals it represents;

I have carefully read and considered TWU's *Community Covenant* and will join in fulfilling its responsibilities while I am a member of the TWU community.

[27] Philippians 4:8.

Tab 4

SUBMISSIONS IN RESPONSE TO THE LAW SOCIETY'S INVITATION FOR SUBMISSIONS

Dear Treasurer and members of Convocation,

Some of you may know me from my role on the Law Commission of Ontario, the Ontario Bar Association, the Canadian Bar Association among other professional activities but today I am writing today in my personal capacity regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. I understand that in Ontario, this accreditation process falls within the authority of Convocation. I have serious concerns about TWU's discriminatory policies which have a direct impact on LGBTQ individuals, and the suitability of TWU as an institution to train future lawyers. I urge you to oppose -- or at the very least place conditions on -- TWU's accreditation, until/unless TWU agrees to amend its Community Covenant Agreement. In addition, I ask you to mandate an accreditation requirement that prevents any law school from discriminating on grounds protected by the *Charter* and human rights legislation, including sexual orientation, gender identity, and gender expression. This is what the Canadian Bar Association recently overwhelmingly approved of as its policy at its Mid-Winter meeting in late February 2014. ***Let me be perfectly clear- I do not oppose the right of TWU to establish a law school-- my concern is solely with their covenant that bars me as a gay married man from attending TWU. If I was married to a woman I could however attend TWU. Clearly and blatantly this is direct discrimination based on my sexual orientation.***

As you noted above, TWU mandates its students to sign the Community Covenant Agreement, on pain of expulsion. The Covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Simply put, the effect of the Covenant is to exclude LGBTQ individuals from applying to or living openly within TWU. Aside from being *prima facie* discriminatory (and inconsistent with the *Charter* and human rights legislation), this practice by TWU raises serious public interest issues, which are at the very heart of the statutory mandate of the LSUC. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest. Over the past year, a number of stakeholders (including the Canadian Council of Law Deans, the Canadian Bar Association, the Canadian Federation of Students, prominent lawyers and academics, editorial boards, and over one thousand law students) have expressed similar concerns. They have rightly pointed out that TWU's policies place a *de facto* quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the LSUC for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada. In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school.

This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest, and contrary to LSUC's regulatory mandate. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released. These developments offend more than 2014 sensibilities – they are legally incorrect:

- First, the FLSC relies heavily on a 2001 SCC judgment in a case involving TWU and the B.C. College of Teachers. Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott* departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the Covenant is to exclude anyone who lives in a committed same-sex relationship, an issue that was completely overlooked in the 2001 case.
- Second, the 2012 SCC decision in *Doré* now imposes an obligation on law societies to apply the *Charter* and provincial human rights legislation every time they make a decision. The B.C. College of Teachers was under no such express obligation in 2001. In practice, this means that private religious organizations can adopt rules that reflect their beliefs, but governments and regulators that are required to operate in the public interest are not bound to accredit such institutions if they discriminate against individuals.

Such significant inconsistencies should prompt Convocation to heavily scrutinize and not fetter itself with the FLSC's recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the legal profession in Ontario should demonstrate the same interests in rendering their decision on TWU's accreditation. Currently I am a Professor of Practice at McGill University (after having taught at the Law School at Ottawa U for over 25 years) , I am committed to equality and promoting the values of the *Charter* in all my classes and in all my interactions with my students. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice. Both McGill and Ottawa University impart these values of tolerance, inclusion and acceptance-- sadly the covenant at TWU mitigates against such acceptance and tolerance.

As Prof. Elaine Craig of Dalhousie University recently wrote in the Globe and Mail http://bit.ly/1cpmd0d, this is an important moment in Canadian legal history and

for the pursuit of justice. ***It is simply not in the public interest for the legal profession to accredit an institution with policies that discriminate against LGBTQ individuals.*** At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's accreditation. I look forward to a properly balanced and progressive decision from the LSUC on this important issue.

Sincerely,

Mark L. Berlin

BA; LL.B; M.Phil

Dear Treasurer and members of Convocation,

I hope this correspondence finds you well and that you've had a good start to the new year.

Some of you may know me from my role on the LSUC's Equity Advisory Group, among other professional activities. I am writing today in my personal capacity regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. I understand that in Ontario, this accreditation process falls within the authority of Convocation. I have serious concerns about TWU's discriminatory policies which have a direct impact on LGBTQ individuals, and the suitability of TWU as an institution to train future lawyers. I urge you to oppose -- or at the very least place conditions on -- TWU's accreditation, until/unless TWU agrees to amend its Community Covenant Agreement. In addition, I ask you to mandate an accreditation requirement that prevents any law school from discriminating on grounds protected by the *Charter* and human rights legislation, including sexual orientation, gender identity, and gender expression.
As you may be aware, TWU mandates its students to sign the Community Covenant Agreement, on pain of expulsion. The Covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Simply put, the effect of the Covenant is to exclude LGBTQ individuals from applying to or living openly within TWU. Aside from being *prima facie* discriminatory (and inconsistent with the *Charter* and human rights legislation), this practice by TWU raises serious public interest issues, which are at the very heart of the statutory mandate of the LSUC. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest. Over the past year, a number of stakeholders (including the Canadian Council of Law Deans, the Canadian Bar Association, the Canadian Federation of Students, prominent lawyers and academics, editorial boards, and over one thousand law students) have expressed similar concerns. They have rightly pointed out that TWU's policies place a *de facto* quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the LSUC for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada. In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest, and contrary

to LSUC's regulatory mandate. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released. These developments offend more than 2013 sensibilities – they are legally incorrect:

- First, the FLSC relies heavily on a 2001 SCC judgment in a case involving TWU and the B.C. College of Teachers. Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott* departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the Covenant is to exclude anyone who lives in a committed same-sex relationship, an issue that was completely overlooked in the 2001 case.
- Second, the 2012 SCC decision in *Doré* now imposes an obligation on law societies to apply the *Charter* and provincial human rights legislation every time they make a decision. The B.C. College of Teachers was under no such express obligation in 2001. In practice, this means that private religious organizations can adopt rules that reflect their beliefs, but governments and regulators that are required to operate in the public interest are not bound to accredit such institutions if they discriminate against individuals.

Such significant inconsistencies should prompt Convocation to heavily scrutinize and not fetter itself with the FLSC's recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the legal profession in ONtarioshould demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

As Prof. Elaine Craig of Dalhousie University recently wrote in the Globe and Mail (http://bit.ly/1cpmd0d), this is an important moment in Canadian legal history and for the pursuit of justice. ***It is simply not in the public interest for the legal profession to accredit an institution with policies that discriminate against LGBTQ individuals.*** At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's accreditation. I look forward to a properly balanced and progressive decision from the LSUC on this important issue.

Thank you for your time and consideration. I wish you all the best for 2014!

Sincerely,

Paul Jonathan Saguil

Further to my previous correspondence, I would commend this article to Convocation for consideration: http://www.theglobeandmail.com/news/british-columbia/inside-trinity-westerns-struggle-between-faith-and-equality/article17185258/?page=all

The evidence therein from actual TWU students about the discriminatory effect of the Community Covenant is compelling:

> When Matthew Wigmore enrolled at TWU two years ago, he did not think much of the community covenant, dismissing it as a difference of opinion. A former Bible camp student, Mr. Wigmore still wanted to be part of an educational community that values faith – and is grateful to have found that at TWU, where he lives on campus. With support from his friends in theatre, whom he calls "his rock," he stopped hiding his sexual orientation last fall.
>
> And then the covenant bothered him.
>
> "I realized I couldn't take it so much as a difference of opinion, that, in fact, excluding people who don't desire to marry the opposite gender, outside of 'God's intention,' is frankly alienating, violating and far past the point of differed opinions," he said.
>
> His friend Mr. James, an American who recently left the university and returned to California for unrelated reasons, concedes TWU is considered liberal in comparison to U.S. Christian universities. But those lines in the covenant still cut deep.
>
> "The university isn't blatantly anti-gay, but when your moral standpoint is, 'We find this unacceptable,' then it's kind of impossible for the students who are openly gay and don't agree with your theology to blend in to the community," he said.
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> "Instead of being scared of any type of criticism, TWU should learn to accept change when it is healthy, while still guarding [its] religious liberty. Trinity's climate would not deteriorate in the slightest by opening itself, fully, to gay students."
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> Mr. Wigmore said he hopes the controversy would prompt the university to rethink the covenant.
>
> "When you whittle it down to the basis of sexual morality, then suddenly people who are of a different sexual orientation feel like they're immoral and they're on a different level than the rest of the students," he said.
>
> "There are some days that I feel like I'm less of a human being than the other Trinity students because I'm of a different orientation, and I don't want to feel that way."

[full article follows]

Inside Trinity Western's struggle between faith and equality

ANDREA WOO

LANGLEY, B.C. — The Globe and Mail

Published Saturday, Mar. 01 2014, 8:00 AM EST

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A month after Matthew Wigmore came out to friends at his evangelical Christian university, he stood before his philosophy of sex and gender class to give a presentation on homosexuality and reparative therapy.

Mr. Wigmore, 19, felt vulnerable. Much of the presentation – which denounced the so-called treatment for homosexuality – was based on uncomfortable personal experiences.

However, the second-year theatre student felt bolstered by a supportive social circle at Trinity Western University, including friend and project partner Dillon James, who is also openly gay.

After a discussion that followed the October presentation, Mr. Wigmore asked if there were any dissenting viewpoints. A hand slowly went up.

"I personally read the King James Version [of the Bible]," the classmate said. "It's hard for me to see how homosexuality is the right choice. How do you expect to get into heaven?"

A hush fell over the classroom. Before Mr. Wigmore could reply, another classmate interjected: "Well, you're a woman and you're speaking right now. Technically, [The Book of] Leviticus doesn't allow that."

Added Mr. James: "And you're wearing a fur coat – something the Old Testament law wouldn't approve of either."

The conversation quickly ended, Mr. Wigmore recounts in an interview.

Trinity Western University is embroiled in controversy over a law school it hopes to open at its Langley campus. Critics point to a clause in a community covenant that requires all students, administrators and faculty to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman" and call it discriminatory on the basis of sexual orientation. They question how a law school at such a university could possibly educate students on discrimination and equality rights.

The Law Society of B.C. is seeking opinions on whether the law school should go ahead, and Monday is the deadline for submissions. After reviewing reports, statutes and public input, the law society's board of directors will then give its final word – likely at its April 11 meeting. Law societies in Nova Scotia and Ontario are also running public consultations.

Prominent lawyers, law professors, students and LGBTQ groups across Canada have decried the program as inherently discriminatory. Some firms said they would be unlikely to take TWU law school graduates, potentially limiting their mobility. Prominent Toronto lawyer Clayton Ruby called the decision by the Federation of Law Societies of Canada to approve the school "cowardly nonsense."

At Dalhousie University, law professors unanimously approved a motion urging the Nova Scotia Barristers' Society not to approve the school's law degrees. "TWU seems to have isolated just one segment of the population for second-class status," said Archibald Kaiser, the Dalhousie law professor who put forward the motion. "I don't see how it could possibly be acceptable to demean some members of its student body or to exclude some people from its faculty."

The university views the criticism as unfair. President Bob Kuhn says it is based on reckless assumptions and calls it an attack on religious freedom in Canada. Robynne Healey, a history professor, co-director of the Gender Studies Institute and chair of the university senate, says she does not recognize the university depicted in the media.

"As a scholar, as a historian, I study people from the past and am pretty conscious of the things that make up their group identity," she said. "I wonder if the people I study would recognize themselves in the way I write about them, because sometimes I don't recognize myself in the way Trinity is being represented."

Founded in 1962 and recognized as a degree-granting institution in 1979, TWU is a privately funded university that aims to combine a Christian worldview with a liberal arts foundation, according to school descriptions. More than 4,000 students attend the school's four locations – a fifth is expected to open this year – and about 900 live on campus in Langley. According to a 2013 survey of first-year students by the Canadian University Survey Consortium, TWU ranked the highest out of 35 institutions in areas including satisfaction with quality of teaching, accessibility of professors outside of class and involvement in campus activities.

The latter includes activities like the Hootenanny – a production of skits, performances and dancing that takes place every semester – and Gotcha!, a week-long, campus-wide "assassin" game in which students sneak-attack each other with water. Since joining Canadian Interuniversity Sport in 1999, the university's athletics teams – the Trinity Western Spartans – have won eight national titles in men's volleyball and women's soccer and two individual titles in track and field. Chapel is often at capacity, with about 300 people attending every morning.

The outcry began shortly after the university submitted a proposal in June, 2012, to the Federation of Law Societies of Canada and B.C.'s Ministry of Advanced Education to open the country's first faith-based law school. The three-year program would accept 60 students a year starting in September, 2016, according to the proposal.

The federation's approval committee gave the proposed law school preliminary go-ahead last December, noting that its mandate is limited to determining whether a program would produce graduates competent for admission into law society bar programs. A special advisory committee had addressed the issues relating to the community covenant agreement and concluded that "as long as the national requirement is met, there is no public-interest reason to exclude future graduates of the TWU program from law society bar admission programs," according to a Dec. 16 news release from the federation. Two days later, B.C. Advanced Education Minister Amrik Virk approved the law school.

This is not the first time TWU has been the focus of criticism for its community covenant: In 1995, the B.C. College of Teachers (BCCT) refused accreditation to the university over the same clause. The case made its way to the Supreme Court of Canada, where a judge eventually ruled in favour of the university, noting "the proper place to draw the line is generally between belief and conduct."

"Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected," the court said in a 2001 judgment. "The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of democratic society."

Given that victory, and the fact TWU has already cleared a number of regulatory hurdles this time, Mr. Kuhn said he is surprised by the current backlash. "On the other hand, I guess one should never be surprised by positions that people take up when perhaps they don't know the whole story," he said.

Mr. Kuhn graduated from what was then called Trinity Western College in 1972 with an Associate of Arts diploma. He then earned a law degree from the University of British Columbia and has been a practising lawyer for 35 years. He scoffs at suggestions the proposed law school would somehow offer substandard legal education.

"If I believe – which I do – that same-sex couples are not part of the traditional Christian worldview, and therefore constitute something that is outside of my belief system, does that make me a lesser lawyer? I've represented gays and lesbians, I've represented all kinds of people I disagree with at a personal level, and I think I've done a reasonably good job of it."

While all professors must commit to the university's statement of faith, school administrators say professors have some leeway in their approaches to teaching. Dr. Healey, the history professor, said it is her responsibility as a scholar and academic to introduce her students to all positions – not just those from a faith perspective.

"That means that we discuss issues of homosexuality, we discuss issues of gender identity in the classroom," said Dr. Healey, who previously taught in the public university system. "It's not, 'This is the right answer,' but, 'This is how we interrogate these ideas.' "

In such an environment, students feel more comfortable asking questions "that would never be asked at a public university," she said. When ideas conflict, conclusions are challenged.

"Issues of equality for women in church leadership, issues of gay marriage – these are all issues that the evangelical community as a whole is wrestling with," Dr. Healey said. "That wrestling is happening here as well. Every individual faculty member and student doesn't hold any particular position that is the same on all of those things."

When Matthew Wigmore enrolled at TWU two years ago, he did not think much of the community covenant, dismissing it as a difference of opinion. A former Bible camp student, Mr. Wigmore still wanted to be part of an educational community that values faith – and is grateful to have found that at TWU, where he lives on campus. With support from his friends in theatre, whom he calls "his rock," he stopped hiding his sexual orientation last fall.

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"I realized I couldn't take it so much as a difference of opinion, that, in fact, excluding people who don't desire to marry the opposite gender, outside of 'God's intention,' is frankly alienating, violating and far past the point of differed opinions," he said.

His friend Mr. James, an American who recently left the university and returned to California for unrelated reasons, concedes TWU is considered liberal in comparison to U.S. Christian universities. But those lines in the covenant still cut deep.

"The university isn't blatantly anti-gay, but when your moral standpoint is, 'We find this unacceptable,' then it's kind of impossible for the students who are openly gay and don't agree with your theology to blend in to the community," he said.

"Instead of being scared of any type of criticism, TWU should learn to accept change when it is healthy, while still guarding [its] religious liberty. Trinity's climate would not deteriorate in the slightest by opening itself, fully, to gay students."

Mr. Wigmore said he hopes the controversy would prompt the university to rethink the covenant.

"When you whittle it down to the basis of sexual morality, then suddenly people who are of a different sexual orientation feel like they're immoral and they're on a different level than the rest of the students," he said.

"There are some days that I feel like I'm less of a human being than the other Trinity students because I'm of a different orientation, and I don't want to feel that way."

With a report from James Bradshaw in Toronto

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6.

To whom it may concern:

Re: Trinity Western University Law School consideration by the Law Society of Upper Canada (the "Law Society")

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

THE LAW SOCIETY'S ROLE

I have concerns over the Law Society's mandate. The call for submissions states: *Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?* Based on the press, and from what I can gather, the real issue for this public hearing is TWU's code of conduct, which is not mentioned in the call for submissions.

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

I don't agree with TWU imposing such a code of conduct on law students. But it is TWU's right to do so. In my mind, the code of conduct does not produce discrimination in students. TWU has already had 12 years in graduating teachers

without any incident. I have met many graduates from TWU, including some who are gay. I have found them to surprisingly open minded, thoughtful, critical thinking, and engaging. I have never encountered any among them who have been disrespectful or discriminatory to GLBTQ individuals. So why would the Law Society deny TWU the ability to teach law?

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

THE LAW SCHOOL'S ROLE

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

DENYING TWU

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

- The Law Society is considering denying TWU on a "public interest" basis (http://www.lawsocietygazette.ca/treasurers-blog/considering-twu/). However, the BCCT denied TWU its accreditation on this exact basis and lost at the Supreme Court of Canada. Its conclusion is directly applicable: "In considering the religious precepts of TWU **instead of the actual impact of these beliefs on the public school environment**, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly." (*TWU v. BCCT*, 2001 SCC 31 at para. 43).

- TWU grads are already lawyers, teachers, doctors, politicians, businessmen, etc. BC has repeatedly approved degree granting privileges for TWU that

include doctorates, masters degrees, and professional programs for TWU – this alone negates the "it is against the public interest" argument. I cannot see what valid public interest justification there could be as to why TWU law grads cannot be a lawyer in Ontario, but be everything else. In fact, TWU undergraduates already practice law in Ontario. There is no evidence whatsoever that their practice is against the public interest.

- TWU as a private institution may ignore "Charter values" of equality in its code of conduct; but the Law Society should not ignore directly binding caselaw (*TWU v. BCCT*, 2001 SCC 31) and the *Charter* in recognizing TWU's religious freedom. What TWU is doing is legally permissible, but the Law Society defying binding the law is unconscionable and sets a bad example. The Law Society must also consider protecting minority rights- TWU's religious rights and freedoms - in its consideration. In this regard, *TWU v. BCCT*, 2001 SCC 31 is still binding law on the Law Society- it is not open to disregard its opinion by this public submission process.

- The Law Society would be punishing TWU based on exercising its right to have a code of conduct; the code of conduct is totally irrelevant to the practice of law. Justice Rand of the Supreme Court of Canada in *Roncarelli v. Duplessis* said that: "To deny or revoke a permit because a citizen exercises an unchallengeable right totally irrelevant to the sale of liquor in a restaurant is equally beyond the scope of the discretion conferred." TWU's right to impose a code of conduct is similarly totally irrelevant if the Law Society denied accrediting TWU on this basis.

- TWU would discriminate by prohibiting behaviour; the Law Society would discriminate by prohibiting an entire institution and law graduates for holding certain minority religious beliefs. In not accrediting TWU, the Law Society is effectively punishing individuals because of their association with TWU. The BC Law Society previously tried to do so when it prevented British citizens from practicing law in BC. The BC Law Society lost (*Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143). What the BC Law Society did then is similar to what is being proposed now. Such behaviour was condemned:

> *. . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to the personal characteristics of the individual or group which has the effect of imposing burdens, obligations, or disadvantages on such individual*

> *or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.* ***Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination****, while those based on an individual's merits and capacities will rarely be so classified.*

So the Law Society would be discriminating against TWU based on its sectarian rules of personal conduct. The Law Society has not has a public submission process for any of the new law schools, such as Thompson Rivers. Instead, it is putting TWU in the hot seat purely based on its sectarian nature. The Supreme Court of Canada has clearly said that such a focus is "disturbing":

> *We would add that the continuing focus of the BCCT on the sectarian nature of TWU* ***is disturbing****.* ***It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU*** *in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.* (*TWU v. BCCT*, 2001 SCC 31 at para. 42)

The exact same issue is before the Law Society. It simply cannot focus on TWU's religious nature when determining whether TWU meets educational requirements absent evidence pose any risk. **What is the "real risk" that TWU grads pose that Christian, Muslim, and Jewish lawyers do not?**

- The Law Society would not be treating TWU equally. If the Law Society would treat TWU equally, it would set up public hearings and investigations for every single law school recognized by the Federation of Law Societies that has a similar code of conduct. Further, should current lawyers who come from such schools be disbarred? Equal treatment means current practicing Ontario lawyers from Pepperdine, Brigham Young, Baylor, Notre Dame, Catholic University of America, etc. should be disbarred because their law school is contrary to the public interest? If so, this is highly troubling.

- The Law Society may be going down a slippery road. If the Law Society prohibits TWU law grads from the bar as contrary to the public interest, then why not those who went to a Christian, Catholic, Jewish, Muslim high school? Or those that belong to church, synagogue, or a mosque? Each of them has similar "codes of conduct" for attendees as TWU. Will it soon be in the public interest to deny them admission to the law society? This is why denying TWU accreditation is concerning. It signals that religious individuals are not eligible for participation in public life because of their association with religious institutions that hold a minority view on moral matters.

- The Law Society would not be treating TWU law grads equally with law graduates from other provinces. Many provincial law societies, including Alberta and Saskatchewan, will recognize TWU law grads. This means that TWU grads can be admitted in Ontario under mobility agreements, but only if they pass the bar in Alberta, for example. This is discriminatory and contrary to those agreements.

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

William J. Afham

Regardless of the merits of this school, we need less graduating law students rather than more so I'm am OPPOSED. The profession is flooded - the inevitable result is a decline in professionalism.

Stephen Bodley
1995 call
Riyadh

Craig Burley, LL.B., Barrister and Solicitor

20 Hughson Street South, Suite 203, Hamilton ON, L8N 2A1
(905) 870-0196
craig.burley@gmail.com

February 28, 2013

BY E-MAIL to jvarro@lsuc.on.ca

Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Re : Trinity Western University Accreditation

Dear Sirs and Mesdames,

I write concerning the proposed accreditation of Trinity Western University ("TWU")'s proposed law school program (the "Proposed Program"). I am mindful of the fact that the Approval Committee of the Federation of Law Societies of Canada has granted the Proposed Program a conditional approval. However, I have serious concerns about the Proposed Program's pedagogical value given the commitment that all TWU students, including those studying the Proposed Program, must make to abstaining from "sexual intimacy that violates the sacredness of marriage between a man and a woman" under the TWU Community Covenant Agreement. This commitment is enforced by TWU on penalty of dismissal or expulsion. TWU, in short, is proud to discriminate against those in same-sex marriages.

The enforcement of the Covenant Agreement, explicitly and straightforwardly discriminatory towards students and instructors in same-sex marriages, undermines the values of non-discrimination and equality that are a central pillar of Canadian and Ontario law and of the legal profession in Ontario. It is my firm belief that a law school and a legal education teaches more by what it *does* than what it *says*. No amount of dishonest preaching about tolerance can undo the toxic moral lessons that are taught by straightforward, unjust and unabashed discrimination against one's fellow citizens. Until TWU changes its Covenant Agreement, I believe its teaching environment is unfit to train Ontario lawyers and its mission and aspirations poisonous to those of the LSUC.

I am mindful, in these comments, of *Trinity Western University v. College of Teachers*, 2001 SCC 31. I am also mindful of the fact that the Court did not consider the concerns I outlined above regarding the outright discrimination that the enforcement of the Covenant Agreement creates against students and teachers in same-sex marriages. Accrediting the teaching of these values is against the public interest.

Sincerely,

Craig Burley
Barrister and Solicitor

Dear LSUC,

I fully support the accreditation of TWU's proposed law school. All the arguments I have seen or heard in the media against it, yes including those by our colleague Clayton Ruby, are specious and contrary to everything our founding fathers (yes, they were all men) stood for in at Newark in 1791 when they stood up to the tyranny of the majority rabble represented by American republicanism, the modern incarnation of which is political correctness.

Regards,
Tom Byrne
Cornwall

LSUC

RE: Trinity Western Accreditation.

Dear Mr. Varro,

Further to the recent notice concerning the accreditation of this law school as provided by the Law Society, I am writing today to provide my support in favour of accreditation.

As I understand it, Trinity has completed all necessary steps to offer classes that meet the requirements for education and it is my belief that they should be entitled to proceed accordingly based on putting forward a curriculum that will educate graduates with the analytical skills to practice law.

While I understand that some object to Trinity on the view that it has a moral code associated with attendance, I do not find that wholly different with a variety of competing moral codes that one finds in various universities across Canada, including religious universities and colleges I attended and ones that were somewhat or completely secular. The point is that there are different views in the public forum now, and I do not believe that we as a society should take any step in promoting one or denigrating another.

I do suggest that Trinity like other law schools be reviewed from time to time to ensure that their curriculum does provide courses that prepare them for the practice of law. Even when I attended Queen's thirty years ago I did think there were courses that had less to do with law and development of thought than with promoting agendas, and I would hope that all university law courses are reviewed from time to time to see that people are taught to think and analyse problems appropriately.

Yours truly,

Mark R. Frederick
Toronto, Ontario

I have serious problems with the discriminatory policies of the university. I would want a careful assessment of students' graduating from that university's understanding of human rights law. I wonder if supplementary study is an option?

Kelly Gallagher-Mackay
Research Director, People for Education

Dear Sir or Madam,

I acknowledge receipt of an e-mail from the Law Society of Upper Canada inviting me to comment on the proposal to accredit the new law school proposed for Trinity Western University (TWU) in British Columbia.

The issue in this matter appears to relate to the regulation imposed on students by TWU that requires students (including students who would be admitted to the new proposed law school) to enter into a formal covenant in which they would agree to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".

It is argued by some that the principal purpose of this "covenant" is to prohibit intimate same-sex relationships, and therefore discriminates against gay students, and is therefore contrary to the principle of equality in the area of sexual preference. Others might submit that if would also prohibit pre-marital sexual relations by students of a heterosexual nature, since those relationships would also be outside a "marriage between a man and a woman". However, their "covenant" would clearly also prohibit sexual intimacy even between two individuals of the same sex who are legally married. This prohibition would not apply to two individuals of opposite sex who are legally married, and therefore the discrimination against gay individuals is obvious.

TWU proudly claims to be a university based on "Christian" principles, but as with all religions, the "principle", like "beauty" is purely defined by the eye of the beholder. TWU's obvious attempt to penalize same-sex relationships may fall within their definition of "Christian principles", but is certainly contrary to the views and opinions of many Christians in this country. TWU cannot have any claim to the "correct" or definitive version of "Christian principles" - their views and opinions are solely their own.

Sexual preference is protected ground for anti-discrimination

laws in Canada. Same-sex marriage is legal in Canada. Therefore, in my view, TWU's actions are contrary to both the letter and the spirit of Canada's laws which prohibit discrimination on the basis of sexual preference, and also recognize the legality of same-sex marriages and common-law same-sex relationships.

Lawyers as a profession are charged with upholding the laws of Canada, and protecting those who are alleged to have contravened those laws. Our role is to stand as a champion of individual rights against the strong arm of the state. Lawyers who graduate from the proposed law school at TWU will have been taught from the outset that there is in fact no equality between individuals in spite of their sexual preference, but in fact that same-sex partners are a separate class against whom it is acceptable to discriminate. In my view, this position is completely untenable when viewing the role of the lawyer in our society.

I would urge the Law Society of Upper Canada to firmly state its opposition to the accreditation of the proposed faculty of law at TWU until such time as TWU withdraws and disowns the discriminatory covenant it insists on imposing on its students.

Yours very truly,

Brad Halls
Barrister and Solicitor
670 St. David Street South
Fergus, Ontario

February 28, 2014

Arleen Huggins
Direct Dial: 416-595-2115
Direct Fax: 416-204-2888
ahuggins@kmlaw.ca

Via Email

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Sir/Madam:

Re: Trinity Western University

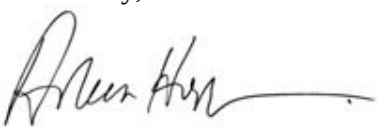
I am a member of the Law Society of Upper Canada (LSUC), called to the Bar in 1991. I have had an opportunity to review the Federation of Asian Canadian Lawyers' (FACL) recent letter to you regarding Trinity Western University (TWU), and write in my personal capacity to support FACL's letter.

I entirely endorse FACL's call for the LSUC to reject or place conditions on TWU's accreditation in Ontario and to ask the LSUC to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

As an institution founded on the Rule of Law and the promotion of equity and human rights, the LSUC should take a vocal and public position to denounce TWU's policies.

Many will be looking to the LSUC to show leadership and direction on this issue and I am sure it will impact upon my, and others, decision on the Bencher elections in 2015.

Yours truly,



Arleen Huggins
AH:me
Encl.

c. Mary Shena
Ms. Lai-Hum King (FACL)

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
Toronto, ON M5C 2B8
www.facl.ca

January 15, 2014

Mr. Thomas G. Conway
Treasurer of Law Society of Canada
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer and Members of Convocation:

RE: Concerns with the Approval of Trinity Western University's Proposed Law School Program

The Federation of Asian Canadian Lawyers (FACL) is a diverse coalition of Asian Canadian legal professionals with a mission is to promote equity, justice, and opportunity.

In furtherance of FACL's mission, FACL issued a statement on January 8, 2014 speaking out against the Federation of Law Societies of Canada's recommendation to provincial law societies to approve the Trinity Western University (TWU) law school program. Please see the attached statement.

FACL urges you to oppose or place conditions on TWU's accreditation in Ontario, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Sincerely,

FEDERATION OF ASIAN CANADIAN LAWYERS

Lai-King Hum
President

FACL Speaks Out Against the Approval of the Trinity Western University Law School in British Columbia

As an organization aimed at promoting equity, justice and opportunity, FACL strongly opposes the Federation of Law Societies of Canada's (FLSC's) recommendation that provincial law societies approve Trinity Western University's (TWU's) proposed law school program. FACL is also disturbed by the B.C. Minister of Advanced Education's hasty approval of TWU's law degree program the day after the FLSC concluded its protracted and closed-door process.

Specifically, FACL is of the view that the TWU Community Covenant Agreement, that is required to be signed by all TWU faculty, staff and students, is discriminatory. The Community Covenant Agreement includes a requirement to abstain from "sexual intimacy that violates the sacredness of marriage between a man and woman" and provides TWU with the reserved rights to question, challenge or discipline its members in response to actions that impact personal or social welfare. Past iterations of the Community Covenant included a requirement to refrain from practices that are biblically condemned, including homosexual behaviour.

The mandatory requirement to enter into the Community Covenant Agreement as a condition to school admission and employment at TWU has the effect of excluding applicants from the lesbian, gay, bisexual, transsexual and transgender communities and negatively impacts upon the human dignity of persons in these communities.

FACL believes that all law schools across Canada must create a forum for free exchange of ideas, premised upon inclusion, tolerance, respect and opportunity for equal participation. FACL further believes that law schools and the institutions that authorize the creation of these schools must act in the public interest and ensure that their policies and practices adhere to the principles of the Canadian Charter of Rights and Freedoms and provincial and territorial human rights legislation.

FACL agrees with the Council of Canadian Law Deans that, "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools."

FACL calls upon the provincial law societies and government decision makers across Canada, to act in the public interest and to reject TWU's application for accreditation of its law school program and to withdraw all approvals and consents on the basis that its policies and practices are discriminatory and contrary to the principles of human rights law in Canada. In addition, FACL advocates for the inclusion of a non-discrimination policy as a condition that all law schools must adhere to in order to maintain its accreditation.

Dear Convocation,

I am a lawyer called in both Ontario and BC presently practicing in Ontario, but I believe this issue has national import. I am writing in response to your call for submissions on the possibility of approving TWU as a law school. I welcome the opportunity to provide input and commend you for conducting this process openly.

I wish to categorically oppose any move to allow anyone to practice law on the basis of a law degree issued by TWU. There are several reasons for this:

1. Legal education should be public

Canada has a long and strong tradition of public education, and in particular of legal education. A public legal education is one of the key tools of our society to pass on collective civic values, including those of diversity, inclusiveness, division of religion from public life, and protection of both individual and minority group rights. Lawyers are not like other professionals; they are according special powers and privileges and a special role in ensuring our legal system functions as intended, including the protection of rights. Lawyers are both a fundamental part of the legal system and, indirectly, an independent arm of the state. Allowing private entities with parochial interests to educate lawyers profoundly undermines this public interest – even when the private entities are well-intentioned.

2. Legal education should be secular

Canada has a strong tradition of protection, and even promotion, of religious rights. However, it has an equally strong tradition of separating religion from public decision-making. As guardians of the legal system, lawyers must be taught to uphold this separation, regardless of their personal convictions. A legal education grounded firmly in any one religious tradition will likely be in a conflict of interest trying to teach a secular approach to the law. Religious schools should teach religion; public law schools should teach public law.

3. The Law Society has a duty to promote respect for the law and for individual and minority rights

The previous two points are in opposition to allowing any private or religious entity to provide accredited legal education in Canada; this third point relates specifically to TWU. Our law, including our Constitution, guarantees minority rights, including the rights of sexual and gender minorities. TWU has explicitly taken positions in opposition to these rights. There are two distinct problems with this. First, it is offensive to me as a human being and to many Canadians that this institution teaches intolerance towards marginalized groups such as sexual and gender minorities, and such teachings should absolutely not be given official sanction by any Law Society. Let them teach hate in private if they wish, but no public body should afford them any credibility or approval, least of all one so central to the administration of justice as the Law Society. The second problem is that an institution that doesn't take the constitutionally

guaranteed rights of sexual minorities seriously does not take the law seriously, and has no place teaching law.

4. The Law Society has a duty to promote diversity in the legal profession

Allowing an institution that deliberately marginalizes sexual and gender minorities, as well as anyone who doesn't follow its chosen religion, will not likely produce graduates from those groups. As one of only four law schools in BC (if approved), TWU would contribute to a less diverse profession. Only schools which not only admit but welcome students of all faiths, sexual orientation and identity should be permitted to graduate accredited law students.

I urge you to exercise your discretion to refuse to accept TWU graduates for admission to the Law Society of Upper Canada.

Thank you for your consideration,

Kyle C. Hyndman

BC: August 2000
Ontario: September 2013

Kyle C. Hyndman
Lawyer

Mr. Varro.

Just received the LSUC notice re Convocation's upcoming vote re the above. My thoughts:

I appreciate that the FLSC has provided only "preliminary approval" which I assume could be retracted if monitoring of its three identified concerns indicates that those concerns are not being addressed. However, I think that providing even some form of qualified approval to the TWU law program is inconsistent with LSUC's public interest mandate unless TWU has expressly altered its earlier positions and confirmed its commitment to comply with Charter and Human Rights protections.

The LSUC should be an advocate for the broader public interest in this situation. Its mandate is not the same as a court's or administrative body whose role is to impartially weigh competing interests, even if the outcome favours the rights and protections of the few over those of the broader public interest.

Convocation should oppose TWU's accreditation because some of the basic tenets of their law program conflict with broader public interest protections. If a court decides otherwise based on a balancing of those interests and the rights and freedoms of a smaller segment of the public, so be it. There's no shame in being on the losing side as long we have taken a principled position that is consistent with LSUC's mandate.

Scott Kerr

Alwin Kong
3509-30 Grand Trunk Crescent
Toronto, ON M5J 3A4
alwinckong@gmail.com
416-464-3780

March 03, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6
jvarro@lsuc.on.ca

Dear Treasurer and Members of Convocation:

RE: Concerns with the Approval of Trinity Western University's Proposed Law School Program

Further to the advisory issued by the Law Society of Upper Canada dated February 28, 2014 (Accreditation of Trinity Western's law program - Agrément du programme de droit), and in answer to the question to be put before Convocation:

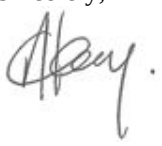
> Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

I respectfully submit that the appropriate and just answer is "NO".

Further, I support the statement issued by the Federation of Asian Canadian Lawyers (FACL) and urge Convocation to seriously consider the recommendations put forward by FACL (please see attached).

Thank you for the opportunity to voice my concerns to Convocation.

Sincerely,



Alwin Kong

FACL Speaks Out Against the Approval of the Trinity Western University Law School in British Columbia

As an organization aimed at promoting equity, justice and opportunity, FACL strongly opposes the Federation of Law Societies of Canada's (FLSC's) recommendation that provincial law societies approve Trinity Western University's (TWU's) proposed law school program. FACL is also disturbed by the B.C. Minister of Advanced Education's hasty approval of TWU's law degree program the day after the FLSC concluded its protracted and closed-door process.

Specifically, FACL is of the view that the TWU Community Covenant Agreement, that is required to be signed by all TWU faculty, staff and students, is discriminatory. The Community Covenant Agreement includes a requirement to abstain from "sexual intimacy that violates the sacredness of marriage between a man and woman" and provides TWU with the reserved rights to question, challenge or discipline its members in response to actions that impact personal or social welfare. Past iterations of the Community Covenant included a requirement to refrain from practices that are biblically condemned, including homosexual behaviour.

The mandatory requirement to enter into the Community Covenant Agreement as a condition to school admission and employment at TWU has the effect of excluding applicants from the lesbian, gay, bisexual, transsexual and transgender communities and negatively impacts upon the human dignity of persons in these communities.

FACL believes that all law schools across Canada must create a forum for free exchange of ideas, premised upon inclusion, tolerance, respect and opportunity for equal participation. FACL further believes that law schools and the institutions that authorize the creation of these schools must act in the public interest and ensure that their policies and practices adhere to the principles of the Canadian Charter of Rights and Freedoms and provincial and territorial human rights legislation.

FACL agrees with the Council of Canadian Law Deans that, "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools."

FACL calls upon the provincial law societies and government decision makers across Canada, to act in the public interest and to reject TWU's application for accreditation of its law school program and to withdraw all approvals and consents on the basis that its policies and practices are discriminatory and contrary to the principles of human rights law in Canada. In addition, FACL advocates for the inclusion of a non-discrimination policy as a condition that all law schools must adhere to in order to maintain its accreditation.

Rural Legal Services

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Phone: (613) 279-3252
Toll Free: (888) 777-8916
Fax: (613) 279-3228

February 28, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Sent by fax to: 416-947-7623

Re accreditation of Trinity Western Law School

Thank you for having sent out a notification concerning the accreditation of Trinity Western and for having given us an opportunity to comment regarding this issue. I have heard much debate about this proposed law school in the past months and have listened carefully to arguments made both for, and against the accreditation. I see this as an extremely important issue, as it goes to the heart of intellectual freedom in our society.

As noted in the report by the committee:

> TWU's requirement that all students, faculty and staff abide by its Community Covenant is the source of much of the opposition to approval of its proposed law school program. Many contacting the Federation argued that the Community Covenant discriminates against lesbian, gay, bisexual and transgendered ("LGBT") individuals. Some suggested that TWU effectively bans LGBT students and such students would thus have access to fewer law school places than other students if the TWU proposal is approved.
> 26. TWU's intention to teach law from a Christian worldview caused some to question the university's ability to ensure that graduates of the proposed law school would acquire the required understanding of professionalism and legal ethics, and the substantive knowledge competencies related to the *Canadian Charter of Rights and Freedoms* and human rights law. Concerns were also raised about academic freedom at the university and the potential impact on the critical thinking skills of those who would attend the proposed school.

This brought back for me the prior case that went to the Supreme Court concerning accreditation of TWUs teachers by the BCCT, *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31. The same arguments were raised in that case by the BCCT, as were raised by those with concerns about the accreditation of the TWU law school. In that case the Supreme Court commented that:

> At the heart of the appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.'s public school system, concerns that may be shared by society generally. While TWU is a private institution that is exempted, in part, from the B.C. human rights legislation and to which the *Canadian Charter of Rights and Freedoms* does not apply, the BCCT was entitled to look to these instruments to determine whether it would be in the public interest to allow public school teachers to be trained at TWU.

> Any potential conflict between religious freedoms and equality rights should be resolved through the proper delineation of the rights and values involved. Properly defining the scope of the rights avoids a conflict in this case. Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. The proper place to draw the line is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. Acting on those beliefs, however, is a different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT. In this way, the scope of the freedom of religion and equality rights that have come into conflict can be circumscribed and thereby reconciled.

The way I interpret this passage from the decision is that "the proof is in the pudding". In other words, discriminatory beliefs are manifested by discriminatory actions and discriminatory policies. Similar to the teachers, if TWU were to exclude members of the LGTB community from the law school and/or treat these students differently than other students or if the lawyers who graduate from TWU law school and go into practice discriminate against a client, staff member or other person in their workplace as a result of their religious beliefs concerning sexuality, then that would be cause for concern and would be grounds for a human rights complaint. However, it is wrong to assume that anyone who holds these religious views, by virtue of holding these views, discriminates against members of the LGBT community. In fact, such an assumption itself, in the absence of any evidence to support it, could be considered to be a discriminatory view of people with traditional Christian beliefs regarding human sexuality.

I note that in the report provided by the federation, that they had considered a letter they received from the CCLD. The report states that,

> In November 2012 Bill Flanagan, President of the CCLD, the organization of the deans of Canada's law schools, wrote to the Federation on behalf of the CCLD expressing concern about TWU's Community Covenant. The letter urged the Federation "to consider this covenant and its intentionally discriminatory impact on gay, lesbian and bisexual students when evaluating TWU's application to establish an approved common law program."
> 37. In subsequent public statements Dean Flanagan, speaking on behalf of the members of the CCLD, **expressed strong opposition to approval of the proposed program on the grounds that TWU discriminates against gay, lesbian and bisexual students.**
> 38. Dean Flanagan's representation that in speaking out against approval of TWU's proposed law school he was speaking on behalf of the members of the CCLD – all law deans in Canada – led some to question whether the involvement of the deans, who are also members of the CCLD, in the review of TWU's proposal could lead to a reasonable apprehension of bias.

The report goes on to state that they addressed these concerns with TWU, and that they received a response stating:

> In that correspondence TWU stated that it is committed to "fully and appropriately addressing ethics and professionalism" and further recognized "its duty to teach equality and meet its public obligations with respect to promulgating nondiscriminatory principles in its teaching of substantive law and ethics and

> professionalism." **TWU also stated that "it should be beyond question that TWU acknowledges that human rights laws and Section 15 of the *Canadian Charter of Rights and Freedoms* protect against and prohibit discrimination on the basis of sexual orientation and that "the courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.** 9 (emphasis added)

It is true that one of the fundamental principles of Christianity is that all human beings have dignity and ought to be treated by others with love and respect. Discrimination of any sort against any group of people in society would violate that fundamental principal.

Not agreeing with someone's political or moral standpoint does not constitute discrimination unless you attempt to prevent that person from holding their opposing views, or punish them for having certain beliefs. By not accrediting TWU on the basis that the school promotes traditional Christian values about human sexuality, you would be discriminating against those who hold those views and want to attend a school that promotes those values.

I therefore support the accreditation of TWU, absent any concrete evidence that there will be discriminatory practices or policies, or that discriminatory views will be taught at the law school.

Yours truly,

Anne-Marie Langan

I do not think Convocation, or the LSUC should recognize or accredit a "degree" from an institution of "higher" learning which condones/encourages disrespect for same sex relationships. Thank you for your attention to this.

Wanda Leanne MacMillan
(Markham) (Toronto)

Please note that I support the accreditation of Trinity Western University Law School by the Law Society of Upper Canada, for the reasons set out by the Federation of Law Societies of Canada's Approval Committee report. That report sets out a sound, coherent and eminently sensible analysis and recommendation on the matter of TWU's law school proposal.

Thank you for your consideration

Michal E. Minkowski
Call: 1986

DAVIS WEBB LLP
LAWYERS

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L6V 1A3

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ESTABLISHED IN 1916
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Ronald K. Webb QC
Neil G. Davis
Christopher L. Moon
Ronald S. Sleightholm
Ellen S. Pefhany
Barbara Skupien
James S.G. Macdonald

COUNSEL
Hon. William G. Davis PC CC QC

February 28, 2014

Via E-mail: jvarro@lsuc.on.ca

The Benchers
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Email: Chris.Moon@DavisWebb.com

Dear Benchers:

Re: **Accreditation of Trinity Western's Law Program**

I write in connection with deliberation by Convocation to determine the accreditation of Trinity Western University's (TWU) proposed law school program.

In my view the Law Society should accredit the Trinity Western University law program. I am informed that the program meets all the requisite academic requirements.

The controversy stems from a requirement that those attending the law program take an oath to not engage in activities that are otherwise legal, but are morally unacceptable to the university's tenets. That is not a basis to deny accreditation.

Our diverse society must recognize that individual moral and religious choice must be respected so long as it does not impact adversely on others, promote illegal activities, or result in illegal discrimination. Part of that freedom is to attend an education institution which holds to a moral standard that the individual believes is proper. Trinity Western is such an institution.

Every education institution has a philosophical basis on which it operates, even if that is to remain completely secular and not representative of the beliefs or mores of any group. That basis itself is a moral standard that results in activities occurring within its structure that are held to be immoral or objectionable to people with different standards and beliefs. To deny students with a different standards or beliefs the opportunity to become a lawyer if they attend a school that upholds those standard would be an exclusionary and discriminatory act; one that should not prevail in Canadian society.

Yours very truly,

Christopher Moon

CLM:pd
H:\C Moon Misc\Letter to LSUC re Trinity Western.2014-02-28.wpd

February 28, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Mr. Varro

Re: Trinity Western University Accreditation

The following is my submission regarding the accreditation of TWU.

I am a member of the LSUC (1978) and the Law Society of Alberta (1995) currently living and working as an employed lawyer in Calgary. The views expressed in this letter are my own and not those of my employer.

I have followed the debates regarding TWU accreditation with interest and have read the FLSC Committee Approval report, the TWU Application, the TWU community covenant, and some of the related correspondence including that of the CCLD. I have also re-read Trinity Western University v. British Columbia College of Teachers, [2001] 1 S.C.R. 772.

The issue, as framed in the materials I have seen, is whether it is in the public interest for a private evangelical Christian university to offer an accredited professional program that will lead to professionals, in this case legal professionals, serving the general public in a society that values diversity and has laws guaranteeing many freedoms and rights including the right not to be discriminated against because of sexual orientation when that university adheres to, and requires its students to adhere to, values that view sex, other that between a man and a woman in wedlock, as wrong and view homosexuality as also wrong.

Whatever anyone may think about evangelical Christians or about anyone else, including the GLBT community, the TWU application should be decided on established legal principle and the facts.

As to established principle, I do not see how the TWU application can be rejected on this ground. It seems to me that the SCC, in TWU v. BCCT, has settled the essential question of principle and specifically as it relates to TWU. The quotes in the footnote below from the case summary head note published by the SCC with the judgment say it all in regard to principle as it relates to the issue before Convocation. [1] Of course those who would

[1] *"At the heart of the appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.'s public school system, concerns that may be shared by*

wish a different outcome from that judgment will pick at differences and no two cases are totally identical but I can find no difference that is meaningful.

The essence of the SCC judgment, as I read it, is that belief in religion is one thing and conduct is another. In other words, despite their religious beliefs and the religious values of the university, graduates of TWU professional programs must conduct themselves in accordance with all applicable laws and professional requirements and the curriculum must support that outcome.

Taking the question of principle as settled, the only real question now open to Convocation to ask itself, is whether there is today any evidence that TWU graduates will fail to honour their professional obligations once they enter the workforce and that the

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society generally. While TWU is a private institution that is exempted, in part, from the B.C. human rights legislation and to which the Canadian Charter of Rights and Freedoms does not apply, the BCCT was entitled to look to these instruments to determine whether it would be in the public interest to allow public school teachers to be trained at TWU. Any potential conflict between religious freedoms and equality rights should be resolved through the proper delineation of the rights and values involved. Properly defining the scope of the rights avoids a conflict in this case. Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. The proper place to draw the line is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. Acting on those beliefs, however, is a different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT. In this way, the scope of the freedom of religion and equality rights that have come into conflict can be circumscribed and thereby reconciled.

Here, by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU, the BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU. Consideration of human rights values in the present circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values. Freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation. Even though the requirement that students and faculty adopt the Community Standards creates differential treatment since it would probably prevent homosexual students and faculty from applying, one must consider the true nature of the undertaking and the context in which this occurs. Many Canadian universities have traditions of religious affiliations. Religious public education rights are enshrined in s. 93 of the Constitution Act, 1867. Moreover, a religious institution is not considered to breach B.C. human rights legislation where it prefers adherents of its religious constituency. It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the public school system. There is nothing in the TWU Community Standards, which are limited to prescribing conduct of members while at TWU, that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. The evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct. In addition, there is no basis for the inference that the fifth year of the TWU program conducted under the aegis of SFU corrected any attitudes which were the subject of the BCCT's concerns. On the evidence, the participation of SFU had nothing to do with the apprehended intolerance from its inception to the present. Rather, the cooperation was intended to support a small faculty in its start-up stage."

curriculum will not support that outcome. The SCC, in 2001, noted the absence of any evidence to support the concerns voiced against accrediting the TWU professional program in that case. Those concerns were substantially the same as those expressed in the present case.

I have seen nothing in any of the materials I have reviewed that suggests TWU graduates will fail to honour their professional obligations or that the curriculum will fail to instill the required professional standards. Indeed I took some comfort from a passage in the TWU community covenant that seems not to have been mentioned in other materials, namely, the commitment to *"be responsible citizens both locally and globally who respect authorities, **submit to the laws of this country**, and contribute to the welfare of creation and society". (emphasis added)*

It has been more than a decade since the SCC ruled in the TWU case. TWU has been turning out professionals – teachers and nurses -- every year. If there was now any actual problem of turning out graduates that adhere to professional standards one would expect to see the evidence.

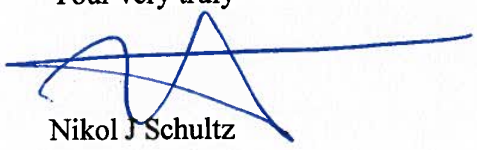
The absence of any evidence does not surprise me. There are many lawyers and judges in Canada who are devout adherents to their religions. They are all sworn to uphold the law. There are many other professionals – teachers, health professionals, accountants, engineers, architects, surveyors, etc. – who are also devout adherents to their religions. They are all bound to adhere to applicable professional standards.

The FLSC gave the application extensive scrutiny, including running it through a special advisory committee, and found no basis in fact on which the application should be rejected.

I find the letter of November 20, 2012 from the CCLD to be disappointing in its failure to do what law deans are bound to espouse to their students as the essence of the legal method, namely, define the issue, identify the applicable legal principle(s), ascertain the facts and apply the law to the facts unemotionally with intellectual rigour without fear or favour. Instead the law deans have chosen to lob a terse statement of "concern" that serves only to fuel the debate while adding nothing to its resolution.

In conclusion, I look to Convocation to do what the CCLD seems incapable of doing: apply the law to the facts of this case without fear or favour. This is what every lawyer is sworn to do regardless of what views we may hold about evangelical Christians or anyone else.

Your very truly



Nikol J Schultz

Trinity Western's policies regarding the LGBT community are clearly discriminatory. They are attempting to cast homosexuality as a behavioural trait. It is not. The Supreme Court has been clear and correct about this issue by declaring sexual orientation as an analogous ground under s. 15 of the Charter. A law school that excludes gays is just as reprehensible as a law school that excludes minorities, women, the disabled, etc. This is not even up for debate.

As lawyers, we hold a responsibility to the public to stand up for injustice. If the Law Society accredits this discriminatory institution, I will be ashamed to be a lawyer in this province.

Donna N. Wilson
Barrister & Solicitor
Toronto ON

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

February 28, 2014

I am a retired member of the Society having been called in 1972.

The TWU issue boils down to whether this private school's rules of conduct can be the basis for refusal of accreditation of the school's academic program.

I submit these are separate issues. The school's academic program should be judged on academic standards, and its rules for student conduct should be judged on the requirements of the law for such rules.

It appears to me that a lot of the discussion has confused the issues by asserting that arguments against the rules of conduct are also arguments against accreditation.

In summary, I submit that the battle between those who oppose and those who support the rules of conduct must settle that conflict on a different battlefield and in a different forum than accreditation.

Raymond S. Wright.

Good afternoon,

As a member of the LSUC, I write to lend my voice in opposition to the accreditation of Trinity Western University.

This school has chosen to actively discriminate against individuals in a manner that oppresses their individual liberties and rights. It also links itself to a specific religious denomination, to the exclusion of others. I find it difficult to believe that this school is capable of separating such discriminatory policies, and underlying discriminatory doctrine, from the education they will provide.

Moreover, in light of the existing barriers that exist for historically disadvantaged groups to entering the profession, permitting this school's imposition of an additional barrier on the basis of orientation, and on faith, will exacerbate existing imbalances and send a terrible message to the public about our profession.

I urge Convocation to reject Trinity Western University as an accredited school of law. Access to the law, including to the bar, is a right that should be shared equally, and without discrimination on the basis of orientation or faith.

Mat Brechtel

Dear Benchers of the Law Society of Upper Canada,

I am writing in response to your request for input on whether to grant recognition to the proposed law school at Trinity Western University. As a law student I have heard a great deal about this issue and feel that it is important that the issue be given proper consideration.

As you are surely familiar with it I will not repeat the wording of the Community Covenant provision in question however I do wish to discuss it. In treating legally married homosexual couples in a way that is different from legally married heterosexual couples through the Community Covenant the definition of discrimination is clearly met. However it is worth noting that this is not a total ban on homosexual students or a call for them to be the target of any sort of negative campaign or even a call for them to reject their homosexual identity. It is asking a certain part of the LGBT community to refrain from certain actions for the few years they are at the school. This is important in considering the relationship between this provision and the other rights and interests at play. Those who are part of TWU also have the right to express their religious beliefs and this should not be ignored either. What behavior is right and wrong is an important part of the beliefs of any religion. To allow either freedom from discrimination or freedom of religion to trump the other would undermine both. As such balancing these rights is a more appropriate approach.

I will turn to how to balance these interests in a moment but I should also mention that in the discussion around this I have heard it argued that even if the clause is narrow it has a much larger effect. Stories are told of LGBT students who did not feel comfortable at TWU. The problem is that any bigger effect is going to change and it seems to vary from person to person as there are also those who did feel they had a place in the TWU community. No school is going to be the right fit for everyone and to say that a narrow clause leads to all of these other things seems to me to be speculation based on assumptions (mainly about Christianity) with anecdotal support at best. As such it is best to consider the clause for what it actually is.

Given what the provision actually is, it does not even directly affect the entire LGBT community, refusing recognition would be an over-reaction and inappropriate. The reaction is perhaps understandable as LGBT individuals have only be recognized as worthy of protection fairly recently so that concern is on people’s minds but concern should not drive us too far the other way. Additionally allowing the law school to exist without recognition is essentially a refusal to allow existence as graduates would not be able to be accredited in their chosen field so the law school would not be able to fulfill its purpose.

I am concerned that refusal to allow recognition would undermine freedom of religion in a significant way. The message that could and I think likely would be taken from it is that religious beliefs are not legitimate, and in fact form grounds for discriminatory consideration in approval processes, unless they comply with what the majority of society thinks at a given time. That is no protection at all. As such I urge the Law Society to give deference to the provisional approval given by the Federation of Law Societies after close consideration and recognize the proposed TWU law school. Thank your for your consideration and close attention to these issues.

Sincerely,

Kelsey Horning

I have just recently learned of the impending accreditation of the law program at Trinity Western University and am quite disturbed that the Law Society of Upper Canada, which I am a member of would be seriously recognizing this program.

I have learned upon review of their "Community Covenant Agreement – Our Pledge to One Another" that sexual intimacy is only accepted between in a marriage between a man and a woman.

This covenant notes amongst other things:

> "In keeping with biblical and TWU ideals, community members voluntarily abstain from the following actions...sexual intimacy that violates the sacredness of marriage between a man and a woman"

Would acceptance into the law program at Trinity Western University be denied if the University knew upon application the candidate was gay or lesbian. I do not know but I have my suspicions.

I have always believed the LSUC was an inclusive organization and promoted equality within the law and our community. In fact, I just completed the LSUC annual report and questions about my gender, religion and sexuality were asked. I took those questions to mean the LSUC was seeking to promote activities in areas where those in certain groups were underrepresented. I hope I am right and I certainly hope that the LSUC was not using those statistics to find ways exclude those who do not have the same beliefs as what the bible states.

My daughter is a lesbian and I am very proud of her. I do not judge her qualities of a human being or her ability to be an educated professional based on her sexuality and would suggest that any organization that would question a student's sexual orientation for other than the purpose of inclusiveness would not be welcome or accredited by the LSUC.

It is time for the LSUC to take a stand.

J.R. Huber Professional Corporation

St. Thomas, Ontario

Joel R. (Jack) Huber

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March 1, 2014

Law Society of Upper Canada
130 Queen Street West
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Dear Treasurer and Members of Convocation:

We are writing on behalf of the student governments at four of Ontario's law schools. Collectively, our organizations represent approximately 4,500 future members of the legal profession. Prompting this letter is Trinity Western University's (TWU's) application to launch a law degree program recognized for admission to the bar of the Province of Ontario. The accreditation process falls within the statutory authority of the Law Society of Upper Canada (LSUC).

As you are likely aware, a number of stakeholders have expressed their concerns with TWU's proposed law school. Most of these concerns relate to TWU's Community Covenant Agreement, which requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Canadian Council of Law Deans,[3] the Ontario Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers, and hundreds of law students[6] have raised concerns related to the compatibility of this covenant with the *Charter of Rights and Freedoms* and provincial human rights legislation.

Specifically, it has been argued that TWU's law school's policies discriminate against LGBTQ students by constraining the number of law school places available to them, and that TWU is not an appropriate venue for teaching constitutional law, legal ethics, or promoting academic freedom. We are not as ideally positioned as other groups to comment on these issues, and will refrain from doing so. However, we would like to take this opportunity to raise three views related to TWU's proposed law school that have arisen among the constituencies we represent.

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[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

[3] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[4] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[6] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

First, in the wake of the Federation of Law Societies' of Canada's (FLSC's) recommendation for approval of the TWU program, we would like to ask LSUC to fully consider the points of view of all stakeholders that have engaged this issue. We urge the law society to ensure that concerns for diversity, anti-discrimination, representativeness in the classroom, and access to the legal profession figure largely in its deliberations. Access to justice bears significant links with improved access to legal education for minority groups. In recent years, law schools have taken tremendous strides to improve the accessibility, representativeness, and practicality of legal education. We would like to see the leadership of the profession demonstrate the same interests and reach a balanced conclusion on this issue. As future lawyers, our peers are committed to equality and promoting the values of the *Charter* within their practices. We believe that our colleagues from new law schools should be exposed to a learning environment consistent with this objective. We trust that any determination by LSUC will respect the law society's own *Charter* obligations.

Second, for many aspiring lawyers, it is important that the law society's decision reflect the job market realities facing new law school graduates. This issue has been acknowledged by LSUC, regardless of how effectively it has been mitigated. Approving new law school cohorts will further dilute the job prospects for new graduates, and today's graduates carry historically high levels of debt due to the cost of law school tuition. Many students feel that the current shortage of articling places for new graduates justifies some restraint in the accreditation of new programs of study for admission to the Ontario bar. Disregarding this issue would be inconsistent with prior LSUC intentions.

Finally, we hope that the significant level of student engagement on the TWU issue will encourage further consultations with students and the youth of the profession. Many in our community are frustrated by what they perceive as the law society's disinterest in student views on issues which bear direct financial, equality, or other consequences for current and future law students. For instance, LSUC's recent announcement of Law Practice Program (LPP) as an alternative to articling is contrary to the input of student groups, and may yet have a detrimental impact on the economics of articling and cost of legal education. We are interested in hearing how the input of student organizations has factored into the TWU discussion at the law society, as the FLSC review was notably opaque.

In closing, thank you for your attention to this important issue. Should you have any questions, or if you wish to correspond with us as a group, please email legalandlitvpi@osgoode.yorku.ca. We look forward to a balanced and progressive outcome on the TWU law school issue that gives primacy to the concerns of the Ontario profession's youth, its aspiring members, and those looking to pursue a legal career.

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March 1, 2014

Law Society of Upper Canada
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Toronto, ON M5H 2N6

Dear Treasurer and Members of Convocation:

We are writing in our capacities as leaders of LGBTQ affinity groups and organizations at Canadian law schools regarding Trinity Western University's (TWU's) proposed law school. TWU's program is currently seeking the approval of the provincial law societies for admission to the bar of each jurisdiction. In Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). We have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. We urge you to refuse or qualify TWU's accreditation. We also encourage you to advance an accreditation requirement in Ontario that prevents any accredited law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to our concerns is the fact that TWU forces its students to sign a 'Community Covenant Agreement' requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[3] the Canadian Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers and academics, law school faculty councils,[6] editorial boards,[7] and over one thousand law students.[8] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing

[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

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[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[6] Four law school faculty councils have passed motions condemning the Community Covenant Agreement: Osgoode (http://bit.ly/1lCEL16), Queen's (http://bit.ly/1e7xLrj), UBC (http://bit.ly/1laMBSW), and Dalhousie (http://bit.ly/1flQgX2). Faculty from Alberta's 2 law schools have also expressed their concerns in an open letter (http://bit.ly/1flYkL6).

[7] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[8] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

legal ethics, or promoting academic freedom. Our agreement with these views is underscored by the fact that many of our LGBTQ peers have been subjected to systemic discrimination, exclusion, and hatred related to their sexual orientation. It would be tremendously disheartening to see the profession's leadership support policies which perpetuate these unfortunate experiences and constrain access to legal education for LGBTQ individuals. Institutionalizing the targeted humiliation of LGBTQ individuals is unacceptable.

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see some law societies remain silent on this issue - deferring to Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that we learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade.

Further, the FLSC's protracted and closed-door process was patently not in the public interest – contrary to the mandate of the LSUC. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key finding on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

In 2014, the FLSC's decision offends more than contemporary Canadian sensibilities. Our understanding is that it is also legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[9] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[10] departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.
- Second, the 2012 SCC decision in *Doré*[11] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt LSUC to heavily scrutinize the FLSC recommendation.

The law schools we attend have made a priority of making legal education more accessible, practical, and representative of Canadian society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. As future lawyers, we are committed to equality and promoting the values of the *Charter* within our practices. Our experiences have taught us that such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. We strongly recommend that you oppose or place conditions on TWU's

[9] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

[10] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

[11] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

LSUC accreditation. We look forward to a properly balanced and progressive decision from the law society on this important issue, and appreciate this opportunity to provide input to the process. Should you wish to correspond with us as a group, please email outlawscanada@gmail.com.

Sincerely,

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The Honourable John Gerretsen, Attorney General of Ontario,
11th Floor, 720 Bay Street, Toronto, ON, M5G 2K1; jgerretsen.mpp@liberal.ola.org

Jonathan M. Richardson, Chair, Young Lawyers' Division (East), Ontario Bar Association,
Augustine Bater Binks LLP, Suite 1100, 141 Laurier Avenue West, Ottawa, ON, K1P 5J3; jmr@abblaw.ca

Sarah L. Kirshin-Neilans, Chair, Young Lawyers' Division (Southwest), Ontario Bar Association,
Nicholson Smith & Partners LLP, 295 Central Avenue, London, ON, N6B 2C9; skneilans@nicholsonsmith.com

Omar Ha-Redeye, Co-Chair, Young Lawyers' Division (Toronto), Ontario Bar Association,
20 Carlton Street, Unit 126, Toronto, ON, M5B 1J2; Omar@FleetStreetLaw.com

Christine A. Jackson, Co-Chair, Young Lawyers' Division (Toronto), Ontario Bar Association,
Osler, Hoskin & Harcourt LLP, 100 King Street West,1 First Canadian Place, Suite 4600, P.O. Box 50, Toronto,
ON, M5X 1B8; cjackson@osler.com

Lisa Marie Barnet, President, Young Lawyers' Division, Canadian Bar Association,
Ontario Power Authority, 1600-120 Adelaide St W, Toronto, ON, M5H 1T1; lisa_barnet@hotmail.com

Blake Jones, Chair, Student Division, Ontario Bar Association,
20 Toronto Street, Suite 300, Toronto, ON, M5C 2B8; bjones44@uwo.ca

Janet Whitehead, President, Country and District Law Presidents' Association,
731 9th Street West, Owen Sound, ON, N4K 3P5; jwhitehead@sarnialaw.com

Paul Jonathan Saguil, Chair, Sexual Orientation & Gender Identity Conference, Ontario Bar Association,
20 Toronto Street, Suite 300, Toronto, ON, M5C 2B8; paul.jonathan.saguil@gmail.com

I am writing regarding Trinity Western University’s (TWU’s) proposed law school. It is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose TWU's LSUC accreditation.

BRUCE DARLINGTON

Toronto

I support TWU's application for law school accreditation.

The Pledge required by TRU is only valid while a student at TRU. After graduation, the student is no longer bound. Even if this is wrong, the lawyer (graduate of TRU law school) is free to NOT accept any work that that lawyer feels he cannot fully represent.

In their practices, lawyers turn down cases all the time for a variety of reasons.

Please vote "yes" to TRU.

Thank you.

Tom Do

I wish to provide comments to Convocation on the following question:

“Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?”

Comments:

The equality of all people is a fundamental precept of our law. It is hard to comprehend how a school that is itself discriminatory could possibly graduate future lawyers who have a proper understanding of, and appreciation for, everyone’s fundamental rights. For this reason, I was very surprised (and dismayed) when TWU received conditional approval from the Federation Approval Committee.

Notwithstanding my concerns, I believe we have to respect the Federation’s decision, which was made in accordance with the approved process.

Therefore, I reluctantly accept that the LSUC should accredit TWU. However, I believe that TWU graduates who wish to obtain an L1 license should be required to take a course in equality rights either from the LSUC or from an Ontario law school as a precondition to obtaining their licence.

Thank you,

Karey Lunau

Toronto, Ontario

Members of the Law Society of Upper Canada have been invited to make submissions responding to this question:

> Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

Is this the right question? Or simply an appeal to the authority of the Federation Approval Committee and Convocation which has the effect of concealing the real issue, and which essentially is inviting non-response from Law Society members?

The Federation of Law Societies of Canada is mandated to ensure "only individuals who follow a rigorous training program and demonstrate their suitability to serve the public with a high level of competence, are eligible to join Canada's legal profession and be licensed by a Canadian law society to practise law." Can legal academic requirements be considered in the context of curriculum alone, and not in the context of the specific TWU community covenant and the academic community more generally in which that curriculum is to be delivered? And is this TWU community covenant really about freedom of religion, or about thinly-veiled discrimination against homosexuals with respect to equality of opportunity in education, which discrimination is contrary to our Canadian law? After all, TWU is a Christian university, but it is my understanding that TWU students include Jews, Muslims, Buddhists and those of other faiths who are not required by the TWU community covenant to suspend expressions of their own religious faiths or participate in Christian religious ritual. What kind of "rigorous training program" is available at a law school which proposes to discriminate with impunity in a manner which contravenes our most cherished legal principles?

Supposing LSUC members were invited to consider the following question instead:

> Given that Trinity Western University's community covenant requires all students, administrators and faculty to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman", which covenant appears to impose celibacy equally upon unmarried heterosexual and homosexual persons, but which covenant would appear to permit sexual intimacy for legally married heterosexual couples and not for legally married homosexual couples, do you consider that this covenant is in accordance with the Canadian Charter of Rights and Freedoms such that graduates of TWU will have participated in a rigorous training program and demonstrated their suitability to service the public with a high level of competence, and such that the Law Society or Upper Canada should now accredit TWU pursuant to section 7 of By-Law 4?

If that were the question, squarely put, we'd have a better chance of receiving a reasoned response from Law Society members, all of whom have taken an oath to uphold the law.

Although I know from reading the Treasurer's blog that considerable care was taken in drafting the question put to Law Society members, it's my respectful submission that the question needs further clarification before consideration of any submissions.

However, in the event that the question is not redrafted, it's my respectful submission that the Law Society should not accredit law graduates of the proposed TWU law school to be called to the bar in Ontario so long as the present community covenant remains in place. Doing so will entrench discrimination in a manner not supportable by our most cherished legal principles.

It would be entirely possible to establish a private law school in Canada, free of public funding, which opted to teach non-Canadian law. This could well be a matter of freedom of religion or freedom of association or otherwise. For example, Canadian traditions of tolerance certainly would encompass a law school teaching sharia law. However, we would not anticipate that graduates of such private law schools, who had not been taught Canadian law by precept and by example, would then be eligible to be called to the bar to practice law in Ontario.

The Federation and Convocation were previously in error when they provided previous approvals. Now is the time to correct those errors, rather than compounding them.

Yours truly,

Ellen Anderson

Innisfil, Ontario

Dear members of Convocation,

I am writing today to express my strong disapproval for the accreditation of Trinity Western's law program. To accredit that school is to give legitimacy to religious bigotry. It would represent a most regrettable setback to the hard-won rights of LGBT people in Canada. Under the rubric of upholding Trinity Western's religious freedom, the Law Society of Upper Canada would be implicitly condoning discrimination against all those who do not follow the narrow hetero-normative restrictions being imposed by that school. It would bring shame and disgrace upon this august institution to which I proudly belong.

What if Trinity Western wished to bar students because they were black or Jews or women, and it claimed the authority to do so based on its religious views? I believe the Law Society would rightly take great offence to such blatant exclusion. Why is it any different with LGBT people? Are they also not protected by Canada's *Charter of Rights and Freedoms*? Are they also not covered by Ontario's *Human Rights Code*? It appears that LGBT people are the last remaining group in society that can be discriminated against. Witness what is currently happening in the United States, where a number of states are attempting to pass laws that would effectively permit "No gays allowed" policies for service providers. It was not that long ago when blacks, Jews and women were subjected to the same pernicious restrictions.

I recognize that religious belief can be a source of great personal comfort and satisfaction. However, history has also shown us that in the name of religion, many wars have been fought, many groups have been persecuted and many people have been unfairly treated. In Canada, we recognize that rights must be balanced; no freedoms are absolute. Under section 1 of the *Charter*, our freedoms are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

So what are the limits of religious freedom? Supposing a follower of some religion sincerely believed that its tenets espoused child abuse, violence or terrorism? Presumably our courts would find a way of promptly limiting this "freedom" in these lurid examples. The point is that a religious belief (even if sincerely held, as it is by Trinity Western) cannot alone be a justification for trampling upon the rights of others. The line must be drawn where this freedom violates Canada's legal and social norms of tolerance, respect for diversity and non-discrimination. I appreciate that this requires a case-by-case analysis. In the case at hand, it is my view that Trinity Western has crossed the line.

Thank you for providing me the opportunity to voice my opinion on this important matter.

Yours truly,

Neville Austin
Solicitor

Dear sirs and madams,

Arizona's Republican Governor, Jan Brewer, recently vetoed a bill that would have protected businesses' right to refuse service on religious grounds. Governor Brewer vetoed the bill because it would have allowed businesses to discriminate against members of the LGBT community.

The parallel here is obvious. If LSUC accredits TWU's law school, it will be facilitating discrimination against the LGBT community. LSUC should follow Governor Brewer's lead.

Kind regards,

Michael Collinge

Barrister & Solicitor

Toronto, ON

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
Toronto, ON M5C 2B8
www.facl.ca

March 03, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Treasurer and Members of Convocation:

RE: Concerns with the Approval of Trinity Western University's Proposed Law School Program

Further to the advisory issued by the Law Society of Upper Canada dated February 28, 2014 (Accreditation of Trinity Western's law program - Agrément du programme de droit), and in answer to the question to be put before Convocation:

> Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

the Federation of Asian Canadian Lawyers (FACL) respectfully submits that the appropriate and just answer is "NO". As previously stated, FACL urges you to oppose or place conditions on TWU's accreditation in Ontario, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Sincerely,

FEDERATION OF ASIAN CANADIAN LAWYERS

Lai-King Hum
President

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
Toronto, ON M5C 2B8
www.facl.ca

January 15, 2014

Mr. Thomas G. Conway
Treasurer of Law Society of Canada
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer and Members of Convocation:

RE: Concerns with the Approval of Trinity Western University's Proposed Law School Program

The Federation of Asian Canadian Lawyers (FACL) is a diverse coalition of Asian Canadian legal professionals with a mission is to promote equity, justice, and opportunity.

In furtherance of FACL's mission, FACL issued a statement on January 8, 2014 speaking out against the Federation of Law Societies of Canada's recommendation to provincial law societies to approve the Trinity Western University (TWU) law school program. Please see the attached statement.

FACL urges you to oppose or place conditions on TWU's accreditation in Ontario, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Sincerely,

FEDERATION OF ASIAN CANADIAN LAWYERS

Lai-King Hum
President

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
Toronto, ON M5C 2B8
www.facl.ca

FACL Speaks Out Against the Approval of the Trinity Western University Law School in British Columbia

As an organization aimed at promoting equity, justice and opportunity, FACL strongly opposes the Federation of Law Societies of Canada's (FLSC's) recommendation that provincial law societies approve Trinity Western University's (TWU's) proposed law school program. FACL is also disturbed by the B.C. Minister of Advanced Education's hasty approval of TWU's law degree program the day after the FLSC concluded its protracted and closed-door process.

Specifically, FACL is of the view that the TWU Community Covenant Agreement, that is required to be signed by all TWU faculty, staff and students, is discriminatory. The Community Covenant Agreement includes a requirement to abstain from "sexual intimacy that violates the sacredness of marriage between a man and woman" and provides TWU with the reserved rights to question, challenge or discipline its members in response to actions that impact personal or social welfare. Past iterations of the Community Covenant included a requirement to refrain from practices that are biblically condemned, including homosexual behaviour.

The mandatory requirement to enter into the Community Covenant Agreement as a condition to school admission and employment at TWU has the effect of excluding applicants from the lesbian, gay, bisexual, transsexual and transgender communities and negatively impacts upon the human dignity of persons in these communities.

FACL believes that all law schools across Canada must create a forum for free exchange of ideas, premised upon inclusion, tolerance, respect and opportunity for equal participation. FACL further believes that law schools and the institutions that authorize the creation of these schools must act in the public interest and ensure that their policies and practices adhere to the principles of the Canadian Charter of Rights and Freedoms and provincial and territorial human rights legislation.

FACL agrees with the Council of Canadian Law Deans that, "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools."

FACL calls upon the provincial law societies and government decision makers across Canada, to act in the public interest and to reject TWU's application for accreditation of its law school program and to withdraw all approvals and consents on the basis that its policies and practices are discriminatory and contrary to the principles of human rights law in Canada. In addition, FACL advocates for the inclusion of a non-discrimination policy as a condition that all law schools must adhere to in order to maintain its accreditation.

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

NO. Currently, there is more supply of recent graduates than what the market demands. The net result of an Approval of another new law program will be to dilute the value of the law degree in Ontario.

Sincerely.

Per:

Luke M. Kuzio, LL.B., LL.L.

Kitchener, Ontario

By Facsimile to: 416-947-7623

125 Topflight Drive
Mississauga, ON L5S 1Y1
905-564-6899

March 3, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
130 Queen Street West (Osgoode Hall)
Toronto, ON M5H 2N6

Re: Opposition to Trinity Western Proposal

I am writing today in opposition to the proposed certification of a law school at Trinity Western University.

Your office, of course, knows very well the objections which are raised against such propositions. Nonetheless, I will repeat them.

In this province—indeed, in this country—we do prospective lawyers the great kindness of cutting them off before they go through law school. Our neighbour to the south, by comparison, cruelly passes many more students through its schools than it ever licenses, by careful use of much stricter Bar examinations. Those who cannot pass are left with tens or hundreds of thousands of dollars in debt and three lost years.

We have an overpopulation of lawyers in this country, and especially in this province. The additional fees of additional lawyers do the Law Society no good if—and when—more and more lawyers fail to find positions and drop their licenses as they flee the profession.

The articling crisis is a symptom of a much larger problem. We cannot—nor would we wish to—cut down on the immigration to Canada of trained lawyers. (Indeed, I myself immigrated with my credentials as a lawyer, although I attended law school at the University of Toronto.)

I am a 2010 graduate, and a 2011 call. Many of my friends—brilliant thinkers, collegial and ethical people—have had difficulty finding work. It is the norm, not the exception, among young lawyers to be repeatedly or indefinitely unemployed.

I myself have been extraordinarily lucky and am well and permanently (self-)employed. This does not mean that I do not have grave concerns about the attempts to turn the Canadian licensing system into an American one: vastly increased tuition fees, larger class sizes (the University of Toronto is bringing in a class more than 20% larger than their usual in September),

the step-by-step removal of articling, and the terrifying, non-existent job market for new graduates.

More and more lawyers do not mean more affordable justice, or the Americans would have solved that crisis decades ago. It means that the lawyers who manage to find work will continue to bill at the rates they need to pay off their soaring loans, and the rest will drop out of law, out of the Law Society's fee rosters, and, potentially, will default on their loans and deal with that for the rest of their lives.

Truly,

Molly C. Leonard

I hope that the Law Society of Upper Canada would support Trinity Western University's application to open a law school given the approvals that it has received to date and the Supreme Court of Canada majority decision in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31. I see no difference in the role of the Law Society of Upper Canada in these circumstances than that of the B.C. College of Teachers in that decision.

I suspect the graduates of the TWU law program, it having received approval from the Federation of Law Societies of Canada and the B.C. Ministry of Advanced Education, will be capable of meeting the requirements of practicing as lawyers in Ontario. I believe the TWU law school graduates should be given the opportunity to prove individually that they can meet the requirements of practicing as lawyers in Ontario.

I certainly would not want to see the Law Society of Upper Canada spending my fees fighting against TWU on this issue as I believe it would be a waste of money.

Donald C. MacDougall
Queen's Law grad 1991
Called to the BC Bar in 1992 and Ontario Bar in 1998
practicing currently in Langley, BC

Dear Mr. Varro,

I write today regarding the Law Society of Upper Canada's possible accreditation of Trinity Western University. I am a member in good standing of the LSUC.

I have serious concerns regarding the potential accreditation of TWU.

TWU's policy regarding gay and lesbian students is simply discrimination couched in the language of religious freedom. Discrimination on the grounds of sexual orientation is prohibited by the Charter, and were a public institution to treat LGBT individuals in such a fashion, it would undoubtedly find itself subject to Charter litigation. If the LSUC accredits TWU, in spite of the knowledge of this discrimination, it implicitly supports it.

The legal profession in Ontario has a duty to uphold the human rights contained in the Charter and in the Ontario Human Rights Code, both of which prohibit discrimination against LGBT persons on the basis of their sexual orientation. I sincerely hope that the LSUC takes a stance against discrimination, and refuses to accredit TWU.

Sincerely,

Jennifer Macko

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Thank you for inviting input from the legal profession and the public on its consideration of Trinity Western University's (TWU) application to open a law school in British Columbia.

I am a member in good standing of both the Law Society of Upper Canada (1985) and the Nova Scotia Barristers Society (2007). I have been practicing law for 28 years. I wish to add my voice and support to the TWU application. With the greatest of respect, the objections marshaled against the application by TWU are ill-considered and unfounded. Canada's pluralistic, multicultural society is comprised of persons of multiple faiths and of no faith, theists and non-theists, believers and non-believers. This is both the virtue and challenge of the Canadian experiment, recognized and supported by the *Canadian Charter of Rights and Freedoms.*

Trinity Western University is a private university. It receives no public funding. It is founded on principles that recognize *"the Supremacy of God and the rule of law".* These principles find their expression at TWU in and through the Christian faith. TWU went through a length, costly and difficult accreditation and approval process. The Federation of Law Societies of Canada convened a special advisory committee to consider TWU's application, its Community Covenant, and whether the objections marshalled against accreditation were founded. It concluded that there was no legal impediment to accreditation. It provided preliminary approval of TWU's application (requiring TWU to establish the Law School in accordance with the approved submissions of TWU). TWU went through a parallel approval process with the Ministry of Advanced Education of B.C., which also approved TWU's application for accreditation of the J.D. degree.

The Supreme Court of Canada in *Trinity Western University v British Columbia College of Teachers* (2001) SCC 31, had occasion to consider the merits of TWU's application for accreditation, and its Community Covenant. To paraphrase the conclusions of the Court, although members of the legal profession may have reasons to object to TWU's Community Standards, their reservations and objections are insufficient to deny TWU graduates admission to the bar, and that, for better or worse, tolerance of divergent beliefs is a hallmark of a democratic society.

The irony is that TWU is a model of respect for human rights in and across all its faculties, while remaining true to its religious beliefs. It produces graduates of the highest caliber, virtue and ethical conduct, as has been doing so for over 30 years. These graduates are teaching, nursing and assuming other professional occupations today in a variety of public and private schools, health care facilities, organizations and private sector enterprises, in multiple jurisdictions

across Canada. No one has produced evidence that TWU graduates engage in discriminatory conduct or are otherwise to be feared as a force against nature. To the contrary; the evidence points in the opposite direction.

Any decision by the LSUC should be thoughtful and evidence-based, free of unfounded presumptions or discrimination. The approach adopted both by the Federation of law Societies of Canada and the Supreme Court of Canada are models of objectivity and impartiality. I urge the LSUC to adopt the same reasoned, dispassionate approach, and to give its support to the TWU's application for its new Law School, and thank you again for this opportunity to add my voice to the proceedings.

Robert ("Robaire") Nadeau, J.D.

Ottawa, Ontario

To Whom This May Concern:

I wish to express my support for accreditation of Trinity Western University's proposed law school by the Law Society of Upper Canada, of which I am a licensed lawyer.

The backdrop of Trinity Western University's Christian-based character will allow it to offer a distinct contribution to Canada's legal community, intellectual environment, and industry. For the same reasons I believe that Trinity Western's law program will generate and support uniquely useful and informative legal thinking and research. I believe that the open and tolerant environment that is Trinity Western University will improve the quality and capacity of its graduates and allow them to better serve the public as lawyers. Ultimately, a law school at Trinity Western University will contribute to a legal education environment in Canada that better reflects the diversity of Canadians and their needs.

I urge Convocation to accredit TWU according to section 7 of By-Law 4.

Thank you,

Stephen Penney

Solicitor

Cambridge, ON

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

March 3, 2014

To whom it concerns:

re. Trinity W U submission for application as law school

I am an active member of the Ontario Bar since 1983 and currently teach paralegal students. I have taught paralegal and law clerk students for over 15 years at colleges.

I have serious concerns with setting a precedent for a Christian Law School. I wish to make clear the choice of religion is not the issue but the fact that it is has ANY religious affiliation or criteria is.

I think allowing any religious oriented law school would create an extremely dangerous precedent. What next? Should we have Jewish law schools, Muslim law Schools, Gay law schools, women only law schools, and so on? Then what next will we have Christian and Muslim paralegal colleges as well? How can you allow one group access to a law school and not others now that we have the Charter of Rights?

Is this the message we want to send that we are going to allow recruiting and teaching at law schools and then down the road paralegal colleges?

Just how long ago was it we non Christians could not even get into law schools in Canada? Do we want to turn the clock back where recruitment is based on your personal and private beliefs and they must be Christian? Is that where we want to go?

Surely lawyers and paralegals are supposed to be able to treat everyone as equals whether they be women, gays, Jews. Muslims, Christians, etc. If someone goes to a law school because they want their religious bias reflected in their curriculum how do we expect these graduates to be unbiased? They are asking necessarily for a bias based institution of learning. How can it not interfere with their ability to be unbiased?

Surely when we teach the law we should be neutral to all religions at all times.

If this was a Jewish Law School application or a Muslim Law School application or Gay law school application would it have even got this far or is it because Christianity is still the majority

religion in Canada this kind of application was even considered. How do we not know because the Law Society members are still majority Christian this bias will even assure a fair consideration and surely will not that kind of argument be raised if this kind of school is allowed and this will necessarily lead to an appeal all the way to the Supreme Court of Canada given the importance of the issue?

Is that the kettle of fish we want to open?

How would it be assured a student is accepted to this law school based on neutral consideration as to their merit? Do you really think that with such an expression of bias non Christians would feel welcome to apply? Even if you make the criteria open to all, the very appearance of Christian bias makes a mockery of the recruiting process to assure neutrality and consideration based on merit.

I do not think any law or other school in a democracy should be defining itself as anything but all inclusive.

Equal opportunity must be the most basic of legal concepts the Law Society should not abandon.

Please reject this proposal and I say that with full respect to Christians. I have nothing against their religion or their personal beliefs but there is a time and place for religious beliefs and ideals and this is not the time or place.

Thank you.

Michael Ian Rubenstein, B.A., LL.B, M.Ed., LL.M

Law Instructor, Trios College

Toronto, Ontario

I have heard a little on this discussion on the cbc and to me, something seems terribly wrong about a law school starting out on such political/moral grounds. Almost counter logical, given UWO's Law education. Why don't you take a survey? Having to write a submission is asking too much and will likely only garner extremists.

Michael

DAVIS LLP | LEGAL ADVISORS SINCE 1892

Recipients listed in Schedule A

January 14, 2014

To Whom It May Concern:

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. In Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). As a *Charter*-affirming legal professional, I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[3] the Canadian Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers and academics, editorial boards,[6] and over one thousand law students.[7] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the law society for leadership and governance on these important issues. To

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[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

[3] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[4] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[6] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[7] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

DAVIS | LLP

date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada (FLSC). In December, it was with profound

disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest -- contrary to LSUC's regulatory mandate. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key finding on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

The FLSC's decision offends more than 2013 sensibilities – the decision is legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[8] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[9] departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.
- Second, the 2012 SCC decision in *Doré*[10] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt LSUC to heavily scrutinize the FLSC recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of

---

[8] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

[9] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

[10] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

DAVIS | LLP

the Canadian public. I strongly recommend that you oppose or place conditions on TWU's LSUC accreditation. I look forward to a properly balanced and progressive decision from the law society on this important issue.

Sincerely,

Susan Kacaba

DAVIS LLP

SCHEDULE A
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In light of the University's views on sexuality and relationships, I strongly oppose its accreditation. This school offers an education premised on discrimination. It would be a step backwards to give the law school accreditation.

Guillaume Lavictoire
Toronto

The very *raison d'être* of the university in both ancient and modern society was and is to provide a vehicle through which the scholar searches for knowledge. This assumes that the academic process is one of asking questions, and subsequently searching for answers to those questions, in an environment that fosters curiosity, exploration and critical thinking. Religious educational institutions, on the other hand, abuse the entire purpose of a university by purporting to already know categorical answers to enormously complex and multifaceted problems of, *inter alia*, morality, science and purpose, and then using the vehicle of 'scholarship' to justify or rationalize that supposed truth. Trinity Western falls into this latter category.

Any program growing out of such a foundation is innately flawed because the very premise of its approach to study - based on precepts of faith not on evidence - are antithetical to the entire notion of a university. While this presents a major problematic for all areas of study, it is particularly concerning vis-à-vis the study of law. To accredit a program which asserts at the outset that students must prescribe to a certain way of thinking, a certain kind of behaviour and a certain morality - all of which necessitates the rejection of other kinds thinking, behaviour or moral codes - undermines the very reason one is supposedly attending university in the first place: to search, to explore, to weigh, to debate, to reflect, to discuss, to analyze, to consider, to learn.

Students coming out of Trinity Western's Law program will be inherently ill-equipped to meet the rigours of a profession which demands of its practitioners the ability to approach problems with an open mind, to consider multifaceted issues from various perspectives and to critically engage with various points of view in addressing complex legal challenges. The LSUC should refrain from accrediting such a program and from tacitly endorsing this unsound approach to the study, and consequently the practice, of law in Canada.

Suneeta Millington

I am opposed to any institution in Canada being allowed to discriminate against any group in our society, including homosexuals. The charter for this law school should not be approved.

Roger G. Oatley
Barrie, Ontario

Motion to Faculty Council

Moved by: **Mary Jane Mossman**

Seconded by: **Douglas Judson**

Faculty Council of Osgoode Hall Law School endorses the following statement with respect to the approval by the Federation of Law Societies of the law school at Trinity Western University:

> WHEREAS Osgoode Hall Law School is committed to the principle that diversity among faculty, students and staff is integral to an open and vibrant environment for teaching and learning law;
>
> WHEREAS Osgoode Hall Law School is committed to continual scrutiny and improvement in our practices of inclusion, and respect for the equality and human rights of all persons involved in teaching and learning about the law; and
>
> WHEREAS Osgoode Hall Law School acknowledges, with profound regret, discriminatory practices in the legal profession and in legal education in Canada, by which some persons have been excluded from the practice of law on grounds such as gender, race, religion and dis/ability.

IN THIS CONTEXT, the Faculty Council of Osgoode Hall Law School respectfully requests Trinity Western University to eliminate the discriminatory language and content in its "Community Covenant"[1] on the basis that:

> The "Community Covenant" at Trinity Western University constitutes discrimination on the basis of sexual orientation and marital status in relation to LGBTQ faculty, staff and students, by proscribing same-sex intimacy within or outside marriage (and opposite sex intimacy outside marriage); and that this discrimination will disproportionately affect faculty, staff and students who are members of some Christian communities; and
>
> The "Community Covenant" at Trinity Western University will result in a disproportionate reduction in the relative proportion of places for the study of law in Canada - for students and potential students seeking to study law who are within the group excluded from Trinity Western University's law school (particularly LGBTQ students); and that this disproportionate reduction in access to legal education in Canada constitutes discrimination and a denial of equality and access to justice for excluded persons.

[1] Trinity Western University is a private, faith-based university affiliated with the Evangelical Free Church of Canada, in which faculty, staff and students are required to sign an annual faith statement, a "Community Covenant," which creates a code of conduct. The "Community Covenant" (section 3) commits persons at Trinity Western University, *inter alia*, to "treat all persons with respect and dignity" and to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." The "Community Covenant" (penultimate para) also states that signatories "become an ambassador of this community and the ideals it represents."

IN ADDITION, and in a spirit of welcoming diversity and embracing equality at Osgoode Hall Law School, Faculty Council requests the Dean and staff, in consultation with faculty and students, to make best efforts to:

> Reaffirm Osgoode Hall Law School's commitment to LGBTQ students by establishing and awarding annually a prize for the best law student essay on the subject of law, sexual orientation/sexual identity, and human rights/equality;
>
> Reaffirm Osgoode Hall Law School's commitment to teaching and learning that is respectful of religious values and religious persons by establishing and awarding annually a prize for the best law student essay on the subject of law, religion and human rights/equality; and
>
> Reaffirm Osgoode Hall Law School's commitment to potential LGBTQ students by establishing a scholarship or bursary for an LGBTQ student in financial need.

IN PASSING THIS MOTION, Faculty Council of Osgoode Hall Law School agrees that:

> The Chair of Faculty Council will forward this motion to Trinity Western University; and
>
> The motion may be circulated by members of Faculty Council and the Osgoode community to other interested parties.

Good day,

I am a TWU alum, I identify with Christianity, I'm gay, and I will apply for TWU's law school program.

I am a proud TWU alum from the class of 2006 with a Bachelor of Arts. I was privileged to serve the university community for three years as an employed student leader, and will toot my own horn claiming creative license behind the tradition now titled, "Fort Week" - probably the most, highly anticipated and fun week of TWU campus life.

I am a gay man and this may be qualified if you ask Paul, Guillaume, Étienne, Mike, or Marvin and all our witnesses.

I identify with Christianity, and with Christians. I was raised in Christian community in my hometown of Agassiz, BC near Vancouver. I was employed as an evangelical missionary for two years throughout Canada and started a "house church" at SFU, as well as incorporating a church here in Ottawa.

I am not a fan of the Community Covenant's interpretation of biblical scriptures regarding "healthy sexuality," however, I adhered to it once and I can do it again.

I will put in an application to be one of TWU's first law school graduates. If successful, I expect Canadian law societies will recognize this achievement and allow me to practice common law in my country.

But this is a single man writing, could TWU kick me out if they discovered I was a married man?

Thanks for your consideration,

Philip Wouda
Gatineau, QC

764 Lawrentian Ave
North Bay, ON
P1B 7V2

March 1, 2014

Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H-2N6

Attn: Policy Secretariat

Dear Madam or Sir

Re: TWU Law School accreditation

I was called to the Bar in 1979 and feel called to be heard on the above topic. I owe it to my gay and lesbian friends, and to my profession. Equity is important.

All lawyers have a duty to uphold the law. That law treats differently gendered people the way it does straight people. A law school which would inculcate a different value system in its graduates should not be accredited.

As a member of the United Church my value system affirms GLBT people. My law society does the same, and ought to act consistently by opposing the accreditation of TWU's law school in British Columbia.

Yours truly

Stuart Bailey

STUART BAILEY

To whom it may concern,

As a member of the LSUC, I am shocked and outraged that a body committed to the ethics of non-discrimination, among other valuable principles, is even countenancing a law degree program from an institution that is blatantly and unapologetically discriminatory towards law-abiding citizens of Canada for the simple reason that they are not heterosexual, and are unwilling to save sex for a marriage between a man and a woman.

What possible message would the LSUC be sending to those potential graduates of TWU? That it is ok to discriminate on the basis of sexual preference and religion? These values are directly contradictory to those that practice law in Upper Canada, and moreover they contradict the ethical code by which LSUC practitioners have chosen to live by. Exceptions to a clear policy of non-discrimination is a slippery slope towards ambivalence towards more aggressive forms of hate percolating into the LSUC community, and necessarily the justice system.

We must all stand vigilant against hate, disguised in sheep's clothing or otherwise. The LSUC's potential recognition of TWU's objectionable policies of discrimination runs counter to the law's notion of fairness, and will inevitably lead to unwanted results. Choice following accreditation is the lawyer's own, but to abide by the rules of the Society in order to become accredited is not a choice. The LSUC should therefore not recognize TWU's legal graduates until it has ended its discriminatory policy, lest the Society be brought into disrepute.

Sincerely,

Peter Hamm

QUEEN'S UNIVERSITY
FACULTY OF LAW

Resolution of Faculty Board
February 7, 2014

Motion concerning the accreditation of the Trinity Western University law school program (moved by Manoj Dias-Abey, seconded by Kathy Lahey)

Background

Trinity Western University (TWU) is a private Christian university in the evangelical Protestant tradition based in Langley, British Columbia.

TWU requires that all community members—including students and staff—pledge that they will abstain from "sexual intimacy that violates the sacredness of marriage between a man and woman" in accordance with its Community Covenant Agreement.

A failure to abide by the terms of the Community Covenant Agreement can result in the removal of the offending student from TWU without readmission.

On December 18, 2013, the government of British Columbia determined that TWU could offer a law degree program. TWU is expecting to admit its first cohort of law students to begin in September 2015.

Although provincial and territory governments decide whether universities can offer specific degree programs, each of the fourteen law societies in Canada are authorized to determine the licensing criteria for lawyers in its province or territory. In practice, this power has been delegated to the Federation of Law Societies of Canada (FLSC).

On 16 December 2013, the FLSC granted "preliminary approval" to TWU's proposed school of law program. Although concerns were raised about the Community Covenant Agreement and its discriminatory impact on lesbian, gay, bisexual, transgender, intersex, and queer identifying (LGBTIQ) students and staff, the FLSC found that these issues were outside the scope of the approval committee's mandate.

Moved that:

1. The Queen's University Faculty of Law Faculty Board is of the view that:

- *the TWU requirement that students and staff comply with the terms of the Community Covenant Agreement discriminates against LGBTIQ people;*
- *such discrimination offends the policies, values, rights, and freedoms protected under human rights legislation in Canada and the Canadian Charter of Rights and Freedoms; and*
- *such discrimination is also contrary to the notion of academic freedom and professional canons of ethics.*

2. The Queen's Law Faculty Board calls on the FLSC:

- *to reconsider its decision to grant preliminary approval to the accreditation of TWU's proposed law program, and*
- *to make a fresh determination on the basis that TWU's admission, hiring, and faculty appointment policies fall within the scope of the FLSC's mandate when deciding whether to grant accreditation.*

3. The Queen's Law Faculty Board calls on the Law Society of Upper Canada to uphold the values of equity, diversity, and access to justice as matters of professional ethics, human rights obligations, and its duty to safeguard the public interest when deciding whether it will accredit the TWU law degree program for purposes of admission to the practice of law in Ontario.

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March 5, 2014

To Whom it May Concern,

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. In Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). As a *Charter*-affirming legal professional, I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[3] the Canadian Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers and academics, editorial boards,[6] and over one thousand law students.[7] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

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[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

[3] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[4] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[6] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[7] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest -- contrary to LSUC's regulatory mandate. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key findings on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

The FLSC's decision offends more than 2013 sensibilities – the decision is legally incorrect:

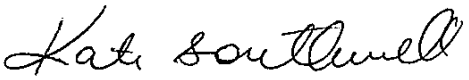
- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[8] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[9] departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.
- Second, the 2012 SCC decision in *Doré*[10] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt LSUC to heavily scrutinize the FLSC recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's LSUC accreditation. I look forward to a properly balanced and progressive decision from the law society on this important issue.

Sincerely,



Kate Southwell

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[8] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

[9] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

[10] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

Family Focused Law™

Elizabeth Swarbrick
Barrister
Solicitor
Notary Public

February 28, 2014

TWU Submissions
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

To Whom It May Concern:

Re: Application of Trinity Western University

"The Law School Proposed by Trinity Western University in BC is something special and I support that."

You may recognize this as a quote from Eugene Meehan in an opinion letter to the Lawyers Weekly from March, 2013.

We agree with him whole heartedly.

It is prudent for the Law Society of Upper Canada, its Benchers, and the Federation of Law Societies to not only hear from large, politically driven interest groups, but also to hear from individual practising lawyers on issues before it.

There are critical issues in this case that touch upon the nerves of many in society. Those being the balancing of freedom of religion, and freedom from discrimination. On one hand, the freedom of Trinity Western University and its students to be educated in the law in the environment that supports their religious beliefs, and on the other hand, the perception of lawyer graduates, who would be discriminatory based upon sexual orientation.

There are some basic points that have already been considered, particularly whether TWU would have acceptable teaching standards, such that their proposed law school would educate their students completely in the law of Canada. In recently listening to a CBC Radio interview on The Current with Professor Janet Epp - Buckingham, a lawyer and professor from TWU, it was made abundantly clear that, not only would TWU have excellent academics in the area of the law, they would also integrate a practical education component. This is long overdue in legal education in Canada.

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So, will TWU teach all items necessary to their students? The answer is clearly yes. This can be seen in the example of their education degree.

TWU has made it abundantly clear through their graduates in the profession of teaching over the last 10 years that it has not produced any teachers who are discriminatory in any way.

It appears that the situation here is along the exact same lines as the *Trinity Western v. British Columbia College of Teachers*, [2001] case from the Supreme Court of Canada. Certainly, all persons reading this letter would have carefully reviewed that Supreme Court of Canada case.

To quote the 8-1 majority on Paragraph 36 (paraphrased) in this case, the line needs to be drawn between *belief* and *conduct*. The freedom to hold beliefs is broader than the freedom to act on them. As the College of Teachers had no concrete evidence that teachers trained at TWU would foster discrimination, the TWU Application had to be permitted. "*For better or worse, tolerance of divergent beliefs is a hallmark of a democratic society.*"(from the majority, emphasis is mine).

Just because a person holds a religious belief, in this situation, that any sexual activity outside marriage between a man and a woman, is against their moral belief, does not mean that the person, as a trained lawyer, is incapable of critical thinking on this point, and incapable of representing an individual client with different morals and beliefs of their own.

If that was the situation, by this logic, discriminating behaviour by lawyers would be rampant, as many lawyers hold to differing religious beliefs from their clients. However, that is not the case.

This case reiterates the importance of the Supreme Court of Canada's approach from 2001, that "it cannot be reasonably concluded that private institutions are protected, but their graduates are defacto considered unworthy of fully participating in public activities.".

I support the pluralistic nature of Canadian society, and submit that the Law Society of Upper Canada is bound to do the same and support the application of TWU.

Yours very truly,

Elizabeth Swarbrick

uOttawa

Université d'Ottawa
Faculté de droit
Section de common law

University of Ottawa
Faculty of Law
Common Law Section

Thomas G. Conway, Law Society Treasurer
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Mr. Conway,

Re: Trinity Western University's Proposed Law School

We write as faculty of the University of Ottawa Faculty of Common Law, and in some cases as members of the Ontario Bar, to express our concern regarding the Federation of Law Societies' ("FLSC") recent decision to preliminarily approve Trinity Western University's ("TWU") application to create a new law school.

TWU requires all faculty, staff and students to sign a "Community Covenant Agreement," the impact of which is to prohibit same-sex sexual intimacy in all circumstances. This Covenant cites biblical passages condemning homosexuality. The Law Society of Upper Canada ("LSUC") must not offer approval or accreditation to a law school with an explicitly discriminatory policy.

As the FLSC has indicated, the decision to recognize TWU's proposed law school ultimately rests with each of the provincial and territorial law societies. In Ontario, the LSUC will be responsible for deciding whether to approve TWU's proposed law school despite its discriminatory policies. The LSUC should refuse to recognize degrees granted by TWU for the purposes of admission to the practice of law in Ontario unless and until TWU abandons its Community Covenant Agreement. TWU's Covenant discriminates on the basis of sexual orientation.

The FLSC's decision to preliminarily approve TWU's law school has caused anxiety and distress among our GLBTQ students, many of whom already feel acutely vulnerable about disclosing their sexual orientation within the legal community. Recognizing TWU's proposed law school has the potential to undo all of the hard work done by the LSUC, the legal profession and law schools to eliminate discrimination and harassment from the profession. In fact, many of our students and

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colleagues would be excluded from attending or being employed as faculty members at TWU simply because they are gay or lesbian.

Section 4.2 of the *Law Society Act* provides that:

In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.

...

3. The Society has a duty to protect the public interest.

At its most basic, the issue facing the LSUC is whether it is in the public interest and in the interests of justice for the legal profession to express approval of an educational institution that explicitly employs policies that discriminate against gays and lesbians. In our view, it is clear that endorsing discrimination of any subordinated group is contrary to the LSUC's governing principles.

At the very least, TWU's proposal should not be approved without open consultation. We therefore ask that the LSUC commit to engaging in a transparent, open discussion of, and deliberation on, the TWU issue. The Nova Scotia Barristers' Society and the Law Society of British Columbia have done just this, and they have encouraged their members to participate in that process. We encourage the LSUC to adopt a similar transparent and accountable approach.

The way we face these challenges speaks to how the profession will discharge its public duty in a whole series of future situations. This is a decision we will have to look back on and justify to future generations.

We would ask that you please provide a copy of this letter to each of the Benchers of the LSUC.

Sincerely,

Jane Bailey, Associate Professor

Professor Elizabeth Sheehy
Dr. Angela Cameron, Associate Professor
Joanne St. Lewis, Assistant Professor
Vanessa MacDonnell, Assistant Professor
Professor Martha Jackman, LSM
Dr. Heather McLeod-Kilmurray, Associate Professor
Professor Yves Le Bouthillier
Professor John H. Currie
Professor Ellen Zweibel
Nicole LaViolette, Associate Professor
Amy Salyzyn, Adjunct Professor
Professor Don McRae
Vanessa Gruben, Associate Professor
Professor Amir Attaran
Lynda Collins, Associate Professor
Rakhi Ruparelia, Assistant Professor
Daphne Gilbert, Associate Professor
Rosemary Cairns Way, Associate Professor
Jackie Huston, Adjunct Professor
Jamie Liew, Assistant Professor
Ravi Malhotra, Associate Professor
Jennifer Chandler, Associate Professor
Professor Errol Mendes
Professor Bruce Feldthusen
John Mark Keyes, Adjunct Professor
Professor Debra Steger
Marina Pavlovic, Assistant Professor
Professor Michael Geist
Herve Depow, Adjunct Professor
Adam Dodek, Associate Professor
Melanie Mallet, Sessional Professor
Stacy Keehn, Acting Assistant Dean, Student Services
Professor Ian Kerr
Larry Chartrand, Associate Professor
David Wiseman, Assistant Professor
Professor Jamie Benidickson
Dr. Graham Mayeda, Associate Professor
Dr. Penelope Simons, Associate Professor
Stewart Elgie, Associate Professor
Dr. Nathalie Chalifour, Associate Professor
Dr. François Larocque, Associate Professor
Professor Teresa Scassa
Professor Louise Belanger-Hardy

Frederick John Packer, Associate Professor and
Director of the Human Rights Research and Education Centre
Craig Forcese, Vice Dean & Associate Professor
Professor Denis Boivin
Suzanne Marie Bouclin, Assistant Professor
Jennie Abell, Associate Professor
Professor Gabrielle St-Hilaire
Professor Peter Oliver
Jeremy de Beer, Associate Professor
Professor J. Anthony VanDuzer
Jennifer Bond, Assistant Professor
Sarah Morales, Assistant Professor
Kim Pate, Sessional Professor
Elizabeth F. Judge, Professor of Law
Lynn Rockman, Sessional Professor
Elizabeth Sanderson, Sessional Professor
Jeremy Levitt, 2012-2013 Fulbright Visiting Research Chair in Human Rights and Social Justice

cc Josée Bouchard, Equity Advisor

uOttawa

Université d'Ottawa
Faculté de droit
Section de common law

University of Ottawa
Faculty of Law
Common Law Section

Thomas G. Conway, trésorier du Barreau
Barreau du Haut-Canada
Osgoode Hall
130, Queen Street West
Toronto (Ontario)
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Monsieur le trésorier,

Objet : Programme d'études en droit de la Trinity Western University

Nous vous écrivons comme membres du professorat de la Faculté de droit de l'Université d'Ottawa et, dans certains cas, en tant que membres du barreau de l'Ontario, afin d'exprimer nos préoccupations au sujet de la décision récente de la Fédération des ordres professionnels de juristes du Canada (« FOPJC ») de donner son approbation préliminaire à la demande de la Trinity Western University (« TWU ») en vue de créer une nouvelle faculté de droit. La TWU exige que tous les membres du corps professoral, du personnel et de la population étudiante signent un « engagement contractuel » à l'effet de s'abstenir de tout rapport intime homosexuel en toute circonstance. Cet engagement cite des passages de la Bible qui condamnent l'homosexualité. Le Barreau du Haut-Canada (« BHC ») ne doit pas accorder son approbation ni son agrément à une faculté de droit dotée d'une politique explicitement discriminatoire.

Comme la FOPJC l'a précisé, la décision de reconnaître le projet de programme d'études en droit de la TWU incombe à chacun des ordres professionnels de juristes provinciaux et territoriaux. En Ontario, le BHC devra donc décider s'il convient ou non d'approuver le programme de droit proposé par la TWU en dépit de ses politiques discriminatoires. Le BHC devrait refuser de reconnaître les diplômes décernés par la TWU aux fins d'admission à la pratique du droit en Ontario à moins et jusqu'à ce que la TWU renonce à son engagement contractuel obligatoire, car cet engagement constitue une discrimination au motif de l'orientation sexuelle.

La décision de la FOPJC d'approuver de façon préliminaire la faculté de droit de la TWU a occasionné de l'anxiété et de la détresse parmi nos étudiants GLBTQ, qui se sentent déjà particulièrement vulnérables pour ce qui est de divulguer leur orientation sexuelle au sein de la communauté juridique. Reconnaître officiellement le programme

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d'études en droit proposé par la TWU risquerait d'anéantir le travail considérable accompli par le BHC, la profession juridique et les facultés de droit en vue d'éradiquer la discrimination et le harcèlement au sein de la profession. En vérité, bon nombre de nos étudiants et collègues seraient exclus des salles de classe et/ou du processus d'embauche de membres du corps professoral à la TWU du simple fait qu'ils et elles sont gais ou lesbiennes.

L'article 4.2 de la *Loi sur le Barreau* prévoit ce qui suit :

Lorsqu'il exerce ses fonctions, obligations et pouvoirs en application de la présente loi, le Barreau tient compte des principes suivants :

1. Le Barreau a l'obligation de maintenir et de faire avancer la cause de la justice et la primauté du droit.
...

3. Le Barreau a l'obligation de protéger l'intérêt public.

Pour l'essentiel, la question que doit se poser le BHC est celle-ci : l'approbation donnée par la profession juridique à un établissement d'enseignement qui adopte des politiques explicitement discriminatoires à l'égard des gais et lesbiennes sert-elle l'intérêt public ainsi que les intérêts de la justice ? Selon nous, il va sans dire que le fait d'entériner une forme de discrimination à l'égard de quelque groupe opprimé que ce soit est contraire aux principes directeurs du BHC.

À tout le moins, la proposition de la TWU devrait faire l'objet d'une consultation ouverte avant d'être approuvée. Nous demandons par conséquent au BHC de s'engager à mettre en place un processus de discussion et de délibération transparent et public sur la question de la TWU. C'est la démarche que viennent d'adopter le Nova Scotia Barristers' Society et le Law Society of British Columbia, qui ont également encouragé leurs membres à participer à ce processus. Nous exhortons le BHC à adopter une approche aussi transparente et responsable que la leur.

La manière dont nous traitons ce type de défis en dit long sur la façon dont la profession s'acquittera de son mandat public à l'avenir et ce, dans différentes situations. Il s'agit là d'une décision sur laquelle nous aurons à revenir et que nous devrons justifier devant les futures générations.

Nous vous prions de bien vouloir transmettre une copie de la présente lettre à chacun, chacune des conseillers et conseillères du BHC.

Veuillez agréer, Monsieur le trésorier, l'expression de nos sentiments les plus respectueux,

Jane Bailey, professeure agrégée
Professeure Elizabeth Sheehy
Professeur Yves Le Bouthilier
Angela Cameron, professeure agrégée
Vanessa MacDonnell, professeure adjointe
Professeure Martha Jackman, LSM
Heather McLeod-Kilmurray, professeure agrégée
Jena McGill, professeure adjointe
Joanne St. Lewis, professeure adjointe
Professeur John H. Currie
Professeure Ellen Zweibel
Nicole LaViolette, professeure agrégée
Amy Salyzyn, professeure auxiliaire
Professeur Don McRae
Vanessa Gruben, professeure agrégée
Professeur Amir Attaran
Lynda Collins, professeure agrégée
Rakhi Ruparelia, professeure adjointe
Daphne Gilbert, professeure agrégée
Rosemary Cairns Way, professeure agrégée
Jackie Huston, professeure auxiliaire
Jennifer Chandler, professeure agrégée
Jamie Liew, professeure adjointe
Ravi Malhotra, professeur agrégé
Professeur Errol Mendes
Professeur Bruce Feldthusen
John Mark Keyes, professeur auxiliaire
Professeure Debra Steger
Marina Pavlovic, professeure adjointe
Professeur Michael Geist
Herve Depow, professeur à la leçon
Adam Dodek, professeur agrégé
Melanie Mallet, LSM, professeure auxiliaire
Stacy Keehn, doyenne adjointe intérimaire, services à la population étudiante

Professeur Ian Kerr
Larry Chartrand, professeur agrégé
David Wiseman, professeur adjoint
Professeur Jamie Benidickson
Graham Mayeda, professeur agrégé
Penelope Simons, professeure agrégée
Stewart Elgie, professeur agrégé
Nathalie Chalifour, professeure agrégée
Francois LaRoque, professeur agrégé
Professeure Teresa Scassa
Professeure Louise Belanger-Hardy
Frederick John Packer, professeur agrégé et directeur du centre de recherche et d'enseignement sur les droits de la personne
Craig Forcese, doyen adjointe et professeur agrégé
Professeur Denis Boivin
Suzanne Marie Bouclin, professeure adjointe
Jennie Abell, professeure agrégée
Professeure Gabrielle St-Hilaire
Professeur Peter Oliver
Jeremy de Beer, professeur agrégé
Professeur J. Anthony VanDuzer
Jennifer Bond, professeure adjointe
Sarah Morales, professeure adjointe
Kim Pate, professeure auxiliaire
Professeure Elizabeth F. Judge
Lynn Rockman, professeure auxiliaire
Elizabeth Sanderson, professeure auxiliaire
Jeremy Levitt, 2012-2013 Fulbright Visiting Research Chair in Human Rights and Social Justice

cc Josée Bouchard, conseillère en équité

EFC The Evangelical Fellowship of Canada

March 4, 2014

TWU Submissions
Policy Secretariat, Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6 via email: jvarro@lsuc.on.ca

RE: TRINITY WESTERN UNIVERSITY SCHOOL OF LAW

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

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

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

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

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

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

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

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

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

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

The Court states at paragraph 36:

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

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

> Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training lawyers at TWU fosters discrimination in the practice of law (in accordance with the Rules of Professional Conduct), the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The LSUC, rightfully, does not require public universities with law school programs to screen out applicants who hold sexist, racist or

> homophobic (or anti-religious) beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

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

> 52 The right to same-sex marriage conferred by the *Proposed Act* may conflict with the right to freedom of religion if the Act becomes law, as suggested by the hypothetical scenarios presented by several interveners. However, the jurisprudence confirms that many if not all such conflicts will be resolved within the *Charter*, by the delineation of rights prescribed by the cases relating to s. 2(*a*). Conflicts of rights do not imply conflict with the *Charter*; rather the resolution of such conflicts generally occurs within the ambit of the *Charter* itself by way of internal balancing and delineation.
>
> 53 The protection of freedom of religion afforded by s. 2(*a*) of the *Charter* is broad and jealously guarded in our *Charter* jurisprudence. We note that should impermissible conflicts occur, the provision at issue will by definition fail the justification test under s. 1 of the *Charter* and will be of no force or effect under s. 52 of the *Constitution Act, 1982*. In this case the conflict will cease to exist.

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

> WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;
>
> WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;

And, the body of the *Act* further states:

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

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

1. Is the LSUC withdrawing from the agreements made with the Federation in regard to National Admissions Standards? If so, what position is the LSUC taking?

2. Is the LSUC withdrawing from the agreement made with the Federation in regard to National Mobility of the Legal Profession? If so, what restrictions will be placed on mobility by the LSUC?

3. Is the LSUC considering a position that would establish a hierarchy of rights rather than a balancing of rights? If so, please describe the intended hierarchy and how it is anticipated to comply with the decisions of the Supreme Court of Canada in regard to interpretation of the *Canadian Charter of Rights and Freedoms*.

4. Is the LSUC proposing to establish an admission standard that excludes those who hold a position on marriage that is contrary to whatever position is approved by the LSUC at any given time? If so, please describe the LSUC's current position on marriage.

5. If the LSUC is proposing to establish an admission standard based on position on marriage, what action does it propose in regard to current members who hold a position on marriage similar to that of TWU?

6. Is the LSUC proposing to establish an admission standard based on religious beliefs and practices? If so, please describe how that standard will align with the decisions of the Supreme Court of Canada on the right to "freedom of religion" and with the Ontario *Human Rights Code*. Also please describe how this standard will align with the LSUC's Statement of Principles on "Respect for Religious and Spiritual Beliefs," particularly paragraphs 50, 51 and 52.

7. If the LSUC is proposing to establish an admission standard based on religious beliefs and practices, what action does it propose in regard to current members who hold religious beliefs and engage in religious practices that will become new standards for non-admissibility to the practice of law in Upper Canada?

8. If the LSUC determines it will not admit graduates of TWU's law school to the practice of law in Upper Canada, will it hold a similar standard for graduates of other law schools who have previously attended faith-based universities? Faith-based high schools? Faith-based foreign law schools? Or, who share the same religious beliefs and practices of TWU students? If so, please provide details of the LSUC's position.

The Law Society of Upper Canada should recognize the accreditation of Trinity Western University's School of Law under By-Law 4.

I look forward to your response.

Yours sincerely,

Don Hutchinson
Vice-President, General Legal Counsel

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

Dear Sir or Madam;

I am a military defence lawyer (an officer and a lawyer, defending accused people in criminal trials).

I am writing in favour of the LSUC accrediting Trinity Western University's (TWU) proposed law school.

As a practising Christian who completed my law degree at the University of Toronto's Faculty of Law, I think the controversy arises because TWU is being unfairly judged. I think the LSUC would show great intolerance by refusing to accredit TWU's proposed law school.

Many 'outsiders' seem to think TWU is discriminatory of certain sexual freedoms. However, TWU's student code of ethics (which restricts sexual conduct): 1) does not encourage discrimination but merely says sexual conduct should be reserved for certain times and places; 2) shows a specific view of self-respect and respect for others in which sexuality is not rampant as it is in society at large. Law school is a place of higher education, and people should not be highly concerned with sexual expression; they should be there to learn.

Many 'outsiders' fail to understand that disapproving of certain conduct in certain circumstances (e.g. sexuality in learning environments) does NOT equate to disapproval of PEOPLE. I personally have specific values for myself that I do NOT require all my friends and associates and other people to adhere to.

I have kept my comments brief, but I care deeply about this. Thank you for your time.

dorothy liang

Policy Secretariat (TWU Submissions)
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON, M5H 2N6

March 5, 2014

Re: Trinity Western University

Dear Members of the Convocation:

Please accept this letter in opposition of accrediting Trinity Western University's law program.

It is with a heavy heart that I write this letter. I am an openly gay woman currently enrolled in my second year of studies at the University of Windsor Law School. The heavy heart is a result of months of letter writing in opposition to a school that I cannot openly attend based solely on my sexuality and not on the content of my character. This is the final letter I will sign and I have decided to invite you to consider an alternative perspective of the opposition movement. This perspective is one of social context and public policy.

In this letter you will not find precedent setting jurisprudence or discussion on legislation. I have been a part of a number of other letters in which you will find the legal arguments you are so explicitly seeking. I suppose, in this way, you may disregard this letter. I sincerely hope that you do not.

Although it is clear that legal arguments are favoured in this matter I do believe that these arguments must be paired with the emotional and psychological dangers associated with accrediting TWU's law program. Although many can (and should) speak out in opposition of the community covenant at TWU, there is a valuable insight that members of the LGBT community can provide that should not be dismissed. These individuals can provide first hand experience on the social context surrounding LGBT issues and the impact that this decision threatens to introduce to this community.

When I was applying to law school I chose my school based on its curriculum, culture, and opportunities. Although seeking out a safe space is inherently at the forefront of my decision-making process, it was not explicitly listed on my checklist of law school qualities. With the accreditation of the TWU law program, this will undoubtedly change. For the first time in Canadian history a law school will exist for heterosexual students only. There will be fewer law school opportunities for those who do not identify as heterosexual, and as such, a quota system will be introduced. It is far beyond my capacity to imagine how such a reality could exist, but I recognize the real potential for this occurring.

As a gay woman with a non-conforming gender expression I have witnessed and experienced a large share of homophobia and heterosexism throughout my life. It is a reality that I have come to live with and I have learned to use these experiences to fuel my passions. However, the ability to take such negative experiences and translate them into positive outcomes is not a skill I immediately inherited upon accepting and embracing my sexuality. For years I was emotionally destroyed by homophobia and heterosexism – sparking bouts of depression and welcoming darkness in my life. I found my way through it all by placing trust in the systems I was involved in to protect and support me. It was within these systems, including my experience in both college and university, where I learned to thrive amidst animosity. The support I have received is the reason I plan to return to the academic world as a professor – because I truly believe in the system.

The decision before you is about more than a community covenant. It is about more than the introduction of a quota system. It is a decision that will impact the social context surrounding the LGBT community nationwide. It is a decision that will systemically support discrimination. It is a decision that will teach society that there are some among us who are less deserving of opportunity. It will symbolize the presence of heterosexism as alive, well, and thriving. This decision is larger than the legal arguments that you have been provided. It is a debilitating decision that will cause members of the LGBT community to question their trust in the legal system – and for some, this trust may simply disappear. In this way, it is in opposition of public policy and the welfare of our society to introduce and support a law program that is inaccessible to a portion of our demographic.

Trinity Western University is a law school I could not attend. Not based on my GPA, not based on my extensive community involvement, not based on my leadership in my school, and certainly not based on the content of my character.

I cannot attend TWU simply because of whom I love.

Sincerely,

Katelyn Scorer
Juris Doctor Candidate, 2015
Windsor OUTlaws, President 2013-2014
scorer@uwindsor.ca

Ten reasons why TWU should be accredited. To the Law Society of Upper Canada.

Thank you for the opportunity to make a submission.

The Law Society of Upper Canada has posed the following question for its Convocation meetings in April 2014:

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2012 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit pursuant to section 7 of By-Law 4?

Here are ten suggested reasons why an affirmative answer should be given to that question.

1. **Centralized Process followed**
   The agreed centralized process was followed by the Federation of Law Societies using both due process and highly qualified decision makers. Why encourage 13 decentralized courts of appeal (ie 13 law society committees) to overrule retrospectively an agreed centralized process?

   If the LSUC (or any one or more provincial law societies) overrules a *centralized Federation decision to accredit (or not to accredit) , what are the predictable deleterious consequences?*

2. **Lack of resources of law societies and law schools**.
   Law societies and law schools lack time, money and personnel to advocate for, and adjudicate upon, or defend multiple challenges to the accreditation (or not) of 15 or more Canadian law schools, and many more foreign universities and law schools which teach prospective Canadian legal practitioners. See also 4 and 5 below.

3. **Era of grievances against law schools**
   Modern law schools live in glass houses. In an era of high student debt, and law graduate under-employment, there are thousands of law students, law faculty and graduates with grievances against their law schools for individual and systemic failures—eg including discrimination against poor, foreign, aboriginal, ESL , visual learner, older, or depressed students, and students with learning disabilities; via low grades, cultural and religious ignorance and insensitivity of staff, absence of skills learning, 100% exams, narrow, outdated or "faculty interest" curriculum, discriminatory scholarships, large classes, reserved places for wealthy foreign students, inadequate feedback, focus on esoteric research, few accessible clinics etc. There is a well-documented and researched list of historic grievances against western law schools, with high debt and under-employment of graduates now added to the mix. If at least 13 concurrent hearing venues become available, this offers a new area for legal specialization.

4. **Complex evidence**
   All of the above "bad and discriminatory behaviours" in all law schools (and universities), occur for complex reasons of history, shrinking budgets, managerialism, habit, competing priorities, ignorance, and comfortable monopoly. Theoretically, 13 law societies should examine each law school and university culture via complex expert evidence to decide which of the allegedly bad and discriminatory practices occur commonly, and/or on balance are "justified".

5. **Magnificent Negotiation Lever**
   The threat of loss of accreditation by between one and thirteen different law society committees, provides a handy negotiation lever against all law schools for under-employed conflict junkies or well organized groups of grievants. Presumably anyone has standing to complain as follows: "Give us the following public apologies and cash etc as remedies for these bad individual or systemic experiences at law school, or else we will seek dis-accreditation of your law school in 13 different public venues over the next 5 years".

6. **Inconsistent and limping accreditation**
   Each process of the 13 different law societies considering accreditation or not, will be based on different evidence, different due process, different resources and a shifting membership of committees—exactly as is currently occurring in relation to TWU across Canada. Different law society committee outcomes are inevitable, as has currently occurred over TWU.

7. **Res Judicata or not?**
   Will the early decisions and evidence of the "fast" law society committees (eg Alberta and Saskatchewan in the case of TWU) have special weight in the interests of uniformity? If so, what are the implications for forum shopping by law schools or grievants, between the reputedly fast and slow, liberal or conservative, of the 13 fluctuating law society committees?

8. **National Mobility of Lawyers in Canada Terminated?**
   Graduates of law schools or universities disaccredited by one or more law societies, presumably will be able to practice in other more friendly Canadian provinces. Will across-provincial redemption be possible if a "tainted" graduate practices with esteem for X years in his/her accredited province? Will any dis-accreditation of a law school operate retrospectively to disqualify many or any past graduates, or only prospectively upon those yet to seek admission to practice?

9. **Gradation of Consequences**
   As with any group of decision makers, it is inevitable that 13 law society committees will choose a variety of consequences where a law school or university has engaged in individual or systemic "bad behaviour." (This is already illustrated by the variety of consequences in recent resolutions about TWU from different bodies). For example, a law society could publicly disapprove, and choose to do nothing; or refer the decision back to a central authority; or accept evidence that a practice or rule had changed; OR under threat of dis-accreditation of the law school, order a private or public apology;

order special free tutoring for particular students; require free completion of the law degree and/or refund of fees; order an expert to supervise and report back to the law society on changes made over several years, all expenses paid by the law school; require suspension and re-education of a particular teacher or administrator or groups thereof; payment of damages, legal costs or refunds to a number of students, graduates or staff; and finally of course, dis-accredit the guilty law school, temporarily or indefinitely.

10. **Devastating Risk of Loss of Accreditation**
    The last draconian threatened consequence, namely loss (or suspension) of accreditation of a law school or university, by any one of the unpredictable 13 law society committees, has some uncomfortable side effects. First, Canadian law schools may carefully conform to one another in order to seek safety and justification from "common (bad and good) practice"; secondly, law schools will tend to settle privately upon almost any demands made by an organized, wealthy and persistent group of grievants: and thirdly, law schools will occasionally resort to epic litigation and appeals supported financially by alumni, university and student funds in order to control any of the 13 critical law society accreditation committees, or in an attempt to discredit self represented conflict junkies and resentniks.

For at least the above ten reasons, I suggest that the LSUC should answer the question set out above in the affirmative, by referring the conditional accreditation and final accreditation of TWU, and other law schools, to the centralized Federation process as originally agreed.

Professor John Wade
Law Foundation Chair
College of Law
University of Saskatchewan
Professor Emeritus, Bond University, Australia.
4 March, 2014.

ALEXANDRA KIRSCHBAUM

Barrister and Solicitor

London, Ontario

March 6, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Policy Secretariat:

Re: Accreditation of Trinity Western's Law Program

While I certainly endorse freedom of religion amongst members of the profession, I am writing against the accreditation of Trinity Western's Law Program under the current circumstances. My reasons are as follows.

1. Accreditation of the program would provide students willing to abide by TWU's community covenant a higher chance of being accepted to law school in the country. Such is the case because students willing to sign the covenant may attend law school at any institution in Canada, including TWU, whereas unwilling students would not be able to attend TWU in good conscience.
2. Accreditation of the program creates a public perception that the Law Society endorses TWU's moral viewpoint, which does not serve the Law Society's aims of serving the public without discrimination.
3. Accreditation of the program may create discomfort and tensions amongst lawyers in the workplace. At present, lawyers are permitted to disclose or not to disclose their religious

beliefs at work; it is a matter of personal choice. Graduates of TWU would be announcing their religious beliefs to the world by virtue of their law school affiliation. Though some graduates might attend TWU without supporting all of TWU's values, those graduates would still have to overcome the perceptions of others in the workplace and in the community.

4. Refusing to accredit the TWU program, with the community covenant in place is not discrimination; it is a restraint of allowing an institution to discriminate. Undergraduates graduating TWU may attend law school anywhere in the country, provided they qualify academically. There is no requirement of premarital gay sex for attending any law school.

It is my belief that the only material requirements for entry into law school are academic excellence and the ability to meet the demands of the profession according to the public interest. A person's sexual orientation, and their engagement in premarital sex are irrelevant to this determination.

It would be a grave error for the Law Society of Upper Canada to accredit TWU with the community covenant requirement in place.

Sincerely,

Alexandra Kirschbaum

LUGOSI LAW FIRM

Dr. Charles I. Lugosi, Esq. LL.B. LL.M. M.B.E. S.J.D. (Doctor of Juridical Science)
Barrister at Law, Solicitor & Notary Public
Admitted to Bars of Ontario (April 9, 1981) and British Columbia (May 10, 1982)
Attorney at Law, admitted to State Bars of Michigan and Washington, District Courts of Eastern and Western Michigan, U.S. Court of Appeals, 6th Circuit; and 4th Circuits, Supreme Court of the United States
Of Counsel: **Robert I. Martin,** B.A. LL.B. LL.M. Professor of Law, Emeritus
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March 5, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

VIA FACSIMILE: 416-947-7623

Dear Colleagues:

Re: Accreditation of Trinity Western University's School of Law

Summary

I enthusiastically support the admission of TWU graduates who pass the bar exams, to any law society of Canada, without limitation, for the practice of law.

I am appalled that there is even any controversy over this issue.

Background

My opinion comes from my personal experience teaching law and serving on faculty committees at both public law schools and private religious law schools in Canada and the United States. I am also a graduate of law schools in both countries: Western and the University of Pennsylvania.

Canadian Law Schools Discriminate Against Christians

Political correctness in Canada and peer pressure to conform to prevailing liberal viewpoints on matters such as gay rights and feminist rights intimidate and stifle intellectual diversity and opposing viewpoints, producing Canadian law graduates who are indoctrinated into closed minded views about lawyers who are religiously observant and conscientious objectors to laws that legalize

immorality and sin. Faculty and administration at Canadian law public law schools appear to generally support this intolerant atmosphere.

The Loss of Students

The tragic result is that some brilliant Canadians, who wish to study law, leave the country and attend American religious law schools like Ave Maria, where I was a Visiting Professor for two years. There they find freedom to study and participate in class without being ridiculed for their personal beliefs. Many non-religious students attend the same schools, and their viewpoints are encouraged and respected. Graduates of law schools like Ave Maria are admitted to the Bar of Ontario after meeting accreditation standards required by the Federation of Law Societies.

Christian law students in Canada, who do not have the option of studying outside Canada, find refuge in organizations like the student chapters of Christian Legal Fellowship. But this organization, and others like it, is not a proper remedy to cure the intolerant anti-Christian bias permeating Canadian law schools.

The Loss of Faculty

I suspect that some faculty members, who serve on faculty recruitment committees at Canada's law schools, ruthlessly purge superior faculty candidates who have a religious viewpoint. For example, being publicly pro-life may automatically disqualify an otherwise outstanding faculty candidate from getting a job. Any potential faculty candidate, who hold morally conservative views, and somehow passes this filter, and does get hired, predictably may hide their religious beliefs, teaching non-controversial topics like wills and estates, and shy away from producing publications and participating in academic conferences that might in any way impede attaining tenure. Canadians who wish to teach law in an atmosphere of freedom and intellectual diversity sometimes find that haven in American religious law schools that are not populated with faculty opposed to professors who actually promote Christian values and principles.

I would be delighted to teach law to the students at TWU, because I anticipate that the religious and non-religious law students there, will be open-minded, tolerant and willing to accept intellectual diversity, key elements that, in my experience, currently appear to be missing from Canadian law schools.

The Need for a Christian Law School

TWU's law school is a response to the failure of Canadian law schools to properly educate lawyers without bias, and their failure to employ qualified faculty who have and present opposing viewpoints. This new law school is badly needed to remedy this imbalance and will hopefully be a breath of fresh air to invigorate and challenge prevailing ways of thinking. I am hopeful that the full accreditation of TWU's law school by all law societies will positively

motivate the other Canadian law schools to begin genuine change, to actively encourage intellectual diversity and opposing religious viewpoints.

This is a good thing, as the history of the common law proves that good things come from Christian values and beliefs. The Christian duty of care to one's neighbor resulted in the formation of the law of negligence. The Ten Commandments of the Jewish religion, were accepted by Christians, and became the backbone of Canada's original Criminal Code. The Constitution of Canada is founded upon both the Supremacy of God and the Rule of Law, that itself is derived from Natural Law, which is consistent with Christian beliefs and values. To deny this heritage and to deny admission to the bar of any Canadian province or territory a qualified lawyer from an accredited religious law school is absurd, offensive and a mean-spirited violation of equality and respect for human dignity.

The Sexual Behavior Covenant

The moral code of conduct required of TWU's students is at the root of much opposition to the TWU law school. I personally doubt most students of every sexual orientation who publicly profess to abide by the sexuality covenant will remain true to it, and will secretly engage in transgressions just because no one is without sin, for, just as the Bible says, "flesh is weak."

In my view, TWU ought to scrap this rule, because, although it is well motivated, it is not realistic and breeds hypocrisy and controversy. For example, if a same sex couple legally marries, does that mean the covenant is honored? The decision to keep or remove this rule belongs to TWU. Litigation may be the end result.

Far better to say to students, choose wisely how you conduct your personal sexual life, for there are always inescapable consequences to sinful acts that lead to destruction of the body and soul. Instead of teaching what not to do, TWU should teach these law students what to do. My suggestion is to encourage all law students to abide by this passage from the Bible, Micah 6:8: "And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God."

Justice, mercy and humility are sadly lacking all too often in our justice system, and instilling these kinds of positive values into law students is far better than clinging to a negative covenant that generate misunderstandings, hasty judgments, hurt feelings and inflammatory rhetoric. Students in professional law schools are adults and need to be trusted to make their own responsible choices.

Conclusion

The fact remains that TWU has met the rigorous accreditation standards required by the Federation of Law Societies to become a law school. Now that this standard is met, the law societies of Canada have no business to set up obstacles

to restrict national mobility and create an artificial restraint upon trade by taking away a future lawyer's inability to earn a living as a practicing professional.

To single out future TWU law grads and deny them their chosen profession by preventing them from practicing law may be illegal and appears to be motivated by thinly disguised prejudice and bigotry against Christian values and beliefs.

Yours truly,

Charles I. Lugosi

March 6, 2014
Pages: 3

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Honourable Benchers of the Law Society of Upper Canada:

RE: TWU Submissions

I am a lawyer and Member in Good Standing of the Law Society of Upper Canada. As such, I am writing to express my opinion on LSUC's accreditation of Trinity Western University's law school. I have many concerns about TWU's accreditation, but for the purposes of this submission I will focus on a narrow human rights perspective, and suggest that denying TWU's application for accreditation *as it is currently made* would strike the right balance between the human rights of law students and the religious freedoms enjoyed by TWU.

I make this submission not only to express my personal opinion, but also because of what I see as my professional obligations under Rules 1.03(1)(b) and 5.04(1) of the *Rules of Professional Conduct*. These *Rules* require me, and all lawyers in the Province, to "respect human rights laws in force in Ontario".

This is fundamentally why I find the accreditation of TWU's law school so problematic. I understand that the *British Columbia Human Rights Code* allows the type of discriminatory actions that TWU has engaged in and is proposing to engage in with its law school. However, the *Ontario Human Rights Code* certainly does not tolerate such actions. Were TWU situated in Ontario (or in Alberta, Saskatchewan or Nova Scotia for that matter) there would be no need for this submission. TWU would be in clear breach of human rights laws and would have to alter its practices accordingly before having any hope of being accredited.

Therefore, can LSUC accredit TWU's law school while respecting our professional obligations with respect to human rights laws in Ontario? Of course, the *Ontario Human Rights Code* does not apply to TWU, but it does apply to LSUC. The decision to accredit TWU's law school is to be made by LSUC here in the Province of Ontario, under the full weight of the "human rights laws in force in Ontario." These human rights laws include not only a duty not to discriminate, but also a duty to not authorize, condone, adopt or ratify discriminatory behavior. In

this light, can LSUC, as Ontario's law society, make a decision to accredit a law school that is clearly in breach of our human rights laws? It should be entirely unacceptable for our profession to ignore practices that are discriminatory in Ontario. To do so would be a failure of our professional obligations, and indeed our profession as a whole, with respect to human rights. It would also send a signal that discrimination contrary to Ontario law is acceptable to LSUC as long as such discrimination is sufficiently "outsourced".

As such I would urge LSUC to be mindful of Ontario's human rights laws as well as our professional obligations when rendering a decision on this important issue. On this basis, I would urge LSUC to deny TWU's request for accreditation.

While such a decision may appear, on its face, to have a substantial negative impact on TWU and the investments that it has made in its putative law school, the reality is somewhat different. TWU is free to hold and disseminate any honestly held religious beliefs. Unlike some of the commentary on this issue, I do not necessarily believe that religious or moral instruction incompatible with the law automatically means that law students will be inadequately prepared to deal with professional life as a lawyer. An ethical and passionate practice of law often involves the interplay of law, public ethics and private morality. Like many lawyers, I do not see an irresolvable contradiction between believing that certain laws are unjust or immoral, while satisfying my obligations to my profession and to the administration of justice in upholding those laws.

Similarly, LSUC's decision to not accredit TWU should not be based on the content of its instruction (provided the over-all content meets professional competency requirements) or on the honestly held beliefs of its administrators, faculty or students. TWU and all those associated with it have an absolute right to their honestly held religious beliefs. Rather, LSUC's decision to deny accreditation ought to turn on the Covenant that students are required to sign as a condition of admission. As a condition of admission, TWU students are required to undertake to act and to refrain from acting in certain ways that are discriminatory under the human rights laws in force in Ontario. The Covenant leaps out of the realm of belief and intrudes upon the domain of action. I believe it is this action that infringes upon the human rights of actual and prospective students at TWU.

Therefore, LSUC should send a strong signal to TWU that its practice of requiring students to sign the Covenant is discriminatory according to the laws of Ontario that bind us individually and as a profession, and that its application for accreditation will fail until it remedies this requirement. That is, in actual fact the only change TWU is required to make to gain accreditation from LSUC in compliance with human rights laws in Ontario is to cease its practice of forcing students to sign the Covenant. Doing so might not make TWU Canada's favourite law school, but it will make it, like all other law schools in the country, compliant with human rights law in Ontario.

I am proud to be part of this profession, and I hope that I will be able to be proud of the decision that Convocation renders on this issue.

Yours sincerely,

Shibil Siddiqi
Barrister & Solicitor

Mr. Troy Ungerman
Partner
Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800
Toronto, ON M5J 2Z4

March 6, 2014

To Whom It May Concern:

I am writing regarding Trinity Western University's (**TWU's**) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. In Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). As a *Charter*-affirming lawyer, I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[3] the Canadian Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers and academics, editorial boards,[6] and over one thousand law students.[7] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its

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[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

[3] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[4] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[6] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[7] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

statutory authority to the Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest -- contrary to LSUC's regulatory mandate. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key findings on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

The FLSC's decision offends more than 2013 sensibilities – the decision is legally incorrect:

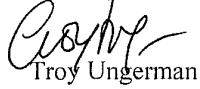
- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[8] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[9] departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.
- Second, the 2012 SCC decision in *Doré*[10] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt the LSUC to heavily scrutinize the FLSC recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's LSUC accreditation. I look forward to a properly balanced and progressive decision from the law society on this important issue.

Sincerely,



Troy Ungerman
Partner, and Chair of the LGBTA Network of Norton Rose Fulbright Canada LLP

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[8] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

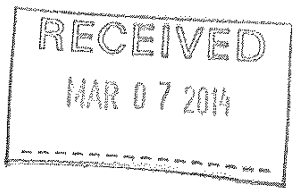
[9] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

[10] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

March 1, 2014

11 Ridgeburn Gate

Ottawa, ON



TWU Submissions
Public Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Treasurer and members of Convocation,

We are members of the Law Society of Upper Canada, having been called to the Bar in 1986 and 1988. We are writing to express our concern about the possible accreditation of the Law program proposed by Trinity Western University. In our view the actions of Trinity Western University are clearly discriminatory on the basis of sexual orientation.

We support the analysis provided by Paul Jonathan Saguil in his letter of February 27, 2014.

We would add that not only would the TWU law program discriminate against law students, but it would also clearly be discriminatory with regards to the hiring of faculty and staff. No person involved in a same-sex relationship could be hired, based on the requirement that faculty and staff "sincerely embrace"` every part of the Community Covenant, including abstaining from "`sexual intimacy that violates the sacredness of marriage between a man and a woman".

We therefore urge you to oppose the granting of accreditation to Trinity Western University until such times as it clearly reverses all discriminatory practices with respect to dealing with students, faculty and staff.

Sincerely,

Caroline Harris-McDonald

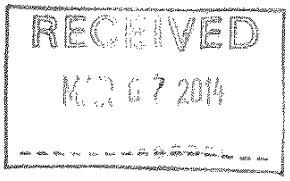
Charles McDonald

Benchers of the Law Society of Upper Canada

130 Queen Street West

Toronto, Ontario

M5H 2N6



March 5, 2014

Honourable Benchers; **RE: TRINITY WESTERN UNIVERSITY LAW SCHOOL**

I am firmly opposed to the accreditation by the Law Society of Upper Canada of the proposed law school at Trinity Western University and urge the Benchers to oppose it too.

It is not appropriate that lawyers be educated at a religious school. It is most definitely not in the public interest that lawyers be trained in a law school that is explicitly Christian: the TWU community covenant reads, in its opening statement that *"The University's mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible"*. It cannot be in the public interest of our secular, pluralistic and multi-cultural country that lawyers obtain their training in a school that is exclusionary in its foundational documents. A lawyer must be able to apply the law and represent his or her clients in the society as it exists and under laws that have been passed democratically, even if the laws may not accord with the conscience or the faith of the lawyer.

Much has been written about the "covenant" which all students are required to sign in order to attend TWU. Most of the discussion centres on the statement that students must abstain from *"Sexual intimacy that violates the sacredness of marriage between a man and a woman"* and the statement that *"...sexual intimacy is reserved for marriage between one man and one woman"*. In these statements the university is at once condemning same-sex relationships, but also all sexual relationships which are outside marriage. But in fact, the most recent Canadian census data shows that both common-law and same-sex relationships are increasing much faster than is the traditional marriage between a man and a woman: the percentage of traditional married couples rose only 3.1 per cent from 2006-2011, whereas common-law couples rose by 13.9 percent over the same period--. http://www12.statcan.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.cfm.

However, I am also very alarmed by the statement in the TWU covenant that students commit themselves to *"treat all persons with respect and dignity, and uphold their God-given worth from conception to death"*. This statement carries with it a clear condemnation of abortion, and also many forms of birth control. In Canada, we have accepted that both abortion and birth control are issues of reproductive health, and our laws reflect this. It is not in the public interest that lawyers be educated at a law school which specifically rejects the belief that reproductive health services for women are a social good. Women have fought long and hard to gain reproductive rights in Canada, and the LSUC should not be promoting a Christian law school which would want to claw back these rights.

Of course, lawyers, like all citizens, are entitled to practise their own faiths and have their own political opinions. However, access to justice will not be furthered if we start to graduate lawyers who have had their legal training in a law school which is so distinctly out of step with the laws and mores of Canada and Canadians.

Thank you for your time in reading this, and I will be watching the debate on this issue with great interest. I do hope that the Law Society of Upper Canada will not agree to the accreditation of the Christian law school at TWU.

Yours truly,

Kathleen Howes

Barrister & Solicitor

Unifor Legal Services Plan

23 Regan Road,

Brampton, Ontario

L7A 1B2

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON

I am writing to express my opposition to Law Society accreditation of the proposed law school at Trinity Western University.

The TWU community covenant reads, in its opening statement, that *"The University's mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible"*. In my view, it is not in the public interest of our pluralistic and multi-cultural country that lawyers obtain their training in a school that is exclusionary in its foundational documents.

In particular, I am concerned about the "covenant" that students are required to sign in order to attend TWU. The statement that students must abstain from *"Sexual intimacy that violates the sacredness of marriage between a man and a woman*" and the statement that "*…sexual intimacy is reserved for marriage between one man and one woman"* together condemn same-sex relationships.

Sexual orientation is a prohibited ground of discrimination under Canadian human rights jurisprudence and under the Ontario *Human Rights Code.* The effect of this covenant is that students who are members of the LGBTQ community are barred from attending unless willing to be "in the closet" with respect to their sexual orientation. This is an essential feature of the discrimination typically faced by LGBTQ individuals – they are forced to pretend to be someone other than who they are. Particularly as we see the extreme lengths to which homophobia will go in outlawing homosexuality in other countries in the world, putting lives as risk, it is extremely important that we be vigilant in Canada in not allowing homophobia to taint our educational and other public institutions.

Thank you. I will be watching the debate on this issue with considerable concern.

Kathy Laird

The Law Society of Upper Canada should not accredit Trinity Western Law.

Kind Regards,

Adriana Nigro
Western Law 2016

CANADIAN DEFENCE LAWYERS

Canadian Defence Lawyers Statement Regarding Trinity Western University's Proposed Law School Program

Canadian Defence Lawyers (CDL) believes that:

- Trinity Western University's Covenant Agreement is discriminatory, and
- discrimination is inconsistent with a lawyer's obligation to uphold the laws of Canada.

Canadian Defence Lawyers is a national organization for civil defence lawyers.

Cornelis Lindhout, LL.B.
Barrister, Solicitor,
& Notary Public

16 Northcliffe Blvd.,
Toronto, ON M6H 3H1
Tel.: 416-653-3073
Fax: 416-653-2226

Please refer to File No.

10 March 2014

LAW SOCIETY OF UPPER CANADA

BY FAX ONLY TO
416-947-7623

TWO (2) PAGES

TO WHOM IT MAY CONCERN:

You have asked for input in connection with Trinity Western University (TWU) application to have a Faculty of Law. I wish to express my thoughts as follows:

To me this application is an issue of FREEDOM. Are students free to choose a University, or a Law School? Are Universities or Law Schools free to set certain policies for admission? It is done all the time, ostensibly because the proposed student lacks the necessary *qualifications*.

As I recall the B.C. Teachers' Union lost a case against TWU, because the Union did not/could not prove that the teachers were not properly qualified, nor that those who graduated with teaching degrees from TWU applied their 'biases' in the public school system.

I saw in the newspaper that in Nova Scotia the Bar Association wants to exclude TWU future law school graduates from practising in that province, not because such graduates would not be qualified, but because of their possible Christian views on moral issues. I'd say that such position does not promote freedom, but falls more under the rubric of 'bullying' in the sense of 'you do things our way, or else'

In this connection I also saw in the Law Times (March 3, 2014), under heading on page 4 that the "Resolution... is not an attack on Christians" and below it, "They (Evangelical preachers) will still have the freedom to preach what they believe in any way" and goes on "Rather, it is the right of gay and lesbian students to a good law school education that's at stake". Fine - they are free to go to X number of law schools in Canada and, presumably, still get a good law school education. They do not HAVE to go to TWU, where there is a standard based on religious beliefs that is different from much in our society.

–2/

Page 2:

Historically we had Christian Universities and Law Schools as part of those universities. I cannot help but wonder if other religions, e.g. Jews or Muslims wanted to have a University and a Law School, that required compliance with their religious dogmas, would they be treated the same as TWU? Is there a fear of a precedent and possible reduction in other law school enrolment? Be that as it may, I still say that a student who does not want to subscribe to TWU's standards is free to go elsewhere. As our society seems ever to be moving forward (or backwards, as one is -still?- free to believe) and if students generally want to have complete freedom, TWU would not get enough law students to make it economically viable to continue.

But the last time I saw a survey under various headings of Universities, I remember that TWU ranked first in some parts, including student satisfaction.

If people believe that practising Christians cannot be good lawyers, then I wonder on what facts such belief is based.

Let us show that letter writers such as reported in the National Post , March 7th, page 13, (and how many others?) have a wrong view of lawyers in general. I quote:

> "I had always thought that people who refer to lawyers as bottom-feeders or other nasty life forms were only joking. But now Ontario lawyer Clayton Ruby seems to be saying that law graduates of Trinity Western University should not be allowed to practise law because they agreed to live chaste lives. One inevitably wonders what level of sexual depravity would, in the views of Mr. Ruby, be recommended for those embarking on a law career."

In my humble opinion no one should pre-judge TWU, thinking that it cannot deliver quality law graduates, just because it asks for a particular life style among its students. TWU has been pre-approved of getting a law school and the example of the Nova Scotia Bar of rejecting TWU's law grads in advance is just plain wrong, even if they are free in a supposedly free country to make a mockery of themselves. Let us, in Ontario, not go in the same direction.

Yours very truly,

Cornelis Lindhout

Greetings,

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. In Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). As a *Charter*-affirming individual, who happens also to be gay and work with the United Church of Canada, I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Students who do not comply with the agreement may be removed from the university without readmission. The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

This policy is not only a human rights violation, it is also a huge step in perpetuating the harm done to LGBTQ people by religion. In my work with the United Church of Canada, I have met with hundreds of LGBTQ people for whom their religious experiences had left them extremely wounded and hardened, after being constantly forced to choose between their sexuality and their faith. This is a choice that is impossible, as one's sexuality is not a choice and cannot be changed, and sexual orientation should not be a barrier to inclusion in any religion.

Forcing students to abide by an ill-informed, patriarchal, and oppressive understanding of what traditional marriage is and enforcing this by threats of expulsion, in counterintuitive to what educational institutions should stand for.

I cannot urge you enough to stand up for the rights of LGBTQ people to be able to obtain an education from the University of their choice without having to hide who they truly are. Practicing law demands a foundation of integrity that will already be compromised if they are forced to repress something about themselves, especially something that is immutable.

Thank you for your time and consideration,

Pamela Rocker
Affirming & Creative Coordinator
Hillhurst United Church, Calgary

RZCD LAW FIRM LLP
Established 1993

Alexandrina Valova
Extension No.: 349
E-Mail: avalova@rzcdlaw.com

March 5, 2013

Benchers of the Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Re: TRINITY WESTERN UNIVERSITY LAW SCHOOL

Honourable Benchers:

As a proud member of the legal profession, I am strongly opposed to the accreditation by the Law Society of Upper Canada ("LSUC") of the proposed law school at Trinity Western University ("TWU").

We live and practice in a society that has made significant strides on crucial legal matters such as abortion, birth-control and same-sex relationships. It is reasonable to say that a great deal of the progress in these areas can be attributed to dedicated lawyers who actively further the principles embodied in the *Charter of Rights and Freedoms*. Also, it goes without saying that our judiciary plays an important role in interpreting laws and has the power to strike down unconstitutional laws. Today's lawyers are tomorrow's judges.

Our society is a secular one and as such it would be most inappropriate for law students to be educated at an explicitly Christian religious school, such as TWU, which prides itself as an institution with a "firm commitment to the person and work of Jesus Christ as declared in the Bible." Such an exclusionary creed cannot be justified in the legal sphere.

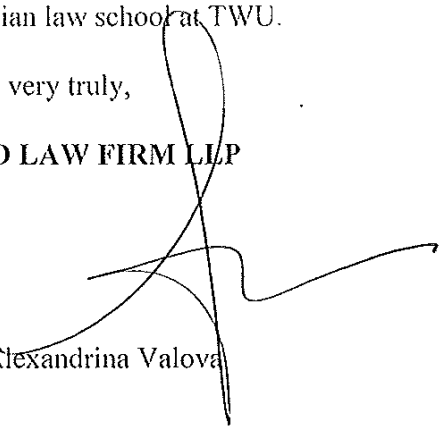
Although there are various ways that a secular state can interact with religion in its borders, it is certainly not in the public interest for lawyers in Canada to be divided along fundamental religious lines. This is so particularly at a time when access to legal services and the courts are an increasing concern. We should not encourage a two-tier legal system.

As lawyers, our primary concern is the public good, and we are in a unique and privileged position to advance same. We must not digress.

In light of the foregoing, I sincerely urge LSUC to not agree to the accreditation of the Christian law school at TWU.

Yours very truly,

RZCD LAW FIRM LLP



Per: Alexandrina Valova

Albert H. Oosterhoff
Barrister & Solicitor

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March 11, 2014

The Treasurer and Benchers
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

Dear Treasurer and Benchers:

Re: TWU Submissions

I am writing this letter in response to the Law Society's invitation of 28 February 2014 for written submissions from the profession and the public on the matter of the accreditation of Trinity Western's law program.

In response to the motion, which asks whether the Law Society of Upper Canada should accredit TWU pursuant to section 7 of By-Law 4, I submit that of course it should accredit TWU. My reasons follow.

The Approval Committee of the Federation of Law Societies has given approval to the TWU program, in accordance with processes approved by Convocation. This means that the proposed curriculum of the TWU Law School is unexceptional. I have examined the curriculum closely and agree that it covers all legal subjects that ought to be taught in a Canadian Law School. Among other things, it has a strong ethics component. So what prevents the Law Society from accrediting the institution?

I understand that the motion has been made because of concerns about TWU's community covenant that requires students, faculty and staff to respect Christian values and to sign a pledge that they will not, *inter alia*, engage in "sexual intimacy that violates the sacredness of marriage between a man and a woman." Opponents of the covenant take the view that it is discriminatory and, moreover, that graduates of the program will not be able to represent clients who are gay effectively or at all.

With respect that view is risible. If it were true then, by the same token, no non-Christian can effectively present Christians. Nor, if they think theft and sexual assaults are wrong (as most of us surely do), they will not be able effectively to

represent thieves and persons who commit sexual assault. We know that Christians and non-Christian lawyers regularly represent such persons. Why? Because under our rule of law they are entitled to a proper defence and to be deemed innocent until proved guilty. And as lawyers of whatever stripe, we are sworn to uphold the rule of law. The same is surely true with respect to the representation of persons whose sexual orientation is other than heterosexual. Indeed, in letters to the editor in the last couple of months, writers who are Christians have asserted that they have represented gay persons and have done so without any qualms. I too, have gay friends and acquaintances and, while still at the bar, happily advised them on legal issues on which I claim expertise.

Is this not what all lawyers are supposed to do? We are sworn to do so, Christians and non-Christians alike. TWU does not at all make the claim that their graduates must limit their practices to those only with whose views they happen to agree. On the contrary, TWU proposes to train its law students to become effective lawyers and to represent all who need their services.

Not only that, but the faculty will have no choice but to train students to that end if they are Christians. Christians profess that the second most important command is to love one's neighbour as oneself. Who is one's neighbour? Christ explained that in a famous parable known as the "Good Samaritan" (see Luke 10:25ff). He had been asked by a lawyer(!) who wanted to justify himself, "Who is my neighbour?" The parable involved a person who was set upon by robbers and left for dead. A priest and a Levite failed to help him, passing by on the other side of the road. But a Samaritan, a member of a society despised by the Jews of that time, stopped and helped the man and took him to an inn, paying for the expenses out of his own pocket. The poor man was his neighbour. Thus, your neighbour is any one who has been placed on your path who needs help. In other words, it is a person who comes to you for legal services, no matter what her personal views or sexual orientation may be (except, of course, that you may not advise or assist her to commit a crime).

Why then is there such opposition to the accreditation of TWU's law school? Does it perhaps originate with those who regard anything Christian to be anathema and perhaps with others who have a particular view of equality. But why? We live in and are members of a pluriform society in which there are a great diversity of views. In a civilized society we must respect and, indeed, cherish this diversity. And we may debate those views with civility in the public square. What we ought not to do in my submission is to deride the views of others simply because they disagree with our own. Our society would cease to be civilized if that were permitted. (In passing, I note that in recent years the Law Society has also emphasized and promoted civility in discourse among lawyers and in the courts.)

It has been suggested that the position of TWU conflicts with established law that recognizes same-sex marriage. I submit that it does not. TWU's law program does not contest that law and, as explained above, its graduates would also have to abide by that law.

There is another, very important issue. Freedom of expression and freedom of religion are constitutionally guaranteed rights. Were Convocation to decide not to grant accreditation to TWU because of its expressed religious view, I should think that the Law Society might be faced with proceedings in which its decision is called into question on constitutional grounds. Similarly, if TWU's law graduates were denied the right to article in Ontario or be called to the bar, similar proceedings might well be brought. This is surely not desirable.

In conclusion, I hope that Convocation will answer the question posed in the motion in the affirmative. Doing so accords with constitutionally protected rights and is the proper course to take for our society.

Respectfully submitted.

Sincerely,

Albert H. Oosterhoff
Professor Emeritus
Faculty of Law
Western University

I am writing, again, this time after receiving notice from the Law Society for submissions, about my deep concern to the Law Society's role, as a member in the Federation of Law Societies, in approving the Trinity Western Law School. I also want to raise my strong objections by any move of the Law Society to accredit this school. As a member of the Law Society of Upper Canada, I believe that the approval of this law school by the Federation is an injustice and that claims that criteria for approving a law school are very narrow, as I have been told, do not address the gross and improper result that has occurred by this decision.

I have already submitted a complaint in this regard to the Complaints Department but received only an email telling me that there was no standing to deal with my submission. As a member of the LGBTQ Community, I feel that the actions of the Federation, and the Law Society, as a member of the Federation, are a breach and denial of my rights. By authorizing a school that allows bigotry and hatred against my community, you are diminishing my worth as a member and telling me that it is okay for law schools to discriminate against members of my community. It is a very slippery slope once this decision is made. What if the pledge by students coming into the law school was that they would not intermarry with non-whites, or non-christians? Would this be acceptable? And how does this school deal with candidates that aren't Christian? Once they start to deny my rights based on their religious freedom, who else will they choose to deny access to a legal education? I know that this decision by the Federation is now made so will leave it to others more skilled in the litigation bar to see whether there is any ability to reverse it.

I am now asking the Benchers and the Law Society at large to deny accreditation of this Law School unless and until they remove any bar to admission to members of the LGBTQ Community. We must as a free and democratic society allow people to express their religious rights as well as their other rights, however, allowing a school to discriminate against LGBTQ candidates creates a bar of access to a career that by its very nature

should be open to all people of all faiths, creeds and backgrounds. Will it now be open for other existing law schools to revisit their admission policies and commence a similar approach to admissions? And what will they be taught at this school with respect to how members of my community should be dealt with once these students are lawyers. Will they deny legal services to me, will they actively work and lobby to overturn my hard fought rights and freedoms? Freedoms are very tenuous. I might remind you that Berlin before 1939 was a very free and open society where members of the LGBTQ were largely allowed to live open lives. Once the Nazis took control of Germany, the repressions of the members of the LGBTQ community were relentless and atrocious and very few members of the community there survived the Holocaust. You may think that an extreme example but there are plenty of examples in history of freedoms gained over long periods being smashed by reactionaries in a very short period of time. We may very well be seeing an attempt at this in the guise of protecting religious freedom. I am appalled that this has reached this level of discussion in our society and ashamed as a Canadian this could still be an area of contemplation given our constitution and Charter of Rights and Freedoms.

I am hearing from members of one large law firm and others in the community that they are leery of getting involved in this issue because the university in question is litigious and has, in fact, argued a similar case to the Supreme Court with respect to a similar admission requirement to members of the Faculty of Education. I find this a spurious and cowardly response. As lawyers, we have an obligation to study and differentiate decisions of our courts to ensure that we achieve justice based on the facts of individual decisions. And to shy away from a case because of fear of litigation to me would be a complete abdication of responsibilities by the Law Society, so I would ask that you quickly dismiss any such objections based on this argument.

In closing, I implore you to deny accreditation of Trinity Western Law school and as a result deny entry of any of its

students to the practice of law in Ontario.

Yours truly,

John V. Rider

February 19, 2014

Thomas G. Conway, Treasurer,
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Mr. Conway:

RE: Trinity Western University Proposed Law School

I am writing to you on behalf of the Toronto Lawyers' Association (the TLA). As you know, the TLA represents the interests of its 3,200 members who practice law in all disciplines across the GTA. Our membership and our Board of Trustees hold diverse opinions, consistent with, and reflective of the diversity of the profession in Ontario.

We understand that at your upcoming meeting in April 2014, Convocation will be considering the Federation of Law Societies' preliminary approval of a law school at Trinity Western University (TWU), and in particular it will be considering the question of admission of TWU graduates to the bar admission programs in Ontario. We urge the Law Society to consider all aspects of this issue with the utmost care, taking into consideration its overarching duties to protect the public and to uphold the Rule of Law; and in doing so, to ensure that all licensees meet the requisite standards of professional competence, professional conduct, and education standards expected of all lawyers admitted to the practice in Ontario.

The TLA appreciates that both freedom of religion and freedom from discrimination on the basis of, *inter alia*, sexual orientation are protected rights in Canada. The TWU's mandatory Community Covenant Agreement raises an important and admittedly complex challenge for the Law Society in balancing those two interests. In the view of the TLA, the Supreme Court decision in *Trinity Western University v. British Columbia College of Teachers* regarding TWU's teachers program is not necessarily the definitive answer to whether the Law Society of Upper Canada should permit TWU graduates to apply to the LSUC's bar admission program, given the great importance of Charter rights and values, and the stated intention of TWU to teach its law program from its fundamentalist Christian worldview. The issues which Convocation is facing are more far-reaching than the question that the Supreme Court answered in the *BC College of Teachers* case. Furthermore, since that decision, *Charter* cases have continued to evolve in keeping with the changing mores of Canadian society.

We note that the Federation of Law Societies has granted only preliminary approval of the TWU law school. In its letter of December 16, 2013, the Federation highlighted that lawyers are required to adhere to principles of non-discrimination (in all respects) in the exercise of their profession. This duty applies equally to practitioners and to academic licensed lawyers who are teaching fundamental legal principles to law students.

It is therefore incumbent upon the Law Society in considering this matter, to take into consideration:

a) The Law Society's overarching duties to protect the public and to ensure its membership meet all core competencies;

b) Canadians' fundamental rights to freedom of association, freedom of religion and equality rights, and whether the law school program at TWU can ensure that its students graduate with sufficient legal, analytical and ethical training to meet the duties of lawyers practicing within this jurisdiction;

c) The quality of legal education, competencies and skills which all students who apply to the bar admission program of the Law Society of Upper Canada are required to demonstrate;

d) Whether the TWU policies would be in contravention of the laws of Ontario, if that university was located in this province; and if so, whether that should have any bearing on the ability of its graduates to seek admission to the Ontario bar admission program on an equal footing with graduates of other Canadian law schools; and,

e) The fact that the Federation's approval of the law school at TWU is preliminary, and the Approval Committee has identified three areas of concern, which will be under scrutiny as the course outlines are further refined and then put into practice - particularly, the fact that TWU's proposal has raised concerns regarding the law school's teaching of ethics and professionalism, and Public Law in relation to the *Charter* and human rights principles within the context of its stated intention to teach from the university's Christian worldview.

We encourage the Law Society to give this matter thorough and careful consideration, and to consult broadly with members of the profession on this important matter. Convocation should not be rushed into making a decision based upon TWU's intended start date for its law school.

As a final matter, the TLA strongly encourages the Law Society to seek input and formal submissions from the TLA and other interested members of the profession if it intends to pursue the recommendation of the Special Advisory Committee to consider adding a non-discrimination provision to the National Requirement for accreditation. As a general principle, the TLA would laud such an addition to the National Requirement, as that would reflect the values which the profession is duty-bound to uphold. However, the terms of such a provision and how it would be imposed upon present and future law school graduates from around the globe is a matter of substantial consequence and importance to the profession. It merits receiving the benefits of broad discussion and input from the diverse members of the Ontario bar.

Sincerely,

Miriam Young
President, Toronto Lawyers Association

TWU Submissions, Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Appropriate response to TWU and future TWU law graduates

Dear Sir:

I take this opportunity to express my gratitude for being able to provide perspective in the above matter.

I am 69 years of age, retired, and have no connection with either TWU or the legal profession. Having observed political and legal trends in Canada over the last 50 years or so, I have come to believe that the law profession should strive to reflect the diversity we see in the population at large so that all Canadians may have access to legal counsel understanding of their concerns. All of the following is from my own observation and I in no way claim to represent TWU.

With respect to TWU seeking to open a law school, a number of interconnected issues present.

The central concern raised appears to focus on an in-house moral covenant applying to all students, staff and other employees whereby all commit to refrain from *"sexual intimacy that violates the sacredness of marriage between a man and a woman."* Concern has been expressed that graduates of such a school would tend more than others to discriminate against those who support intimacy outside those parameters.

Before any other considerations, TWU is a privately funded religiously-affiliated school and is entitiled to uphold the values and principles upon which it was founded on a similar basis as a church. Pre-rejection of future unknown graduates based on speculation that they might discriminate against LGBT persons seems literally to be prejudice - judging before the fact. It assumes a form of hypothetical discrimination against the University and then proceeds to recommend rejecting graduates from the school, effectively acting on the long-rejected premise of presumed guilt by association when no guilt has ever been established with which to be associated.

It would appear that the primary focus of the TWU covenant is directed, most importantly, not towards one's sexual orientation per se, but rather on how one should **act** with respect to it while at TWU. The vast majority of students in attendance are heterosexual, at least some of whom, at times, may have inclinations to engage in sexual activity while enrolled at the school. By agreeing to the covenant, they have not committed to **change** their sexual orientation, but rather not to **act** upon it outside of heterosexual marriage. Accordingly, the covenant, while impacting everyone at TWU, the overwhelming majority of those affected are unmarried and heterosexual. I am not aware that concerns have been raised by members of this or any group, all of whom, except for married students and staff, effectively have agreed to remain celibate while attending TWU. Married students have merely agreed to respect their marriage vows of fidelity- and surely they should not be rejected for *that*.

This lopsided focus raises the question of whether the law societies' concerns are more political in nature, given that the group they ostensibly seek to support represents only a miniscule portion of those connected with TWU. If law is to be concerned with the rights of all, it seems strange that their concern seemingly pays little, if any attention to the rights of those most impacted by TWU covenant. Have we then come to the place where we now advocate that minorities should enjoy rights, not equal to, *but rather superior to*, those of the majority?

Similar battles have been fought on other fronts, such as affirmative action programs both here and in the US. Such measures may feature a quota approach whereby ethnic minority status has trumped qualifications for applicants to medical schools, for one example. The inevitable result is that non-minority applicants with higher qualifications have been rejected in favour of ethnic minority applicants with inferior qualifications. Accordingly, students rejected on this basis have taken civil action on the grounds of racial discrimination by reason of their not being minority applicants. At the end of the day, in this case, such policies predict inferior medical care to the public by reason of reverse discrimination policy. So this is analogous to the present initiative wherein it may be asked: "Why are the law societies so deeply concerned about how TWU policy might impact LGBT students and their future clients with virtually no concern expressed for how it impacts the majority heterosexual group?" Does belonging to a majority group now diminish one's individual value and protectability in society? Are minority individuals therefore entitled to superior privilege and in some highly visible instances in Canada, treated as being above the law while we may safely look askance at non minority individuals as merely a "dime a dozen" so to speak?

TWU admission policies do not discriminate against people of LGBT orientation. In fact, there are students in attendance who identify as such. Do such LGBT students not have the right to attend TWU and comply with their standards if they so choose? To my knowledge, the present initiative among the law societies does not flow from any expressed dissatisfaction on their part. What we seemingly countenance here, is not a response to alleged incidents of discrimination within a school or potential discrimination against future clients, but rather outside interests seeking to address a problem that does not exist, possibly in order to create grounds to justify discriminating against them. TWU students and staff knowingly and willingly have agreed to abide by the moral covenant, knowing in advance that it is a privately-funded Christian College adhering to Christian standards.

I cannot speak for TWU on the following, but a scenario could present where two students of the same sex have a civil marriage certificate. Presumably, the same rule would apply. While in attendance at TWU, all are subject to historic Christian standards and understandings upon which this nation was founded. For those who object to such standards, there is nothing stopping them from going elsewhere. We in Canada claim to reflect diversity. But if a faith-based institution is required to acquiesce to a moral standard inconsistent with their founding principles, essentially they would be deprived of any meaningful right to exist. This would not be diversity at all, but rather reverse discrimination by imposition of a demand to conform and renounce their founding faith - based principles. Such a demand cannot be called tolerance.

Medicine - an alternate profession facing similar professional ethics issues

Let us change venue here for a moment, seeing that this initiative potentially challenges freedom of religion and conscience at virtually **every level** in Canadian society. Abortion is largely, though not entirely decriminalized in Canada. There are numerous graduate doctors who decline to have any part in abortion because they believe that it is murder. They may believe that scientific evidence provides

ample support for that view. Accordingly, they cannot take part in it. This would also apply to Catholic nuns and others who train as nurses and devote their lives to caring for the sick and injured. They do not accept that killing is part of their calling.

It is one thing for the law to allow something, but it is quite another, in the name of tolerance, to require involvement at any level in what one considers to be wrong. Significant numbers of the Canadian public believe that, regardless of intent, the decriminalization of abortion is pernicious in its effect. Such Canadians, particularly women, may seek out medical practitioners who will not attempt to pressure them into having abortions which they do not want. And surely these women have a right to "choice", namely the right not to be pressured or otherwise coerced into killing their preborn child. Should these Canadian women have an equal right to choose doctors sympathetic to their needs? Or should there be none among whom to choose? It is not my purpose to debate the merits of the abortion issue here. I merely wish to show that *it is an area where legality of procedure does not constitute a binding obligation on all medical professionals to be supportive or involved.* Previous legislators reassured concerned Canadians that it would not come to that. They also told us it would not be publicly funded.

Should we therefore bar medical graduates of faith from practising in **any** branch of medicine just because they cannot in good conscience be involved in **one single area**? Specialties exist because no doctor can be fully competent in every branch of medicine. The same is true of law. Is it not therefore unjust to make a litmus test of a single issue where many would have to violate their conscience as a requirement in order to demonstrate their suitability to enter professional or public life in Canada?

In the 1995 EGAN case, the Supreme Court included sexual orientation, seemingly undefined, into the Charter. We accept that courts can and do tweak and modify or even strike down laws as deemed necessary to conform to existing constitutional principles. But we would hope that this would not be done in a manner that would have the undesirable effect of weakening, subverting those principles.

In EGAN, we need to remember that inclusion of sexual orientation in the Charter did not have in view an expanded redefinition of marriage. The decision countenanced the availability of spousal benefits to same sex couples. In the majority ruling, it states the following:

Marriage has from time immemorial been firmly grounded in our legal tradition, one that is itself a reflection of long-standing philosophical and religious traditions. But its ultimate raison d'être transcends all of these and is firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual. It would be possible to legally define marriage to include homosexual couples, but this would not change the biological and social realities that underlie the traditional marriage.

It is noteworthy that in EGAN, the SCC recognized that marriage was based on historic philosophical and religious tradition from time immemorial, but that its fundamental social reality was anchored in heterosexual relationships, capable of producing children... "...***In this sense, marriage is by nature heterosexual..."***

It is equally noteworthy that the SCC said that "***It would be possible to legally define marriage to include homosexual couples, but this would not change the biological and social realities that underlie the traditional marriage."***

I freely concede the accuracy of the SCC wording here that it would be "...***possible to legally define***

marriage to include homosexual couples... "

The key to understanding the scope of this decision lies in the word ***"possible."*** By no means can this wording be construed to suggest that the historic definition of marriage was unconstitutional. Had that been the understanding, the SCC could have said such a redefinition of marriage was ***necessary,*** not merely possible. However, in the subsequent marriage reference, one of the questions put before the SCC was whether or not the historical heterosexual definition of marriage was *constituional.* Surely if they believed it not to be, they could have said so. But they declined to answer the question. Had they said no, they would have contradicted what they said in EGAN. Had they said yes, it would have strengthened the hand of those Canadians wishing to retain that definition.

In the Ontario Court of Appeal March 4, 5, 2003, in Halpern v Attorney General of Canada, that court struck down a lower court decision which had upheld the heterosexual marriage definition as constitutional. The federal government argued for the law at both levels. However, at this point, Prime Minister Chretien evidently reversed his position and decided not to honour his oath of office to uphold the laws of Canada and accordingly declined to appeal to the SCC. However, since the matter was so important to Canadian society, the recognized intervenors sought leave to appeal to the SCC. They had reason to do so since, among other things, the SCC had said in EGAN that marriage was by nature heterosexual and also that while the definition *could* be changed, they did not say that it *must* be changed.

Coming from an amicus position, the intervenors sought to serve the public by doing what Mr. Chretien was sworn to do and yet refused to do, evidently repositioning himself against the law. The intervenors sought to to uphold it.

We understand that the SCC does not grant leave to every appellant. However, the recognized intervenors at both lower court levels, coming from an amicus position, sought leave to appeal the Ontario Halpern decision. It was not merely a matter of the SCC acting independently to decide whether to grant such leave and which is routine. The government of Canada through Justice Minister Martin Cauchon placed a motion before the SCC **asking the court to deny the intervenors the right to be heard. Clearly, the government had decided to oppose the law and any attempt to uphold it, however legitimate that attempt might be.** This was unconscionable dereliction of duty, violation of the oath of office and clear denial of due process in order to block such an important matter from being heard. The Prime Minister betrayed the people of Canada by directly opposing a law he was sworn to uphold. Regardless of one's views on the marriage definition, this cannot be denied. The SCC denied leave to appeal, thereby allowing the Ontario decision to stand, forcing recognition of same sex marriage on all of Canada.

While we understand that the decision became law, the process whereby it took place goes down as one of the worst incidents of reprehensible political manipulation of a most fundamental issue in Canadian history. And the reason I have referred to all of this as relevant is because this context may provide some perspective when some may wonder why human rights commissions and some lower courts may vigorously prosecute Christians and others who "dare" to uphold the still valid constitutionally-protected marriage and family understandings our nation held from the beginning.

SEXUAL ORIENTATION IS NOT A ONE WAY STREET

Celibacy and heterosexuality are the most basic and long-recognized sexual orientations, the latter being

the basis for all human existence. These two historic forms of sexual orientation are the standard at TWU and accordingly upheld. Thus, sexual orientation is not a one way street. **These two forms enjoy just as much protection under the Charter as any other form of it.** So if we decide to reject TWU students because of their in - house covenant, we discriminate against them, or so it would appear, on two prohibited grounds:

1) Sexual orientation
2) Religion

Should a move to discriminate against TWU in the manner proposed ultimately be upheld, the potential effect on freedom of religion, conscience and speech could be devastating. And this is something the law profession needs to be deeply concerned about if we wish to preserve the kind of free society the founders left us- and also the kind of country we will leave to our children. If we enact provisions and allow precedents to stand which effectively subvert the freedoms the country was based on, we will be powerless to change it when we lay down our tools. Then our children will be left to suffer the consequences of our myopia and inertia in the face of mounting hostility towards our cherished freedoms - much of it advanced in the name of progress and tolerance.

If upheld, rejection of TWU students as proposed would also open the question whether graduates of **any** religious school, secondary or post secondary, should be allowed to enter professional or public life in Canada, thereby undermining the basis upon which religious schools exist. Yet religious education is protected by the Constitution and which protection could only be weakened or extinguished if our public institutions are prepared to act in clear disregard for the Constitution. Further, if such graduates are to be deemed unfit to work within the law and accordingly rejected from the bench, it clearly follows that no Christian, or person of faith, should be allowed to run for public office in Canada, or, if elected, that they should be barred from taking a seat in the House of Commons or the legislature of a province. We all know that precedent in one area is used to justify pressing it further into other areas of public policy.

Making the law is of greater significance than working under that legislated umbrella. Yet the legislative bodies of Canada, unlike those in communist and similar regimes, are not one-party entities. They reflect a lot of diversity. You can even run as an independent. The public record shows, for example, that one MP I know of voted against having transgenderism in the Canadian Human Rights Act. Should he therefore be demonized as a "homophobe" and forced out of office? He is of minority national and religious background, like others coming from Africa, Latin America, Asia and elsewhere. Many such Canadians of diverse backgrounds have strong family values and are accordingly concerned about how our governments are proceeding in the areas we are addressing here.

In Canada we speak of respect for diversity, of which TWU is but one example. By definition, it means that not all share the same views. But TWU's commitment to celibacy and heterosexual marriage is neither unusual nor unconstitutional; indeed they are the standard in most of the world and those upholding them cannot justly be subjected to discrimination and reprisal for doing so.

If it is upheld that such people of faith in Canada may be marginalized as having little or no place in professional or public life, I fail to see how that is essentially different from the policy of the former Soviet Union where Christians and others were routinely and intentionally failed in their studies and barred from advancing their position.

LADIES FIRST?

I grew up at a time when you gave up your seat on the bus to an elderly person or a lady. When the Titanic sank in 1912, women and children had first place in the lifeboats - and which was no small token gesture by the men. It was their way of saying that we had to look out for them. Since men have often taken on a more selfish approach, women have had to stand up for themselves if no one else is going to.

In that vein, I just read a news report regarding the University of Ottawa raising the question of sexual aggression against female students. It is no secret that there is some level of sexual activity among university students. But this is an area where TWU has a clear advantage. If a student wishes to pursue their studies in an environment free from threat of sexual harassment or aggression, this would be an ideal choice since all agree to avoid sexual intimacy outside of marriage.

We have seen advances in protecting women on some fronts, but this is an area where they are still vulnerable, and even losing ground. They are by far the most targeted group when it comes to sexual harassment and aggression. We see a weakening of women's security exemplified by a recent Ontario case flowing directly from the sexual equality rights juggernaut. A biological man identifying as transgendered was able to enter a women's facility and in that facility attacked a defenceless woman. He has now been declared a dangerous offender. But this kind of scenario was predicted by those opposing inclusion of transgenderism in the Human Rights Act. When it comes to vulnerability to sexual aggression, women are the big losers here, but TWU policy affords female students and staff one of the most secure learning environments in the country. Surely we cannot be opposed to that.

Young people raised in a faith environment may desire to attend a school like TWU which supports their values and where they are not subject to harassment or open ridicule even by professors because of their faith, and which does happen in Canada. Surely, if we choose to call ourselves democratic and tolerant, we cannot deny such students the right to choose such a school or penalize them for doing so without regard to their academic and practical qualifications.

In the end, we must uphold freedom of religion and speech which are also under ongoing siege in Canada, apparently despite the constitutional protections they should enjoy. People of faith have a constitutional right to express and uphold their values. And when that dies, we take a major step closer to the repressive regimes of the world. We have seen in the likes of North Korea, the former USSR and others, that constitutional freedoms may be appropriately articulated on paper, but mostly dead on the ground.

The founders of this nation upheld the kind of values shared by TWU and which millions of Canadians still share. The official name of this country was in part taken from the Bible by Leonard Tilley with the solid approval of all those assembled in Charlottetown on July 1, 1867. Our national motto also came from the Bible. Recently, that motto has been removed from our money. I asked the Bank of Canada why this was done. They replied that it was due to technical difficulty - if one is willing to accept it.

There is a Bible in every courtroom. Every insurance company acknowledges the supremacy of God whereby disasters beyond human control are deemed acts of God and not insurable, thereby legally protecting the industry from bankruptcy. The Charter affirms the Supremacy of God. If there is no higher law or order, a nation will descend into moral chaos as has happened in other times. And if government alone has the supreme right to speak to what is right or wrong, then others expressing

dissenting views may be targeted. When governments can tell us what we may and may not discuss and forcibly indoctrinate our children without regard to constitutional parental education rights, we are in serious trouble.

Semantics play an important role when debating. The term "homophobe" largely functions as an expression of hate in order to silence, demonize or otherwise vilify in the public's eyes, those who do not agree with how our public institutions have proceeded on issues flowing from the sexual revolution. Those opposing abortion are labelled "anti choice" instead of pro life. A CBC Halifax employee told me once that their journalists were required to use either "anti abortion" or "anti choice," not pro life. In the US, those wishing to curb abortions are said to "wage war on women" - while the evidence shows quite otherwise. In all these cases, I am confident that people at TWU and others of similar persuasion would willingly agree to be called what they truly are - conscientious objectors - an appropriate and respectful term and which is not asking too much.

When new law affecting social policy is introduced, the legal profession needs to take sober second thought on the broader long-range implications and where the road leads. Consider some typical results of including sexual orientation into the Charter, especially from Human Rights tribunals.

-In Ontario, a Catholic school, upholding their religious beliefs, declined to have a same sex couple attend the senior prom as a couple. An Ontario court ordered them to allow the couple to attend, and further stipulated, (ultra vires?) that the school was forbidden to cancel the event. I was not aware that a court could have such broad injunctive or mandamus jurisdiction with respect to holding an extra curricular event.

- A BC teacher was suspended for writing a respectful letter to the editor opposing the introduction of same sex teaching in the school system. This is not an outcome consistent with a free society.

-A BC Knights of Columbus chapter was convicted of discrimination for refusing their church owned property to be used for a same sex wedding. This effectively penalized them for upholding their religious belief and denied them the right to limit the use of their property to uses consistent with, or at least not in conflict with, their religious beliefs. Such a ruling is draconian and clearly at variance with the SCC holding that no person or religious entity shall be subject to such discrimination. But it happens just the same.

- An Alberta Pastor was convicted by an Alberta Human Rights tribunal of speaking against homosexuality and ordered not to speak on it even in his church -for life - in clear suppression of religious freedom and free speech within the church. A court later overturned this draconian ruling, also similar to the kind of suppression faced by believers living under communism and the like. The government of Alberta supported the discrimination but which the court overturned.

-When my wife and I operated a bed and breakfast in New Brunswick in the early 1990's, civil status was covered by the NB Human rights legislation. We had advertised "no common law." We had six minor children living at home. Guests shared eating areas, bathroom and living areas in direct contact with our children in our personal private residence. It was impossible for us to tell our daughters that (heterosexual) sex before marriage was wrong but that it was ok for $35 a night. The NB Human Rights Act included a provision whereby we could apply for an exemption. We applied twice, citing our superior right to qualify guests in the privacy of our own home. We were twice denied, saying that "an exemption was not within the spirit of the Act." Maintaining respect for the sanctity of the family in

our home was not deemed consistent with the superior right of the public to force us to accept whatever standards -or lack of them- they wished to bring into our private living space. And we call this tolerance and balancing of rights? What tolerance? What balance? If you answer to the name of Mom or Dad, when you come up against sexual equality rights, this tells you exactly how much respect human rights legislation has for the sanctity of your home.

These are just a few examples of official/bureaucratic intolerance towards faith-based rights to freedom of religion, speech and conscience. In other areas, it is different. Smoking is legal, yet there is a warning on every package of cigarettes. Are such warnings hate motivated? We are allowed to prohibit guests from smoking under our roof and which limits their freedom. And this is allowable even though smoking is legal. Yet if one warned of known risks of some protected sexual activities, would we lose our jobs or be hauled before a human rights tribunal, fined and forced to pay for someone's offended feelings? And it matters not that your concerns may be entirely true. Truth is no defence. The only thing that matters is that someone does not like what you say. By that standard we could close down debate in the House of Commons.

For example, Canadian Blood Services is poised to accept blood from MSM donors. Would we be guilty of hate if we pointed out that such people in North America have the highest incidence of STDs and particularly HIV infection? Would we be guilty of hate for quoting the Atlanta Centre for Disease Control's warning that Canada's move in this direction could unleash another medical disaster like the previous Hepatitis C tainted blood scandal? Is the CDC promoting hate by issuing such a medical alert? Do any of us, if sick or injured want to risk receiving tainted blood out of political correctness? One of my daughters nearly died in childbirth in 2007 due to a rare unforseen condition. She received 40 units of blood in 4 days, teetering between life and death, but miraculously survived. Long story, but we prayed. Suppose any of any of us nowadays had a daughter that required blood. Would we want her to come out of hospital HIV positive? And if she was young - who would be willing to marry her? We talk about control over one's body when it comes to abortion. Do we have no control over our body when it comes to sexual equality rights v known public health risks -and where the courts have already upheld the latter? And yet we are facing it again. Is this what we are required to risk for the sake of reckless out of control political correctness?

If a privately funded religious school can be sanctioned for its beliefs and internal standards, what prevents a law society or other professional licensing body from refusing licensure to otherwise qualified applicants in any field by reason of the beliefs espoused by the church they attend? Both are privately funded and religiously - affiliated. There is really no difference in law.

If some law societies are convinced in their belief that graduates of TWU are not fit to practice law in their province, we might ask whether consistency would therefore lead to an internal inquisition to identify any root out members already holding values similar to those upheld by TWU? - and there are many.

Justice Omer Leger of Court of Queen's Bench in New Brunswick once commented in a civil case that in law, witnesses are weighed, but not counted. In other words, a fallacy repeated by a chorus of voices is still a fallacy, and a single word of truth should suffice to strike it down. Numbers may in large measure govern politics, but law must operate on higher principles.

I need not quote from the submission by the Evangelical Fellowship of Canada showing that the Supreme Court of Canada has explicitly upheld the right of religiously-informed individuals and entities

to uphold and advance their beliefs, including the nature of marriage, and to do so without penalty or discrimination. And that should be sufficient. But where the rubber meets the road, the reality is that lower courts and other bodies often decide to what degree, if at all, they will abide by those constitutional assurances on a case by case basis. And the cost of appeals can be prohibitive.

The rule of law is a lofty principle. But as I have cited, judges and other tribunals on numerous occasions have acted without proper regard for the law and suppressed the rights of respondents in very direct and harmful ways. And this puts them in the impossible position of having to lay out money, potentially bankrupting themselves, where complainants' expenses, in the case of human rights tribunals, are funded at taxpayers' expense. This places respondents at a huge disadvantage in defending constitutional rights which the SCC has already affirmed but to which they may effectively be denied meaningful access by reason of obstacles **which their antagonists do not face.**

This is by no means a single issue malaise in Canada. Disregard for the rule of law goes far beyond sexual equality matters. The federal Truth in Sentencing Act, for example, prescribes minimum sentences for certain kinds of offences. Recently, federal Justice Minister Peter MacKay noted that some judges in Ontario have openly declared their refusal to comply with the law and which brings the administration of justice into disrepute. If judges can flout the law with impunity, how can citizens trust that in their integrity?

On another front, the SCC recently struck down federal laws on prostitution, but staying the decision for a year to give Parliament time to legislate more appropriately. In the interim, the existing laws still apply. And I have no problem with that. However, a news report indicated that both Ontario and New Brunswick have announced that they will not uphold the law in the interim. So while we can go to great lengths to get just laws on paper, this does not seem to prevent our public institutions from ignoring them when they see fit.

Further, Quebec is now poised to challenge the Criminal code by redefining and declaring assisted suicide and euthanasia as medical treatment under provincial jurisdiction and thereby exempt from federal law. If that were allowed to stand, it could potentially overrule the federal government and the Criminal Code and impose this on every province. If Quebec proceeds to pass bill 52 or another version of it, I hope Mr. McKay is able take effective steps to stop them. I wish him well. But we are witnessing a breakdown of the rule of law in Canada when those sworn to uphold it may openly declare with impunity their intent to disregard it.

In Canada, government is not Lord over our souls. Still, TWU and others are being asked (unlawfully) to deny their faith in areas where that faith has drawn a line in the sand which they cannot cross. And under our long - standing constitutional guarantees in this area, no one can lawfully force them to do so or penalize them for non compliance with such unlawful demands - but only if our courts and public institutions are willing to abide by those constitutional protections. Thank you for reading this.

I am advised that Alberta and Saskatchewan have approved TWU's proposed law faculty.

Yours respectfully,

Robin D Wilcox (Mr.)
Edmonton AB
March 4, 2014

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March 10, 2014 (*updated March 12, 2014*, at p. 14)

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Attention: Mr. Jim Varro, Director of Policy

Dear Mr. Varro:

RE: Trinity Western University – Request for Accreditation

Please find, starting at page 2 of this letter, my submission regarding the matter returnable before Convocation on April 10 and 24, 2014. The submissions are personal to the author and are not to be interpreted as those of the law firm, or of the organizations in the biographical information described in Appendix II. Thank you for the opportunity to make these submissions.

Yours very truly,

R. LEE AKAZAKI, C.S.
Partner

Links to various references will be available at LeeAkazaki.com:

1. Letter from Feth, February 21, 2014
2. Pothier Response to TWU Presentation to Nova Scotia Barrister's Society, March 5, 2014
3. Kierstead and Abner Paper on Learning Professionalism, 2013
4. Pinto Paper for Centre for the Legal Profession, 2011
5. Franklin paper on Homophobia in Law, 2004
6. Franklin paper on Anti-Gay Bullying in Education, 2014
7. Hing paper on Personal Identity in Lawyering Courses, 1993
8. White paper on Attitudes and Internalized Stigma in Gay and Lesbian College Students, 2012
9. Silver paper on Emotional Competence, Multicultural Lawyering and Race, 2002
10. Norton, *A History of Homophobia*, 2002-12
11. Norton and Crew, from *The Homosexual Imagination*, 1974.

THE LAW SOCIETY OF UPPER CANADA

RESPONSE TO REQUEST FOR ACCREDITATION OF A LAW DEGREE PROPOSED BY TRINITY WESTERN UNIVERSITY

SUBMITTED BY: R. LEE AKAZAKI, C.S., of the Ontario Bar

Table of Contents

INTRODUCTION AND EXECUTIVE SUMMARY

1. Trinity Western University (TWU) requests Ontario's Law Society to approve a proposed law degree, for the purpose of licensing TWU's graduates as members of the Ontario Bar.

2. The close affiliation of TWU with a church does not make it unique among Canadian liberal arts colleges. For example, TWU's namesake Trinity College Toronto, where the writer studied before law school, was founded in 1851 by Bishop John Strachan. To this day, my Trinity serves as Canada's main Anglican Seminary and Anglicanism is an integral part

of campus life. Like students in many faith-based colleges, I recall signing a covenant with my Trinity, in 1981, still in use today:

> I acknowledge that by registering at Trinity College in the University of Toronto, I am joining a community that stands for academic and personal excellence, community involvement, respect for others, and stewardship of property.
>
> *Trinity College Code of Student Conduct*, p. 2

3. What differentiates TWU's Community Covenant from analogues used by my Trinity and other faith-based colleges is that TWU's covenant requires students to embrace and promote abstinence from any form of sexual behaviour, on campus or off-campus, outside of marriage between a man and a woman. Such sexual behaviour is described axiomatically as violating the sacredness of marriage. The footnote to the current text of the covenant also requires the student to accept two paragraphs from the teaching of St. Paul as revealed in the first chapter of Romans. That teaching states lesbian and homosexual behaviour represent the wrath of God for unrighteous behaviour. TWU's requirement that each student sign the document has been construed as discriminatory against members of the LGBTQ community, including partners in same-sex marriages recognized under Canadian law.

4. During your deliberations, members of Convocation must understand two essential points that define the debate:

- Just as the Law Society cannot dictate to TWU, TWU cannot dictate to the Law Society. The Law Society's mandate in recognizing a law degree is to make a *rule* for qualifying law students for entry into the practice of law. This is *not* an adjudicative process.

- As lawyers and lay benchers, members of Convocation must shed the reluctance to read the TWU Community Covenant on the mistaken belief that it is merely a statement of faith. The document states that "members enter into a contractual agreement and a relational bond," so we must read it for what it is: a legal contract which law students must execute as a condition of entering this proposed pathway to LSUC licensure.

5. For the reasons that follow, the conclusion Convocation must reach is that the Law Society must suspend consideration of the TWU request for accreditation of its law degree until TWU does one of the following:

1) rescinds the Community Covenant;
2) exempts law students from the Community Covenant;
3) amends the Community Covenant for law students in a way that preserves its aspiration to be a faith-based school, but that does not exclude or demean students who do not share the faith or its teaching regarding sexuality; or
4) agrees to refer the Community Covenant to the Ontario Human Rights Commission for advice to the Law Society and TWU on a wording which conforms to Ontario *Human Rights Code*.

6. By way of executive summary, the balance of this submission follows this order of topics:

1. Whom does the Law Society govern? (Jurisdiction)

- The Law Society's jurisdiction extends only to licensees, and by logical extension to candidates for membership in the Bar. The Bar and the Academy operate independently of each other. Therefore, TWU has no *de jure* standing before the Law Society, which in turn has no legal authority over TWU.

- The Law Society's exercise of authority in this instance is rule-making and is *not* adjudicative or quasi-adjudicative. If the Law Society were to consider its role as analogous to that of the British Columbia College of Teachers, it would amount to an unprecedented self-inflicted diminution of the independence of the Bar. It would also mean the Law Society becomes a tribunal for applications by prospective law schools and effectively a rubber stamp for the Federation of Law Societies of Canada (FLSC).

- The Law Society's independent status differs from the statutory mandate of the B.C. College of Teachers. The latter had specific jurisdiction to approve or certify programmes offered by established teachers colleges. In contrast, the Law Society's jurisdiction is over members. As a matter of regulation of lawyers, it sets rules regarding the qualifications that each lawyer must have. It is in this rule-making function that the Law Society "accredits" a university's law degree.

- The Law Society of Alberta incorrectly sub-delegated its rule-making authority to the FLSC, against an express statutory prohibition. Ontario's Law Society should not follow this unlawful example.

- Until a TWU graduate applies to complete articles or LPP and to write the Bar entrance examinations, the Law Society is free to make a rule that the candidate's law degree shall be from an accredited law school that does not breach the Ontario *Human Rights Code* or would be in breach, if the law school were located in Ontario.

2. "The Fiercest Debate" – Historical Source of the TWU Controversy

- From the well-known historical debate between the Bar and the Academy over control of the educational qualifications for the Bar, we can draw two very important lessons:
    - The Law Society has exclusive policy-making power over the qualifications of lawyers through its regulation of lawyers, not law faculties.
    - University law faculties have freedom to teach what their professors see fit to teach.
- TWU strategy is informed by the belief that, just as the courts ordered the B.C. College of Teachers to accredit TWU's teacher's college, so can it enforce the FLSC process and treat law societies as the FLSC's rubber stamps. This strategy is misconceived because, unlike the statutory jurisdiction of the College of Teachers to approve and certify teacher training programs, the Law Society does not have a legal say in what law schools teach. This limitation of Law Society jurisdiction is also part of its independence from judicial review at the suit of TWU.

3. TWU and Its Community Covenant

- TWU is private liberal arts university founded by evangelical Christians. Like similar institutions in Canada founded by religious orders, TWU requires all students and faculty to sign a Community Covenant.
- The current version of the Community Covenant purports to be a more softly worded version of a document that was before the Supreme Court in the 2001 case, but the references to scripture have also been changed. TWU has, at least during the Nova Scotia Barristers Society meetings, admitted that the Community Covenant is discriminatory.
- As lawyers, we must read it in the same way we would read any contract, in its context and meaning, including the scriptures incorporated by reference. Because the contract is between

TWU and the student, we must read the document objectively as a contract between a branch of a Congregationalist church and a lay person.

- The references in the 2001 text in support of the condemnation of "homosexual behaviour" actually contained no such condemnation. The footnote used in the current text actually refers to a teaching of St. Paul that homosexuality was God's punishment for unrighteous behaviour: i.e. God's work, not a threat to marriage between a man and a woman. The Community Covenant is informed by a popular view that homosexuality "violates" the procreative values of the nuclear heterosexual family.

- The current text drops the reference to "homosexual behaviour" and requires students to swear off "sexual intimacy that violates the sacredness of marriage between a man and a woman." The transformation of this view of homosexuality into the belief that homosexuality is "anti-family" is a more recent argument used to wrap homophobia in a theological package. The current text is actually more offensive than the 2001 text. At least the 2001 text incorrectly described homosexuality as sinful and not a threat to others.

4. Law Society Expertise re equity as pertaining to law students and lawyers

- The Law Society has staff resources to deal with human rights and equity issues, including a dedicated committee of Convocation. These resources provide the Law Society with expertise to consider the impact of the TWU discriminatory practice on law students and lawyers.

- TWU's Community Covenant requires, as a condition of admission to the law school, that students collaborate in an overt practice of systemic discrimination. Collaboration with such practices denigrates LGBTQ members of the Law Society and calls into question the ethical soundness of Bar candidates who are prepared to sign the covenant to secure a spot in a law school. The TWU Community Covenant is therefore incompatible

with the education and well-being of modern lawyers as ethical professionals.

5. TWU's breach of *Human Rights Code* not exempted

- Students at TWU do not, by being admitted, lose their status as members of the public whose human rights are protected. TWU's discriminatory Community Covenant clearly breaches the rights, *inter alia*, of LGBTQ students.

- The Supreme Court in 2001 assumed that TWU's Community Covenant was legal in British Columbia, in that s. 41 of the B.C. *Human Rights Code* exempted faith-based education institutions from prohibitions against discriminatory practices. With due respect to the Supreme Court, this was a glaring weakness in its reasoning. The Ontario equivalent, s. 18, is worded differently so as to leave no doubt that TWU would not be exempted from the Ontario *Human Rights Code*.

- The function of the exemptions for organizations, whose primary purpose is the promotion of any one of several identifiable groups, is that the act of promoting that very group will not be construed as a breach of human rights. The basic policy behind this exemption is to avoid thwarting the very promotion of equity and diversity that the legislation is intended to support. The exemptions do not allow cross-discrimination, so as to allow a religious group to discriminate against a sexual identity group (or vice-versa).

    - For example: an all-girls school is permitted to exclude boys. But the same all-girls school is not permitted to exclude black girls. TWU is therefore free to take steps to attract Christian students and even exclude non-Christians, but it cannot discourage or exclude lesbian or gay Christians.

- If this point is not clear enough in the B.C. statute, there is no room for doubt in the Ontario statute. If an analogue to TWU in Ontario were to set up a law school with a similar discriminatory contract as a condition of admission, the practice would be unlawful and the Law Society would not be able to recognize the degree without contravening the duty under s. 4.2 of the *Law Society Act* to uphold the rule of law and act in the public interest.

1. Whom does the Law Society govern? (Jurisdiction)

7. The scope of the Ontario Law Society's jurisdiction is historically limited to regulation of members of the Bar. The Law Society currently achieves regulation of lawyers for the "learning" aspect of its statutory mandate by recognizing the degrees held by candidates. Unlike state bar councils in the United States, who have delegated accreditation of law schools to the American Bar Association, our Law Society has been: (a) scrupulous in not overstepping the bounds of its jurisdiction and (b) jealous in protecting the independence of the legal profession. The Law Society has no *de jure* say in telling what the universities can teach in their law faculties, any more than the universities can compel the Law Society to recognize the degrees the law faculties confer. The only *de facto* influence the Law Society has is that a law degree that cannot provide a pathway to a career in law is worth not much more than a degree in criminology or public administration. A law school is valuable to a university because it attracts students who want to become lawyers. The Law Society also needs the universities. Gone are the days when an apprenticeship and a bar admission course are sufficient to educate the modern jurist. A law school is more than the sum of the competencies to become a lawyer.

8. Whatever one's view of this mutual independence of the Bar and the Academy in Ontario, independence is the bedrock of our profession. It is against this backdrop that one must consider Treasurer Conway's remarks to Convocation on January 23, 2010:

> … [T]he decision-making process the Law Society is undertaking with respect to TWU is quasi-adjudicative in nature and certain procedural protections are required to safeguard the process.

9. With the utmost respect to Treasurer Conway and the Law Society staff who undoubtedly assisted him in composing these remarks, this characterization of the Law Society's process is both incorrect and dangerous. TWU has no standing or ability to impose itself on the Law Society, in the same way the Law Society has no authority to exert over TWU. Convocation's authority to consider the proposed LL.B. or J.D. *degree* offered by TWU is one of *policy*. It is policy

because it will affect future candidates to entry to the bar, not actual graduates who have applied to the Law Society. As a policy decision, Convocation must not fetter itself with any sense of administrative process in respect of TWU, *qua* university. (In the same that TWU would be within its rights to refuse audience to the Law Society, if the latter were later to demand a formal hearing at TWU or any other university over an academic matter.)

10. If the Law Society were to consider itself in a position of administrative or adjudicative authority over a university law faculty, the Law Society would be submitting or attorning to a process similar to the one which governed the B.C. Teachers College, which operated under a very different regime of professional regulation. I respectfully submit no less than this:

> **If the Law Society were to consider itself bound by administrative law principles to the application of TWU, it would be a most singular self-inflicted wound to the independence of the Bar.**

11. Hyperbole? No. The above statement is a matter of law and the historical foundation of the legal profession in Canada. We must start by reviewing the Law Society's enabling statute: in particular, 4.1 of the *Law Society Act*, R.S.O. 1990, c. L.8, as qualified by s. 4.2 (in which I have italicized the word "persons"):

> **Function of the Society**
>
> 4.1 It is a function of the Society to ensure that,
>
> (a) all ***persons*** who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
>
> (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to ***persons*** who practise law in Ontario and ***persons*** who provide legal services in Ontario. 2006, c. 21, Sched. C, s. 7.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.

2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.

3. The Society has a duty to protect the public interest.

4. The Society has a duty to act in a timely, open and efficient manner.

5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. 2006, c. 21, Sched. C, s. 7.

12. As a matter of statutory construction, an entity can have a duty within a power, and so a purposive and contextual reading of these provisions would indicate that the enumerated principles under s. 4.2 do not expand the authority under s. 4.1 and do not create separate areas of jurisdiction.

13. As stated in s. 4.1, the purpose of the Law Society is to regulate lawyers (*qua* persons), not law faculties, law firms or any other legal entities. Section 4.1 contains the jurisdictional rationale for law schools to insist that lawyers have recognized law degrees before applying to be called to the bar.

14. The power to set the standards of learning for “persons” is the statutory authority for s. 7 of Law Society By-Law 4, cited in the question before Convocation. In fact, s. 7 merely provides for a tautological definition of “accredited law school” as “a law school in Canada that is accredited by the Society.” The actual operative provision of By-Law 4 is s. 9(1)1(i), which stipulates that the applicant for licensure for a Class L1 lawyer’s licence must have: “A bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.” An applicant, in this context, is the person wanting to become a lawyer.

A law school need not apply to be accredited – every function and decision of the Law Society operates within the context of the would-be lawyer's qualifications.

Comparison/Contrast with B.C. College of Teachers in 2001:

15. In *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, at 787, the Supreme Court majority accepted the Court of Appeal's characterization that "This case is really an administrative law case." The case was argued as an objection to the College's decision not to certify the TWU teaching program, on the basis that the college had no jurisdiction to consider discrimination as a ground for decision. At page 788, the court considered the jurisdiction of conferred by the *Teaching Profession Act*, R.S.B.C. 1996, c. 449:

> **4** It is the object of the college to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage the professional interest of its members in those matters.
>
> **21** Subject to this Act, the council must govern and administer the affairs of the college and, without limiting that duty, the council may do the following:
>
> . . .
>
> (b) appoint an employee of the college as an evaluator with authority to evaluate and decide whether persons applying for a certificate of qualification or for membership in the college have complied with this Act and the bylaws of the college;
>
> (c) delegate to a committee of the college the authority set out in paragraph (b), either in addition to or in substitution for one or more evaluators appointed under that paragraph;
>
> . . .
>
> (i) ***approve, for certification purposes, the program of any established faculty of teacher education or school of teacher education.*** (emphasis added)

16. The Supreme Court did find that the College acted within its jurisdiction to consider equality rights and discrimination, although the College lacked sufficient inherent expertise to be accorded administrative deference beyond the correctness standard, for the purposes of the standard of review. The court upheld the lower court's order of mandamus requiring the College to certify. It agreed with the lower courts that the College had come to its decision based solely on the discrimination issues, and that the College had insufficient evidence before it of the potential impact of TWU's discriminatory practices on the educational experience of pupils in public schools. TWU could apply for an order of mandamus against the College, because the enabling legislation conferred administrative jurisdiction over TWU's "faculty of teacher education."

17. This difference between the ambit of the Law Society's authority and that of the B.C. College of Teachers is crucial. Education is a matter of provincial jurisdiction under the Canadian Constitution, and provincial ministries of education control junior and secondary school curriculum, either directly or through delegated municipal school boards. Private schools are also controlled to a large extent in terms of the curricula they must teach. In other words, the teaching profession at the junior and secondary school levels is not independent of the state.

18. In contrast, the history of *minimal* active coordination in Ontario between the Law Society and the legal Academy over the shape of legal education is evidence of the absence of legal authority on the part of the Bar to dictate to the Academy. The other side of the historical barrier between the Bar and the Academy is that the Academy lacks any legal basis to require the Bar to recognize a law degree conferred by any particular university. Indeed, s. 60 of the *Law Society Act*, which confers authority to operate programs of pre-licensing education or training to grant degrees in law, allows Ontario's Law Society to turn its back on the Academy altogether and return to the original self-contained trade school model. The *Law Society Act* confers no statutory power over a university's faculty of legal education.

19. Rather, under s. 4.1 of the *Law Society Act* the Law Society's decision to accredit a law faculty is, in fact, an act of rule-making with respect to all *Bar*

candidates who apply on the strength of that law faculty's degree.[1] The Law Society must exercise this function and cannot delegate it to the FLSC, according to the principle of *delegatus non potest delegare*: *Huron Perth Children's Aid Society v. Ontario*, 2012 ONSC 5388 (CanLII, Ont. Div. Ct.), at para. 114.

20. On this last point, it is worth observing The Law Society of Alberta (LSA) incorrectly sub-delegated is policy or rule-making authority when, as stated in the a letter from Kevin Feth, February 21, 2014, it relied on s. 37(3) of the Legal Profession Act, R.S.A. 2000, c. L-8 about the power to evaluate Bar candidates' academic qualifications under s. 37(1):

> (3) The Benchers may retain one or more third parties to carry out any of the responsibilities referred to in subsection (1) and may make rules in that regard.

This letter was particularly inconsistent with the LSA's January 14, 2014, Bulletin, in which the LSA admitted that the FLSC criteria did not contemplate the applicable rules to deal with a faith-based school that sought to discriminate against LGBTQ students:

> "The national approval system was developed to ensure that those entering the legal profession have demonstrated relevant legal competencies. The criteria did not anticipate the creation of a faith based law school, and thus criteria were not developed to deal with the issues that arise in the case of TWU."

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[1] **[UPDATE]** A reader of the March 10, 2014, original of this submission asked for clarification of this point, in view of the Law Society's power under s. 62 to make by-laws governing degrees in law and pre-licensing education. A fundamental common law rule of construction states that subordinate legislation, i.e. rules and bylaws, cannot exceed the statutory mandate of the body incorporated by the legislation. Eg., *Oshawa Cable v. Whitby (Town)*, 1969 CanLII 427 (ON SC) and *Re Steetley Industries Ltd. and The Queen*, 1977 CanLII 1406 (ON SC). While the B.C. *Teaching Profession Act* s. 21 (now s. 13 of the *Teachers Act*, SBC 2011 c.19) conferred a direct statutory authority on the College's Council to regulate teacher education programs offered by institutions, the *Law Society Act* does not grant any such authority over law faculties. It may appear that the Law Society achieves a similar purpose through its bylaws, but in terms of lawful jurisdiction it does so by enacting rules or by-laws that apply to the degrees that Bar candidates must *have*, as opposed to those the law schools must *confer*. This distinction draws the boundary preserving the functional and juridical independence of the Law Society and the legal academy.

21. We must remember that the Law Society exercises the responsibilities in respect of each Bar candidate. Clearly this provision authorizes the Law Society to have a third party evaluate the qualifications, but the power to decide which law degree to recognize for the purpose of all future candidates from a particular school is not a mere exercise of "responsibility" but setting a rule that applies to all of those candidates, collectively. The Law Society of Alberta has misread subsection (3) to mean:

> (3) The Benchers may retain one or more third parties to carry out any of the responsibilities referred to in subsection (1) and ~~may~~ [to] make rules in that regard.

Indeed, as Prof. Alice Woolley[2] of University of Calgary pointed out to me, s. 37(5) of that provision is a separate and express delegation provision which *excludes* the power to make rules:

> (5) The Benchers may delegate any of their authority under this section, *other than the authority to make rules*, to the Executive Director or to the Credentials and Education Committee." (emphasis added)

22. In contrast, s. 37(3) contains no express delegation. The clear wording of s. 37(3) contemplates contracting out of evaluation tasks, but not the rule-making authority itself. Ontario's *Law Society Act* contains no power to delegate its powers regarding regulation of lawyer competence and qualifications, despite providing for delegation in other matters (eg. s.. 49.16); and certainly no power to delegate the authority to make rules regarding the degree qualifications of lawyers.

23. Ontario's Law Society must not repeat its Alberta counterpart's jurisdictional error. The Law Society of Alberta's decision is more than an unlawful delegation. It is an acceptance that it must accede to the request of any educational institution that teaches the minimum FLSC competencies. In doing so, the Law Society of Alberta has lowered itself to the status of a mere statutory

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[2] Prof. Alice Woolley, the OBA Foundation Chief Justice of Ontario Fellow in Legal Ethics and Professionalism Research, Professor of Law and Director of Admissions, University of Calgary, whom I consulted on the interpretation of the Alberta statute.

tribunal with expertise in the legal profession, and granted a university standing and rights despite the absence of law society jurisdiction. It has thus compromised the independence of the Bar in being able to choose its own path as a self-regulated, independent professional estate established before the nation itself.

2. "The Fiercest Debate" – Historical Source of the TWU Controversy

24. Law Societies accredit law faculties so they do not have to examine the minutiae of every candidate's legal education. If one has an LL.B. or J.D. from a recognized legal education program, one has satisfied the first requirement for admission to the bar. In theory, the Law Society has the power to accredit a community college or trade school, or to confer a practice licence on an autodidact or a law office trainee who can prove the equivalent of an institutional education. Indeed, the Law Society was calling persons to the Bar before law schools started in Canada.

25. No one should seriously consider a return to the apprenticeship regime. Although the boundaries of the debate were and continue to be drawn between academic vs. practical schools of thought, the pure apprenticeship model was a product of the Upper Canadian Family Compact. You had to know or be related to a lawyer to be offered articles. The unwritten "Community Covenant" of the early Law Society of Upper Canada ensured opportunities to become a lawyer, provided you were not a woman, black, Jewish, etc. Indeed, as the concerns raised by ethnic and racialized lawyer associations during the recent debate over articling attest, there remains at least a perception that articling has slowed the advancement of diversity in the legal profession. Modern Canadian law schools are more than training grounds. They are the engines of innovation that led not only to the *Charter* revolution in Canada but also to world-leading corporate organizations, financial instruments, telecommunications structures and regulated natural resource exploitation. Without Canada's university law schools, our Bar would likely be a colonial or semi-colonial anachronism.

26. The 20th-Century battle between Ontario's legal profession and the academy settled on an academic university degree as a prerequisite to a call to the bar. Moreover, the degree program was only open to students with at least two years of university education in an arts or science discipline. On January 18, 1957, a suite at Toronto's Royal York Hotel was the venue for an historic accord penned by lawyers John Arnup for the Law Society, Alex Corry of Queen's University (on behalf of Ontario universities) and Park Jamieson (renter of the suite). The 1957 accord represented an end to a lengthy period of fierce and

sometimes acrimonious debate between the Law Society's Osgoode Hall programme and Ontario university law deans, over the shape and substance of the Canadian Common Law degree. The official history of the Law Society described the debate and the 1957 compromise which resulted in the 3-year LL.B. degree, to be followed by articles and a bar admission course: Moore, *The Law Society of Upper Canada and Ontario's Lawyers - 1797-1997* (Toronto: University of Toronto Press, 1997), pp. 258ff. As members of Convocation are undoubtedly familiar, the 1957 accord was later amended in 1969 to increase the freedom of university law faculties to sequence the core parts of the Common Law curriculum as the schools saw fit.

27. Canadian law schools and law societies outside Ontario effectively followed the Ontario arrangement, as amended, from 1957 to 2009, without any formal arrangements among themselves. There has never been any agreement between Ontario's Law Society and any law school outside Ontario.

28. The 2012 criteria are based on a 2009 report of the FLSC adopted by the Law Society in 2010, pursuant to a February 25, 2010, Report to Convocation. The fact that the Law Society passed the 2010 resolution over the objection of several law schools and a general request for deferral by the Council of Canadian Law Deans means that the 1957/69 was effectively abandoned. The correspondence appended to this Report to Convocation, especially the language adopted by representatives of the Academy, clearly recognized that Law Societies retained full and exclusive jurisdiction to decide whether or not to approve a particular school's law degree for the purpose of licensing Bar candidates. At the present time, there is no legally enforceable agreement between any of the provincial or territorial law societies and Canadian universities. Ontario law schools did not challenge the 2010 repudiation of the 1957/69 accord within the two-year limitation period under Ontario's *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, s. 4, and therefore no legal accord exists, if one ever did.

3. TWU and Its Community Covenant

Trinity Western University

29. TWU is privately-funded liberal arts university founded by evangelical Christians. It is the seat of the Evangelical Free Church of Canada, described as an association of evangelical churches. Like similar institutions in Canada founded by religious orders, TWU calls itself a Christian university and requires all students and faculty to sign a Community Covenant. This document is a moral and legal contract that the university applying to conduct both on-campus and off-campus. The TWU Community Covenant is at the heart of the controversy. We must read it in its entirety to understand what it says, including the scripture incorporated by reference.

30. In the course of my own consultations with lawyers and academics, one law professor has said, in response to my contention that we must read the Community Covenant, including the scripture incorporated by reference:

> So now we're all experts in biblical exegesis claiming to know better than TWU what the Bible *really* means? This is how fundamentalism begins.
>
> Herein lies precisely the problem that courts have sought to avoid: wading into religious doctrine. Canada's constitutional tradition, both pre and post Charter, has maintained a "hands off" religion approach, protecting religious opinions and expressions from interference while the courts have refused to evaluate the merits of religious opinions when determining whether and how to protect them (e.g. the SCC shielded the Jehovah's Witnesses from persecution even while finding the content of their religious views to be sexist, anti-Semitic and anti-Catholic).
>
> ~ Comment from contributor to the Canadian Legal Ethics list-serve, March 6, 2014

31. This comment is representative of lawyers and academics who view the TWU law school controversy in terms of TWU's religious freedom to form a community of like-minded adherents. The argument is that one cannot delve into the tenets of the faith, to debate the validity of TWU's position as protected

religious belief. One should have no quarrel with this position. If the Community Covenant were merely a unilateral statement of faith, then most proponents of religious freedom would agree that TWU has crossed no line. Students would also understand that a Christian perspective on law may inform the curriculum.

32. The controversy has arisen, not because TWU is a faith-based school, but rather because of the contract it requires students to sign as a condition of entry. This is a matter of contract law, and the reasonable expectations and acknowledgements of the *student*, as well as the school.

33. In the debate over TWU's Community Covenant, we must not read the text for its validity as religious belief. Rather, we must read it, as all contract lawyers do every day, to understand what it says. Because the text incorporates scripture, by textual references or footnotes, we must read these, too. We cannot shy away from reading the relevant portions of the contract in their entirety. It is our duty to read them.

34. As contract lawyers, one's duty is to read the actual words, in the context of the setting in which it arises. That means reading paragraphs 21-25 to understand what 26-27 are actually saying. The test under contract law, recently affirmed by the Court of Appeal for Ontario in *Schneeberg v. Talon International Development Inc*., 2011 ONCA 687 (CanLII) para. 38, is as follows:

> The text of the written agreement must be read as a whole and in the context of the circumstances as they existed when the agreement was created. The circumstances include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement.

35. The courts have not shied away from construing religious documents when they are contracts and not mere theological statements: *Davis v. United Church of Canada* (1992), 8 OR (3d) 75, 1992 CanLII 7731 (ON SC). (A case

interpreting and applying the United Church Manual, a faith-based covenant connecting the church with members of the congregation, and with ministers who are ordained pursuant to a calling by God. In the words of the Court of Appeal for Ontario: "It is common ground that the Manual is the law of the United Church of Canada and it governs the relationship between the parties": *McCaw v. United Church of Canada* (1991), 4 OR (3d) 481; 82 DLR (4th) 289; 1991 CanLII 7048.)

36. Imagine for a moment: a gay married student is accepted to TWU law school and brings the Community Covenant into a lawyer's office for independent legal advice. An obvious client question for the lawyer is: "What am I signing?" The lawyer's first duty is to read the contract for what it says, including the citations of scripture to which the student is agreeing. That is the exercise we are undertaking here.

37. So one's advice to the gay married student might be: "The Community Covenant requires you to abstain from sex with your same-sex partner, because that would violate the sanctity of marriages between heterosexual couples. This incorporates by reference Romans 1:26-27. In the context of the entire chapter in Romans, it does not say that same-sex sexuality violates the sanctity of marriages between heterosexuals. Rather, the scriptural reference states that your being gay is God's punishment for unrighteous behaviour."

38. After reviewing the contract with the lawyer and receiving this legal advice, the student might say, "I can't agree to that. Even if I were to agree to abstain, I can't tell my partner that my love for him violates sanctity of other marriages. I also do not accept that my being gay is a punishment from God." Refusing to sign the contract, the student gives up his spot at the school, in favour of someone who *is* prepared to sign it. For the sake of all such students who may not feel comfortable signing the Community Covenant but are not yet trained to read contracts, we, members of the Law Society, must read it, too.

2001 and 2014 Texts of the Community Covenant

39. For convenience, I will refer to the text considered by the Supreme Court in 2001 as the "2001" text and the current one as the "2014" text. When TWU actually instituted each of them is immaterial to our discussion.

40. The 2001 text, quoted in the decision at paragraph 4, listed "homosexual behaviour" among a long list of "biblically condemned" conduct of an offensive, dishonest or harmful nature:

> REFRAIN FROM PRACTICES THAT ARE BIBLICALLY CONDEMNED. These include but are not limited to drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). Furthermore married members of the community agree to maintain the sanctity of marriage and to take every positive step possible to avoid divorce. [Emphasis added {by the court}.]

41. The current or 2014 text drops the reference to "homosexual behaviour" and requires students to swear off "sexual intimacy that violates the sacredness of marriage between a man and a woman," withdraws the language of direct condemnation, and replaces the parenthetical references with footnotes:

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

- communication that is destructive to TWU community life and inter–personal relationships, including gossip, slander, vulgar/obscene language, and prejudice[14]
- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others[15]
- **sexual intimacy that violates the sacredness of marriage between a man and a woman [16]** [emphasis added]
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event.

…

[14] Colossians 3:8; Ephesians 4:31.

[15] Exodus 20:15; Ephesians 4:28.

[16] **Romans 1:26-27; Proverbs 6:23-35.** [emphasis added]

42. Although the language is now less explicit, the message of violation of the traditional family makes the current text more offensive to LGBTQ persons than the old text. It is one thing to condemn homosexuality as sinful. It is another to say it poses a threat to the nuclear heterosexual family.

43. Whatever the theological expertise of those who drew the contract, it must be read and understood by undergraduate applicants to the LL.B./J.D. program

who are learned neither in religious studies nor in the law. Contract law recognizes the importance of construing a document from the perspective of the less powerful party, in this case the law student. What is the school asking the student to do and accept?

44. This said, TWU cannot claim special expertise in reading the Community Covenant, because it is a Protestant Congregationalist order which believes in the primacy of the Gospel (the portions of the New Testament outlining the teachings of Christ) and the democratic or "grass-roots" concept that the laity, not priests called by God, should read the scripture for what it says. The origin of Protestantism was in the publication of Bibles in the vernacular, so that congregants could read for themselves what the priests were telling them on Sunday morning. The Wikipedia description of the Congregationalist polity states:

> Most importantly, the boundaries of the powers of the ministers and church officers are set by clear and constant reminders of the freedoms guaranteed by the Gospel to the laity, collectively and individually. With that freedom comes the responsibility upon each member to govern himself or herself under Christ. This requires lay people to exercise great charity and patience in debating issues with one another and to seek the glory and service of God as the foremost consideration in all of their decisions.

45. The Community Covenant relies mainly on the New Testament to support this condemnation. As we learned in law school, one always has to read actual the wording of the contract to understand what it says, including the fine print in the footnotes.

46. It should not escape the lawyer's notice that, between the 2001 and 2014 texts, *all* of the biblical references have been changed for new ones. The 2001 text, as quoted by the Supreme Court, at [2001] 1 S.C.R. 795, refers to: "**I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10.**" The full version of the current text, in footnote 16 at page 3, refers only to: "**Romans**

1:26-27; Proverbs 6:23-35." (The biblical texts from the King James translation for all these citations appear in Appendix I hereafter.)

References in the 2014 Community Covenant

47. I will deal with the references in the current text first, and with Proverbs 6:23-35 first of all. The extracts from Proverbs deal with adultery and a general warning against the "evil woman." It does not deal with same-sex sexuality.

48. We then move to Romans 1:26-27, which do appear to refer to lesbian and gay sex:

> 26 For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature:
>
> 27 And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompence of their error which was meet.

49. A plain, grammatical reading of paragraphs 26-27 show that it was *God* who *made* the women and men commit lesbian and homosexual acts. To find out what the "error" was that they committed, one has to read the antecedent paragraphs to see that the sin was not the sexual acts but idolatry:

> 21 Because that, when they knew God, they glorified him not as God, neither were thankful; but became vain in their imaginations, and their foolish heart was darkened.
>
> 22 Professing themselves to be wise, they became fools,
>
> 23 And changed the glory of the uncorruptible God into an image made like to corruptible

> man, and to birds, and fourfooted beasts, and creeping things.
>
> 24 Wherefore God also gave them up to uncleanness through the lusts of their own hearts, to dishonour their own bodies between themselves:
>
> 25 Who changed the truth of God into a lie, and worshipped and served the creature more than the Creator, who is blessed forever. Amen.

50. So the “error” at the end of paragraph 27 for which the men received “due penalty” was not the “acts with other men.” Rather, the “acts with other men” were the penalty. In the context of the entire passage, from clauses 21-27, it is God who inflicted homosexual behaviour as a penalty for idolatry, i.e. worship of images of creatures. The Pauline teaching reflects his famous misogyny and his understanding of the Hebrew law (which I will discuss below) and states: If you worship a false idol, God will make you gay or perform gay acts. To be absolutely clear, this means that the text does not prohibit lesbian and gay acts. Rather, the sexual acts (which St. Paul found shameful) are what God made the sinners do after they worshipped false idols.

51. Breaking it down further, in terms of the logic of St. Paul’s speech, the Pauline doctrine is that God made men and women commit homosexual acts because they sinned, not that they sinned because they committed homosexual acts. Otherwise they would have sinned for doing what God made them do. What TWU has done, by reading the scripture completely ungrammatically and out of context, is to turn the penalty into the crime. The commission of homosexual acts, which St. Paul considered unseemly, was a punishment and no more sinful than other punishments God meted out to people who did not believe in him as the one God.

2001 References

52. As one can see in the texts referenced in the 2001 version (reproduced in full in Appendix I), the five biblical references given for the sexual sins are at most cryptic apart from a general disapproval of "fornication." The scripture referenced in the Community Covenant contains no specific disapproval of "homosexual behaviour."

53. One possible explanation for the absence of a reference to homosexual conduct in the 2001 text is a typographical error by the printers of the Supreme Court Reports. I believe the reference to "Rom. 2:26-27" quoted in the Supreme Court decision probably should have read "Rom. 1:26-27"; and that this is the same reference in the 2001 and 2014 texts. As stated above, the chapter from Romans, stating part of the Gospel of St. Paul, did not describe homosexuality as a sin but rather as a punishment meted out by God for unrighteous behaviour. In other words, the lifting of two paragraphs and reading them ungrammatically is an act of propaganda. As lawyers reading a contract, we would advise students that the footnote does not support the statement that the sacredness of marriage is violated, and that the incorporated scripture contains a theory of homosexuality as God's punishment, which most Canadians would now find offensive.

54. The Bible is not without its clear statements regarding the sinfulness of homosexuality. According to TWU's Core Values Statement, the Old and New Testaments are both infallible ("without error"). However, both the 2001 and 2014 texts of the TWU Community Covenant avoid more explicit and more famous Old Testament texts such as Leviticus 18:22 "Thou shalt not lie with mankind, as with womankind: it *is* abomination." Another oft-cited biblical reference to homosexuality appears in Genesis 19:4-24, in which the character Lot pleaded that the men of Sodom and Gomorrah show interest in his daughters instead of only in themselves. The popular account of God's disapproval of homosexuality ties this sexual behaviour to the demise of Sodom and Gomorrah: "Then the Lord rained upon Sodom and upon Gomorrah brimstone and fire from

the Lord out of heaven." This story from Genesis would be better support for a theory that God punished the people of Sodom and Gomorrah, for homosexuality. But the Community Covenant does not refer to this, and so it is not part of the contract we are reviewing.

Why homosexuality may be an occasional preoccupation in the Bible

55. Whatever the negative treatment of homosexuality in the Bible, it remains hard to read these references as threats to the sacredness of marriage between men and women. As the texts in Appendix I show, *adultery* is the true and logical threat to marriage.

56. Religious historians have discovered that the origin of the Hebrew prohibition described by St. Paul was not, as many have thought, a threat to procreation and family, but rather a reaction to fertility cults based on idolatry of the phallus:

> Homophobia originally had nothing whatsoever to do with a prejudice against people who refused to procreate. In spite of the general opinion today, male homosexuals were not condemned on the grounds that they refused to "be fruitful and multiply." There is simply no evidence to support this modern interpretation of the Biblical attitude, and this particular homophobia does not occur until much later. Even "the sin of Onan," which came to be a condemnation of masturbation, derived originally from a prohibition against ritual masturbation before the idol of Baal, not because it violates a "law of procreation." The phrase "against nature" at this period still meant only "as a heretic" or "as an idolator," and would not be interpreted as "against 'natural' procreative 'law'" until much later. More specifically, "against nature" meant "as an apostate," one who goes "against true nature" in the sense of betraying and renouncing the true religion. In fact the trend of the Hebrew, and later the Christian, priesthood toward celibacy is a reaction against the fertility cults of which homosexual rites were an integral part.
>
> Homophobia originally was a condemnation of idolatry, the worship of the phallic deity Baal in which homosexual rites happened to play an important part. I think this is still the essential factor of homophobia: it is so firmly rooted in the psyche of contemporary people that homosexuals are

> still seen as heretics and foreign or strange or queer worshippers of a system not held by the majority. More evidence for this will be adduced when we get to the active persecution of homosexuals in the eleventh century. Dr. George Weinberg, who coined the word "homophobia", defined homophobia as "acute conventionalism", but it nevertheless has its historical source in the Hebrews' acute nationalism.
>
> Norton, *A History of Homophobia*, "1 The Ancient Hebrews" 15 April 2002, (updated 28 February 2012); also referenced in White, “Attitudes and Internalized Stigma in Gay and Lesbian College Students” (2012), p. 3.

57. The fact that the original source of Judeo-Christian attitudes toward homosexuality have morphed with the passage of time into a threat to the nuclear family is clearly evident in the current incarnation of the TWU Community Covenant, which refers to a violation of heterosexual marriage. As an artefact, the TWU Community Covenant’s characterization of homosexuality is of anthropological significance because it conspicuously ignores the actual biblical sources of the condemnation. We should not be naïve as to assume TWU’s bona fides in employing the Community Covenant:

- There *are* express biblical condemnations of homosexuality, in the Old Testament, mainly informed by ancient Hebrew law. TWU chooses not to rely on them, and they are not part of the contract.

- The New Testament citations relied upon for the Community Covenant require considerable sophistry to be interpreted as condemnations of homosexuality. (In the text from Romans, it is in fact absurd to abstain from homosexuality, if that is what God has willed one to do as a punishment.)

- Despite obvious and widespread offence and suffering caused by the TWU Community Covenant to members of the LGBTQ community, TWU has resisted thus far from excising the offending parts of the document.

> Using a text in this way is not to deduce its meaning but to use it to justify pre-existing discomfort with homosexuality on the basis that it does not meet gender norms.

58. But for the absence of a causative allegation that homosexuals also committed the other "condemned" behaviour, this original text skirted the boundaries of the *Criminal Code* provisions regarding hate speech. Anyone reading the 2001 Community Covenant certainly was left with no doubt what the TWU administration thought about those who engage in "homosexual behaviour." In *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 (CanLII), [2013] 1 SCR 467, at para. 124, the Supreme Court held that the distinction between conduct and identity did not save speech from constituting hate speech:

> [124] Courts have thus recognized that there is a strong connection between sexual orientation and sexual conduct. Where the conduct that is the target of speech is a crucial aspect of the identity of the vulnerable group, attacks on this conduct stand as a proxy for attacks on the group itself. If expression targeting certain sexual behaviour is framed in such a way as to expose persons of an identifiable sexual orientation to what is objectively viewed as detestation and vilification, it cannot be said that such speech only targets the behaviour. It quite clearly targets the vulnerable group. Therefore, a prohibition is not overbroad for capturing expression of this nature.

59. The association of morally reprehensible behaviour with belonging to an identifiable group is common to the language of intolerance and contumely. Associating such groups with lying and cheating, for example, is a technique still used by anti-Semitic propagandists and is now widely known as the "Big Lie" technique. In *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697, a majority of the Supreme Court of Canada upheld the limit on freedom of expression posed by s. 319(2) of Canada's *Criminal Code*, prohibiting persons from "communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group." The Keegstra case fell clearly

within this description, because of the association of Jews with various crimes relating to morality, dishonesty and political instability. The 2001 TWU Community Covenant did not say that homosexuals were also liars, cheats, etc. Rather, it listed homosexual behaviour among those enumerated evils.

60. In the case of the 2014 Community Covenant, the reference to violation of the sacredness of marriage is tantamount to an accusation of political instability, given the place the nuclear family holds within the Canadian polity.

61. Apparently, TWU denies that its Community Covenant is discriminatory. In a January 24, 2014, op-ed article in CBA's *National* magazine, TWU President Robert Khun stated:

> University welcomes students without discrimination. Students come from a wide variety of backgrounds and religions. One of the strengths of the University is its strong community. Part of fostering that community is having a Community Covenant so that everyone knows what the expectations are of faculty, staff, and students. The Community Covenant is rooted in respect for the human dignity of all, without exception. It encourages Christian virtues such as love, joy, and peace. The Covenant also requires that all members of the community act in a manner that respects historic Christian values, which include principles applicable to expressions of sexuality.

62. At the March 4, 2014, hearings before the Nova Scotia Barristers Society, TWU President Kuhn reportedly repeated the denial of discrimination, and then admitted it:

> When asked if TWU's Covenant was discriminatory, President Kuhn at first gave a flat no, but then qualified that answer and eventually acknowledged that it was discriminatory, just lawful discrimination.
>
> Prof. Em. Dianne Pothier (Schulich School of Law), Memo to NSBS President, March 5, 2014

63. As stated earlier, the Supreme Court in *Whatcott* rejected the argument that TWU does not discriminate against homosexuals, but rather only asks them not to engage in gay sex. At paragraph 123 of *Whatcott*, the court effectively found that TWU's Community Covenant discriminates against members of the public who are LGBTQ:

> [123] L'Heureux-Dubé J. in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 (CanLII), 2001 SCC 31, [2001] 1 S.C.R. 772, in dissent (though not on this point), emphasized this linkage, at para. 69:
>
> > I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. . . . The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as *per* Madam Justice Rowles: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person" (para. 228). She added that "the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people" (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood.

4. Law Society Expertise re equity as pertaining to law students and lawyers

64. The Law Society has staff resources to deal with human rights and equity issues, including a dedicated committee of Convocation. These resources provide the Law Society with expertise to consider the impact of the TWU discriminatory practice on law students and lawyers.

65. Around the world, LGBTQ individuals are increasingly the subject of state-sanctioned, church-sanctioned and extrajudicial intolerance, intimidation and violence. It is virtually axiomatic that a student who is prepared to sign a document that formalizes institutional and systemic discrimination against LGBTQ students collaborates with the discrimination. A graduate will have to live with this internal stigma for the rest of his or her legal career.

66. We, members of the Law Society, are a position analogous to the members of the *Comité national des écrivains*, the French writers' guild, when it refused to admit writers who, during World War II, chose to publish in publications authorized by the Nazi occupiers. As Simone de Beauvoir explained:

> … j'approuvais que ses membres s'engageassent à ne pas écrire dans les revues et les journaux qui accepteraient des textes d'anciens collabos. Les gens qui avaient consenti à la mort de millions de Juifs et de résistants, je ne voulais plus entendre leur voix; je ne voulais pas trouver dans des publications leur nom accolé au mien. Nous avions dit : « Nous n'oublierons pas »; je ne l'oubliais pas.[3]
>
> - Simone de Beauvoir, *La Force des choses (Tome 1)* (Paris : Gallimard, 1963), p. 54 (Ed. Folio).

[3] [I] agreed that its members vowed not to write in magazines and newspapers that accepted manuscripts from former collaborators. I did not want to hear the voices of those who went along with the death of millions of Jews and of members of the Resistance. I did not want to have their names next to mine in these publications. We said: "Lest we forget." I did not forget.

67. We must not forget homosexuals were among those the French collaborators also helped round up for the occupiers. The cruelty and harm inflicted on victims of discrimination is therefore compounded by the admission of collaborators who took part in the discrimination. It is not hard to imagine the following dialogue during the coffee break of an examination for discovery, commercial deal, or mediation. In the following dialogue, an LGBTQ lawyer, legally married to a same-sex spouse, asks the other lawyer where he or she earned a law degree:

LGBTQ lawyer:	So where'd you go to law schoo?
TWU graduate lawyer:	Out west. Trinity Western Law School.
LGBTQ lawyer:	(Pause.) Did you sign the Community Covenant?
TWU graduate lawyer:	Yes, I had to.
LGBTQ lawyer:	You signed the document that said not to engage in "sexual intimacy that violates the sacredness of marriage between a man and a woman"?
TWU graduate lawyer:	Yes, and I reckoned it didn't apply to me. I met my spouse at TWU and we did not have sex until we were married at their chapel.
LGBTQ lawyer:	I met my same-sex spouse in law school, too. Do you believe my marriage violates the sacredness of yours?

68. The above hypothetical exchange poses both professional and ethical problems for both interlocutors. None of us who are not members of the LGBTQ community, long treated as outcasts and subhuman, can fully appreciate how hurtful that discrimination actually is.

69. What is also retrograde about this text is that, by defining the homosexual by the sexual act, it reverses the strides gained in North America (sometimes called the "Ellen Effect," referring to Ellen DeGeneres, the host of the 2014

Academy Awards) to accept that there is more to sexual identity and orientation than the gender of one's sexual partner:

> The Ellen effect's twin outcomes of cultural significance and acceptability of homosexuality are nowhere so clear as in Kennedy's direct refutation of the equation of gay identity with sexual acts: "to say that the issue in Bowers was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.
>
> Franklin, "Homophobia and the "Mathew Shepard Effect" in *Lawrence V. Texas*," 48 *New York Law School Law Rev.* 657 (2004) at 676

70. Whatever objections one might have from an ideological or sociological perspective, the Law Society must concern itself more narrowly with the members of the Bar and law school graduates who apply to be licensed in Ontario. As stated earlier, a law degree is more than the competencies outlined by the FLSC list of competencies. The critical questions one must ask are:

- Is the TWU Community Covenant is compatible with the education of the 21st-century Canadian lawyer?

- If it is not compatible, should the Law Society require law students to be exempted from the Community Covenant requirement, as a condition of recognizing a TWU law degree for the purposes of assessing a candidate's qualifications to practice law in Ontario?

71. In the legal education field, there has been in recent years (as recent as 2014) a growing interest among researchers in professional pedagogy (or "andragogy" – the study of adult learners, since law students are all above the age of majority). Prof. Laura Pinto's 2011 paper, "Adult Education in Ethics and Professionalism," commissioned for the University of Toronto Centre for the Legal Profession, delivered at a seminar of the Chief Justice of Ontario's

Advisory Committee on Professionalism, described as the “affective domain,” the basic layer of attitudes and values formed during the learning process (pp. 3, 4 and 8 of linked paper). What is clear from this analysis is that teaching to the cognitive level does not supplant the role of the affective domain in shaping the professional’s values and ethics.

72. In other words, a promise that the TWU faculty of Community Covenant adherents can still teach the equality and tolerance of homosexuality under Canadian legal norms will forever be impaired by a student’s collaboration in a policy which the student knows is intended to discriminate against homosexuals. What is even worse, I submit, is the dilemma faced by the LGBTQ student who is tempted to sign the Covenant “in bad faith,” i.e. either lying about his or her intent to remain celibate or swearing off his or her self-identified sexuality in order to obtain a recognized law degree. It is a Faustian pact for both heterosexual and LGBTQ students which incubates the new lawyer’s moral compass in a personal context of hypocrisy. The notion that one cannot train lawyers to respect those whom the school has a policy of excluding on grounds of religious condemnation is therefore one aspect of TWU’s lack of sophistication to train lawyers.

73. Another notable absurdity in the assertion that one can teach tolerance while excluding LGBTQ students is the perpetuation of the outdated pedagogical treatment of homosexuals as “the other,” whose point of view can be studied without being heard:

> In every area in which the profession carries out its most professional duties, a major duty has been the suppression of the homosexual sensibility. Heterosexuals have been debating the homosexual question exclusively amongst themselves for an untoward number of decades, and the prohibition of homosexual contributions to that debate, including the absence of a debate on the heterosexual problem of homophobia, is a serious indictment of the academy. Scholarship has abjectly served what Christopher Isherwood calls "the heterosexual dictatorship." Homosexuals learned nothing new when we read Orwell; it has always been 1984, as near as we can recollect. For an intolerably long time, the academy has refused to admit that homosexual love is a subject worthy of appreciation

> for its contributions to literature, to criticism, to teaching, to culture — even though a substantial number of authors, critics, teachers, and students are homosexual, including authors on the List of Great Masters, teachers commended for meritorious service, students on the honor rolls. Too often have we sat by while the contributions and insights of homosexuals have been suppressed, misappropriated, and otherwise abused by heterosexual prejudice, and too long have we been forced to assume heterosexual masks for the dubious benefits of passing unnoticed in an academy which is, after all, as much "ours" as "theirs." Gays have uniquely valuable contributions to make to the dialogues shaping our collective culture, and from now on we intend to do so openly, with dignity and pride. The appearance of gay space in this issue of College English is more than a refreshingly novel turning of the tables: it is a step towards human liberation.
>
> Norton and Crew, from *The Homosexual Imagination*, a special issue of *College English*, the official journal of The National Council of Teachers of English, edited by Rictor Norton and Louie Crew in 1974.

74. The importance of the affective level of lawyer education has been affirmed recently by Kierstead and Abner in their paper, “Learning Professionalism in Practice” (published by Osgoode Hall Law School and supported by the Chief Justice of Ontario’s Fellowships). Kierstead and Abner’s research, supported by published work including research conducted by the Carnegie Foundation, found that “professional identity” ethical duty and rule observance were integral to professional learning, and that this was preceded by a foundation of educating the learner lawyer’s personal conscience and moral development. (See linked paper by Kierstead and Abner, pp. 17-22, 70-71.)

75. As another member of the group I consulted stated:

> TWU claims they'd teach Charter values as well as any other law school, if that's true, then there's also the question of whether it makes sense to accredit a university that would essentially be starting from the hypocritical stance of "do as we say in class, not as we do (and demand you do)."
>
> ~ Comment from another contributor to the Canadian Legal Ethics list-serve, March 6, 2014

76. Sensitivity to personal identities of clients and other members of public the lawyer serves is part of the modern training of a lawyer, in that one cannot see or foresee the origins of human conflict without critical thinking and empathy. It is hard to imagine an area of law in 21st-century Canada that is so black-letter and impersonal that this skill set does not apply. See Hing, "Raising Personal Identification Issues Of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age In Lawyering Courses," 45 Stan. L. Rev. 1807(1993) at 1809 (p. 3). As Marjorie Silver stated, in the context of integrating emotional and multicultural competence into the modern legal curriculum in the United States, where race is the main root of social unrest, "Racism is like being in the Mississipi river; if you are not actively struggling against the current, you are drifting along with it": Silver, "Emotional Competence, Multicultural Lawyering and Race," 3 *Florida Coastal Law Journal*, 219 (2002), at 219.

77. One of the failings of the B.C. College of Teachers in the judicial review proceedings was that it did not adequately consider the need for evidence that the training of teachers who sign the Community Covenant at TWU can lead to discrimination in public schools. The Law Society should consider the availability of a mounting body of psychological and sociological data on the effect of homophobic and other discriminatory attitudes on students and graduates. This has emerged in recent years in the public consciousness over the effects of bullying and intimidation. It seems common knowledge that bullying is a vicious circle in which bullies have themselves been bullied. The Law Society has a duty to consult experts, and Ontario has a world-leading Ontario Institute of Studies in Education (OISE) as a resource.

78. Clinicians in other jurisdictions have also studied this issue. For example, one can review an eye-opening thesis defence paper in the University of North Texas: White, "Attitudes and Internalized Stigma in Gay and Lesbian College Students" (2012). It studied the effect of traditional and modern attitudes as

predictors of homophobia among a cohort of 79 gay, lesbian and bisexual college students. This is homophobia harboured *by* members of the LGBTQ community. The study showed that social and religious attitudes toward homosexuality had a direct impact on "LGB" students' long-term self-esteem, including the development of homophobic attitudes within themselves.

79. The institutional homophobia manifested by "deliberate indifference" to the plight of the victim of homophobia in the education setting spreads this negative social and psychological condition rather by stealth. The reason for this is that traditional or church-based homophobia is rooted not in religious doctrine but in a desire to enforce gender norms: Franklin, "Empathy and Reasoning in Context: Thinking about Anti-Gay Bullying," (SSRN-id2397918: unpublished manuscript, 2014), at pp. 27 and 54.

80. Faustian bargains as evidenced in the TWU Community Covenant are inherently hypocritical in that the individual knows at some personal, ethical and affective level that the signatory will obtain an unfair advantage over those who do not choose to sign on. The Law Society has battled hard to curb sharp practice and incivility. Do we now embrace members who are prepared to sign this document, knowing it provided an unfair advantage over those who did not sign because of their ethics?

81. Legal ethics do not create separate private and professional domains. Rather, as the recent research shows, legal ethics rely on internalizing rules of conduct and ethical duties based on the best of one's own personal conscience. Student collaboration in an overt exercise of systemic discrimination and professional hypocrisy engages the good character requirement of Bar licensure. Apart from the requirements of courage and other moral strength, the good character requirement includes "A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is

upheld" *Law Society of Upper Canada v. James Maurice Melnick*, 2013 ONLSAP 27 (CanLII), at para. 6.

82. The scenario one can readily foresee arising from this dynamic is one where TWU investigates a student or graduate for breach of the covenant. Depending on the status of the person as law student, applicant to the Ontario Bar, articling or LPP student, or member of the Bar, there would be escalating consequences to the person for suspension or expulsion (from the TWU "Community") or for revocation of the law degree on the grounds of bad faith. Two examples immediately come to mind which most lawyers have come across in their employment, family, criminal or civil litigation practices:

- Breach of the covenant can immediately expose the student to blackmail upon break-up or even during a prohibited relationship. The sources of blackmail include not only the student's sexual partner(s) but also others both within and without the community who may have witnessed the behaviour or heard rumours.

- Actual suspension, expulsion or revocation places the Law Society in the position of having to reject a Bar candidate or member's academic qualifications even though the reason for TWU's disciplinary action is for homosexual behaviour. The Law Society would be placed in the position of having to deny eligibility to apply for an L1 licence or to revoke one on the basis of breach of the TWU Community Covenant.

5. TWU's breach of *Human Rights Code* not exempted

83. Subject to the comments below regarding the so-called exemption of religious educational institutions, the requirement that students execute the Community Covenant once they have been admitted to the university is subject to the British Columbia human rights legislation. Students do not lose their status as protected members of the public by being admitted: *Berg v. UBC*, 1993 CanLII 89 (SCC); 102 DLR (4th) 665. (In *Berg*, the UBC faculty denied a student with a history of mental illness an access key and an internship document given to students on admission. This conduct was held to be a discriminatory denial of services ordinarily available to the public.)

84. The Supreme Court in 2001 assumed that TWU's Community Covenant was legal in British Columbia, in that a private college was not subject to the s. 15 equality provisions of the *Canadian Charter of Rights and Freedoms* and in that s. 41 of the B.C. *Human Rights Code* exempted faith-based education institutions from prohibitions against discriminatory practices. With due respect to the Supreme Court, this was a glaring weakness in its reasoning, and the same error could not be committed in the context of Ontario's human rights legislation.

85. In the 2001 *B.C. College of Teachers* decision, the Supreme Court evidently read this provision as permitting a faith-based school to discriminate against persons on the basis of sexual orientation and identity. The B.C. Court of Appeal and the judicial review court did not really deal with this issue.

86. The judicial review court, in *Trinity Western University v. British Columbia College of Teachers*, 1997 CanLII 2124 (BC SC), remitted the decision to the College on pure administrative law grounds. The Court of Appeal, in *Trinity Western University v. British Columbia College of Teachers*, 1998 CanLII 7054 (BC CA), did not actually deal with this point directly, either. The reasons

deflected consideration of the provision into another issue, without actually interpreting its effect:

> [234] Section 19 of the Human Rights Act, S.B.C. 1984, c. 22, (now s. 41 and s. 42(3) of the Human Rights Code) states:
>
> > 19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a ***primary*** purpose the promotion of the interests and welfare of ***an*** identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of ***the*** identifiable group or class of persons. **[emphasis added by Lee Akazaki]**
> >
> > (2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.
>
> [235] Under that section, TWU is entitled to grant a preference to members of the faith it professes for the purposes of the "promotion of the interests and welfare of an identifiable group" without contravening the Human Rights Code. This provision is unrelated, however, to the Council's concerns regarding the potential effect of TWU's discriminatory policies and practices on the public school system. Prima facie discrimination may be contrary to the public's interest within the public school system. TWU's bona fide intentions and objective requirements do not pertain to the suitability of their practices for public school certification.

87. The Court of Appeal therefore acknowledged that the faith-based school can discriminate in favour of members of its faith, but did not say whether it could discriminate against student candidates on the basis of sexual orientation or

identity (recognized as analogous to sex, in *Egan v. Canada*, [1995] 2 S.C.R. 513). The majority in the Supreme Court decision in *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31, at para. 25, also did not make it clear whether TWU could discriminate on grounds other than religious ones:

> … It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply.

88. Perhaps s. 41 (previously s. 19(1)) would have justified a preference for Evangelical Christian students. It is intended to allow institutions whose primary purpose is to promote certain groups in a category, to do precisely that. However, one struggles to see the justification for exclusion of a group in a category *different* from the one in which the protected group belongs. From the perspective of the function of human rights legislation, it makes sense to accommodate a church's decision to require members to be adherents of the particular faith or sect, because it is by nature a religious organization. TWU is actually exempted from the prohibition against discriminating against people who are not members of its affiliated church. It is not exempted from the prohibition against discrimination on the basis of sexual orientation or identity.

89. Ontario's *Human Rights Code* is worded more clearly on this point. Under s. 18, TWU's Covenant would be in breach, without exemption, because of the word 'similarly':

> **18.** The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is ***primarily*** engaged in serving the interests of ***persons identified by a prohibited ground of discrimination*** is restricted to persons who are ***similarly*** identified. R.S.O. 1990, c. H.19, s. 18; 2006, c. 19, Sched. B, s. 10. (emph. added)

90. The choice of law must be considered in relation to the Law Society' wide policy jurisdiction over Bar candidates. It has no authority over TWU, and therefore whether TWU is in breach of the B.C. or Ontario human rights legislation is not one which the Law Society has or can determine in favour of or against *TWU*. Instead, the Law Society must consider the proposed TWU law degree in terms of the advantage or privilege it provides for a candidate for licensure in establishing qualifications to practice law in Ontario.

91. One must be careful not to confuse the TWU law degree as a status held by the candidate governed by the law of where the status was obtained. Under s. 4.1 and s. 4.2 of the *Law Society Act*, the Law Society's responsibility to set standards of learning for practice in Ontario. The fact that it is convenient to recognize certain law degrees does not make the Law Society's mandate any less rooted in Ontario law, and it does not lessen the Law Society's obligation to ensure standards of learning should be "proportionate to the significance of the regulatory objectives sought to be realized." If the objective is to ensure that the Law Society does not impliedly legitimate a discriminatory practice of a B.C. law school that would be in breach of law in Ontario, the Law Society's proportionate response must be to require the discriminatory practice to stop before recognizing the law degree.

92. It is in this context that the Law Society must make a rule or policy decision whether to grant the advantage or privilege in circumstance where the law degree was obtained in circumstances where heterosexuals were preferred over homosexuals in breach of the *Human Rights Code*. The Law Society has the power and duty to the Bar candidate and to the people of Ontario to decide policy based on the desirability of recognizing TWU's law degrees.

93. From the perspective of its own public policy, the Law Society is bound not to recognize the TWU law degree as long as the Community Covenant is in place in its current form. The simple reason for this is that an analogue to TWU in

Ontario would be bound by the Ontario *Human Rights Code*, and the Human Rights Tribunal or the courts would find the Community Covenant to amount to a discriminatory practice. If a similar university with a similar entrance policy were to be established in Ontario, the Law Society would be guided by the public interest and rule of law provisions of s. 4.2 of the *Law Society Act*, not to recognize the degree.

CONCLUSION

94. The Law Society therefore faces an historic decision to preserve the independence of the Bar and to uphold the human rights of persons on the path of licensure to the Bar. The alternative is to help pave a pathway to licensure which starts by excluding and/or denigrating members of the LGBTQ community and by promoting hypocrisy. The Law Society must suspend consideration of the TWU request for accreditation of its law degree until TWU does one of the following:

1) rescinds the Community Covenant;
2) exempts law students from the Community Covenant;
3) amends the Community Covenant for law students in a way that preserves its aspiration to be a faith-based school, but that does not exclude or demean students who do not share the faith or its teaching regarding sexuality; or
4) agrees to refer the Community Covenant to the Ontario Human Rights Commission for advice to the Law Society and TWU on a wording which conforms to Ontario *Human Rights Code*.

APPENDIX I ~ BIBLICAL REFERENCES

The following are the texts for the biblical references used in the 2001 Community Covenant, for the various condemned sexual offences including "homosexual behaviour." (Text from the King James translation)

References for the 2014 Community Covenant:

Romans 1:26-27 (paras. 21-25 added, for context)

> 21 Because that, when they knew God, they glorified him not as God, neither were thankful; but became vain in their imaginations, and their foolish heart was darkened.
>
> 22 Professing themselves to be wise, they became fools,
>
> 23 And changed the glory of the uncorruptible God into an image made like to corruptible man, and to birds, and fourfooted beasts, and creeping things.
>
> 24 Wherefore God also gave them up to uncleanness through the lusts of their own hearts, to dishonour their own bodies between themselves:
>
> 25 Who changed the truth of God into a lie, and worshipped and served the creature more than the Creator, who is blessed forever. Amen.
>
> *26 For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature:*
>
> *27 And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompence of their error which was meet.*

Proverbs 6:23-35.

23 For the commandment is a lamp; and the law is light; and reproofs of instruction are the way of life:

24 To keep thee from the evil woman, from the flattery of the tongue of a strange woman.

25 Lust not after her beauty in thine heart; neither let her take thee with her eyelids.

26 For by means of a whorish woman a man is brought to a piece of bread: and the adulteress will hunt for the precious life.

27 Can a man take fire in his bosom, and his clothes not be burned?

28 Can one go upon hot coals, and his feet not be burned?

29 So he that goeth in to his neighbour's wife; whosoever toucheth her shall not be innocent.

30 Men do not despise a thief, if he steal to satisfy his soul when he is hungry;

31 But if he be found, he shall restore sevenfold; he shall give all the substance of his house.

32 But whoso committeth adultery with a woman lacketh understanding: he that doeth it destroyeth his own soul.

33 A wound and dishonour shall he get; and his reproach shall not be wiped away.

34 For jealousy is the rage of a man: therefore he will not spare in the day of vengeance.

35 He will not regard any ransom; neither will he rest content, though thou givest many gifts.

References for the 2001 Community Covenant:

I Cor. 6:12-20

12 All things are lawful unto me, but all things are not expedient: all things are lawful for me, but I will not be brought under the power of any.

13 Meats for the belly, and the belly for meats: but God shall destroy both it and them. Now the body is not for fornication, but for the Lord; and the Lord for the body.

14 And God hath both raised up the Lord, and will also raise up us by his own power.

15 Know ye not that your bodies are the members of Christ? shall I then take the members of Christ, and make them the members of an harlot? God forbid.

16 What? know ye not that he which is joined to an harlot is one body? for two, saith he, shall be one flesh.

17 But he that is joined unto the Lord is one spirit.

18 Flee fornication. Every sin that a man doeth is without the body; but he that committeth fornication sinneth against his own body.

19 What? know ye not that your body is the temple of the Holy Ghost which is in you, which ye have of God, and ye are not your own?

20 For ye are bought with a price: therefore glorify God in your body, and in your spirit, which are God's.

Eph. 4:17-24

17 This I say therefore, and testify in the Lord, that ye henceforth walk not as other Gentiles walk, in the vanity of their mind,

18 Having the understanding darkened, being alienated from the life of God through the ignorance that is in them, because of the blindness of their heart:

19 Who being past feeling have given themselves over unto lasciviousness, to work all uncleanness with greediness.

20 But ye have not so learned Christ;

21 If so be that ye have heard him, and have been taught by him, as the truth is in Jesus:

22 That ye put off concerning the former conversation the old man, which is corrupt according to the deceitful lusts;

23 And be renewed in the spirit of your mind;

24 And that ye put on the new man, which after God is created in righteousness and true holiness.

I Thess. 4:3-8

3 For this is the will of God, even your sanctification, that ye should abstain from fornication:

4 That every one of you should know how to possess his vessel in sanctification and honour;

5 Not in the lust of concupiscence, even as the Gentiles which know not God:

6 That no man go beyond and defraud his brother in any matter: because that the Lord is the avenger of all such, as we also have forewarned you and testified.

7 For God hath not called us unto uncleanness, but unto holiness.

8 He therefore that despiseth, despiseth not man, but God, who hath also given unto us his holy Spirit.

Rom. 2:26-27

26 Therefore if the uncircumcision keep the righteousness of the law, shall not his uncircumcision be counted for circumcision?

27 And shall not uncircumcision which is by nature, if it fulfil the law, judge thee, who by the letter and circumcision dost transgress the law?

I Tim. 1:9-10

9 Knowing this, that the law is not made for a righteous man, but for the lawless and disobedient, for the ungodly and for sinners, for unholy and profane, for murderers of fathers and murderers of mothers, for manslayers,

10 For whoremongers, for them that defile themselves with mankind, for menstealers, for liars, for perjured persons, and if there be any other thing that is contrary to sound doctrine;

APPENDIX II : About the Author - R. Lee Akazaki

Partner with the Toronto, Canada, firm of **Gilbertson Davis Emerson LLP** as trial and appellate counsel in a wide range of civil litigation matters. Experience includes ecclesiastical law. Fluently bilingual and pleads in French and English.

Certified by the Law Society of Upper Canada as a Specialist in Civil Litigation. Called to the Bar in 1990, B.A. (Hons.) from Trinity College at the University of Toronto and LL.B./J.D. from the University of Toronto Faculty of Law.

Past-President, Ontario Bar Association (OBA). Administrator and Chair of Selection Committee, OBA Foundation Chief Justice of Ontario Fellowships in Legal Ethics and Professionalism. Board Member for Ontario, Canadian Defence Lawyers. 2013 recipient of the Ontario Bar Association (OBA)'s Linda Adlam Manning Award. Trustee, OBA Foundation. Author, OBA Code of Conduct for volunteers and staff, the model for the Canadian Bar Association (CBA) Principles of Conduct. Advisory Board, JusticeNet.ca. Numerous past positions on boards and committees of the OBA, CBA, Law Society of Upper Canada Barrister Advisory Group, Uniform Law Conference of Canada and Medico-Legal Society of Toronto.

Author, "The Accidental Mentor," a monthly column for the *Canadian Lawyer* at canadianlawyermag.com. Author of leeakazaki.com, a Newstex syndicated blog devoted to mentorship of lawyers. Runner-up, CLawBies 2012 Best Law Blog Award. Winner of CLawBies 2011 Award for Best New Law Blog. Published in *The Advocates Quarterly, JUST.ca, Briefly Speaking, The Medico-Legal Journal of the United Kingdom, The Medical Post, The Journal of the Patent & Trademark Office Society of the United States and The Lawyers Weekly*.

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File No. n/a

March 12, 2014

Law Society of Upper Canada
TWU Submissions - Policy Secretariat

Dear Sirs:

Re: Accreditation of Trinity Western University's Law Program

I am writing in response to the Law Society's invitation for written submissions from the profession with respect to the above-noted issue. I do so from the perspective of a member of the Ontario Bar who has practised civil litigation, family law and ADR for 35 years, while maintaining active membership and participation in an evangelical Christian church, and regularly volunteering and serving as a board member and legal advisor for several Christian charities – some with covenants similar to the one complained of at TWU.

Allow me to start by saying that I have no connection with TWU as an institution, nor do I have any opinion regarding its assertion that Canada needs more law schools – Christian or otherwise. I am writing simply because I feel personally attacked by some of the arguments being put forward by the opponents of TWU's proposed law school.

The issue of TWU's community covenant has already been addressed by the Supreme Court of Canada, in the context of TWU's teacher's college. That Court determined that neither the equality rights guaranteed by the Charter nor TWU's Charter right of freedom of religion (as a private institution) can trump each other, and these competing rights must be balanced. The balance point is the line between personal belief and action. "*Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.*"

That TWU's future law graduates will be discriminatory in their professional conduct is, however, the assumption that opponents of TWU's law faculty make. The question raised is how TWU can turn out law graduates who will respect the Charter or provincial Human Rights legislation? It is alleged that students who choose to attend a law faculty operated by TWU will, simply by virtue of its covenant and the belief system it purportedly stands for, be incapable of properly representing certain clients or arguing certain types of cases – particularly those involving gender equality.

The underlying belief feeding this assumption appears to be that evangelical Christians are a monolithic and dangerous sub-culture, preoccupied with issues of sexual orientation and reproductive behaviour in the ongoing culture wars of North American society. Apparently

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evangelicals are thought to be bent upon undoing years of social progress and must be thwarted in their supposed efforts to turn back the clock.

Being pigeon-holed and demonized in that fashion is the sole reason I have become sufficiently motivated to write this letter. Not only have I ably represented several gay clients over my 35 years in practice, I also have an "out-of the-closet" gay nephew who is loved and appreciated no less and no differently on that account by his evangelical, church-attending, extended family. Perhaps more importantly for this discussion, my partners and I recently hired an openly gay associate lawyer for our firm, simply because she was the best candidate for the position. Her sexual orientation was irrelevant to our hiring decision.

Similarly, I am aware of at least one openly gay individual employed by one of the Christian organizations I have served with. It was expressly acknowledged that our hiring focus had to be the mission of the organization and the ability of that individual to carry out the mission – not on sexual orientation. The board agreed that we could not promote inclusiveness and respect as a Christian organization without being inclusive ourselves.

I therefore get rather exercised when a bald assumption is made that holding an evangelical Christian world view renders me (and by extension, all others of similar belief) somehow incapable of treating other members of Canadian society with respect and dignity, regardless of their unique characteristics. Evangelical Christians are perfectly capable of balancing their personal beliefs and their actions as Canadian citizens, and do it successfully every day.

The evangelical Christians I personally know, and regularly meet in various settings (probably a much larger population sample than TWU's opponents are exposed to), hold similar views. They honestly struggle with interpreting, understanding and properly applying scriptural truth to their lives in the modern context, and they seek to deal with others in a sensitive manner. Notwithstanding a few Biblical references regarding sexual conduct that tend to distract from the bigger picture, the attitude and teaching of most evangelical Christian churches across this country is that Jesus modelled radical and affirming respect and inclusiveness for all people. He treated everyone he met with dignity (although he was known to be hard on lawyers and their arguments) and he instructed his followers to do likewise.

Incidentally, most of the "objectionable" scriptural references about sexuality that are raised, when the church's position on sexuality is debated, happen to be found in the original Jewish Torah portion of the Old Testament. TWU's opponents do not impugn the ability of observant Jewish lawyers to carry out their professional obligations, yet one would expect them to hold a similar view regarding the definition of marriage. Does no one see an inconsistency there?

The evangelical Christians I know usually sound a lot less self-righteous and indignant about others' beliefs than TWU's opponents. They simply ask for the same treatment that every other Canadian is entitled to, by law – freedom of religion and freedom of expression – rather than being shouted down or sidelined simply because they want to practise their faith or hold a world view that is currently in the minority.

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Protection of all minorities, including religious minorities, is the entire point of Human Rights legislation, is it not? It is indeed puzzling that TWU's opponents find its claim to the Charter's protection of religious freedom such a threatening prospect for civil society in Canada, since their own objections to this proposed law school are based on a Charter equality argument.

Having just read TWU's impugned covenant myself for the first time, I suggest that it can only be properly viewed as a whole. It is specious reasoning to seize upon a few words in one bullet point as a "proof text" for the proposition that no graduate of TWU's law school could ever be trusted to act properly as a licensed professional, and that provincial law societies should accordingly take it upon themselves to bar its graduates from practising in their provinces.

That sort of approach to scriptural interpretation fell out of favour in most Christian circles decades ago, so it is rather amusing to observe TWU's opponents resorting to it now. Why not evaluate TWU's community covenant fairly, in its entirety? A copy of the entire 3 ½ page document, taken off the internet, is attached for the edification of those who may not have taken time to do so.

The first two sections contain background statements that I expect could be comfortably endorsed by Christians of any persuasion, be they Catholic, Orthodox, Mainline Protestant or Evangelical. Section 3, titled "Community Life at TWU" gets more specific, and is broken into two parts, with the first part listing a series of admirable and aspirational values. When reading that first section, several rhetorical questions occurred to me as I pondered the ideals set out for members of the TWU community:

- In this era of judges complaining about civility in the profession, would it not be refreshing to see lawyers graduating from a school that promotes the virtues of patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, mercy and justice?
- Do we not want lawyers to live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity?
- Who can object to treating <u>all persons</u> [*emphasis mine*] with respect and dignity, upholding their God-given worth?
- Is it not a lawyer's duty to be a responsible citizen who respects authorities, submits to the laws of this country and contributes to the welfare of society?

The second part of Section 3 lists examples of conduct which all members of the TWU community (including not only its students but its faculty and staff) are asked to voluntarily abstain from. This includes gossip, slander, vulgar language and other destructive forms of communication, lying, cheating, harassment, theft, use of degrading, exploitive or pornographic materials, substance abuse, smoking and drinking on campus. No objection is apparently raised by TWU's opponents to any of those activities being proscribed.

In the middle of all these qualities and ideals is found a single phrase which is generating all of the heat and light in this debate, namely a request to refrain from <u>any</u> sexual intimacy outside of marriage. The aim is evidently to promote the sanctity of marriage and restrict sexual activity to

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those who are married to one another. The phrase at issue does not specifically single out same-sex relationships, but rather all sexual intimacy outside of marriage. It equally applies to unmarried students who want to have sex in their dorm rooms, or married faculty members who are tempted to have an affair.

I have heard no complaint from any of TWU's opponents that this provision unfairly discriminates against persons who are unmarried, or who want to have affairs. The entire basis for objection to this phrase is that "marriage" has been defined as, "*between a man and a woman.*"

As everyone ought to be well aware, that is how marriage has been defined by the world wide Christian church for two millennia, not to mention the preceding millennia of Jewish faith and tradition which are the foundation upon which the Christian faith is built. This is not some new doctrine invented by evangelicals in the last century, nor by TWU in particular. It represents centuries of mainstream Christian thought, which cannot simply be wished away.

By disregarding the many, highly desirable virtues discussed in this covenant, which TWU is trying to encourage in the members of its community – a voluntary community, I hasten to point out, not a publicly funded university – and focusing instead on one phrase which simply confirms that the institution understands and defines marriage in a traditional Christian manner, TWU's opponents appear to demonstrate the exact failing which they presume TWU law graduates will exhibit: focussing on one characteristic (sexuality) to the exclusion of all other facets of human identity and interaction which make the practice of law so interesting and rewarding.

Furthermore, attacking this rather minor (and, I would suggest, incidental) portion of TWU's larger covenant by mounting an organized, country-wide campaign throughout the legal profession – in the face of an existing Supreme Court decision on the very same issue, no less – suggests that TWU's opponents regard any person who holds a traditional or evangelical Christian view of marriage as not fit to practice law. As a member in good standing of the Ontario Bar, I find that view abhorrent. It is nothing less than an attack on my freedom of religion. I also submit that the Law Society has no business involving itself in such ideological battles.

In closing, I would observe that students will (as they always have done) apply to the professional schools that appeal to them, for a variety of reasons. Prospective students who are offended by some aspect of TWU's community covenant have 16 other law school options available in Canada, not to mention several more in other Commonwealth countries. I therefore respectfully urge the Law Society to proceed with recognizing the accreditation of TWU's proposed law school.

Yours very truly,

DUECK, SAUER, JUTZI & NOLL LLP

THEODORE C. (TED) DUECK

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TRINITY WESTERN UNIVERSITY

- Living in Community
- Living in Residence
- University Policies
- For Your Information

Community In Covenant

Our Pledge to One Another

Trinity Western University (TWU) is a Christian university of the liberal arts, sciences and professional studies with a vision for developing people of high competence and exemplary character who distinguish themselves as leaders in the marketplaces of life.

1. The TWU Community Covenant

The University's mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible. This identity and allegiance shapes an educational community in which members pursue truth and excellence with grace and diligence, treat people and ideas with charity and respect, think critically and constructively about complex issues, and willingly respond to the world's most profound needs and greatest opportunities.

The University is an interrelated academic community rooted in the evangelical Protestant tradition; it is made up of Christian administrators, faculty and staff who, along with students choosing to study at TWU, covenant together to form a community that strives to live according to biblical precepts, believing that this will optimize the University's capacity to fulfil its mission and achieve its aspirations.

The community covenant is a solemn pledge in which members place themselves under obligations on the part of the institution to its members, the members to the institution, and the members to one another. In making this pledge, members enter into a contractual agreement and a relational bond. By doing so, members accept reciprocal benefits and mutual responsibilities, and strive to achieve respectful and purposeful unity that aims for the advancement of all, recognizing the diversity of viewpoints, life journeys, stages of maturity, and roles within the TWU community. It is vital that each person who accepts the invitation to become a member of the TWU community carefully considers and sincerely embraces this community covenant.

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2. Christian Community

The University's acceptance of the Bible as the divinely inspired, authoritative guide for personal and community life is foundational to its affirmation that people flourish and most fully reach their potential when they delight in seeking God's purposes, and when they renounce and resist the things that stand in the way of those purposes being fulfilled. This ongoing God-enabled pursuit of a holy life is an inner transformation that actualizes a life of purpose and eternal significance. Such a distinctly Christian way of living finds its fullest expression in Christian love, which was exemplified fully by Jesus Christ, and is characterized by humility, self-sacrifice, mercy and justice, and mutual submission for the good of others.

This biblical foundation inspires TWU to be a distinctly Christian university in which members and others observe and experience truth, compassion, reconciliation, and hope. TWU envisions itself to be a community where members demonstrate concern for the well-being of others, where rigorous intellectual learning occurs in the context of whole person development, where members give priority to spiritual formation, and where service-oriented citizenship is modeled.

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3. Community Life at TWU

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

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity
- communicate in ways that build others up, according to their needs, for the benefit of all
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society
- observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce
- exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others
- encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another.

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

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

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4. Areas for Careful Discernment and Sensitivity

A heightened level of discernment and sensitivity is appropriate within a Christian educational community such as TWU. In order to foster the kind of campus atmosphere most conducive to university ends, this covenant both identifies particular Christian standards and recognizes degrees of latitude for individual freedom. True freedom is not the freedom to do as one pleases, but rather empowerment to do what is best. TWU rejects legalisms that mistakenly identify certain cultural practices as biblical imperatives, or that emphasize outward conduct as the measure of genuine Christian maturity apart from inward thoughts and motivations. In all respects, the TWU community expects its members to exercise wise decision-making according to biblical principles, carefully accounting for each individual's capabilities, vulnerabilities, and values, and considering the consequences of those choices to health and character, social relationships, and God's purposes in the world.

TWU is committed to assisting members who desire to face difficulties or overcome the consequences of poor personal choices by providing reasonable care, resources, and environments for safe and meaningful dialogue. TWU reserves the right to question, challenge or discipline any member in response to actions that impact personal or social welfare.

Wise and Sustainable Self-Care

The University is committed to promoting and supporting habits of healthy self-care in all its members, recognizing that each individual's actions can have a cumulative impact on the entire community. TWU encourages its members to pursue and promote: sustainable patterns of sleep, eating, exercise, and preventative health; as well as sustainable rhythms of solitude and community, personal spiritual disciplines, chapel and local church participation, work, study and recreation, service and rest.

Healthy Sexuality

People face significant challenges in practicing biblical sexual health within a highly sexualized culture. A biblical view of sexuality holds that a person's decisions regarding his or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to one's (future) spouse, to others in the community, and to oneself. Further, according to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation. Honouring and upholding these principles, members of the TWU community strive for purity of thought and relationship, respectful modesty, personal responsibility for actions taken, and avoidance of contexts where temptation to compromise would be particularly strong.

Drugs, Alcohol and Tobacco

The use of illegal drugs is by definition illicit. The abuse of legal drugs has been shown to be physically and socially destructive, especially in its potential for forming life-destroying addictions. For these reasons, TWU members voluntarily abstain from the use of illegal drugs and the abuse of legal drugs at all times.

The decision whether or not to consume alcohol or use tobacco is more complex. The Bible allows for the enjoyment of alcohol in moderation, but it also strongly warns against drunkenness and addiction, which overpowers wise and reasonable behaviour and hinders personal development. The Bible commends leaders who abstained from, or were not addicted to, alcohol. Alcohol abuse has many long-lasting negative physical, social and academic consequences. The Bible has no direct instructions regarding the use of tobacco, though many biblical principles regarding stewardship of the body offer guidance. Tobacco is clearly hazardous to the health of both users and bystanders. Many people avoid alcohol and/or tobacco as a matter of conscience, personal health, or in response to an addiction. With these concerns in mind, TWU members will exercise careful discretion, sensitivity to others' conscience/principles, moderation, compassion, and mutual responsibility. In addition, TWU strongly discourages participation in events where the primary purpose is the excessive consumption of alcohol.

Entertainment

When considering the myriad of entertainment options available, including print media, television, film, music, video games, the internet, theatre, concerts, social dancing, clubs, sports, recreation, and gambling, TWU expects its members to make personal choices according to biblical priorities, and with careful consideration for the immediate and long-term impact on one's own well -being, the well-being of others, and the well-being of the University. Entertainment choices should be guided by the pursuit of activities that are edifying, beneficial and constructive, and by a preference for those things that are "true, noble, right, pure, lovely, admirable, excellent, and praiseworthy," recognizing that truth and beauty appear in many differing forms, may be disguised, and may be seen in different ways by different people.

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5. Commitment and Accountability

This covenant applies to all members of the TWU community, that is, administrators, faculty and staff employed by TWU and its affiliates, and students enrolled at TWU or any affiliate program. Unless specifically stated otherwise, expectations of this

covenant apply to both on and off TWU's campus and extension sites. Sincerely embracing every part of this covenant is a requirement for employment. Employees who sign this covenant also commit themselves to abide by TWU Employment Policies. TWU welcomes all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University's Christian identity. Students sign this covenant with the commitment to abide by the expectations contained within the Community Covenant, and by campus policies published in the Academic Calendar and Student Handbook.

Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility. The University also provides formal accountability procedures to address actions by community members that represent a disregard for this covenant. These procedures and processes are outlined in TWU's Student Handbook and Employment Policies and will be enacted by designated representatives of the University as deemed necessary.

By my agreement below I affirm that:

- I have accepted the invitation to be a member of the TWU community with all the mutual benefits and responsibilities that are involved;
- I understand that by becoming a member of the TWU community I have also become an ambassador of this community and the ideals it represents;
- I have carefully read and considered TWU's Community Covenant and will join in fulfilling its responsibilities while I am a member of the TWU community.

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March 13, 2014

Via Email: jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Submission concerning TWU's Accreditation

Members of the profession who have worked with me understand my strong bias towards supporting a Canadian society that preserves the dignity and worth of every human being. I recognize that a balancing act is required whenever rights compete with one another. It is clear to me that TWU's application for accreditation ought to be denied by Convocation so long as their actions (not their members' beliefs) are not in keeping with Charter values.

Yours very truly,

Richard Adams
B.C.L., LL.B., MBA

209 Aberdeen Ave.,

Peterborough On.,

K9H4W7

March 6, 2014

Benchers of the Law Society of Upper Canada

130 Queen St W.,

Toronto On

M5H 2N6

Honourable Benchers,

We of the voluntary group *Catholics for Choice Canada* urge you to deny accreditation to the proposed law school at Trinity Western University, Langley, B.C

There are basic flaws in this application. The first is that religiously- based training is bound to reflect the biases and convictions of the sponsoring religion. These may be in conflict with the views of other religions, and the holders of the views may be unable to fairly deal with cases before them.

We think that any law school which requires an intellectual or moral covenant of its students and faculty starts off in bias. We value the present Canadian attachment to neutrality and the basing of judicial decisions on human rights.

For us as liberal and progressive Catholic Christians, a further problematic factor in this application is the appropriation of the term "Christian" by an evangelical institution with its narrow, doctrinaire policies .

In fact, Christians come in many varieties and with many political views. The fundamentalist version is just one and a minority one at that. We represent a large percentage of Canadian Catholic Christians who hail the legal rights, including sexual rights, won for people in our society.

The Law Society has by nature an interest in a careful understanding of terms and language. We urge you to reject this totalizing attempt by Trinity Western to appropriate for its agenda certain terms. We ask you to recognize the wide variety of religious and theological positions within the religion of Christianity, and indeed among all faiths.

Law graduates formed in a narrow curriculum laden with reactionary socio/religio/political doctrine will not serve Canada's diversity, particularly should they ascend to the bench.

Yours faithfully,

Rosemary Ganley, Coordinator

Catholics for Choice Canada

Tel 1 705 748 9756

I would like to submit my objection to the accreditation of the above-noted program. I realize you have received a number of submissions arguing against this submission and I will not repeat them here, but would respectfully add my vote to those objecting to the accreditation in Ontario.

Regards,

Tina Dallas, Toronto

Ottawa, le 13 mars 2014

Soumissions TWU
Secrétariat des politiques
Barreau du Haut-Canada
Osgoode Hall
130, rue Queen Ouest
Toronto (Ontario)
M5H 2N6

Objet: Certification de la faculté de droit proposée par l'Université Trinity Western (TWU)

Monsieur le trésorier,
Membres du conseil,

La présente soumission vise à manifester mon profond désaccord vis-à-vis la certification de la faculté de droit de la TWU par le Barreau du Haut-Canada et ce, en vertu de l'article 7 de son Règlement administratif no 4.

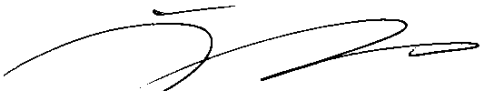
En tant qu'avocat membre en règle du Barreau du Haut-Canada et membre de la communauté gaie, lesbienne, bisexuelle et transexuelle (« GLBT »), je trouve déplorable que les membres du personnel et étudiants en droit de la TWU doivent signer un engagement à l'effet qu'ils s'abstiendront de tout rapport d'intimité sexuelle qui violerait la vocation sacrée du mariage entre un homme et une femme. Évidemment, on réfère ici à la conception traditionaliste du mariage selon le droit canonique en vigueur où l'on stigmatise encore les rapports consensuels et légaux entre deux personnes de même sexe.

Quel message envoie t'on à ces futurs juristes qui étudieront dans leurs cours les tenants et aboutissants du droit à l'égalité prévu à l'article 15 de la *Charte canadienne des droits* et libertés ? Que dire de leur futur Code de déontologie qui édicte une approche professionnelle exempte de toute discrimination ? C'est un message des plus contradictoires : d'un côté, les détenteurs du pouvoir officiel à la TWU restreignent l'admission d'étudiant(e)s basée sur un motif d'exclusion qui s'avère discriminatoire pour les GLBT ; de l'autre, les étudiants formés seront les futurs ambassadeurs pour assumer les droits et libertés de l'ensemble des citoyens sans égard à un motif discriminatoire.

C'est le cas de le dire : « *faites ce que je dis et non ce que je fais* ». À cet égard, la TWU ne prêche pas par l'exemple. De plus, tout comme en Ontario, le *Code de déontologie des avocats* de la Colombie-Britannique (*Professional Conduct Handbook*) édicte une conduite claire de non-discrimination à ses règles 3 et 3.1. La paradoxe est tellement frappant qu'il en est inquiétant.

Afin d'envoyer un message clair et fort que toute forme de discrimination est inadmissible en Ontario, il va de l'intérêt public et de la protection des minorités sexuelles de reconnaître qu'en Ontario, tous les programmes d'éducation juridique certifiés doivent être exempts de discrimination sous toutes ses formes. En conséquence, je serais gré au Barreau du Haut-Canada de ne pas certifier la faculté de droit la TWU.

Veuillez agréer, Monsieur le trésorier, Membres du conseil, l'expression de mes sentiments les plus respectueux.



M^{e} Jean-François Morin
(819) 743-3276

TRANSLATION

Ottawa March 13, 2014

Submissions re TWU:
Law Society of Upper Canada, Policy Secretariat
Osgoode Hall
130 Queen West Street Toronto ON
M5H 2N6

Dear Treasurer, Members of Convocation

Re: Accreditation of the Faculty of Law proposed by Trinity Western University (TWU)

This submission is intended to express my deep concern towards the accreditation of TWU' Faculty of Law by the Law Society of Upper Canada, in light of section 7 of its bylaw #4.

As a lawyer in good standing of the Law Society of Upper Canada and member of the gay, lesbian, bisexual and transsexual community (« GLBT »), I find deplorable that staff and law students at the TWU must sign an agreement to the effect that they will abstain from any sexual intimacy which would violate the sacred vocation of marriage between a man and a woman. Of course, this is referring to the traditionalist conception of marriage according to canon law in effect where consensual and legal relations between two people of the same sex are still stigmatized.

What is the message being sent to these future lawyers who will study all aspects of the right to equality provided in section 15 of the Canadian Charter of Rights and Freedoms? What to say about their eventual Rules of Professional Conduct which states a professional conduct above any discrimination? It is one of the utmost contradictory messages: on one hand, the holders of the official power at TWU limit admission of students based on a ground for exclusion which turns out to be discriminatory for GLBT's; on the other hand, their graduating students will be the future champions of rights and freedoms for all citizens against any grounds for discrimination.

This is a case of: "do as I say, not as I do". In this case, TWU do not practice what they preach. Also, as in Ontario, the British Columbia Professional Conduct Handbook clearly requires a non-discriminatory conduct in its rules 3 and 3.1. The paradox is so great that it is worrisome.

In order to send a clear and strong message that any form of discrimination is inadmissible in Ontario, it is in the public interest and in the interest of protecting sexual minorities to recognize that in Ontario, all accredited legal education programs must be exempt from discrimination in any form. Consequently, I would ask the Law Society of Upper Canada to not certify the faculty of law of the TWU.

Respectfully,

Jean-François Morin

Attention: TWU Submissions, Policy Secretariat
Law Society of Upper Canada, Osgoode Hall

I am writing in response to your request for written submissions on the issue of whether Trinity Western's Law School Program should be accredited. I am opposed to its accreditation because it asks its students to subscribe to values that are contrary to important Charter protections. In my opinion, it creates a dangerous precedent and does not foster the respect for diversity, sexual identity and religious freedoms that Canadian law schools should foster in future lawyers.

I have attached a video interview with an Ontario criminal lawyer, Lorne Gross. He does a superb job of responding to all challenges to a contrary opinion and I hope you will include this interview as part of my submission.

sunnewsnetwork.ca/video/3297994949001

Yours respectfully,

Barbara Landau, Ph.D., LL. B, LL.M.

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
Toronto, ON M5C 2B8
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March 13, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Treasurer and Members of Convocation:

RE: Trinity Western University Accreditation

Thank you for the opportunity to provide written submissions to Convocation regarding the issue of the accreditation of Trinity Western University pursuant to section 7 of By-Law 4. FACL has provided its views on this matter in the letter dated January 15, 2014 (please see attached).

We understand that the written submissions will be considered at the meetings to be held on April 10 and April 24, 2014. We also understand that Convocation is meeting in the Convocation Room, which does not accommodate public seating, but a media room will be available at Osgoode Hall where individuals can watch the webcast, subject to seating availability.

In the interest of openness and transparency, FACL formally requests a change of venue so that FACL and other interested parties may attend "in person" and make submissions at the meetings.

In the event that this request is not granted, then FACL asks that this request be noted.

Sincerely,

FEDERATION OF ASIAN CANADIAN LAWYERS

Lai-King Hum
President

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
Toronto, ON M5C 2B8
www.facl.ca

January 15, 2014

Mr. Thomas G. Conway
Treasurer of Law Society of Canada
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer and Members of Convocation:

RE: Concerns with the Approval of Trinity Western University's Proposed Law School Program

The Federation of Asian Canadian Lawyers (FACL) is a diverse coalition of Asian Canadian legal professionals with a mission is to promote equity, justice, and opportunity.

In furtherance of FACL's mission, FACL issued a statement on January 8, 2014 speaking out against the Federation of Law Societies of Canada's recommendation to provincial law societies to approve the Trinity Western University (TWU) law school program. Please see the attached statement.

FACL urges you to oppose or place conditions on TWU's accreditation in Ontario, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Sincerely,

FEDERATION OF ASIAN CANADIAN LAWYERS

Lai-King Hum
President

Federation of Asian Canadian Lawyers
20 Toronto Street, Suite 300
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FACL Speaks Out Against the Approval of the Trinity Western University Law School in British Columbia

As an organization aimed at promoting equity, justice and opportunity, FACL strongly opposes the Federation of Law Societies of Canada's (FLSC's) recommendation that provincial law societies approve Trinity Western University's (TWU's) proposed law school program. FACL is also disturbed by the B.C. Minister of Advanced Education's hasty approval of TWU's law degree program the day after the FLSC concluded its protracted and closed-door process.

Specifically, FACL is of the view that the TWU Community Covenant Agreement, that is required to be signed by all TWU faculty, staff and students, is discriminatory. The Community Covenant Agreement includes a requirement to abstain from "sexual intimacy that violates the sacredness of marriage between a man and woman" and provides TWU with the reserved rights to question, challenge or discipline its members in response to actions that impact personal or social welfare. Past iterations of the Community Covenant included a requirement to refrain from practices that are biblically condemned, including homosexual behaviour.

The mandatory requirement to enter into the Community Covenant Agreement as a condition to school admission and employment at TWU has the effect of excluding applicants from the lesbian, gay, bisexual, transsexual and transgender communities and negatively impacts upon the human dignity of persons in these communities.

FACL believes that all law schools across Canada must create a forum for free exchange of ideas, premised upon inclusion, tolerance, respect and opportunity for equal participation. FACL further believes that law schools and the institutions that authorize the creation of these schools must act in the public interest and ensure that their policies and practices adhere to the principles of the Canadian Charter of Rights and Freedoms and provincial and territorial human rights legislation.

FACL agrees with the Council of Canadian Law Deans that, "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools."

FACL calls upon the provincial law societies and government decision makers across Canada, to act in the public interest and to reject TWU's application for accreditation of its law school program and to withdraw all approvals and consents on the basis that its policies and practices are discriminatory and contrary to the principles of human rights law in Canada. In addition, FACL advocates for the inclusion of a non-discrimination policy as a condition that all law schools must adhere to in order to maintain its accreditation.

March 14, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto ON M5H 2N6

Dear Madam or Sir:

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

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

We acknowledge the reality of differing views in our society related to sexual morality and community standards for institutions of higher education. In this context, as you undertake your assessment at the provincial level we wish to urge you to endorse the accreditation of TWU's law school, which has already been duly researched and decided by a national body created expressly for the purpose of such reviews.

This accreditation rightly reflects the balance that has been struck in human rights legislation between individual rights related to sexual orientation and institutional rights related to religious identity. Opponents of granting accreditation apparently believe that this balance is inappropriate and needs to be righted, possibly in light of the rights set forth in Section 15 of the Charter. However, for a provincial law society to weigh in with such a contrary view on this issue is, we believe, to err gravely on at least three fundamental points related to national standards, due process and the rule of law.

First, the principle of national professional standards, whether in accounting, medicine, law or social work, is an important one for national integration, promoting interprovincial consistency and mobility. Should the Upper Canada law society support a view different from the national body, we believe it would be a much more appropriate approach to deal with any differences regarding such standards by reopening this matter in the national context in which it belongs.

Second, we would maintain that withholding accreditation and thereby imposing a kind of morality test on graduates is the wrong way to deal with a dispute about the academic legitimacy of the institution they attend. This not only infringes on the religious freedom of individual graduates but also violates due process by making a presumption about their individual views

Executive Director Dr. Justin Cooper ♦ 79 Robinhood Drive, Dundas, ON, L9H 4C2
905.627.4540 ♦ jcooper@checanada.ca ♦ www.checanada.ca

Our mission is to advance the efficiency and effectiveness of Christian higher education at member schools, including fostering institutional cooperation, and to raise public awareness of the value of Christian higher education in Canada.

that is not based on any evidence or inappropriate behaviour or performance regarding human rights.

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

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

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

Third and finally, we would ask that the rule of law be respected in this matter. When disputes arise in society regarding human rights, public morality and the like, our democratic society has institutions with authority to deal with these, namely, the legislature and the courts. In this situation, the Supreme Court of Canada has already ruled in favour of Trinity Western University in an almost identical case.

As well, when the definition of marriage was changed for civil purposes, specific clauses were inserted to protect religious institutions from facing discrimination on the basis of their retention of religious views of marriage. For a provincial professional society to make a decision directly opposed to these rulings would be to offend the rule of law, something highly ironic for a law society to consider.

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

Sincerely,

Justin Cooper
Executive Director

TWU Submissions
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Re: TWU's Accreditation

I wish to add my voice to the chorus regarding this issue. I cannot believe that we in Canada would take this colossal step backward given our Charter. Will we soon also have a men's only law school?

Yours very truly,

Elaine M. Gray
B.A York University, J.D. Osgoode Law School

I am writing to support the accreditation of Trinity Western University's proposed law school. Trinity Western University should be treated the same as any other Canadian university. Provided it meets all of the ordinary requirements for accreditation, it should be accredited. The Code of Conduct all members of TWU agree to abide by is irrelevant to whether TWU graduates should be eligible to become members of Ontario's legal profession.

If members of a private university choose to express their religious faith by adhering to a Code of Conduct prohibiting particular sexual activities they believe to be immoral, it is noone's business but their own. The fact that other members of Canadian society may disagree with those views or even find them offensive is not sufficient ground to deny graduates from that law school the right to practice in Ontario. Trinity Western's Code of Conduct does not violate the British Columbia *Human Rights Code* or any other applicable legislation and it has committed to ensure its graduates are familiar with all required aspects of Canadian law, including the constitutional and human rights protections for sexual orientation. Before being called to the Bar, TWU graduates will have to swear to, among other things "protect and defend the rights and interests of such persons as may employ me"; "neglect no one's interest"; "not refuse causes of complaint reasonably founded"; "not pervert the law to favour or prejudice any one"; and "safeguard the rights and freedoms of all persons" (LSUC By-Law 4, s. 21).

Tolerance of divergent beliefs is a hallmark of our democratic society. Section 2 of the *Charter* provides every Canadian with guarantees of their freedom of conscience and religion; freedom of thought, belief, opinion, and expression; and freedom of association. Section 15 protects them from discrimination on the basis of religion. In *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31, the Supreme Court held that no one *Charter* rights is privileged over another. It concluded that "TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools. Indeed, if TWU's Community Standards could be sufficient to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church" (para. 33). The Court's analysis in that case applies directly to the Law Society here. Unless there is evidence that TWU graduates will ***act*** in a discriminatory manner because they agreed to a Code of Conduct prohibiting all extra-marital sexual relations, there is no reason to deny them the opportunity to become lawyers in Ontario. If a lawyer engages in discriminatory conduct, the Law Society can discipline the lawyer for a violation of Rule 5.04 of the *Rules of Professional Conduct*. But until belief turns into practice, it is not for the Law Society to police.

The Legislature of Upper Canada abolished the need to profess any particular religion in order to be called to the Bar in 1833 (*An Act to dispense with the necessity of taking certain Oaths, and making certain Declarations in the cases therein mentioned; and also to render it unnecessary to receive the Sacrament of the Lords Supper as a qualification for Offices, or for other temporal purposes*, S.U.C. 1833, c. 13). The Law Society should not re-establish religious tests in 2014. TWU's application for accreditation should be accepted.

Yours truly,

Josh Hunter

Barrister & Solicitor

This issue cannot be properly characterized as a clash between freedom of religion and equality rights for LGBTQ persons.

If the Law Society refuses to accredit TWU's law school (or signals it will not call its graduates to the bar in Ontario) such a decision entails absolutely no infringement of freedom of religion. Those students, administrative staff and academic faculty members at TWU who choose to express their freedom of religion by refraining from all sexual activity prior to marriage, or by refraining from marrying a partner of the same sex, can continue to do so. That will remain absolutely their personal decision in accordance with their religious beliefs.

And that's because nobody affiliated with any law school in Canada is required to engage in premarital sexual activity or in same sex marriage, or indeed in any sexual activity or in any marriage whatsoever.

However, if the Law Society does accredit TWU's law school and thus implicitly endorses its community covenant, that decision would undeniably entail a grievous infringement of the equality rights of LGBTQ persons. LGBTQ persons could not be full and equal members of the TWU community. LGBTQ persons would have fewer opportunities to study law or to teach law in Canada.

Do evangelical Christians who wish to adhere to the TWU community covenant have the right to insist upon this covenant for all those who attend TWU under the rubric of freedom of association?

No.

It's clear that if the TWU community covenant were to be amended or eliminated such that the equality rights of LGBTQ persons were no longer infringed, those members of the TWU community who wish to refrain from premarital sex or to engage only in heterosexual married relations would also remain absolutely free to do so. And in addition they could quite simply choose to associate only with those who hold the same views, whether within the university or within the larger Canadian community. One would consider it appropriate for the "chaste" TWU evangelicals to behave towards LGBTQ persons with ordinary civility, but that appears to present no problem: kindness and respect are values which are also enshrined within the community covenant. But devout evangelicals need not become best friends with any LGBTQ person at TWU if more intimate association were offensive to them or to their religious beliefs. In short, nothing would constrain the evangelicals from continuing to exercise their freedom of religion in the context of their freedom of association.

However, what the TWU covenant seeks is freedom **from** association. Members of the TWU community wish to impose a covenant upon those persons who do not share their religious views with respect to premarital sex or same sex married relationships as the price of entry into the TWU community. The effect of the covenant is to assert the right of the evangelicals to protect themselves from having to associate with sexually active married LGBTQ persons, whose behaviour their covenant explicitly deems injurious to heterosexual marriage.

Well then, is this a legitimate and constitutionally protected right?

No again. Not to such an extent.

Our Supreme Court has repeatedly considered whether s. 2(d) of the Charter protects freedom **from** association as well as freedom **of** association, notably beginning in 1991 in *Lavigne v. OPSEU*, then again in 2001 in *R. v. Advance Cutting* and most recently in the 2014 case, *Bernard v. Canada (AG).*

The Court has concluded that s. 2 (d) does provide some protection of freedom from association, but it's a limited and lesser protection than freedom of association. Not all forms of involuntary association are protected. To paraphrase, there is no constitutional right to isolation from such association with others as is a necessary and inevitable part of a modern and democratic society.

Our modern and democratic society is grounded in the principal, enshrined in our laws which lawyers are sworn to uphold, that association with diverse persons is both necessary and inevitable.

This was not always the case. Historically the profession of law offered *de facto* isolation from association with women, blacks, Jews and gays. For generations, our law was made by white heterosexual Christian males. One might assert that the white heterosexual Christian males who were admitted to the bar, first through legal apprenticeship and later through professional law faculties, did receive an excellent legal education – just as it's asserted TWU could offer an excellent legal education. But historically, those ineligible to study law obviously did not receive that excellent legal education. Even if occasional individual women, blacks, Jews and gays managed to get into law schools, they were for generations generally precluded from practising law, or severely constrained in their practice of law.

Nor is this ancient history. Bora Laskin, a University of Toronto and Harvard law grad, was as a Jew unable to obtain employment in a Toronto law firm after graduation: he ended up teaching at UofT and from there went directly to the Supreme Court. Did he as Chief Justice welcome Bertha Wilson when she joined him in 1982, the first woman to be appointed to the Supreme Court? Not notably. Nevertheless since then, have women judges really made a difference? Most of us would agree that they have, increasingly and incrementally as there has been sufficient critical mass of women lawyers and women judges to bring their diversity of life experience and perspective to the bench. And most of us are increasingly optimistic that our common law will continue to evolve, as more and more persons from traditional equity-seeking groups have the opportunity to attend law school and to practice law and to serve on the bench. Including members of the LGBTQ community.

Since 2005, with the establishment of same sex marriage in Canada through courageous leadership from our Ontario Court of Appeal, we've seen how social consensus with respect to increased acceptance of LGBTQ persons has followed legal initiative. Now TWU proposes to reverse this movement, in the name of freedom of religion and freedom from association. But

the vitality of the common law requires that all persons equally be welcomed into all law schools based upon merit of application. It requires that no law school be permitted to assert a constitutional right to freedom from association with LGBTQ persons in the name of freedom of religion.

The TWU accreditation issue does not engage any genuine conflict between freedom of religion and equality. Interestingly enough, the TWU community does not in its community covenant actually seek, under the auspices of freedom of religion, freedom from association with persons of differing religious beliefs: Jews, Muslims, Buddhists are apparently all welcome to attend. It's significant that the TWU assertion of freedom of religion appears to focus quite narrowly on one element of Christian belief which is not even held by all Christian adherents: namely, opposition to equality of sexual orientation.

It has to be absolutely clear to Convocation in its deliberations: **freedom of religion** cannot shelter behind an unjustified assertion of a right to **freedom from association,** or a constitutional right to isolation from LGBTQ persons in a manner which offends their dignity and their fundamental humanity.

This is an issue absolutely fundamental to justice in Canada.

Either the TWU community covenant is appropriately amended, or Convocation must refuse to accredit TWU's law school and it must refuse to call any future TWU law graduates to the bar in Ontario.

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By e-mail to jvarro@lsuc.on.ca

March 17, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Members of Convocation:

I write on behalf of Egale Canada concerning the decision that you will make in April concerning the accreditation of Trinity Western University ("Trinity Western") proposed law school program. Egale Canada is a national lesbian, gay, bisexual, and trans (LGBT) human rights organization. For over twenty years, Egale Canada has intervened before numerous Canadian courts and tribunals—including the Supreme Court of Canada—to represent the issues of LGBT Canadians. Committed to respect for diversity in thoughts, opinions, and belief systems, Egale Canada continues to fight for substantive legal rights for Canada's LGBT community. I am sharing our perspective to assist your decision-making process.

In Egale Canada's view, it is a laudable state of affairs that rights and principles of equality which recognize the dignity and value of all individuals irrespective of their sexual orientation or gender identity are firmly grounded at all levels of Canadian law, including human-rights legislation in every jurisdiction and jurisprudence interpreting the Canadian Charter of Rights and Freedoms. This state of affairs is the result of hard-fought legal and social struggles. Those rights and principles, in concert with others such as freedom of expression and freedom of religion, now form part of the fabric of professional ethics and the rule of law which all members of the legal profession are required to advance. Trinity Western's application reaches you against this backdrop.

Egale Canada does not purport to have expertise in the fine-grained assessment of a proposed law degree. We would urge that, in your deliberations and decision-making process, you carefully examine Trinity Western's admission criteria and practices, curriculum, hiring, and "Community Covenant Agreement" with a view to assuring yourself that they are compatible with the ethical and legal training appropriately required of those seeking entry to the legal profession in Ontario. We recognize religious organizations' exemption from human-rights legislation for their private activities. In the light of the legal profession's public character and trust, as well as the practical and symbolic weight of your imprimatur, you should be alert to the possibility that internal practices ordinarily shielded from human-rights scrutiny may pose difficulties for a publicly oriented accreditation bid. We would urge you to ensure that, in its original materials or supplemental ones submitted since, Trinity Western demonstrates satisfactory responses to the concerns that you have received about its application.

Yours truly,

Helen Kennedy
Executive Director

PIERRE-YVES BOUCHER, B.A.,LL.B.,DESD
OTTAWA

Monday, March 17th 2014.

Thomas G. Conway,
Law Society Treasurer,
The Law Society of Upper Canada,
Osgoode Hall,
130 Queen Street,
TORONTO, Ontario.
M5H 2N6

Dear sir:

As a retired member of the LSUC, allow me to intervene in the debate regarding the approval of the proposed Trinity Western University law program.

At the outset let me say that I personally would never agree to the Community Covenant required of TWU students and staff. There are too many elements in that Covenant that I would find difficult if not impossible to comply with taking into account my temperament.

Allow me to explain my interest in Trinity Western University. When TWU applied for membership in the Association of Universities and Colleges of Canada, which would clearly amount to accreditation as a university in Canada, I was the Associate Executive Director and Legal Counsel to the Association. As such I was involved in the application for membership, the subsequent appraisal of the institution and the debates amongst university presidents regarding the proposed membership. In my position at the AUCC, I heard all of the arguments against the institution. Because of their Community Covenant Agreement, academic freedom, the corner stone of academic integrity and quality, could not exist. We heard that because the students were required to agree to forego sex outside of marriage and agree not to indulge in alcohol and drugs that amounted to unacceptable restrictions on its students freedom and somehow affected the quality of their graduates.

…/ 2

Originally the debate was adjourned to allow for further information and assessment to be provided. One important piece of information obtained at the time was that when asked from some important BC university presidents about the standing of TWU graduates pursuing graduate studies in their institutions , they admitted that TWU graduates stood in the top 5% of the class. That took care of the quality argument. As for academic freedom, calmer spirits had to acknowledge that one's beliefs does not prevent the exploration of beliefs of others.

I have not had contact with TWU since I left the AUCC more than twenty years ago, but I recall then that their graduates demonstrated very high levels of academic quality, work ethics, and critical analysis, qualities that were not necessarily present in all of the graduates I encountered from other university institutions.

In my experience working with publicly funded universities and others that are religiously inspired such as those operating under pontifical charters, I found the latter to be much more opened to exploring and challenging doctrine than in the "regular" institutions.

If, as it has been argued by some of the interveners to date, the requirement that students sign on to a Community Covenant Agreement somehow prevents them from being high quality students and graduates in any endeavour of knowledge including law, then might I suggest that the Law societies then have an obligation to review the limiting impact on students and academia in those universities with law schools that impose a student code of conduct as many do. We need also to examine those law schools where the free pursuit of academic exploration in inhibited through peer pressure, tenure and promotion.

Surely in a pluralistic society, as one would argue Canada should be, we can accept that people will have differing points of view and beliefs. That within that pluralistic society we can have groups of people sharing similar beliefs and values different from others is a given. That a portion of this pluralistic society decides to band together to promote and advance their beliefs and values by creating institutions to respond to their needs should, and I would say must, also be a fundamental value of the Canadian society we seek to promote. A pluralistic society by definition implies that we do not all share the same beliefs and values.

The only issue in this application must be one of the quality of education in the proposed programs and the assessed ability of their graduates to function as quality legal professionals.

…/ 3

One has to ask why a debate on the quality of education has been highjacked by a group seeking to gain exclusivity of recognition and credibility based on sophistic arguments. The orchestrated opposition to the TWU recognition is evident by observing the number of identical or similar letters and arguments that parrot the others even when the language is different. It clearly is an organized opposition by a few.

Most interveners object to a Community Covenant Agreement that most have not seen or read. They have not taken into account the very nature of the text they object to by singling out one sentence from the entire document. Do they really object to the following commitments:

"Members of the TWU community, therefore, commit themselves to:

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity
- communicate in ways that build others up, according to their needs, for the benefit of all
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society
- observe modesty, purity and appropriate intimacy in all relationships~~, reserve sexual expressions of intimacy for marriage~~, and within marriage take every reasonable step to resolve conflict and avoid divorce
- exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others
- encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another.

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

communication that is destructive to TWU community life and inter–personal relationships, including gossip, slander, vulgar/obscene language, and prejudice

- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others
- ~~sexual intimacy that violates the sacredness of marriage between a man and a woman~~
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event."

If not why do they argue that the whole document is objectionable. (The full text of the Agreement can be found for those who are interested at https://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html)

I have read the objections raised by the law school I know best. Allow me to suggest that most of the signatories, many whom I know and have high regards for, have probably not read or know the content of the Community Covenant Agreement. Most probably do not know the religious affiliation of TWU or the fact that it is fully funded by fees and donors without subsidy from public funds or from institutional subsidies from revenues generated by arts, social sciences and other general programs. In fact I suspect none of them know that TWU is a neighbour of theirs "just across the canal" and both institutions appear to prosper even though one shares religious beliefs that are not endorsed by the other. Each has been coexisting without conflict and I have never heard that one was threatened by the coexistence of the other.

I am disappointed but not surprised that the Canadian Council of Law Deans has clearly avoided commenting on the academic quality of the proposed program to be offered by TWU. One must assume that the Council has performed its obligations and have concluded that the academic considerations are good and those arguments cannot be used to object to the proposed program so that the Council must fall back on the fallacy of the argument that somehow, one who objects to sex outside marriage and objects to marriage by other than between a man and a woman is practicing unlawful discrimination and should not be allowed to practice the legal profession. Were their argument a real and substantial argument, then present practitioners of the profession who share the beliefs of TWU should also be considered inappropriate for the

practice of the profession and law schools should require students to assert in writing that they have no objection to the exercise of same sex marriages and other similar practices. Of necessity the issues raised by the Council against the TWU application must be because of the beliefs of the law practitioner whether or not it is expressed in a written document.

If we were to accept the arguments of those who oppose the recognition of the TWU proposed program then one would have to conclude that the graduates of the law programs of the Benjamin Cardozo School of Law and the J. Reuben Clark Law School, among many others, should not be admitted to the practice of law, the first school is from Yeshiva University ("We are proud to share with you our exciting new initiatives and programs and hope that you join us on this journey of Jewish living and learning at Yeshiva University") and the second is part of the Brigham Young University ("To succeed in this mission the university must provide an environment enlightened by living prophets and sustained by those moral virtues which characterize the life and teachings of the Son of God."). Both institutions, to my knowledge, do not require a written undertaking to follow religious practices and beliefs, but both clearly set out the importance of their basic beliefs in their programs of education. We would also need to dismiss the academic work of senior recognized academics such as George W. Dent (Professor at Case Western University) who has published on "Marriage, Religious Freedom, Equality and Homosexuality" and "Civil Rights for Whom? Gay Rights Versus Religious Freedom".

The Toronto Lawyers Association paper is the best, most reasoned and reasonable document I have yet read on the issues raised by this application. I do not fully agree with its conclusions but I must admit that they suggest a very viable and reasoned solution.

Allow me to propose two possible arguments in favour of the solution proposed by the TLA and add a possible addition to their recommendations.

The first is that my understanding of the law as it applies in Ontario is that when there is a conflict between fundamental rights, the solution must be, whenever possible, one of reasonable accommodation. Here we have a conflict of the rights of GLBT rights and those who profess a religious creed both of which are protected rights. A reasonable accommodation would be to allow one law school to be consistent with the advancement of a group's religious

creed while all of the others could be opened to the advancement of GLBT rights. A solution very similar to the linguistic accommodation that exists in our law schools. Of the eighteen law schools outside of Quebec two allow for French Canadians to function in their language while the sixteen others require that students and staff function in English.

My second argument is that, considering the high quality of the graduates of the TWU undergraduate programs as it appears confirmed by their performance when moving to graduate studies in the so-called regular university system, it would be unfair to allow their graduates to continue competing with others on strictly academic performance criteria for admission to the other law schools.

Also as an add-on to the solution proposed by the TLA. In Ontario, all undergraduate university programs are subject to periodic evaluation to maintain quality integrity and relevance. In many graduate programs there are similar periodic evaluations. In some professions, the approved programs must be re-evaluated also on a periodic basis. Health institutions and specialty programs in Medicine must also be periodically recertified. In the US, regular and periodic evaluation of accredited institutions is a fact of life. I suggest that the LSUC and consequently all law societies in Canada should adopt a requirement of periodic evaluation of approved programs to insure that they remain of high quality, relevant and pertinent to the objectives pursued by the law societies as guarantor to the public of high quality of legal services.

I personally have great difficulty with the argument that TWU's proposed program should not be recognized because they discriminate and "discrimination is inconsistent with a lawyer's obligation to uphold the laws of Canada". That almost sounds like an argument that because they discriminate on the basis of sexual orientation we should discriminate against them on religious grounds. Somewhat like saying that because they will not let us chew on their bubble-gum, they cannot play in our sandbox. Besides while I agree that lawyers are obligated to uphold the laws, I am also convinced that lawyers have an obligation to challenge laws that they consider to be inappropriate, illegal or contrary to what they believe is right. As a country, we have elevated to the Order of Canada persons because they have challenged existing laws.

On a final note I should say that I am appalled that some members of Convocation have chosen

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to militate publicly for or against the TWU application. Those members knew that they would be called upon to make a decision on this application when it went forward from the Federation of Law Societies to the provincial law societies. One would not accept that a judge intervene to advocate for or against an issue that may ultimately come before him or her for decision. Similarly, an ultimate judge in this case should not have intervened. I submit that is a very basic principle of the rule of law. At this time it may well raise a question as to whether Convocation can make a decision "free of any apprehension of bias or predetermination" as outlined by the Treasurer. As a minimum those members who have intervened to date must declare their involvement, not participate in the discussions and the decision making of Convocation on this application. Similarly, any member of Convocation who has been "lobbied" either for or against the recognition of the TWU proposed program in law should also disclose the details of this lobbying and decide whether or not he or she can be **seen** to make a decision **free of bias or predetermination**. In this phase, Convocation is acting as a decision maker and not as a legislator.

In closing, regardless or your religious affiliation or beliefs, we should keep in mind the following: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law" (Constitution Act, 1982)

Yours sincerely,

(Original signed by Pierre-Yves Boucher)

Pierre-Yves Boucher

Windsor Law
University of Windsor

Motion concerning Trinity Western University Faculty of Law
March 12th, 2014 (passed unanimously by Faculty Council, Faculty of Law, University of Windsor)

We, the members of the Faculty of Law at the University of Windsor, write in response to the Law Society of Upper Canada's request for submissions concerning the Ontario accreditation of Trinity Western Law School (TWU).

The TWU Community Covenant requires that all community members commit themselves to a set of beliefs and a course of conduct that will exclude access of students to legal education on the basis of sexual orientation, gender identity, gender expression, sexual minority and marital status, and that may affect the retention of students on these same bases.

The issue that must be addressed is whether accrediting law graduates of TWU will enhance or detract from access to justice, equality, democratic inclusion and the protection of the public interest.

The legal profession must be fully representative of the population of Ontario, and entry into the profession should not be limited on the grounds of sexual orientation or other similar grounds. Law schools and the Law Society of Upper Canada have an important role and a symbolic function in demonstrating the principles of equality and democratic inclusion that govern the legal profession.

Given the limited number of accredited law schools in Canada, and the commitment of Canadian law societies to mobility between the provinces, accrediting TWU will disadvantage already vulnerable LGBTTIQ people in joining the legal profession, and will thus limit the Law Society of Upper Canada's ability to ensure a representative legal profession in the province of Ontario. In light of these grave concerns:

1. ***The University of Windsor Faculty of Law believes that the requirement of students to sign and agree to the terms of the Community Covenant is discriminatory towards LGBTTIQ students;***

2. ***The University of Windsor Faculty of Law calls on the Law Society of Upper Canada to uphold the values of equity, diversity, and access to justice and to protect the public interest;***

3. ***The University of Windsor Faculty of Law calls on the Law Society of Upper Canada to make TWU's accreditation conditional on the removal of discriminatory clauses within the covenant.***

I am writing to express my personal opinion regarding Trinity Western University's proposed law school. As you are no doubt aware, TWU forces its students to sign a Community Covenant Agreement requiring its students to abstain from sexual intimacy that violates the sacredness of marriage between a man and a woman.

As a member of the Ontario bar, I think it would be a real disgrace if the Law Society of Upper Canada accredited TWU's law program. In my personal opinion, it is akin to accrediting a program that discriminates against otherwise admissible candidates on any other ground prohibited by the *Charter*. Lawyers have an obligation to serve the public interest and to help pave the road to a more equal future in which the rule of law is upheld in a manner that is fair regardless of race, ethnicity, or sexual orientation. Accreditation of the TWU law program would be a step backward, and I am vehemently opposed to it.

Thank you for considering my own personal views on this matter,

Zohar Levy
Toronto

mogan°daniels°slager

Peter J. Mogan
Partner – M&A | Business Law

DIRECT LINE: (604) 801-6023
Email: **pmogan@mdslawyers.com**

March 18, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Sirs and Mesdames:

Re: Resolution re Non-Discrimination in Legal Education

In December 2013, the Federation of Law Societies of Canada (FLSC) recommended approval of the proposal of Trinity Western University (TWU) to establish a new law school. Since that time, opponents of the proposal have brought a motion before the Law Society of Upper Canada (LSUC) to reject the recommendation and to rule that graduates of the TWU law school not be eligible for admission to the B.C. Bar.

As a lawyer with 36 years of private practice, both here in British Columbia and in Ontario, I write to express my strong support for the proposed law school. The proposal itself was the work of a large, diverse and experienced group of lawyers and law professors from across the country. Though I am a supporter of public education - my wife is a public school teacher and both my daughters were educated in public schools and public universities - I accepted the invitation to join the TWU law school advisory committee because I liked the distinctive features of this law school program.

We worked diligently to put together plans for a law school that would be of the highest quality, combining theoretical learning with experiential learning. We were keen to have a law school with a heavy emphasis on preparing students for private practice in a small firm setting. One thing that was particularly important to me in the TWU proposal was a provision for a concentration on issues of social justice. This is much

needed and currently lacking in other law school curriculums. Increasingly, the current generation of post-secondary students are wanting to find a career where they can make a positive difference in society. We need more lawyers who will see their primary calling as serving the marginalized members of our society.

After 18 months of careful consideration, the FLSC concluded that the TWU proposal was a good one. The opponents of the proposal have based all of their arguments on one issue that does not even comprise any component of the proposal, namely that students of the new law school will be required to sign a Community Covenant which they argue is discriminatory in nature.

The reality is that these arguments were before the FLSC. So diligent was the accreditation committee to deal exhaustively with the issue raised by the opponents that they struck a special advisory committee comprised of very senior and respected practitioners from throughout Canada. They consulted with and took advice from John B. Laskin, one of the most respected constitutional lawyers in Canada. They looked carefully at the issue of whether the proposed law school was in the public interest. They concluded that there is "no public interest reason to exclude future graduates of the program from law society bar admission programs".

I would urge the LSUC Benchers to familiarize themselves with the TWU proposal and the FLSC report (to be found at http://www.flsc.ca/_documents/ApprovalCommitteeFINAL.pdf) and to give it the same rigorous review that the FLSC accreditation committee gave it. I would particularly ask the Benchers to carefully consider the recommendations of the FLSC Special Advisory Committee (to be found at http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf). I would urge you, as well, to consider the benefits mentioned above in the greater public interest.

I have one other concern. What are the implications if the only reason that the TWU law school is denied accreditation is because of the TWU Community Covenant? Let me state at the outset that, like some others who are proponents of the TWU proposal, I am not supportive of the Community Covenant in concept or in content. I do not believe that a code of conduct or prescribed behaviours for adult students on issues other than academic issues (such as plagiarism) are helpful or appropriate. Nor do I believe that selecting certain areas of behaviour (e.g. sexual) to the exclusion of other areas (e.g. use of financial resources and social justice) is reflective of a biblical Christian ethic. However, I strongly believe that a privately-funded school ought to have the right to have a covenant if they wish and that students ought to be free to assent to such a covenant without putting at risk the opportunity to practice law in B.C. or any other Province. Moreover, the Community Covenant does not ask students to affirm a belief in its rightness, merely to agree to refrain from certain behaviours while attending TWU. That is hardly discriminatory.

My concern is that if the Canadian law societies find that attendance at a law school which restricts certain behaviours and holds certain beliefs about marriage on grounds of faith is reason enough to deny admission to the Bar, where will this go next? Will lawyers who belong to Islamic, Jewish, Sikh, Christian or other faith systems that do not believe in gay marriage be considered unfit to remain members of Canadian law societies? Will those who belong to clubs and societies that discriminate on the basis of gender or race also be considered unfit to be lawyers? Where will this end? The LSUC should very careful in considering whether holding a belief system – even one that is generally unpopular or repugnant to most – should ever be the basis for denying membership to a Canadian law society.

Thank you for your consideration.

Yours very truly,

Mogan Daniels Slager LLP

By
Peter J. Mogan

LAW SOCIETY OF UPPER CANADA,
OSGOODE HALL

MAR 14, 2014

Through newspaper articles in recent weeks, we were surprised and saddened that there is an opposition to the law faculty of the Trinity Western University of BC due to their Biblical principles and values.

Personally we have been so privileged to live with these principles since immigrating to Canada 60+ years ago. We and millions of other Canadians are still enjoying these sensible laws and their blessings. Let us keep them, thus helping each other for a safer and therefore better life for us and our children and grandchildren for future generations.

With such principles and values, there would be:

1. Less divorces, thus
2. Fathers and mothers would be encouraged to pass on good and safe principles to their children and lovingly teach them to be kind and righteous good citizens, thereby
3. Fewer people would end up in jail, saving $s for us all in taxes spent for courts and such jails.

Yours Sincerely,

M Hummel
also for Linda Hummel

P.S. In the past centuries, several countries of Europe, where Bibles and Biblical teachings were accepted, lives were permanently changed thus fewer jails were needed and some of these institutions were closed up.

March 18, 2014

Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer and Members of Convocation:

Out On Bay Street is a non-profit organization that provides lesbian, gay, bisexual, transgender, and queer (LGBTQ) law students and young professionals with career development, educational, and networking opportunities, working to help them transition from school to the workplace. It is integral to our mandate to promote inclusive and pro-diversity workplaces and schools for LGBTQ individuals.

We are writing to register our concerns regarding Trinity Western University's (TWU's) proposed law school, given its impacts on our service community and student membership across Canada. TWU's program is currently seeking the approval of the provincial law societies for admission to the bar of each jurisdiction. In Ontario, this is a decision that falls to the Law Society of Upper Canada (LSUC). We have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. We urge you to refuse or qualify TWU's accreditation. We also encourage you to advance an accreditation requirement in Ontario that prevents any accredited law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to our concerns is the fact that TWU forces its students to sign a 'Community Covenant Agreement' requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[3] the Canadian Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers and academics, law school faculty councils,[6] editorial

[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

[3] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[4] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

boards,[7] and over one thousand law students.[8] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom. Our agreement with these views is underscored by the fact that many of our LGBTQ student members and colleagues have been subjected to systemic discrimination, exclusion, and hatred related to their sexual orientation. It would be tremendously disheartening to see the legal profession's leadership support policies which perpetuate these unfortunate experiences and constrain access to legal education and the legal profession for LGBTQ individuals. We are confident that our membership base and corporate partners would agree that institutionalizing the targeted humiliation of LGBTQ individuals is unacceptable.

The legal profession turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see some law societies remain silent on this issue - deferring to Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that we learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade.

Further, the FLSC's protracted and closed-door process was patently not in the public interest – contrary to LSUC's mandate. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key finding on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

In 2014, the FLSC's decision offends more than contemporary Canadian sensibilities. Our understanding is that it is also legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[9] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[10] departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.

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[6] Four law school faculty councils have passed motions condemning the Community Covenant Agreement: Osgoode (http://bit.ly/1lCEL16), Queen's (http://bit.ly/1e7xLrj), UBC (http://bit.ly/1laMBSW), and Dalhousie (http://bit.ly/1flQgX2). Faculty from Alberta's 2 law schools have also expressed their concerns in an open letter (http://bit.ly/1flYkL6).

[7] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[8] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

[9] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

[10] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

- Second, the 2012 SCC decision in *Doré*[11] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt LSUC to heavily scrutinize the FLSC recommendation.

Current Canadian law schools have made a priority of making legal education more accessible, practical, and representative of society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. We strongly recommend that you oppose or place conditions on TWU's LSUC accreditation. We look forward to a properly balanced and progressive decision from the law society on this important issue, and appreciate this opportunity to provide input to the process.

Sincerely,

Paul Marai
Chair, Board of Directors
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/dj

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[11] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

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As a gay person, here are my views on this issue

It is only in the last decade that LGBT people have won the right to marry and consequently begun to enjoy mainstream societal acceptance.

Not surprisingly this societal acceptance has upset some religious and conservative interest groups. One could thus view the TWU admissions policy as a reaction to social acceptance of LGBT people; namely they are scared that their traditional family values are being eroded.

That being said, if equality under the law makes some people uncomfortable, it is a small price to pay for broader social acceptance. For example, the gay suicide rate is three times the national average. Thus, one would hope that legitimizing gay individuals' rights minimizes their feelings of marginalization which in turn leads to better social integration.

Given that all individuals are supposed to be equal under the law, I cannot support a law school that punishes people for being gay; neither should the law society.

I. Loui Dallas
Criminal Defence Lawyer
B.A. (Hons.), B.Ed., M. Ed., J.D.

DR. BRADLEY W. MILLER
c/o Faculty of Law, Western University
London, Ontario
N6A 3K7

March 19, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Policy Secretariat,

I am an Associate Professor in the Faculty of Law at the University of Western Ontario. I am also a member of the Law Society of Upper Canada. I am writing in my personal capacity.

I support Trinity Western University's (TWU) request for accreditation from LSUC, which I believe to be in the public interest.

I will briefly sketch an argument for accreditation and deal with two arguments against it.

The reasons for TWU Law

The homogeneity of legal education in Canada ought to be a cause for concern. Our civic society is sufficiently robust to accommodate a wide variety of civic associations, including a private, religious law faculty. As a legal educator who has, over the years, been in conversation with many law students of religious faith, I can attest that there are some law students who would choose and would benefit from an education in a religious setting such as TWU is proposing. These students want to pursue questions (and answers) about law that, most often, do not animate their professors and their fellow students. They want to explore the riches of a tradition of legal thought that goes back to the establishment of the first universities, and before. Although they share their classmates' (or some of their classmates') desire to work for social justice through law, these students want to understand how the legal profession can be a vocation, a way of serving God through serving other persons. They are, quite simply, on another path.

As the BC Civil Liberties Association has made the case with admirable clarity in its January 28, 2013 submission to the Federation of Law Societies of Canada, I will not here address the constitutional and human rights arguments in favour of TWU. Suffice it to say that our constitutional order is premised on the value of communities, including religious communities, and affords them room, as the BCCLA expresses it, 'to prescribe the conditions of membership of their group and set out their fundamental beliefs.'

The argument against TWU Law from practice

Of the arguments that have been marshalled against recognizing a TWU law degree, the weakest (and most reliant on culpable stereotyping) is that TWU graduates will be prone to discriminating against

sexual minorities. There are three problems with this assertion: (1) it has not been made out in the context of TWU's other professional programs; (2) it is not supported by the record of TWU's undergraduates who are now alumni of other law faculties; and (3) it is not supported by the practice of other lawyers, judges, and law professors who agree with the moral priority of the conception of marriage supported by TWU's community covenant. In short, there need not be any tension, professionally, between holding to a conjugal conception of marriage, and serving clients irrespective of their sexual orientation or marital status. The evidence all points in the opposite direction.

If LSUC determines that the acceptance of a particular form of marriage is in fact a pre-condition to participation in public life, we must consider what consequences there will be for those existing members of LSUC who cannot, in good conscience, affirm that conception. Is LSUC prepared to impose statements of belief on its membership? The condemnation of TWU's code of conduct would end, logically, in a code of belief to be imposed on the LSUC membership.

An equally unimpressive argument is that TWU students will be unable to exercise critical thinking. Now I have taught students from all academic backgrounds, religious and secular. To be sure, not all are equally able to think critically. Nor are all equally free from the lazy assumptions of fundamentalism (whether religious or non-religious). But the assumption (or rather, the dogmatic assertion) that there is a greater preponderance of uncritical fundamentalists among the graduates of religious educational institutions is, in my experience, demonstrably false.

The argument against TWU Law from principle

Some have argued that even if TWU poses no genuine risk, accrediting TWU law faculty would make LSUC complicit in an act of impermissible discrimination. As a professor of constitutional law, I do not agree with this assessment. Again, I will not set out a full argument here, but endorse the argument of the BC Civil Liberties Association.

Additionally, I ask LSUC to consider this: immediately before the federal Parliament legislated on same-sex marriage, Parliament held public hearings to address the question of how to balance the competing interests that would be generated by the forthcoming change to the federal law of marriage. In response, a settlement was achieved that is set out in both the preamble and s.3.1 of the *Civil Marriage Act*, SC 2005, c33. In short, no organization is to be deprived of any benefit or subject to any sanction solely because of their exercise of their religious beliefs with respect to marriage. It thus combines the establishment of same-sex marriage with a generous statement of the civil rights of others to hold to a different understanding of marriage. The statute is expressly built on the agreement that there is no single, conception of marriage that all Canadians must accept as a precondition to participation in public life. This is federal law, of course, and not binding on LSUC. But it is a principle of Canadian law, embodies an eminently reasonable accommodation of the competing interests, and LSUC would do well to incorporate this proposition of Canadian law into its decision-making.

Yours truly,

Bradley W. Miller
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Western University
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Federation of Chinese Canadian Professionals (Ontario)
加拿大華人專業人員聯會, 安大略省

Association of Chinese Canadian Lawyers of Ontario

March 20, 2014

VIA EMAIL (jvarro@lsuc.on.ca)

Jim Varro, Director of Policy
TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen St. W.
Toronto, ON M5H 2N6

Dear Mr. Varro:

Re: Trinity Western University — Request for Accreditation

We write to you as the Board members of the Association of Chinese Canadian Lawyers of Ontario ("ACCLO"). The ACCLO is a non-profit organization that focuses on fostering the professional development of Chinese Canadian lawyers; advocating for equality, justice and fairness for Chinese Canadians in legal matters; and facilitating Chinese Canadians' access to the Canadian legal system. The ACCLO was formed in 1975 and is the legal section of the Federation of Chinese Canadian Professionals (Ontario).

The ACCLO is opposed to discrimination of any kind — including discrimination on the basis of ethnic origin *and* discrimination on the basis of sexual orientation. For this reason (which we develop further below), we ask the Law Society of Upper Canada ("LSUC") to refuse accreditation to the law school proposed by Trinity Western University ("TWU") pursuant to section 7 of By-Law 4.

As the Treasurer has acknowledged, the LSUC's decision must be made in the public interest, which is part of the LSUC's mandate.[1] Specifically, s. 4.2 of the *Law Society Act,* R.S.O. 1990, c. L.8 provides:

[1] "Treasurer's remarks respecting TWU for February Convocation (in public)", available online: <http://www.slsuc.on.ca/uploadedFiles/treasurer-twu-remarks.pdf>.

> In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
>
> 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
>
> …
>
> 3. The Society has a duty to protect the public interest.

The cause of justice, rule of law and public interest are enhanced when the values of the *Canadian Charter of Rights and Freedoms* ("*Charter*") are respected. Thus, the LSUC's decision on TWU should be guided by the *Charter*.[2]

TWU's proposed law school would offend the *Charter* value of equality because it would institutionalize a policy of discrimination against queer students. TWU requires, as a condition of admission, that all students sign a covenant in which they voluntarily abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". A breach of this covenant can result in expulsion from the university.[3]

This covenant tells prospective students that if they are queer, they can only attend TWU if they deny their sexual identity — or lie about their sexual behaviour at the risk of expulsion if they get caught. This is no more acceptable than a covenant that excluded students of Chinese descent. Both ethnic origin and sexual orientation are prohibited grounds of discrimination under s. 15(1) of the *Charter*.

TWU has attempted to distinguish its covenant from recognized forms of discrimination by characterizing it as being aimed solely at homosexual *behaviour* and not homosexual persons. While this approach once held some currency, it has since been discredited. In *Saskatchewan (Human Rights Commission) v. Whatcott* (2013), the Supreme Court of Canada adopted the following passage from Justice L'Heureux-Dubé's dissent in *Trinity Western University v. British Columbia College of Teachers* (2001):

> I am dismayed that at various points in the history of this case, the argument has been made that one can separate condemnation of the 'sexual sin' of 'homosexual behaviour' from intolerance of those with homosexual or bisexual orientations… The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected."[4]

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[2] In *Doré v. Barreau du Quebec*, [2012] S.C.J. No. 12 at paras. 24, 28, 35, the Supreme Court of Canada made it clear that all administrative decision-makers — including law societies — must consider *Charter* values in the exercise of their discretion.

[3] Trinity Western University, *2012-2013 Student Handbook* (nd) at 23, available online: <http://twu.ca/student handbook/student-handbook-2013-2013.pdf>.

[4] *Saskatchewan (Human Rights Commission) v. Whatcott,* [2013] S.C.J. No. 11 at para. 123.

TWU also asserts that its covenant is protected by freedom of religion under s. 2*(a)* of the *Charter*. This claim, however, does not stand up to scrutiny. At the core of TWU's claim is the notion that freedom of religion includes not only "the right to manifest religious belief by worship and practice or by teaching and dissemination"[5] (which we do not object to TWU doing), but also the right to insulate oneself from those who do not share one's religious beliefs or practices by *excluding* such persons — even when engaged in a public activity such as operating an accredited law school. Freedom of religion does not go this far. The Supreme Court of Canada made that clear in *S.L. v. Commission scolaire des Chênes,* which rejected a freedom of religion claim by parents who wanted to exempt their children from a class called "Ethics and Religious Culture".[6] Writing for the majority, Deschamps J. held: "The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society".[7]

TWU also cannot derive any assistance from s. 18 of the Ontario *Human Rights Code,* which exempts certain religious institutions from the anti-discrimination conditions that would otherwise apply. Section 18 provides:

> The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified. (emphasis added)[8]

TWU cannot take advantage of this provision to restrict membership to students who believe in the brand of Christianity that says homosexuality is sinful because it is not "primarily engaged in serving the interests" of only these students. This is clear from s. 3(2) of TWU's own statute, which states: "The objects of the University shall be to provide for young people of any race, colour or creed university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian."[9] (emphasis added) In other words, even TWU's own governing statute recognizes the difference between teaching one's "underlying philosophy and [religious] viewpoint" — which we do not object to TWU doing — and discriminating against students of other creeds (*e.g.,* those who do not subscribe to TWU's religious views) by *excluding* them.

Finally, it is important to say a word about the Supreme Court of Canada's 2001 decision in *Trinity Western University v. British Columbia College of Teachers,*[10] since the Federation of Law Societies of Canada relied on this case to grant conditional approval. Two observations are in order.

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[5] R. *v. Big M Drug Mart,* [1985] S.C.J. No. 17 at para. 94.
[6] [2012] S.C.J. No. 7.
[7] *Ibid.,* at para. 40.
[8] *Human Rights Code,* R.S.O. 1990, c. H.19, s. 18.
[9] *Trinity Western University Act,* S.B.C. 1969, c. 44, s. 3(2).
[10] [2001] S.C.J. No. 32.

First, thirteen years have passed since that decision was rendered and societal views on homosexuality have continued to evolve. At the time *British Columbia College of Teachers* was decided, gays and lesbians were not even permitted to marry. It was not until two years later that the Ontario Court of Appeal held that a legal definition of marriage that excluded same-sex couples violated s. 15(1) of the *Charter.*[11] Moreover, in *British Columbia College of Teachers,* the Supreme Court heard but did not fully embrace the argument that "there is no distinction between homosexual persons and homosexual behaviour" and that "practices and identity" are related.[12] It was only Justice L'Heureux-Dubé in dissent who stated that "(t)he status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected." [13] In 2013, however, a unanimous Supreme Court adopted Justice L'Heureux-Dubé's statement in *Saskatchewan (Human Rights Commission) v. Whatcott.*[14]

The Supreme Court recently recognized in *Canada (Attorney General) v. Bedford* that its precedents may be revisited "if new legal issues are raised as a consequence of significant developments in the law or if there is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate."[15] There has been a change in both circumstances and law in the area of gay and lesbian equality. Accordingly, Professor Elaine Craig's observation is apt: "Today's decision makers are expected to be much more protective of gay and lesbian equality than were the decision makers of ten, fifteen, or twenty years ago."[16] Canada should move forwards and not backwards — as should its legal profession.

Second, the Supreme Court's analysis in *British Columbia College of Teachers* is not entirely applicable to the question before the LSUC because there is something unique about the legal profession. Lawyers wield tremendous power in our society. [17] As such, lawyers have long considered it part of their professional responsibilities to use that power responsibly to safeguard the rights of minorities and protect them from discrimination.

It is antithetical to the professional obligations of lawyers and the values of the justice system to discriminate against queer students by *excluding* them from attending a law school. It is hard enough to get into law school as it is. The LSUC should not increase that burden — solely for queer students — by accrediting a law school that effectively excludes them from admission. This is no more justifiable than a law school that excludes Chinese Canadians. At the end of the day, everyone must have equal access to the legal profession.

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[11] *Halpern v. Canada (Attorney General)* (2003), 65 O.R. (3d) 161.
[12] *Trinity Western University v. British Columbia College of Teachers, supra* at para. 23 (S.C.C.).
[13] *Ibid.,* at para. 69.
[14] *Saskatchewan (Human Rights Commission) v. Whatcott, supra* at para. 123 (S.C.C.).
[15] *Canada (Attorney General) v. Bedford,* [2013] S.C.J. No. 72 at para. 42.
[16] Craig, Elaine, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013), 25 C.J.W.L. 148 at 168.
[17] See letter from Rev. Dr. Linda Yates of St. John's United Church to Nova Scotia Barristers' Society dated February 9, 2014, available online: <http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-09_Rev.Yates_TWU.pdf>.

Yours truly,

Ken Jim President	Josephine Kiang Vice-President/Secretary	Roslyn M. Tsao Treasurer
Wennie Lee CLE Director	Gerald Chan Media Contact	Jeffrey Lem Executive Member
Sean Zhang Executive Member	Carole Suen Executive Member	Greg Chang Executive Member
Michelle Cheung Executive Member	Simmy Yu Executive Member	Sue Chen Executive Member
Howard Yeung Executive Member	Justin Ho Executive Member	Kari Chan Executive Member

To whom it may concern,

In my view, the issue regarding accreditation of graduates of Trinity Western University as members of the Law Society of Upper Canada is very straightforward. Graduates of an accredited law school who otherwise qualify for admission to the bar of the Province of Ontario should not automatically be denied admission because they attended a law school which required them to sign a covenant governing their personal sexual conduct and practices.

While I personally find the covenant to be inappropriate at best, it is my view that the graduates of Trinity Western University who are admitted to the bar of the Province of Ontario should be governed by the same Rules of Professional Conduct as every other member of the bar. In the event that they engage in discriminatory conduct in the course of their practice of law, they should be subject to the same sanctions and penalties as every other member of the bar. It is neither fair nor reasonable to presume that because they have signed the covenant, (however inappropriate it may be and however "out of sync" with commonly held values it may be), the graduates of Trinity Western University would automatically be ungovernable or unable to comply with the Rules of Professional Conduct which govern all Ontario lawyers and they are therefore unfit for admission. To express my concern in terminology readily understood by lawyers, refusing to admit persons to the bar of the Province of Ontario because they attended Trinity Western University and signed its covenant (to which they presumably subscribe), is the equivalent of being presumed guilty of breaching their responsibilities as a member of the bar or being unable to comply with those responsibilities until proven innocent.

I wish to point out as well that no candidate for admission to the bar of the Province of Ontario is subject to a litmus test or an investigation regarding their personal beliefs and religious practices. This is as it should be. The Law Society of Upper Canada should not prejudge a person’s qualification for admission based on those criteria, especially when no other candidate is judged on those criteria. To do so is inherently unfair, unreasonable and, dare I say it, discriminatory.

Thank you for the opportunity to make submissions.

Douglas A. Hendler

Toronto

SEVENTH-DAY ADVENTIST CHURCH IN CANADA
ÉGLISE ADVENTISTE DU SEPTIÈME JOUR AU CANADA

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Siège Social

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March 19, 2014

Delivered via email: jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
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M5H 2N6

Re : Law Society of Upper Canada consideration of Trinity Western School of Law graduates

Dear Law Society of Upper Canada:

We recently became aware that the Law Society of Upper Canada is seeking input with respect to the new law school planned at Trinity Western University ("TWU"). We welcome that opportunity and respectfully make the following comments to assist the Benchers as they make a decision that will affect graduates of a TWU School of Law.

Seventh-day Adventist Church in Canada ("SDACC")

1. The Seventh-day Adventist Church is a world-wide Christian denomination whose members rest and worship on the seventh day of the week, and who look forward to the second coming of Jesus Christ. Currently, there are over 66,000 members of Seventh-day Adventist churches throughout Canada, worshipping in some 370 congregations. There are members in every Canadian province and territory. Some

of these members are lawyers and actively involved with the law society of their jurisdiction.

2. The SDACC is a body corporate, federally incorporated without share capital by Special Act of Parliament in 1920. The SDACC is the national denominational entity within Canada of Seventh-day Adventists.
3. Seventh-day Adventist organizations operate 44 elementary and secondary schools located throughout Canada. These schools exist to provide students with a Christian education in and through which they express and live out their faith as guaranteed by the *Canadian Charter of Rights and Freedoms* and the rights guaranteed by human rights legislation in each province and territory.

Canadian University College

4. Canadian University College ("CUC") is a Seventh-day Adventist university college located in central Alberta with over 500 students attending from all over North America and various international locales. CUC offers over 27 major or track choices in Campus Alberta Quality Council ("CAQC") approved bachelor degree programs in Arts, Music, Science and Education. It has a professional nursing program in collaboration with the University of Alberta leading to professional nursing certification. CUC holds CAQC approval for its degree programs. CUC is an expressly Christian educational institution and teaches from a perspective consistent with the religious teachings of the Seventh-day Adventist international church movement. It maintains a broad statement for its educational community requiring behavioural compliance with doctrinal teachings of the SDA church.

SDACC Educational Functions

5. The SDACC's national Education Department team is responsible for the coordination, promotion, training, and quality of the Seventh-day Adventist

educational system in Canada. However, this is only a part of the global educational system which includes 7,804 schools, colleges, and universities, with 84,997 teachers and 1,673,828 students. Working in close cooperation with the Church's Canadian educational institutions, the Education Department offers services to boards, administrators, and faculty of the same. They also provide support to educational leaders at conference and mission levels and to teachers in Adventist elementary and secondary schools to ensure that the Adventist philosophy of education and the principles of faith-and-learning are integrated into the life of each institution. In addition, the staff cooperates with Adventist Chaplaincy Ministries and Youth Ministries Departments in nurturing the faith of Seventh-day Adventist students attending non-Adventist colleges and universities throughout Canada.

Seventh-day Adventist Church's concern for equality and religious liberty

6. The Seventh-day Adventist Church has a particular interest in matters pertaining to equality and religious liberty.
7. The SDACC has on numerous occasions presented briefs to and appeared before parliamentary and other government committees addressing issues touching on religious freedom. For example, briefs have been presented to the House of Commons Special Committee on Visible Minorities in Canadian Society and appearances were made before the Parliamentary Committee on Equality rights in 1985. The SDACC has also participated as a consultant to the Helsinki Working Group of the Canadian Council of Churches in its work toward a Convention on religious liberty and elimination of all forms of religious intolerance.
8. The SDACC is also very concerned and interested in the equality rights guaranteed by human rights legislation. It understands the necessity of treating all persons with dignity and respect and to accommodate immutable differences between citizens, both as a general legal principle and to ameliorate historical discrimination.

9. The Seventh-day Adventist Church has always been a strong advocate of religious freedom for all individuals and faith communities, regardless of their religious beliefs. This commitment is evident from the activities set out above and also from other actions the Seventh-day Adventist Church has taken to promote religious liberty, including the publication, for over a century, of the periodical *Liberty, A Magazine of Religious Freedom* to publicly advocate for a broad understanding of freedom of religion.

The Seventh-day Adventist Church in Canada's Interest

10. Because of its interest in freedom of religion and equality rights, and also because of its educational endeavors, the SDACC has been carefully following the recent issues pertaining to TWU's School of Law.
11. Some of the members of the Seventh-day Adventist Church may prefer to have an education presented within a Christian environment, which is the reason for the existence of our schools across Canada, including CUC. Further, some of the members of the Seventh-day Adventist Church's may endeavor to become lawyers and may prefer the option of receiving a law school education within a Christian environment.
12. In this specific circumstance, we understand the Federation of Law Societies and the B.C. Ministry of Advanced Education have both reviewed the TWU School of Law in great detail and approved it, after considering all relevant matters and also considering TWU's religiously based community covenant. We understand that they found that the education to be provided by TWU would be appropriate and adequate, with respect to both the teaching of substantive law and the teaching of ethics and professionally appropriate behavior for lawyers.
13. From the perspective of the SDACC, the court in *Trinity Western*, [2001] 1 S.C. R. 772 struck an appropriate balance that properly recognizes the rights and obligations

of all parties in these situations. It is the view of the SDACC that the analysis applied in *Trinity Western* would govern in the present matter.

The SDACC will continue to follow this issue and urges the Law Society of Upper Canada to approve graduates of the proposed TWU law school.

SEVENTH-DAY ADVENTIST CHURCH IN CANADA

MARK JOHNSON
President of the Seventh-day Adventist Church in Canada

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

Yes.

The conditions that students and the school willingly adopt for religious reasons are no reason to bar graduates from qualifying as lawyers. It would be highly discriminatory to do so (discrimination against people for their religious beliefs). TWU does not require, demand or request anything of the larger community in terms of sexual behaviour; it requires certain behaviours only of its own students, who choose to attend because the school fits their belief system.

David M. Sherman, LLB, LLM
Toronto

THE CHURCH OF
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March 12, 2014

TWU Submissions
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To whom it may concern:

Re: Law School at Trinity Western University

The Church of Jesus Christ of Latter-day Saints stands for freedom of religion, freedom of expression and freedom of association. Accordingly, the Church supports approval of the Trinity Western University law school and requests that the Law Society of Upper Canada approve any graduate of the faculty of law of TWU to practice law in the province of Ontario.

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

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

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

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

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

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

Respectfully yours,

Elder David P. Homer
Area Seventy, North America Northeast
The Church of Jesus Christ of Latter-day Saints

The proposed litigation described in this article strikes me as well founded.
thetyee.ca/News/2014/03/20/BC-Evangelical-Law-School/?utm_source=daily&utm_medium=email&utm_campaign=200314

The "Community Covenant" at Trinity Western University constitutes discrimination on the basis of sexual orientation and marital status in relation to LGBTQ faculty, staff and students, by proscribing same-sex intimacy within or outside marriage (and opposite sex intimacy outside marriage);

Personally, I would urge the Law Society of Upper Canada to firmly state its opposition to the accreditation of the proposed faculty of law at TWU until such time as TWU withdraws and disowns the discriminatory covenant it insists on imposing on its students.

Alternatively, the LSUC should postpone or table the question of accrediting TWU until the issue has been litigated.

I further submit that, since the Law Society of B.C. has not yet made a decision, it would show normal respect for LSUC to at least await their decision.

Wilfred Day
Barrister & Solicitor
Port Hope, Ont.

Dears Sirs/Mesdames:

As a long-standing member of the Law Society of Upper Canada (February 1993), I wish to make my thoughts on the above matter known for consideration by members of Convocation.

As I understand it, the so-called "controversy" surrounding TWU's application for accreditation arises from the school's requirement that students pledge themselves to a code of conduct. I understand the code of conduct requires that unmarried students take a pledge of celibacy, recognizing that, as a Christian University, they require their single students to abstain from sexual activity as sexual activity is appropriate for married persons in "traditional" unions ie. between one man and one woman.

The objection to TWU's accreditation, as I understand it, is that students taking such a pledge cannot be expected to fairly and equitably conduct themselves as lawyers representing people in the general population who might support same-sex marriage or themselves be gay. I have not followed this story too closely so if I have framed the objection incorrectly, please forgive me and read no further. If I have stated the objection correctly, then please consider my letter as my support for TWU's accreditation.

When I was called to the Bar I recall swearing an oath; I remembering pledging allegiance to the Queen, and to upholding principles of justice, etc. I am quite sure there was no pledge to agree to represent equally individual clients attending my office without regard for their sexual preferences or their stance on gay marriage; indeed, to inquire of a client's views on these subjects upon attending my office would likely land me before a Human Rights Commission as well as a Law Society disciplinary Committee.

Without any empirical evidence to support the following contention, I can assure you there are numerous members of the Law Society of Upper Canada who are dedicated followers of Roman Catholicism, Orthodox Jewish practices and Islamic teachings none of which, to my knowledge, approve of same-sex marriage; quite the contrary. If TWU's accreditation is to be withheld on the grounds as outlined above, I suppose, to be equitable, the Law Society will have to undertake a wholesale review of the religious beliefs and views on same-sex marriage of all its current members to ensure, like would-be candidates graduating from TWU and seeking membership, they are able to render legal services without discrimination on account religious beliefs.

The opposition to TWU's accreditation supports the position that those who make no pledge to uphold any sort of moral standard are to be preferred as members of the legal community over those who choose commit to a moral standard laid out by a religious teaching that is obviously of great importance to them; this is shameful.

I was raised as a Christian although I do not current regularly attend church. I have no qualms with same-sex marriage, nor indeed a "woman's right to choose" (At least under certain circumstances). I fully support the rights of same-sex couples to marry with all the same legal

rights enjoyed by heterosexual couples. That being said, I also see no grounds whatsoever to deny TWU accreditation. Surely any practicing lawyers called to the Bar following education at such an institution can be expected to conduct themselves to a high moral standard and can only be expected to be valuable additions to the Law society. Furthermore, understanding their duties to any prospective client would have the good sense to simply recuse themselves from representing a client with whom they felt a moral or ethical conflict. If need be, an obligation to recuse due to a moral conflict can certainly be included as part of the educational program of the Bar Admission course.

I thank you for your consideration herein.

Robert A. McGill
McGill Law Firm Professional Corporation
London, Ontario

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OSGOODE HALL LAW SCHOOL
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20 March 2014.

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RE: Accreditation of Trinity Western's Law Program

Dear Convocation:
Like many other members of the legal community in Canada, I was disappointed with the decision of the Federation of Law Societies to approve the proposed law school at Trinity Western University.

With respect, the University's claim to freedom of religion cannot justify the mandatory imposition of its discriminatory covenant on faculty, staff and students. In this context, the legal opinion on which the Federation based its decision failed to examine the issue fully in relation to the legal profession's obligations to act in the public interest and in the pursuit of justice for all Canadians.

I am also profoundly disappointed by the process adopted by the Law Society of Upper Canada in relation to this matter. As you will be aware, Law Societies in other provinces, including British Columbia and Nova Scotia, opted to create a public forum for the presentation of oral, as well as written, submissions – processes that created opportunities for interactive discussion of this important issue among members of the public and the legal profession. I regret that the LSUC has instead opted to receive only submissions (including resubmissions) in writing.

For the record, I moved the motion at Osgoode Hall Law School's Faculty Council, which was passed overwhelmingly, and which was directed respectfully to Trinity Western University. No response has been received from TWU – a signal, perhaps that TWU is not prepared to engage with other members of the legal academic community on this matter. I understand that Dean Sossin forwarded the Osgoode Faculty Council motion to you in early February, and then resubmitted it in accordance with the procedures announced later last month.

In recommending that the Law Society of Upper Canada examine this issue, taking account of material that was not available to the Federation at the time of its decision, I also draw Convocation's attention to the unfortunate history of formal discrimination in the legal profession in Canada, as well as claims that continue to identify current situations of informal discrimination. In such a context, it is important to recognize that freedom of religion should not provide the basis for discrimination in legal education.

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With this submission, I am attaching two additional documents. One is a paper prepared by Professor Emerita Dianne Pothier (Schulich Law School at Dalhousie University), which is forthcoming in *Constitutional Forum*. As a respected legal scholar on issues of constitutional law and equality jurisprudence in Canada, Professor Pothier has addressed a number of issues raised by the TWU application for accreditation, including those canvassed in the legal opinion prepared for the Federation. In addition, she has addressed directly the submissions made by President Kuhn on behalf of TWU at the public forum in Nova Scotia. Professor Pothier has given permission for me to forward her paper to your attention.

The second document was also a submission to the public forum in Nova Scotia. Written by Rev Dr L Yates, this submission represents a theological rebuttal of the religious arguments presented by TWU. Although I am not suggesting that the LSUC must determine the "truth" of these different interpretations of Christian doctrine, Dr Yates' submission reveals that the religious views of TWU are not entirely consistent with either the Bible or with historical Christian traditions. This critique is important in defining the scope of assertions of religious freedom when they result in discrimination.

Finally, I suggest that it is important to be skeptical about TWU's claim to be a private institution, and thus beyond the reach of the *Charter* and of human rights legislation in British Columbia. As others will have pointed out in their submissions, the language of Ontario's human rights legislation is not exactly the same as that in BC, an issue that needs to be carefully addressed by Convocation. Moreover, as colleagues at the University of Ottawa have pointed out, TWU has received funding for some purposes from governmental agencies, supported by Canadian taxpayers. As in so many cases, the distinction between "private" and "public" needs to be scrutinized with great care, particularly when it is the basis for discriminatory action.

This issue is important for the Ontario legal profession and for the Canadian public. Although I regret the Law Society's decision to limit input on this matter to just written submissions, I commend these to Convocation's careful attention.

Yours truly,

Mary Jane Mossman

Mary Jane Mossman, LSM
Professor of Law, Osgoode Hall Law School
University Professor, York University
LLD, Law Society of Upper Canada

An Argument Against Accreditation of Trinity Western University's Proposed Law School

TO: J. René Gallant, President, Nova Scotia Barristers' Society

FROM: Dianne Pothier[1]

RE: Trinity Western University's proposed Law School

DATE: Consolidation of written submissions to the NSNS Executive Committee made January 18, 2014, oral submissions made February 13, 2014, and written submissions made March 5, 2014 in response to TWU President's Kuhn's presentation on March 4, 2014

I am writing in response to your invitation for comment on whether the proposed Law School at Trinity Western University should be recognized as conferring a common law Canadian law degree for the purposes of admission to the Nova Scotia Barristers' Society.

TWU's Community Covenant

Trinity Western University is a private, faith-based university affiliated with the Evangelical Free Church of Canada. Faculty and staff are required to sign an annual faith statement. Faculty, staff and students are required to sign a "Community Covenant" that commits them, *inter alia*, to "treat all persons with respect and dignity" and to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman" (Community Covenant, s. 3). Students need not be adherents of the Evangelical Free Church faith, or any other Christian faith, but are nonetheless required to abide by the religiously-based code of conduct. The Community Covenant not only commits signatories in respect of their own personal conduct, but also incorporates accountability for the conduct of others within the TWU community:

> Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility. Community Covenant, s. 5)

Signatories of the Community Covenant further "understand that … I have also become an ambassador of this community and the ideals it represents." (Community Covenant, penultimate paragraph)

[1] I am writing as a member of the NSBS continuously since 1982 (mostly with non-practicing status) and as a Professor Emeritus of the Schulich School of Law. In most years during my time on the Dalhousie Law Faculty, from 1986-2012, I taught either Public Law (with a focus on human rights law and *Charter* equality) or Constitutional Law or both. I have also published extensively in these areas.

Although analogies between TWU and other faith-based educational institutions in Canada have been drawn, none of those other institutions has or had a Community Covenant like TWU's. It is only the Community Covenant that has given rise to the question of whether a TWU Law School should be accredited. Faith-based institutions as such are not at issue.

Even if done in a way that respects the "sinner," TWU's Community Covenant creates an unwelcoming environment for those involved in same-sex intimacy of any kind (whether within or outside marriage) and opposite-sex intimacy outside marriage. This is blatant discrimination on the basis of sexual orientation and marital status. However, most of the criticism directed at TWU, as well as TWU's response, has been focused on sexual orientation. Why? Although there is some history of discrimination against those in common law heterosexual relationships, it is not nearly as extreme or extensive as the history of discrimination based on sexual orientation. Sexual orientation discrimination at TWU thus hits a very raw nerve. In terms of TWU's employment and admission policies, however, both marital status discrimination and sexual orientation discrimination are permitted under British Columbia human rights legislation because TWU is exempt as a religiously-based private institution.[2] Nonetheless, the implications of taking a TWU degree into the public realm raise very different questions.

In his March 4 main presentation to the NSBS Executive Committee, TWU President Kuhn asserted that nothing in the TWU Community Covenant is offensive. Such a claim is untenable. TWU can argue that, in accordance with their religious beliefs, they are entitled to give offense because sexual intimacy outside marriage between a man and a woman is immoral according to their interpretation of the Bible. But to claim no offense accepts no accountability for the positions they take, and shows a fundamental lack of understanding of equality principles by failing to come even remotely close to appreciating the perspective of those excluded. Furthermore, President Kuhn's assertion that the only thing offensive in this situation is the criticism directed at TWU demonstrates a misunderstanding of freedom of religion. Freedom of religion gives adherents the freedom to hold and express beliefs, but does not exempt those beliefs from critical assessment.

During questioning from the Executive Committee on March 4, President Kuhn said it would violate TWU's freedom of religion for an outside body to dictate what can be in its Community Covenant. I agree with President Kuhn on this point, but it has further implications that President Kuhn did not acknowledge. TWU has the right to determine the content of its Community Covenant, but that means it also has to accept the consequences of its choice. The real question is: what are those consequences? When asked if TWU's Covenant was discriminatory, President Kuhn at first gave a flat no, but then qualified that answer and eventually acknowledged that it was discriminatory, just lawful discrimination. The premise that, because of a religious exemption, the discrimination is lawful within the private realm of TWU does not mean it has no consequences outside TWU.

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[2] Given that TWU has existed in some form, with this type of Community Covenant throughout, for more than half a century, I am prepared to assume that, even if British Columbia adopted a more restricted religious exemption in its human rights legislation, TWU would need to be grandfathered as a matter of freedom of religion.

The Federation of Law Societies split the assessment of the proposed TWU Law School into two issues: (1) whether the proposed TWU Law School meets the "national requirements" for knowledge and skills requisite for admission to a bar in a Canadian common law jurisdiction – mandate of the Approval Committee; and (2) whether there are other public interest issues that should preclude approval of the TWU Law School as a basis for admission to a bar – mandate of the Special Advisory Committee, and the subject of John B. Laskin's legal opinion. In my assessment, such a splitting of issues is artificial. In both contexts, the issue is the same. Does the discriminatory context of TWU as a private institution taint reliance on a TWU degree in the public realm?

The TWU Community Covenant is more than a statement of religious beliefs. It is a commitment to enforcing a religiously-based code of conduct, not just in respect of one's own behaviour, but also in respect of other members of the TWU community, including non-believers (either because they are not adherents of the faith or are general adherents of the faith who do not accept all of the tenets of the faith). The Community Covenant is also a commitment to being an ambassador of TWU's ideals. The extent to which the TWU Community Covenant is actually enforced is not the point. TWU cannot rely on non-enforcement when the issue is admission to the practice of law where compliance with legal undertakings is sacrosanct. The TWU Community Covenant incorporates discrimination as a fundamental aspect of the culture of the institution, which pervades much more than course content.

The Federation of Law Society's Approval Committee limited itself to course content of a TWU Law School.

> 51 Although the course outlines for TWU's proposed Ethics and Professionalism and Constitutional Law courses are consistent with what one would expect for such courses, the members of the Approval Committee see a tension between the proposed teaching of these required competencies and elements of the Community Covenant. In particular, the Approval Committee is concerned that some of the underlying beliefs reflected in the Community Covenant, which members of faculty are required to embrace as a condition of employment, may constrain the appropriate teaching and thus the required understanding of equality rights and the ethical obligation not to discriminate against any person. This tension appears to be reflected in the description of the mandatory Ethics and Professionalism course (LAW 602), which states that the course "challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing professional obligations and responsibilities."
>
> 52. Based on the proposed course outlines and TWU's commitments and undertakings noted above, the Approval Committee concluded that the issue of whether students will acquire the necessary competencies in both Ethics and Professionalism, and Public Law is, at this stage, a concern, rather than a deficiency. (Approval Committee Report)

The Federation's Approval Committee relied on assurances from TWU that it appreciated such tensions, and would reconcile them. But the assurances were simple assertions, without any

explanation as to how this would be done. Similarly, when asked about academic freedom, President Kuhn on March 4 gave a very general answer. He did not specifically address the question of how to reconcile the TWU Community Covenant with Canadian constitutional and statutory principles of equality. He did not explain how it would be possible, consistent with the Community Covenant, to teach Canadian equality law as anything but fundamentally flawed because of its lack of conformity to their interpretation of the Bible. President Kuhn did not explain how, consistent with the Community Covenant, professional ethics could supersede personal beliefs about sexual intimacy outside heterosexual marriage affirmed in the Covenant. In Canada no one is required to believe in same-sex marriage. No one is required to believe in marriage at all. And anyone is free to try to get legal and/or constitutional change respecting marriage or discrimination. But absent such change, they are required to abide by current law.

In its submissions to the Federation of Law Societies, TWU said only that key cases on sexual orientation equality would be taught, and standard texts relied upon. (May 13, 2013 letter from Kevin G. Sawatsky, p. 4, Appendix to Approval Committee Report) That could be done by teaching simply that Canadian equality law is inconsistent with their particular perspective on Christianity. The real question is not what will be taught, but how it will be taught, i.e. will it be taught in a way that accepts that constitutional and legal equality dictates prevail over religious judgment. TWU has not confronted that issue. President Kuhn's presentation to the Executive Committee on March 4 offered no illumination on this point. TWU is presumably not in a position to address that question without yet knowing who will be teaching the courses. In ordinary circumstances, it would not be appropriate for the Federation's Approval Committee or any bar society to probe deeply into the pedagogy of a Law School course. But where there is such a stark tension between an institutional culture of discrimination and legal obligations of equality and non-discrimination, more than a statement of concern is warranted.

Most lawyers probably face some degree of tension between their personal beliefs and the legal order, and must find a way to reconcile them in a way that respects the law. Lawyers may be called upon to advance or defend causes they do not personally believe in. To do so, lawyers may need to compartmentalize themselves to be able to take professional stances at odds with their personal beliefs. That may not always be easy to do, but it is possible when the lawyer is unconstrained by a community covenant committing the signatory unequivocally to mores about sexual intimacy inconstant with the law. For example, consider this situation revealed by Justice Jim MacPherson, of the Ontario Court of Appeal. Justice MacPherson sat on the panel that decided *Halpern v. Canada (Attorney General)* (2003), 65 O.R. (2d) 161 (C.A.), which ruled that s. 15 of the *Charter* required same-sex marriage. They also ruled, unlike courts from other provinces, that the declaration of invalidity should not be suspended. That meant marriages pursuant to the ruling could be performed right away. The Court of Appeal judges decided among themselves that they should not do so personally in the immediate aftermath of the decision. That left the first marriage under the ruling to be performed, that day, by a lower court judge. It was done by a judge who personally did not believe in same-sex marriage, but who reacted on the basis that if the Ontario Court of Appeal had ruled that same-sex marriage was mandated by the constitution, it was his responsibility to perform such marriages. He understood how to live and let live. He was able to separate his personal views from his professional responsibility. How could such compartmentalization be consistent with the TWU Community Covenant? Given the depth of opposition to same-sex sexual intimacy, and opposite-sex sexual

intimacy outside marriage, incorporated into the TWU Community Covenant, the challenge to reconcile such deeply felt beliefs, and the commitment to enforcing them, with public responsibilities respecting equality is especially acute. That should place a particularly high onus on TWU to explain, which it has not even begun to meet.

The SCC decision in *BCCT v. TWU*

Much of the discussion of TWU's proposed Law School has involved debate over the impact of the Supreme Court of Canada's decision in *British Columbia College of Teachers v. Trinity Western University*, [2001] 1 S.C.R. 772. I think a strong argument could be made that this case would be decided differently today by the Supreme Court of Canada. That Court has not been averse to reversing itself, particularly in the area of constitutional and human rights law: e.g. *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, [2007] 2 S.C.R 391, incorporating a right to collective bargaining within constitutional protection of freedom of association, reversing the 1987 Labour Trilogy; *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union,* [1999] 3 S.C.R. 3 (Re *Meiorin*), adopting a unified approach to direct and adverse effects discrimination, reversing the earlier bifurcated approach; *Saskatchewan Human Rights Commission v. Whatcott*, 2013 SCC 11, modifying in part the definition of hatred in the context of human rights legislation prohibitions of hate speech. However, it is quite speculative to contend that the SCC would be ready to reverse itself in *BCCT v. TWU*. I am prepared to proceed on the basis that *BCCT v. TWU* remains good and binding law. On that assumption, I respectfully disagree with the view of the Federation's Special Advisory Committee, and the opinion of John Laskin on which it relied, that the *BCCT v. TWU* decision is determinative. I disagree with President Kuhn's assumption, expressed in his presentation on March 4, that the *BCCT* decision makes TWU's discrimination unassailable in relation to the use of a TWU degree in any context. In my assessment, the SCC decision in *BCCT* can be distinguished.

BCCT v. TWU involved an application by TWU for certification of its teacher training program. The BCCT rejected the certification application, a decision that was held invalid by the majority of the Supreme Court of Canada. The SCC recognized that the TWU Community Covenant raised serious concerns, but concluded it was improper to deny certification in the absence of specific evidence that TWU graduates as a group would actually discriminate against students. To avoid a conflict between religious freedom and equality, the majority of the SCC drew a "line … between belief and conduct" (para. 36), leaving individual discriminatory teacher conduct liable to disciplinary proceedings (para. 37). It is important to note the context of TWU's application. The *status quo ante*, which already had certification, was four years of education at TWU followed by a final year at Simon Fraser. TWU's new proposal was to replace the final year at Simon Fraser with one at TWU. The majority of the SCC relied on the nature of that fifth year at Simon Fraser, where "[o]n the evidence, it is clear that the participation of Simon Fraser University never had anything to do with the apprehended intolerance from its inception to the present" (para. 38), questioning: "[a]fter finding that TWU students hold fundamental biases, based on their religious beliefs, how could the BCCT ever have believed that the last year's program being under the aegis of Simon Fraser University

would ever correct the situation?" (para. 38). In the *BCCT* context, given the already in place accreditation, an effort was being made to lock the barn door long after the horse had escaped. There is no such issue of prior approval history in relation to accreditation of a TWU Law School that does not yet exist.

The Simon Fraser teacher training curriculum did not have any anti-discrimination component. In contrast, Law Schools are mandated to teach legal principles of equality, in the constitutional and statutory context. Furthermore, while public school teachers carry only the obligation of all members of the populace not to discriminate in the provision of public services, lawyers have an extra level of responsibility. Lawyers are potentially involved in the administration of constitutional and statutory equality and anti-discrimination provisions. The practice of law means being involved in enforcing legally enshrined codes of conduct distinct from any personal code of conduct of the lawyer. That takes the issue beyond personal belief protected by freedom of religion, and involves a responsibility carried by lawyers very different from that of the general populace. Thus there is good reason to impose a higher bar than in *BCCT v. TWU*, i.e. good reason for going beyond looking for specific evidence that TWU Law School graduates will, as a group, engage in discriminatory conduct.

The extra step of a year at Simon Fraser was neither designed for, nor effective in, addressing the discrimination issues raised by the TWU Community Covenant. In contrast, Law Societies are in a position to address those issues by adding an extra step to the bar admission process. If a law degree from TWU were treated as in a category parallel to those from foreign law schools,[3] the National Committee on Accreditation requirements, or some provincial counterpart, could be used to fill the gap in requirements for admission to a Canadian bar. The gap is rooted not in the personal beliefs of TWU graduates, but in an institutional culture of discrimination that imposes a religiously-based code of conduct on others, and excludes on that basis.

TWU argues that such an extra step would run contrary to the freedom of religion of its graduates. In addressing the justified limits on freedom of religion in order to promote equality, it must be remembered that there is more latitude in limiting freedom of religion outside a penal context, where instead what is involved is access to benefits or privileges; *Alberta v. Hutterian Brethren of Wilson County*, [2009] 2 S.C.R. 567, paras. 37, 95. Admission to a bar clearly falls into the latter category. The *Hutterite* case recognized inevitable "conflicts with individual beliefs" (para. 90), setting the essence of a *Charter* s. 1 inquiry as: "whether the limit leaves the adherent with a meaningful choice to follow his or her religious beliefs and practices." (para. 88)

A decision by a provincial bar society to deny recognition to a TWU law degree would not preclude anyone from conducting themselves in their own sexual activities in accordance with their religious beliefs. It would ultimately only address the inability to impose, in the public sphere, such a code of conduct on others. It would add an extra step, through the National Committee on Accreditation or a comparable provincial process, but would not preclude

[3] A student with a degree from a TWU Law School cannot be in a worse position than someone with a degree from a law school outside Canada. There are undoubtedly foreign law schools with a worse record than TWU on discrimination.

admission to the practice of law. Moreover, there is much that can be done with a legal education apart from entering the legal profession. Although Carleton's law program is a world apart from TWU, it is an example of an academic study of law with utility not connected to admission to a bar. The limits on freedom of religion involved in a bar society decision not to recognize a TWU law degree are quite minimal.

Conclusion

In his presentation to the Executive Committee on March 4, President Kuhn invoked the lengthy history behind the "traditional" definition of marriage as being between a man and a woman. As far back as that history goes, it simultaneously represents a legacy of discrimination on the basis of sexual orientation in relation to marriage and much more. It is only very recently that such discrimination in the public realm has become unlawful, but the tension between dominant norms of opposite-sex intimacy oppressing same-sex intimacy is not remotely novel. Although legal protection against sexual orientation discrimination is relatively recent, it is not much more recent than legal protection against discrimination at all. For most of our history, all discrimination was lawful discrimination. Recall *Christie v. York*, [1939] S.C.R. 50 when, at the start of the second world war against Nazi Germany, the majority of the Supreme Court of Canada ruled there was no valid legal claim against explicit racial discrimination in refusing to serve a black customer at a bar; freedom of contract was the only operative legal principle then acknowledged. The weight of history is a many edged sword.

TWU caters primarily to British Columbia residents. Thus there may be very few graduates of a TWU Law School interested in admission to the NSBS. But that does not make the matters of principle any less important. The TWU Community Covenant does not admit of compromise with their interpretation of the Bible. Both in its teaching and in its institutional culture of discrimination represented by the Community Covenant, a TWU Law School cannot be counted on to separate out an individual's personal code of conduct from the inability to impose a religiously-based code of conduct on others, a separation crucial to the practice of law. TWU graduates do not need to change their personal beliefs to become lawyers. But they need to move beyond the institutional culture of discrimination enshrined in the TWU Community Covenant. That discriminatory culture excludes from the TWU community based on not sharing its values on sexual intimacy, and commits community members not only in their own personal conduct but also to enforcing the religiously-based code of conduct on others.

Beyond the numbers of how many TWU Law School graduates would seek recognition in Nova Scotia, what matters is the anti-equality message that would be conveyed by a decision by the NSBS to recognize the TWU Law School as qualifying for bar admission. Such a decision would undermine the message conveyed by the annual pride reception held by the NSBS. Such a decision would undermine the message conveyed by the fact that the Society has an Equity Officer. Such a decision would undermine the message conveyed by the *ad hoc* committee, chaired by Emma Halpern as Equity Officer, on Employment Equity in the Legal Profession. I strongly urge the NSBS not to undermine those equality messages. Instead the NSBS should show leadership in denying approval to the proposed TWU Law School.

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Affirm UNITED

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Music: Ray Grant
Office Administration: Marilyn Peacock
Children/Youth: Heidi Cleary
Ordained: Rev. Dr. Linda Yates. D. Min.

February 9, 2014

Nova Scotia Barristers' Society
Cogswell Tower
800–2000 Barrington Street
Halifax NS B3J 3K1

Dear President Gallant:

We write to you with several concerns regarding the accreditation of Trinity Western University (TWU) law school. It is our understanding that students who wish to attend the law school must adhere to a covenant of behaviour that restricts sexual activity to heterosexual married couples. Although this specific requirement is outlined in several places within the covenant, it is very telling that in section 3 of the Community Covenant, it places homosexual marriage within the same category as lying, stealing, use of violent materials, slander, gossip and "prejudice." TWU justifies its own *de facto* prejudice against homosexual relationships by specious use of biblical references and allusions to the example of the life of Jesus.

We too are readers of the Bible and Christian followers of Jesus. As such, we object to the accreditation of the TWU's law school. TWU's covenant creates a hostile environment to those who may be gay, lesbian or transgendered; allowing this environment into the courtrooms of Canada jeopardizes gays' Charter rights. TWU claims to be able to do so because of the Chartered guarantee of religious freedom. As practicing Christians, we believe that religious freedom is an important right, but, it does not trump all other rights, including the right to a fair, non-oppressive judicial system in which all lawyers have been trained in law schools of universities that are open to the diversity that makes Canada a great, fair country. The right for religious institutions to refuse to perform same-sex marriage is very different than the right to refuse same-sex married couples into a law school with a restrictive religious belief system and culture.

We voice these concerns based on beliefs articulated below.

The Bible and the life of Christ

The majority of biblical scholarship would question many of TWU's interpretations of biblical passages cited in the covenant to condemn homosexual marriage. It is not our intention to get into "dueling" Bible passages. Marriage within the Bible is a social institution that changes within historical contexts even within the Bible itself, since authoring of the sixty-six books span more than a thousand years. We can observe in the Bible sanctioned sexual relationships that include multiple wives, concubines and the acceptance of sex workers (Jesus has two in his own genealogy). It also has space for eunuchs, celibates and so on. Further, the writers of the Bible wrote with a limited

understanding of science. For example, the world is considered flat and the Copernican understanding of the universe is unknown. Likewise, understanding of human sexuality was limited. It was assumed that all people were born heterosexual and chose to be homosexual. The sciences of medicine, biology and psychology now confirm that this is not true. Christian interpretation of marriage has changed a great deal. Until a hundred years ago or so, a love-matched marriage would have been considered unusual. The joining of property and the continuation of family name through progeny have been the key concerns of marriage throughout Christian history.

Jesus would have been very familiar with homosexual relationships within the culture of the Roman Empire. Yet, he does not mention it. He remarks on several other aspects of human sexuality; for example, he broke several sexual taboos by touching vaginally bleeding women and he uplifted the rights of other socially rejected women (even adulterous ones). He made several recommendations about divorce (although these differ between gospels). However, he was clearly not concerned enough about homosexuality to offer an opinion.

Most Christian doctrine upholds that sexual intimacy within Christian marriage is for 1) the increased intimacy and closeness of the couple, 2) the creation and nurturing of children and 3) an earthly representation of the joining of the spirit and the body. There is no reason that homosexuals cannot be married, given these three purposes of marriage. Many homosexuals have found ways to have children. As well, most heterosexual couples continue to have sex long beyond the point of fertility.

Biblical principles which uphold human rights

The really important human rights movements within the last 500 years have all been predicated on interpretation of the biblical proscription against oppression and its own internal movement toward freedom. Abraham Lincoln's indomitable belief in the rights of slaves to be free was predicated on his deep belief in the concern expressed in scripture for equity and freedom from oppression. Martin Luther King Jr. fervently stood on biblical principles in excoriating the dominant culture for systemic oppression of African Americans. The right of women to vote was fought for on the sturdy platform of biblical texts. All of these fighters for human dignity and freedom referred, among other passages, to God's actions to free the Hebrew people from slavery (the entire book of Exodus), Jesus' call for love of neighbour as oneself (Mark 12:31, Matthew 22:34-40, Luke 10:25-28) and Paul's famous, and culturally astonishing assertion that in Christ there is no distinction between "slave and free, male and female, gentile and Jew." All are equal in God. If polls are to be believed, the vast majority of Canadian Christians believe these biblical calls to freedom from oppression apply to homosexuals.

Until very recent times, the Bible has been used in parts of North America as justification for the criminalization of inter-racial and inter-faith marriages. The continuous use of religion and religious texts has been used throughout history to justify majority-held social prejudices and hatred. We believe this is what is happening or will happen at TWU.

Restrictions on the right to religious freedom

As practicing Christians we deeply appreciate the right to religious freedom entrenched in the Canadian Charter of Rights and Freedoms and in other legislation. We also recognize that this freedom exists in relationship with other inherent rights and freedoms. That Canadian society exists relatively peaceably containing an incredible diversity of cultures, languages, religions and political movements has a great deal to do with confidence in a judiciary that takes seriously the rights of all Canadians to due process under the law. There may exist a number of universities that extol particular religious points of view, which oppress certain groups of people. We may even agree that their interpretation of the right to religious freedom may, in some ways, contribute to this great diverse Canadian societal fabric. Law schools are one exception to this right to religious freedom. To create a law school which streams students on the basis of sexual orientation will lead to the fraying of our diverse Canadian social fabric because it begins to concentrate prejudices passing as entrance criteria to a law school. This cannot help but affect interpretation of the law far into our Canadian

future. No one is under the illusion that lawyers and judges do not bring the totality of their belief systems to their work. However, the prerequisite attitude for entrance into current legal education systems requires rigorous openness to the law itself as a priority over personally held religious beliefs.

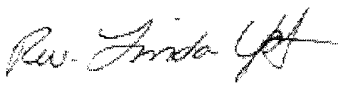
We, as Christians, accept limits on our religious freedom in order to preserve all freedoms, by the continued maintenance and construction of an equitable legal system that begins with law schools that respect the human rights of all Canadians. Law schools are special because lawyers and the judiciary wield critical power in our society. Although we might have some concerns about TWU operating education, medical, social work and other faculties, none of these produce the people who will populate the legal infrastructure that has as its primary purpose the upholding of freedom and human rights. We can only have great, remarkable, vibrant diversity in Canada when the structures which allow this diversity to thrive can be counted on to safeguard basic human rights and freedoms. They help us sort out our competing claims on "rights." The TWU religious streaming system threatens this.

The Federation of Law Societies

It is disappointing to us that prejudice against gays and lesbians is still "allowable." If any other minority group had been so clearly named as forbidden to marry, even thought they have such a right guaranteed by Canadian law, it is likely that the Federation of Law Societies would not have given preliminary approval. The only way to demonstrate the unconscious action of possible blind entitlement of the heterosexual majority in this unfortunate decision is to give an example of the reverse. What if a university had been created by a new religion that only allowed people to enter if they agreed to restrict sexual activity and marriage to same sex pairings (because it was decreed by their God in a religious document)? What if prospective students to such a university had to sign a document that described heterosexual relationships and marriage as something to be avoided along with theft, slander and violence? We contend that all manner of suspicion about biased influence on the practice of law from graduates of such a school would be brought to bear.

We respectfully request that the Barristers' Society of Nova Scotia refuse to recognize the credentials of law graduates from TWU.

In service,



Rev. Dr. Linda Yates

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BY E-MAIL
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March 20, 2014.

Ms. J. Varro
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Re: Accreditation of Trinity Western's law program

Dear Ms. Varro:

I understand opposition to accreditation of TWU's law school program centers on its "Community Standards Agreement" that some argue is discriminatory particularly against the gay and lesbian community. Some may allege that graduates of this law school will hold or be perceived to hold homophobic attitudes based on their acceptance of these standards which will lead these graduates to actively discriminate against the gay and lesbian community when in practice. While I was counsel for the Canadian Conference of Catholic Bishops which intervened in *Trinity Western University v. British Columbia College of Teachers,* [2001] S.C.J. No. 32, the following views are my own.

In my opinion, this argument is flawed, as it peremptorily stereotypes TWU's law school future students and graduates as bigoted based on their moral and religious beliefs. This would be contrary to their right to freedom of religion under the *Charter.* Any decision by LSUC to deny accreditation on this basis would adversely impact one group only - TWU's law school future students and graduates. Consideration in the abstract of *Charter* rights of gays and lesbians cannot be used to infringe the religious freedom of these students and graduates by denying accreditation on this basis.

Most importantly, the same issues were addressed by the Supreme Court in *Trinity Western* which in an 8-1 decision found:

> *TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15*

jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality. [para. 25]

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. The BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU. Accordingly, this Court must. [para. 33]

Another part of that context is the Human Rights Act, S.B.C. 1984, c.22, referred to by the Court of Appeal and the respondents (now the Human Rights Code), which provides, in s. 19 (now s. 41), that a religious institution is not considered to breach the Act where it prefers adherents of its religious constituency. It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. ....While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWO-SFU teacher program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ....Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. [para. 35]

We would add that the continuing focus of the BCCT on the sectarian nature of TWU is disturbing. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system. [para. 42]

In considering the religious precepts of TWU instead of the actual impact of these beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly. ....The BCCT is, by this affirmation,

> *stating that it will deny a full program to all private institutions regardless of circumstances. This is contrary to its mandate.* [para. 43]

Before accreditation could be denied to TWU law school by LSUC on the above basis there would have to be compelling evidence linking the moral and religious views of TWU's future law students and graduates with discriminatory practices against gays and lesbians. As this argument is based on pure speculation with respect to future events, a LSUC decision denying accreditation on this basis would not, just as in the BCCT case, survive a *Charter* challenge. Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes approved by Convocation in 2010 and 2011, LSUC should now accredit TWU pursuant to s. 7 of By-Law #4.

Yours very truly,

BARNES, SAMMON LLP

Per: William J. Sammon

WJS/lr

Dr. Donald Buckingham
Ottawa, Ontario

March 21, 2014

Via Email to: jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Policy Secretariat:

RE: Trinity Western University (TWU) Consultation

I have been a member of the Law Society of Upper Canada since 1988. Oddly enough that same year, I also became a Christian espousing Christian beliefs and Christian doctrine. My faith is an important and inseparable part of who I am. Holistically speaking then, I am a Christian, a son, a husband, a father, a friend, a mentor, and yes indeed a lawyer. My worldview informs all of my life including family life as well my professional life. My own desire to serve as a lawyer and to thereby act for the betterment of Canadian society is enhanced by my Christian faith. I see no cogent reason why, then, it would be in the best interests of Canadians, Canadian lawyers or Canadian legal regulators to refuse to accredit a legal education program at a university espousing a Christian worldview where that program has been carefully designed to develop compassionate, caring, and skilled lawyers. We need more of such lawyers in this country.

I obtained my law degree from the University of Saskatchewan. I have practiced law in two provinces of Canada (Nova Scotia and Ontario) and taught full-time or part-time in three Canadian Law Faculties (Western, Saskatchewan and Ottawa). From my perspective, experience, and worldview, the Canadian legal education landscape needs more diversity, not less. A law school at TWU will continue and enhance, not detract from, Canada's quest for such diversity. TWU law grads will enhance the reputation of the Canadian legal profession as an ethical, caring and trusted pillar of society.

As the Law Society has invited written submissions from the profession and the public on this matter, please accept this letter as one more voice for the Law Society to do the right thing and follow the reasoned decisions that have been made public from the very thorough reviews that have already been completed by the Federation of Law Societies of Canada, and the British Columbia Ministry of Advanced Education to approved of TWU program and granting of the degree Juris Doctor (J.D.).

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

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

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

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

Canadian society is robust enough to live with the tension of divergent understandings of marriage and sexuality, just as it is robust enough to live with the tension of divergent

understandings of the divine. Canadian society can handle disagreements about the morality of sexual practices and the nature of marriage, just as it handles disagreements about the value of religious practices. What are we afraid of anyway?

Therefore on April 10 and April 24, 2014, I urge Convocation to approve the accreditation of Trinity Western University's (TWU) proposed law school program and to answer with a resounding "YES" to the following question:

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

Thank you.

Yours sincerely,

Dr. Donald Buckingham

Dear LSUC,

In response to your invitation to Members for comments on the proposed recognition of the new Trinity Western University law school, let me add my views from the heart of Europe, as a member of the LSUC and the LSBC.

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

The TWU Covenant should be a very minor factor in the above evaluation. I was shocked to see that my former Dalhousie professors are trying to leverage their professional association against recognition of TWU in Nova Scotia. The terms of the TWU Covenant, for a private university, do not seem so extreme or unreasonable that it should block the normal recognition process. TWU is an outlier, a bit strange and isolated, and different from the traditions of Canadian legal education. But the Covenant reflects a significant minority point of view in Canada, and specifically Western Canada. The individuals who sign the Covenant voluntarily are apparently willing to attempt to abide by it, and seeking a community that affirms it. This legitimate counter-cultural commitment should not be held as a roadblock to their recognition as attorneys.

The lesson from Europe is that the history of intolerance here is evident on the face of every city and every border. This crowded continent now finds peace only by avoiding political purity and by tolerating neighbours with strikingly different cultural identities. With so much room to breathe in Canada, it would be disappointing if we could not find a way to respect the limited differences presented by TWU.

Acceptance of TWU as a qualified law school would not diminish individual rights in Ontario in any way. Rather it would show that Ontario's famous civil peace tolerates collective identities which lie well beyond the mainstream.

I have sent similar comments to the LSBC (having lived for 7 years in Vancouver). My comments are also strongly influenced by the 7 years I recently concluded in Boston, where I learned from the Americans a great deal about defense of individual rights and group rights.

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

Yours sincerely,

Thomas Digby
Basel
Switzerland

HALCO
HIV & AIDS Legal Clinic Ontario 65 Wellesley Street East, Suite 400, Toronto, Ontario M4Y 1G7

March 21, 2014

VIA ELECTRONIC MAIL

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

To Whom It May Concern:

Re: Accreditation of Trinity Western University's School of Law

As benchers of the Law Society of Upper Canada (LSUC) you are uniquely placed to defend and advance Canada's proud history of equality. Such an opportunity will present itself on April 10 and April 24, 2014, when convocation will meet to determine the accreditation of Trinity Western University's (TWU) School of Law. On behalf of the HIV & AIDS Legal Clinic Ontario, I respectfully request that the LSUC act in accordance with established principles of equality and not accredit TWU's School of Law, pursuant to s.7 of LSUC By-Law 4.

TWU is unwilling to accept gay/lesbian students. Students are required to sign a "Community Covenant Agreement" stating that all TWU community members will abstain from same-sex sexual intimacy. TWU threatens to expel students caught in same-sex sexual intimacy because such behaviour offends its interpretation of the Christian Bible. Like all TWU students, law students would be governed by the same "Covenant."

A decision to accredit TWU's law graduates would effectively provide an endorsement of a school that actively discriminates against gay/lesbian students. As noted by the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 77: "The proper place to draw the line in cases like the one at bar is generally between belief and conduct… The freedom to hold beliefs is broader than the freedom to act on them." Barring students from a law school is action, not belief. In addition, and in any event, the British Columbia College of Teachers case did not deal with the equality rights of prospective students under s.15 of the *Canadian Charter of Rights and Freedoms*.

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By accrediting TWU's School of Law, the LSUC would sanction a discriminatory quota system whereby fewer placements would be available for gay/lesbian students than for heterosexual students.

TWU's accreditation application should not be approved because of its overt discrimination on the basis of sexual orientation.

Canada should move forward, not backward. I urge benchers to vote against the accreditation of TWU's School of Law.

Thank you for your attention to this matter.

Sincerely,
HIV & AIDS Legal Clinic Ontario
per:

Ryan Peck
Barrister & Solicitor
Executive Director

I am writing to the LSUC in support of the submission by HALCO in opposition Accreditation of the TWU School of Law.

I write this in my personal capacity and not on behalf of the Advocacy Centre for the Elderly although I do list my position as Executive Director of ACE as part of my credentials.

Judith A. Wahl
Barrister and Solicitor
Executive Director
Advocacy Centre for the Elderly

I would like to thank the Law Society of Upper Canada for providing an opportunity to both members of the society and the general public to provide input on the consideration of Trinity Western University's (TWU) accreditation by the Law Society of Upper Canada (LSUC). In preparing my thoughts below I have had the opportunity to review a significant number of submissions (made public) for the Nova Scotia Barristers' Society's own consideration of the same matter. The submissions both in support and against range from the simple and heartfelt to full factum style arguments.

I am writing to encourage the LSUC to accept TWU's new legal education program and, by extension, a willingness to consider future TWU graduates who may apply for membership with LSUC . The fundamental premise, and why I feel it is important to provide my voice as an LSUC member in writing, is that to do otherwise would represent a fundamental incompatibility with the rule of law that lawyers, as professionals, are expected to uphold. As much as numerous comments submitted in the Nova Scotia debate referenced the rule of law, or even first principles, in encouraging the denial of TWU's accreditation, my conclusion is that to deny accreditation would be a fundamental statement against the rule of law by any Law Society in this country that opts to do so. A paramount consideration mentioned repeatedly, and which I cannot ignore as a member of the profession, is that there is a directly applicable precedent to frame the decision from no less an authority than the Supreme Court of Canada (SCC).

With regard to the teaching program and proposed legal program, the ability to mount a relevant and appropriate 'technical' education was, and is, not in doubt from a pedagogical perspective. Further, a review of the BC College of Teachers decision indicates that the SCC did consider TWU's covenant and identified that there was no evidence indicating that graduates of TWU would be incapable of practicing the profession of teaching in a legally compliant manner. Likewise, there was a fundamental conclusion that TWU is a private body even though some have subsequently argued it receives public support.

The argument has also been made (or at least inferred) that law societies and colleges of teachers, although they are both public bodies, are somehow fundamentally different in a way that creates a unique moral and/or even legal imperative to act differently. I cannot conclude that argument is valid as a distinguishing factor. First, the public morally regard teachers as being in a trust position with regard to some of the most sensitive members of society, and that moral position is reinforced in law. The SCC nonetheless affirmed that the decision by the BC College of Teachers to refuse recognition of the TWU program and its applying graduates was unfair in the absence concrete evidence that TWU trained teachers would foster discrimination in the public system. Is the legal community truly in a more sensitive position than this either morally or at law? It would seem not to be, despite the fact that many may passionately argue and genuinely feel that it is. Second, arguments about the inability of future TWU graduates to provide appropriate legal representation to the public are simply that, arguments. Has anyone produced evidence (public discipline records or otherwise) since the teachers college program was accredited that TWU trained teachers have promoted discrimination in the public system in any sort of systemic way or at any level that exceeds the graduates of other teacher education

programs in that province? There is really no concrete evidence to suggest the SCC's demarcation between belief and conduct was anything but correct.

At the present time, the appropriate decision is to accept TWU request for accreditation based on the law as it currently stands, as established by the Supreme Court of Canada, and to consider any graduates from TWU who apply for membership with LSUC. No doubt, the decisions of one or more law societies will be reviewed in any event, and at that point there will be ample opportunity for senior courts of the land to consider the matter. However, outright refusal to accept TWU's proposed program and, by extension, any graduates from the program who might apply to practice law in Ontario, isn't legally compliant with current law and doesn't show respect for the rule of law.

It should also be noted that all law societies have tools at their disposal to appropriately address the questionable conduct of any law school graduate who applies for membership, be it from TWU or any other already accredited program, that conducts themselves in a manner that is contrary to law. Once a member, there are other legal mechanisms available to both the law societies and the public at large to address any questionable member conduct.

Thank you again for the opportunity to make this submission in advance of the Benchers' consideration of the motion.

Darren Charters

Further to your request for submissions, I am writing in to voice my objection to the recognition of law degree granted by Trinity Western by the Law Society of Upper Canada (LSUC) because of the covenant that law students are required to pledge to adhere to as condition of attending that law school. In my view the covenant the violates the fundamental rights of persons of the gay/lesbian/bisexual/transgender orientation, and cannot be saved by appeals to freedom of religion. Recognition would also undermine all of LSUC's efforts to promote diversity in the profession. Diversity is only sustainable in an environment of tolerance. The covenant, by distinguishing and imposing a different and more restrictive code of sexual conduct on persons of same -sex orientation perpetrates intolerance of fundamental human differences. In conferring status on Trinity Western's law school for the purpose of licensing lawyers, the LSUC would legitimizing a type of collective, public discrimination that is contrary to Canadian values as they have evolved. While the underlying values that the covenant perpetrates are worthy of protection in a limited way, as a matter of private conscience (provided they are not expressed publicly in such a way as to promote hatred or violence), they still conflict with other the fundamental values that are based on immutable characteristics . Where the values underlying the covenant are imposed so as to deny or limit the human rights of specific groups in conjunction with obtaining a public right or privilege (here the practice of law), they should not be recognized .

In my view, this entire episode is just a further reflection of how the essential dignity of and respect for persons of GBLT orientation has still not been achieved either socially or under the law. Would there be any debate here if the covenant instead had been that individuals had to agree to refrain from sexual practices with persons of other racial backgrounds, or perhaps restrictions on sex between specified racial groups (certainly as plausible as a religious belief as the so called "biblical interpretation" that purports to be Trinity's "Devine" exemption from discrimination)? Recognizing and accepting Trinity's covenant will only further delay day when persons with a different sexual orientation are recognized, accepted, and fully protected under the law. In making these arguments I am aware of the Supreme Court of Canada's decision in 2001 involving Trinity Western (which none the less did distinguish between belief and conduct). In light of developments since then, including the diversity movement and the recognition of GLBT rights in many parts of the world, maybe it is time for the SCC to consider again what is belief and what is conduct under the Charter. In the meantime the LSUC should uphold its own values and refuse accreditation.

Thank you for the opportunity to participate in this debate on an important issue.

Eric Endicott

Justice Centre
for Constitutional Freedoms

In Defence of the Free Society

A submission to the Law Society of Upper Canada on Diversity, Tolerance, and Trinity Western University

by

The Justice Centre for Constitutional Freedoms

March 21, 2014

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Introduction

Some Canadians have expressed their opposition to the new law school at Trinity Western University (TWU).

This opposition is based on one section of TWU's Community Covenant, which requires students who choose to attend TWU to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

The Special Advisory Committee of the Federation of Law Societies of Canada, formed specifically to address concerns raised by opponents of the TWU law school, concluded there was no public interest reason to exclude future graduates of the TWU law program from the bar admission program.

Opponents of TWU's law school argue that:

1) the Community Covenant discriminates against gays and lesbians;
2) the TWU law school will produce lawyers who will discriminate against gays and lesbians;
3) the TWU law school itself, by virtue of points 1) and 2) is therefore in violation of, or incompatible with, Canadian law; and
4) the TWU law school, by virtue of the Community Covenant, cannot competently teach law.

Opposition to the TWU law school is based primarily on disagreement with what TWU believes about marriage and sexuality. Opponents of the TWU law school argue that adherence to the "wrong" beliefs about sexuality and marriage should disqualify a university from teaching law, even when the Federation of Law Societies of Canada (FLSC) has determined that TWU's academic standards and professional criteria have been met.

This submission will address these arguments, as well as some of the assumptions on which they are founded.

Executive Summary

The crucial importance of voluntary associations to a free society

One of the hallmarks of a free society is authentic diversity, consisting of a broad range of robust associations with differing and conflicting beliefs. In a free society, authentic diversity facilitates the formation of a myriad of private institutions based on culture, ethnicity, religion, gender, political belief, and many other factors which recognize and affirm individual and group identity.

True tolerance does not consist of using "diversity" as a slogan to attack authentic diversity, or to censor disagreement. Rather, true tolerance means actually accepting the authentic diversity expressed by a wide range of different associations.

In a free society, nobody is compelled to join, or comply with the beliefs of, a voluntary association, be it TWU or any other private institution. The individual's freedom to reject the beliefs, practices and standards of voluntary associations does not conflict with an association's freedom to develop, teach and practice its own beliefs.

Freedom of association is rendered meaningless if private institutions cannot define and live out their own mission and purpose because those in power require the institutions (as a condition of recognizing its graduates' qualifications to practice a profession) to accept as members people who disagree with that mission and purpose. Those who reject a private association's beliefs and practices are protected by not being required to join it.

If, in Canada, voluntary associations cannot develop, express and live out their own beliefs, without disqualification of their members from entry into a profession for which they are otherwise qualified, then Canada's free society will be greatly diminished.

Lawyers advocate for their clients, regardless of ideology

Opponents of the TWU law school argue that its graduates will discriminate against gays and lesbians.

This argument pre-supposes that lawyers are incapable of advocating resolutely and effectively on behalf of clients who hold beliefs or who engage in conduct with which a lawyer disagrees.

This, in turn, is disproven every day by tens of thousands of Canadian lawyers who competently and professionally represent clients whose values, religion, socio-economic status, sexual orientation, and political beliefs are different from those of the lawyer. Lawyers routinely act for clients whose beliefs, lifestyles, and behaviour differ from their own. The idea that TWU law school graduates will discriminate against gays and lesbian is therefore without any basis.

The Federation of Law Societies of Canada based its approval of TWU's law school on academic and professional criteria. This is how it should be. Opinions about sex and marriage, whether held by lawyers, judges, law professors, or law students, are irrelevant.

Lawyers and law professors can advocate for change to the law

No law society in Canada imposes an ideological standard or philosophical requirement on those seeking to join its ranks. Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or the Supreme Court of Canada' interpretation of the *Charter*) and still provide competent and professional legal services to their clients.

The Federation of Law Societies of Canada understood these principles when providing its approval of TWU's law school, *based on academic standards and professional criteria*. Denying TWU the right to start and operate a law school on the basis of its belief about marriage would effectively repudiate a long-standing principle that lawyers need not agree with all laws in order to be competent lawyers.

National mobility standards should exclude ideology

The Supreme Court of Canada in *Reference Re Same-Sex Marriage*, 2004 SCC 79, at paragraphs 52-59, and the *Civil Marriage Act*, SC 2005, c. 33, Section 3-3.1, specifically protect the right of religious individuals and religious institutions to adhere to their faith-based definition of marriage, to the exclusion of all other definitions.

The establishment of a philosophical or ideological standard for the creation of new law schools would effectively repudiate the hard work carried out in the past decade by the Benchers and Council Members of Canada's law societies. These lawyers, and others, have devoted thousands of hours to developing national academic standards. The resulting interprovincial mobility of lawyers benefits clients and lawyers. This should not be thwarted by the imposition of an ideological requirement on new law schools.

The benefits of diversity in legal education

Our legal system is based on the idea that truth best emerges through a structured adversarial contest of two (or more) opposing viewpoints.

Yet which existing law faculty in Canada can honestly claim to provide its students with significant exposure to libertarian, conservative, and religious perspectives on the law?

Canadian law students stand to benefit from more choice in the law faculties available to them. In a free society, institutional diversity within academia is a public good, not a

threat, to society as a whole. The creation of a law school which differs from others should be welcomed by those who are truly tolerant and cherish authentic diversity.

No person is exempt from criticism

The Supreme Court of Canada has held that freedom of expression serves to protect minority beliefs which the majority regard as wrong or false. The view of the majority has no need of constitutional protection; it is tolerated in any event. To facilitate the search for truth, and to develop good public policy, democracy cannot permit the censorship or silencing, whether direct or indirect, of an opponent's expression of belief. Restricting the expression of beliefs merely because they may cause hurt or offense is entirely incompatible with the Court's jurisprudence. Individuals enjoy the freedom to claim that another person's opinions are "discriminatory" or "bigoted," but in a free society the truth of such claims is determined by citizens, not by the government.

The principles governing free expression apply similarly to freedom of association. A free society cannot endure when subjective feelings of offence are recognized as a legal criterion that can be used to undermine the *Charter*'s fundamental freedoms of expression and association.

TWU does not discriminate

It is not illegal for a voluntary association to define itself in a way that results in some people (or many people) not wanting to join it, or pay for its services.

There is no legal authority for the proposition that a private institution engages in illegal discrimination by virtue of its beliefs or membership requirements.

Every Canadian university has a code of student conduct, which students agree to abide by as a condition of attending that university. The codes of student conduct at other universities are different from TWU's code, and are far less demanding.

The nature and content of the Community Covenant is such that many (and perhaps most) Canadian students, whether gay or straight, would not want to attend TWU. To suggest that the Community Covenant "discriminates" against gays and lesbians is akin to suggesting that the Community Covenant "discriminates" against those wanting to practice any other lifestyle or behaviour prohibited by the Community Covenant (and there are many).

The Community Covenant is a barrier to attending TWU for *all people* who are unwilling to live by Evangelical Christian beliefs and teachings during their course of study. The claim that TWU discriminates against gays and lesbians is therefore unfounded.

The crucial importance of voluntary associations to a free society

One of the hallmarks of a free society is authentic diversity, consisting of a broad range of robust associations with differing and conflicting beliefs. In a free society with authentic diversity, a myriad of private institutions are formed on the basis of culture, ethnicity, religion, gender, political belief, and many other factors which recognize and affirm individual and group identity. Authentic diversity consists of the fundamental differences which are expressed and lived out by thousands of private organizations in Canada, large and small.

Opponents of the TWU law school argue that those who disagree with same-sex marriage should not be permitted to start or operate a law school, even when the Federation of Law Societies of Canada has approved TWU's academic standards and professional criteria.

This raises the fundamental question of whether, in Canada's free society, private institutions and other voluntary associations have the right to establish their own codes of conduct, and to develop and practice their own beliefs, without their members being denied admission to a profession for which they are otherwise qualified.

True tolerance does not consist of using "diversity" as a slogan, or using "diversity" as a basis for censoring public disagreement. Rather, true tolerance means actually accepting the authentic diversity expressed by a wide range of different associations.

As William Galston explains it:

> "[I]f we insist that each civil association mirror the principles of the overarching political community, meaningful differences among associations all but disappear; constitutional uniformity crushes social pluralism."[1]

Through the exercise of freedom of association, Canada's numerous organizations protect minority rights and freedom of expression by forming a healthy and necessary barrier between the individual and the state. A free society demands that all voluntary associations *comply with* the laws of the land, but does not demand of any private institution that it *agree with* the laws of the land. In a free society, the door is always open for the expression of disagreement with existing laws, and for the peaceful advocacy of changes to existing laws.

In stark contrast to the free society, the totalitarian state pervades all aspects of social, cultural, political and religious life, demanding compliance with and adherence to the state's ideology. There are no barriers between the individual and the state, because truly independent associations are prohibited. There is no authentic diversity, and hence no need for tolerance either, because all associations and organizations must comply with

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[1] Galston, "*Expressive Liberty, Moral Pluralism, Political Pluralism: Three Sources of Liberal Theory*", 40 Wm and Mary LR 869 at 875 (1999).

the state's ideology. Disagreement with existing laws, and peaceful advocacy of change to those laws, are forbidden both for individuals and for voluntary associations.

Opponents of TWU's law school would presumably agree with the principle that a free society depends on the robust exercise of freedom of association. Opponents of TWU's law school would presumably agree with the principle that citizens in a free society can create private institutions and form voluntary associations while expressing disagreement with some (or many, or all) of society's existing laws. Opponents of TWU's law school would, presumably, agree that true tolerance requires accepting authentic diversity.

In a free society, nobody is compelled to join, or agree with the beliefs of, a voluntary association, be it TWU or any other private institution. The individual's freedom to reject the beliefs and practices of voluntary associations does not conflict with an association's freedom to develop, teach and practice its own beliefs. A free society respects the freedom of *both* the individual *and* the association, recognizing that they are not in conflict with each other.

Freedom ceases to exist when individuals are compelled to join associations they disagree with. In the same manner, freedom is also undermined when associations are required to alter their mission, purpose, or belief system to suit the ideological preferences of individuals who disagree with the association.

Freedom of association is thus a two-way street: a voluntary association has the right to freely determine and live out its beliefs, and the individual has the freedom to refuse to join that association, and to reject its beliefs.

Opponents of TWU's law school are advocating for a one-way street. They cherish, and would rightfully assert, the individual's freedom not to attend TWU. Yet they would deny TWU its right to create and operate a law school, only because they disagree with TWU's beliefs about marriage and sexuality. This is a demand for conformity, and a rejection of the authentic diversity that exists in a society which respects freedom of association.

Any person who disagrees with an Evangelical Christian teaching on a topic could call herself or himself a victim of discrimination on the part of TWU. Recreational marijuana users, and sexually active single people (whether gay or straight) are merely two examples. A review of the Community Covenant's demands would produce numerous other examples of people whose behaviour precludes them from attending TWU. Hence the significance of the fact that no person is compelled to attend TWU, or to fund it through taxation.

Freedom of association is rendered meaningless if private institutions cannot define and live out their own mission and purpose because those in power require the institution (as a condition of recognizing its graduates' qualifications to practice a profession) to accept as members people who disagree with that mission and purpose.

If, in Canada, voluntary associations cannot develop, express and live out their own beliefs, without disqualification of their members from entry into a profession for which they are otherwise qualified, then Canada's free society will be greatly diminished.

Lawyers advocate for their clients, regardless of ideology

Opponents of the TWU law school argue that its graduates will discriminate against gays and lesbians.

This argument pre-supposes that lawyers are incapable of advocating resolutely and effectively on behalf of clients who hold beliefs, or who engage in conduct, with which a lawyer disagrees.

This, in turn, is disproven every day by tens of thousands of Canadian lawyers who competently and professionally represent clients whose values, religion, socio-economic status, sexual orientation, and political beliefs are different from those of the lawyer.

Lawyers routinely act for clients whose lifestyles, behaviour and beliefs differ from their own. For example, lawyers practicing in family law may be personally opposed to divorce, or may morally disapprove of some of the conduct of some of their clients, but this does not prevent them from providing competent legal services to their clients. Criminal defence lawyers don't care about their clients' views on marriage, nor is the lawyer's personal opinion about marriage relevant to the legal representation being provided. The Canadian Civil Liberties Association, while disagreeing entirely with the pro-life view on abortion, advocates passionately and effectively for the free expression rights of pro-lifers.

To claim that a gay lawyer is incapable of providing excellent legal representation to an Evangelical Christian client would be anti-gay bigotry. And yet, opponents of the TWU law school argue that its graduates, because of their presumed disagreement with same-sex marriage, will discriminate against gay and lesbian clients. This argument, if true, would mean that if a student commits to abstain from illegal drugs and pornography while attending TWU, this commitment will cause that student (when she or he later becomes a lawyer) to discriminate against those who use illegal drugs or pornography. This is disproven every day by lawyers who represent diverse clients whose beliefs and behaviours differ from those of the lawyer.

The Federation of Law Societies of Canada based its approval of TWU's law school on academic and professional criteria. This is how it should be. Opinions about sex and marriage, whether held by lawyers, judges, law professors, or law students, are irrelevant.

Lawyers routinely act for clients whose beliefs, lifestyles, and behaviour differ from their own. The idea that TWU law school graduates will discriminate against gays and lesbian is therefore without any basis.

Lawyers and law professors can advocate for change to the law

No law society in Canada imposes an ideological standard or philosophical requirement on those seeking to join its ranks. Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or the Supreme Court of Canada' interpretation of the *Charter*) and still provide competent and professional legal services to their clients.

A democracy, by its very nature, leaves the door open for all citizens, including lawyers and law professors, to advocate for what they see as improvements to the law.

It should be noted that TWU does not oppose the federal *Civil Marriage Act*, which expressly protects the freedom of religious institutions to hold and declare their own definition of marriage, and which expressly affirms the right of all people to express publicly their diverse views on marriage.

It should also be noted that the Community Covenant specifically demands of TWU students that they "submit to the laws of this country," which includes federal and provincial human rights legislation.

But even if TWU publicly advocated for changing Canada's marriage laws, a free society allows it to do so, in keeping with the long-standing principle that lawyers, law students, and law professors have the right to advocate for what they see as improvements to the law.

The Federation of Law Societies of Canada understood these principles when providing its approval of TWU's law school, *based on academic standards and professional criteria*. Denying TWU the right to start and operate a law school on the basis of its belief about marriage would effectively repudiate a long-standing principle that lawyers need not agree with all laws in order to be competent lawyers.

The same principle holds true for law professors, whose teaching of the law will be informed by their personal opinions of what the law ought to be. It is not a requirement (nor should it be) that a law professor agree with all laws now in force.

Prior to the change in Canada's marriage laws, should advocates for same-sex marriage have been precluded from creating or running a law school? Should agreement with the then-existing definition of marriage have been a litmus test for those wanting to teach or practice law?

These same questions can be fairly posed today: should opponents of same-sex marriage be precluded from creating and running a law school? Should agreement with current marriage laws be a litmus test for those wanting to teach or practice law?

National mobility standards should exclude ideology

The Supreme Court of Canada in *Reference Re Same-Sex Marriage*, 2004 SCC 79, at paragraphs 52-59, and the *Civil Marriage Act*, SC 2005, c. 33, Section 3-3.1, specifically protect the right of religious individuals and religious institutions to adhere to their faith-based definition of marriage, to the exclusion of all other definitions.

Adhering to the "correct" view of sexuality and marriage (or any other topic) is not a bona fide occupational requirement for lawyers. Therefore, Canada's national standards for legal practice should not require adherence to – or rejection of – any particular religious or philosophical belief.

The establishment of a philosophical or ideological standard for the creation of new law schools would effectively repudiate the hard work carried out in the past decade by the Benchers and Council Members of Canada's law societies. These lawyers, and others, have devoted thousands of hours to developing national academic standards. The resulting interprovincial mobility of lawyers benefits clients, and should not be thwarted by the imposition of an ideological requirement on new law schools.

Canada's Law Societies cannot require lawyers who are currently practicing to adhere to any particular worldview or belief system, whether religious or non-religious, and this includes a wide range of differing beliefs about sexuality and marriage.

Opponents of the TWU law school do not suggest that current lawyers should be disbarred (or re-educated) on account of their personal beliefs about sexuality and marriage.

If those now practicing law can do so competently and professionally while disagreeing with same-sex marriage, why should new lawyers by held to an ideological standard?

The benefits of diversity in legal education

Our legal system is based on the idea that truth best emerges through a structured adversarial contest of two (or more) opposing viewpoints.

Yet which existing law faculty in Canada can honestly claim to provide its students with significant exposure to libertarian, conservative, and religious perspectives on the law?

Good advocates fully understand the position of their opponents. But today, few Canadian law students are taught a full and balanced range of worldview perspectives that are important to understanding current debates. Uniformity of thought can lead to intellectual laziness, and to the academic disease of Groupthink, thereby stifling the development of better ways of thinking and doing. Some who shout the loudest for

"tolerance" and "diversity" may in fact be the most intolerant of any *real* diversity in opinion or ideology.

Canadian law students stand to benefit from more choice in the law faculties available to them. In a free society, institutional diversity within academia is a public good, not a threat, to society as a whole. The creation of a law school which differs from others should be welcomed by those who are truly tolerant and cherish authentic diversity.

No person is exempt from criticism

In Canada's free society, religious adherents of various faiths frequently experience criticism – sometimes expressed with hatred, contempt, or ridicule – of their most cherished beliefs. Many faith adherents, including law students, find themselves in this situation on a daily basis. True tolerance means accepting, or at least putting up with, vigorous (and even unfair) attacks against one's own sincerely held beliefs. For the individual whose beliefs are criticized or ridiculed, a free society affords the choice of ignoring the criticism, or responding to it by peaceful means.

The Supreme Court of Canada has held that freedom of expression serves to protect minority beliefs which the majority regard as wrong or false. The view of the majority has no need of constitutional protection; it is tolerated in any event. To facilitate the search for truth, and to develop good public policy, democracy cannot permit the censorship or silencing, whether direct or indirect, of an opponent's expression of belief. Restricting the expression of beliefs merely because they may cause hurt or offense is entirely incompatible with the Court's jurisprudence. Individuals enjoy the freedom to claim that another person's opinions are "discriminatory" or "bigoted," but in a free society the truth of such claims is determined by citizens, not by the government.

The principles governing free expression apply similarly to freedom of association. A free society tolerates the authentic diversity among private institutions which results from freedom of association.

A free society cannot endure when subjective feelings of offence are recognized as a legal criterion that can be used to undermine the *Charter*'s fundamental freedom of association. Freedom of association is a two-way street: associations cannot compel individuals to join, and individuals cannot compel associations to change their beliefs and practices.

TWU does not discriminate

There is no legal authority for the proposition that a private institution engages in illegal discrimination by virtue of its beliefs. It is not illegal for a voluntary association to

define itself in a way that results in some people (or many people) not wanting to join it, or pay for its services.

For example, if a health clinic provides reiki treatments, which some religious adherents regard as an occult practice, those religious adherents do not become victims of discrimination by virtue of the clinic's health services being commonly available to the public. Those who regard reiki as morally wrong have the freedom to seek health care elsewhere, but do not enjoy the right to stop the clinic from providing it, or proclaiming its merits. In this example, illegal discrimination would only occur if the clinic refused to provide reiki treatments to religious adherents. The religious adherents' disagreement with reiki does not constitute discrimination, and does not entitle them to demand that the clinic change its beliefs or its practices.

Students choosing to attend TWU, as part of that decision, choose to adhere to the Community Covenant. The Community Covenant asks students to commit themselves to practicing Evangelical Christian teachings, including:

- cultivating Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice;
- living exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity;
- treating all persons with respect and dignity, and upholding their God-given worth from conception to death;
- being responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society;
- encouraging and supporting other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another;
- abstaining from harassment or any form of verbal or physical intimidation, including hazing;
- abstaining from the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography;
- abstaining from drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs.

Every Canadian university has a code of student conduct, which students agree to abide by as a condition of attending that university. The codes of student conduct at other universities are different from TWU's code, and are far less demanding.

The nature and content of the Community Covenant is such that many (and perhaps most) Canadian students, whether gay or straight, would not want to attend TWU. To suggest that the Community Covenant "discriminates" against gays and lesbians is akin to suggesting that the Community Covenant "discriminates" against those wanting to

practice any other lifestyle or behaviour prohibited by the Community Covenant (and there are many).

There are Christians who feel attracted to the same sex and who agree with Evangelical Christian teachings about sex and marriage, for whom the Community Covenant poses no barrier to attending TWU. TWU already has gay students in attendance.

In short, the Community Covenant is a barrier to attending TWU for *all people* are unwilling to live by Evangelical Christian beliefs and teachings during their course of study. The claim that TWU discriminates against gays and lesbians is therefore unfounded.

About the author

John Carpay is President of the Justice Centre for Constitutional Freedoms. He earned his B.A. in Political Science at Laval University, and his LL.B. from the University of Calgary. John has defended constitutional rights and freedoms in the Alberta Court of Queen's Bench (*Boissoin v. Lund*), Saskatchewan Court of Appeal (*Whatcott v. Saskatchewan Human Rights Commission*), Federal Court of Appeal (*Benoit v. Canada*), and Supreme Court of Canada (*R. v. Kapp*). He acts for seven students who are suing the University of Calgary in the Alberta Court of Queen's Bench (*Wilson v. University of Calgary*) in defence of their campus free speech rights, and for Darcy Allen in his constitutional challenge to the government's health care monopoly (*Allen v. Alberta*).

In 2010, John Carpay was presented with the *Pyramid Award for Ideas and Public Policy*, in recognition of John's work in constitutional advocacy and in building a non-profit legal foundation. John Carpay also serves on the Board of Advisors of iJustice, an initiative of the Centre for Civil Society, India.

About the Justice Centre for Constitutional Freedoms

"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has."

The free and democratic society which the *Canadian Charter of Rights and Freedoms* holds out as our ideal can only be fulfilled by honouring and preserving Canada's traditions of freedom of expression, freedom of association, freedom of conscience and religion, constitutionally limited government, the equality of all citizens before the law, and the rule of law.

The Justice Centre for Constitutional Freedoms (JCCF) was founded for the purpose of advancing and promoting the core principles of freedom and equality through education

and litigation. The JCCF is a registered charity, funded entirely by the voluntary donations of freedom-minded Canadians who agree with the Centre's goals, mission, vision and activities. The Centre is independent and non-partisan, and receives no funding from government.

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"Defending the constitutional freedoms of Canadians"

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
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Dear Colleagues

I have attempted to formulate an analogous situation to Trinity's position on the LGBT community to help me understand just why I am so offended by it. I thought it might be analogous to taking the position that Jews could attend the law school, but must undertake not to practice Judaism. However, religion is a belief system, and not entirely the same as one's sexual orientation.

The best analogy is to race. Should the LSUC support accreditation of a Law School that would deny entry to someone who is black? Of course, one cannot agree not to practice "being black". Such a policy would essentially deny entry to those who are black. That is not the Canadian way. It is offensive, wrong, against the Charter, promotes hate; the list goes on.

Being LGBT is not a choice; it is the same as one's race- just who you are. Consequently, it is not a matter of practice. Not that it should matter. Substitute race, creed, colour, whatever you want into that policy and it is simply wrong.

Acceptance of this "policy" means acceptance that being LGBT is bad, or evil. A quick review of the Ten Commandments shows that adultery, lying and many other "sins" that ordinary people engage in are apparently "worse" than being LGBT. Perhaps, as a first step, Trinity should bring back the scarlet letter to demonstrate that it is really serious about its behavioural code.

If the LSUC supports this accreditation, I would like to say I will resign my membership because it is an entirely foreign concept to everything I have ever believed about my country and my profession. Unfortunately, I cannot vote with my feet in this case. At least not until the next Benchers election.

Yours truly

Barbara Legate
London

I am writing to express my support for the TWU law school.

I graduated from the University of Ottawa in 1983. I articled at Lerners in London, and have practiced in Niagara Falls and in London, Ontario. I still practice in London in a small law firm and conduct a busy practice. I have been involved in many law related projects including a local television show that focussed on explaining the law to the public. I also initiated a law related musical project to raise funds for charity. This morphed into Courthouse Rocks which is now in its 11th year and has helped raise over $200,000 for the less fortunate in our community.

In order to determine what the objectives of the new law school would be, I reviewed the school's stated objectives.
I was impressed with these stated objectives and appreciated the emphasis on expanding access to justice which is a personal growing concern for me. I like their emphasis on the idea of training leaders, not just lawyers. I like their emphasis on charity and social justice law. All of these are positive goals and worthy objectives.

For those who ask why we need a new law school like this, I ask why not?
To those who might be concerned that a "Christian" law school is a scary and foreign concept, I would remind those persons that many of the great universities in the West were initially established by "Christian" believers. And for those who fear that such a University would be intolerant, I would look to the example set by Rev John Witherspoon, a Scot who established "Princeton" University. Despite his strong opinions, he showed no desire to protect his students from ideas that he disagreed with. His tolerant approach was consistent with all that we expect a first class university to be and became a model for others. He understood and helped establish the concept of separation of church and state, despite his own strong views. I would fully expect TWU to honour this tradition.

In addition, it is worth remembering that the basis and foundation for our law remains the Judaeo-Christian tradition and the Mosaic Code is the root of our legal tree.

I believe that there is room in Canadian society and in the Canadian legal community for such a university and I believe that it will make a positive and valuable contribution in many different ways. The fabric of Canadian legal education and legal practice would benefit and would be stronger as a result of such a university in my view. Thanks for giving this consideration.

Dan Mailer
London, Ontario

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
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Here is my response to the following question:

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

The simple answer to the simple question put by Convocation to its members is that the Approval Committee's decision was wrong and we should not accredit TWU.

TWU has openly admitted that its policy is discriminatory against the LGBTQ community. We should not let the Approval Committee's conditional approval stand in our way of taking a stand against such an openly discriminatory policy.

Even the Approval Committee recognized the accreditation process as an iterative one. It said that the Community Covenant is a "concern" that can be addressed in the future if sufficient assurances in the curriculum are not provided. There is therefore every expectation in the process that approval is not final. Conditional approval should not be considered a bar to revisiting this issue. Besides, once TWU makes financial commitments to building its law school, it will be much more difficult to revisit this issue in the future.

The Approval Committee was satisfied with TWU's ability to deliver an appropriate curriculum but was not sufficiently concerned about TWU's discriminatory Community Covenant to consider it anything more than a "concern". Our profession has the duty and opportunity to promote and protect the Charter of Rights and Freedoms which has been a monumental advance in our civilization and in the decency with which Canadians treat each other. We betray our duty and squander our opportunity to promote and protect the Charter by signalling that our Law Society will put up with discrimination is nothing but a "concern".

Some have said that there is no connection between TWU's discriminatory policy and the quality of law student that it will produce. They say that some of their leaders have even defended and represented gay clients. The discriminatory mindset of the university and its ability to justify this discrimination on religious grounds cannot help but diminish the sense of importance of our equality rights on the part of the students. Even if we are wrong in this assessment, the gains our society have made through advances in Charter jurisprudence are too important to take that risk.

I am with those who say that the TWU accreditation issue is not a freedom of religion issue. It is not a collision between the right to freedom of religion and the right to equal treatment. It is an attempt to apply freedom of religion to attack the right to equal treatment before the law.

Imagine a private law firm wishing to post an ad for a new lawyer on the Law Society jobs bulletin board seeking only candidates willing to sign a covenant comparable to TWU's Community Covenant. Would the Law Society need submissions from the profession and then two convocations to decide whether to permit the ad to stay?

If TWU wants a law school and wants to send us its graduates, it needs to revoke the Community CoCommunity Covenant requirement.

Mike Adams

Innisfil, Ontario

BY E-MAIL via jvarro@lsuc.on.ca

March 23, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Benchers:

Re: Trinity Western University School of Law

It is with great concern that I write to you regarding the Trinity Western University'a (TWU) application for a law school. By rejecting the recommendation to approve the proposal by the Federation of Law Societies of Canada (FLSC), the Law Society of Upper Canada (LSUC) would jeopardize the mobility of lawyers domestically and internationally, and, more importantly, would send a message to people of all faiths that we are not welcome in the legal profession.

Prior to joining the Faculty of Law at the University of Toronto, I completed both my undergraduate and graduate studies at TWU. I signed the Community Covenant six times over six years. Not only does this fact not undermine my competency as a future lawyer, but my experience at TWU enhanced my competency by instilling in me a deep love for all people and desire to serve humanity through advocacy.

TWU is not seeking accommodation. It has played by the rules for accreditation, including the processes this very body approved in 2010 and 2011. It has long been recognized for an outstanding quality of education that would surely extend to its School of Law. Rather than to bring harm to a community, TWU is seeking to provide an alternative option for students of similar worldviews to study in a supportive environment; this option is currently available in Canada for all sorts of disciplines, yet not for law. TWU is uniquely equipped to help students navigate the integration of religious identity with law and ethics, which is an important challenge faced by law students of all faiths.

Because we live in a country that celebrates diversity and respects religious freedom, whether or not you agree with the values reflected in TWU's Community Covenant is irrelevant. As you are aware, this was the conclusion of the Supreme Court of Canada in 2001 in *TWU v BC College of Teachers*, as well as affirmed in the legal opinion sought by the FLSC by John B. Laskin. It is through toleration that the Canadian multicultural mosaic can live in harmony.

If the LSUC does not recognize the TWU law degree, it denotes the legal community's desire to impose a religious test that would exclude many able advocates and mark a prejudicial departure from precedence. My privately held convictions should not need to be sanctified through attending a public school and I can assure you that these convictions have not changed despite the school I attend. This will make no difference to my ability to uphold the law and zealously represent clients. The LSUC website calling for submissions notes the decision on accreditation "with respect to graduates of TWU who may practice law in Ontario". I am a graduate of TWU who may practise law in Ontario; we already exist.

My values as a future Christian lawyer compel me to respect the law, respect my clients and respect my colleagues, as well as to be a venerable advocate who is held to the highest of ethical standards. These are qualities infused in the servant leadership taught at TWU, and would benefit rather than harm the legal profession. Moreover, Canadian law has already recognized TWU's right to exist and grant degrees. It for these reasons I strongly urge you to adopt the recommendation by the FLSC to approve TWU's law school proposal in accordance with the Law Society's previously established processes.

In January, a joint letter was sent to LSUC by representatives of four Ontario law school student governments that purported to speak on behalf of 4,500 Ontario law students. Please know that this letter was conceived of, written and signed on behalf of our faculty without any consultation. Thankfully our legal system does not acclaim the loudest voice as victor. After significant consideration, the FLSC Special Advisory Committee found that there is "no public interest reason to exclude future graduates of the program from law society bar admissions programs" and I am confident LSUC will come to the same conclusion by answering **"YES"**.

Sincerely,

Jessie Legaree
JD Candidate, 2015
University of Toronto

PAUL SCHACHTER
PAUL SCHACHTER

March 22, 2014

Via email to jvarro@lsuc.on.ca

Attention: TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Trinity Western University

Dear Honourable Members of the Convocation:

Please accept this letter as public comment in connection with the request of Trinity Western University (TWU) for approval as an accredited faculty of law. I write in my capacity as an individual lawyer, now retired, who has worked in the area of civil liberties and constitutional law for over four decades. Although I practiced in the United States, I am a citizen of Canada. I have an interest in seeing that the laws of Canada are fairly applied.

By requiring the Community Covenant for students and similar requirements for faculty, TWU imposes compulsory policies that are widely recognized as having the effect of discriminating against and excluding people on the basis of sexual orientation, such as students in same sex relationships. TWU contends that it has the right to impose those policies based upon its religious freedoms. It is easy to understand why TWU, a religiously affiliated school, makes that argument. It may not be as easy to comprehend how the accreditation of TWU, a private institution, violates the equality rights of individuals. I explain below why the activities of TWU, when analyzed under the appropriate legal framework, are governed by the requirement of equal protection and benefit of the law without discrimination, and why recognizing TWU as an accredited law school violates those rights.

The arguments over whether or not religious organizations are subject to equality provisions often align on opposite poles. One view contends that religious groups must always be exempt from obligations that violate their members' religious beliefs, while the other argues that no one, including a religious organization, is ever exempt from the equal protection requirement. The shortcoming of both of these standpoints is that they look at the characteristics of the organization or of the rights involved, but not at the nature of the activities. A better analysis, and one that respects both the right of free exercise of religion and the right to equality, is that purely private activities are not subject to equality rights, while activities that extend into the public sphere, including those of private and religious organizations, are not exempt from the requirement of equal protection.

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It is important to postulate a sound legal framework for the application of equality rights in diverse circumstances, especially since court decisions have not been consistent. There have been different outcomes dependent on whether the rights involve race/origin discrimination, gender discrimination or sexual orientation/gender identity discrimination. The varying results for similar conceptual circumstances suggest that decisions are conditioned more on the extent to which a particular social equality movement has gained acceptance than on a uniform and coherent analysis of the rights.

It is understandable that tribunals have reached uneven results as they try to balance the rights of and public attitudes towards groups that do not conform to “traditional” norms. Added to the need to consider the societal effects are the difficulties that arise because civil liberties are rarely absolute. It is easy to conceive of circumstances under which many fundamental rights might be abridged. For example, the right to association can be limited in circumstances of public danger, such as a fire hazard. The right to life may be in conflict with the right to security of the person where self-defence is required.

The tension between conflicting rights makes the resolution of the issue involving TWU seem troublesome. The free exercise of religion (which includes rights to freedom of religion, freedom of belief, freedom of expression and freedom of association) and the guarantees of equality necessary to ensure the full participation of minority groups in our society are at odds and, therefore, appear to need to be balanced.

A factor often considered in the balancing attempt is whether the right is a fundamental one worthy of the highest protection or one that is less weighty. There is no doubt that expressional and associational rights require assiduous protection. The increased surveillance of individuals and groups made possible by technological advances has greatly increased the risk to freedom of thought, belief, opinion and expression. Limitations on these rights must be closely scrutinized.

The same standard of vigilance applies to limitations on equal protection, because these provisions are also fundamental to democracy. The principle underlying equality rights is that minority and disfavoured groups must be guaranteed the right to participate in all public pursuits and affairs of the country.

Because both rights deserve the same strong protection, it is not possible to resolve the question of which guarantee predominates in a conflict situation simply by looking at the “importance” of the right. Balancing two fundamental rights by attempting to decide which is intrinsically more fundamental is subjective and changeable depending on the point of view of the decision-maker. This may be one reason such approach has led to inconsistent results.

It is also not helpful to look solely at the nature of the organization. A church or club is considered private when it carries out its religious or social function. Even the fact that a church or club needs certain government permits and licences does not necessarily result in

its losing its private nature. For example, a permit to construct a sign would not normally convert a private permit-holder into a public organization.

Accordingly, the framework for applying equality rights cannot depend on attempting to evaluate the relative weight of equally fundamental rights or the characteristic of the organization itself. Rather, the analysis must look at whether the activity affecting the rights involves the private or public sphere. This methodology leads to consistent outcomes that give the greatest realization to both rights.

Worship, education on faith and religious canons, governance of spiritual organizations and most activities inside one's home and genuinely private clubs are within the private sphere. The rights to expression and association preclude the government from interfering with private activities. Associational rights permit all white, all black, all Aboriginal, all Asian, all Catholic, all Jewish or all agnostic private organizations to be established. The law may not dictate to anyone who his or her associates must be. Individuals can be as selective as they desire in the private sphere. While bigotry and prejudice are deplorable, it is the right of every person to close her or his home or private social life to any person solely on the basis of personal prejudices, including homophobia. The obligations of equal protection do not apply to these private activities.

Things are different when the activity reaches into the public realm. Such activities go beyond social interactions and infringe on the basic right of individuals in a democracy to participate in civil society. Where facilities serve the public, such as a restaurant or a grocery store, the private owner cannot limit customers based on the owner's preference to include only certain people or to exclude others due to their minority or disfavoured status that is protected by the law.

There are certain thresholds, which, once crossed, give the activity a public nature. Even the activities of a private club may be deemed public, when, for example, participation in those activities is necessary to obtain entrée into the public realm. Once an activity is in the public realm, society has an obligation to protect participation of all recognized protected sectors in that activity. If the guarantees of equality of every individual under the law and of equal benefit of the law without discrimination are to be meaningful, they must prevent official inaction to protect rights as well as affirmative action that abridges them. The fact that specific protective legislation may not yet exist in British Columbia is not determinative. Both the omission to protect and the omission to pass laws for protection of activities within the public sphere are denials of equal protection of the laws.

Recognition of a law school as accredited involves activities that bring what might otherwise be a private organization into the public sphere. Accreditation is only necessary when a university desires to prepare law students for the practice of law under publicly enacted legislation or common law. Attendance at an accredited school is the gateway to a law licence that sanctions the holder to engage in the practice of public law and appear in the court system. This is in contrast to the right to practice ecclesiastical law. Accreditation and a law licence are not necessary requirements for priests, rabbis, imams or lay congregants

to interpret and enforce the laws of a religion pertaining to faith. Indeed, for the reasons that matters of beliefs, worship and religious governance are inherently private, the public, through government, has no right to impose its standards on who can practice religious law.

Accreditation is the official imposition of standards. It is not like a permit to erect a sign. Rather, it is a comprehensive set of requirements that governs whether the activities of an institution will be recognized as capable of preparing students for service related to the public law. While a private institution may have the right to teach law to whom it wants, any way its wants, it does not have the right to be accredited as the preparer or gatekeeper for the public practice of law. Accreditation brings the activities into the public realm. Consequently, when a law school discriminates in its activities, the guarantee of equal protection of the laws is implicated.

Lawyers are engaged in public activities by the fact of their being lawyers. In Ontario, Section 5.04(1) of the *Rules of Professional Conduct* recognizes that lawyers have a special responsibility not to discriminate on the grounds of sexual orientation, gender identify and gender expression in professional dealings with any person. Similarly, in British Columbia, lawyers are restrained from engaging in <u>any</u> prohibited discrimination. *Code of Professional Conduct Section 6.3-5* ("A lawyer must not discriminate against any person."). It is inconsistent with the *Rules* and *Code of Professional Conduct* to recognize as accredited a law school that overtly discriminates against individuals based upon sexual orientation and adopts such discrimination as one of its tenets, while it disciplines a lawyer trained at that officially approved school who discriminates on the same basis, as he or she has been taught to do. The argument that even though TWU discriminates on the basis of sexual orientation, it can, nonetheless, correctly teach the laws relating to equality and non-discrimination does not remedy this defect. Any parent knows that it is ineffective to teach "do as I say, not as I do."[1]

Accreditation of TWU will bring its activities of teaching law, which otherwise may have been private, into the public realm where equal protection of the laws applies. For the reasons set forth in this letter, as long as its policies have the effect of discriminating on the basis of sexual orientation and gender identity, the TWU law school should not be recognized as accredited.

Respectfully yours,

Paul Schachter

[1] There is also a case to be made that discriminatory education undermines faith in the integrity of the legal system as a whole. Could a gay or lesbian individual have confidence in receiving fair treatment from a judge who is a graduate of the TWU law school in matters where his or her credibility is balanced against a heterosexual?

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TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
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March 23, 2014

To Whom It May Concern:

Although I am not myself a lawyer, I believe this issue is of high relevance to the values of justice and equality in our province. Therefore, I welcome the opportunity to make this submission.

I believe that if Trinity Western University's proposed school of law is accredited by the Law Society of Upper Canada, it would represent a serious blow to the now widely-recognized principle that discrimination on the basis of sexual orientation is unacceptable in our society.

Although I oppose the recognition of TWU, I must admit that I disagree with some of the arguments that have made against the school. In particular, I believe it is misguided to claim that graduates from the proposed school will be unqualified to practice law because they will continue discriminatory behaviour when they begin legal practice. To my mind, this is an unwarranted presumption and, more importantly, overlooks the main issue in this disagreement. The problem, as I see it, is that the proposed law school will *itself* be practicing discrimination against prospective students. As it now stands, the TWU "Community Covenant" allows heterosexual students to be sexual active with their own partners in a legal marriage. However, homosexual students are prohibited from sexual activity *even if they are legally married.* This erects a barrier to homosexual students that does not exist for their heterosexual counterparts and, as such, clearly constitutes discrimination.

Now, it appears that under Canadian law TWU is permitted to practice this discrimination within its own walls as religious institution, in recognition of its Constitutional right to religious freedom. However, it does not follow from this that the LSUC is obliged to endorse these discriminatory practices. The LSUC's mandate remains the protection the integrity of the legal profession in Ontario, and this includes the responsibility of ensuring that entry into the profession is open to all people equally, without regard to race, gender, religion or sexual orientation.

Since the first gateway into the profession is acceptance into law school, if schools are allowed to discriminate in favour of certain groups at the expense of others, this will have obvious implications for the equality of representation in the profession as a whole. It appears to me that this is a matter of sufficient public interest to override any concerns over impeding TWU's religious freedoms. While it might be claimed that the actions of a single school will not have a significant effect, if should not be

assumed that TWU will be the last private religious institutionto attempt to open a law school. If the LSUC is required to recognize graduates from TWU, then it will be difficult to argue against recognizing a future school that might discriminate against, say, female or black students in accordance with *its* "sincere religious beliefs." So now is the time to settle this issue.

Of the arguments that have been made in favour of TWU, two seem most prominent. Some, ironically enough, argue on the basis of the protection of diversity and minority rights. They argue that if TWU is not recognized, then this would effectively constitute discrimination against people holding its religious views. However, this argument does not stand up to scrutiny. If TWU is not recognized, there will still be no barriers to entry into the legal profession, any more than already exist, erected against people who hold its views on homosexuality. And it is easily possible for TWU to modify its Covenant so it is no longer discriminatory while still maintaining its Christian identity and philosophy. It should be noted that TWU freely admits non-Christians, so clearly it is possible to maintain its identity as a Christian school while admitting students who do not themselves observe Christian beliefs and practice.

Defenders of TWU also frequently cite, for obvious reasons, the Supreme Court's 2001 decision in *Trinity Western University v. British Columbia College of Teachers*. On this, I will obviously defer to the legal expertise of members of the LSUC, and will only mention that there is disagreement among lawyers, including the president of the Law Society of Alberta[1], over whether this case is determinative of the current situation. It should also be pointed out that, as best as I can determine, that case was based on an earlier version of the Community Covenant. In the Court's decision, it states only that "homosexual behaviour" was included among a list of other "sexual sins". I have been unable to find what constitutes the remainder of that list, but if (as now) it also included premarital sex, then it could be argued that the old version of the Covenant was not discriminatory *in practice*, since it subjected homosexual students to no more stringent restrictions than heterosexual students. Neither homosexual *nor* heterosexual students could have sex outside of marriage and, although the option of marriage was not then available to homosexual students, this was not the result of TWU's policies, but of Canadian law as it then stood. Therefore, if *TWU v. BCCT* is going to be a significant factor in your decision, I believe it would be necessary to examine a copy of the Community Covenant as it then existed, in order to ensure that the decision in that case still pertains here.

Again, I thank you for the opportunity to express my views, and trust you will make the correct decision in the best interests of the legal profession and of the people of Ontario.

Sincerely,

Faizal Ali, MD, FRCPC

[1] http://www.lawsociety.ab.ca/docs/default-source/default-document-library/2014/ebulletins/bulletin_2014_01jan_14.htm?sfvrsn=2

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
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To Whom It May Concern

Re: Accreditation of Trinity Western University's School of Law

I urge the Law Society of Upper Canada (LSUC) to vote against the accreditation of Trinity Western University's (TWU) proposed law school program for the reason that TWU's "community covenant agreement" as part of its Christian mandate, requires that gay, lesbian or bisexual students will be subject to disciplinary measures, including expulsion, if they engage in "sexual intimacy that violates the sacredness of marriage between a man and a woman." This means that a married homosexual couple is treated differently than a married heterosexual couple, the latter being permitted to engage in the perfectly natural human expression of love, expressed through one's sexuality. This amounts to discrimination based on sexual orientation. Of equal concern is TWU's literature (See General University Policies; Responsibilities of Membership in the Community of Trinity Western University and Application to Students) that refers to 'homosexual behaviour" as a sexual sin, akin to adultery, hence denying the well-established fact that homosexuality is a "sexual orientation", *not* a "behaviour" that should be met with societal opprobrium and/or criminal sanctions (like their other listed TWU prohibited activities such as cheating, stealing, drunkenness, adultery).

Within the Mandate of LSUC to Consider Context in Which Law School Courses Are Offered

I submit that it is within the mandate of the Federation of Law Societies of Canada (FLSC), and hence within the LSUC's mandate to find that, based on the context in which TWU is teaching the required content of Ethics and Professionalism, TWU fails to meet the requisite national standard to be accredited.

One cannot divorce context from content when considering the standards of academic offerings at a law school.

Our Rules of Professional Conduct (RPC) are replete with statements about the important role that lawyers have in society, in upholding the Rule of Law and in being leaders in preserving and respecting the *Human Rights Code* (HRC) and the *Canadian Charter of Rights and Freedoms (*Charter), and in fighting valiantly to uphold both the spirit and the legalities enshrined therein.

See Rule 5.04 (1) and its commentary, quoted, in part, below:

A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate…

Commentary: The Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law.

Preach and Practise What You Teach

How can any right-minded person accept that TWU, which boldly and openly practises discrimination, that is based on a certain stream of religious teaching and interpretations of the Bible, is fit to teach Ethics and Professionalism- a required module for academic accreditation? That is akin to having the late Fred Phelps (the U.S. anti-gay crusader) or the late Wolfgang Droege, (a former leader of the Heritage Front, a Canadian neo-Nazi white supremacist organization), teach inclusion and diversity in a Human Rights program.

Would the LSUC accredit a private "Whites Only" law school that professes an ideology founded on William Shockley's and Arthur Jensen's notion that Blacks have inferior intelligence, but that teaches all the required courses, with substance that meets the FLSC standards? Would the LSUC accredit a Christian law school that articulates an ideology that describes Jews as sinners who are responsible for all the evils (wars, poverty, financial collapses) in the world? Would you accredit a private Muslim law school that requires students to sign a covenant that acknowledges the belief that non-Muslims are sinners and that associating with sinners while studying at law school will be met with disciplinary measures?

I implore the LSUC to take the position that the proposed context in which Ethics and Professionalism would be taught at TWU is antithetical to and incompatible with the values and ideals expressed in the RPC. The program covenant, in addition to discrimination, disciplines students for engaging in perfectly legal behaviors (same-sex marriage, that includes marital sex). How can the LSUC approve an academic curriculum that is being taught in the context of rejection of Canadian law (same-sex marriage)?

TWU does not practise what it proposes to teach in its Ethics and Professionalism courses, thus making a mockery of legal education.

At best the LSUC, in accrediting TWU, would be perpetrating a sinister farce, believing that an institution that, in practice, shows hateful disrespect for the principles of all provincial Human Rights legislation, can teach the Rules of Professional Conduct (Ethics and Professionalism) to the requisite standard. At worst, the LSUC would be complicit in promulgating TWU's beliefs that are antithetical to Canadian legal values, and anathema to those who cherish the ideals of our legal system.

A Dagger In a Cloak

The LSUC must not permit TWU to hide its "dagger"-egregiously discriminatory practices, based on homophobia- behind the "cloak" of religion. When religious views express hatred (the TWU literature denigrates homosexuals, calling them sinners, and TWU advocates, contrary to Canadian law, that marriage is only between a man and a woman) towards a particular Human Rights Code-protected group, it is imperative that the LSUC give voice to its disapproval with a resounding "no" vote to accreditation.

Moral Responsibility to Find a Creative Solution to a Challenging Dilemma

Members of the legal profession are depending on the LSUC to do the right thing, to have the moral courage to interpret their mandate in a way that permits them to declare: TWU is incapable of sincerely delivering required courses on Ethics and Professionalism, given the very foundation of their interpretation and application of the principles in the Christian Bible- an interpretation that is in collision with, and denies the cherished legal values of our Canadian society.

Let the Supreme Court of Canada Re-visit the Issue; Times Have Changed

TWU relies heavily on their success at the Supreme Court of Canada against the British Columbia College of Teachers in 2001 where the court required that the teacher's college accredit TWU, despite the "community standards" (covenant) requirement of the program. This case can be distinguished in several fundamental ways, and I leave that to more capable legal minds than mine. Since the time of this case in 2001, Canada has experienced a seismic shift in societal and legal attitudes regarding equality rights for our gay population; witness the legalization of same-sex marriage in 2005 following a 2004 Supreme Court of Canada ruling (reference) that denounced discrimination against gays who want to marry, declaring marriage laws that excluded gays unconstitutional.

I submit that the LSUC must take a morally correct stance, and oppose the accreditation of TWU based on the fact that they offer a curriculum that does not satisfy the requirements in Ethics and Professionalism in that their very program does not reflect the high principles expressed in the Ethics and Professionalism component of the course.

Do not let us go on record as a profession, as failing to do the right thing because we just could not find a way to put a fresh new interpretation on the breadth of our accreditation mandate. A difficult challenge such as this requires a morally responsible, creative response. It can be done.

Do not accredit TWU.

Let TWU again bring the issue to the courts.

Yours truly,

Gilda Berger
(Barrister & Solicitor; member of the Law Society of Upper Canada)

March 23, 2014

By email to jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
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Re: Trinity Western University – Request for Accreditation

I am a member of the Law Society of Upper Canada, called in 1991. I wish to say at the outset that I am writing in my personal capacity only and do not wish to be taken as representing anyone's views but my own.

This is an extremely difficult issue for me. I have read many of the submissions to the Federation of Law Societies of Canada and most of the submissions to the LSUC which have been made public to the date of this letter. There are people I deeply respect on each side of this issue.

The questions here, in my view, are more straightforward than they are being made out to be. Who decides, and what do they get to decide on? The law schools, including TWU, are independent of the law societies, which is the reason that an accreditation process is necessary. What is being accredited is a program of study, not the shared beliefs of the individuals who offer it or who are engaged in it. Unless all law schools are put under the direct control of the government or its designated regulatory body, we have to accommodate the possibility that a group of people motivated by sincerely held beliefs may want to create a community in which like-minded people agree voluntarily that they will be bound by those beliefs. If this school is not publicly funded and does not compel anyone to attend it, then I am not prepared to say that people should be unable to choose to attend it. In our current structure, I do not believe it is the place of our profession's regulator to decide on these aspects of any law school's operation.

What clearly is in the purview of regulators to decide, and what they should examine very carefully, is the acceptability of the content of the program of instruction within the school, and the

qualifications of all individuals graduating from it who seek admission to the profession. If the program of study is deficient, or neglects or distorts instruction in law because of a fundamentalist emphasis on religious belief, then that program of study (as opposed to the institution hosting it) should not be approved. But it is disrespectful to religious people to assume that they are incapable of distinguishing between personal beliefs and restrictions they choose to accept on their personal conduct, on the one hand, and their role in a wider community which includes persons who do not share those beliefs, on the other.

There is no justification for unlawful discrimination against or unfair treatment of people on the basis of their sexual orientation or their religious belief (among many other aspects of individual personality). But the question before the LSUC is not a referendum on the existence of TWU's law school or its code of conduct for its students – the LSUC cannot and should not decide those issues. The LSUC has to examine the eligibility of the school's program of study for accreditation, and if it has met the defined criteria for accreditation the LSUC's purview ends there. It would be unwise, and counterproductive in the longer term, for the LSUC to extend its accreditation process to include consideration of the perspectives from which a school provides its instruction as opposed to the instruction itself. One of the strengths of legal education is that it can both teach what the law is and analyze it, critically and from a variety of perspectives. Different schools will provide different perspectives, and this is a good thing.

Individuals graduating from this or any other law school should be expected to adhere to the legal and ethical requirements of the profession if they choose to apply for membership in it. These individuals will have a range of personal beliefs and values which will inform and motivate them, and some of these will be reflected in their educational choices as well as their choices of religious affiliation (or lack of one), political affiliation (or lack of one) or other relationships and associations in their lives. The only expectation the LSUC should have is that potential lawyers have a clear understanding of their obligations as lawyers and be prepared to carry them out whatever their choices <u>for themselves</u> would be in similar circumstances. To believe otherwise will necessarily involve looking with suspicion not only at graduates of this particular law school but also at all persons who are (for example) adherents of particular religions or political or social movements. This line of enquiry is not one the LSUC should embark on.

In summary, my view is that if the program of the study of law at TWU meets the existing requirements for accreditation that are applied to other law schools, then it should be accredited by LSUC. This would in no way constitute the LSUC's sanction of the school's internal requirements for its students' conduct, which requirements may very well have the effect of marginalizing the school in any event. The LSUC has no scope to evaluate the school as a whole unless it wishes to

obtain overall supervisory responsibility for law schools as part of its regulatory authority – and it is not my sense that anyone is making that argument.

Sincerely,

David L. Denomme

I am writing to express my strong view that the Law Society of Upper Canada should not accredit Trinity Western pursuant to Section 7 of By-law 4.

Procedural Concerns

First, it is disappointing that the Law Society has chosen not to assemble (and essentially ignore) submissions made prior to February 27th. I hope this is not an attempt – similar to that of an insurance company denying coverage – by the Law Society to exhaust those Law Society members who are opposed to accreditation of Trinity Western University. Regardless, it certainly could be perceived as such and I seriously question why the Law Society would not have erred on the side of inclusion when it comes to submissions on this important subject.

Second, the Law Society has prepared a question for Convocation that is biased – why should the conditional approval of the Federation Approval Committee have any bearing on the decision of Convocation? Was the membership consulted as part of that process? I certainly don't recall being consulted. Were we allowed to make submissions then? If we were, I certainly don't recall receiving notice for submissions.

You also fail to mention that the Federation Approval Committee recommended a non-discrimination provision. Why is that not mentioned in your stated question? This is an important qualification because it is explicit recognition by the Federation Approval Committee that there is a strong concern that Trinity Western has a policy of discrimination.

Therefore, you should ignore the conditional approval of the Federation Approval Committee as part of your consideration. The only question that matters is whether Trinity Western should be accredited by the Law Society – no "givens", no extraneous considerations, no limitations. And the answer is clearly no.

Basis for Refusal

The basis for refusal is simple: Trinity Western requires its law students (and its law professors) to sign a covenant that violates the Charter. Therefore, how can a school that allegedly teaches Charter values be accredited when its very foundation is tainted?

As noted by the SCC in its 2001 decision, the heart of this matter is how to reconcile the religious freedom of individuals wishing to attend Trinity Western with the equality for all Canadians, including based on sexual orientation. However, unlike that decision, this matter also involves the question of teaching of the law – not only is this an issue of protecting equality but also it is an issue of how the law of equality is taught to future lawyers and judges. Further, the law has evolved since 2001, in particular the law of equality and the definition of marriage. Therefore, the 2001 decision is of limited application when it comes to a law school that would ignore the law of the land regarding same sex equality.

The Law Society fulfills the role of gatekeeper to the profession of practising law in the Province of Ontario. As part of that role, you must consider whether the education received at a law school is of the highest standards. I believe there is serious room to question whether a school that fails to recognize the law regarding marriage in Canada – indeed a school that requires its students and faculty to condemn behaviour protected by the law – can meet those high standards. Without a doubt, Trinity

Western's covenant embodies a discriminatory practice that is inconsistent with the Charter and Canadian values.

Please do not let Trinity Western fool you. This is not about Christian values or religious freedom. This is about equality under the Charter – plain and simple. No one is proposing to stop those from attending Trinity Western from having a belief about marriage. No one is proposing that Christians cannot be lawyers. Indeed, there are many law schools in Canada – indeed, I would say ALL OF THEM – where a Christian can learn the law and maintain their individual beliefs.

The opposition to accrediting Trinity Western is that it would elevate religious values above equality before the law. We cannot and must not allow this to happen. Ontario would become the Arizona of the north, where religious values would allow a university to discriminate against the LGBT community not only in terms of its admissions but also in terms of its teachings. Please have the courage to vote against accreditation and, at a minimum, put the onus on Trinity Western to prove in the courts why its discriminatory covenant should not preclude it from having a law school.

Finally, permit me to add a personal note. I am a gay lawyer. All of my comments above, however, are based on the law and not on my personal connection to this question. The law must treat everyone equally – and everyone must be taught that all are equal before the law – regardless of race, gender, religion, sexuality or any other enumerated ground.

However, it is also personal for me. In an era when homophobia seems to be a tolerated form of bullying, when young boys and girls are taunted into suicide based on their sexual orientation, when Catholic schools are permitted to ban queer-straight alliances, when federal politicians say the most heinous things about LGBT issues, when the Mayor of Toronto won't march in the World Pride Parade, when many countries around the world are advancing anti-homosexual laws through extreme violence, we need the law – more than ever – to stand against such a tide of hate. This is the duty of Convocation when considering this issue. If I can't attend Trinity Western or teach there because I'm in a same sex relationship, how can there be any question that its law program should be denied accreditation?

If we allow a university founded on discrimination to be accredited to teach the law, we are sanctioning the teaching of discrimination itself. Please do the right thing and deny accreditation.

Yours,

David Bronskill

Toronto

March 21, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

To Whom It May Concern:

Re: Accreditation of Trinity Western University's School of Law

I am writing with respect to the accreditation of Trinity Western University's School of Law. I am dismayed that this program is even being considered for accreditation given the grossly discriminatory policies of the University.

TWU is unwilling to accept gay and lesbian students. Students are required to sign a "Community Covenant Agreement" stating that all TWU community members will abstain from same-sex sexual intimacy. TWU threatens to expel students caught in same-sex sexual intimacy because such behaviour offends its interpretation of the Christian Bible. Like all TWU students, law students would be governed by the same "Covenant." A decision to accredit TWU's law graduates would endorse a school that actively discriminates against gay and lesbian students.

This is more than a question of a different set of beliefs. The Covenant is clear that it anticipates disciplinary action should students fail to follow its instructions. Gay and lesbian students who have the audacity to enter into normal relationships of love with students of the same sex face sanction and expulsion. This is repulsive.

I expect the Benchers of the Law Society to decline to accredit this program, much as I would expect you to decline to accredit a program which prohibits the participation of people of colour, women, people who are disabled, or any other people from historically disadvantaged groups.

This is an opportunity for the Law Society to send a message that discrimination in the legal profession will not be accepted in the Province of Ontario. I urge benchers to vote against the accreditation of TWU's School of Law.

Thank you for your attention to this matter.

Sincerely,

Elisabeth Brückmann
Barrister and Solicitor

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March 21, 2014

TWU Submissions
Policy Secretariat
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Benchers,

Re: Trinity Western University

I am a member of the Law Society of Upper Canada, writing in my personal capacity, with respect to the decision faced by the LSUC regarding accreditation of Trinity Western University in light of its policy regarding same-sex relationships.

In years past, racial discrimination was justified, legally and socially, under the umbrella of religious freedom. Most educated and justice-oriented people look back on legal decisions of our past with a sense of horror, but also with a sense of satisfaction that we have evolved as a society beyond such blatant prejudice. Now, racism rarely "wins" under our current constitutional and human rights regime when alleged conflicts of rights are considered. That homophobia does sometimes "win", and that the Trinity Western controversy is even a matter of relevance in 2014 is in my view a reflection of the fact that anti-gay animus is more socially acceptable than racism or sexism. The same laws apply whether the issue is race or sexual orientation. Yet it must be acknowledged that this issue would be much more simply resolved if Trinity Western banned Black students, or prohibited inter-racial relationships, on religious grounds.

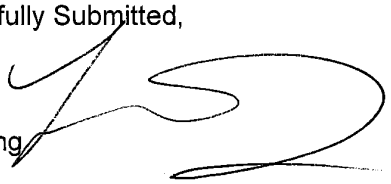
If the Law Society of Upper Canada accredits Trinity Western, it will almost certainly find itself on the wrong side of history. When the next generation looks back at the decision, they will undoubtedly do so with the same sense of incredulousness that we now feel when we look at troubling historical cases involving race. While legal arguments may certainly be found to justify the accreditation, I urge the LSUC to acknowledge that the credibility lent to those arguments is significantly influenced by our social and political landscape.

In addition to looking at social context, the mere possibility of accrediting Trinity Western University is personally disconcerting. I am proud to be part of our profession and a member of the Law Society of Upper Canada. I am proud that the LSUC welcomes into its fold lawyers with a wide variety of personal histories, cultures, religions and perspectives, many of which differ from mine. However, the thought that my governing body might accredit a school that refuses people like me, not because of lack of academic credentials, but because of who we are, is both a practical and symbolic affront. It is not a matter of diversity of perspective, but one of

prejudice, which must not be given legitimacy by accrediting a law school that as a matter of policy embodies prejudice that the supreme law of our country eschews.

In our free and democratic society, we all must have the right to adhere to religious doctrines, and to be free from them as we personally choose. However, it is an undeniable fact that prejudice and discrimination on the basis of race, gender, sexual orientation and other immutable characteristics have, in large part, been fuelled by religious doctrine. Constitutional and legislative protection has been necessary in the defence against that social harm. No religious order under our constitutional democracy therefore is vested with the power to determine the rights of individuals in the public sphere. We must not allow these protective legal instruments to be used as a weapon or mask to erode the very principles of equality and dignity that they have been designed to protect.

Respectfully Submitted,



Lynn Iding

Dear Honourable Benchers,

I am writing to ask you to vote against the accreditation by the Law Society of the proposed law school at Trinity Western University. In my view, such accreditation does not strike the right balance between human rights and religious freedom. In essence, it provides a seal of approval to an institution that intends to enforce religion-based policies that discriminate against members of the LGBT community. This is a profound step backwards in a pluralistic and multi-cultural society, and more specifically, for a profession that aspires to greater diversity.

I understand that provincial approvals to date, and the Federation of Law Societies' preliminary approval makes the Law Society's position more difficult. However, this also provides an opportunity for the Law Society to take a stand that reflects its own diversity and discrimination initiatives, policies and rules. Among those are Rule 5.04 (1) which provides:

> 5.04 (1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identify, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other licensees or any other person.

Among other things, Trinity Western University requires students to sign a covenant to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". This does not reflect such a special responsibility, nor is it consistent with the Law Society's equity and diversity values which among other things, seek "to ensure that both law and the practice of law are reflective of all peoples in Ontario". Moreover, the Law Society pledges to protect the public interest, and to maintain and advance the cause of justice and the rule of law. While these are undoubtedly broad statements of principle, such foundational values also provide significant, overarching guidance when hard decisions are to be made.

As you know, the motto of the Law Society is "Let Right Prevail". If right is truly to prevail in these circumstances, Trinity Western Law School should not be accredited.

Yours truly,

Judith McCormack, LL.B., LL.M, LSM

ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien

March 24th, 2014

Mr. Thomas G. Conway
Treasurer
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer:

Re: Trinity Western University Law School

As noted last week, OBA Council considered a resolution pertaining to the above-noted matter at its meeting last Friday, March 21st. The resolution was sponsored jointly by our Equality Committee and the Sexual Orientation and Gender Identity Law Section, and supported by the Young Lawyers Division and the Women's Law Forum. The text of the resolution, which was approved by an overwhelming majority of Council members, follows:

"MOTION ON NON-DISCRIMINATION IN LEGAL EDUCATION

WHEREAS:

- Discrimination continues in the legal profession and legal education in Canada despite significant progress toward its elimination, undermining public confidence in the administration of justice, access to legal resources and education, and respect for the rule of law;

- Ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice and by improving the profession's representativeness of and responsiveness to Canadian society;

- Discrimination and exclusion in legal education undermines the ethical underpinnings of the legal profession and contributes to a corrosive educational environment that is hostile to freedom of expression;

- Diversity among law school faculty and students is integral to an open and enriching environment for teaching and learning the law and the formation of values in law school has a long-term impact on future lawyers;

- Discrimination is not a recognized protected form of freedom of expression and any conflict between enumerated freedoms must consider the potential impact on the legal profession, the justice system, and society as a whole;

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- Canadian law prohibits an institution from discriminating on constitutionally protected grounds, including targeted discrimination of the inseparable practices of a minority group rather than its members' identity;[1]

- The Law Society of Upper Canada has a statutory duty to carry out its functions, duties, and powers to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, and to protect the public interest;[2]

- The Law Society of Upper Canada and its counterparts have a legal obligation to apply the *Charter of Rights and Freedoms* and the provincial/territorial human rights codes every time they make a decision;[3]

- The *Charter* prohibits law societies from facilitating the creation of unequal access to the legal profession for minority groups, either directly or by accrediting exclusive law schools or other discriminatory pathways for access to the bar;

- The Ontario Bar Association is committed to continuously improving the legal profession's inclusion, representativeness of Canadian society, and respect for the equality of lawyers, legal academics, and students of law; and

- The Ontario Bar Association is committed to lowering barriers for qualified individuals seeking access to legal education or practice in Canada;

BE IT RESOLVED THAT the Ontario Bar Association:

- Calls on the Law Society of Upper Canada to require all legal education programs recognized for admission to the bar of the Province of Ontario provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression or identity, age, mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education (including faculty and employees, applicants for admission, enrolled students, and graduates) and to ensure that this anti-discrimination requirement applies equally to proposed new programs of legal education and currently accredited programs;

- Calls on the Law Society of Upper Canada and its counterparts in other provinces and territories to codify this requirement in any existing or forthcoming national accreditation requirement under the purview of the Federation of Law Societies of Canada, its successor, or other such consortia of provincial and territorial law societies; and

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[1] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11.
[2] *Law Society Act*, RSO 1990, Chapter L.8, s. 4.2.
[3] *Doré v. Barreau du Quebec*, 2012 SCC 12.

- Calls on the Law Society of Upper Canada to withhold or rescind accreditation from law schools or legal education programs that do not meet this fundamental requirement, without prejudice to students currently enrolled or admitted to accredited law schools that lose their accreditation."

As this motion was approved by the Ontario Bar Association Council, it represents the OBA's position on this matter. As you know, OBA Council consists of both elected and appointed lawyers from all regions of the Province. At Friday's Council meeting, all regions and all practice settings were well represented.

Should you have any questions with regard to this matter, or the OBA's position, please do not hesitate to contact me.

Sincerely,

Pascale Daigneault

Pascale Daigneault
President

cc: TWU Submissions
Policy Secretariat, L.S.U.C.
M. Berlin
E. Montigny
P. Saguil
S. Pengelly

March 24, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6
Attention: Jim Varro, Director, Policy

Dear Jim Varro:

A prominent Halifax gay lawyer, Kevin Kindred, who is sensitive to minority prejudice and has looked at the issue carefully, has come out and said that this is a clear, case of prejudice against Evangelical Christians. (See TWU Submissions Nova Scotia Barristers' Association TWU Law Program: Tuesday, January 28, 2014.)

Also, Stephen Kimber, who is a columnist and for years a leading left wing liberal in the Halifax media, teaches at the University of Kings College, has said in the February 17, 2014 of ***Metro News***, "*Trinity Western U: Freedom of Religion V Freedom From Intolerance"*:

"But denying qualified graduates of an accredited law program the right to practice law in this province seems a kind of discrimination. Is the argument that Trinity Western lawyers can't adequately represent LGBT clients because they once signed a covenant that may have simply reflected their own sexual values? Do we really believe lawyers should only represent those they agree with? If so, we're in big trouble?"

This is *never* an issue of competence. Anybody graduating from the University is then obliged to write the Barristers' Society's Bar Exams. It is *never* a matter of competence or if they technically qualified. The presumption is: (a) They have a University Degree, and (b) They have to pass the Bar Exams.

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

Respectfully submitted,

Marian Chisholm
Halifax, NS

"COMMUNITY LIFE AT TWU

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

- **sexual intimacy that violates the sacredness of marriage between a man and a woman"**

The above- quoted bullet, taken from the TWU website highlighting their covenant with one another, states that the school not only tolerates, but indeed promotes a position that violates Canada's Charter of Rights and Freedoms. While many people have already pointed out the discrimination on the basis of sexual preference (anti-homosexuality being promoted), it is not clear that even heterosexual common-law relationships are tolerated. This is wholly unacceptable. To give this group the sanction of accepting their graduates into the Law Society of Upper Canada would be to compromise the Law Society's own tenet of acceptance of everyone and the expectation that all members of the LSUC would promote that goal.

If this school is permitted to have its graduates become members of the LSUC, I will have to seriously reconsider whether I would want to remain a practising lawyer in Ontario.

John T. Petrosoniak

TWO Submissions Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Sirs and Mesdames:

I am a graduate of Osgoode Hall Law School (1976) and have been a member of the Law Society of Upper Canada since 1978 (and the Law Society of Alberta since 1982). Thank you for allowing me to make a submission in the above matter.

Issue: Whether or not to accredit TWU's law school.

The Federation of Law Societies of Canada (FLSC) Approval Committee having approved TWU's application for accreditation, the issue is whether the Law Society should override their recommendation and deny accreditation. Since important rights and privileges are involved, a compelling reason for such a denial would be required.

Argument Against Accreditation
If I understand it correctly, the argument for denying accreditation goes something like this (my paraphrase):

TWU imposes a standard of behaviour on its law students that prohibits sex outside the bonds of conventional marriage (the "Community Covenant"). For LGBTs, who are unable or unwilling to participate in conventional marriages, this creates at worst a hardship in the form of marriage deferral until law school is completed, and at best a hostile environment in the meantime. (In the case of faculty members or other employees, the obligations of the Community Covenant apply throughout the period of their employment).

(To my knowledge, no evidence was presented of any LGBT student or potential student actually facing this dilemma).

Arguments in Favour of Accreditation
There are two arguments in favour of accreditation: first, that the above argument is unsound; and second, that denying accreditation would indicate a bias against the Christian religion.

The first issue has already been settled. In the absence of evidence of actual harm, the Supreme Court refused to find the existence of discrimination in TWU's Community Covenant. Moreover, it refused to find that the anti-discrimination provisions of the Charter took precedence over the provision on freedom of religion.

The FLSC Special Advisory Committee on TWU spoke to the matter in paragraph 28 of its Report:

"It is the view of the Special Advisory Committee that the approach of the Supreme Court in BCCT to reconciling competing rights under the Charter and the requirement of evidence of actual harm continue to be the law of Canada."

(The *BCCT* case referred to above is *Trinity Western University v. BC College of Teachers, 2001 SCC 31).*

The second argument is that **not** granting accreditation risks the appearance of bias against the Christian religion. At paragraph 15 of *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada*, (March 2005), statistics from the 2001 Canadian Census are provided. The combined Catholic, Protestant, Christian Orthodox and Christian (not elsewhere defined) population of Canada totalled 22,851,825 (assuming my addition is correct), out of a total Canadian population of 29,639,035, for a total of 77% (assuming my division is correct).

The beliefs of all Christian religions are based on the Bible. (Whether or not individual Christians actually follow -- or even believe in -- particular teachings of the Bible and whether all Christian denominations agree on the interpretation of individual verses of the Bible is quite another matter). Throughout the Bible, from the first book (Genesis 2:24 KJV "Therefore shall a man leave his father and his mother and cleave unto his wife; and they shall be one flesh.") through the last (Revelations 23:14-15 KJV "Blessed are they that do his commandments, that they may ...enter in through the gates into the city [of Heaven.] For without are ...whoremongers..and whosoever loveth and maketh a lie."), sex outside the bonds of marriage is condemned. (Certainly, more liberal Christians would view marriage as being extended to gay and lesbian couples). Therefore, I submit that it can at least be argued that the *professed* belief of most Christians is that sex outside of marriage is against God's commandments.

Recommendation

In my view, those who oppose the accreditation of TWU have not met the burden of providing compelling reasons for overriding the FLSC's approval process. In fact, there are sound reasons for supporting it, not the least of which is that supporting the Charter-protected right of freedom of religion is reasonable in light of the doctrinal foundations of Christianity and Christianity's widespread acceptance in Canada. To be frank, I have some sympathy for the argument that LGBT students might find TWU to be a hostile environment in terms of their sexual orientation. However, I maintain that it would be a personal choice if they still wished to attend there, knowing the existence of the Community Covenant. Over thirty years ago, when I attended Osgoode Hall Law School, having personally made an abstinence pledge of a similar nature, I encountered great animosity and hostility, including threats, on account of my religions. This was demoralizing and demeaning. However, it was my choice to attend a "liberal" law school, and I never would have dreamed of imposing my views on others. (I suppose if you want to stand for something opposition will always follow.)

March 25, 2014

By Fax: 416 947 7623

Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Attn: Policy Secretariat, TWU Submissions

Dear Honourable Benchers

Re: Just Say No to Trinity Western

In 1988, I litigated for same-sex benefits against my former employer, the Toronto Public Library. See *Andrews* v. *Ontario (Minister of Health)*, 1988 CanLII 4825 (ON SC). Bencher Howard Goldblatt was one of my lawyers.

In the course of it, I learned a lot about law, policy, governance, and community organizing. I was told by several of the lawyers with whom I worked that I had the skills to become a lawyer and in 1995, I was called to the Bar of Ontario.

It turns out that I did have the skills to become a lawyer – I did well at law school, I do well in practice; yet a Trinity Western law school would have kept me out.

I am stunned that the Federation of Law Societies has given its preliminary approval for Trinity Western to establish a law school that purports to openly discriminate against the lawful activities of a significant percentage of our society (both gay and straight) when it comes to their admission and ongoing participation at their proposed law school.

For me, as an open lesbian in the legal profession, I expect my colleagues in law to respect me, to be able to work collegially with me, to uphold the equality values that will ensure my full participation in the profession and in society, more generally. Students graduating from a Trinity Western law school will not be able to do this.

For me, as a member of the legal profession, I expect others to serve a diverse and challenging public with competence, integrity, professionalism and

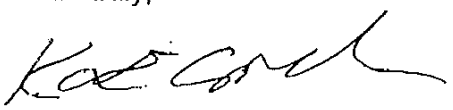
understanding. Students graduating from a Trinity Western law school will not be able to do this, either.

As Justice L'Heureux-Dubé put it in the first round of Trinity Western litigation to accredit public school teachers, "at its core, this case is about providing the best possible educational environment for public school students in British Columbia". That case represented a terrible and inexplicable loss to me. Ontario Benchers can send a different message – any law school that does not accept gays and lesbians is doing a very deficient job in educating law students and advancing the equality rights of all Canadians.

How can it be so clear that Trinity Western could not expressly exclude Blacks, the Japanese, Jews or Aboriginal people yet expressly exclude gays and lesbians who are simply going about their business, being who they are, and wanting to study law?

I urge you to do what the Supreme Court of Canada would not do – reject any educational institution whose stated objectives promote discrimination, unequal treatment, marginalization, and hatred of....me!

Yours truly,



Karen Andrews
Barrister and Solicitor

VIA EMAIL: <jvarro@lsuc.on.ca>

March 25, 2014

Mr. James Varro
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Mr. Varro:

RE: ***TWU Accreditation***
Our File No.: N/A

I am writing today to provide my brief submissions on the above-noted matter.

It is my opinion that accreditation should be either denied or withheld by the Law Society of Upper Canada to Trinity Western University on the grounds that its mandatory *Community Covenant Agreement* either discriminates or gives the appearance of discriminating as against LGBTQ students who may choose to attend this institution.

As a 2004 call lawyer practicing in the area of Plaintiff-side personal injury, I would be appalled were one of my injured clients discriminated against by a private individual on the basis of his or her medical disability. I use the term "appalled" intentionally; while it may be "appalling" to so discriminate, a third party has the benefit of his or her own conscience, and may do so as he or she may please, within the relevant boundaries of the law.

This line of reasoning, in my opinion, begins and ends with the private individual.

Were one of my injured clients discriminated against by, for example, an insurance company (the most common institutional "player" in my practice area) on the basis of race, or gender, or religion, or disability, or sexual orientation, such a practice may very well be actionable, never mind offensive and wrong. That said, to the insurers' credit, except in the most exceptional cases, it is my experience that it would be unlikely for such a situation to arise, on account of the internal measures that these institutions take to ensure that this type of discrimination does not occur. Human rights policies are created and, from time to time, revised. Diversity offices are established to address diversity issues both within their client base and amongst their staff. In the event that a (presumably) rare case of discrimination

does occur, complaints may be forwarded to the insurer's Ombudsoffice who, as a matter of practice, will attempt to resolve the issue.

Diversity legislation such as the federal *Charter of Rights and Freedoms* and the Ontario *Human Rights Code* bolster my opinion that Ontarians do not tend to accept, either conceptually or in practice, the permitting or sanctioning of discrimination against identified individuals at the institutional level.

It is therefore my respectful opinion that to accredit an institution that would either a) prohibit LGBTQ students from attending its program; or b) force those same students to hide, disguise or otherwise lie about his or her sexual identity, an issue not faced by straight or cis-oriented TWU students and that is, frankly, completely irrelevant to the study or practice of law, would be appalling, discriminatory and, in our opinion, a stain on the character of the Law Society of Upper Canada, along with its membership.

Put differently: what does sexual orientation have to do with the study of law? Any reasonable person must agree that the answer is "absolutely nothing", and for an institution to require its members to adhere (or lie about adhering) to a code that directly involves and impacts one's sexual orientation in order to study law at that institution is preposterous, absurd, silly, and wrong- and a position that should not be condoned by the LSUC.

Consequently, it is my respectful submission that accreditation be either denied or withheld until this pertinent issue is resolved with Trinity Western University.

As an aside, I was pleased to read, amongst the other various and thoughtful submissions provided to the LSUC, the *Resolution of Faculty Board of the Queen's University Faculty of Law dated February 7*, my *alma mater*, and was further pleased to see that the Resolution was seconded by my first-year Property Law professor, Prof. Kathleen Lahey. I am in agreement with the Resolution, would voice my support for the measures therein, and am pleased to copy the Queen's Law Faculty Board on this submission.

Respectfully submitted,

MATTHEW CONSKY

cc: Queen's Law Faculty Board c/o Kathleen Lahey via email: <kal2@queensu.ca>

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
TORONTO, ON
M5H 2N6

TRINITY WESTERN UNIVERSITY

These are my personal views, not my Law Firm's.

I am a senior lawyer of 40+ years practice in Ontario and a WASP but a religious atheist as Ronald Dworkin defined it.

I have read many of the submissions and I support those of WEST COAST LEAF (February 5, 2013) and the UNIVERSITY OF SASKATCHEWAN, COLLEGE OF LAW GAY/STRAIGHT ALLIANCE (March 18, 2013) as being particularly to the point.

Freedom of conscience or religion is a fundamental freedom under section 2 of the Charter as are freedom of thought, belief, opinion, expression and association. I cannot comprehend that any of those freedoms includes the right to reject the equality rights in section 15 of the Charter.

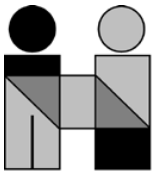
We should support rules that ameliorate discrimination, not encourage discrimination. "The Bible is a book. It is a good book. But it is not the only book." Paraphrasing lines from "INHERIT THE WIND".

The TWU rules promote narrow mindedness, discrimination, superiority complex and false moralistic hierarchy. We should not be training lawyers or future judges to accept those rules as proper or appropriate in our society of freedoms and equality. LGBT people are not evil or sinful because of their sexual orientation. They are different in some respects as we all are.

We should support ecumenical approaches and tolerance and acceptance of differences. The TWU rules are exclusionary and should not be supported in any legal education environment. The rule of law supersedes discriminatory expressions of religious freedom.

On those bases I would not support the accreditation of TWU as a Canadian law school. It isn't just the Community Covenant that is offside, it's the whole biblical supremacy approach.

James W. Dunlop
London, Ontario



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March 21, 2014

VIA ELECTRONIC MAIL

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Accreditation of Trinity Western University's School of Law

To Whom It May Concern:

The Benchers of the Law Society of Upper Canada (LSUC) are uniquely placed to defend and advance Canada's proud history of equality, when convocation meets to determine the accreditation of Trinity Western University's (TWU) School of Law. On behalf of the Hamilton Community Legal ClinicéClinique juridque communautaire de Hamilton, I respectfully request that the LSUC act in accordance with established principles of equality and not accredit TWU's School of Law, pursuant to s.7 of LSUC By-Law 4.

TWU students are required to sign a "Community Covenant Agreement" stating that all TWU community members will abstain from ``sexual intimacy that violates the sacredness of marriage between a man and a woman``. TWU threatens to expel students caught in same-sex sexual intimacy because such behaviour offends its interpretation of the Christian Bible. Like all TWU students, law students would be governed by the same "Covenant." A decision to accredit TWU's law graduates would effectively provide an endorsement of a school that actively discriminates against gay/lesbian students.

As noted by the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 77: "The proper place to draw the line in cases like the one at bar is generally between belief and conduct… The freedom to hold beliefs is broader than the freedom to act on them." Barring students from a law school is action, not belief. In addition, and of importance, the British Columbia College of Teachers case did not deal with the equality rights of prospective students under s.15 of the *Canadian Charter of Rights and Freedoms*.

By accrediting TWU's School of Law, the LSUC would sanction a discriminatory quota system whereby fewer placements would be available for gay/lesbian students than for heterosexual students. The University has isolated one segment of the population for second-class status. It is not acceptable to demean some members of the student body or to exclude some people from its faculty. It is questionable how such a university could educate students on discrimination and equality rights.

TWU's accreditation application should not be approved because of its overt discrimination on the basis of sexual orientation. The LSUC must uphold the Charter and advocate for equality and against discrimination.

We urge benchers to vote against the accreditation of TWU's School of Law.

Thank you for your attention to this matter.

Sincerely,

Hugh A. Tye, J.D.
Executive Director

March 25, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

By email: jvarro@lsuc.on.ca

Attention: Mr. James Varro, Director, Policy

Dear Mr. Varro:

RE: Trinity Western University School of Law

First of all, I wish to thank the Law Society of Upper Canada for the opportunity of input from the legal profession and the public on its consideration of Trinity Western University's application to open a law school in British Columbia.

Frankly, as a member of the Bar in Ontario, I am appalled at the attempt of some to do an end-run around the clear dictum of the Supreme Court of Canada and the well-reasoned decisions which have been rendered to date in favour of the establishment of Trinity Western's Law School. It is quite illiberal and a bid to monopolize legal education in Canada.

In this regard, I endorse the arguments made by the British Columbia Civil Liberties Association[1]. I urge the LSUC to support pluralism, refrain from participating in blatant religious discrimination and uphold the decision of the Federation of Law Societies of Canada.

Yours respectfully,

JoAnne Mead Nadeau, LL.B.
Stittsville, ON

Footnote:

1. Http://www.flsc.ca/_documents/TWUBCCivilLibertiesAssnJan282013.pdf

SWADRONASSOCIATES

March 25, 2014

BY E-MAIL

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Sirs/Mesdames:

Trinity Western University Accreditation

We write in response to the Law Society's invitation for submissions respecting the accreditation of Trinity Western University's (TWU) proposed law school program, which will be considered by Convocation on April 10 and April 24, 2014. We understand that Convocation will be determining the question as follows:

> *Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?*

In our submission, the Law Society should not accredit TWU for the reason that TWU applies discriminatory criteria to the admission of prospective students. TWU requires all students to enter into a Community Covenant, which it describes as a "contractual agreement" and "solemn pledge." As part of the Community Covenant, students are required to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." The Community Covenant goes on to explain that, "according to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation."

Acknowledging that TWU is a faith-based institution, it is nevertheless patently discriminatory to deny eligibility for admission to students who identify as gay, lesbian, bisexual, transsexual, transgendered, queer or questioning. Christian students are welcome to voluntarily accept the principles of the Community Covenant. However, prospective students who identify as LGBTQ are unable, by reason of an immutable personal characteristic, to receive admission to TWU.

SWADRON ASSOCIATES BARRISTERS & SOLICITORS
115 Berkeley Street, Toronto, Ontario M5A 2W8 **Phone: 416-362-1234** Fax: 416-362-1232 Website: www.swadron.com

It is important for the legal profession to foster diversity, including faith-based diversity. Appropriately, the schools presently accredited by Convocation have no policies or requirements that bar Christian students from admission. Nor do they have policies or requirements that otherwise limit students' ability to pursue dignity and well-being in accordance with their personal characteristics and values.

In our submission, accrediting an institution that incorporates discriminatory admission criteria would be harmful to the profession of law.

We ask that Convocation refuse to accredit TWU pursuant to section 7 of By-Law 4.

Thank you for your consideration.

Yours very truly,

SWADRON ASSOCIATES

Per:

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Mercedes Perez

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simon.fish@bmo.com

VIA EMAIL TO: jvarro@lsuc.on.ca

March 26, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Policy Secretariat:

RE: Accreditation of Trinity Western University's ("TWU") Proposed Law School Program

We write regarding TWU's proposed law school program application. We understand that TWU has received: (i) conditional approval from the Federation of Law Societies of Canada's Approval Committee for its proposed program; and (ii) approval from the British Columbia government. We further understand that the Law Society of Upper Canada ("Law Society") will meet to determine the Ontario accreditation of TWU with respect to its graduates who may practice law in Ontario.[1]

The purpose of this letter is to request that the Law Society deny the accreditation of any legal education programs, recognized for admission to the bar in Ontario, that are discriminatory.

At BMO, diversity and inclusion are part of our core values. It is BMO's view that the TWU Community Covenant, which is required to be signed by all TWU faculty, staff and students, is discriminatory. We understand that the Community Covenant requires abstention from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[2] We believe the Community Covenant discriminates against individuals on the basis of sexual orientation and gender expression.

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[1] See Trinity Western University Accreditation, The Law Society of Upper Canada, online: http://www.lsuc.on.ca/twu/.

[2] See the TWU Community Covenant, Trinity Western University, online: http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html.

We urge the Law Society, during its review to determine the Ontario accreditation of TWU, to carefully consider the following:

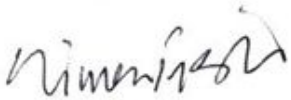
1) *Charter of Rights and Freedoms*;
2) human rights legislation;
3) Canadian law;
4) spirit of the legal profession;
5) protection of public interest;
6) core values of Canadians; and
7) whether the reduction of opportunity for gay, lesbian and bi-sexual students and the imposition of a quota system on these individuals is acceptable.

It is our belief that, after a thorough review of the TWU application, the Law Society accreditation process, and the above noted points that the Law Society should strongly consider the submissions of the Ontario Bar Association to:

1) require all legal education programs, recognized for admission to the bar in Ontario, provide equal opportunity without discrimination (on the basis of sexual orientation, gender expression or identity, race, national or ethnic origin, colour, religion, sex, age, mental or physical disability) for students, applicants, faculty and employees in currently accredited legal programs or proposed new programs;
2) codify a non-discriminatory requirement into any existing or forthcoming national accreditation requirement under the purview of the Federation of Law Societies of Canada; and
3) withhold or rescind accreditation for legal education programs that do not meet this requirement on a without prejudice basis to students currently enrolled or admitted to accredited law schools that lose their accreditation.[3]

We thank the Law Society for the opportunity to provide written submissions for consideration by Convocation about the accreditation of TWU.

Yours truly,



[3] See Ontario Bar Association letter, dated March 24, 2014, online: http://www.lsuc.on.ca/uploadedFiles/TWUOntarioBarAssociationMarch24.pdf.

CHRISTIAN LEGAL FELLOWSHIP
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March 26, 2014

Via Email to: jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Policy Secretariat:

RE: Trinity Western University Consultation

On April 10 and April 24, 2014, Convocation will meet to determine the accreditation of Trinity Western University's (TWU) proposed law school program and to answer the following question:

> Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

The society has invited written submissions from the profession and the public on this matter. The Christian Legal Fellowship appreciates this opportunity and answers the question in the affirmative.

The Christian Legal Fellowship (CLF) has also made written submissions to the Law Society of British Columbia (February 28) and the Nova Scotia Barristers' Society (February 11) in response to similar consultations.

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

Much of the attention surrounding Trinity Western University's (TWU) proposed school of law has to do with sensitivity to concerns about discrimination, and thus the perceived need of the Law Society to ask the above question. It is our understanding that the question arises in connection with the TWU Community Covenant Agreement, as has been the case in British Columbia and Nova Scotia. For example, the Nova Scotia Barristers' Society is reviewing the issue of whether they will permit graduates of Trinity Western University's (TWU) proposed school of law to acquire membership in their society.

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

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

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

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

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

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

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

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

There exist, in the courts, law faculties, and firms, Christian lawyers who accept the moral theology behind the TWU code of conduct. They have not, to this point, been viewed as unfit to practice and to teach. But if the TWU application is denied, we can expect that pressure will be brought to bear on them as well. It is intolerable that lawyers should be required to conform their personal beliefs to someone else's view of what marriage ought to be and what its purpose is. But that will be the message if the TWU application fails.

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

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

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

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

Please note the 206 endorsements including judicial (retired) that follow. CLF would be pleased to provide further assistance in any way the LSUC believes would be appropriate. Thank you for your attention to this matter.

Sincerely,

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

Interim Executive Director
Member of the LSUC since 1985
CHRISTIAN LEGAL FELLOWSHIP / Alliance des chrétiens en droit
www.christianlegalfellowship.org
Suivez- nous sur / Follow us on www.twitter.com/CLF_Canada
In the Crossroads Centre, 1295 North Service Road, Burlington, ON

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198. J. David S. Avren, Director of Legal Services, BC Hydro, Vancouver, BC
199. Jeannette Savoie, Lawyer, Yellowknife, NT
200. Cornelis Van Dam, Th.D., Emeritus Professor of Old Testament, Canadian Reformed Theological Seminary
201. Timothy A. Stonhouse B.A. J.D., Former presiding Justice of the Peace in Alberta, Member of Alberta bar, presently practising in BC
202. Peter Bowal, Professor of Law, University of Calgary, former Presiding Justice of the Peace (AB), Calgary, AB.
203. Dr. Charles I. M. Lugosi, J.D. LL.M. M.B.E. S.J.D.(Doctor of Juridical Science) Barrister-at-Law, Adjunct Professor of Law, Laurier University, Brantford, ON (Intends to submit a separate, independent letter for consideration)
204. Bradley W. Miller, DPhil (Oxon), Associate Professor, Faculty of Law, University of Western Ontario
205. The Honourable Ernest A. Marshall QC
206. The Honourable George W. Baynton, retired Justice, Queen's Bench Court for Saskatchewan:

> "As a recently retired Justice of the Queen's Bench Court for Saskatchewan, I strongly endorse the CLF submission for the reasons that follow.
>
> "The constitutionally guaranteed freedom of speech and freedom of religion, which are stated by the *Charter* to be 'fundamental freedoms', have come under attack these days in a manner that could not have been anticipated a few years ago. One has no real value in the absence of the other. Traditionally the legal profession has fought hard to uphold and protect the constitutionally protected rights of Canadians even though in some cases the views of the individuals or groups in issue may not be those held by a majority of Canadians or those in the legal profession. As a former judge, I often rendered judgments to uphold the rights of litigants despite the fact that I did not endorse their views or agendas. I in turn felt secure that the courts would uphold my constitutionally protected rights, if they were ever violated, even though the court might not endorse my views or agendas. If a judge made his or her rulings involving fundamental rights on the basis of his or her views or opinions rather than in accordance with the rights protected by the Charter, the judge would not only be seriously in error, but would also bring the administration of justice into disrepute.
>
> "The justice system as a whole in a constitutionally protected democracy is responsible to uphold and do what it can to protect and uphold these fundamental rights. A democracy is kept healthy by the ability of its citizens to freely express their views and opinions. This stimulates debate which in turn fosters new ideas and solutions. Conversely a democracy that does not tolerate free speech on the basis that it must be confined to the views and opinions held by another segment of society, will become rigid and stagnant and will cease to remain a constitutionally protected democracy. Canadian society, with its multicultural make up, acknowledges the value of and necessity for tolerance. If I attempted to stifle or restrict the rights of others to express their views, just because those views differed from my own views which I maintained were constitutionally protected, I would be intolerant and possibly even bigoted. As long as our public institutions are not swayed by such intolerance, our freedoms will remain unscathed. But if such intolerance is supported by any segment of our justice system, including the legal profession and its governing bodies, our freedoms will be seriously undermined.

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

FOOTNOTES:
[1] *Civil Marriage Act*, S.C. 2005, c. 33.
[2] *Trinity Western University v. British Columbia College of Teachers,* 2001 SCC 31.

Sent by e-mail: jvarro@lsuc.on.ca

March 26, 2014

TWU Submissions
Policy Secretariat, Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Mr. Varro and others:

TWU should be accredited by LSUC under s. 7 of By-Law 4. I would be content if TWU were fairly persuaded to amend its covenant, but not if it were unfairly pressured to do so.

I am taking a position on my own behalf based on the legal, constitutional, and precedential position. LSUC has a duty in this context to decide and act fairly, and even judicially.

To deny accreditation to TWU based upon its covenant would be to:

1. Effectively discriminate against TWU graduates on the basis of religion and contrary to the text of s. 15 of the *Charter*;
2. Flout the authority of British Columbia, or any other Province, to have its own human rights codes;
3. Call into question the good character of religiously observant lawyers and paralegals or those who have ever attended a religious school, based on that fact alone; and
4. Raise serious questions about administrative fairness and the role and duty of LSUC under ss. 4.1 and 4.2 (especially 4.2.5) of the *Law Society Act*.

Based upon my readings including opinion letters and comments by others including the B.C. Civil Liberties Association:

1. TWU and its law school are in compliance with the British Columbia Human Rights Code and approved by the government of B.C.;
2. The B.C. Human Rights Code is consistent with the *Charter*;
3. The 2001 Supreme Court of Canada decision in *TWU v. BC College of Teachers* ("TWU 2001") is directly applicable, and there is no specific evidence of the type that case called for with respect to:
    a. prospective legal graduates of TWU;
    b. lawyers who did their first degree at TWU; or
    c. professional teachers who have attended TWU since 2001.
4. *Andrews v. Law Society of BC*, the very first Charter decision to deal with s. 15 equality, addressed discriminatory admission to the practice of law;
5. The Federal *Competition Act* applies to lawyers, paralegals and other regulated professions; and

6. Except for a few commenters with tenuous pedagogical concerns about faculty selection, there seem no concerns with the quality of legal education at TWU but only with the covenant.

Thus to deny accreditation to TWU would appear to be contrary to the principles set out in existing SCC precedents, the B.C. Human Rights Code, s. 15 of the *Charter* and Constitutional religious guarantees generally, and the role of the Law Society under the Act. It would also set a problematic precedent and raises the spectre of anticompetitive conduct (*i.e.* excluding potential qualified lawyers).

Consider some additional potential consequences of LSUC refusing to accredit based on the covenant:

1. If the PQ is elected in Québec and it or a future government imposes a Québec charter (possibly using notwithstanding clause) which discriminates by prohibiting university students, faculty and staff from wearing hijabs, or turbans, or yarmulkes, will McGill (or Montréal or Sherbrooke common-law programs) lose accreditation due to religious discrimination?
2. Assuming at least one provincial law society accredits TWU, what does this do to the interprovincial mobility agreement? How would Ontario treat TWU graduates be treated compared with NCA graduates from foreign institutions, including those who attended religious law schools elsewhere?
    a. Will the NCA and LSUC start requiring certified copies of law school codes of conduct or affidavit evidence regarding same from foreign-educated applicants? What about Windsor graduates who also got a degree from Detroit Mercy, a Catholic university?
3. Would a foreign-educated applicant from a country with a poor record vis-à-vis rights of women or minorities be refused for that reason? A lawyer who went to school in apartheid-era South Africa? And if not, what is the basis for refusing TWU so long as it complies with its own Canadian Province's human rights laws?
    a. Medicine does not refuse admission merely because medical education was in a place with a poor women's rights records, but acts only when there is specific evidence *e.g.* about different treatment or abuse reporting.
4. What about lawyers who went to Catholic law schools in the U.S., or other religious law schools, or religious universities for their first degree, or are religiously observant? If the objection to TWU is a hypothetical one based on presumptions of character of its graduates, then there are whole swaths of Ontario lawyers and paralegals to be interrogated.

The SCC's insistence on specific evidence is not only a legal requirement, but a practical one. It is not the proper role of LSUC to discriminate against and refuse to admit qualified applicants, nor to thwart the government of British Columbia and its human rights code, by denying accreditation to TWU.

Yours truly,

David Fernandes

March 26, 2014

To Whom It May Concern:

I'm writing to express my view that the Law Society of Upper Canada should not accredit Trinity Western University's law school. As a current law student and future member of the legal profession in Ontario, I will be ashamed if the Law Society gives a stamp of approval, on behalf of all legal professionals in the province, to a law school that openly discriminates against certain students, faculty and staff.

TWU's Community Covenant is discriminatory, plain and simple. It prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman." Students who do not comply with the Covenant may be expelled from the university.

A covenant that discriminated against people who engaged in sexual relationships with someone of a different race or religion would never be tolerated by the Law Society, and neither should one that discriminates against anyone who engages in a sexual relationship outside of heterosexual marriage.

Accrediting TWU's law school would be inconsistent with the Law Society's equity and diversity values, which seek "to ensure that both law and the practice of law are reflective of all peoples in Ontario." The Law Society itself has stated its commitment to working to ensure that "legal profession [is] free of harassment and *discrimination*." Moreover, the Law Society pledges to protect the public interest, and recognizes that, "to maintain the privilege of self-governance, the public interest must always be of paramount concern to the Law Society." Endorsing discrimination can never be in the public interest.

At a time when lawyers, firms, and law schools are becoming increasingly aware of the need to promote and ensure diversity within the legal profession, particularly from equity-seeking groups such as the LGBTQ communities, accrediting TWU would be a step backwards.

Thank you,
Esther Lexchin
JD Candidate 2014, University of Toronto Law School

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Achieving Together...

March 24, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto ON M5H 2N6

Dear Madam or Sir:

Thank you for this opportunity to participate in the dialogue regarding whether the Law Society of Upper Canada should concur with the accreditation of the new law school that will be opening at Trinity Western University (TWU) in British Columbia.

I am writing in my capacity as Executive Director of the Ontario Alliance of Christian Schools (OACS). Since 1952, the OACS is a service organization in Ontario dedicated to the advancement of quality Christian education that integrates faith and learning. Our membership consists of 70 independent Christian elementary and secondary schools in Ontario educating over 11,000 students each year. Graduates from our member schools can be found in all occupational and vocational segments of society in Canada and abroad, including membership in the Law Society of Upper Canada.

As you are assessing this issue, we wish to encourage you to endorse the accreditation of TWU's law school based on the following reasons:

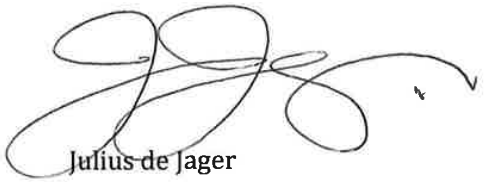
1. The school's proposal has been rigorously examined by both the Federation of Law Societies of Canada and the Ministry of Advanced Education of BC—both of which have given approval for the J.D. Program at TWU.
2. The opposition being raised against accreditation is prejudicial and unfounded. It finds its basis in the school's Community Covenant, specifically regarding sexuality. This same opposition was raised in 2001 when the Supreme Court of Canada ruled in favour of TWU with respect to being accredited to train teachers. The argument that TWU graduates would discriminate against LGBT persons lacked evidence in 2001. It can be disproven today by looking at the graduates of TWU programs, which include two professional schools and a business school. These graduates are successfully employed in both public and private sectors in a number of jurisdictions. The court made it clear that fear of future discrimination by TWU graduates was no reason to deny the University the ability to train teachers. The same reasoning should apply to lawyers.
3. Graduates should be judged on their conduct and competence. They should not be prejudged on the presumption that they may discriminate against LGBT persons in the future because they are graduates of TWU. The Law Society and the courts should be the place where a lawyer's professional misconduct (if it occurs) is addressed. This fundamental principle of a fair hearing in actual cases is something we feel the Law Society should model.

Cont'd

4. Freedom of conscience and religion is one of the fundamental freedoms in the Charter of Rights. By denying graduates of TWU because of the Community Covenant, the Law Society would be taking the position that freedom from discrimination based on sexual orientation is absolute, which is contrary to the SCC ruling that "Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute." (Trinity Western University v. College of Teachers, [2001] 1 S.C.R. 772, at para. 29).

We urge you to affirm the acceptance of graduates from the TWU Law School as worthy members of the Law Society of Upper Canada without prejudice relating to the religious character of the institution.

Sincerely,



Julius de Jager

Executive Director

JdJ:tb

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Toronto, ON M5H 2N6

Also via email: jvarro@lsuc.on.ca

RE: TRINITY WESTERN UNIVERSITY SCHOOL OF LAW

Dear Policy Secretariat,

The question Convocation will answer regarding Trinity Western University's School of Law is:

> *Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?*

The short answer is: of course it should.

In fact, to ask the question despite the conclusions of two professional legal opinions, the findings (after extensive investigation) of two government decision-making bodies, and the ruling of an 8-1 majority of the Supreme Court of Canada in a case barely a decade old with virtually the exact same fact scenario, demonstrates a bias amounting to a religious inquisition on the part of those asking the question. There is no doubt in my mind that if this were about an orthodox Jewish, Muslim, atheist, Black, feminist, LGBTQ or any other private law school formed along associational lines,[1] there would be no such "due diligence" practiced. This double standard is evidence for not only why we *should* accredit TWU, but also why we *need* to accredit TWU.

The short answer having been given, I shall take this opportunity to outline a few reasons why the answer should remain, "of course".

In response to those opposed to TWU

Some of those opposed to TWU's law school like to (ironically) quote from the 2001 *Trinity Western* Supreme Court case. "Heed these words!" they say, "The Court said, 'The proper place to draw the line in cases like the one at bar is generally between belief and conduct … The freedom to hold beliefs is broader than the freedom to act on them.'[2] Barring students from a law school is action," they say, "not mere belief."

[1] To be absolutely clear, I would fully support such private law schools (e.g. all black, all LGBTQ, all Muslim, etc.) on the condition that these schools produced lawyers who were competent in their understanding and practice of Canadian law.

[2] *Trinity Western University v. B.C.C.T.*, [2001] 1 S.C.R. 772 at para. 36. Incidentally, they ignore the paragraph before (para. 35) in which the court details the lack of any evidence whatsoever of discriminatory conduct by TWU's teacher graduates. The court states, "there is no evidence before this Court of discriminatory conduct by any graduate."

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But didn't the Supreme Court allow TWU to do just that in the 2001 case? In fact, the Court *ordered* the B.C. College of Teachers to give accreditation to TWU,[3] despite the fact that the school was exercising this covenant. So, did the Court misapply its own rules in the very case it was deciding at that moment? Obviously not.

However, those opposed counter that TWU's policy targets not just homosexual behaviour, but homosexual people, citing as authority para. 123 of the recent hate speech case from the Supreme Court, *Saskatchewan (Human Rights Commission) v. Whatcott*.[4] They explain that characterizing the issue as one of behaviour rather than identity is (to quote Clayton Ruby in an op-ed published in the *National Post*) "an old trick that bigots have long used to mask their views."[5]

However, such objectors are selective in their quoting of the Supreme Court and miss an important nuance. In the paragraph just before the one to which they refer, Justice Rothstein states, "I agree that sexual orientation and sexual behaviour can be differentiated for certain purposes [emphasis mine]."[6] Do objectors like Mr. Ruby mean to suggest that Justice Rothstein and the five Supreme Court justices who signed their name to his judgment are "bigots" who are "masking their views"?

Furthermore, the evidence does not support these objectors' claim. There are a number of homosexual men and women who attend TWU. Again, the irony is rather thick: These objectors totally ignore or refuse to acknowledge the existence of self-identifying homosexual men and women who willingly adhere to TWU's community covenant. These students' existence is ignored because of… their behaviour! "Such individuals can't really be gay because, judging by their (lack of certain) behaviour, they aren't gay." Such hypocrisy is disappointing to say the least.

Herein lies the false assumptions made by those opposed: All assume that it is the school imposing the community covenant on the students, they assume it is a large, powerful, mean institution discriminating against small, powerless, weak individuals. But that's not the way a covenant works. A lifestyle covenant is something that an individual willingly chooses to adopt in order to guide his or her own path.

Canadians who share a moral code and wish to embark on a corporate enterprise together, guided by that particular religious code, are protected by the *Charter's* guarantee of freedom of association. That freedom, to be clear, includes an absolute protection of the constitutional rights of individuals when those rights are exercised in common with others.

That's what TWU is: More than 4,000 individuals who see value in governing themselves according to a certain code that happens to be religiously informed. There is no harm in that.

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[3] *Trinity Western University v. B.C.C.T.*, [2001] 1 S.C.R. 772 at para. 43, 44.

[4] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, para. 123.

[5] Clayton Ruby and Gerald Chan, "A law school at Trinity Western University will impose a queer quota" *National Post* (29 July 2013) online: <http://fullcomment.nationalpost.com/2013/07/29/clayton-ruby-and-gerald-chan-a-law-school-at-trinity-western-university-will-impose-a-queer-quota/>.

[6] *Whatcott*, *supra* note 4 at para. 122.

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A word on religious and associational freedoms

It is helpful here to discuss the legal principles surrounding the fundamental freedoms of religion[7] and association[8] as protected by section 2 of the Canadian *Charter of Rights and Freedoms*. These are especially relevant to the discussion of TWU's School of Law.[9]

The *Universal Declaration of Human Rights* describes the freedom of religion and conscience as the "freedom, either alone or in community with others and in public or private, to manifest [one's] religion or belief in teaching, practice, worship and observance."[10] The *Declaration* recognizes that freedom of religion is for the individual *and* for the community; it is a freedom practiced privately *and* practiced publicly, it entails a freedom to believe *and* a freedom to manifest those beliefs through actions.

Chief Justice McLachlin echoed this sentiment in a speech in October 2002 where she stated that "the rule of law must incorporate within itself some space for the manifestation of religious conscience" and that "the courts have maintained an enduring responsibility for finding, in the comprehensive claims of the rule of law, a space in which individual ***and community adherence to religious authority can flourish***."[11]

More recently, in the *Hutterian Brethren* case, the Supreme Court again emphasized the importance of recognizing the community and collective aspect of religious rights. Justice LeBel wrote,

> [Freedom of religion] includes a right to manifest one's belief or lack of belief... It also incorporates ***a right to establish and maintain a community of faith that shares a common understanding*** … Religion is about religious beliefs, but also about religious relationships… [This case] raises issues about belief, but also about the maintenance of communities of faith.[12]

This recognition of a communal right to the free exercise of religion is important for creed-identified individuals who wish to collectively express their identity or who wish to engage in

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[7] *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 [*Charter*], at s. 2(a), "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion…"

[8] *Charter*, at s. 2(d), "Everyone has the following fundamental freedoms: …(d) freedom of association…"

[9] In addition to the s. 2 fundamental freedoms, we could also look to other sections including section 15 and how that clause also applies to and protects the individual members of a Christian institution. Iain Benson makes this observation: "There are various rights within Section 15 that mirror rights found elsewhere. Thus, the right to be free from discrimination on the basis of religion is an equality dimension of religious rights in addition to the freedom of conscience and religion in Section 2(a). Over the years it has been startling to see how, for example, one aspect of an equality right, such as "sexual orientation," is hived off and played against a Section 2(a) right without any realization that there is also a corresponding equality right touching on religion within Section 15 itself." Iain T. Benson, "The Freedom of Conscience and Religion in Canada: Challenges and Opportunities" (2007) 21 Emory Int'l L. Rev. 111 at 148.

[10] *Universal Declaration of Human Rights*, G.A. Res. 217A(III), UN Doc. A/810, at 71 (1948), art.18.

[11] The Right Honourable Beverley McLachlin, PC, "Freedom of Religion and the Rule of Law: A Canadian Perspective" speech published in Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (Montreal: McGill-Queen's University Press, 2004) 12 at 20 [emphasis added].

[12] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 180-182 [emphasis added]. See also the dissenting opinion of Justice Abella (at para. 114, 118, 131, 164-65) where she discusses the integral role that community plays in many religious traditions. Although both Justice Abella and Justice LeBel are writing in dissent, the majority did not disagree on this point.

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enterprise together to the exclusion of others. Justice LeBel's statement recognizes that freedom of religion includes a right to establish and maintain a community of faith that shares a common understanding about lifestyle or morality; interference with their belief system and their statement of values is an infringement on their freedom to manifest their religious beliefs as they see fit.

Like the "jealously guarded"[13] protection of freedom of religion, the freedom of association has been encouraged for centuries. John Stuart Mill wrote that "from this liberty of each individual follows the liberty, within the same limits, of combination among individuals: freedom to unite, for any purpose not involving harm to others…"[14] It is clear that the freedom of association is an individual right and not a collective right. As Professor Hogg puts it, "The right protects the exercise in association of the *constitutional* rights of individuals… freedom of religion [does] not lose constitutional protection when exercised in common with others."[15] The communal religious rights of individual members of religious organizations or institutions (like those within the Trinity Western community as discussed above) are also protected by their freedom of association. This should include the freedom to limit membership in the religious community; this necessarily includes limiting enrolment to believers who share certain religious perspectives and values. The Supreme Court explained that to not allow for this is contradictory and otherwise defeats the purpose of the s. 2(d) freedom:

> [The] freedom of association should guarantee the collective exercise of constitutional rights. Individual rights protected by the Constitution do not lose that protection when exercised in common with others. People must be free to engage collectively in those activities which are constitutionally protected for each individual."[16]

On a religious definition of marriage

The question the LSUC must answer then is this: Can a religious institution hold to a religious definition of marriage? Can religious lawyers hold religious definitions of marriage? I sure hope so. Otherwise all of the assurances made by those advocating for a same-sex marriage law prior to 2005 were at best naive noise, at worst, outright lies. In balancing between equality for gays and lesbians and religious freedom, the *Civil Marriage Act* redefined marriage for civil purposes (that phrase is

[13] *Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698 at para. 53.

[14] John Stuart Mill, *On Liberty*, eds. by David Bromwich and George Kateb (New Haven: Yale University Press, 2003).

[15] P.W. Hogg, *Constitutional Law of Canada*, student ed. (Toronto: Thomson Carswell, 2007) at 1009.

[16] *Reference Re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313 at para 172. I believe that, with the exception of associational rights in relation to employment and labour disputes, associational rights have otherwise been undervalued. I agree with Prof. David Schneiderman, who suggests that "associational rights may provide a key resource to minorities who have experienced oppression elsewhere but who do not qualify for group-specific measures in multi-cultural societies. Associational rights may act in such instances as a prophylactic between the state and the pursuit of group purposes. To the extent, then, that a pluralist theory of the constitution accommodates vulnerable communities and subcultures, the world will be made a safer place. Associational rights, in this way, generate resources for survival in a modern setting." [David Schneiderman, "Associational Rights, Religion, and the *Charter*" in Richard Moon, ed., *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008) 65 at 80].

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emphatically used throughout the *Act*) but allowed *religious* individuals and institutions (this would include TWU) to maintain *religious* definitions of marriage.[17]

The preamble could not be clearer on this point:

> WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;
>
> WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;[18]

And, for greater certainty, the *Act* expressly notes:

> **3.1** For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.[19]

Now I admit that the *Civil Marriage Act* is federal law and the LSUC is a provincial institution. But if those opposed to TWU are citing our gay-marriage law as the reason why TWU is "out of touch" with our laws, then they need to be consistent. TWU is not out of touch with the *Civil Marriage Act* – TWU fits squarely within it as seen above. To refuse to license a competent TWU law graduate would be to deprive a person of "any" benefit, "solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Charter*." The balance requires that religious institutions and individuals be allowed to hold a religious definition of marriage, as confirmed in TWU's community covenant. Anything less would be no balance at all to the detriment of religious freedom.

LSUC's own commitment to religious freedom

In the same year that the *Civil Marriage Act* was passed, the LSUC also approved and published an important statement of principles in relation to religious freedom. The document, *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada*, outlines the history of discrimination against religious people in Canada and internationally, outlines legislation that has been developed to counteract this and concludes with some principles. These principles are helpful for the purposes of this discussion.[20]

[17] *Civil Marriage Act*, S.C. 2005, c. 33.

[18] *Civil Marriage Act*, preamble.

[19] *Civil Marriage Act*, s. 3.1.

[20] In case the benchers of the Law Society have misplaced their copy of this document, I am attaching a full PDF version of the Statement to the e-version of this submission and have reproduced in an appendix a copy of the principles from that document.

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If this Statement of Principles is to have any meaning at all, I trust Convocation will take the words of the document to heart and apply them to the situation at hand. To quote a few key phrases from the document as they apply to TWU:

> 49. The incidents of religiously motivated discrimination reinforce the importance for the Law Society to adopt a Statement of Principles that recognizes religious diversity.
>
> 50. The Law Society of Upper Canada, recognizing that:
>
> a. Respect for religious diversity advances the cause of justice;
>
> b. The rule of law is enhanced when religiously motivated discrimination or hatred is not tolerated;
>
> c. There continues to be a disturbing number of incidents of religious discrimination… in Ontario and in Canada…;
>
> d. The laws of Ontario and Canada guarantee freedom of conscience and religion, and prohibit discrimination… on the basis of religion or creed;
>
> e. The international community has condemned religious discrimination as harmful and unacceptable…; and
>
> f. Although particular groups may be frequent targets of religious discrimination, religious hatred and discrimination is a problem of Canadian society as a whole;
>
> 51. The Law Society of Upper Canada condemns in the strongest terms all manifestations and forms of hatred and discrimination based upon religious and spiritual beliefs… [and] the Law Society condemns all forms of religious intolerance directed at any group or community.
>
> 52. The Law Society of Upper Canada undertakes to promote and support religious understanding and respect both inside and outside the legal profession.
>
> 53. …the Law Society of Upper Canada has undertaken a strategy… to promote religious respect in our profession, society and the world.
>
> 54. This report demonstrates that there are many religious practices in Ontario and Canada… The Law Society has been proactive in creating this Statement of Principles to encourage religious respect in the legal profession.[21]

To deny competent TWU law graduates a license to practice in Ontario on the basis of their religious convictions as it pertains to their religious understanding of marriage, human sexuality and how they choose to govern their own lives is to actively violate the LSUC's own principles.

Lessons from the *Ontario Human Rights Code*

There are also lessons that can be learned, by analogy, from the *Ontario Human Rights Code*. The *Code* allows for certain exemptions from the general prohibition against employment discrimination on the basis of creed. The *Code* bans employment discrimination in section 5(1)[22], but allows an

[21] *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada,* (March 10, 2005) The Law Society of Upper Canada, pp. 23-25.

[22] *Human Rights Code*, R.S.O. 1990, c.H.19., at s. 5.(1), which reads, "Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability."

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exemption in section 24(1).[23] While admittedly there is a difference between discrimination in employment and discrimination in service or enrolment, nevertheless, the principles animating the exemption for the one can inform the other.

The Supreme Court of Canada explained the purpose of the exception:

> …the courts should not … consider it merely as a limiting section deserving of a narrow construction. ***This section***, while indeed imposing a limitation on rights in cases where it applies, ***also confers and protects rights***. I agree with Seaton J.A. …:
>
> > This is the only section in the Act that specifically preserves the right to associate… In a negative sense [this section] is a limitation on the rights referred to in other parts of the Code. But in another sense ***it is a protection of the right to associate***.[24]

Justice Beetz later reinforced this purposive approach in a case examining the same clause from another jurisdiction. He stated that the clause was

> designed ... to allow certain non-profit institutions to create distinctions, exclusions or preferences which would otherwise violate the [Québec] *Charter* if those distinctions, exclusions or preferences are justified by the … religious … nature of the institution in question. In this sense, [the clause] confers rights upon certain groups. [It] was ***designed to promote the fundamental right of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits***. Its effect is to establish the primacy of the rights of the group over the rights of the individual in specified circumstances.[25]

The ramifications of limiting associational rights reach beyond religious communities.[26] Note that the exception in section 24 is a protection not only of religious associations but also fraternal, social and cultural groups. To ignore the broad, purposive approach advanced by Justice Beetz will also negatively affect other groups that have suffered historical disadvantage. For example, a gay baseball league in the United States was recently under fire for removing a team because three of the teammates were bi-sexual and not fully gay.[27] Objectively viewed, this might make sense, but it

[23] *Ibid.*, at s. 24.(1)(a) which reads, "The right under section 5 to equal treatment with respect to employment is not infringed where, (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and *bona fide* qualification because of the nature of the employment."

[24] *Caldwell v. Saint Thomas Aquinas High School*, [1984] 2 S.C.R. 603 at 626 [emphasis added].

[25] *Brossard (Town) v. Québec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279; [1988] S.C.J. No. 79 at para. 100 [emphasis added].

[26] I agree with the conclusions of Grim and Finke who describe religious rights as the "canaries in the coal mine… serving as a 'litmus indicator of whether freedom exists not only for them – but for all others in their societies.' We expand the litmus test beyond a particular religious group to religious freedoms in general, and we agree that the violations of vulnerable religious liberties indicate potential threats to other liberties as well." Brian J. Grim & Roger Finke, *The Price of Freedom Denied* (New York: Cambridge University Press, 2011) at 202.

[27] United States District Court Judge John Coughenour ruled in favour of the North American Gay Amateur Athletic Alliance (NAGAAA) and dismissed discrimination claims against it. The Court found that "it is reasonable that an organization seeking to limit participation to gay athletes would require members to express whether or not they are gay athletes." The complaint was based on other competitors' belief that more than two members of the San Francisco D2 team were heterosexual, and therefore violated Rule 7.05 of the NAGAAA Softball Code, which limits the participation of non-LGBT players to only two per team. See *Apilado v. North American Gay Amateur Athletic Alliance* (W.D. Wash. Nov. 10, 2011).

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violates the league's rights to define for themselves who their members are. Is the LSUC willing to open this door by banning from the practice of law graduates from one identifiable group?

On balancing interests

The extent the State (including the Law Society) can intrude in the context of confessional schools (including Trinity Western University) needs to be balanced against the religious objectives and freedoms of those who have established the schools for confessional purposes. Where a government regulation, or the exercise of ministerial discretion, interferes with what it means to be a confessional school,[28] such regulation or discretion needs to be appropriately constrained.

Teaching from a religious perspective is not something that is done arbitrarily, or something that can be separated from the academic curriculum. The purpose of confessional schools is not to be religiously "neutral", but to teach from a particular religious perspective that is fused into all courses and programs and informs community life generally. It cannot be removed or altered without undermining the character and purpose of what it means to be a confessional school or community. The refusal to recognize the graduates of such schools despite demonstrated competence would be a significant infringement of their rights.

The State's role in education is to see that a certain quality of education is achieved. This is true for the Law Society of Upper Canada as well: to make sure that a certain quality or competency is attained and maintained, in order to ensure that the practice of law remains above reproach. This is typically done through the articling program, the ethics modules and the Bar admissions exams. The religious beliefs of the individual lawyers applying to practice should not factor in to this determination. The State and LSUC are interested in the ends (legal scholarship, ethics, competency, etc.), not the means to that end. LSUC does not have the power to preclude or prevent a confessional means to this end. Indeed, a competent law student should have the "the right to declare [his or her] religious beliefs openly and *without fear of hindrance or reprisal*…"[29] Barring such a student from the practice of law strikes me as a clear "hindrance or reprisal" for a religious conviction and identity.

Confessional schools form part of, and have a place in, our multicultural, religiously diverse society.[30] In *Big M Drug Mart*, the Supreme Court of Canada recognized that "[a] truly free society is one that can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs, and codes of conduct."[31] This was later affirmed in *Trinity Western*, where the Supreme Court noted,

[28] This would include dictating what is and is not acceptable dogma in relation to religious matters, including the religious definition of marriage.

[29] *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 at para 94 [emphasis added].

[30] The diversity of Canada is also a *Charter* value, protected under section 27: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

[31] *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295, at para 94.

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"The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected."[32]

Continuing to recognize the legitimacy and religious integrity of confessional schools, *and their graduates*, as alternatives to State-run schools, is entirely appropriate – indeed necessary – within our pluralistic society. There is no question that these schools have a right to exist. Their existence is undermined if they are then not permitted to practice after having been taught from a confessional perspective.

Justice Peter Lauwers (Ontario Court of Appeal) quipped in a recent speech, "The issue, when it comes to religion, is whether the public square should be naked or neutral. Should the public square be stripped of religion, or should it be merely indifferent to religion?" To suggest that a lawyer cannot be educated at a Christian university and practice in Ontario is to strip our province's public square of religion. No, Canada is a welcoming country, Ontario a tolerant province. We are to be inclusive, truly liberal. As William Galston wrote:

> A liberal polity guided… by a commitment to moral and political pluralism will be parsimonious in specifying binding public principles and cautious about employing such principles to intervene in the internal affairs of civil associations. It will, rather, pursue a policy of *maximum feasible accommodation*, limited only by the core requirements of individual security and civic unity [emphasis in original].[33]

The Law Society of Upper Canada should recognize the accreditation of Trinity Western University's School of Law under By-Law 4.

Respectfully submitted for your consideration,

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All that is necessary for the triumph of evil is that good men do nothing.

[32] *Trinity Western University v. B.C.C.T.*, [2001] 1 S.C.R. 772 at para. 33.

[33] William A. Galston, *The Practice of Liberal Pluralism* (New York: Cambridge University Press, 2005) at 20.

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APPENDIX

RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS

A STATEMENT OF PRINCIPLES OF THE LAW SOCIETY OF UPPER CANADA

March 10, 2005

VI – RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS – STATEMENT OF PRINCIPLES

49. The incidents of religiously motivated discrimination and hatred outlined in this report and the Canadian and international condemnation of discrimination and hatred based on religion reinforce the importance for the Law Society to adopt a Statement of Principles that recognizes religious diversity. Therefore, the Law Society adopts the following Statement of Principles.

50. The Law Society of Upper Canada, recognizing that:

    a. Respect for religious diversity advances the cause of justice;

    b. The rule of law is enhanced when religiously motivated discrimination or hatred is not tolerated;

    c. There continues to be a disturbing number of incidents of religious discrimination and religiously motivated hate crimes in Ontario and in Canada, as well as in the world;

    d. The laws of Ontario and Canada guarantee freedom of conscience and religion, and prohibit discrimination and the wilful promotion of hatred on the basis of religion or creed;

    e. The international community has condemned religious discrimination as harmful and unacceptable, and has recommended that measures be undertaken to combat religious hatred and discrimination; and

    f. Although particular groups may be frequent targets of religious discrimination, religious hatred and discrimination is a problem of Canadian society as a whole;

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51. The Law Society of Upper Canada condemns in the strongest terms all manifestations and forms of hatred and discrimination based upon religious and spiritual beliefs. Although current circumstances centre predominantly on issues of anti-Semitism and Islamophobia, the Law Society condemns all forms of religious intolerance directed at any group or community.

52. The Law Society of Upper Canada undertakes to promote and support religious understanding and respect both inside and outside the legal profession.

CONCLUSION

53. In accordance with our mandate and the Bicentennial Report, the Law Society of Upper Canada has undertaken a strategy to discourage all forms of hatred and discrimination based on religion and to promote religious respect in our profession, society and the world.

54. This report demonstrates that there are many religious practices in Ontario and Canada. Yet despite the existence of religious diversity in our country, there exist many incidents of religiously motivated hate crimes and discrimination. The legislation and jurisprudence clearly indicate that religious disrespect is not acceptable. The Law Society has been proactive in creating this Statement of Principles to encourage religious respect in the legal profession.

55. The separate report entitled Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law will present a dialogue with various members of the profession. This is another aspect of the Law Society’s strategy aimed at discouraging religious hatred and discrimination. The Law Society anticipates doing other projects for this strategy, such as developing continuing legal education programs, public education programs and outreach programs with organizations that promote religious respect.

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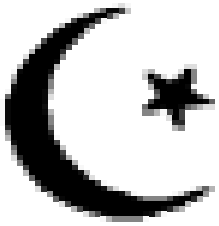
RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS

A STATEMENT OF PRINCIPLES OF THE LAW SOCIETY OF UPPER CANADA



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THE LAW SOCIETY OF UPPER CANADA

RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS

A STATEMENT OF PRINCIPLES OF THE LAW SOCIETY OF UPPER CANADA

March 10, 2005

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"What makes our communities work is our deep commitment to human rights and mutual respect. The Government is committed to these values […] It will take measures to strengthen Canada's ability to combat racism, hate speech and hate crimes, both here at home and around the world […] What makes our communities vibrant and creative is the quality of their cultural life. The Government will foster cultural institutions and policies that aspire to excellence, reflect a diverse and multicultural society, respond to the new challenges of globalisation and the digital economy, and promote diversity of views and cultural expression at home and abroad."

Excerpt from Speech from the Throne
to Open the First Session of the Thirty-Eighth Parliament of Canada
October 5, 2004

INTRODUCTION

1. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report)*[1] and recognized its commitment to the promotion of equality and diversity in the legal profession and its responsibility to regulate and provide services to an increasingly diverse legal profession[2] and population. Recommendation 1 of the *Bicentennial Report* provides "The Law Society should ensure that the policies it adopts actively promote the achievement of equality and diversity within the profession and do not have a discriminatory impact." The Statement of Principles presented in this report promotes respect for religious diversity and condemns religiously motivated hatred and discrimination based on religion, in accordance with the Law Society's commitment to promote equality and diversity, and more specifically recommendation 1 of the *Bicentennial Report.*

2. There is great diversity in the religious[3] and spiritual beliefs and practices of people in Ontario and in Canada. This diversity, together with the values and spirituality that are shared in Ontario, in Canada and throughout the world,

[1] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).
[2] For information about the demographics of the legal profession, see Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto, October 2004).
[3] In this report, the term "religious" belief includes "spiritual" belief. The terms "religion" and "creed" are used interchangeably.

should be celebrated. Instead, individuals and communities continue to be disrupted by religious hatred and discrimination.[4]

3. Hatred and discrimination on the basis of creed or religion are not acceptable. The Ontario *Human Rights Code*[5], the *Canadian Human Rights Act*[6], the *Canadian Charter of Rights and Freedoms*[7] (the *Charter*), the *Criminal Code*[8], as well as the Law Society of Upper Canada *Rules of Professional Conduct*[9] contain provisions that recognize the value of religious or spiritual beliefs and/or prohibit discrimination and the wilful promotion of hatred on the basis of religion or creed.

4. The Law Society of Upper Canada recognizes the importance of promoting religious diversity and respect for religious beliefs. On April 22nd, 2004, Convocation passed a motion that the Law Society's Equity and Aboriginal Issues Committee and the Law Society's Government Relations Committee recommend to Convocation for Convocation's approval the role the Law Society should play and the positive steps it should take to discourage anti-Semitism and all forms of hatred or discrimination based on religion in our profession, our society and the world, and to promote religious respect in our profession, our society and the world.

5. In May 2004, a Working Group on Anti-Semitism and other Forms of Hatred and Discrimination Based on Religion (Working Group) was created with members of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, the Government Relations Committee and other interested benchers. Joanne St. Lewis is Chair of the Working Group. The members of the Working Group are: Andrea Alexander, Gary Gottlieb, Thomas Heintzman and Mark Sandler.

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[4] See *infra* paragraph 22 for a review of serious religiously motivated hate incidents that were reported in Ontario in 2004.
[5] Ontario *Human Rights Code,* R.S.O. 1990, c. H. 19.
[6] *Canadian Human Rights Act,* R.S. 1985, c. H-6.
[7] *Canadian Charter of Rights and freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
[8] *Criminal Code*, R.S.C. 1985, c. C-46.
[9] *Rules of Professional Conducl* (Toronto: Law Society of Upper Canada, November 1, 2000).

6. The Working Group decided that the Law Society should develop programs and initiatives to discourage anti-Semitism and all forms of hatred or discrimination based on religion, and to promote religious respect. Some of the initiatives proposed include creating a statement of principles; developing education and outreach programs; sponsoring and attending community events; recognizing lawyers who demonstrate a commitment to the issues; and publishing information on a regular basis about the importance of promoting religious and spiritual respect and discouraging hatred and discrimination based on religion.

7. As part of the strategy to promote religious respect and discourage all forms of hatred and discrimination based on religion, the Working Group developed a *Statement of Principles* for the legal profession, included as Part VI of this report. The adoption of the *Statement of Principles* is well within the mandate of the Law Society "to govern the legal profession in the public interest by […] upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law". A *Statement of Principles* for the legal profession that promotes respect for religious belief and condemns hatred or discrimination based on religion not only advances the cause of justice and the rule of law, but also serves to educate the legal profession in the public interest.

8. The Working Group also decided that a cross-section of the profession should be interviewed about the relationship between their faith/spiritual belief(s) and practices, the rule of law and legal practice. The exercise revealed the commonality in the values and respect for human dignity of each religion. The information gathered through these interviews will be included in a separate report entitled *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law*. The following individuals were interviewed: Kiran Kaur Bhinder (Sikh), Judith Holzman (Jewish), Douglas Elliott (Christian), Vinay Jain (Jain), John Borrows (Aboriginal), Amina Sherazee (Muslim), Anita Balakrishna (Hindu) and Eric Nguyen (Buddhist).

9. This report is divided as follows:

I- THE MEANING OF "RELIGION" AND "CREED"
II- ONTARIO AND CANADA'S PROFILE
III- RELIGIOUSLY-MOTIVATED DISCRIMINATION AND HATE CRIME IN ONTARIO AND CANADA
IV- LEGAL DEVELOPMENTS IN ONTARIO AND CANADA
V- THE INTERNATIONAL POSITION
VI- STATEMENT OF PRINCIPLES

I – THE MEANING OF "RELIGION" AND "CREED"

10. The term "creed" has often been used in Canadian legislation and case law interchangeably with "religion". While the Ontario *Human Rights Code* promotes equal treatment with respect to employment and the provision of services without discrimination because of creed[10], the *Charter*[11] and the *Canadian Human Rights Act*[12] promote equality without discrimination because of religion.

11. The Ontario Human Rights Commission and the Tribunal have interpreted creed broadly to include religion. Creed means a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a requisite. The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed.

12. Although religion is not defined in the Ontario *Human Rights Code,* the *Canadian Human Rights Act* or the *Charter,* the Supreme Court of Canada considered the definition of the term "religion" and religious practices in *Syndicat Northcrest v. Amselem* [13]. The appellants, all Orthodox Jews, set up

[10] *Supra* note 5.
[11] *Supra* note 7, section 15.
[12] *Supra* note 6.
[13] *Syndicat Northcrest v. Anselem*, [2004] S.C.J. No. 46 at para. 39 (QL).

"succahs" on their balconies for the purposes of fulfilling the biblically mandated obligation of dwelling in such small enclosed temporary huts during the annual nine-day Jewish religious festival of Succot. The respondent, the syndicate of co-ownership Syndicat Northcrest, requested their removal, claiming the succahs were in violation of the by-laws as stated in the declaration of co-ownership, which prohibited decorations, alterations and constructions on the balconies. The respondent proposed to allow the appellants to set up a communal succah in the gardens. The appellants expressed their dissatisfaction with the proposed accommodation, explaining that a communal succah would not only cause extreme hardship with their religious observance, but would also be contrary to their personal religious beliefs, which, they claimed, called for the setting up of their own succahs on their own balconies. The respondent filed an application for a permanent injunction prohibiting the appellants from setting up succahs and, if necessary, permitting their demolition.

13. The Supreme Court of Canada defines religion and discusses the breadth of freedom of religion as follows:

> [Religion means] [f]reely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith […]
>
> Freedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials. But, at the same time, this freedom encompasses objective as well as personal notions of religious belief, "obligation", precept, "commandment", custom or ritual. Consequently, both obligatory as well as voluntary expressions of faith should be protected under the Quebec (and the Canadian) *Charter*. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance that attracts protection. [14]

[14] *Ibid* at paras. 46-47.

II – ONTARIO AND CANADA'S PROFILE

14. Canada is committed to human rights, mutual respect and the promotion of diversity and multiculturalism, including diversity of religious and spiritual beliefs. Responses to the 2001 Canadian Census indicate that more than twenty four million people in Canada, or eighty three percent of Canadians, identify as being of a religious or spiritual faith. In Ontario, nine and a half million people, or eighty four percent, identify as being of a religious or spiritual faith. The Census identifies nine majority faiths in Canada and in Ontario: Catholic, Protestant, Christian Orthodox, Christian not included elsewhere, Muslim, Jewish, Buddhist, Hindu and Sikh. In addition, approximately 65,000 people in Canada, and 19,000 people in Ontario, indicated their religion as being other than those already listed.

15. **Selected Religions, Ontario and Canada (2001 Census)**[15]

	Canada	**Ontario**
Total population	**29,639,035**	**11,285,550**
Catholic	12,936,905	3,911,760
Protestant	8,654,850	3,935,745
Christian Orthodox	479,620	264,055
Christian not included elsewhere	780,450	301,935
Muslim	579,640	352,530
Jewish	329,995	190,795
Buddhist	300,345	128,320
Hindu	297,200	217,555
Sikh	278,410	104,785
Eastern religions	37,550	17,780
Other religions	63,975	18,985
No religious affiliation	4,900,090	1,841,290

[15] Statistics Canada, "Selected religions, provinces and territories (2001 Census)", online: http://www.statcan.ca/english/Pgdb/demo30b.htm.

III – RELIGIOUSLY-MOTIVATED DISCRIMINATION AND HATE CRIME IN ONTARIO AND CANADA

16. Notwithstanding the diversity of religious beliefs in our country, there has been a disturbing rise in religiously motivated discrimination and hate crime over the last several years in Ontario and Canada. A 2001-2002 survey of twelve of the major police forces in Canada identified 928 hate crimes committed in those jurisdictions during the period.[16] The results showed that 43% of the hate crimes were motivated by religion. The survey confirmed that there was a spike in the number of hate crimes committed in the months immediately following the September 11, 2001, terrorist attacks in the United States. There were approximately three times as many hate crimes recorded in Canada during the two months immediately after September 11, 2001 as there were during the same two-month period the year before.[17] Although the level of hate crime decreased again after its peak in the latter months of 2001, hate crimes motivated by religion continued to be committed over the duration of the survey period. Two trends identified by the survey were that Jews or their institutions were targeted in 25% of hate crimes, more often than any other group targeted in any type of hate crime. Jews were also the most frequent targets of hate crimes motivated by religion, followed by Muslims.

17. The League for Human Rights of B'nai Brith Canada recently released its 2004 *Audit of Anti-Semitic Incidents,* which indicates that anti-Semitic incidents in Canada has risen by 46.7% from the previous year.[18] In total, 857 incidents were

[16] The Canadian Centre for Justice Statistics, *Pilot Survey of Hate Crime* (Results released June 1, 2004); summary available online: http://www.statcan.ca/Daily/English/040601/d040601a.htm. The Police Forces surveyed were Calgary, Edmonton, Halton Regional, Montreal, Ottawa, Royal Canadian Mounted Police (excluding detachments from British Columbia), Regina, Sudbury, Toronto, Waterloo, Windsor, and Winnipeg. These services represent about 43% of the national volume of crimes measured by the Uniform Crime Reporting Survey.

[17] *Ibid*.

[18] League for Human Rights of B'nai Brith Canada, *Audit of Antisemitic Incidents, 2004* (published in March 2005). Available online: http://www.bnaibrith.ca/pdf/audit2004.pdf. The 2002 *Audit* indicates that 459 anti-Semitic incidents were reported to B'nai Brith Canada's League of Human Rights that year, an increase of 60.48% from the 286 incidents reported in 2001. The 2003 *Audit* revealed that 584 anti-Semitic incidents were reported, representing an additional 27.2% increase over 2002. This was the highest number of incidents in the 20-year history of the *Audit*. The types of incidents reported each year ranged from harassment to vandalism to severe violence.

reported, the highest number in the twenty-two year history of the Audit. Since 2000, the total number of incidents has increased more than three-fold. Harold Davis, National President of B'nai Brith Canada stated in a press release "The threshold for what constitutes anti-Semitic activity continues its downward cycle, with open expressions of anti-Semitism being increasingly tolerated. A climate is being created where acts of anti-Semitism have simply become so commonplace, that the perpetrators of these crimes are often showed lenience, with their acts brushed aside or labelled as mere 'pranks'." Frank Dimant, Executive Vice-President of B'nai Brith Canada, also states: "A disturbing trend has been detected whereby incidents of anti-Semitism are becoming increasingly violent. Individuals are acting out their prejudices in less restrained fashion. Every concerted effort must be made to thwart this dangerous pattern, so that these expressions of hatred do not escalate. We've already seen the bombing of a Jewish elementary school. Surely, this should be enough to sound the alarm."[19]

18. Since September 2001, The Council on American-Islamic Relations Canada (CAIR-CAN) has documented hate activity against 19 Islamic institutions and mosques, including attempted arson, destruction and defacement of mosque property, and graffiti. Six of those incidents have occurred in the last 12 months.[20]

19. In addition to hate incidents, religious communities face a lack of acceptance of their religious practices. Those incidents occur at school or work. Where freedom of religion is litigated[21], the students and families at the centre of these controversies have faced anger and hostility from others.

B'nai Brith Canada, *2002 Audit of Anti-Semitic Incidents,* online: http://jewishcanada.ca/publications/audit2002/audit2002-00.html. B'nai Brith Canada, *2003 Audit of Anti-Semitic Incidents,* online: www.bnaibrith.ca/publications/audit2003/audit2003-02.html.

[19] B'nai Brith press release posted March 15, 2005, available online at: http://www.bnaibrith.ca/prdisplay.php?id=886.

[20] On line information from www.caircan.ca

[21] Examples of case law on point: *Peel Board of Education v. Ontario Human Rights Commission* (1991), 3 O.R. (3d) 531 (Ont. Ct. Gen. Div. (Div. Ct.)); *Multani(tuteur de) c. Commission scholaire Marguerite-Bourgeoys,* [2004] J.Q. no. 1904 [*Multani*], leave to appeal to S.C.C. requested.

20. In September 2003, at the invitation of the Canadian government, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance visited Canada, and reported on his findings. In his report, the Special Rapporteur made note of the increase in anti-Semitic activity in Canada in recent years, as well as the discrimination and hate directed at Muslims in the wake of September 11, 2001. The Special Rapporteur made particular reference to the unique challenges faced by Muslim women, including discrimination related to wearing the hijab. Among the conclusions and recommendations of the Special Rapporteur was the recognition that the "resurgence of anti-Semitism and Islamophobia requires not only vigilant attention and repression but also measures to promote dialogue between the communities concerned".[22]

21. In 2004, numerous religiously motivated hate incidents continue to be reported in Canada. Included in these incidents were the firebombing of the United Talmud Torah School library in Montreal in April, the upsetting of 24 headstones in a Jewish Cemetery in Quebec City in June, and suspected arson related to a fire in a Sikh parochial school in Vancouver in July.

22. The following are examples of some of the incidents that have taken place in 2004, in Ontario:

    a. March 15, 2004 – Thirteen houses and vehicles were defaced with swastikas and anti-Semitic graffiti in Vaughan;

    b. March 21, 2004 – In a string of incidents in Toronto, windows were broken and swastikas painted on the wall at the Pride of Israel Synagogue, swastikas were marked on street signs, homes and cars, a Jewish school was damaged, and 27 headstones toppled at Bathurst Lawn Memorial Park Cemetery;

[22] Mr. Doudou Diene, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Racism, Racial Discrimination, Xenophobia and all Forms of Discrimination, Mission to Canada,* UN Doc. E/CN.4/2004/18/Add.2 (1 March 2004).

c. March 25, 2004 – A fire was set at the Al-Mahdi Islamic Centre, a mosque in Pickering, and a Muslim business establishment was vandalized;

d. March 26, 2004 – Four gravestones were toppled in the Beth David Cemetery in Brantford;

e. March 28, 2004 – Fire fighters responding to a fire at a business in Vaughan discovered swastikas painted on the front entrance;

f. April 10, 2004 – A dozen headstones were toppled at the Beth Jacob Cemetery in Kitchener;

g. June 12 & 13, 2004 – A Conservative Jewish candidate had 9 of his election signs painted with swastikas in the Windsor West riding;

h. June 20, 2004 – Anti-Semitic graffiti was discovered on an Ottawa synagogue;

i. June 23, 2004 – In Toronto, Ryerson University's multi-faith prayer room was defaced with anti-Muslim graffiti;

j. June 27, 2004 – Anti-Semitic messages were painted on Unionville streets;

k. August 2004 – Death threats were made against Muslim students in flyers and letters received by Ryerson University in Toronto;

l. September 4, 2004 – A mosque in St. Catharines suffered damage to its exterior wall when a car parked against the wall was set on fire and ignited cardboard was stuffed into exterior vents of the building;

m. October 14, 2004 – Death threats were received by the Arab Student Association office and the Muslim Student Associations at Ryerson University in Toronto; and

n. October 18, 2004 – A 21 year old man was arrested as he was posting hate literature outside the Arab Student Association office at Ryerson University in Toronto.

23. One of the most serious manifestations of anti-Semitism is Holocaust denial. Those who promote Holocaust denial assert that the Jewish Holocaust did not happen. Although not all make the same claims, they promote the position, based upon distorted, misleading or false information, that there was no systematic attempt by Nazi Germany to exterminate European Jews. That manifestation of anti-Semitic hatred has attracted a tremendous amount of media attention and is widely spread through the Internet. The cases of *R. v. Keegstra*[23] and *R. v. Zundel*[24] both dealt with hatred manifested by Holocaust denial.

IV- LEGAL DEVELOPMENTS IN ONTARIO AND CANADA

Legislation Prohibiting Hatred and Discrimination

24. When addressing incidents of religiously motivated incidents, federal and provincial legislation prohibit either hatred or discrimination on the grounds of religion or creed. Provisions to this effect can be found in the *Charter*[25], federal and provincial human rights legislation[26], the Law Society of Upper Canada *Rules of Professional Conduct*[27], as well as the *Criminal Code*[28].

25. Section 2(a) of the *Charter*[29] guarantees freedom of conscience and religion. Section 15 further guarantees "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without

[23] [1990] 3 S.C.R. 697 [*Keegstra*].
[24] [1992] 2 S.C.R. 731 [*Zundel*].
[25] *Supra,* note 7.
[26] Such as the Ontario *Human Rights Code, supra* note 5 and the *Canadian Human Rights Act, supra* note 6.
[27] *Supra* note 9.
[28] *Supra* note 8.
[29] *Supra* note 7.

discrimination and, in particular, without discrimination based on […] religion […]"[30]

26. Other sections of the *Charter* also recognize the value of religious or spiritual faiths. For example, sections 25 and 35 guarantee Aboriginal rights and freedoms and section 27 recognizes that the *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. Section 28 of the *Charter* guarantees *Charter* rights equally to men and women. Therefore, the *Charter* recognizes that religious rights and practices are guaranteed equally to men and women.

27. Provincial human rights codes and the *Canadian Human Rights Act* also promote the right to equality based on creed or religious beliefs. The Ontario *Human Rights Code* provides that every person has the right to equal treatment with respect to services, goods, facilities, accommodation (housing), employment, the right to enter into contracts, and membership in vocational associations without discrimination because of creed.[31]

28. The *Canadian Human Rights Act* prohibits discrimination on the ground of religion in relation to goods, services, facilities, accommodations, employment and employee organizations in a manner similar to the Ontario *Human Rights Code*.[32] The *Canadian Human Rights Act* also contains anti-hate provisions. Under the *Act*, it is discriminatory to publish or display any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or an intention to discriminate, or incites or is calculated to incite others to discriminate, if the discriminatory practice expressed or implied, if engaged in, would be discriminatory practice under other provisions of the *Act*.[33] It is discriminatory as well to communicate via telecommunication facilities any matter that is likely to expose a person or persons to hatred or contempt by

[30] *Ibid*.
[31] *Supra* note 5, ss. 1-3, 5, 6.
[32] *Supra* note 6, ss. 3(2), 5, 7, 9.
[33] *Ibid*., s. 12.

reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

29. The *Criminal Code* deals specifically with hate crimes and hate-motivated crimes in sections 318 to 320, 430(4.1) and 718.2(a)(i).[34] Sections 318 and 319 prohibit advocating genocide and public incitement of hatred or wilful promotion of hatred against any group distinguished by colour, race, religion, ethnic origin or sexual orientation. Chief Justice Dickson, in *Keegstra,* discusses the values promoted by the legislation:

> In my opinion, it would be impossible to deny that Parliament's objective in enacting s. 319(2) is of the utmost importance. Parliament has recognized the substantial harm that can flow from hate propaganda, and in trying to prevent the pain suffered by target group members and to reduce racial, ethnic and religious tension in Canada has decided to suppress the wilful promotion of hatred against identifiable groups. At the core of freedom of expression lies the need to ensure that truth and the common good are attained, whether in scientific and artistic endeavours or in the process of determining the best course to take in our political affairs. […] The message put forth by individuals who fall within the ambit of s. 319(2) represents a most extreme opposition to the idea that members of identifiable groups should enjoy this aspect of the s. 2(b) benefit. The extent to which the unhindered promotion of this message furthers free expression values must therefore be tempered insofar as it advocates with inordinate vitriol an intolerance and prejudice which view as execrable the process of individual self-development and human flourishing among all members of society.[35]

30. Sections 320 and 320.1 allow judges to authorize seizure of hate propaganda in hard copy or electronic form. Section 430(4.1) was added to the *Criminal Code* in 2001 creating the offence of mischief against places of religious worship or religious property "motivated by bias, prejudice or hate based on religion, race, colour, or national or ethnic origin". Finally, a court is directed by section 718.2(a)(i) of the *Criminal Code* to treat, as an aggravating feature on sentencing, evidence that any offence was motivated, inter alia, by bias, prejudice or hate based on religion as well as other enumerated grounds.

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[34] *Supra* note 23.
[35] *Supra* note 23 at 762.

31. The Law Society has also adopted rules of professional conduct and model policies that promote the respect for religious and spiritual beliefs. Rule 5.04 of the *Rules of Professional Conduct*[36] specifies that a lawyer has a special responsibility "to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of […] creed […] with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person." Rule 5.04 encompasses the duty to accommodate religious or spiritual faiths and practices. Model policies that prohibit harassment and discrimination on the ground of creed are also available for the legal profession. Such model policies and guidelines include the *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*[37], the *Guide to Developing a Policy Regarding Flexible Work Arrangements*[38] and *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms*[39]. The Law Society also published an information document entitled *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices*[40], which outlines best-practices and legal developments in the area of accommodation and includes information about accommodations of creed and religious beliefs and practices.

Case Law Development

32. Tribunals, including the Supreme Court of Canada, have interpreted the terms hate and discrimination. In *Keegstra*, the accused, an Alberta high school teacher

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[36] *Supra* note 9.
[37] *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001).
[38] *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated March 2003).
[39] *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, March 2002).
[40] *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

whose teaching licence was revoked for communicating anti-Semitic statements to his students, was charged under the *Criminal Code* with unlawfully promoting hatred against an identifiable group. Mr. Keegstra was convicted by a jury and sentenced to a $5,000.00 fine. The Alberta Court of Appeal overturned his conviction on constitutional grounds, but the Supreme Court of Canada reversed that decision.[41] The Supreme Court held that the *Criminal Code* provisions that prohibit the dissemination of hate violated the guarantee of freedom of expression, but were saved under section 1 of the Charter. The case was remitted back to the Court of Appeal for decision on other issues, where a new trial was ordered. Mr. Keegstra was again found guilty and sentenced to a $3,000.00 fine. The Court of Appeal quashed his conviction on separate constitutional grounds, but the Supreme Court of Canada overturned that decision.[42]

33. Former Chief Justice Dickson held that hatred must be defined contextually. He stated:

> Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.[43]

34. Other examples of incidents involving hatred include the case of *Zundel* in which the accused was charged with spreading false news after publishing a pamphlet that, *inter alia*, challenged the existence of the Holocaust.[44] Although Mr. Zundel was found guilty and sentenced to nine months imprisonment, the Supreme Court allowed the appeal and entered an acquittal after the majority held that the relevant *Criminal Code* provision was not justifiable under section 1 of the *Charter*.

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[41] *Keegstra, supra* note 23.
[42] *R. v. Keegstra,* [1996] 1 S.C.R. 458, rev'g (1994), 157 A.R. 1 (C.A.).
[43] *Supra* note 23.
[44] *Supra* note 24.

35. Although Mr. Zundel's conviction was overturned by the Supreme Court of Canada, in 1996, complaints were filed with the Canadian Human Rights Commission alleging that Mr. Zundel was placing materials on the internet that were likely to expose people to hatred contrary to section 13 of the *Canadian Human Rights Act.* Mr. Zundel posted a homepage on the Internet that questioned the existence of the Holocaust. In 2002, the Canadian Human Rights Tribunal found that Mr. Zundel had engaged in discriminatory practice and ordered that he cease communicating messages that are likely to expose a person or group to hatred.[45]

36. In May 2003, Mr. Zundel was detained for being a threat to national security. The Federal Court ruled that his status within the white supremacist movement, his contacts and publications make him a danger to the security of Canada.[46] Mr. Zundel's deportation order to Germany was carried out in March 2005.[47]

37. Racist or anti-Semitic hatred is often not confined to one single identifiable group. The case of *Andrews and Smith* v. *The Queen* [48], dealt with the prosecution of two members of the Nationalist Party of Canada, a white supremacist political organization, for the wilful promotion of hatred directed against Black people, Jews, Pakistanis etc.

38. Case law has also dealt with discrimination based on religion or creed. Discrimination is defined as follows:

> A distinction, whether intentional or not, but based on a protected ground, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.[49]

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[45] *Citron v. Zundel,* [2002] C.H.R.D. No. 1 (QL).
[46] *Re Zundel,* [2004] F.C.J. No. 60 (QL). In February 2005, the Federal Court determined that there were reasonable grounds to believe Mr. Zundel was inadmissible to Canada for being a security threat: *Re Zundel,* [2005] F.C.J. No. 314 (QL).
[47] Kirk Makin "Zundel won't fight deportation order" *The Globe and Mail* (26 February, 2005) A7.
[48] [1990] 3 S.C.R. 870.
[49] *Law Society of British Columbia v. Andrews,* [1989] 1 S.C.R. 143 at 174-175 [*Andrews*]. Discrimination includes "direct discrimination" (where a practice or rule is adopted which on its face discriminates on a protected ground); "adverse effect discrimination" (where a practice or rule is adopted which is on its face

39. Some examples of incidents that involve discrimination and have been dealt with by tribunals relate to the observance of religious practices at work or at school. For example, in the employment context, the Human Rights Board of Inquiry in *Shapiro v. Peel (Regional Municipality)*[50] ruled that an employee, who was an observant member of the Jewish faith and had to use vacation time, lieu time or unpaid leave to celebrate Jewish holy days, was discriminated against. The Board also held that Ms. Shapiro's proposal that she work overtime to make up for the time she lost from work to celebrate Rosh Hashana was a reasonable one. An employer who requires a Jewish employee to use vacation or lieu time or unpaid leave in order to celebrate Jewish holy days discriminates under the *Code.*[51]

40. Case law has also addressed this issue in the context of education. Quebec courts remain divided regarding the right of students to accommodations based on religious practices. In December 2001, a student was sent home from school because he wore a kirpan, a small ceremonial dagger worn by Sikhs. Although the Québec Superior Court declared null and void the School Board's ruling that Gurbaj Singh was not allowed to wear the kirpan, the Québec Court of Appeal reversed the decision in March 2004. It held that the School Board's decision infringed Mr. Singh's full exercise of freedom of religion under the *Charter*, it was properly restricted under s. 1 as the enjoyment of the freedom constituted a threat to the security of others. In April 2004, an application for leave to appeal to the Supreme Court of Canada was filed.[52]

41. In 1994, a student was expelled from a public school in Québec for wearing the hijab, the Islamic headscarf. Later that same year another student was told that she would have to stop wearing the hijab or find a new school; she found a new

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neutral, and which will apply equally to everyone, but which has a discriminatory effect upon a prohibited ground on one person or group in that it imposes, because of some special characteristic of the person or group, obligations, penalties or restrictive conditions not imposed on other members); and "systemic discrimination" (practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics): See *Andrews; Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission),* [1987] 1 S.C.R. 1114.

[50] [1997] O.H.R.B.I.D. No. 15 (QL).

[51] *Ibid.*

[52] *Multani, supra* note 21.

school.[53] Following these incidents, the Québec Commission des droits de la personne et des droits de la jeunesse produced a discussion paper in 1995 called *Religious Pluralism in Québec: a Social and Ethical Challenge*. In the paper, the Commission regards the ban on the Islamic veil in public schools as discrimination based on religion and states that where the school's rules interfere with the right to equality, the school has an obligation to accommodate and adapt the rules to eliminate any discriminatory consequences.[54] Despite the Commission's report, in 2003 another student was barred from a school in Québec for wearing the hijab. The family of the girl filed a human rights complaint against the school, but later decided not to proceed with the complaint.[55]

42. The CRTC has recently been faced with investigating incidents of religiously motivated hatred. During coverage of Palestinian leader Yasser Arafat's funeral on November 12, 2004, three people on the *Imus in the Morning* radio show, simulcast on the all-news MSNBC, advocated dropping a bomb on Palestinians to "kill 'em all."[56] The Canadian Radio-television and Telecommunications Commission (CRTC) is currently investigating over 20 complaints about the show.[57]

V – THE INTERNATIONAL POSITION

43. The harm of religious discrimination and the need to promote religious rights and freedoms has been recognized internationally. This position was formally stated

[53] Kinda Jayoush "Students Strive to Wear Traditional Symbols in Class Decision Draws Wide Criticism: Muslim Council Ponders Legal Action" *Montreal Gazette* (24 September, 2003) A2.
[54] Commission des droits de la personne et des droits de la jeunesse by Pierre Bosset *et al.* (Québec: Commission des droits de la personne et des droits de la jeunesse, 1995) at 23, online: http://www.cdpdj.qc.ca/fr/publications/docs/hidjab.pdf.
[55] "Human rights complaint in hijab case dropped" *CBC News* (17 November, 2004), online: http://www.cbc.ca/story/canada/national/2004/11/16/hijab041116.html.
[56] Antoniz Zerbisias "Probe Here over Aired Arab Slurs: Arafat Mourners Derided on MSNBC" *The Toronto Star* (30 November, 2004), online: http://www.thestar.com; "Imus in the Morning" *MSNBC* (12 November, 2004), online: Media Matters for America, http://www.mediamatters.org/items/200411190009. MSNBC later apologized to "anyone who was offended by these remarks."
[57] Zerbisias, *ibid.*

in the *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (the "*Declaration*") in 1981.[58]

44. Article 1 of the *Declaration* guarantees the right to thought, conscience and religion, including the right to choose one's religion and freedom and to manifest one's religion in private or in public, individually or in community with others. Articles 2 & 3 of the declaration guarantee the right to be free from discrimination on the grounds of religion or belief, and condemn discrimination on these grounds as a violation of human rights and freedoms.

45. Pursuant to the *Declaration,* the United Nations Commission on Human Rights decided, in Resolution 1986/20, to appoint a Special Rapporteur on Freedom of Religion or Belief. The Special Rapporteur's mandate is to examine incidents and governmental actions, which are inconsistent with the provisions of the *Declaration*, and to recommend remedial measures, taking into account a gender perspective and the experience of various states.

46. The Special Rapporteur's report of January 15, 2003, documents violations of the principles of non-discrimination and respect perpetrated against people of various faiths in countries around the world.[59] The Special Rapporteur discussed the acts of hatred and discrimination, including verbal and physical assaults, committed against Muslims in the wake of September 11, 2001. Attacks on Jews and vandalism of synagogues were also noted. The Special Rapporteur's analysis showed an overall rise in hatred and discrimination against religious minorities and women and an increase in religious extremism affecting all religions.

47. The Special Rapporteur noted that, in 2002, religious minorities faced threats to their existence due to harassment (Christians in Myanmar), deportation (Adventists and Protestants in Azerbaijan), campaigns of repression (against Falun Gong members), arrests (Protestants and Adventists in Turkmenistan),

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[58] *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,* GA Res. 36/55, UN GAOR, 36th Sess., (1981).

[59] Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief, *Civil and Political Rights, Including Religious Intolerance*, UN ESC, 59th Sess., UN Doc. E/CN.4/2003/66 (15 January 2003), online: www.unhchr.ch/html/menu2/7/b/religion/documents.htm.

imprisonment and expulsion (Tibetan monks and nuns), and death sentences (Christians in China and members of the Ismaili community in Saudi Arabia). The Special Rapporteur described cases of religious hatred and discrimination by non-state entities including violent attacks by Orthodox extremists on Jehovah's Witnesses, Pentecostals and Catholics in Georgia; attacks on Muslims by Hindu extremists in India; attacks by Muslim extremists on religious minorities in Bangladesh, Indonesia and Pakistan; violence against Coptic Christians in Egypt; and attacks on Catholic, Adventist, Methodist and Nazarene churches in Yugoslavia. The Special Rapporteur also highlighted the discrimination that had occurred when religious minorities were subject to limitations on the manifestation of their religious identity or belief.

48. As a result of recent incidents such as those recorded by the Special Rapporteur, the international community has come together at conferences on anti-Semitism organized by the Organization for Security and Co-operation in Europe (OSCE) to promote religious respect and non-discrimination. The first conference took place in 2003 in Vienna[60] and was followed by a second conference in Berlin in 2004[61]. Over four hundred participants from governments, international organizations, and non-government organizations attended each conference, including delegations from Canada, the United States and a number of European countries. Expert speakers presented information and participants discussed strategies for eliminating anti-Semitism. A number of recommendations came out of the conferences including recommendations that States:

a. Acknowledge that anti-Semitism is a human rights violation and condemn all manifestations of anti-Semitism;

b. Compile data and statistics relating to anti-Semitic incidents;

c. Train law enforcement officers about hate crime;

[60] OSCE, *Consolidated Summary of the OSCE Conference on Anti-Semitism, Vienna, 19 and 20 June 2003*, PC.DEL/883/03 (18 July 2003).
[61] OSCE, Consolidated Summary of the *OSCE Conference on Anti-Semitism*, Berlin, 28 and 29 April 2004, PC.DEL/696/04/Rev.1 (27 July 2004). Online: http://www.osce.org/documents/cio/2004/07/3349_en.pdf.

d. Ensure that legal systems foster a safe environment, free from anti-Semitism and discrimination;

e. Implement hate crime legislation;

f. Encourage information exchanges on best practices and experiences in law enforcement and education;

g. Encourage political and civic leaders to speak out clearly and frequently against discrimination;

h. Encourage NGO efforts in the area of anti-discrimination;

i. Implement anti-bias education in schools and elsewhere;

j. Promote accurate remembrance and, as appropriate, education about the Holocaust;

k. Promote inter-religious dialogue (possibly facilitated by a Code of Conduct);

l. Avoid elevating certain religions over others; and

m. Ensure that anti-Semitic materials are not disseminated in the media in print, electronic, or any other form, while ensuring that faith-based communities are allowed equal access to media and are represented fairly in the media.

VI – RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS – STATEMENT OF PRINCIPLES

49. The incidents of religiously motivated discrimination and hatred outlined in this report and the Canadian and international condemnation of discrimination and hatred based on religion reinforce the importance for the Law Society to adopt a *Statement of Principles* that recognizes religious diversity. Therefore, the Law Society adopts the following *Statement of Principles*.

50. **The Law Society of Upper Canada, recognizing that:**

a. **Respect for religious diversity advances the cause of justice;**

b. **The rule of law is enhanced when religiously motivated discrimination or hatred is not tolerated;**

c. **There continues to be a disturbing number of incidents of religious discrimination and religiously motivated hate crimes in Ontario and in Canada, as well as in the world;**

d. **The laws of Ontario and Canada guarantee freedom of conscience and religion, and prohibit discrimination and the wilful promotion of hatred on the basis of religion or creed;**

e. **The international community has condemned religious discrimination as harmful and unacceptable, and has recommended that measures be undertaken to combat religious hatred and discrimination; and**

f. **Although particular groups may be frequent targets of religious discrimination, religious hatred and discrimination is a problem of Canadian society as a whole;**

51. **The Law Society of Upper Canada condemns in the strongest terms all manifestations and forms of hatred and discrimination based upon religious and spiritual beliefs. Although current circumstances centre predominantly on issues of anti-Semitism and Islamophobia, the Law Society condemns all forms of religious intolerance directed at any group or community.**

52. **The Law Society of Upper Canada undertakes to promote and support religious understanding and respect both inside and outside the legal profession.**

CONCLUSION

53. In accordance with our mandate and the *Bicentennial Report*[62], the Law Society of Upper Canada has undertaken a strategy to discourage all forms of hatred and discrimination based on religion and to promote religious respect in our profession, society and the world.

54. This report demonstrates that there are many religious practices in Ontario and Canada. Yet despite the existence of religious diversity in our country, there exist many incidents of religiously motivated hate crimes and discrimination. The legislation and jurisprudence clearly indicate that religious disrespect is not acceptable. The Law Society has been proactive in creating this *Statement of Principles* to encourage religious respect in the legal profession.

55. The separate report entitled *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law* will present a dialogue with various members of the profession. This is another aspect of the Law Society's strategy aimed at discouraging religious hatred and discrimination. The Law Society anticipates doing other projects for this strategy, such as developing continuing legal education programs, public education programs and outreach programs with organizations that promote religious respect.

[62] *Supra* note 1.

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March 26, 2014

VIA E- MAIL – jvarro@lsuc.on.ca

TWU Submissions
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Dear Sirs and Mesdames:

Re: Accreditation of Trinity Western University's Law Program

In April Convocation will consider the accreditation of Trinity Western University's (TWU) proposed law school program as the Federation of Law Societies of Canada (FLSC) did last December. FLSC recommended approval of the proposal of Trinity Western University (TWU) to establish a new law school. I encourage the Law Society of Upper Canada to follow suit and provide it with accreditation.

TWU proposes to establish a School of Law, admitting 60 students per year and granting J.D. degrees to its graduates who would then be eligible to apply to qualify as lawyers in the various jurisdictions of Canada. TWU was founded as a junior college over 50 years ago and has grown to a degree granting university for over 30 years. It is a private, Christian, liberal arts university with approximately 4,000 students. I too am a product of a similar institution in the United States and as such appreciate the value of a faith-based education grounded in high moral principles. TWU has over 40 undergraduate degree and 19 graduate degree programs and already has two professional schools – nursing and teaching – and a business school. TWU graduates are very successfully contributing to Canadian society and around the world. Their professional graduates in education and nursing have been a great success.

TWU is the pioneering law school proposal under the new accreditation guidelines established by the Federation of Law Societies of Canada. TWU's accreditation process has been opposed by many. TWU is unfortunately accustomed to having its professional programs opposed and it has successfully waged this battle several times before as it has grown its programs In order to deal with TWU's application the Federation convened a Special Advisory Committee to consider, among other things, whether TWU's Community Covenant, interpreted by some as discriminatory, meant the law school should not be approved. The Committee considered extensive arguments but in the end concluded that TWU's application should proceed.

As a lawyer with 24 years of private practice in Ontario, I write to express my strong support for the proposed law school. The proposal itself was the work of a large, diverse and experienced group of lawyers and law professors from across the country. I am a supporter of both public and private education – I, my wife and my three children are products of the private and public education systems. Both systems play an important role in our society. TWU has worked diligently to put together plans for a law school that would be of the highest quality, combining theoretical learning with experiential learning. They are keen to have a law school with a heavy emphasis on preparing students for private practice in a small firm setting, something law students would benefit greatly from. They are also intent on concentrating on issues of social justice. This is much needed. Increasingly, the current generation of post-secondary students desire to find a career where they can make a positive difference in society. We need more lawyers who will see their primary calling as serving the best interests of the members of our society.

It has been queried whether the requirement that students and faculty at TWU must agree to abide by the Community Covenant raises additional considerations that should be taken into account in determining whether graduates of the proposed law school program should be permitted to enter law society admission programs. While these arguments raise important issues that implicate both equality rights and freedom of religion, in light of applicable law, considered carefully by the Federation, none of the issues, either individually or collectively, should raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies. Also, these issues have been extensively and exhaustively debated and litigated before. The TWU proposal will meet all national requirements and there would be no public interest reason to exclude future graduates of the program from law society bar admission programs.

In making Convocation would be wise to consider relevant case law, statutes, and the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). TWU is a private institution to which the *Charter* does not apply and which is exempt, in part, from the provisions of the British Columbia *Human Rights Code* (the "*Human Rights Code*"). Section 41(1) of that statute states:

> 41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

Further, in the *Trinity Western University v. British Columbia College of Teachers,* 2001 SCC 31 (CanLII), http://canlii.ca/t/dmd, referred to hereafter as the "*BCCT* case" the Supreme Court held that although the *Charter* does not apply to TWU (as it is a private institution) and the university is exempt from certain provisions of the *Human Rights* Code, the rights and values articulated in the *Charter* and human rights legislation are relevant in considering broader issues of public

interest. In reaching this finding, the Supreme Court confirmed the approach to reconciling different rights and values under the *Charter* stating:

> A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law. When the protected rights of two individuals come into conflict . . . *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.

The Supreme Court distinguished between belief and conduct stating:

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

The TWU proposal meets all national requirements and there is no juristic reason to exclude future graduates of the program from law society bar admission programs. I urge Convocation to support it. Thank you for your consideration.

Yours very truly,
ROSS & McBRIDE LLP
Per:

David A. van der Woerd

DVDW:lc

Submission to the Law Society of Upper Canada

Trinity Western Faculty of Law accreditation process

By Kenneth Vigeant

March 26, 2014

I believe that the Trinity Western University Faculty of Law program **SHOULD BE** accredited by the Law Society of Upper Canada, assuming it meets (as has been reported) all other academic and structural requirements for a law school.

The opponents of accreditation appear to be primarily concerned that students at TWU will not properly learn and therefore believe certain doctrines about equality. To become a lawyer does not (and should not) require that the person adopt any particular belief system. It does require that they learn certain skills and academic knowledge (for example, that they understand the importance of the rule of law, or that they understand the basic underlying principles of major areas of the law). Society expects that lawyers use these skills and knowledge to assist their clients; it does not prevent them from advocating for change. The change that is being advocated for can be of any type (even to change our underlying constitutional structure) as long as it is done in a peaceful manner. This proposition makes it clear that in the recent past there has been no expectation that lawyers be indoctrinated in any specific belief system (as opposed to knowing all the legal principles, defences and remedies that their client may require if they have a claim within the present legal system).

While I am very sympathetic to the desire of non-heterosexual populations to be fully respected and to live dignified lives, it shows a lack of historical awareness to want to implement one acceptable way to think (which in this day and time is a liberal belief system) and require that people accept that specific belief system. At this time the dominant forces in society (including the population in general) support the opponents of accreditation of TWU's program, but underlying majority belief systems can change over time. It is far better for society that lawyers are only expected to have the aforementioned skills and academic knowledge, and be able to have any belief system in their private lives (and be able to advocate for change). Only if there is a strong bias in favour of lawyers being able to have any belief system and advocate for any change they want (as long as they have the proper skills and knowledge) will there be protection for 'liberal' lawyers to advocate for change when society eventually enters a more traditionalist and restrictive phase (note for example attempts by legislative assemblies in 2013-14 in parts of the United States to punish post-secondary institutions for using texts that 'glorify' homosexual 'lifestyles' or that criticize American history using critical race theories). It is a serious fallacy to believe that the present majoritarian ways of thinking will always (for all time) be the way that people think. Social norms change over time (hopefully for the better but not always). It is very

important to have society accept that lawyers are exempt from necessarily adopting acceptable belief systems as long as they use their skills and knowledge for the best interests of their clients. Rather than expecting lawyers to adopt one particular way of thinking, it is better to teach them skills, knowledge and hopefully how to think and advocate for themselves and for what they think is good for society. To try to implement a secular 'religion' or belief system is as detrimental to an effective legal profession as it would be to impose on a lawyer one actual religion to practice law in adherence with.

Human rights law should be taught at TWU so that the students have the same knowledge as students at any other law school. TWU may have its own philosophical approach to how this topic is taught but that is no different than law professors expounding their own belief system in other ways. Students (eventual lawyers) are free to believe as they wish and should be able to attend schools that reflect some of what they believe in. For example, if a student in a criminal law class does not like the underlying philosophical approach of the professor, they will still have certain knowledge from the class and can make up their own mind what to believe.

I fully appreciate that 'religious belief' if allowed in general life as a justification to discriminate could destroy the constitutional reality that discrimination is bad in public life, but to state that certain institutions cannot express religious belief (and that religious belief is to be a never-acted-upon internal private thought-system) grossly impairs what freedom of religion means which includes the right to advocate that religion. There has to be a balancing of these directly competing but equal constitutional values. I believe that allowing TWU to have a moral code that students are expected to follow (when there are MANY other choices of where students can attend to study law) does not disproportionately affect the equally valid goal of preventing discrimination.

For these reasons, I am in favour of TWU being accredited even if the school has an expectation of students that is discriminatory toward non-heterosexual relationships.

CANADIAN COUNCIL of CHRISTIAN CHARITIES
ADVANCING MINISTRY TOGETHER

BY FAX: 416-947-7623
BY EMAIL: jvarro@lsuc.on.ca

March 27, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Attention: Mr. Thomas G. Conway, Law Society Treasurer

Dear Mr. Conway:

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

Who We Are And What We Do

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

Violation of Religious Freedom and Equality

The LSUC's review comes within the context of a concerted campaign of those who disagree with TWU's religious beliefs and practices on marriage. It has been suggested that such a belief and practice is reason enough to deny TWU graduates the ability to practice law.[2] However, it has not been demonstrated that the mere religious belief of marriage and personal expression of that belief will result in a deficiency of relevant legal competencies.[3] In fact, given that throughout this country there are hundreds of practicing lawyers who espouse the same beliefs as TWU, it is reasonable to conclude that having a mere religious belief and personal practice regarding marriage does not make one any less competent to impartially practice law than one who has a secular view and practice on marriage. Thus it is hardly a sufficient reason to decline a TWU graduate from legal practice.

Such a prohibition based on religious belief and practice, rather than on legal incompetence, is reminiscent of earlier violations of religious freedom in this country such as the *Roncarelli* case of 1959.[4] In that case, the Quebec premier of the day did not approve of the religious beliefs of the Jehovah's Witnesses and demanded the withdrawal of the liquor license of Mr. Roncarelli. That is not dissimilar to the general theme of the injustice being advocated against TWU:

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

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

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

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

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

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

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

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

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

The obvious question is, "Why?"

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

Is There No Room For Diversity?

The average number of first-year law students in Canada is 2000.[8] TWU plans an entrance class of some 60 students, which would represent only 3% of the first year law class in Canada. With TWU law school coming on stream, approximately 97% of law students in Canada will be attending secular law schools. The question we have to ask is, "With there being 97% of the law students in secular institutions, can 3% have an existence of their own? Or, paraphrasing Douglas Laycock, we ask, "Is the secular model so absolutist that it cannot tolerate a 3% minority with a different solution?"[9]

This controversy raises questions about the ability of charities that hold the same position as TWU on the issue of the sanctity of marriage, to operate in the "public sphere." Should TWU's law graduates not be accepted to practice law in a province in Canada, it will have set a troubling precedent for other charities. The same arguments against TWU law graduates could be raised against graduates of Christian schools and universities or any institution which might hold beliefs which differ from those endorsed by the state. This would give support to the very troubling argument, as some have already raised, that such faith based institutions should not have the state's imprimatur to issue such diplomas.[10] Those institutions will be forced to answer for their religious belief on marriage (or potentially any other issue, for that matter) and their graduates will be suspect as they enter into the various professions, such as medicine, social work, nursing, and education. In effect, their religious beliefs will be used against them rather than any ethical failures they would commit in violation of professional standards.

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

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

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

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

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

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

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

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

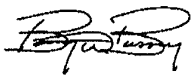
Conclusion

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

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

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

Sincerely,



Barry W. Bussey, B.A., LL.B., M.A., LL.M.
V-P Legal Affairs

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

Submission: by Gerard Paul Charette, Licensee of the Law Society of Upper Canada (the "**Law Society**" or the "**Society**")

To: The Members of Convocation of the Law Society

Respecting: the Question (the "**Question**") Called by the Law Society in Connection with the Application by Trinity Western University ("**Trinity Western**") to the Law Society (via its delegate, the Canadian Common Law Program Approval Committee (the "**Approval Committee**") of the Federation of Law Societies of Canada (the "**Federation**")

The Question: Given that the Canadian Common Law Program Approval Committee has provided conditional approval (in its report, the "**Report**", dated December 2013) to the Trinity Western law program (the "**Law Program**") in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society now accredit TWU pursuant to section 7 of By-Law 4?

Date of Submission: March 26, 2014

Relevant Background of Gerard Paul Charette

The following background information is relevant to my submission and is hereby disclosed:

1. I have been a member of the Law Society since 1979.

2. I am an ordained Permanent Deacon of the Roman Catholic Church serving in the Diocese of London Ontario.

3. I have delivered a letter of intent to Trinity Western confirming my interest in pursuing continuing legal studies within the framework of the Law Program or associated law programs. For this purpose, pursuant to my right to practice my religious beliefs and my right of

self-determination, I intend to abide by the Community Covenant (the "**Community Covenant**") of Trinity Western as referred to in paragraph 21 of the Approval Committee's Report. I look forward to studying law at Trinity Western.

Submissions With Respect to Legal Matters

Facts on Which I Rely

The essence of my submission turns on the following facts:

The Community Covenant

4. The Community Covenant sets out behavioural expectations for students and faculty of Trinity Western. According to the Approval Committee. The Community Covenant requires faculty

> to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman" (Para. 21 of the Report)

Moreover, for faculty

> (S)incerely embracing every part of the covenant is a requirement for employment (by Trinity Western). (Para. 21 of the Report)

The Approval Committee's Concerns and its Basis for the Concerns

5. Although the Approval Committee has given its preliminary approval to the Law Program, it

> concluded that the issue of whether students with acquire the necessary competencies in both Ethics and Professionalism, and Public Law (relating to the Canadian Charter of Rights and Freedoms and human rights law principles) is, at this stage, a concern, (the "**Concern**") . . . (Para. 48 and 52 of the Report)

6. Moreover, the basis of the Approval Committee's Concern is that the Approval Committee

> sees a tension between the proposed teaching of (the Ethics and Professionalism, and Public Law competencies) and elements of the Community Covenant. (Para. 50 of the Report)

In particular,

> the Approval Committee is concerned that some of the underlying beliefs reflected in the Community Covenant, which members of the faculty are required to embrace as a condition of employment, may constrain the appropriate teaching and thus the required understanding of equality rights and the ethical obligation not to discriminate against any person. (Para. 50 of the Report)

7. Although the question called is stated in simple terms: 'Should the Law Society accredit the Law Program?' Nonetheless, in reality, the Question has been called for only one reason: To determine whether the Community Covenant gives the Law Society grounds upon which it can reject the preliminary approval given by the Law Society's own delegate. By the same token, it is incumbent on the Law Society to also consider whether it ought to reject one or both of the Concerns expressed by the Approval Committee.

The Approval Committee's Concern is Without Merit

The Approval Committee's Concern is without merit for the following reasons:

The Scope of the Approval Committee's Jurisdiction

8. The employment requirement exists with respect to conduct that occurs outside the framework of the actual in person delivery of teaching services. Although the Approval Committee explicitly claims jurisdiction in relation to the employment requirement (Report, Para. 31), nonetheless the consideration of the particular employment requirement constitutes a collateral matter outside the ambit of the Approval Committee's jurisdiction.

9. The national requirement (the "**National Requirement**") for law school programs and their accreditation makes no reference such collateral matters. In this regard, the expression of the Concern is to be compared with the comment (the "**Comment**") made by the Approval Committee in connection with the library budget. (Report, paragraph 54) Questions relating to law library budgets are clearly within the scope of the Approval Committee's mandate. Collateral matters relating to community-wide codes of conduct, and indeed any other collateral matters affecting academic communities, are not within the scope of the criteria addressed by the National Standards and, indeed, such collateral matters were never intended to be addressed. The Approval Committee has exceeded its jurisdiction.

The Imposition of Additional Regulatory Burden

10. Has the Federation or any law society ever purported to enquire concerning any collateral codes of conduct applicable to the law professors of currently accredited law school in Canada? Obviously such codes or rules of conduct do exist, whether they have been initiated by the teaching institution or by the many other organizations that, together, comprise any particular academic community.

Codes of conduct of one sort or another constitute the enduring substrata of all academic organizations. Such collateral rules of conduct can include, for example, collateral obligations arising as a consequence of mandatory or voluntary participation in any university committee, club or council, university project or initiative, membership in any union of professors, university political club or party, advocacy group, non-governmental organization or participation in other collateral relationships. The Approval Committee cites no previous enquiry, concern or intervention in connection with any such collateral matters. Clearly, participation in any one or more of such collateral organizations is bound to have some greater or lesser effect on the any law professor who participates in such collateral organization.

11. One has only to consider a law professor who adheres to the principles of Marxism or Socialism and who may also be a member of a university political club or party founded for the purpose of promoting Marxist or Socialist principles. In this regard, the following questions may be posed:

a. Would participation by a socialist or Marxist professor in the political party constitute a possible impediment to the teaching of the following mandatory courses: Contract Law, Property Law, Business Organization, Real Estate Law and Wills and Trusts?

b. Would such adherence constitute a "tension" worthy of the expression of a 'concern' by any of the Approval Committee, the Federation or the Law Society?

c. Has any of them ever thought to make any such enquiry?

12. There are other possible members of a university's academic community. For example, what about the participation of Muslims? Would a Muslim law professor who adheres to Sharia law and who belongs to a university Muslim club be considered as being under an analogous impediment? What about those members who adhere to the principles of Hinduism or Buddhism or any other religion?

13. Yet, the Approval Committee singles out collateral participation in a Christian organization and acting according to its principles as being a "Concern". In consequence, the Approval Committee seeks to impose an additional barrier or impediment to accreditation that operates in the nature of a regulatory warning or threat of future regulatory intervention. It thus has a chilling effect, either by intention or in its effect, as against Trinity Western in the operation of its academic programs, including the Law Program.

14. The reference to collateral matters also constitutes the imposition of additional regulatory burdens on the members of the Trinity Western community. These types of burdens are in addition to the legitimate burdens place on all law school communities. In consequence the

imposition of the collateral burdens constitutes an unjustified impediment to full participation Canada's legal system to those who seek to enter the Law Program. The Concerns are analogous to additional irrelevant burdens places upon minorities according to discriminatory voting laws current in 19th and 20th century democracies.

15. Moreover, given that the Concerns constitute a threat of future intervention by the Approval Committee, they operate so as to constrain all members of the Trinity Western community as they seek to fulfill their goal of religious self-expression.

Interference with the Freedom of Contract

16. The employment requirement is a matter lying within the ambit of Canadian employment law. Citizens, residents and other entities are free to bind themselves under the laws of Canada (or of a Province) in connection with such matters. In consequence, the concern also amounts to an inappropriate interference with the freedom of contract that ought to exist as between Trinity Western and its law professors. The Approval Committee is legitimately concerned with employment matters only to the extent that such matters that bear directly upon the National Requirements. For example, the National Requirements can legitimately impose upon Trinity Western an obligation to engage law professors who have adequate academic qualifications or practical experience. However, the National Standards in no way concern themselves with collateral matters as set forth in employments contracts or constituting other parts of the employment framework.

No Causal Relationship Between the Concerns and the Delivery of Services

17. With great respect, the expression of the Concern is intellectually shallow. This shallowness betrays a misplaced concern with the religious experience. The shallowness arises as a consequence of Approval Committee's presumption concerning possibility of pedagogical incompetence. The Approval Committee presumes that there exists a real possibility that pedagogical incompetence will arise as a consequence of the fulfillment of a religious belief that is purely co-incidental to the delivery of teaching services. The Approval Committee has not cited evidence of any necessary causal relationship or correlation between the employment requirement and the inability to teach the competencies in question. In consequence,

a. Applying the logic of the Approval Committee, no member of the Law Society would be competent to defend those who have committed crimes because all members have sworn oaths and are otherwise subject to codes of conduct requiring them to uphold the criminal law.

b. Indeed, the case of the recusal of Deans Bobinski, Jutras and Sossin also brings to light the shallowness of the Approval Committee's Concern. Using the same logic applied by the Approval Committee, one could quite rightly claim that there exists a question of competency relating to the their teaching of the elements of freedom of religious expression, one of the core elements of the *Canadian Charter of Rights and Freedoms*. Yet, one would think that the three Deans are qualified notwithstanding their vigorous opposition to the manner in which the members of

> the Trinity Western community have elected to fulfill their right to religious self-expression. One cannot fairly presume future academic incompetence on the part of the Deans. I can see no reason to subject future unknown and unnamed employees of the Law Program to a presumption that is more rigorous than that applied to the Deans or to any other person.

The Tensions that Arise in the Course of Legal Practice

18. The issue of presumed incompetence leads one to a consideration of the tensions that do in fact that exist within the framework of the delivery of educational services at a law school. As has been stated, the Approval Committee "sees a tension between the proposed teaching of (the) required competencies and elements of the Community Covenant." (Report, paragraph 50). Again, in the mind of the Approval committee,

> the underlying beliefs reflected in the Community Covenant, . . . *may constrain* the appropriate teaching and thus the required understanding of equality rights and the ethical obligation not to discriminate against any person. (Report, paragraph 50, my emphasis)

19. To begin, it is trite for the Approval Committee to say that there exists a tension between the competencies and the Community Covenant. Analogous tensions abide in the air of all the courtrooms and law offices of the Province of Ontario. It is inappropriate for the Approval Committee to base its decision to express the Concern on the basis of such an ordinary and commonplace tension.

20. Lawyers are called to deal regularly with similar tensions, including conflicts between personal beliefs and the legal affairs of

clients that may, to a greater or lesser degree, impair their objectivity. Why mention only tensions related to Christian religious practice?

21. There is always a possibility that the tension will snap the bond between lawyer and client or his or her employing agency. The recusal of Deans Bobinski, Jutras and Sossin is a case in point. The recusal demonstrates that such matters are not to be dealt with on the basis of *a priori* rules or concerns that presume the real possibility of incompetence. They are to be dealt with on the basis of fact specific situations.

22. What institution and regulatory framework is given to deal with the possibility of conflicts of interest within the framework of fact specific situations? The answer is that is that, at least in the first instance, it is the Law Society itself, that is accorded the powers to regulate, dare I say threaten or warn, the members in connection with matters pertaining conflicts of interest. The Law Society has this jurisdiction, not the Approval Committee. By expressing the Concern, the Approval Committee has, unwittingly, intruded into an area of jurisdiction that belongs solely to the Law Society. The Law Society has been appointed to sound the alarm in connection with conflict of interest and, to continue the metaphor, to put out the fires that inevitably arise.

23. The Approval Committee plays the role of a mere technical expert whose function is to lend technical support to the governing body. In point of fact, the Approval Committee plays a role in relation to the Law Society that is completely analogous to the role played by Professor Bruce P. Elman in relation to the work of the Approval Committee. He

was appointed by the Approval Committee to provide technical support to the Approval Committee as a consequence of the recusals of the three Deans. (Report, Paragraph 41)

24. In this connection, the Approval Committee makes the point of confirming that Professor Elman did not participate in the Approval Committee's analysis or decision. (Report, Paragraph 41) Would that the Approval Committee had also restricted its analysis and decision to the technical matters that completely describe its jurisdiction - the criteria for the design and implementation of law programs. It was not appointed to advise the Law Society in connection with matters pertaining to conflict of interest. The Law Society has retained this jurisdiction for itself and has never sought the Approval Committee's advice in that regard. In point of fact Law Society may well have exceeded its own jurisdiction had it pretended to assign this aspect of its own regulatory authority to an external body, one that does not even have a majority of Society members.[1]

The Conflict of Interest Rule[2]

25. Because the Advisory Committee has, in point of fact, raised the issue of conflict of interest - what it calls a "tension" - it is necessary to make a submission with respect to the portion of the regulatory framework that deals with the area.

[1] It is in the realm of the Law Society's jurisdiction to appoint committees from time to time to investigate and to report on regulatory issues such as conflict of interest. However, these instances presume a definitive appointment and, most likely, the inclusion of members of the Society.

[2] I make no comments in connection with the impending changes to the Conflict Rules that are to become effective in October of this year. In any event, I do not think the new rule changes the regulatory framework in any substantial way.

26. The Law Society has enacted a Rule of Professional Conduct against lawyers acting in conflict of interest because it is recognized that conflicts are bound to occur within the framework of legal practice. Yet the Rule against conflict does not, except in rare cases, deal with conflicts on the basis of *a priori* prohibitions.

27. With great respect, in its deliberation concerning conflict of interest, the Approval committees "strains out a gnat then proceeds to swallow a camel." [3] In focusing on an area outside of its mandate, the Approval Committee misses a point relating to conflict of interest that is both relevant and much more significant.

28. If one sees the work of a law professor in terms of conflicts or "tensions", what does one find? How and to what extent does the Law Society deal with "tensions" associated with law professors who act in conflict of interest?

29. To begin, subsections (5) and paragraph (6) 1. of Section 1 of the Law Society Act are broadly worded. Taken together, they would seem to indicate that during the course of providing instruction a law professor is engaged in the provision of legal services. At the very least, the provision of educational instruction is analogous to the provision of legal services. Therefore, within the framework of the law professor/law student relationship it is appropriate to consider that the professor is the lawyer and the student is the client.

30. At the outset, one ought remind oneself that law professors are, almost without exception, members of one of the Provincial governing

[3] Matt. 23:24 RSV. The precise reference is "You blind guides, straining out a gnat and swallowing a camel!" Christ's comment is to everyone. We sometimes parse things too finely and, in the process, miss the larger, more important point.

law societies of Canada. One ought to also remember that, in delivering educational services, the law professors help fulfill one of the enduring core functions of the various law societies - the education of future members. In earlier times the various law societies fulfilled this core function largely within the framework of their own day-to-day operations. Today, law professors bear the overwhelming proportion of the burden of educating future lawyers. For these reasons it is not inappropriate to consider that law professors provide legal services that constitute a subset of the practice of law.

31. Rule 2.04 of the Law Society's Rules of Professional of Conduct (the "**Conflict Rule**" or the "**Conflict of Interest Rule**") is instructive. The Rule defines a "conflict of interest" or "conflicting interest" to mean

> an interest
>
> (a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or a prospective client, or
>
> (b) that a lawyer might be tempted to prefer to the interests of a client or prospective client. (Rule 2.04 (1)

32. The relevant question arises: Does the Community Covenant assist or detract from compliance with the Conflict of Interest Rule? In other words does a professor who complies with the Community Covenant stand a better or worse chance of avoiding a conflict of interest in the prosecution of his duties as an instructor in the law?

33. The commentary to the Conflict Rule (the "**Commentary**") makes clear that conflicts of interest are not limited to financial interest (Commentary to Subsection 2.04 (1)). It applies to any situation that

would "interfere in any way with the lawyer's fiduciary obligation to the client, dhis or her ability to exercise independent professional judgment or his or her ability to fulfill his or her obligations . . . owed to the administration of justice." (Paragraph (e) to the Commentary to Subsection 2.04 (3))

34. In point of fact, the Commentary deals extensively with conflicts of interest arising as a consequence of sexual relationships and other intimate relationships as between lawyers and their clients. That the Law Society should think it appropriate to provide an extensive commentary in connection with sexual relationships as between lawyers and clients indicates that the interplay between and among the sexes is a flash point of regulatory concern.

35. According to the Commentary, the lawyer who purports to have sexual or other intimate relationship with a client must, at a minimum, consider

a. that the vulnerability of the client, both emotional and economic and, may constitute a conflict of interest, and

b. whether the relationship will interfere in any way with the lawyer's fiduciary obligations to the client and his or her ability to exercise independent professional judgment.

36. There, of course, exists another warning sign, the imbalance of power as between professor and student. Rule 2.04 wisely recognizes that any such an imbalance is a concern.

37. The Conflict of Interest Rule is liberal in that it does not purport to presume that a sexual relationship as between a lawyer and client necessarily constitutes a conflict. It thus permits a lawyer to continue to

act so long as he or she carefully assesses the situation and takes the other steps required by the Rule. The Rule is rational in that it recognizes that such questions can only be logically determined with reference to particular member in particular circumstances, and not by reference to *a priori* rules.

38. Certainly, if the Rules of Professional Conduct can bear the tension arising as a result of the concurrent existence of a sexual relationship and the performance of professional duties then the tension of ***not having*** intimate relations outside traditional marriage as between a law professor and his or student ought to be well within the realm of acceptable practice for all members, including law professors. Indeed, unless the matter has an impact on the administration of justice, the Law Society has absolutely no rational regulatory concern in connection with the question of whether the law professor does or does not have sexual relationships with anyone who is a stranger to the law professor/law student relationship. Such strangers are, by definition, not included among that class of persons known to everyone as 'clients'.

39. What is most astounding is that the Approval Committee does not perceive that the "burden" of not having sexual relations is more likely to enhance the law professor's ability to avoid a conflict of interest, that is to say, to more properly exercise his or her independent professional judgment in teaching the required knowledge and skills.

A Client-Centered Profession Ought to Focus on That Which Serves the Client – The Impact on Women Students and Other Students

40. Most important is the impact of the Community Covenant upon the law students who receive in-person educational services. When one focuses on the needs and interests of the student of law it quickly becomes apparent that, contrary to the presumption of the Approval Committee, the existence of the Community Covenant tends to promote a higher level of professionalism in relation to the delivery of in person educational service to students. This is because the Community Covenant serves to act as an additional barrier to sexual harassment. Indeed, this is a point that the Approval Committee appears to ignore. Rather, it focuses on the abstract possibility that a law professor will somehow misinform his or her students concerning the truth of the law because of his or her religious beliefs.

41. Moreover, there exists sound social science research that exposes the negative effects of unwanted sexual advances upon university students, particularly women.

42. Benson and Thompson are the authors of a 1982 study published by the University of California on behalf of the Society for the Study of Social Problems.[4] The study deals with the negatives effects of unwanted sexual advances on university students. The study abstract states the problem plainly in the following terms:

> We examine experiences of sexual harassment reported by a random sample of undergraduate women at a major U.S. campus, Berkeley. Thirty percent reported having received unwanted sexual attention from at least one male instructor during their four years at college. Two general patterns emerge: Women carefully monitor and try to avoid new

[4] Social Problems, Vol. 29, No. 3 (Feb., 1982), pp. 236-251.

> instructors who harass them. But when harassment occurs in more established student teacher relationships, women often lose their academic self-confidence and become disillusioned with male faculty. We argue that the prevalence of sexual harassment has the cumulative effect of eroding women's commitment to careers in male-dominated areas.

43. With respect, we should all take a moment to reflect on these words.

44. Moreover, there is no reason to doubt that students who experience same-sex attraction or a transgender experience are also subjected to unwelcome sexual advances from time to time. The Law Society is called to take account of similar interests of these students as well.

45. Contrary to the assertion of the Approval Committee, the Community Covenant serves to promote the achievement of the National Requirements. In point of fact the Community Covenant sets a standard that is academically and professionally superior when one focuses on the needs of the law student.

46. The fact that the Community Covenant also applies to strangers to the Law Professor/Law Student relationship is completely irrelevant to the Law Society and, for that matter, irrelevant to the work of the Approval Committee.

47. In the result, the actions of the Approval Committee unwittingly discredit that which exhibits the marks of excellence and professionalism in the delivery of educational services. Trinity Western should be applauded for seeking to put the interests of its students ahead of the personal self-interests of any teacher. It does this soundly

and rationally. Its rules are based not only in sound religious belief, but also in sound social science research.[5]

Students should not seek to avoid instructors because of threat of unwanted sexual advances, nor should they suffer loss of academic self-esteem for the same reason. Students who seek academic excellence can, with greater confidence, approach law professors who live by the Community Covenant. Indeed, if a law professor were to violate the Community Covenant, then the Community Covenant itself, being part of the employment requirement, serves to ensure that the professor is held accountable. In consequence, the expression of the Concerns constitutes a serious error that manages to be simultaneously irrelevant, capricious and perverse.

The Impact on a Law Professor's Other Clients – Acting Against the Interest of a Client

48. Matters only get worse when one considers the impact on the law students who are strangers to the intimate relationship between a law professor and a particular law student. One immediately recognizes that the expression of the Concern is doubly erroneous when one considers another element of the Conflict Rule, the rule that prohibits

[5] I should hasten to add that any conclusions arising from within the field of social science research does not operation as a litmus test that one ought to apply to determine whether a religious practice is protected. Religious practice is, except in defined cases, exempt from any requirement to comply with social science research. However, as a matter of fact, faith and reason constitute the enduring twin foundations of the practice of Christianity. When Christianity is properly practiced, faith and reason are typically recognized as being inseparable companions. This is not to claim that a lack of faith betrays the mark of irrationality. The only point made is that faith and reason, when properly understood, do not clash with each other.

lawyers acting against the interests of their clients. (Subsection 2.04 (4))

49. For this purpose, one must recall that a law professor who stands before his or her class faces between approximately 20 and approximately 90 students. Each one of them is the professor's client. Each is entitled to receive the single-minded devotion and allegiance of his or her professor. Each of them is entitled to presume that his or her professor does not seek to favour any other student in an inappropriate way. As if the pressures of study and taking law exams was not enough.

50. Subsection 2.04 (4) of the Conflict of Interest Rule confirms that a lawyer has a conflict of interest if he or she purports to act against the interests of his or her client. Specifically the Rule provides that a lawyer

> who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved in or associated with the client in that matter
>
> (a) in the same matter,
> (b) in any related matter, or
> (c) save as provided by subrule (5), in any new matter, if the lawyer has obtained from the other retainer relevant confidential information
>
> unless the client and those involved in or associated with the client consent.

51. One ought to stipulate at the beginning that any question of obtaining consent is outside the realm of possibility.

52. The conclusion is inevitable, a law professor who has sexual relations with a student taking a particular law course acts against the interests of all his or her other students who take the same law course.

53. In consequence, the Community Covenant also serves to better protect the academic interests of the law professor's other clients.

Advocacy on Behalf of an Interested Party

54. Although I have not had time to complete my study, I am troubled by the question of bias.[6] I consider the following:

a. The Approval Committee comprises seven members, three of them law deans.

b. The Canadian Council of Law Deans has engaged and continues to engage in forceful advocacy against Trinity Western's application,

c. The deliberations and report occur within the framework of intense controversy involving much comment and analysis in the media.

d. The three law deans recuse themselves.

e. The Approval Committee expresses its complete confidence in the good faith of the three deans. (Report, Paragraph39). It is easy to comment with the benefit of hindsight. Yet, one would have thought that a simple acceptance of the recusals, and nothing more, would have been more judicious.

f. It appears that at least one of the three law deans may have continued to advocate in public against Trinity Western's application following the recusal and before the issuance of the Report. In this regard, see Dean Sossin's Blog dated November 16,

[6] I only became aware of the request for submission in the last two weeks or so.

2013.[7] The law of recusal places a higher obligation on judges and other decision makers who hold the obligation of recusing themselves as a consequence of their own advocacy against a defendant. What is one to think of a situation in which a judge who, after announcing his or her recusal, continues to shout out submissions against the defendant from within the body of the court? One would think that silence would be the order of the day in the face of prior partisan advocacy.

g. The Approval Committee delves into the area of conflict of interest that is – this is my submission – completely outside the scope of its mandate. This action, in its purpose or, certainly, in its effect, casts a cloud of doubt over Trinity Western's application.

h. Even when it roams into the area of conflict, it appears to miss the larger, more important relating to conflict of interest.

It is not difficult to imagine that, in the mind of a reasonable bystander, bias is possibly at work.

The Public Interest

[7] http://deansblog.osgoode.yorku, ca/2013/11/in-praise-of-the-ccld/ (accessed on March, 20, 14)

Background

55. We are all aware that the public policy can be a very unruly horse.[8] I am therefore concerned when its relative, the "public interest", is invoked.

56. Thankfully, the December 2013 Special Advisory Committee on Trinity Western's Proposed School of Law, with great effort, concluded that there is no public interest reason to exclude future graduates of Trinity Western from admission to the bar admission programs of the various law societies.

The Law Society and the Public Interest

57. The Law Society Act does state that the Law Society does have the duty to protect the public interest. (Paragraph 3 of Section 4.2). However, this duty applies only within the four corners of the Law Society's legislated mandate. The Law Society has holds no brief is determining whether or not members and non-clients should or should not engage in extra-marital affairs.

58. Indeed, the public interest provision is set within the context of other legislative provisions that are intended to remind the Law Society that it is not to engage in the promotion of the members' self-interest to the detriment of the members of the public. This would also include the promotion of the self-interest of any particular group of Law Society members. Thus, the duty to act in the public interest does not give the

[8] Burrough, J., Richardson v. Mellish (1824), 2 Bing. 252; quoted by Lord Bramwell in Mogul Steamship Co.;. McGregor, Gow and others, 66 L. T. Rep. 6.

Law Society the authority to make public policy in areas that are collateral to its mandate.

59. The companions to the public interest principle are set forth in Section 4.1 and 4.2. They include

a. Ensuring standards of learning and competence appropriate for the rendering of legal services,

b. Maintaining and advancing justice and the rule of law,

c. Facilitating access to justice,

d. And acting in a timely and open manner.

The duty to act so as to facilitate access to justice for the people of Ontario is relevant. Access to legal education is an important component to both the right to access to justice and to the expression of religious belief.

Paragraph 5 of Section 4.2

60. Moreover, Paragraph 5 of Section 4.2 is particularly relevant to the question at hand. It explicitly requires that

> Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized

For the reasons stated above, there is no regulatory objective to be achieved by expressing the Concern about the Community Covenant. Even if there were, the expression of the Concern would be disproportionate to the significance of the any such regulatory objective.

61. In this circumstance, the Law Society's mandate is to determine whether the academic requirement for admission to the Law Society are or are not satisfied, without seeking to impose additional rules and additional burdens with respect to collateral matters. This is particularly true in the fact of rules and burdens that, by intention or in their effect, tend to impede the right to exercise religious self-expression.

Concerns of Equity in the Allocation of Study Spaces

62. I am also given to understand that there exists a claim that the existence of Trinity Western Law Program would somehow have an unfair negative impact on students who are uncomfortable with the Community Covenant. This is apparently on the basis that, for practical reasons, they cannot take advantage of the Law Program because of the Community Covenant. With respect, this presumes that there are no members of the LBGT community who practices chastity. There are obviously many of their other sex-attracted friends who devote themselves to the practice of chastity. There is no evidence before the committee concerning this point and therefore no reason to presume that there are few, if any, LBGT student who are not also attracted to the practice of chastity.

63. Moreover, students who experience discomfort with the Community Covenant are well served by the comparatively plentiful number of academic positions at other law schools open to all candidates for study positions. Indeed the entire process is likely to amount to a zero sum game (or a state of affairs that closely

approximates a zero sum game) because students who seek the Trinity University experience and who would otherwise apply to other law schools will, instead, apply to Trinity Western and thereby free up study spaces at other law schools. In the end Trinity Western adds to the total number of study positions available and therefore benefits all applicants for study, including those who may experience discomfort as a consequence of the Community Covenant.

Conclusions

64. In consequence of the foregoing, I submit following:

a. the Approval Committee has exceeded its jurisdiction to the extent that it bases any element of its Report on collateral matters, such as the Community Covenant.

b. the expression of the Concerns constitutes a discriminatory practice that seeks to apply (or to threaten to apply) differentiated treatment as against those who seek to practice Christian beliefs.

c. the decision to express the two Concerns constitutes a serious breach of the rules of natural justice. It is discriminatory in its intent or in its effect. It has a chilling effect on the exercise of the freedom of religious self-expression.

d. The expression of the two Concerns is capricious and, when seen in the light of the Conflict Rule, results in a decision that is fact perverse.

e. There exists a reasonable apprehension of bias on the part of Trinity Western and those who seek to study in the Law Program.

65. For all the foregoing reasons the expression of the Concerns by the Approval Committee constitutes a serious error. I submit that Convocation ought to

a. explicitly reject the two Concerns as expressed by the Approval Committee, and

b. accredit the Law Program.

Submission With Respect to Profession Matters – the Law Society and the Maintenance of the Collegial Framework

66. I do not envy the members of the Approval Committee. If I seem too critical it is not my intention to denigrate the work of its members. In point of fact, even if the Approval Committee's Report is deficient in any respect, such deficiency is beneficial in that it serves to remind me of my own failings. Would that my failing were limited to controversial legal analysis.

67. Moreover, the Approval Committee has labored within the intensely difficult framework of a conflict between one's right to the freedom of sexual self-expression and one's rights to the freedom of religious self-expression. I can scarcely think of a more difficult framework within which to do one's work in public. Even, and perhaps especially the law Deans, have been, I am sure, subjected to extensive and intensive lobbying within their respective academic communities. In consequence, everyone's contribution bears at least some merit in important respects.

68. Yet, in the end, this process has led to no small amount of division among all concerned, some of it needless. As the Approval Committee notes, "the views of both the opponents and the supporters (of the Trinity Western Law Program) were clearly heartfelt and strongly held." (Report Paragraph 24) The issue has raised much controversy in the press, some of it expressed in ways that are less than professional.

69. No one among us ought to be subjected to treatment that bears the odious marks of disrespect or dehumanization. Being called any number of epithets sometimes applied to members of the LBGT community or being called "homophobic" or being told that one "supports homophobic policies" amount to name-calling.[9] Such statements can claim no meaningful intellectual content and serve only to harm both the person who utters the words and the person who receives them. All such statements are equally disrespectful. Our Law Society ought to ensure that these types of behaviours are avoided.

70. In consequence of all the foregoing, there it appears that is reparative work that ought to be done so as to mend relationships among all the members of the various communities that make up the Law Society. I urge Convocation to take some time to consider this question, now or perhaps in the near future.

71. For this reason, I would like to have the benefit of becoming better acquainted with the members of the LBGT community that constitutes one of the important communities of the Law Society.

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[9] Those who accuse others of 'homophobia' or 'Christophobia' should perhaps recognize that we do have accepted legal terms that seem to give no one any offence, and that actually convey intellectual content. These are the term "discriminatory" and its cognate the word "discrimination".

72. I suppose a first step in a needed rapprochement is to begin by acknowledging that each community, LBGT and Christian, shares the same experience of being called names and being thought to be, to one extent or another, "out of the mainstream of society" (See Paragraph 28 of the Report)[10]. In point of fact, we share at least this one commonality. There are many others.

73. I submit that we all could benefit from a new collegial framework. I suspect that much of the lack of communication arises from the fact that, to my knowledge, there is no framework for the communities to encounter each other on a regular basis in a collegial framework. I therefore ask Convocation to consider whether an informal council or discussion group can be established to determine what steps might be taken for the sake of maintaining and promoting a framework of true collegiality and brotherly and sisterly affection among all the members of Law Society's constituent communities.

74. Any such council or group must necessarily operate outside the scope of the adversarial process. The adversarial process serves the administration of justice in many ways. I doubt that it can serve the demands of collegiality, certainly not in this instance.

Respectfully submitted

Gerard Paul Charette

[10] I do not know who has expressed the idea that Christian beliefs are "outside the mainstream". Further, I do not know whether the idea was expressed out of sense of authentic affection or in a patronizing way. It is somewhat uncomfortable for one to find acceptance because one is viewed as being "outside the mainstream". Yet, acceptance is the key criteria. Moreover, when Christianity is well practiced, it is typically experienced as being counter-cultural. So, I will take no offence.

March 27, 2014

TWU Submissions
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Re: Submission to the Law Society of Upper Canada regarding Trinity Western University Law School

To the Treasurer and Members of the Convocation:

The Becket Fund for Religious Liberty submits these comments to the Law Society in response to the Treasurer's invitation for public input regarding the new law school at Trinity Western University.

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

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

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

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

Canada has also signed the U.N. General Assembly's Statement on Human Rights, Sexual Orientation, and Gender Identity,[5] and the Organization of American States' 2012 Resolution on Human Rights, Sexual Orientation, and Gender Identity.[6] These documents, although not legally binding, nevertheless affirm that "non-discrimination ... requires that human rights apply equally to every human being regardless of sexual orientation or gender identity"[7] and "condemn discrimination against persons by reason of their sexual orientation and gender identity."[8] These non-discrimination norms are recognized in Canadian law under section 15 of the Charter and elsewhere.[9]

Taken together, these international human rights documents demonstrate Canada's commitment to protecting the rights of all people, regardless of their religion, sexual orientation or gender identity. And, consistent with Canada's longstanding commitment to international human rights, the Charter is "presumed

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[2] Universal Declaration of Human Rights, art. 18.

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

[4] ICCPR, art. 2(1).

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

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

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

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

[9] Sexual orientation was held to fall within the ambit of s. 15 in *Egan v. Canada*, [1995] 2 S.C.R. 513. The Ontario *Human Rights Code* similarly prohibits discrimination on the basis of "sexual orientation, gender identity, [and] gender expression." R.S.O. 1990, Chp. H.19, section 1.

to provide at least as great a level of protection as is found in the international human rights documents which Canada has ratified."[10] For all of these reasons, Canada has the reputation of being an exemplary state when it comes to compliance with international human rights norms.

Application to the School of Law proposal. Trinity was established by the Evangelical Free Church of Canada to "manifest" its religion "in community with others" through "worship, observance, practice and teaching."[11] As Trinity's mission statement says:

> The mission of Trinity Western University, as an arm of the Church, is to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life.[12]

Members of the Trinity community—faculty, students, and staff—carry out this mission by pledging to live together according to specific standards required by their faith.[13] Among other things, they promise to abstain from "lying, cheating, or other forms of dishonesty," "stealing, misusing or destroying property belonging to others," "gossip, slander," and "prejudice," and "sexual intimacy that violates the sacredness of marriage between a man and a woman."[14] Although Trinity welcomes students of all faiths or no faith, it asks all of its students to live by these standards—known as a "community covenant"—while enrolled. *Id.*

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

The court agreed that, because of the agreement to refrain from sexual intimacy outside of opposite-sex marriage, "a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a

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[10] *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia,* [2007] 2 S.C.R. 391, at para. 70.

[11] *See* International Covenant on Civil and Political Rights, art. 18(1).

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

[13] Trinity Western University, Community In Covenant, http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html; Trinity Western University, Student Handbook – Community Covenant Agreement, http://twu.ca/studenthandbook/university-policies/community-covenant.html.

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

considerable personal cost."[15] But it also recognized that denying accreditation to Trinity's teacher-training program because of the community covenant "places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice."[16]

The court concluded that "the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence."[17] It also observed that "[t]o state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage [Charter] s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality."[18]

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

Implications of non-recognition for Canada's international human rights obligations. When reaching its 2001 decision, the Supreme Court observed that "if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church," and that the freedom of religion enjoyed by Trinity's students—which includes the "free[dom] to adopt personal rules of conduct based on their religious beliefs"—"is not accommodated if the consequence of its exercise is the denial of the right of full participation in society."[19]

The court was correct to be concerned about the potentially broad implications of denying accreditation on the basis of Trinity's community covenant. Indeed, the Faculty Council of the University of British Columbia Law Faculty has relied on this logic to ask the Law Society of British Columbia to consider revoking the law licenses of Trinity's current administrators and denying licenses to the future graduates of Trinity's law school.[20] The implications of the UBC Law Faculty's request—which has not, as of this date, been echoed by any Ontario law faculty—are deeply troubling.

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

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

[16] *Id.* at para. 32.

[17] *Id.* at para. 25, 29.

[18] *Id.* at para. 25.

[19] *Id.* at para. 33, 35.

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

of conduct based on their religious beliefs."[21] In addition to violating the Charter rights of Trinity administrators and graduates, each of these assertions is flatly inconsistent with international human rights law.

As to the first: although the scope of the right varies, it is trite law that religious educational institutions like Trinity may make employment decisions based on religious principles without violating human rights norms, including norms of non-discrimination. This right, which is necessary to protect the freedom and autonomy of religious institutions, has been repeatedly vindicated not only in Canada[22] but also in the United States[23] and throughout Europe.[24] The UBC Law Faculty's assertion that any enforcement of Trinity's community covenant may be inconsistent with the *Code of Professional Conduct for BC* entirely ignores this important dimension of international human rights law.

As to the second: restricting admission to the professions based on an individual's religious affiliation is an ancient form of religious persecution. In eighteenth-century Ireland, all barristers, solicitors, and notaries were required to take an anti-Catholic oath.[25] In nineteenth-century Maryland, Jews were prohibited from holding any civil position or practicing law.[26] In Canada, Jews could not hold public office until 1832.[27] Today, restrictions on admission to the bar based on religious affiliation are fewer in

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[21] *Trinity Western University*, [2001] 1 S.C.R. 772, at para. 33, 35. The Faculty Council's Motion calls on the Law Society to "have express regard" to Trinity's community covenant when deciding whether "accrediting graduates of [Trinity's] proposed school of law program would be 'in the public interest.'" The Faculty Council also called on the Law Society to "have express regard to the possibility ... that any practicing lawyer who is employed by TWU and in a position to make employment or disciplinary decisions may therefore be forced to choose between enforcing the Community Covenant Agreement and complying with the *Code of Professional Conduct for BC*." Faculty Council of the UBC Law Faculty, Motion Addressed to the Law Society of B.C., Mot. 3, 5, http://news.ubc.ca/wp-content/uploads/2014/01/Motion-addressed-to-Law-Society-of-BC-as-passed1.pdf.

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

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

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

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

[26] Seamus Hasson, *The Right to Be Wrong* 110 (1st ed. 2005).

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

number, but remain a feature of governments that promote a particular religion or oppose religion altogether, such as Saudi Arabia and North Korea. Not surprisingly, the official commentary on Article 18 of the UDHR makes it clear that "Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including ... policies ... restricting access to education [or] employment."[28] A rule preventing otherwise-qualified individuals from practicing law because they chose to enter into a religiously-based community covenant while at law school—or revoking the license of a lawyer who enforced such a covenant for religious reasons—would violate this longstanding principle of international human rights law.

* * *

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

Very truly yours,

Eric Rassbach
Deputy General Counsel

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

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March 27, 2014

VIA EMAIL and MESSENGER

Mr. Thomas G. Conway
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c/o TWU Submissions
Policy Secretariat
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c/o jvarro@lsuc.on.ca

RE: TWU request for accreditation of a law school

Dear Mr. Conway:

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction.

I have been practising law for twenty years, out as a gay man, and am the practice group leader for Litigation in the Toronto office of my law firm. I am a proud member of the Law Society of Upper Canada (LSUC). Over the years, I have happily served LSUC in a variety of capacities, including speaking on panels, acting as pro bono counsel on disciplinary reviews and providing pro bono advice on human rights matters in the late 1990's culminating in the LSUC model policy on discrimination and harassment in the legal workplace. I have happily watched (and helped) LSUC and other leading Canadian institutions to understand the need to stop discrimination on the basis of sexual orientation and to accept their LGBTQ members on a full and equitable basis.

For all of those reasons and others, this issue is unavoidably personal, and so I write this letter in my personal capacity. By the time this issue is debated at Convocation, you will have received volumes of information on the topic, including many letters like this one. I wanted you to have my views as well. Some of the points below are the fruit of the labour of others, but I agree with them all.

In Ontario, law school accreditation process falls within the authority of LSUC – not any other body. I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to deny accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, including sexual orientation.

Blakes

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the LSUC's statutory obligation to serve the public interest and the cause of justice.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[3] the Canadian Bar Association,[4] the Canadian Federation of Students,[5] numerous prominent lawyers and academics, editorial boards,[6] and over one thousand law students.[7] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals in Canada over the past decade. It is also contrary to the leadership that LSUC itself has taken on equity and diversity. Approving accreditation would be a significant (and, in my view, embarrassing) step backward for LSUC.

The FLSC's decision offends more than just our current sensibilities. In my view, the decision is legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[8] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[9] departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex

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[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

[3] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[4] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[5] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[6] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[7] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

[8] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

[9] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

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Blakes

between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.

  - More bluntly, the TWU covenant amounts to a "No Gays" prohibition on admission. If the covenant was a "No Women" or "No Blacks" or "No Jews" prohibition, I am confident we would not be having this debate. Freedom of religion would not be allowed to be stretched so broadly to insulate express discrimination in those cases, as TWU is attempting to do here.

- Second, the 2012 SCC decision in *Doré*[10] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The LSUC should demonstrate the same interests in rendering its decision on TWU's accreditation. I am personally committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can be fostered only in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to accredit a law school that openly discriminates against a vulnerable segment of the Canadian public. The effect of accreditation here would to endorse the view that LGBTQ Canadians are not only less worthy of admission (that is, expressly barred from admission), but also less worthy of protection and less worthy of acceptance and inclusion – as lawyers, law students and citizens. That cannot be the message that Canada's largest law society wants to send to the country.

I strongly request that the LSUC deny the TWU request for accreditation.

Yours very truly,

Bradley E. Berg

/lrm

[10] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Lindsay M. Lyster
President
president@bccla.org

March 27, 2014

By email to jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
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Dear Sirs and Mesdames:

Re: Accreditation of Trinity Western University Law School

I write in my capacity as President of the British Columbia Civil Liberties Association (the "BCCLA"), in response to the invitation for submissions from the public in respect of the accreditation of Trinity Western University's proposed law school.

The Treasurer of the Law Society has stated the following question for decision by Convocation:

> Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

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

In making this submission to Convocation, the BCCLA takes the position that TWU's status as a private, faith-based institution, and more specifically, the Community Covenant which members of the TWU community agree to abide by, ought not to stand in the way of TWU's accreditation nor the right of its graduates to become members of the Law Society of Upper Canada.

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

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

TWU is a private religious educational institution that has proposed to open a new law school. It has received approval from the Federation. In considering the question posed by the Treasurer, Convocation is now deciding whether the Law Society of Upper Canada will consider TWU an accredited law school.

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

The BCCLA

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

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

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

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

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

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

> the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.
>
> What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority". (paragraphs 94-96)

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

Discussion

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

Those freedoms were called "fundamental" by the framers of the *Charter* for a reason – without them, we would have no right to hold or

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

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

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

Were such conditions imposed on students attending a public faculty of law they would rightly be seen as unlawful discrimination contrary to s. 1 of the *Human Rights Code* of Ontario, as well a breach of students' rights to equality under s. 15 of the *Charter*. But it is crucial to remember that TWU is not a public university and these conditions are not imposed on TWU students – they are voluntarily accepted by those

students who choose to attend TWU. The *Charter* does not apply to TWU as a private institution. The Supreme Court held in *Trinity Western University* that as a result of s. 41 of the British Columbia *Human Rights Code* TWU does not contravene the *Code* where it prefers members of its religious constituency (para. 35). The same would be true under s. 18 of the Ontario *Human Rights Act*.

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

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

In this case, the public good is accreditation for the purpose of admission to the bar by students graduating from TWU's proposed law school. The denial of that public good to graduates of TWU's law school would infringe the freedom of religion, of association and of expression of the members of the TWU community. We are unaware of any sufficient rationale being offered that would justify that infringement. Permitting graduates of TWU to enter the legal

profession does not send the message from the state to LGBTQ Canadians that they are less worthy of respect than others nor does it deny them any rights or freedoms to which they would otherwise be entitled. All it does is respect the freedom of those who wish to govern their own conduct in accordance with the religious tenets encompassed within the Community Covenant.

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

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

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

It is fundamentally wrong to assume that because some law students are prepared to agree to conduct themselves in accordance with the Community Covenant while attending TWU that they will not also conduct themselves in accordance with the legal requirement, found both in the *Human Rights Code* and the rules that govern the legal profession, that they not discriminate in their practice of law. Again, the decision of the Supreme Court of Canada in *Trinity Western University* is dispositive:

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

> the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. (paragraph 35) (emphasis added)

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

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

The same reasoning applies to the accreditation of TWU's law school and the training of lawyers. To apply section 15 *Charter* in a way that would deny a public good to a group of people who have adopted a code of conduct based on their religious beliefs would deeply undermine the freedom of religion, and the freedom of association, not only of members of the TWU community, but of all Canadians.

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

Conclusion

We submit that Law Society of Upper Canada should, in accordance with the Federation's decision, accept TWU as an accredited law school. The question is not whether members of Convocation, individually or as a group, agree with TWU's Community Covenant or would choose to abide by it themselves. The question is whether the acceptance by law students attending TWU of the Community Covenant should bar TWU graduates from joining the ranks of the legal profession in Ontario. Our commitment to a society in which LGBTQ people are free from unlawful discrimination on the basis of sexual orientation does not give us licence to discriminate against others on the basis of their conscientiously held religious beliefs, nor to deny them their fundamental freedoms. There is no basis for believing that accreditation of TWU's law school will lead to unlawful discrimination against LGBTQ people, or would otherwise be contrary to the public interest. To the contrary, for the Law Society to deny TWU's application for accreditation would itself be contrary to law, as established by the Supreme Court of Canada, and would result in unlawful discrimination against and infringement of the fundamental freedoms of those who seek only to be able to study law and be allowed entry to the legal profession without discrimination based on their religious beliefs.

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

Yours truly,

Lindsay M. Lyster

President

DALHOUSIE UNIVERSITY
SCHULICH SCHOOL OF LAW

March 27, 2014

Policy Secretariat, Law Society of Upper Canada
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Toronto, ON
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Dear Mr. Secretariat,

Re Trinity Western University's Proposed Law School

I write in response to your request for public input into the Law Society of Upper Canada's consideration of Trinity Western University's (TWU) proposed law degree program.

I am an Assistant Professor at Schulich School of Law where I teach and research in the area of constitutional law, among other subjects. Last year I published an article that advanced an analysis opposing preliminary approval of TWU's proposal by the Federation of Law Societies of Canada (the Federation).[1] The legal opinion provided to the Federation by Mr. John Laskin specifically addressed some of the arguments I made in that article. The Report of the Federation's Special Advisory Committee (SAC) on the TWU proposal also referenced my paper. I would like to take your request for public input as an opportunity to respond to the SAC's review of the arguments I advanced in that paper.

Given that the SAC Report and the legal opinion obtained by the Federation specifically address my arguments, I would ask members of the Law Society of Upper Canada, in deliberating on these Federation documents, to also consider reading my position in full. I have attached a copy of the article as an appendix to this letter. In this letter I will limit my comments to four problematic aspects of the SAC report as they relate to the arguments I advanced in my paper.

A. Introduction: The SAC's Report

[1] Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25(1) Canadian Journal of Women and the Law available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2202408

In response to concerns about TWU's proposed law school, the Federation established a Special Advisory Committee to examine and provide the Federation with advice about TWU's requirement that all students, staff, and faculty of TWU agree to abide by a Community Covenant as a condition of admission and employment. The SAC issued a final report to the Federation in December 2013 advising that in its estimation there would be no public interest reasons for the law societies to exclude future graduates of the program if the Federation's Approval Committee were to conclude that TWU's proposal complies with the National Requirement. The SAC Report revealed significant deficiencies in the reasoning relied upon to arrive at this recommendation. I have summarized four of these deficiencies in the paragraphs below. Following this summary I have included a discussion explaining in further detail these four fatal errors in the reasoning relied upon by the SAC.

In deciding whether to accredit TWU, the LSUC should not give weight to the report of the SAC for the following four reasons:

1. TWU discriminates on the basis of sexual orientation. The SAC mischaracterized the conclusion of the Supreme Court of Canada in *BCCT* on this point.

In *BCCT* the Supreme Court of Canada found that TWU's Covenant perpetuates unfavourable differential treatment on the basis of sexual orientation and that a gay or lesbian student could only attend there at considerable personal cost.[2] These are the very phrases that the Supreme Court of Canada has used to define discrimination on the basis of sexual orientation in other decisions.

2. In concluding that TWU does not ban LGBT individuals, the SAC improperly relies on a distinction between sexual identity and sexual activity that has been rejected by the Supreme Court of Canada.

The SAC concludes that to its knowledge TWU does not limit or ban LGBT individuals.[3] This conclusion is inaccurate. The SAC's reasoning relies on a distinction between prohibiting same sex sexual activity and banning LGBT students[4] that has been explicitly rejected by the Supreme

[2] *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772, 199 DLR (4th) 1; ("BCCT"). It is true that the Supreme Court of Canada found that the Covenant did not amount to *unlawful* discrimination, primarily because of the *Human Rights Code* exemption. However, it is not accurate to conclude that the Court found that TWU does not discriminate.

[3] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at 36.

[4] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at 36.

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Court of Canada.[5] To ban same sex sexual intimacy (as TWU clearly does) is to ban LGBT students. The LSUC should not accept the formalistic and impoverished view of equality taken by the SAC and rejected by the Supreme Court of Canada.

3. The SAC report does not adequately respond to the argument that the legal context has changed since 2001.

The Law Society of Upper Canada, in deciding whether approval of TWU's program is in the public interest, must balance freedom of religion and equality for gays and lesbians based on 2014 legal norms and social values not those of nearly 15 years ago.

4. The SAC wrongly concluded that opposition to TWU is premised on the assertion that Christian universities are incompetent to deliver an accredited legal education.

The deficiencies with TWU's proposed program do not flow from its Christian worldview or intention to teach from that perspective. The specific institutional policies of this particular university, as articulated in its Community Covenant and Statement of Faith, are inconsistent with some components of the National Requirement. It obscures the institutionalized deficiency in TWU's proposed program to cast these arguments as anti-Christian.

C. Discussion of Response to the Report of the Special Advisory Committee

The reasons why the LSUC should reject the SAC's Report, summarized in the previous section, are discussed in further detail in the paragraphs to follow.

I. TWU discriminates on the basis of sexual orientation. The SAC mischaracterized the conclusion of the Supreme Court of Canada in *BCCT* on this point.

TWU requires its students and staff to sign a contract committing not to engage in same sex sexual intimacy because it is - in the words the university has chosen - "vile" and "shameful".[6]

[5] *Whatcott v Saskatchewan*, 2013 SCC 11, [2013] 1 SCR 467.

[6] Trinity Western University will not hire you nor will it admit you as a student unless you sign a covenant (http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html) promising not to engage in "sexual intimacy that violates the sacredness of marriage between a man and a woman." In support of this covenant TWU cites the following:
Romans 1:26: For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature.
Romans 1:27: In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error.

TWU's mandatory Community Covenant perpetuates unfavourable differential treatment on the basis of sexual orientation. It is true that in *BCCT* the Court concluded that the exclusion of gays and lesbians from TWU was not unlawful. Section 15 of the *Charter of Rights and Freedoms* does not apply to TWU in the context of the accreditation of teachers and the protections under the *Human Rights Code* of British Columbia are not granted to TWU students and staff. However, the SAC Report misconstrues the Court's conclusions. The Court held that because section 15 of the *Charter* is not triggered and because the *Human Rights Code* does not apply, TWU's policy does not constitute discrimination for the purposes of these provisions. The Court also held that TWU's policy perpetuates unfavourable differential treatment on the basis of sexual orientation and that gay and lesbian students could only attend TWU at considerable personal cost.[7] These are the very phrases that the Supreme Court of Canada has used to identify and define discrimination on the basis of sexual orientation in other decisions.[8]

The SAC report makes no mention of the Court's holding that TWU's policy perpetuates unfavourable differential treatment on the basis of sexual orientation. The SAC report does not include reference to the Court's finding that it would only be at considerable personal cost that a gay or lesbian student could attend TWU. Instead the SAC report asserts that there is nothing to suggest that TWU's covenant limits access to the university by LGBT individuals. The SAC did not recognize the "considerable personal cost" and the "unfavourable differential treatment" imposed on LGBT individuals as a limit on admission. Rather than recognizing this limit and the considerable dignity interest that underpins it, the SAC significantly understates the Covenant's impact on LGBT individuals by concluding that gay and lesbians students would merely "feel unwelcome" at TWU.[9]

The SAC's incomplete treatment of the Court's findings in *BCCT* gives the misperception that the Court in *BCCT* held that TWU's policies do not discriminate. This is an inaccurate characterization of the Court's reasoning. A proper interpretation of the majority reasoning in *BCCT* is that the Court concluded that TWU's policies do not constitute *unlawful* discrimination in the province of British Columbia.

While representatives of TWU, to my knowledge, have not explicitly denied that TWU discriminates on the basis of sexual orientation, they have implied that they do not discriminate[10] and they have asserted in their correspondence to the Federation a commitment to principles of

[7] See for example *Egan v Canada*, [1995] 2 SCR 513 at 528, 124 DLR (4th) 609.
[8] *Egan v Canada, ibid.*
[9] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at para 36.
[10] Robert G Kuhn, "TWU Has Played By The Rules" *National Magazine (*28 January 2014), online: The Canadian Bar Association <http://www.nationalmagazine.ca/Articles/January-2014/TWU-has-played-by-the-rules.aspx>.

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equality and non-discrimination with respect to gays and lesbians.[11] In addition to being contrary to the prohibition in its Community Covenant, these assertions are inconsistent with both TWU's non-discrimination policy and with its current and historic approach to the issue of discrimination on the basis of sexual orientation.

First, sexual orientation is conspicuously absent from the lengthy list of grounds upon which TWU declares itself not to discriminate. Other than religion, sexual orientation is the only prohibited ground of discrimination under British Columbia's human rights legislation that is not protected by TWU's anti-discrimination policy.[12]

Second, consider TWU's response both in the 1990s when the British Columbia College of Teachers raised concerns and again in the current context when the Federation decided that considering the issue of discrimination by a proposed law school was indeed required by its mandate to regulate in the public interest. TWU's response, in both instances, was to argue vociferously that the teaching profession and the legal profession should not be permitted to *even consider* whether TWU's policy raises concerns regarding discrimination against gays and lesbians.[13] Taking the position that those charged with stewarding the profession of public school teachers or licensing and regulating lawyers should not be allowed to *even consider* issues of discrimination in fulfilling their responsibilities does not reveal a commitment to non-discrimination. The Supreme Court of Canada rightly rejected TWU's position on this issue.[14]

The most recent example of TWU's resistance to equality protections can be found in its vocal (and unsuccessful) opposition to the recent anti-discrimination resolution passed by the membership of the Canadian Bar Association.[15]

It is easy to write a letter proclaiming one's commitment to the principle of non-discrimination.[16] What matters is what this institution does. TWU has a Community Covenant that only permits gays and lesbians to attend at "considerable personal cost"[17] to their dignity and sense of self

[11] Letter from TWU President Raymond to Federation of Law Societies (17 May 2013) appendixed to the SAC Report.
[12] This is not to suggest that TWU does not discriminate on grounds such as marital status or sex. Rather it is to note the significance of adopting a non-discrimination policy with an extensive list of prohibited grounds that does not include sexual orientation.
[13] See *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772; Letter from TWU President Raymond to Federation of Law Societies of Canada (24 April 2013); Letter from TWU Interim President Bob Kuhn to NSBS (7 January 2014) in <http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-01-07_Kuhn_TWU.pdf>.
[14] *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772, 199 DLR (4th) 1.
[15] Open Letter to the Canadian Bar Association (February 18, 2014) at http://www.twu.ca/academics/school-of-law/news/2014/075-open-letter-cba-bc.html.
[16] Letter from TWU President Raymond to Federation of Law Societies of Canada (17 May 2013) appendixed to the SAC Report.
[17] *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772 at 25, 199 DLR (4th) 1.

worth. TWU has a non-discrimination policy that covers race, colour, national or ethnic origin, age, sex, marital or family status, pardoned convictions, and physical or mental disabilities but does **not** cover sexual orientation.

The LSUC should consider whether it would approve TWU's law degree if the policy prohibited sexual intimacy except that which occurs within the sanctity of marriage between a man and woman of the same race. In other words, would the LSUC give the stamp of approval to a law school that prohibited inter-racial couples?

The analogy is direct and apt. There are examples of American schools, such as Bob Jones University, that have done precisely this and have done so on the basis of religious belief. The Internal Revenue Service had the courage to revoke Bob Jones University's tax-exempt status on the basis that such a policy was contrary to public interest – a decision that was upheld by the Supreme Court of the United States.[18] Bob Jones University attempted (unsuccessfully) to justify its prohibition of interracial sex on many of the same grounds that TWU justifies its prohibition on gay sex: we are a private university; we have the right to our religious beliefs; we permit racialized students to attend, we just require that they comply with a code of conduct consistent with our religious beliefs. There is no principled basis upon which you could say yes to a covenant that says no gay sex but no to a covenant that says no interracial sex.

If you, as benchers of the LSUC, approve this law school you will have to accept that you would either also approve a law school with an anti-miscegenation policy or accept that you do not consider gays and lesbians entitled to the same degree of respect, dignity and equality that you would grant to others.

II. In concluding that TWU does not ban LGBT individuals, the SAC improperly relies on a distinction between sexual identity and sexual activity that has been rejected by the Supreme Court of Canada.

The SAC concludes that to its knowledge TWU does not limit or ban LGBT individuals.[19] Presumably, the SAC's reasoning relies on drawing a distinction between prohibiting same sex sexual activity (which it says would make LGBT students feel "unwelcome") and prohibiting LGBT students.[20] In *Whatcott* in 2012, the Supreme Court of Canada specifically rejected TWU's argument that there is a distinction between prohibiting same sex conduct and prohibiting gays and lesbians. The Court concluded that it is not possible to condemn same sex

[18] *Bob Jones University v United States*, 461 US 574 (1983).
[19] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at 36.
[20] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at 36.

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intimacy "without thereby discriminating against gays and lesbians and affronting their human dignity and personhood."[21]

In rejecting the specious argument that a legally significant distinction can be drawn between discriminating against homosexual behavior and discriminating against homosexuals, the Court in *Whatcott* stated: "Courts have recognized a strong connection between sexual orientation and sexual conduct and where the conduct targeted by speech is a crucial aspect of the identity of a vulnerable group, attacks on this conduct stand as proxy for attacks on the group itself."

It could not be clearer that the Supreme Court of Canada today rejects exactly the kind of distinction between act and identity that TWU and the SAC suggests bears some legal significance. Indeed, on this issue, the Court in *Whatcott* draws its authority from Justice L'Heureux-Dube's dissenting decision in *BCCT* (finding that TWU's covenant was discriminatory and that it was acceptable for the College of Teacher's to modify its accreditation of the TWU program as a result). The Court in *Whatcott* states with approval:

> L'Heureux-Dubé J. in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, [2001] 1 S.C.R. 772, in dissent (though not on this point), emphasized this linkage, at para. 69:
>
> I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. ... The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as per Madam Justice Rowles: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person" (para. 228). She added that "the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people" (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood. [22]

Despite his reliance on *Whatcott,* Mr. Laskin's opinion is silent on this important aspect of the decision. Not only is the SAC report silent on this aspect of *Whatcott*, but also, and even more

[21] *Whatcott v Saskatchewan*, 2013 SCC 11, [2013] 1 SCR 467 citing L'Heureux-Dubé J with approval.
[22] *Whatcott v Saskatchewan*, 2013 SCC 11 at 123, [2013] 1 SCR 467.

problematically, the committee invokes exactly the love the sinner, hate the sin reasoning rejected by the Court in *Whatcott*.

One final note on this point - any suggestion that TWU's Community Covenant is voluntary and non-binding is without foundation. TWU's Community Covenant is not a guideline or invitation to abstain from same sex intimacy. It is a covenant – a solemn, formal agreement that all staff and students must sign in order to work at or attend this university. TWU describes it as a "contractual agreement" that all members of the TWU community must enter into before joining the "TWU community."[23]

To summarize, according to the Supreme Court of Canada a policy that requires students to promise not to engage in same sex intimacy is an attack on the "human dignity and personhood" of gays and lesbians.[24] The council of the LSUC should do better than to accept the formalistic and impoverished view of equality taken by the SAC and rejected by the Supreme Court of Canada.

III. The SAC report does not adequately respond to the argument that the legal context has changed since 2001.

In my paper I concluded that the legal analysis engaged in today to reconcile *Charter* rights would differ from that of the BCCT decision in 2001. This is not because the Court has rejected an internal balancing approach to resolving tensions between *Charter* rights and values. This is what the SAC suggests was my argument in support of the assertion that the Court's approach in 2014 will have shifted from that taken in 2001.[25] Rather, my argument is that the legal and social context in which this balancing would be done has changed. Legal recognition of the equality interests of sexual minorities is more thorough today than it was in 2001.[26] The SAC report does not address these changes in the Court's jurisprudence. The SAC report rejects the proposition that the legal context has changed since 2001 without offering any significant analysis or support for this conclusion.

Mr. Laskin's legal opinion did address my argument, although I do not agree with his conclusions. My argument was that as social values have evolved since 2001 legal recognition of equality for same sex couples has also evolved. I discussed a number of cases that support this assertion. Mr. Laskin dismisses my argument by stating that in his view, "it is doubtful

[23] Trinity Western University Student Handbook, *Community Covenant Agreement*, online: Trinity Western University <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>.
[24] *Whatcott v Saskatchewan*, 2013 SCC 11, [2013] 1 SCR 467.
[25] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at paragraphs 27-29.
[26] *Canada (Attorney General) v Hislop*, 2007 SCC 10, 278 DLR (4th) 385; *R v Tran*, 2010 SCC 58, 326 DLR (4th) 1.

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…that this evolution of social values would lead to a different outcome today from that in BCCT."[27] He does not address the important claim that, as a result of evolving social values, legal recognition of equality on the basis of sexual orientation has increased since 2001 and that this increased legal recognition of what constitutes equality for gays and lesbians shifts the balancing process. Instead, he argues that the recognition of freedom of religion is as deeply embedded today as it was in 2001. With respect, I did not suggest otherwise. While the values of freedom of religion continue to be recognized today, just as they were in 2001, the point is that recognition (both social *and* legal) of the value of equality for gays and lesbians has increased since 2001. An increased legal understanding of what constitutes equality on the basis of sexual orientation is likely to produce different conclusions regarding what constitutes a reasonable balance between equality for gays and lesbians and freedom of religion. In 2001 the Court concluded that an appropriate balance was struck because gays and lesbians could go elsewhere to become teachers (an argument Mr. Laskin also makes today regarding prospective gay law students). In 2014 it would likely not be sufficiently cognizant of gay and lesbian equality simply to say "TWU is not for everybody"[28] and in the interests of religious liberty the gays can go elsewhere to become lawyers.

In my paper I noted several cases in which the Supreme Court of Canada has increased the degree of protection against discrimination on the basis of sexual orientation recognized under the *Charter*. *Whatcott*, which was released after the paper was published, offers an additional example. As noted above, *Whatcott's* reliance on Justice L'Heuruex-Dube's dissent in *BCCT* established that when balancing freedom of religion with the impact on equality interests perpetuated by TWU's covenant, the fact that the Covenant bans gay sex rather than gay individuals is not relevant. This is a notable shift from the majority's approach in *BCCT*. In characterizing the implications of TWU's covenant in *BCCT* the majority, unlike L'Heureux-Dube J in dissent, appear to note some significance regarding the distinction between condemning sexual practices and condemning gay individuals.[29] This reasoning is no longer good law. In *Whatcott* the Court clearly rejected the majority position in *BCCT* and adopted Justice L'Heureux-Dubé's approach on this issue.

Mr. Laskin also concludes that the grounds I suggested for refusing TWU's application should be rejected because "Professor Craig provides no evidence to support the contention that" TWU law graduates would discriminate against gays and lesbians.[30] First, I did not offer evidence of

[27] *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: Federation of Law Societies of Canada <http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> Letter from John Laskin at Appendix C.
[28] *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772 at 22, 199 DLR (4th) 1.
[29] *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772 at 22, 199 DLR (4th) 1.
[30] *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: Federation of Law Societies of Canada <http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> Letter from John Laskin at Appendix C.

this contention because the grounds for rejecting TWU that I advanced were not based on the assumption or suggestion that hypothetical TWU law graduates would discriminate. Rejection of this proposed law school should be based on the fact that this university *does* discriminate. Second, it is of course impossible to offer evidence of whether hypothetical law graduates from a law school that does not exist would discriminate, even if that were my argument. Third, the Supreme Court of Canada in *Whatcott*, albeit in the context of considering the constitutionality of prohibitions on hate speech, concluded that in assessing the reasonableness of a limit on section 2 of the *Charter*, proof of actual harm may not be either possible or required:

> The fact that s. 14(1)(b) of the Code does not require intent by the publisher or proof of harm, or provide for any defences does not make it overbroad. Systemic discrimination is more widespread than intentional discrimination and the preventive measures found in human rights legislation reasonably centre on effects, rather than intent. The difficulty of establishing causality and the seriousness of the harm to vulnerable groups justifies the imposition of preventive measures that do not require proof of actual harm. The discriminatory effects of hate speech are part of the everyday knowledge and experience of Canadians. As such, the legislature is entitled to a reasonable apprehension of societal harm as a result of hate speech.[31]

While not definitive, given that the Court was considering the constitutionality of hate speech, the reasoning in *Whatcott* suggests the Court **now recognizes** the inherent difficulty of proving the harmful effects of discriminatory practices and will take this into account when balancing competing *Charter* values.

In addition, I would encourage the LSUC to consider the legal opinion on the applicability of *BCCT* to this situation offered by constitutional law and equality scholar Dianne Pothier. Professor Pothier concludes that even if the legal context has not changed the earlier TWU decision is distinguishable in any event:

> BCCT v. TWU involved an application by TWU for certification of its teacher training program. The BCCT rejected the certification application, a decision that was held invalid by the majority of the Supreme Court of Canada. The SCC recognized that the TWU Community Covenant raised serious concerns, but concluded it was improper to deny certification in the absence of specific evidence that TWU graduates as a group would actually discriminate against students. To avoid a conflict between religious freedom and equality, the majority of the SCC drew a "line ... between belief and conduct" (para. 36), leaving individual discriminatory teacher conduct liable to disciplinary proceedings (para. 37). It is important to note the context of TWU's

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[31] *Whatcott v Saskatchewan*, 2013 SCC 11 at 123, [2013] 1 SCR 467.

application. The status quo ante, which already had certification, was four years of education at TWU followed by a final year at Simon Fraser. TWU's new proposal was to replace the final year at Simon Fraser with one at TWU. The majority of the SCC relied on the nature of that fifth year at Simon Fraser, where "[o]n the evidence, it is clear that the participation of Simon Fraser University never had anything to do with the apprehended intolerance from its inception to the present" (para. 38), questioning: "[a]fter finding that TWU students hold fundamental biases, based on their religious beliefs, how could the BCCT ever have believed that the last year's program being under the aegis of Simon Fraser University would ever correct the situation?" (para. 38).

The Simon Fraser teacher training curriculum did not have any anti-discrimination component. In contrast, Law Schools are mandated to teach legal principles of equality, in the constitutional and statutory context. Furthermore, while public school teachers carry only the obligation of all members of the community not to discriminate in the provision of public services, lawyers have an extra level of responsibility. Lawyers are potentially involved in the administration of constitutional and statutory equality and anti-discrimination provisions. Thus there is good reason to impose a higher bar than in BCCT v. TWU, i.e. good reason for going beyond looking for specific evidence that TWU Law School graduates will, as a group, engage in discriminatory conduct.

The extra step of a year at Simon Fraser was neither designed for, nor effective in, addressing the discrimination issues raised by the TWU Community Covenant. In contrast, Law Societies are in a position to address those issues by adding an extra step to the bar admission process. If a law degree from TWU were treated as in the same category as those from foreign law schools, the National Committee on Accreditation requirements, or some provincial counterpart, could be used to fill the gap in requirements for admission to a Canadian bar.[32]

The Council of the Law Society of Upper Canada, in deciding whether approval of TWU's program is in the public interest, must balance freedom of religion and equality for gays and lesbians based on 2014 legal norms and social values, **not** those of nearly 15 years ago.

IV. The SAC wrongly concluded that opposition to TWU is premised on the assertion that Christian universities are incompetent to deliver an accredited legal education.

[32] Letter from Dianne Pothier to NSBS (18 January 2014) at <http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-01-24_Pothier_TWU.pdf>.

The SAC mischaracterizes the opposition to TWU as, in part, based on an assertion that "TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law."[33]

The SAC report states that "the inability to effectively teach legal ethics, particularly to teach students to think critically about ethics, is also one of the central arguments advanced by Professor Elaine Craig."[34] This sentence is included in the paragraph following a heading that reads:

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

The SAC report goes on to conclude that the argument that TWU's Christian worldview means that students will fail to acquire the necessary critical thinking skills is without merit. The Report then notes that many current members of the profession and the judiciary share this Christian worldview and there is no evidence that they are unable to think critically or act ethically.

This characterization of the concerns I raised with respect to TWU's capacity to meet the Federation's National Requirement is inaccurate. In fact, this aspect of the SAC's report, and its characterization of the arguments I advanced, is either disingenuous or obtuse. Of course many ethical members of the profession share with TWU a Christian worldview. Of course faith based universities are not, simply by virtue of their Christian mandate, incapable of teaching critical thinking skills or equality and human rights. I did not argue otherwise.

The concern that I raised was with TWU's institutional policies as mandated by its Community Covenant and Statement of Faith. For example, TWU's deficiency with respect to the National Requirement on legal ethics stems from a TWU university policy mandating that all faculty members sign a statement of faith in which they pledge, on pain of dismissal, to "agree with ... and agree to support ... at all times" the position that the Bible is "the ultimate authority by which every realm of human knowledge and endeavor should be judged." Academic staff are required to teach students that the Bible is the ultimate, final, and authoritative guide by which all ethical decisions must be made. To teach that ethical issues must be perceived of, assessed with, and resolved by a pre-ordained, prescribed, and singularly authoritative religious doctrine is not to teach the skill of critical thinking about these issues. An institutional policy that requires all

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[33] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at para 31.

[34] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: < http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at 41.

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faculty to teach from this perspective, and only this perspective, is inconsistent with a requirement that the program teach the skill of critical thinking.

To be as clear as possible, the argument is not that Christian institutions are incapable of providing a legal education worthy of accreditation. The argument is not that those holding a Christian worldview are incapable of upholding their ethical duty not to discriminate. The argument is not that a Christian worldview is antithetical to critical thinking. Rather, the argument is that the **specific institutional policies** of this particular university, as articulated in its Community Covenant and Statement of Faith, are inconsistent with the ethical duty not to discriminate and the requirement that a law school teach the skill of critical thinking about ethical issues. With respect, this distinction should have been obvious to the members of the Special Advisory Committee and those of the Federation's Approval Committee. To be sure, many worthy and highly esteemed educational institutions, such as St Francis Xavier, Trinity College at the University of Toronto, and Notre Dame in the United States, have a faith-based tradition. The distinction, and it is an important one, is that these institutions do not impose policies that discriminate on the basis of sexual orientation or mandate a statement of faith that is inconsistent with creating an institutional environment consistent with some aspects the requirements that the law societies have arrived at in accrediting Canadian common law degrees.

It is true that TWU, in its submissions to the Federation, espouses a commitment to critical thinking. However this assertion, easily made in letters to the Federation and the various law societies, is simply inconsistent with the school's institutional policy. The deficiency in its program on the legal ethics requirement does not flow from the institution's commitment to Christianity or even its mandate to teach law from a Christian perspective. It flows from the wording of its mandatory Statement of Faith and mandatory Community Covenant. I did not suggest that TWU's proposed program deficiencies flow from its Christian worldview or intention to teach from that perspective. It obscures the institutionalized deficiency in TWU's proposed program to cast these arguments as anti-Christian.

Conclusion

Given the shortcomings in its reasoning, I would urge the LSUC to give very little weight to the conclusions drawn by the Special Advisory Committee on TWU's proposed school of law. As I suggested above, the purpose of this correspondence is to respond to specific deficiencies in the SAC's treatment of the arguments I advanced in "The Case for the Federation of Law Societies Rejecting Trinity Western's Proposed Law Degree". My argument in full with respect to the reasons why the law societies should not approve a TWU law school, as it is currently proposed, can be found in the attached article. Thank-you again for seeking public input in your consideration of TWU's application.

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Sincerely,

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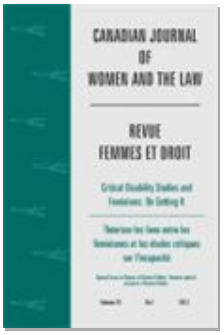
The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program

Elaine Craig



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Commentary/Commentaire

The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program

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L'Université Trinity Western (l'UTW), une école chrétienne privée en Colombie-Britannique, pourrait devenir la première faculté de droit chrétienne du Canada. Trinity Western pratique la discrimination fondée sur l'orientation sexuelle tant dans sa politique d'embauche que dans sa politique d'admission. On a aussi constaté qu'elle entrave la liberté académique. Les établissements dont les politiques discriminatoires vont à l'encontre des valeurs juridiques fondamentales ne sont pas compétents pour procurer une formation juridique. La Fédération des ordres professionnels de juristes du Canada, l'organisme national qui coordonne les 14 ordres professionnels du Canada, ne devrait pas approuver des programmes d'établissements qui ont des politiques discriminatoires. La décision de ne pas approuver la demande de l'UTW résisterait à une contestation judiciaire de celle-ci. Le contexte juridique dans lequel une décision de la Fédération ferait l'objet d'un examen judiciaire a changé depuis que la Cour suprême du Canada a tranché en faveur de Trinity Western dans l'arrêt Université Trinity Western c B.C. College of Teachers. La décision de la Fédération serait examinée selon la norme de la décision raisonnable plutôt que de la décision correcte. Considérant la mission, le mandat et les exigences académiques actuelles de la Fédération, une décision de rejeter la demande de l'UTW serait confirmée par les tribunaux parce qu'elle est raisonnable. L'UTW devrait être libre de faire de la recherche et de l'enseignement conformément à ses engagements religieux. L'UTW ne devrait cependant pas être autorisée à imposer au public un programme fondé sur la religion qui ne peut pas être en mesure de fournir une formation juridique conforme à ce que les organismes de réglementation de

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la profession juridique au Canada ont reconnu comme nécessaire pour protéger le public.

Trinity Western University (TWU), a private Christian school in British Columbia is posed to become Canada's first Christian law school. Trinity Western discriminates on the basis of sexual orientation in both its hiring and admissions policies. It has also been found to violate academic freedom. Institutions with discriminatory policies that are antithetical to fundamental legal values are not competent providers of legal education. The Federation of Law Societies of Canada, the national coordinating body for Canada's fourteen law societies, should not approve programs from institutions with discriminatory policies. A decision not to approve TWU's application would survive a court challenge by TWU. The legal framework within which a decision of the Federation would be judicially reviewed has changed since the Supreme Court of Canada ruled in favour of Trinity Western in Trinity Western v B.C. College of Teachers*. The Federation's decision would be reviewed on a standard of reasonableness rather than correctness. Based on the Federation's mission, mandate, and current academic requirements, a decision to deny TWU's application would be upheld as reasonable by the courts. TWU should be free to pursue research and education in a manner in keeping with its religious commitments. TWU should not be permitted to impose upon the public a religiously grounded program that is incompetent to deliver a legal education consistent with what the regulators of the law profession in Canada have identified as necessary to protect the public.*

> "Never admit more than five Jews, take only two Italian Catholics, and take no blacks at all."[1]

Trinity Western University Applies for Law School

Should a self-regulating legal profession require that the institutions that educate its members not discriminate on the basis of irrelevant personal characteristics in their hiring and admissions policies? Should the organization charged with protecting the public interest by serving as the gatekeeper to the profession of law concern itself with whether the institutions that it accredits are consistent with the fundamental tenets of Canada's legal system? In regulating the law schools that produce this country's next generation of lawyers, should the governing bodies of the legal profession require that the policies of these institutions respect equality? The Federation of Law Societies of Canada (the Federation), the national coordinating body for Canada's fourteen law societies, will provide its answers to these

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1. These were the dean of medicine's instructions to the admissions committee at Yale Medical School in 1935. David M Oshinsky, *Polio: An American Story* (New York: Oxford University Press, 2005) at 98.

important questions when it decides whether to approve a law degree program proposed by Trinity Western University (TWU).

The *Canadian Charter of Rights and Freedoms* and the human rights regimes in every province of Canada prohibit discrimination on the basis of sexual orientation.[2] Respect for, and protection of, vulnerable minorities is a fundamental principle of constitutional law in Canada.[3] Embedded in this aspect of supreme Canadian law is respect for equality and the rejection of discrimination on the basis of factors such as sexual orientation (or race or physical disability). In short, equality is one of the fundamental legal values on which Canada's system of law and governance is based.[4] TWU, which has announced its intention to launch a law school pending approval by the government of British Columbia and the Federation, discriminates on the basis of sexual orientation.[5] Hiring and admissions policies at TWU require all student and staff applicants to sign a community code of conduct pledging not to engage in same-sex sexual intimacy.[6] According to the Supreme Court of Canada, these hiring and admissions policies discriminate against gays and lesbians.

The Court in *Trinity Western v British Columbia College of Teachers* suggested that TWU's discriminatory policies were not unlawful because of the exemption provided to religious organizations under section 41 of British Columbia's human rights legislation.[7] However, the Court recognized that if a government

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2. *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 15. See, for example, *Human Rights Code*, RSBC 1996, c 210; *Human Rights Code*, RSO 1990, c H 19.
3. *Reference re Secession of Quebec*, [1998] 2 SCR 217, 161 DLR (4th) 385.
4. *Vriend v Alberta,* [1998] 1 SCR 493 at para 67, 156 DLR (4th) 385.
5. Trinity Western University (TWU), "Proposed School of Law at Trinity Western University" (18 June 2012), online: TWU <http://twu.ca/academics/proposed-school-of-law/default.html>.
6. TWU community members are required to pledge that they will abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." TWU, *Community Covenant Agreement: Our Pledge to One Another* (nd) at 3, online: TWU <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf> [*Covenant Agreement*]. The covenant's bar on same-sex sexual activity was revised in 2009. In its earlier version, the version at issue in *Trinity Western University*, *infra* note 7, the community standards document specifically named "homosexual behavior" as a biblically condemned practice (at 4). In its current version, the covenant bars "homosexual behavior" by requiring members of the TWU community to promise that sexual intimacy will be limited to marital relationships between a man and a woman. It then cites scripture biblically condemning same-sex sexual intimacy in support of this covenant. TWU's community covenant today, just as it did in its previous incarnation, imposes unfavourable differential treatment on the basis of sexual orientation. TWU is neither apologetic about, nor (despite the re-wording of its covenant) does it try to conceal, this discrimination. The university has a non-discrimination policy that purports to protect against discrimination based on every protected ground of discrimination except sexual orientation (and, of course, religion). TWU, "Employment Opportunities," online: TWU <https://twu.ca/divisions/hr/join/> ["Employment Opportunities"].
7. *Trinity Western University v British Columbia College of Teachers,* [2001] 1 SCR 772, 199 DLR (4th) 1 [*Trinity Western University*]. The Court found that TWU policies create "unfavourable differential treatment" on the basis of sexual orientation (at para 34). Section 41(1) of British Columbia's *Human Rights Code*, *supra* note 2, reads: "If a charitable, philanthropic,

actor adopted TWU's policies it would violate section 15 of the *Charter* and that if a public university adopted TWU's policies it would violate human rights legislation. By requiring as a condition of admission or employment that students and staff pledge not to engage in same-sex sexual behaviour that would be acceptable for opposite-sex couples, TWU policies create "unfavourable differential treatment" on the basis of sexual orientation.[8] Applicants who refuse to make this pledge will not be hired by, nor admitted to, the university.[9] According to TWU's policies, a breach of this covenant can result in dismissal from the university.[10] As the Supreme Court of Canada found, the impact of TWU's mandatory code of conduct excludes applicants to the university on the basis of sexual orientation.[11]

In addition to its discriminatory practices, according to the Canadian Association of University Teachers (CAUT), TWU also violates academic freedom.[12] An ad hoc investigatory committee established by the CAUT to inquire into TWU's policies and practices[13] concluded that "there is no question that Trinity Western University violates the commitment to academic freedom that is the foundational bedrock of the university community in Canada and internationally."[14] The committee based its findings on a review of TWU's mandate, policies, and core values as reflected in the university calendar and human resource documents such as TWU's mandatory statement of faith. The committee found that "unwarranted and unacceptable constraints on academic freedom" were revealed by TWU's own statement of academic freedom, the requirement that all academic staff members annually sign TWU's statement of faith, and the institution's articulated mandate and core

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educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons." The applicability of section 41 to TWU was not directly at issue in this case nor was it examined in any great detail.

8. *Trinity Western University, supra* note 7 at para 34.
9. *Covenant Agreement*, *supra* note 6.
10. Trinity Western University, *2012-2013 Student Handbook* (nd) at 23, online: TWU <http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf> [*Student Handbook*]. Whether a student has yet been expelled from TWU on this basis is not relevant. The handbook makes clear that students who cannot or will not comply with this covenant are not welcome at TWU. As the Supreme Court of Canada determined in *Vriend v Alberta,* [1988] 1 SCR 493, fear of discrimination itself constitutes harmful and unfavourable treatment. (I am grateful to Mathieu Bouchard and Amy Sakalaskous for drawing this point to my attention.)
11. *Trinity Western University*, *supra* note 7 at paras 25, 34.
12. In 2009, the Canadian Association of University Teachers (CAUT) placed TWU on a list of institutions in Canada that violate academic freedom. "Trinity Western Added to CAUT's Faith Test List," *CAUT Bulletin* (8 September 2009), online: Canadian Association of University Teachers <http://www.cautbulletin.ca/en_article.asp?ArticleID=2926>.
13. Ibid.
14. William Bruneau and Thomas Friedman, *Report of an Inquiry Regarding Trinity Western University* (October 2009) at 4, online: CAUT <http://www.caut.ca/uploads/TWU_Report.pdf>.

values.[15] In sum, the Federation has been asked to give approval to a new law degree program at an institution with policies that discriminate on the basis of sexual orientation (according to the Supreme Court of Canada) and that violate academic freedom (according to the CAUT).

The purpose of this article is threefold. First, it discusses the Federation's authority to approve new law schools and argues that it should not approve programs from institutions with discriminatory policies. Institutions with discriminatory policies that are antithetical to fundamental legal values are not competent providers of legal education.

Second, it demonstrates that a law program delivered by TWU would not comply with the Federation's academic requirements for Canadian law schools. TWU's violation of academic freedom and its discriminatory policies make it incapable of delivering a law program in compliance with the Federation's academic requirements on ethics and professionalism. The impact of TWU's discriminatory admission and hiring practices jeopardizes its ability to competently deliver a program that develops an appreciation of the ethical duty not to discriminate. The impact of TWU's requirement that all teaching and research occur from a stated religious perspective jeopardizes its ability to competently deliver a program that teaches critical thinking about ethical issues in law.

Third, the article explains why a decision not to approve TWU's application would likely survive a court challenge by TWU (despite TWU's successful challenge of the denial of an application by TWU for approval of a fully accredited teacher education program in 1996). The legal framework within which a decision of the Federation would be judicially reviewed has changed since the Supreme Court of Canada ruled in *Trinity Western v B.C. College of Teachers*.[16] The Federation's decision would be reviewed on a standard of reasonableness rather than correctness. Based on the Federation's mission, mandate, and current academic requirements, a decision to deny TWU's application would be upheld as reasonable by the courts. In fact, given TWU's policies, it would be unreasonable for the Federation to approve a law degree program from TWU.

The teaching and study of law within religious institutions and universities has a long history. The arguments advanced in this article do not seek to limit or oppose religiously based teaching and study of law in a private religious institution. The Federation's mandate concerns the professional attributes required of a program of legal study. The learning environment and intellectual commitments at TWU are incompatible with preparation in the competencies required by the Federation for the practice of law. TWU should be free to pursue research and education in a manner in keeping with its religious commitments. TWU should not be permitted to impose upon the public a religiously grounded program that is incompetent to deliver a legal education consistent with what

15. *Ibid* at 10.
16. *Trinity Western University, supra* note 7.

the regulators of the law profession in Canada have identified as necessary to protect the public.

The Federation Has the Authority to (Dis)Approve New Law Degree Programs

In response to concerns about a possible TWU law school raised by the Canadian Council of Law Deans, the Federation implied that it lacked the authority to approve new law programs: "[L]aw societies have no jurisdiction to approve law schools, which is within provincial government authority and responsibility."[17] It is true that provincial governments have the authority and responsibility to decide whether to allow a university to confer a bachelor of laws degree.[18] However, each of the fourteen law societies in Canada is authorized by statute to determine the licencing criteria for lawyers in its province or territory.[19] This includes the authority to decide whether to accept applicants to the bar with law degrees from a particular program.[20] In other words, provincial governments decide whether their universities can offer a law degree program. Law societies decide whether graduates of a particular law degree program will be eligible for admission to the practice of law.

The fourteen law societies have delegated authority to the Federation to review and make recommendations to them with respect to whether they should accept applicants to the bar from new Canadian law schools.[21] The Federation is the coordinating body for the fourteen law societies in Canada. In a sense, the Federation is the fourteen law societies. Perhaps another way to think of it is as a committee comprised of each of the fourteen law societies. It is a committee with delegated authority including the authority to make recommendations (which will be treated as determinative[22]) on whether the law societies should accept applicants to the bar from new Canadian law degree programs. The ultimate responsibility for the

17. Letter from President of the Federation Gérald Tremblay to William Flanagan, President of the Council of Canadian Law Deans (3 December 2012) [Letter from President] [on file with author].
18. This article does not take a position on whether the BC government should allow TWU to grant law degrees. That is a separate issue requiring a different analysis, different parties, and different considerations.
19. See, for example, *Legal Profession Act*, SBC 1998, c 9, ss 19, 20(1)(a), and 21(1)(b).
20. *Ibid.* See, for example, section 21(1)(b): "The benchers may make rules to do any of the following: (b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court."
21. Federation of Law Schools of Canada (FLS), *Report of the Ad Hoc Committee on Approval of New Canadian Law Degree Programs on Applications by Lakehead University and Thompson Rivers University* (January 2011) at 2, online: FLS <http://www.flsc.ca/_documents/Task-Force-Report-new-law-schools.pdf>.
22. Letter from President, *supra* note 17, confirming that the Approval Committee is to make the final determination on compliance with the FLS's academic requirements. Whether, as a matter of administrative law, this delegation is legitimate is a separate issue. Regardless, the ultimate responsibility for these decisions falls to the member law societies.

decision to approve a new law degree program resides with each individual law society. Each law society could, at any time, change its approval process such that it no longer delegates responsibility for this decision to the Federation.

In this sense, each of the member law societies in Canada is responsible for a decision by the Federation to approve a TWU law degree. If the Federation fails to live up to the expectations of its member law societies by not exercising its delegated authority in a manner that protects the public interest and reflects the academic requirements that the law societies have agreed upon, then its authority to approve new programs should be withdrawn. Given that the ultimate responsibility for approval falls on them, an individual law society that does not want to be attributed with approving a law school that discriminates on the basis of sexual orientation will need to withdraw authority from the Federation if it accepts the TWU's proposal. However, at this point, it is the Federation (through delegation from its member law societies) that is charged with approving new law degree programs in Canada for the purposes of admission to the bar. The Federation has in turn created a Canadian Common Law Program Approval Committee (Approval Committee). The Approval Committee has a mandate to make recommendations to the Council of the Federation in respect of applications by Canadian universities for approval by the Federation of new academic programs.[23]

In addition to its assertion to the Canadian Council of Law Deans that the law societies do not have jurisdiction to approve new law schools, the Federation also stated that it has not been given a mandate by the law societies to consider a proposed law school's hiring and admissions policies.[24] In its response to the law deans, the Federation has asserted that the scope of its inquiry is limited to determining a law school program's compliance with the current national requirement. The national requirement is the Federation's newly adopted national standard for academic requirements of a Canadian law degree. The standards are expressed in terms of "competencies in basic skills, awareness of appropriate ethical values and core legal knowledge."[25] According to the Federation, "[t]he national requirement . . . does not contemplate or authorize an inquiry into the admission philosophy of a law school program . . . or an investigation into whether the admissions policies of an educational institution are consistent with federal or provincial law."[26] The Federation has suggested that "the Approval Committee has no authority to go beyond the specific provisions of its mandate. It is not a policy-

23. FLS, *National Requirement for Approving Canadian Common Law Degree Programs* (nd), online: FLS <http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs>.
24. Letter from President, *supra* note 17.
25. FLS, *Task Force on the Canadian Common Law Degree: Final Report* (October 2009) at 4, online: FLS <http://www.flsc.ca/_documents/Common-Law-Degree-Report-C(1).pdf> [*Task Force*].
26. Letter from President, *supra* note 17.

making committee. Its primary stated function is to 'determine law school program compliance with the national requirement'."[27]

These responses by the Federation are insufficient. First, there is no legal impediment to the Federation, through its member law societies, changing the mandate of the Approval Committee. This reality is discussed in the paragraphs to follow. Second, as discussed in the third part of this article, even under this purportedly limited authority described by the Federation, the TWU's application should be denied. The TWU's proposed program would not meet the national requirement as currently articulated by the Federation.

In *Trinity Western University,* the majority found that section 4 of the *Teaching Profession Act*, in giving the British Columbia College of Teachers jurisdiction to set standards for admission to the profession of teaching, authorizes the college to consider discriminatory practices in assessing a teacher education program.[28] The Court found that "[s]chools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance. It would not be correct . . . to limit the scope of s. 4 to a determination of skills and knowledge."[29] The law societies would be given at least as broad an authority under their enabling statutes to inquire into discriminatory practices by the law schools that they (through the Federation) regulate.

The Federation is the gatekeeper to the profession of law in Canada. As the Federation notes, the responsibility for determining who is admitted to the profession of law is enormously significant: "[E]ach decision to admit an applicant tells the public that the newly licensed lawyer has met high standards of learning, competence and professional ethics."[30] In order to determine the appropriate authority for its Approval Committee, the Federation need only look to its own vision, mission, and value statements. The Federation describes its mission as acting in the public interest by, in part, "[p]romoting the cause of justice and the Rule of Law."[31] It purports to pursue this mission in a manner that is "[f]ocused on the public interest," "[r]esponsive and accountable," and "[c]onsistent with the highest standards of professionalism, excellence, ethics and good governance."[32] The Federation takes this mandate from the statutes governing the law societies in each province.[33]

To abdicate its gatekeeping responsibility respecting admission to the profession by hiding behind the self-imposed limits it describes in its response to the Council of Canadian Law Deans is inconsistent with the Federation's own mission to act in

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27. *Ibid*.
28. *Teaching Profession Act*, RSBC 1996, c 449 (as replaced by the *Teachers Act*, SBC 2011, c 19, s 99(2) (effective 9 January 2012).
29. *Trinity Western University*, *supra* note 7 at para 13.
30. *Task Force, supra* note 25 at 15-16.
31. FLS, *Mission Statement*, online: FLS <http://www.flsc.ca/en/our-mission/> [*Mission Statement*].
32. FLS, *Values Statement*, online: FLS <http://www.flsc.ca/en/our-mission/>.
33. See, for example, *Legal Profession Act*, *supra* note 19.

the public interest in a responsive and accountable fashion. It is not in the public interest to train lawyers in an institution with discriminatory policies. It is true that TWU, as a privately funded, religious institution, may be exempted from certain of the protections against discrimination created by British Columbia's *Human Rights Code.*[34] Without this exemption, its policies would certainly violate human rights law protections. More importantly, the wording of the religious exemption granted to TWU under section 41 of British Columbia's human rights legislation is particular to that province.[35] The Supreme Court of Canada found that TWU's discrimination is not unlawful in British Columbia. However, it may be unlawful in other Canadian jurisdictions. The majority of provinces do not have religious exemption clauses parallel to the one found in the British Columbia legislation. The human rights legislation in provinces such as Alberta and Manitoba do not include an exemption provision analagous to the BC provision. In other provinces, such as Saskatchewan and Nova Scotia, the exemption that is included is limited to employment.[36] Presumably, an exemption limited to employment contracts would not apply to student admission policies such as the one found in TWU's covenant. Given the variance in human rights codes and the scaricity of case law interpreting exemption clauses, it would be ill-advised for the Federation to assume that TWU's discriminatory policies are exempted under legislation such as the *Alberta Human Rights Act*, the *Saskatchewan Human Rights Code*, or the Nova Scotia *Human Rights Act*. Presumably, none of these law societies would accept a Federation decision to approve a law degree from an institution whose policies would be unlawful if it were situated in any of their provinces. Responsive and accountable service in protection of the public interest requires the Federation to examine whether TWU's discrimination would be exempted in the province of every law society it represents. This is particularly true given its role in stewarding the national mobility agreement between law societies in Canada. Before accepting a decision by the Federation to approve a TWU law degree, each of the member law societies in Canada would certainly want to ascertain whether TWU's discriminatory policies violate human rights legislation in their jurisdictions.

The law societies should also consider the possibility that a decision by them to approve a program from an institution that discriminates in its admissions policies would violate section 15 of the *Charter*. The *Charter* applies to a law society's policies and regulations regarding eligibility for admission to the bar.[37] A law society that adopted criteria for admission to the bar that precluded eligibility for gays and lesbians would violate the *Charter.* By adopting a Canadian common law degree as

34. *Human Rights Code*, *supra* note 2.
35. *Ibid*, s 41. See also *Trinity Western University*, *supra* note 7.
36. *Human Rights Act,* RSNS 1989, c 214, *Alberta Human Rights Act*, RSA 2000, c A-25.5, *Saskatchewan Human Rights Code,* SS 1979, c s-24.1, *Human rights Code,* CCSM, c H175.
37. *Black v Law Society of Alberta,* [1989] 1 SCR 591.

a criteria for eligibility, the law societies have delegated part of their gatekeeping authority to Canada's law schools. The admissions process at approved law schools serves a gatekeeping function for the law societies. In this sense, the law societies have downloaded to the law schools part of their statutorily authorized discretion to establish criteria for admission to the practice of law. Law societies, as is the case with government actors, cannot avoid their *Charter* obligations by doing indirectly (through delegation) what they are not permitted to do directly. Think of it this way. The government of Canada is not permitted to discriminate on the basis of sexual orientation in its hiring policies. Assume a particular government department outsourced its hiring process to a private human resource firm. The exercise of hiring discretion by that private firm would be subject to *Charter* scrutiny. The government cannot avoid the application of the *Charter* by using private third party entities to carry out some of its activities.[38] The same is true for law societies. When a law society approves a law degree program from an institution, it uses the admissions process of that institution to serve as a preliminary gatekeeper to the practice of law. It has in essence adopted the institution's admissions process. A law society that approves a law degree program from an institution that discriminates on the basis of sexual orientation in its admissions policies has adopted for itself a criteria for eligibility that violates section 15 of the *Charter*. Presumably, the member law societies would be disinclined to accept a Federation decision to approve it if it could result in a *Charter* violation on their part.

The Federation should also consider the fact that if any of Canada's current law schools, which are neither private nor religiously based, adopted the policies employed by TWU they would violate the human rights legislation in their respective provinces. To approve a new law school with policies that would violate human rights legislation if adopted by any of the current Canadian law schools is not to "promote the cause of justice and the Rule of Law."[39]

There is much controversy within the legal academy regarding the decision of Canada's law societies to articulate the academic criteria required of Canadian law degree programs.[40] The advisability of the Federation's decision to impose upon Canadian law schools program requirements for eligibility to the bar is not at issue in this article. The fact is that the law societies have stepped into a regulatory capacity in relation to Canadian legal education. Given this decision, it is incumbent upon them to conduct this regulation in a principled and coherent manner. Nor do the arguments advanced in this article advocate for an expanded intrusion by the Federation into the delivery of legal education in Canada. First, the Federation could justifiably be more rigorous in approving new law degree

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38. *Eldridge v British Columbia (Attorney General)*, [1997] 2 SCR 624.
39. *Mission Statement*, *supra* note 31.
40. See, for example, Canadian Association of Law Teachers and Canadian Law and Society Association, "Response to the Consultation Paper of the Task Force on the Canadian Common Law Degree of the Federation of Law Societies of Canada, December 15, 2008" (2009) Canadian Legal Education Annual Review 151.

programs than in its review of Canadian law schools with decades or centuries of experience and reputation educating law students. Second, if any of Canada's current law schools were to adopt policies that violate human rights legislation, then they too should be considered non-compliant with the Federation's requirements for approval. Third, rejecting a law degree program on the basis that it is offered by an institution with discriminatory policies does not demand significant, substantive scrutiny of a law school's curriculum or pedagogical approaches. The Federation is not well positioned, nor would it be desirable for it, to inquire into the particular pedagogical practices of a specific course or law teacher. The arguments advanced here relate specifically to institutional policies. Within an institutional environment that protects academic freedom and that rejects discriminatory policies, all manner of diversity of perspective, background, and pedagogical approach should be permitted to flourish or not, based on its own merits. However, it is reasonable to conclude that concepts of justice, equality, non-discrimination, inclusivity, and anti-oppression—foundational tenets of Canada's legal system[41]—cannot properly be taught, from whatever pedagogical approach, in a learning environment created by an institution with policies that are explicitly (and unapologetically) discriminatory.

For the Federation's purposes, the issue is not only whether TWU's discriminatory practices contravene human rights code regimes. The concern, from the Federation's perspective, should also be with the impact TWU's policy will have on TWU's ability to competently deliver a program that develops an appreciation and understanding of fundamental legal principles and values such as the concept of non-discrimination. The untenable nature of the Federation's initial response to this question can be illustrated by reference to a plausible hypothetical. What if instead of a policy prohibiting same-sex sexual intimacy TWU required its members to refrain from mixed-race sexual intimacy? Would the Federation approve a law degree from an institution with an anti-miscegenation policy that excluded applicants to its law school on the basis of race? Imagine that the Approval Committee was presented with an application to approve a law school program from an institution with a covenant identical in all respects to that of TWU except that wherever the TWU's text reads "the sacredness of marriage between a man and a woman," the institution's text instead read "the sacredness of marriage between a man and a woman of the same race." And wherever references to Bible text are made with respect to homosexuality, additional references to Biblical passages are made with respect to interracial sexual relationships.[42] If the Council of

41. *Reference re Secession of Quebec*, *supra* note 3.

42. The analogy here is apt. It is not an implausible analogy. Bob Jones University, a private Christian university in South Carolina, ended its ban on interracial dating as recently as 2000. (I am grateful to Jocelyn Downie for bringing this analogy to my attention.) See "Bob Jones University Ends Ban on Interracial Dating," *CNN US* (30 March 2000), online: CNN <http://articles.cnn.com/2000-03-04/us/bob.jones_1_racist-school-ends-ban-bushs-visit?_s=PM:US>. See Serena Mayeri, *Reasoning from Race: Feminism, Law and the Civil Rights Revolution* (Cambridge, MA:

Canadian Law Deans wrote to the Federation to raise concerns about the discriminatory nature of an anti-miscegenation covenant, would the Federation respond that it cannot refuse to approve the program because to consider the covenant lies outside the Approval Committee's authority? A religiously based anti-miscegenation policy is analogous to TWU's anti-gay policy. Discrimination based on racist religious beliefs would also be exempted under section 41 of British Columbia's *Human Rights Code*. There is no principled foundation upon which to approve a law school program delivered by a private institution with religiously based homophobic policies and practices but not one delivered by a private institution with religiously based racist policies and practices.

Similarly, the Federation should ask itself what it would do if TWU's covenant discriminated on the basis of sex. Would a faculty with religious opposition to women's participation in public life be able to competently train men for entry into the legal profession? If the Federation is of the opinion that its current mandate to approve new law schools does not allow for an inquiry into an institution's admissions and human resource policies for the purposes of identifying discrimination, then it should seek approval from the law societies to change its mandate. Again, there is no legal impediment to the law societies making this change. Rather, it is their responsibility, as the gatekeepers to the profession, to ensure that the process they adopt for approving new law degrees is sufficiently rigorous and reflects, protects, and promotes the core values of the profession and the legal system, most notably, in this instance, anti-discrimination.

A TWU Law Degree Would Not Comply with the National Requirement

As described earlier, as a second line of defence in responding to the Council of Canadian Law Deans' expressions of concern about the TWU application, the Federation made reference to the national requirement. However, contrary to the implication of the Federation's letter, TWU's policies are highly relevant to the assessment of capacity to meet the national requirement. It is precisely on this requirement that the TWU proposal fails. In particular, because it has policies that discriminate on the basis of sexual orientation and that violate academic freedom, a TWU law school program would not meet the Federation's national requirement on ethics and professionalism.

The Federation has articulated a greater concern with ensuring competency on ethics and professionalism than with any other subject matter addressed by law schools: "Ethics and professionalism lie at the core of the legal profession."[43]

Harvard University Press, 2011), for a discussion of the challenges with relying on race-based analogies to advance sexual minority rights arguments.

43. *Task Force, supra* note 25 at 4. The Federation concluded that the emphasis and focus of the national requirement should be on learning outcomes—that a focus on learning outcomes

As such, the Federation "places particular emphasis on the need for law school graduates who seek entry to law society admission programs to have an understanding of ethics and professionalism."[44] According to the Federation, "the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better."[45]

The ethics and professionalism competency requirement established by the Federation stipulates that an "applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context."[46] In addition to knowledge and understanding of the ethical dimensions of practising law (such as the duty not to discriminate), the national requirement also establishes skills-based competencies in the area of ethics and professionalism. One of the skills required by the Federation is the ability to "identify and engage in *critical thinking* about ethical issues in legal practice."[47] The statement of faith and community covenant required of its faculty, staff, and students reveal that TWU would be unable to provide a learning environment that could satisfy the ethics and professionalism competency required by the Federation. There are at least two reasons why this is the case. First, it is reasonable to conclude that an academic institution with policies that create "unfavourable differential treatment" on the basis of sexual orientation[48] is not a learning environment capable of developing an adequate understanding of the ethical duty not to discriminate. Second, TWU's statement of faith violates academic freedom and is incommensurate with a program aimed at developing the skill to think critically about ethical issues.

TWU Is Not a Learning Environment Capable of Developing an Adequate Understanding of the Ethical Duty Not to Discriminate

One vital aspect of ethics and professionalism relates to the ethical duty not to discriminate and to the importance of human rights principles. Rule 6.3-5 of the Federation's *Model Code of Professional Conduct* stipulates that "[a] lawyer must not discriminate against any person."[49] The *Model Code of Professional Conduct*

"represents the appropriate regulatory approach" (*ibid* at 4). In keeping with this conclusion, the task force recommended that the Federation leave it to law schools to determine how graduates accomplish the competencies identified in their report. However, they made one exception to this approach for competencies related to professionalism and ethics.

44. FLS, *Common Law Degree Implementation Committee: Final Report* (August 2011) at 15, online: FLS <http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf> [*Implementation Committee Report*].
45. *Task Force, supra* note 25 at 35.
46. *Implementation Committee Report*, *supra* note 44 at 17.
47. *Ibid* [emphasis added].
48. *Trinity Western University, supra* note 7 at 34.
49. FLS, *Model Code of Professional Conduct* (as amended 12 December 2012), Commentary Rule 6.3-5 at 100, online: FLS <http://www.flsc.ca/_documents/ModelCodeRevDec2012TDBL.pdf>.

emphasizes that "[a] lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws."[50] A key question in relation to an institution's capacity to meet the national requirement with respect to ethics and professionalism is whether the institution is capable of developing students' understanding of the ethical duty not to discriminate. To answer this question with respect to TWU's application, the Federation should consider some of the scriptural passages that TWU compels all members of its community to comply with.[51] Particularly noteworthy are those scriptural passages cited to support the covenant that TWU students, staff, and faculty not engage in same-sex sexual intimacy.[52] These include the following: Romans 1:26: "For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature"; Romans 1:27: "In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error."[53]

As discussed earlier, the requirement that members of the TWU community not engage in same-sex sexual intimacy either on or off campus was found by the Supreme Court of Canada to create "unfavourable differential treatment" on the basis of sexual orientation.[54] The Court recognized that such treatment, if engaged in by a public institution, would violate the human rights of gays and lesbians under section 15 of the *Charter* (if the *Charter* applied) and under Canadian human rights code regimes.[55] The Court rejected the formalistic argument that the covenant does not constitute discrimination because it prohibits sexual acts between people of the same sex rather than gay and lesbian people themselves. The Court agreed that instead the question is whether TWU's community standards mean

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50. *Ibid,* Commentary Rule 6.3 at 100.
51. All TWU programs are established and implemented according to the edict that scripture "must be the final and ultimate standard of truth, the reference point by which every other claim to truthfulness is measured." TWU, *Core Values Statement Series No. 1: Obeying the Authority of Scripture* (5 January 1999) at 3, online: TWU <http://twu.ca/divisions/hr/about/twu-core-values.html> [*Core Values Statement*].
52. "[C]ommunity members voluntarily abstain from . . . sexual intimacy that violates the sacredness of marriage between a man and a woman." *Covenant Agreement*, *supra* note 6 at 3. As discussed later in this article, it misrepresents the implications of the commitment required of members to insert the word voluntarily into the agreement. The agreement itself is not optional, and a breach of the agreement can result in suspension or expulsion. To argue that it is voluntary because sexual minorities can simply choose not to apply to TWU is to engage in the most obvious and objectionable formal equality reasoning. Women can choose not to become pregnant. Sikhs can choose to abandon their headwear. For a discussion of the inequality of formal equality reasoning, see Dianne Pothier, "Equality as a Comparative Concept: Mirror, Mirror, on the Wall, What's the Fairest of Them All?" (2006) 33 Supreme Court Law Review (2d) 135.
53. *Covenant Agreement*, *supra* note 6 at n 16.
54. *Trinity Western University, supra* note 7 at para 34.
55. *Ibid* at para 25.

that a gay or lesbian student who signed the covenant would consider themselves accepted by the TWU community on an equal basis.[56] The majority concluded that "a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost."[57] The majority confirmed that the same would be true for gay and lesbian job applicants.[58]

Sexual orientation is conspicuously absent from the lengthy list of grounds upon which TWU declares itself not to discriminate.[59] Other than religion, sexual orientation is the only prohibited ground of discrimination under British Columbia's human rights legislation that is not protected by TWU's anti-discrimination policy.[60] The fact that the discrimination perpetuated by TWU's policies may not be unlawful in British Columbia should not be relevant to a decision as to whether a TWU law school would be in compliance with the Federation's national requirement on ethics. In the context of this assesment, the Federation's concern should be with the impact that TWU's policies will have on TWU's ability to competently deliver a program that develops students' understanding of the ethical duty not to discriminate.

While the Federation ought not to inquire into specific course content and pedagogical approach, it should (given the regulatory role it has assumed) apply the national requirement to an institution's policies in a manner that is cognizant of the fact that a proper legal education is multi-dimensional, textured, and contextual. It is so much more than the rote learning of doctrine and legal text. It includes relationships, role modelling, critical discussion, and experiential learning. Knowledge and understanding of an ethical rule are not the same. The Federation's national requirement stipulates that students demonstrate a competency in both awareness and understanding of the ethical dimensions of practice.[61] By including both knowledge and understanding, the national requirement must intend something more than just a competent knowledge of the actual rules of professional conduct. An understanding of the ethical dimensions of lawyering is broader than just a knowledge of the professional rules of conduct. Understanding the ethical dimensions of the practice of law must mean something like grasping the significance, implications, and importance of ethical duties such as the duty not to discriminate.

Consider then the learning environment in which TWU proposes to deliver a law program with the capacity to develop a competent understanding of a lawyer's duty

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56. *Ibid* at para 23.
57. *Ibid* at para 25; see also para 23.
58. *Ibid* at para 34.
59. "We do not discriminate on the basis of race, colour, national or ethnic origin, age, sex, marital or family status, pardoned conviction, nor physical or mental disabilities." "Employment Opportunities," *supra* note 6.
60. *Ibid; Human Rights Code*, *supra* note 2.
61. *Implementation Committee Report, supra* note 44 at 17.

not to discriminate. TWU discriminates against gays and lesbians in its hiring policy by stipulating that compliance with the covenant not to engage in same-sex sexual intimacy serves as a condition of employment.[62] TWU discriminates against gays and lesbians in its admissions policy by requiring that applicants sign the community covenant and by advising applicants that those "who find themselves unable to maintain the integrity of their commitment should seek a living-learning situation more acceptable to them."[63] TWU policies require students to be complicit in acts of discrimination against gays and lesbians by requiring that they sign the covenant in order to attain membership in the community and by encouraging them to "challenge one another and hold each other accountable to the *Community Covenant*."[64] Again, TWU's admissions and hiring policies would constitute unlawful discrimination if adopted by any of the universities currently offering law degrees in Canada.[65]

An institution with policies that discriminate on the basis of sexual orientation does not have the competency to deliver a law program consistent with the national requirement on ethics and professionalism. The institutional setting at TWU, because of TWU's community covenant, is simply not consistent with the national requirement that law programs have the capacity to develop an understanding of the ethical duty not to discriminate. The Federation should conclude that the proposed TWU law degree program does not meet the national requirement because of the institution's discriminatory policies. This conclusion does not require the Federation to request information about, or scrutinize, the substance of any proposed course or pedagogical approach. The failure to comply with the national requirement is at an institutional level.

TWU's Policies Violate Academic Freedom and Are Incommensurate with a Program Aimed at Developing the Skill to Think Critically about Ethical Issues

Academic criteria for approval of a law degree program under the Federation's current national requirement includes the "skills to . . . identify and engage in critical thinking about ethical issues in legal practice."[66] TWU's policies are incommensurate with this requirement. TWU describes itself "as an arm of the church" and identifies its primary mandate as "first and foremost, a community of people passionately

62. *Covenant Agreement*, *supra* note 6.
63. *Student Handbook*, *supra* note 10 at 24.
64. *Ibid* at 25.
65. Human rights code regimes do apply to public universities and do prohibit discrimination on the basis of sexual orientation. See, for example, the *Canadian Human Rights Act*, RSC 1985, c H-6; Ontario's *Human Rights Code, supra* note 2.
66. *Implementation Committee Report*, *supra* note 44 at 17.

committed to Jesus Christ and to God's purposes."[67] It is a disciple-making community. The university confirms that "[d]iscipleship for members of the TWU community is not an option."[68] It is mandatory. TWU's core value statements stipulate that scripture must be the "final authority for all Christian faith and life."[69] TWU's programs are established and implemented according to the edict that scripture "must be the final and ultimate standard of truth, the reference point by which every other claim to truthfulness is measured. In other words, Scripture must be our lens by which we view and evaluate our lives and the world."[70] Core to its mission, the university maintains that "[a]ll that Scripture teaches in regard to . . . ethical commitments must be wholeheartedly embraced."[71]

These commitments are not voluntary for members of the TWU community. The university requires that this assertion of scriptural doctrine as the final and authoritative source of truth be expressed in all teaching.[72] Compliance with teaching from this perspective is obligatory.[73] Academic staff at TWU are required annually to sign a statement of faith.[74] The statement of faith requires faculty to "agree with . . . and agree to support . . . *at all times*" the position that the Bible is "the ultimate authority by which every realm of human knowledge and endeavor should be judged. Therefore, it is to be believed in all that it teaches, obeyed in all that it requires, and trusted in all that it promises."[75] All students, faculty, and staff are required to pledge "acceptance of the Bible as the divinely inspired, authoritative guide for personal and community life."[76] In other words, academic staff are required to teach students that the Bible is the ultimate, final, and authoritative guide by which ethical decisions are to be made. Students are required to pledge acceptance of the scripture as the ultimate source of authority by which to judge every aspect of their lives, including ethical decision making.

To teach that ethical issues must be perceived of, assessed with, and resolved by a pre-ordained, prescribed, and singularly authoritative religious doctrine is not to teach the skill of critical thinking about these issues. In fact, to limit ethical inquiry in this manner is hostile to the process of critical thinking. Critical thinking

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67. TWU, *Introductory Statement to TWU Core Values Series: Trinity Western University as an "Arm of the Church"* (4 October 1997) at 2, online: TWU <http://twu.ca/divisions/hr/about/twu-core-values.html>.
68. TWU, *Core Values Statement Series No 6: Growing as Disciples in Community* (12 July 2001) at 1, online: TWU <http://twu.ca/divisions/hr/about/twu-core-values.html>.
69. *Core Values Statement*, *supra* note 51 at 3.
70. *Ibid*.
71. *Ibid* at 4.
72. TWU, *Statement of Faith* (6 November 2009), online: TWU <http://twu.ca/divisions/hr/employee/documents/default.html> [*Statement of Faith*].
73. *Ibid*; see also Bruneau and Friedman, *supra* note 14.
74. *Statement of Faith*, *supra* note 72; see also Bruneau and Friedman, *supra* note 14 at 7.
75. *Statement of Faith*, *supra* note 72 [emphasis added].
76. *Covenant Agreement*, *supra* note 6 at 1.

involves deliberation, reasoning, reflection, and logic in order to decide what to believe or what to do. It requires the ability to discern hidden values and unstated assumptions, to consider and evaluate the reason and logic of competing statements of truth, to observe and evaluate evidence, and to assess context and the reliability of sources of information in order to arrive at a finding of truth. Critical thinking does not start with a conclusion of truth. Certainly, one might, through critical-thinking processes, arrive at the conclusion that an ethical decision should be guided by, or based on, religious doctrine. However, to teach that all judgment must be guided by the Bible—to teach that the source of truth for all ethical decision making is the scripture—is not to teach the skill of critical thinking about ethical issues.

As the CAUT has concluded, a guarantee of academic freedom from a stated religious perspective is inconsistent with a commitment to academic freedom: "[T]he right, *without restriction by prescribed doctrine,* to freedom of teaching and discussion."[77] So too, it is antithetical to the development of the skill of critical thinking about ethical issues in law to require that it be taught from one particular, and purported to be singularly authoritative, perspective. It would be unreasonable for the Federation to conclude that TWU, given its current policies, could offer a learning environment competent to develop critical thinking skills about ethical issues in law. Based on the national requirement for ethics and professionalism established by the Federation, TWU's application for approval of a new common law degree should be denied.

A Decision Not to Approve TWU's Application Would Be Upheld

In 1996, the British Columbia College of Teachers (BCCT) denied an application by TWU for approval of a fully accredited teacher education program. The college denied the application on the basis that it would not be in the public interest because of the discriminatory practices enagaged in by the institution. The BCCT found that TWU did not meet its criteria for accreditation because of its prohibition of same-sex sexual activity. TWU sought judicial review of this decision, and, ultimately, the BCCT was ordered to fully accredit TWU's teacher education program.[78]

There are two interrelated reasons why a decision by the Federation not to approve a TWU application would be treated differently by the courts than was the decision of the BCCT. First, the legal context has changed. Second, the Federation's justifications for denying an application differ from the arguments made on behalf of the BCCT.

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77. Bruneau and Friedman, *supra* note 14 at 10 [emphasis in the original].
78. *Trinity Western University, supra* note 7.

The Legal Context Has Changed since Trinity Western University *Was Decided*

The legal context has changed in two ways since *Trinity Western University* was decided. First, the legal standard by which a decision of the Federation would be judicially reviewed has changed. The Federation's decision would be treated with deference by the courts.[79] The BCCT's decision did not receive deference. It was reviewed by the Court on a standard of correctness. The BCCT argued that it could not accredit TWU because of a concern that its graduates could have a detrimental effect on the learning environment in public schools. Having no evidence before them to demonstrate that the public school system would be harmed by teachers who received all of their training at TWU, the Supreme Court of Canada concluded that the BCCT's decision was not correct. According to the majority, the BCCT did not properly take into account the impact of its decision on the right to freedom of religion of TWU members.[80] In making its decision, the Federation will be required to balance freedom of religion and equality (as was the BCCT). However, unlike in *Trinity Western*, the balance struck by the Federation would be reviewed on a standard of reasonableness. Provided the Federation achieves a reasonable balance between protecting freedom of religion and protecting equality, its decision will be upheld.

As was just suggested, in deciding whether to approve a new law degree program, the Federation must strike a reasonable balance between freedom of religion, equality, and its mandate to protect the public interest.[81] The Federation's decision on whether to approve a law degree from TWU must be consistent with *Charter* values.[82] In making its decision, the Federation must ask how to pursue its objectives in a way that will best protect the *Charter* values at issue.[83] If the decision is judicially reviewed, the question will be whether "in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing" of the *Charter* rights and values at play.[84] Again, this question will be approached with deference. The Federation's decision will be unreasonable if, in pursuing its objectives, it disproportionately impairs a *Charter* guarantee—in this case, either freedom of religion or equality.[85]

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79. *Doré v Barreau du Québec,* 2012 SCC 12, [2012] 1 SCR 395 [*Doré*]. I am grateful to my colleague Sheila Wildeman for originally bringing this point to my attention.
80. *Trinity Western University, supra* note 7 at para 33.
81. *Doré, supra* note 79.
82. In *Doré, supra* note 79, the Supreme Court of Canada determined that the exercise of individualized administrative discretion—like a decision by a professional regulator as to whether to approve a program—are to reflect *Charter* values.
83. *Ibid*.
84. *Ibid* at para 57.
85. *Ibid* at para 7.

A decision by the Federation not to approve a law degree from TWU would affect the interests of TWU law graduates (presuming the government of British Columbia decides to accredit a TWU law degree). Unlike graduates from other Canadian law schools, TWU law graduates would not be eligible for licensure to practise law in Canada immediately following graduation and completion of a provincial bar exam and articles. Instead, like foreign-trained lawyers, TWU graduates would presumably have to meet certain entrance requirements determined by the National Committee on Accreditation.[86]

The question is whether this impact on freedom of religion is unreasonable in light of the Federation's mandate. The answer is no. The Federation must take into consideration the impact of its decision on freedom of religion.[87] However, it must do so in a way that balances the impact on freedom of religion with both its mandate to protect the public interest and competing *Charter* values such as equality.[88] A proper balance of the Federation's mandate with all of the *Charter* rights and values at issue requires that the Federation not approve a law degree from TWU. Not only is it reasonable for the Federation to reject TWU's application, but it would actually be unreasonably dismissive of equality protections for them to do otherwise.

The Federation is charged with protecting the public interest by ensuring that those who are licensed to practise law in Canada have received an education that will position them to protect and promote the fundamental legal principles upon which Canada's systems of law and governance are to operate. It is not in the public interest to train lawyers in an institution with policies that are inconsistent with core professional values and fundamental legal principles. TWU, given its discriminatory policies and violation of academic freedom, is not equipped to provide the kind of legal education that Canadians expect of their practising lawyers. Lawyers enjoy a uniquely independent system of self-regulation. With this privilege comes a heightened need to empower the profession's regulating bodies to protect the public interest. The intrusion on freedom of religion imposed by a decision not to approve TWU's application is necessary and drives at the core of the Federation's

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86. The National Committee on Accreditation (NCA) is a standing committee of the Federation. It assesses the legal education and professional experience of individuals who obtained their credentials outside of Canada. Based on its assessment of the applicant's education and experience, the NCA requires individuals to meet particular requirements before they can apply for admission to a law society in Canada. Federation, "About the NCA," online: FLS <http://www.flsc.ca/en/nca/about-the-nca/>. A regulator's decision not to approve an educational program is separate from a provincial government's decision on whether to accredit a university's degree. If the government of British Columbia gives TWU permission to confer law degrees, the Federation could adopt a process for TWU law graduates similar to what it currently requires of foreign trained lawyers. Of course, much would need to be done by the Federation to ensure that an alternative process of accreditation for TWU-trained lawyers was sufficiently rigorous, thorough, and substantive to compensate for the deficiencies in a TWU law program.

87. *Doré, supra* note 79.

88. *Ibid*.

mandate. In arriving at a reasonable balance, it is important to remember that a decision by the Federation not to approve TWU's proposed program is distinct from the institution's ability to offer its students the opportunity to study law in its specifically Christian environment. A different matter still, one in the hands of the BC government, is whether such study leads to the conferral of a law degree.

When viewed in light of the Federation's overarching objectives, the competing equality interests, the lack of impact on the university's ability to offer a law degree, and the potential for accommodation of TWU law graduates through the NCA process, the limit on religious freedom imposed by a refusal to approve TWU's law degree is proportionate and therefore reasonable.

The second and related change to the legal context since *Trinity Western University* was decided involves the relationship between evolving societal values and evolving *Charter* jurisprudence. As societal values change, what constitutes a reasonable balance between protecting freedom of religion and protecting against discrimination on the basis of sexual orientation also changes. The Court's evolving jurisprudence on gay and lesbian equality clearly reflects this position.[89] For example, in *R. v Tran,* the Court rejected the same gay panic defence it had accepted for decades on the basis that "the ordinary person standard must be informed by contemporary norms of behaviour, including fundamental values such as the commitment to equality provided for in the *Canadian Charter of Rights and Freedoms*."[90] In *Canada (Attorney General) v Hislop,* the Court explicitly recognized that despite constitutional recognition in 1995, equal protection under the law has been achieved gradually for gays and lesbians as social, legal, and political norms have become more tolerant of sexual minorities.[91]

Today's decision makers are expected to be much more protective of gay and lesbian equality than were the decision makers of ten, fifteen, or twenty years ago.[92] *Trinity Western University* was decided twelve years ago. The majority in that case found that the equality interests of gays and lesbians were not sufficiently jeopardized by a public school system with teachers educated in a university that discriminates on the basis of sexual orientation: "While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers."[93] Societal values have evolved. The Court in *Trinity Western University* addressed the inequality towards sexual minorities by concluding that the discriminatory policy was okay

89. Consider also the evolving recognition of equality protection for same-sex couples under section 15 of the *Charter* revealed by the Court's decisions in *Canada (Attorney General) v Mossop,* [1993] 1 SCR 554, 100 DLR (4th) 658; *Egan v Canada,* [1995] 2 SCR 513, 124 DLR (4th) 609; *Reference re Same-Sex Marriage*, [2004] 3 SCR 698, 246 DLR (4th) 193.
90. *R v Tran*, 2010 SCC 58 at para 34, [2010] 3 SCR 350.
91. *Canada (Attorney General) v Hislop*, 2007 SCC 10, [2007] 1 SCR 429.
92. *Ibid*.
93. *Trinity Western University, supra* note 7 at para 35.

because "TWU is not for everybody."[94] A reasonable balance between freedom of religion and equality for gays and lesbians based on contemporary standards requires ascribing more weight to the equality interest than what is attributed to it by resolving the tension with the conclusion that no one is saying that gays cannot be teachers.[95]

The Federation's Basis for Denying Approval Is Different

In addition, the justification for denial relied on by the Federation would be different than the argument made by the BCCT. The BCCT argued that teachers trained in an institution that discriminates on the basis of sexual orientation might perpetuate discriminatory attitudes in the public school classroom. The Court concluded that the BCCT decision was incorrect because there was no concrete evidence that this scenario would occur. The Federation's decision not to approve would be justified on a different basis. First, it is reasonable to conclude that principles of equality, non-discrimination, and the duty not to discriminate—requirements of the Federation's accreditation framework—cannot competently be taught in a learning environment with discriminatory policies. Second, it is reasonable to conclude that the skill of critical thinking about ethical issues cannot adequately be taught by an institution that violates academic freedom and requires that all teaching be done from the perspective that the Bible is the sole, ultimate, and authoritative source of truth for all ethical decision making. This is a different argument than the one made by the BCCT. It is not a prediction that in the future TWU law graduates would discriminate. It is not a conclusion that requires empirical evidence of discrimination by TWU graduates. Nor, as noted earlier, is it a conclusion that would be reviewed on a correctness standard.

Conclusion

June 2003 was a triumphant month for the equality interests of gays and lesbians in North America. Two landmark court decisions were released that month. On 26 June 2003, the Supreme Court of the United States finally declared anti-sodomy laws to be an unconstitutional violation of the rights of gay men in America.[96] Sixteen days earlier, the Ontario Court of Appeal had concluded that a legal definition of marriage that excluded same-sex couples violated the equality guarantees under the *Charter*.[97] This decision was a watershed moment in the successful bid to achieve same-sex marriage rights across Canada. Anti-sodomy laws were repealed in Canada more than thirty years earlier on 27 June 1969—without a

94. *Ibid* at para 25.
95. *Ibid* at para 35.
96. *Lawrence v Texas*, 539 US 558 (2003), 123 S Ct 2472.
97. *Halpern v Canada (Attorney General)* (2003), 65 OR (3d) 161, 225 DLR (4th) 529.

court battle and before equality guarantees were even constitutionally entrenched in this country.[98] Interestingly, the legislation repealing anti-sodomy laws in Canada came into force one day before gay, lesbian, and transgender men and women in New York City were pushed to the point of uprising during the famous Stonewall Riots, which are often credited with kicking off the sexual minority rights movement in America.

It has always seemed striking that in the same month that Canada was granting same-sex marriage, the United States was finally rejecting criminal law prohibitions aimed at gay sex—something Canada had done thirty-four years prior. Canada has often been at the vanguard of ensuring constitutional and human rights protection for the equality interests of gays and lesbians. Given our legal tradition in this regard, it seems all the more striking that the Federation might abdicate its gatekeeping responsibilities by approving a law school with discriminatory policies, when its American counterpart, despite a legal culture much less protective of sexual minority rights, has recognized in its standards of approval for law schools that the distinction between lawful and unlawful discrimination against sexual minorities based on religious justification is not relevant.[99] Under the American Bar Association's standards, law schools with a religious affiliation can prefer persons who adhere to the religious affiliation or purpose of the school, provided such preference is "protected by the United States Constitution" and provided the institution does "not use admission policies or take other action to preclude admission of applicants . . . on the basis of . . . sexual orientation."[100] In deciding whether to approve a law degree from TWU, the Federation and its member law societies will need to choose on which side of legal history they wish to stand.

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98. *Criminal Law Amendment Act*, SC 1968-9, c 38.

99. American Bar Association (ABA), *2012–2013 ABA Standards and Rules of Procedure for Approval of Law Schools* (Chicago: ABA, 2012), Standard 211 at 12-13, online: ABA <http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf>. See, in particular, the Interpretation to Standard 211 at 13. For the purposes of law degree program approval, the ABA does not distinguish between lawful and unlawful discrimination on the basis of sexual orientation. Conversations with the ABA reveal that there has not yet been controversy regarding this section of the ABA standards. It remains to be seen how the ABA will apply this section in its assessment of religiously affiliated American law schools with homophobic policies. Nevertheless, just by revising its standards in this way, the ABA has demonstrated a commitment to equality for sexual minorities that far exceeds the FLS's initial response to this issue.

100. *Ibid*.

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March 27, 2014

TWU Submissions
Policy Secretariat
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Re: TWU Submission

I am writing in my capacity as the President of Criminal Lawyers' Association of Ontario ("CLA"). Our organization opposes the accreditation of Trinity Western University's law school ("TWU") for the reasons that follow.

The Criminal Lawyers' Association of Ontario

The CLA is a non-profit organization founded on November 1, 1971. Its objects are to educate, promote and represent its membership on issues relating to criminal and constitutional law. The CLA has over 1000 members in Ontario and associate members across Canada. The CLA serves as the voice of criminal defence lawyers in Ontario.

The CLA is routinely consulted by both Houses of Parliament and their Committees to offer submissions on proposed legislation pertaining to issues in criminal and constitutional law. Similarly, the CLA is often consulted by the Government of Ontario, and in particular the Attorney General of Ontario, on matters concerning provincial legislation, court management, Legal Aid and various other concerns that involve the administration of criminal justice in the Province of Ontario.

The CLA is frequently granted standing to intervene at the Supreme Court of Canada and Ontario Court of Appeal on cases involving criminal law, constitutional law, and civil liberties. We have also been granted standing and participated in the Commission on Proceedings Involving Guy Paul Morin (the "Kaufman Inquiry") and the Inquiry into Pediatric Forensic Pathology in Ontario (the "Goudge Inquiry").

I would like to thank Ingrid Grant, Jaki Freeman and Breese Davies for drafting these submissions on behalf of the CLA.

Our Interest in the Accreditation of TWU

The CLA is an organization comprised of lawyers who make it their life's work to advocate for the criminally accused, often the most vilified and marginalized people in society. We deal with *Charter* issues on a daily basis and frequently represent people who are mistreated by those in authority due to their race, age, sexual orientation and gender identity. As such we are deeply concerned about any form of discrimination within our own profession and the message that would be sent to the rest of society about the rights and dignity of LGBT people if the LSUC officially accepts and approves of discriminatory conduct.

Why TWU Should be Refused Accreditation

As you know, TWU is associated with the Evangelical Free Church and requires that all students and staff sign a "Community Covenant." By signing the covenant the student or teacher promises not to engage in certain behavior that TWU considers contrary to biblical teachings, including cheating, lying, and drunkenness. It also contains an explicit prohibition against "sexual intimacy that violates the sacredness of marriage between a man and a woman." The covenant binds the signers both on and off campus. Violation of the covenant can result in expulsion or a lesser sanction.

The effect of TWU's "Community Covenant" is that LGBT people are not welcome at TWU unless they essentially renounce their identity and agree not to engage in any form of same-sex relationship or intimacy, even within a legal marriage. Heterosexual students are required to abstain from pre-marital sex but are free to enter heterosexual marriages. The discriminatory message and effects are clear.

The CLA does not take the position that there is any evidence that the graduates of TWU's law school would not possess the necessary knowledge to become good lawyers or that they would necessarily discriminate against future LGBT clients.[1] Rather, we believe that the LSUC should refuse to accredit the TWU law school unless and until TWU removes the requirement for law students to sign the "Community Covenant." This position would denounce TWU's discrimination against LGBT people and would make it clear that LSUC refuses to provide any manner of official or tacit approval of these policies.

In other words, the decision to refuse accreditation to TWU **should not and need not** be based in any inadequacy of the legal education offered there. This is so for the same reason that the expulsion of South Africa from the International Olympic Committee in 1970 did not occur because apartheid caused poor athletic performance. Rather, divestment from apartheid South Africa was a moral and symbolic expression of condemnation. The LSUC should take a similar public stand against TWU's discrimination against LGBT people.

[1] This was the position advanced by the BC College of Teachers regarding the accreditation of the TWU's teacher training program and rejected in *Trinity Western University v. British Columbia College of Teachers*, [2001] S.C.J. No. 32. This case is not determinative of the issue now before the LSUC, as it dealt exclusively with this very different basis for refusing accreditation.

We believe that the LSUC should take this stand in keeping with its duties "to maintain and advance the cause of justice and the rule of law" and "to protect the public interest."[2]

This position is also supported by the Rules of Professional Conduct and the Barrister's oath. Rule 5.04(1) and the associated commentary states:

> **A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate** on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other licensees or any other person.
>
> Commentary:
> **The Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination. This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.** Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law. (emphasis added)

The Barristers' Oath states:

> I accept the honour and privilege, duty and responsibility of practising law as a barrister and solicitor in the Province of Ontario. I shall protect and defend the rights and interests of such persons as may employ me. I shall conduct all cases faithfully and to the best of my ability. I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client. I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility. I shall seek to ensure access to justice and access to legal services. **I shall seek to improve the administration of justice. I shall champion the rule of law and safeguard the rights and freedoms of all persons.** I shall strictly observe and uphold the ethical standards that govern my profession. All this I do swear or affirm to observe and perform to the best of my knowledge and ability. (emphasis added)

We expect that the LSUC will be concerned that by refusing the accreditation of TWU, it will be favouring the rights of LGBT people over the freedom of religion of the TWU students, staff and administration. However, we submit that in these circumstances, the result we propose is the correct one.

Freedom of religion is important but not unlimited. It must sometimes yield to the important goals of a civil society. Such limits have included a law that required Hutterites to have their pictures taken as part of the drivers' licencing scheme despite their religious objection,[3] the recognition that witnesses will sometimes be required to remove the niqab to ensure fair trial rights,[4] and the requirement that civil marriage commissioners perform

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[2] *Law Society Act*, s. 4.2

[3] *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] S.C.J. No. 37

[4] *R. v. N.S.*, [2012] S.C.J. No. 72

same-sex marriage ceremonies regardless of their personal religious objection.[5] We submit that the condemnation of discrimination within our profession is another such critical goal.

The refusal to accredit TWU would not prevent the students or staff of TWU from believing or worshipping as they choose. It would neither compel nor prohibit any religious rite or practice. It would not stop them from living by the dictates of the covenant or from holding views about homosexuality. It would not prevent TWU from operating a law school and issuing law degrees, or even from requiring their students to sign the covenant.[6] It would only deny our profession's approval and endorsement of the discrimination involved in the covenant. To the extent that freedom of religion is even affected by this refusal, our proposed approach represents the "just and proportionate balance" necessary when rights conflict.[7]

In considering the issue, we ask that the LSUC consider the following points:

- Polite discourse about "equity-seeking groups" and "historically disadvantaged minorities" glosses over historical realities. LGBT people are an equity seeking group because they have historically faced stereotyping, ridicule, assault, chemical castration, imprisonment and execution because of their identity. In many parts of the world, this has not changed.

- The views expressed in the TWU Community Covenant cannot be viewed outside of their historical context. TWU's attempt to discriminate and exclude LGBT people is not a historical anomaly or outlier. LGBT people have faced centuries of oppression in large part **because** of religious views that homosexuality is sinful and shameful.

- Social acceptance of the LGBT community is relatively new and thus somewhat tenuous. Imagine what the reaction of the Benchers would be if a proposed law school stated that Jewish students are welcome, as long as they do not attend synagogue or engage in other religious ritual, or if a law school declared that black students are welcome, but cannot have intimate relationships with white students. We submit that there is no way such discrimination would be countenanced.

- This decision has import beyond whether LGBT students will be admitted to one of Canada's many law schools. The LSUC is an important and respected institution within our civil society. A moral statement by the LSUC matters to society more broadly, be that a statement condemning discrimination against LGBT people, or a statement that such discrimination will be tolerated as just one more point of view. The decision sends a message about whether LGBT people are fully and unequivocally valued and accepted within our society. If TWU is accredited, the LSUC will send a clear and unfortunate message to LGBT

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5 *Saskatchewan (Marriage Act, Marriage Commissioners)(Re),* [2011] S.J. No. 3 (C.A.)

6 See *Hutterian Colony, supra* at paras. 92-5

7 *N.S., supra* at para. 31

students that they are less deserving of law school spaces and less deserving of position in our profession.

- This issue raises a broader policy question – if we will accept this discriminatory treatment of LGBT people, what will we not accept in the future? Would we accept a religious law school that, based on a belief that women should not be educated, excludes women? If we do not take a stand now, how could we in principle take a stand later against any other form of discrimination?

- Given the size and influence of the province of Ontario within Canada, refusal by the LSUC to accredit the TWU law school would make that law school much less attractive to applicants who wished to practice in Ontario. This economic pressure could bring about a change in policy at TWU.

Again, the CLA urges the LSUC to refuse to accredit TWU law school unless and until it removes the requirement that law students sign the "Community Covenant." We would be pleased to address Convocation directly and respond to any questions on our position.

Yours very truly,

Anthony Moustacalis
President

cc. All Benchers

To whom it may concern,

I am writing to voice my concern about Trinity Western University's community covenant and submit that the Law Society of Upper Canada not accredit TWU's law program pursuant to section 7 of By-Law 4.

Religious rights are integral to our legal and cultural fabric and a discussion about their importance is a dialogue in which we should all participate. Advocating to be the first Christian-run Law school, TWU had an opportunity to be at the forefront of this discussion and advance the study of religious rights and freedoms in Canada. But as many have pointed out, the topic has been raised in a context of prejudice.

Education should be accessible to all, regardless of race, gender, ethnicity, religion, disability, or sexual orientation. By suggesting that any who disagree are free to apply elsewhere, TWU is closing its doors to members of the LGBT community and its allies.

I am proud that I will be called to the Bar in June. But just as I will be expected to uphold the dignity and integrity of the profession, so too should our legal and educational institutions. The Law Society of Upper Canada should only accredit those programs that do not discriminate—on any basis.

Thank you,

Kimberly Grange

March 27, 2014

Dear Benchers:

As members of the Special Committee on the accreditation of Trinity Western University's law school, you are uniquely placed to defend and advance our country's proud history of multiculturalism, secularism, and equality.

As a female lawyer who entered law school with a boyfriend and left law school with a girlfriend (who I am still with 13 years later), I am uniquely placed to explain how the accreditation of Trinity Western University as a law school is damaging to individual law students, universities who are currently providing non-discriminatory legal education, and the legal profession as a whole.

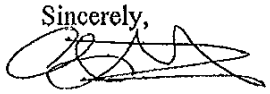
TWU requires students to sign a "community covenant" which, among other things, requires abstinence from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Law students are often young and may be just beginning to have romantic relationships. To ask them at the beginning of law school to make such a promise may put them in a very difficult position later. Certainly, I had no idea as I began law school that I would fall in love and begin a long-term same-sex relationship before I graduated. To make students choose between a relationship and continuing their law degree is an unfair burden to place on law students who, because of their sexual orientation, may already be experiencing additional stress and isolation.

All other law schools are held to a standard set by the provincial human rights code to ensure that they do not discriminate. Currently, law schools experience – and rise to – the challenges of providing a legal education to a diverse group of students and often have to balance and negotiate the competing rights of their students. By demonstrating how this is done, law schools provide students with a real-life example of how substantive equality is achieved. Allowing TWU to avoid this challenge by discriminating against an already vulnerable group under the guise of religious freedom means that TWU fails as a legal educator.

A decision to accredit TWU's graduates would also negatively affect the legal profession as a whole. It would effectively give the Canadian legal profession's blessing to a school that actively discriminates against queer students. In the words of the Supreme Court of Canada in the 2001 decision in *Trinity Western University v. British Columbia College of Teachers*: "The proper place to draw the line in cases like the one at bar is generally between belief and conduct... The freedom to hold beliefs is broader than the freedom to act on them." Barring students from a law school is action, not mere belief. In addition, and in any event, the British Columbia College of Teachers case did not deal with the equality rights of prospective students under s. 15 of the Charter

As Benchers you must also be concerned with how the legal profession is seen by the general public. It is the law and lawyers who often require individuals and institutions to uphold principles of equality. A decision to accredit TWU will be seen as holding this law school to a standard that is lower than that to which other Canadians are held. Canada should move forward, not backward — as should its legal profession. I urge you to vote against the accreditation of Trinity Western University's proposed law school.

Sincerely,



Emily Hill

March 26, 2012

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Via email: jvarro@lsuc.on.ca

Dear Benchers:

I am old enough to remember a time when a politician (Justice Minister, as he was then, Pierre Elliot Trudeau) said, "There is no place for the state in the bedrooms of the nation." This statement then resulted in changes to our laws and more importantly perhaps, to our Canadian mores, allowing our society to become more inclusive. I am sad and disappointed that some 47 years after such sentiment was enshrined in our law, that there even exists in my country an accredited professional school that discriminates against the admission of citizens based on their personal and private lives but apparently there is. The question now is, should **my** law society discriminate against the graduates of such an institution?

The issues I ask you to address before deciding on whether the graduates of the Trinity Western University law school should be granted the rights and privileges to practice law by the LSUC are these:

1. Should the bedrooms of law students be the business of a legal education?

2. Would the Law Society of Upper Canada have any hesitation in admitting members who graduated from a law school that excluded women, indigenous populations, Irish (need not apply!), Jews, Muslims or Anglicans and would we welcome that school's graduates to be our members?

3. Is there any risk that individuals who have been educated in an environment that discriminates against those who have lifestyles of which they do not personally approve, continue to exclude those same individuals as worthy of their legal skills - will these beliefs be left behind at TWU or should we expect such individuals will serve only those who share their beliefs, hire support staff who share their beliefs, promote and advocate only the laws of our country that reflect their beliefs?

4. Is there any benefit to be gained by admitting to the practice of law in Ontario members who have not had the experience of dealing with a wide variety of religious beliefs while acquiring their legal education?

5. Would there be any pride for the lawyers of Ontario in belonging to a law society that said we welcome as members those who discriminate against individuals for their personal sexual practices or would we take pride in saying, we draw the line at admitting such members?

My submission would be that I would be proud to be a member of a Law Society that would draw that line and support by its actions the Ontario Human Rights Code.

Yours truly

Shirley Jackson

We are: father and daughter; both of Chinese ethnic descent; and practicing law in Toronto and a 2L student at UWO Law, respectively. We ask the Law Society of Upper Canada to refuse accreditation to the law school proposed by Trinity Western University.

We believe that TWU's proposed law school would offend the *Canadian Charter of Rights and Freedoms'* value of equality because it would institutionalize a policy of discrimination against LGBTQ students. TWU requires, as a condition of admission, that all students sign a covenant in which they voluntarily abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". A breach of this covenant can result in expulsion from the university. This covenant tells prospective students that if they are LGBTQ, they can only attend TWU if they deny their sexual identity. This is no more acceptable than a covenant that excluded students of Chinese descent. Both ethnic origin and sexual orientation are prohibited grounds of discrimination under the *Charter*. It is antithetical to the professional obligations of lawyers and the values of the justice system to discriminate against LGBTQ students by *excluding* them from attending a law school. This is no more justifiable than a law school that excludes Chinese Canadians. We believe that everyone must have equal access to the legal profession.

Yours truly,
Jeffrey W. Lem, Partner, Miller Thomson LLP
Megan J. Lem, 2L University of Western Ontario Law School.

Dear Mr. Varro:

I have attached a written submission prepared on behalf of myself and Amy Sakalauskas for submission to the Nova Scotia Barristers' Society with respect to their consideration of TWU's accreditation. Our paper includes comments on the following topics:

1. What this debate is NOT about.
2. The TWU Community Covenant is Discriminatory
3. The Federation Process was flawed
4. The Federation's Special Advisory Committee expressed and relied on significant errors of law and reasoning.
5. BCCT does not decide this issue
6. The Public Interest requires a refusal to accredit

We would ask that this be considered along with the other written submissions in LSUC's process. While references within the paper are made to the NSBS, we suggest the comments can be applied to your process as well. I would also note that the letter refers to submissions by Dr. Elaine Craig, professor at the Schulich School of Law at Dalhousie. I understand Dr. Craig was going to be forwarding her submissions to you as well.

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

Ronald J. MacDonald, QC
Director, NS Serious Incident Response Team
Suite 203-1256 Barrington St.
Halifax, N.S. B3J 1Y6

February 10, 2014

Via email: rene.gallant@emera.com

Dear Mr. President:

RE: Accreditation of Trinity Western University

Thank you very much for the opportunity to share our thoughts as part of the Nova Scotia Barristers' Society (NSBS) public consultations on the crucial issue of whether the NSBS should accredit Trinity Western University (TWU) as a university which grants an approved law degree for the purpose of enrollment as an articled clerk in the Society.

These joint submissions are prepared by Amy Sakalauskas and Ronald J. MacDonald, QC, and are delivered in conjunction with written submissions forwarded by Professor Elaine Craig. We will be making oral submissions at the public meeting called to address this issue on February 13, 2014.

In our view, the issue of TWU's accreditation is perhaps the most critical issue to face Council in the last 30 years. This is about fundamental human rights, as critical to the protection of the public's interest as any issue can be.

This submission will address the following points:

1. What this debate is NOT about.
    a. **"**Those opposed to TWU's accreditation are against teaching law from a faith based or Christian perspective"
    b. "TWU prohibits pre-marital sex for everyone, not just gays and lesbians."
    c. "TWU is a private institution"
    d. "TWU accepts gays and lesbians"/ "Everyone has a choice whether they attend TWU"
    e. "Law Societies are not playing by the rules"
    f. "TWU has a separate definition of marriage"
2. The TWU Community Covenant is Discriminatory
3. The Federation Process was flawed
    a. Why was a second committee appointed?

b. There was insufficient public consultation and transparency.

c. The SAC did not have the mandate to determine these questions.

d. The general Federation process.

4. The Federation's Special Advisory Committee expressed and relied on significant errors of law and reasoning.
5. BCCT does not decide this issue
6. The Public Interest requires a refusal to accredit
7. The NSBS Strategic Plan and The Equity Office: Putting Theory Into Practice
8. The Result

1. WHAT THIS DEBATE IS NOT ABOUT

Proponents of TWU have often framed the position of those opposing accreditation in certain ways. At the outset, it is important to dispel these comments and positions.

A. "Those opposed to TWU's accreditation are against teaching law from a faith based or Christian perspective."

It is not our position that a school cannot teach from a Christian point of view. Likewise, it is not our position that Christians who share beliefs with TWU cannot practice law.

Canada's *Charter* protection of religious freedom protects an individual's and an institution's right to preach, talk, and teach about their religious beliefs. An institution should be able to teach that in their view sexual relations between a same sex couple are, to use the words of the Biblical references in TWU's Community Covenant (Romans 1:26-27) "vile" and "shameful".

It is one thing to hold, preach and teach certain **beliefs**, another to exercise **discriminatory actions** based on those beliefs**,** and yet another for a professional regulator to sanction such discriminatory actions. The NSBS is being asked to accredit a law school that, at an institutional level, discriminates on the basis of sexual orientation. Framing this as an attack on Christians or on freedom of religion is inaccurate and disingenuous.

B. "TWU prohibits pre-marital sex for everyone, not just gays and lesbians."

It has been said that "TWU prohibits pre-marital sex for everyone, not just gays and lesbians." The logic of this comment relies on a concept of equality that has no legal currency and even less

moral weight. TWU's Community Covenant draws a formal distinction between heterosexual couples and same sex couples that perpetuates unfavourable treatment against the latter. All unmarried couples are treated the same way by the Covenant, all married couples are not. To ask an LGBT student or staff to make this kind of covenant or commitment is to ask them to tolerate precisely the kind of humiliation and degradation that equality and human rights protections are intended to prohibit.

C. "TWU is a private institution"

To a large extent the question of whether TWU is a private institution is irrelevant. In deciding what constitutes the public interest in this case, the NSBS, as an administrative decision-maker, is required to balance *Charter* values in its decision-making, which would of course include freedom of religion *and* the equality rights of gays and lesbians. Any decision taken by the NSBS in this matter must, in the final analysis, comply with the *Charter*. Unquestionably, the regulators of the legal profession are public actors.

Moreover, questions can be raised with respect to the assertion that TWU is a "private institution". TWU has received millions in infrastructure funding in recent years[1]. In addition, as a university, TWU indirectly receives a variety of public funds by way of interest free student loans, tax credits, and tax free scholarships.

D. "TWU accepts gays and lesbians"/ "Everyone has a choice whether they attend TWU"

It is true that if you are gay, you can go to TWU, but only at considerable personal cost to your dignity and sense of self. At law, to say, "we will accept a gay person, so long as they do not engage in same sex sexual relations", is the same as saying we do not accept gay persons. The Supreme Court of Canada has answered this clearly in *Whatcott v Saskatchewan*[2]. Elaine Craig's submission to the NSBS, dated February 5, 2014 also deals with this argument in detail[3].

A related argument being advanced by those supporting a TWU accreditation is that everyone has a choice as to whether they attend TWU. The suggestion appears to be that because of this choice the institution should be able to impose discriminatory rules and policies. In *Whatcott* the Supreme Court of Canada held that you cannot separate the person from the behaviour. If you forbid the behaviour, you forbid the person. At TWU, a gay or lesbian cannot "choose" to attend

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[1] TWU receives over 2.9 million in support from the Knowledge Infrastructure Program Funding : https://twu.ca/about/news/general/2009/what-is-kip-funding.html

[2] *Whatcott v Saskatchewan*, 2013 SCC 11 at 123, [2013] 1 SCR 467.

[3] http://www.nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-05_Craig_TWU.pdf

without entering a contractual arrangement that condemns their sexual identity as shameful and vile. That is not a choice. That some LGBT students might acquiesce to a discriminatory practice does not justify the discrimination.

E. "Law Societies are not Playing by the Rules"

In a January 28, 2014, article published in National Magazine[4], and in other recent media reports, President Kuhn states that TWU played by all the rules and that by now independently considering whether to accredit TWU the law societies are breaking those rules. Mr. Kuhn states:

> "It is factually and legally significant that Trinity Western's law school proposal has received endorsement by strong precedent from the Supreme Court of Canada, as well as thorough reviews from the Federation and Ministry of Advanced Education. Trinity Western has played by the rules. *Proposed attempts to now change those rules, or to circumvent them, not only show disrespect for the rule of law, but diminish the importance of the Federation and ignore the stringent process of approval applied to TWU. It would be counterproductive for a law society in Canada to now disregard that stringent process by the Ministry of Advanced Education and the Federation. In addition, ex post facto changing the rules or applying new criteria will undoubtedly result in many concluding that the guarantee of freedom of religion in Canada is, at best, nominal.*"

President Kuhn appears to be arguing that we, the Nova Scotia Barristers' Society, do not have the right to consider TWU's accreditation separately. This statement is made in spite of the following facts:

a. The Federation process was always known to be a **recommendation** to the Law Societies. It was always understood that the Law Societies have the final say in the matter.

b. The Federation's Special Advisory Committee itself recognizes this fact. It states[5]:

> "The consideration of public interest issues is one aspect of the overall responsibility of law societies for determining whether an applicant should be admitted to the legal profession. **Assisting the law societies with the exercise of this responsibility** is entirely consistent with the mandate of the Federation. The decision to establish the Special Advisory Committee was made by the Council of

[4] TWU Has Played By the Rules : http://www.nationalmagazine.ca/Articles/January-2014/TWU-has-played-by-the-rules.aspx

[5] http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf , at Paragraph 15

the Federation, a body comprised of representatives from every law society in Canada. **The advice to be provided by the Special Advisory Committee is intended to assist the law societies**, the bodies ultimately charged with determining whether graduates from the proposed TWU school of law should be admitted to the profession."(emphasis added)

c. The British Columbia government announcement was very clear that their review did **not** consider the Community Covenant. At the press conference to announce approval, the Minister of Advanced Education stated:

> "I am aware of the opposition by some individuals and organizations to the law program at Trinity Western University, however, they do not fall within the scope of the quality of the law degree or academic programming [inaudible] is outside the purview of [inaudible] government. The Ministry of Advanced Education and the Degree Quality Assessment Board based their view solely on the assessment of the quality of the program. Again, and I stress, the review was within the confines of the *Degree Authorization Act*."

Not only were no rules broken, the current process is just as always anticipated. The Law Societies are the bodies statutorily authorized to decide this issue in their respective provinces.

F. "TWU has a separate definition of marriage"

TWU and its supporters defend the terms of their Covenant by stating that their faith holds a definition of marriage that limits it to a union between one man and one woman. In a January 24, 2014 letter to Rene Gallant, Bob Kuhn, TWU President, asserts that in allowing same sex marriage, Canadian law "only changes the definition of marriage for civil purposes"[6]. On that we agree. However, in the same way in which we would not say that the Persons Case *only* changed the definition of "person" for civil purposes, the use of "only" for the expansion of marriage to same sex couples is a gross understatement of the legal recognition of same sex marriage.

Mr. Kuhn references the Preamble and Section 3.1 of the *Civil Marriage Act*. These are interpretive provisions, offered to confirm that the *Civil Marriage Act* is consistent with the *Charter of Rights and Freedoms* and individuals and organizations are free to hold and voice their own beliefs about marriage. The language was meant to be declarative, in response to those religious affiliated officials (i.e., Priests, Rabbis) who may not want to perform same sex marriages.

[6] http://www.nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-01-24_Kuhn_TWU.pdf

At its base, marriage is a legal relationship. A secular relationship. For those who choose to get married by way of a religious ceremony, it is also a rite. There may be separate (additional) requirements for a marriage to qualify as a rite (i.e., the Catholic sacrament of marriage). The preamble to the *Civil Marriage Act* confirms that adherents to a particular religion remain free to establish those requirements.

In the January, 2011, *Marriage Commissioners Appointed Under The Marriage Act (Re)*[7] case, the Saskatchewan Court of Appeal ruled that provincial marriage commissioners could not refuse to perform same sex marriages on account of their religious beliefs. The Court explained that forcing the couple looking to be married to go to another, willing, commissioner was contrary to fundamental principles of equality in a democratic society. The Court also reasoned that by allowing commissioners to opt out because they did not want to marry people of the same sex, the door was opened to allowing them to opt out because they did not want to marry people from different races.

In this recent example of a balancing of freedom of religion and equality, the Appeal Court decidedly followed the Supreme Court of Canada's holding that religious freedom is not absolute, and wrote, "This is clearly one of those situations where religious freedom must yield to the larger public interest"[8]. This is in keeping with the continually growing interpretations of equality for gays and lesbians, including when faced with discrimination purportedly justified by freedom of religion. It is disappointing that the Federation's Special Advisory Committee did not consider the recent case law in its considerations.

In the end, the only real assistance to the Society (in performing a contextual balancing of freedom of religion and equality) offered by the *Civil Marriage Act* is its affirmation of the need to protect the equality interests of gays and lesbians. The *Civil Marriage Act* did <u>not</u> create any new right or freestanding recognition to religious groups, including in relation to their views on marriage.

2. <u>THE TWU COMMUNITY COVENANT IS DISCRIMINATORY</u>

In the recent letter from TWU President Robert G. Kuhn, published in the National Magazine, he stated: "The University welcomes students without discrimination." We touched on our disagreement with this statement above.

[7] *Marriage Commissioners Appointed Under The Marriage Act (Re*), 2011 SKCA 3

[8] Saskatchewan Marriage Commissioners Reference, at 100.

TWU proponents ignore the reality of their Community Covenant. In *Trinity Western University v British Columbia College of Teachers*[9], the Supreme Court of Canada held that TWU's policy perpetuates unfavourable differential treatment on the basis of sexual orientation and that gay and lesbian students could only attend TWU at considerable personal cost. These are the very phrases that the Supreme Court of Canada has used to identify and define discrimination on the basis of sexual orientation in other decisions.[10]

Indeed, the British Columbia Civil Liberties Association, which supports TWU's Community Covenant, has nevertheless stated as follows on January 31, 2013[11]:

> "This Community Covenant clearly discriminates against lesbian, gay and bisexual students. BCCLA does not endorse the practice of TWU in this respect and it is not our place to do so."

TWU and its Community Covenant discriminate. While an exemption in BC legislation may mean it is not unlawful discrimination in British Columbia, it is still discrimination[12]. Whether it would be unlawful discrimination were TWU situated in our province remains an open question. Nova Scotia does not offer religious educational institutions the same exemption granted under the British Columbia *Human Rights Code.*

Some argue that because TWU's discrimination is legal in British Columbia the analysis should not consider whether TWU's policies would be unlawful in other provinces, such as Nova Scotia. With respect, this argument ignores the responsibility of the Society to consider this question from the perspective of our Nova Scotian society, including our *Human Rights Act*. It also mistakenly hangs too much weight on but one aspect of the many considerations that have to be made in deciding this question.

First, a common sense approach to the issue demonstrates discrimination. The Community Covenant draws a distinction between straight individuals and LGBT individuals. Of course, legal minds will parse such situations, and may argue that it is not discriminatory if you accept

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[9] *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772, 199 DLR (4th) 1; ("BCCT").

[10] *Egan v. Canada*, [1995] 2 S.C.R. 513

[11] http://bccla.org/2013/01/note-on-twu-law-school-issue/

[12] In the letter from the CBA Sexual Orientation & Gender Identity Conference and Equality Committee to the Federation of Law Societies of Canada, at http://www.cba.org/cba/submissions/pdf/13-18-02-eng.pdf, an argument is advanced that the TWU Community Covenant is actually incompatible with the British Columbia *Human Rights Code*. Notably, this question has never been judicially decided.

the person, but reject only their actions. But even that strained argument does not stand up to legal analysis.

We borrow greatly from Elaine's Craig's letter to demonstrate why this is the case. In *Whatcott* in 2012, the Supreme Court of Canada specifically rejected the argument that there is a distinction between prohibiting same sex conduct and prohibiting gays and lesbians. The Court concluded that it is not possible to condemn same sex intimacy "without thereby discriminating against gays and lesbians and affronting their human dignity and personhood."[13]

In rejecting the specious argument that a legally significant distinction can be drawn between discriminating against homosexual behavior and discriminating against homosexuals, the Court in *Whatcott* stated: "Courts have recognized a strong connection between sexual orientation and sexual conduct and where the conduct targeted by speech is a crucial aspect of the identity of a vulnerable group, attacks on this conduct stand as proxy for attacks on the group itself."

It could not be clearer that the Supreme Court of Canada today rejects exactly the kind of distinction between act and identity that some suggest carries a legal significance. Indeed, on this issue, the Court in *Whatcott* draws its authority from Justice L'Heureux-Dube's dissenting decision in *BCCT* (finding that TWU's covenant was discriminatory and that it was acceptable for the College of Teacher's to modify its accreditation of the TWU program as a result). The Court in *Whatcott* states with approval:

> L'Heureux-Dubé J. in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, [2001] 1 S.C.R. 772, in dissent (though not on this point), emphasized this linkage, at para. 69:
>
> I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. ... The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as per Madam Justice Rowles: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person" (para. 228). She added that "the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people" (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea

[13] *Whatcott v Saskatchewan*, 2013 SCC 11, [2013] 1 SCR 467.

> that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood. [14]

One final note on this point: any suggestion that TWU's Community Covenant is voluntary and non-binding is without foundation. TWU's Community Covenant is not a guideline or invitation to abstain from same sex intimacy. It is a covenant – a solemn, formal agreement that all staff and students must sign in order to work at or attend this university. TWU describes it as a "contractual agreement" that all members of the TWU community must enter into before joining the "TWU community."[15]

To summarize, according to the Supreme Court of Canada, a policy that requires students to promise not to engage in same sex intimacy is an attack on the "human dignity and personhood" of gays and lesbians.[16] The council of the NSBS should do better than to accept the formalistic and impoverished view of equality taken by TWU and rejected by the Supreme Court of Canada.

3. THE FEDERATION PROCESS WAS FLAWED

A. Why was a second committee appointed?

The Federation's Special Advisory Committee's ("SAC") Report, dated December, 2013, provides background to the formation of the SAC. In paragraphs 1 to 7, the SAC Report notes that there were submissions received respecting the approval of TWU that were outside the mandate of the Approval Committee. The Approval Committee was the Federation Committee established to address the issue of approval of new law school accreditation applications.

The President and the CEO of the Federation received an opinion from John B. Laskin on the issue (Appendix C to the report). Mr. Laskin addressed a variety of issues. Implicit in his opinion is that the Federation could consider public interest issues when considering TWU's application. Although he held that the Approval Committee did not then have that mandate, his opinion clearly anticipated the Committee could be given the mandate by the Federation Council.

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[14] *Whatcott v Saskatchewan*, 2013 SCC 11 at 123, [2013] 1 SCR 467.

[15] Trinity Western University Student Handbook, *Community Covenant Agreement*, online: Trinity Western University <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>.

[16] *Whatcott v Saskatchewan*, 2013 SCC 11, [2013] 1 SCR 467.

Instead, the Federation appointed a different committee. To an outsider, this raises the following question: why wouldn't the Federation simply give the authority to the very committee established to deal with these approvals? Were they not the ones with the expertise in the area? By taking that task away from them, it creates a perception of bias in the minds of the public. It as if there was a concern with how the Approval Committee would decide the issue. And, we are left to wonder: How were the members of the Special Committee chosen? What was the process? The criteria?

The Approval Committee is effectively an adjudicative committee. It receives submissions and makes decisions. To be mid process, and have a part of a matter taken from their consideration, cannot do anything but raise concern in the mind of the informed public.

This perception is heightened when one observes the results of the two committees. The Approval Committee obviously had significant concerns about the TWU Community Covenant, as their approval was given on the academic abilities of TWU with a caveat - an expressed concern about TWU's ability to teach ethics and public law. This suggests that the committee's view of the Covenant was quite different from the SAC's view, which dismissed concern about the Covenant on a public interest basis, a much stronger ground for concern.

To an informed, objective observer, the question remains: Why was the SAC appointed, when a perfectly good committee was already in existence to deal with the issues of TWU's application?

B. There was insufficient public consultation and transparency.

The SAC gave its opinion on several matters, clearly matters falling within the definition of the "Public Interest".

While that committee proclaims that it considered "many written submissions", its process for seeking opinion and engaging in dialogue seemed to be non-existent. Unlike the process now being followed by the NSBS, which is public and transparent, the Federation did not actively seek public input into the matter, and gave no notice of the committee's process to the public or the profession.

This is a critical error. If this committee is purporting to make a decision on behalf of the law societies, it must follow a process that at least approximates the public processes of those societies.

It is only by seeking and welcoming a wide variety of submissions and opinions that a body is truly able to assess the public interest. It does no good to say "we were aware of that argument". One needs to know how an issue affects the public at large. That is the very essence of determining the public interest. One cannot do that when the process does not seek that opinion; when it operates in a vacuum.

C. The SAC did not have the mandate to determine these questions.

This is a potentially fatal flaw in the Federation process.

The SAC considered and answered the following questions:

- Whether approving TWU's proposed law school would be contrary to the public interest;
- Whether TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law;
- Whether TWU respects academic freedom;
- Whether approving TWU's proposed law school would result in LGBT students having fewer opportunities and choices than others.

The problem, however, is that this was not the committee's task. The SAC mandate reads as follows:

> "*1. The specific mandate of the Special Advisory Committee is to provide advice to the Council of the Federation on the following question:*
> *What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?*
>
> *2. In its consideration of the question, the Special Advisory Committee shall take into account:*
> *(a) all representations received by the Federation to date including any responses to those representations by TWU;*
> *(b) applicable law, including the Canadian Charter of Rights and Freedoms, human rights legislation, and the Supreme Court of Canada decision in Trinity Western University v. British Columbia College of Teachers (2001 SCC 31); and*
> *(c) any other information that the Special Advisory Committee determines is relevant to the question.*

This mandate was clear: to figure out whether there were other considerations and then come back to Council and provide advice on what those considerations should be. Nowhere was that committee given the mandate to answer those questions, or even give advice on them. The Federation Council was only to be advised, and then would be expected to determine what should happen next. Thus, the conclusions made by the SAC were made without authority, and should be disregarded.

D. The General Federation process.

We elect Society Council members to conduct the work of Council transparently and accountably. Society members benefit from an open process at the Council table and have come to expect nothing less. In contrast, the Federation lacks in both process and accountability. It is a registered non-profit, not a statutory body. It does not have the legal obligations of the Society in its decision-making.

The Federation is making important decisions that impact the Society, its members, and the public. They do not allow observers at their meetings. They do not advise as to when such meetings take place, where they take place, or what the Federation representatives are discussing (even when they are asked for such information). Society members cannot access Minutes. The Society Council does not receive detailed reports, nor do Society members. All of this undermines the efforts of the Society to open up its processes and decision-making. Perhaps this was a more acceptable way of Federation functioning in the past, before law societies vested it with core tasks born of a statutory mandate. Today, the Federation is in desperate need of change.

We are asking Council to act in the public interest and do your own assessment of this question. Given the numerous concerns with the Federation process, the faulty legal reasoning upon which it reached conclusions, and what we see as a highly questionable delegation in statutory decision-making, it would be inappropriate for the Society to merely create an Addendum to the Federation decision, as opposed to conducting a fulsome analysis of the questions the Application of TWU raises.

4. THE FEDERATION'S SPECIAL ADVISORY COMMITTEE EXPRESSED AND RELIED UPON SIGNIFICANT ERRORS OF LAW AND REASONING

Even if one were to ignore the fatal process issue associated with the SAC, it opinions and legal conclusions are in error. Elaine Craig's letter, submitted jointly with this submission, covers this issue in detail.

5. BCCT DOES NOT DECIDE THIS ISSUE

TWU continually places a great reliance on the decision of the Supreme Court of Canada in the BCCT case. Elaine Craig, in her submission, and paper attached, deals with this issue and points out how the legal landscape has changed greatly since that decision. Professor Dianne Pothier, in her submission to council, advised that even if BCCT continued to be good law, it would not apply in this circumstance. According to Professor Pothier the context and facts are

too different. We join a large chorus of others who assert that it is very likely the matter would be decided differently now.

This is particularly so given that that BCCT case decided a completely different issue. In the Laskin legal opinion, he summarizes, at page 3, the central issue in BCCT:

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

The issue in BCCT was whether teachers who graduated from TWU would discriminate. That is not the issue before the Society. The issue here is whether it is contrary to the public interest for a law society to accredit a school that discriminates against those who are able to enter their law school on the basis of sexual orientation. Moreover, and as was eloquently argued by Rev Dr Yates in her submission to council on behalf of the United Church, law schools and legal profession regulators bear a special and unique responsibility for protecting human rights and equality.

This case is different. The Supreme Court of Canada recently demonstrated that they will change law based on a different argument, even when considering the same Criminal Code section. For example, in *Reference re ss. 193 & 195.1(1)(c) of Criminal Code (Canada)* [17], the Supreme Court upheld Criminal Code prostitution provisions against a Charter challenge that they violated a person's freedom of expression. However, that law has now changed: in *Canada (Attorney General) v. Bedford*[18] the Court struck down the prostitution provisions, which on this occasion were argued on the basis the several provisions breached the accused's rights to security of the person under s. 7 of the Charter.

No one should decide this case based on BCCT**.** It is not binding on these facts and it is not clear that the BCCT reasoning remains good law. In any event, TWU's discrimination is wrong. This Society should be prepared to take a stand and change the law if necessary.

6. THE PUBLIC INTEREST REQUIRES A REFUSAL TO ACCREDIT

The purposes of the NSBS are clearly set out within Section 4 of the *Legal Profession Act*[19]:

[17] [1990] 1 S.C.R. 1123

[18] 2013 SCC 72

[19] S.N.S., 2004, c. 28

> 4 (1) The purpose of the Society is to uphold and protect the public interest in the practice of law.
> (2) In pursuing its purpose, the Society shall
> (a) establish standards for the qualifications of those seeking the privilege of membership in the Society;
> (b) establish standards for the professional responsibility and competence of members in the Society;
> (c) regulate the practice of law in the Province. *2004, c. 28, s. 4;* and
> (d) seek to improve the administration of justice in the Province by
>
> (i) regularly consulting with organizations and communities in the Province having an interest in the Society's purpose, including, but not limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province, and
> (ii) engaging in such other relevant activities as approved by the Council.

The fundamental purpose is simple and straightforward: to uphold and protect the public interest in the practice of law. One of the primary ways to protect that public interest is to: "establish standards for the qualifications of those seeking the privilege of membership in the Society". Simply put, it is up to the Society to act as the all-important gatekeeper on who may seek the privilege of membership**.**

It is very telling that one of the stated functions of the Society is to consult with organizations that reflect sexual diversity. It is no accident that the legislature highlighted that factor. These sections, and the long history of our Society, emphasize the critical importance protecting the public interest has in all decisions of Bar Council. The decision to accredit TWU puts that obligation into sharp perspective.

TWU says that it has a right, particularly in British Columbia, to maintain its Community Covenant. Its position is that it has the right to have an organization that chooses, based on their religious beliefs, who can enroll and work at their school. They argue they have the right to discriminate, in their "private" university. That may or may not be true today. Regardless, there is only one body that chooses what law degree qualifies a person to join this Society. Bar Council's responsibility is to regulate in the public interest in this province. Coucil's decision should not be dictated by a decision of the British Columbia government to exempt TWU from that province's human rights protections.

In Canada, law societies have given responsibility for academic training in the law to law schools. However, it remains the law societies' responsibility to monitor those degrees to ensure the public interest is met. By accrediting a school, the NSBS gives its stamp of approval to a law school, and effectively says we accept you as part of our process in ensuring the qualification of new lawyers. This process must consider more than just academic knowledge. Section 4 of our

Act does not say we must govern to ensure qualified lawyers. It says we must govern in the public interest, a much broader concept.

Our processes must not be seen to adopt and thus encourage a discriminatory organization. For example, it is impossible to imagine that we would ever accredit an institution that prohibited Blacks, or Jews, or women. Nor should we accredit, as part of our admission process, a school that prohibits gays and lesbians. If the NSBS were to accredit TWU, the following is unavoidable:

- Some religious groups believe that woman should not be educated. Should they form a private law school in Canada and wish to be accredited, there would be no principled basis for the NSBS to deny accreditation.

- The Bible has been interpreted to suggest that inter-racial marriage is wrong. Should a private law school in Canada prohibit inter-racially married persons, again there would be no principled basis for the NSBS to deny accreditation.

Accrediting TWU sends a message to the public that discrimination on the basis of sexual orientation is okay, and accepted. There can be nothing more fundamentally destructive to the interest of the public than that.

Imagine this headline: **"Nova Scotia Barristers' Society says Law School that bans gays is okay."**

7. THE NSBS STRATEGIC PLAN AND THE EQUITY OFFICE: PUTTING THEORY INTO PRACTICE

It is clear to us that the Society recognizes the key role equality plays in regulation in the public interest. The Society has made commitments through its new Strategic Framework and its long-standing Equity Office. It is now being called upon to honour its duties and commitments.

As affirmed by Council in May, 2013, the mandate of the Equity Office is to "promote the interests of equity-seeking groups in Nova Scotia by seeking to improve the administration of justice; addressing issues of racism, sexism and other forms of discrimination in the legal profession; and ensuring that the legal profession adequately reflects the public it serves"[20]. Furthermore, the Equity Office promotes the interests of equity-seeking groups[21] in Nova Scotia by:

[20] http://www.nsbs.org/improving_justice/the_equity_program

[21] Persons seeking equality on the basis of their sexual orientation and gender identity are specifically included in the definition of "equity seeking groups" for purposes of the Equity Office mandate.

• Seeking to improve the administration of justice;
• Addressing issues of racism, sexism and other forms of discrimination in the legal profession; and
• Ensuring that the legal profession adequately reflects the public it serves[22]

Since its 1994 creation in response to the Royal Commission on Donald Marshall, Jr., our Equity Office has been a model for what true public interest regulation entails. The Society Council reconfirmed its commitment in its thorough 2013 review of the Equity Office. And, we see fundamental principles of the Equity Office front and centre in every aspect of the Society's 2013-2016 Strategic Framework[23]. A few simple examples illustrate the Society's duty to promote equity, and in particular, for those seeking it on the basis of their sexual orientation:

- The strategic direction of "Excellence in Regulation and Governance" compels the Society to examine its purported delegation of authority to the Federation and act to correct any deficiencies. The Strategic Priority of "Transforming regulation and governance in the public interest" undoubtedly highlights the same duty;
- The Strategic Direction of "Improving the Administration of Justice" includes using all avenues entrusted to the Society to ensure access to the justice system and trust in it, both of which are core elements of the decision facing the Society on this issue;
- The Strategic Priority of "Enhancing access to legal services and the justice system for all Nova Scotians" undoubtedly requires a consideration of how sanctioning TWU's Community Covenant runs contrary to achieving this priority and,
- The Strategic Initiative to "Advocate for enhanced access to legal services and to the justice system for equity-seeking and economically disadvantaged groups[24]" is a clear direction for the Society to consider the potential effect that limiting access to the legal profession has on access to legal services and the justice system for members of the LGBT community.

The Society has never been called upon to put theory into action in the way it is being called upon now. If the Equity Office and the Strategic Framework are to be more than laudable goals and enviable statements of intent, the Society must be true to them as they consider this historical issue that will have great impact on marginalized and historically disadvantaged groups. With respect, anything less than a refusal to accredit the TWU school of law would be hypocritical in the truest sense of the word.

[22] http://nsbs.org/sites/default/files/cms/menu-pdf/2013-05-24_eq_mandate.pdf

[23] http://nsbs.org/sites/default/files/cms/menu-pdf/strategicframework.pdf

[24] Equity Seeking groups is defined to include persons seeking equality on the basis of their sexual orientation.

8. THE RESULT

Council has to act on the question before it, first and foremost. We have heard concerns from Council members that the Society might get involved in litigation, or that the National Mobility Agreement might be threatened. With respect, these considerations are not the question presently before Council. Furthermore, bringing those potential issues into consideration is an exercise in conjecture that serves only to detract from the current accreditation question. We are at step one. Should TWU's school of law degree be accredited in Nova Scotia? Canadian law societies might answer this question differently. So be it. The National Mobility Agreement and/or TWU's school of law would have to respond to that reality. As for litigation, it might happen whatever decision Council makes. The key is for Council to be on the right side of the argument – the right side of the public interest. We believe this means the side denying accreditation.

The relevant regulation under the Legal Profession Act is the definition of "Law Degree" under Section 3.1:

> In this Part …
>
> (b) **"law degree"** means i) a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree, or an equivalent qualification…"

This Regulation, as it is currently written, attempts to delegate to the Federation the responsibility for accrediting a law school. While we have comments on the general propriety of such a delegation, we will leave them aside for this discussion.

Council has its own regulatory authority. Regulations are frequently changed, updated, and amended, especially with changing circumstances. Council does not need a change in circumstances, as Council has the ultimate authority to change regulations as it sees fit. It may be sensible to have a Federation committee make decisions regarding bare academic standards. However, issues which relate to fundamental public interest factors are not well suited to be decided by a committee consisting of only 5 people, especially without jurisdictional representation, and lacking in process.

We have made the case for change: the Federation's decision to accredit TWU should not be accepted. We have pointed out their very serious errors in process, the significant legal and logical errors made, and have stated the case why accreditation should not take place. To do so is but a simple matter of changing the Regulation to withhold authority for approval in new law schools for the NSBS, as always had been the case prior, including for the most recent new schools, such as Thompson Rivers and Lakehead Universities.

Thus, the new regulation should read:

> (b) **"law degree"** means i) a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by Council for the granting of such degree, or an equivalent qualification…".

Consideration might also be given to following the lead of the Law Society of British Columbia, which reserves a right to reject a Federation recommendation within the regulation. If that option is selected, the regulation might read:

> "(b) **"law degree"** means i) a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree, *unless Council adopts a resolution declaring that it is not or has ceased to be an approved faculty of law,* or an equivalent qualification…"

In addition, the regulation should specifically outline the Society's commitment to anti-discrimination and equality in legal education, and its duty to consider broad public interest issues, so there is no question that such considerations are part of the accreditation process. The sooner the Society makes this change, the better.

The passing of the regulatory amendment should then be followed by a motion to deny accreditation to TWU until such time as it changes its Community Covenant to no longer discriminate against gays and lesbians.

The impact of that regulation will mean that TWU graduates will not be automatically eligible for admission to this province's articling program. It does not mean that the NSBS would not accept a TWU graduate. For example, a TWU graduate may qualify to article by being accredited by the National Committee on Accreditation. They may be able to join a Society in another province and later take advantage of the National Mobility agreement. Thus the failure to accredit TWU creates a burden on graduates who wish to practice in Nova Scotia, but not one that is unreasonable. Rather it is an outcome that strikes a reasonable and appropriate balance between protecting religious freedom and protecting equality. Our position is not designed to prohibit individuals, but rather to refuse institutional accreditation to a university that discriminates on the basis of sexual orientation. TWU graduates would be treated precisely the same as law graduates from any other law school (currently meaning those outside of Canada) that is not accredited at the institutional level.

The true result of the decision not to accredit will be to send a very strong message to the public that this discrimination will not be accepted in Nova Scotia. That sends a message across the country, and indeed more broadly: discrimination on the basis of sexual orientation is wrong.

Thank you for taking the time to consider our submissions. We look forward to the opportunity to address the public meeting on February 13, 2014.

Ronald J. MacDonald, QC

Amy Sakalauskas

TRINITY WESTERN UNIVERSITY ('TWU') – PROPOSAL FOR LAW SCHOOL

The Law Society of Upper Canada has decided to consider the accreditation of TWU with respect to graduates of TWU who may wish to practise law in Ontario. I understand that both the B.C. Law Society and the N.B. Law Society have received submissions, and several other law societies have declined to consider the matter.

TWU'S proposal to establish a law school has, it is apparent, drawn some fierce (at times, uninformed) opposition. As one of the most vocal opponents to TWU's proposal is Clayton Ruby, the form of this Submission is primarily a response to several of Mr Ruby's public stands (***Arguments 1 – 5***). I have not read anything by Mr Ruby in respect of *Argument 6*, but as it appears to be another argument that will be addressed by the LSUC Benchers, I will attempt to respond to it, also.

1.'**The legal system...has no history of religious affiliation. Instead, our legal tradition has always emphasized a strict separation of Church and State' [National Post, July 29, 2013]**

Sorry, Messrs Ruby and Chan: right continent, wrong country – such a pity there are so few countries on the continent, as they may have hit it right if they had ventured south of the 49th parallel. Unfortunately, such forcefully-made statement does not reflect the history of law in Canada. Although many examples are available, as these gentlemen (in support of other arguments) have relied on the Canadian Charter of Rights and Freedoms, perhaps the opening words of the Charter might be somewhat instructive:

> "*Whereas Canada is founded upon principles that recognise the **supremacy of God** and the rule of law..."*

This, of course, is only one of many examples of how Christianity, in particular, has been integral to the Canadian legal system. Without in any way attempting to develop a full response to such comment, one need only consider the origins of the law of equity (Chancery Courts), or reliance on the Biblical question of 'Who is my neighbour' (*Donoghue* v. *Stevenson,* 1932) in the development of the law of negligence, to understand that the statement about church/state separation is unsubstantiated.

Without belabouring the point, Christians motivated by their faith have had a very significant influence in the development of human rights in British, Canadian, and international law. Hopefully, at least some of the following names (or situations) will be recognised (and if not, should be further researched):

- John Cooke, whose prosecution of Charles I led to the development of the law regarding crimes against humanity (allow me to suggest, in that regard, the book 'The Tyrannicide Brief', by Geoffrey Robertson);

- William Wilberforce and Thomas Clarkson, who successfully led the fight to abolish slavery in the British Empire (for more information, I strongly recommend the book of the same name by William Hague);
- Rev. Dr. Martin Luther King, Jr. (does anything more need to be said?);
- John Howard and Elizabeth Fry (prison reform);
- The 'Tolpuddle Martyrs' (trade union rights) – interestingly, several are buried in London, Ontario after returning from transportation to Australia;
- The Christian martyrs, from the early days of Christianity to the present time (essential background to the development of religious freedoms).

Having said all of the foregoing, it should be noted that TWU is neither looking for state support, nor to exert control over the state (which is the historical origin, in the United States, of the concept of separation of church and state). It is a private university, and does not seek public funds.

Perhaps the biggest irony in this specific criticism is that TWU is not seeking public support – whereas the opponents of TWU appear to be unfazed by the fact that the Triangle Program (for gay and LGBT students) receives financial support from the state, through the Toronto District School Board. In other words, separation of church and state is considered by such opponents to be essential, but state support for other minority groups (particularly those critical of TWU) is taken for granted.

2. Lawyers would get their training in ethics and rights in an environment that is contrary to Canadian laws [Globe and Mail, July 24, 2013]

There are several problems with this argument (which the Globe and Mail attributes to Mr Ruby):

First, the argument is made in a vacuum, with no idea of what training in 'ethics and rights' would be provided at TWU Law School (how can one speculate on what has not yet occurred?);

Secondly, without even visiting Trinity Western University, it is difficult for anyone to make an informed comment on the level of training in ethics and rights presently provided by TWU;

Thirdly, it is appropriate to question the philosophical foundation for Mr Ruby's ideas of 'ethics and rights', and to wonder whether Mr Ruby's enunciation of 'ethics and rights' would be an improvement on the following [quoted *verbatim* from Section 3, 'Community Life at TWU', of the impugned Community Covenant]:

> *"Members of the TWU community...commit themselves to:*
>
> **cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness; gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice;*
>
> **live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity;*

**treat all persons with respect and dignity, and uphold their God-given worth from conception to death;*

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

Indeed, one wonders whether such a covenant might actually improve the standards of the Bar. Perhaps, such an expression of ethical responsibilities should be required of all students accepted into law schools across the country, and regularly repeated, including during the Call to the Bar.

3. 'it is immoral and unconstitutional to ban gay students' [Daily Xtra, December 14, 2013]

Of course, the first question is: what is the basis for Mr Ruby's concept of 'morality'? Hopefully, it is somewhat more universally authoritative and recognized than simply Mr Ruby's personal opinion. Because, of course, if the only basis for claiming that something is 'immoral' is that it offends my (or my friends') concept of morality, then the simple answer is 'you have your morality, and I have mine'.

The difference is that, as stated above, the morality in the Community Covenant of TWU is carefully stipulated, and is accepted by those who sign it. It is a morality that would find common acceptance among the Christian community - and, quite frankly, I expect that Mr Ruby would have a hard time finding fault in that expression of morality (with the minor observation that he might prefer to delete the word 'Christian').

The second question is: does the Community Covenant 'ban gay students' (or, as Mr Ruby claims later in the same article, the proposed law school at TWU would impose a 'queer quota' on incoming students)? I challenge Mr Ruby to review the Community Covenant and identify any statement to that effect. Let's be both precise and fair: the covenant is not directed toward orientation, but the **activities** of either homosexual or heterosexual students outside marriage (ironically, Mr Ruby acknowledges that truth in another article, as noted below).

A sexually-active gay student may decide to self-exclude because he or she does not wish to live, for the three years at TWU, in an abstemious relationship, according to the commitment to '...reserve sexual expressions of intimacy for marriage...' – but a heterosexual who does not wish to limit his or her sexual behaviour during that period would similarly self-exclude. Indeed, I have been advised that there are gay students who do attend TWU, happily and willingly complying with the Community Covenant; it would not be unrealistic to assume that there are sexually active heterosexuals who self-exclude.

4. Gay sex is forbidden at Trinity Western [The Province, October 29, 2013]

This argument is presented by Mr Ruby and Ms Chaisson, as follows:

"*Trinity Western University requires its students to abstain from 'sexual intimacy that violates the sacredness of marriage between a man and a woman.' **Hint: that means gay sex is forbidden**, even in marriage. That imposes an **unconstitutional definition of marriage** on its students and staff. Yet Trinity Western now wants accreditation for a law school'.*

Are there any problems with that argument? Possibly, a few:

First, let's be fair: the statement that 'gay sex is forbidden' is a 'half-truth' (which, by its very nature, is far from the truth!). **The full truth is** that the students personally 'voluntarily abstain' (at least, for the period that they are attending TWU) from ***engaging in*** **either homosexual or heterosexual** sexually intimate ***activities.*** The Covenant is not targeted at gays, despite the valiant attempts to twist the wording – it is directed toward what TWU believes (on Biblical grounds and in line with its desire that students and staff 'treat all people with respect and dignity') is respect for both sexes.

Secondly, the definition of marriage used by TWU is a religious definition of marriage consistent with the religious traditions of the university and with two of the largest elements of the Christian church – the Roman Catholic Church, and evangelical Protestants. It is, indeed, also consistent with many other religious traditions. It is **not 'unconstitutional'** – it simply does not accept the **recently-minted** definition of 'marriage' which is found, not in the Charter, but rather in the Civil Marriages Act, 2005 [the silliness of that statement might be clearly seen if, in 2004, one were to claim that a gay 'marriage' was 'illegal' because gay marriage was 'unconstitutional'].

Third, it is worthwhile noting that the first word in that statute is 'Civil', not 'religious'. Indeed, the statute (which, like all statutes, is legally capable of amendment and therefore not in the 'constitutional' category) expressly states that it is not against the public interest to hold and publicly express diverse views on marriage. Yes, TWU holds a view on marriage that is different than what is now contained in a recent statute – but not only is it expressly permitted by the same statute to hold and apply such view, but its definition is consistent with centuries of tradition and with the beliefs of the largest elements of Christianity as well as many other world religions.

5. The policy is discriminatory – on a par with 'No Jews allowed' [The Province, October 29, 2013]

Not only do Mr Ruby and Ms Chaisson, in such article, criticise TWU, but (without providing any substantiation whatsoever for their claim) make the claim that 'A minority within Christianity is entitled to believe that being gay is antithetical to Christianity...They are entitled to teach such silliness and try to persuade others to adopt that view'.

Although it is tempting to challenge several elements of such statement, it would be a diversion to do so. Frankly, the important issue is not how many Christians hold that belief, or the basis for challenging the claim of its 'silliness'. However, identifying such unfair criticism is instructive in one's attempt to understand whether Mr Ruby and Ms Chaisson are deliberately engaging in hyperbole.

It must be acknowledged, in fairness, that there is one area in which there might be discrimination against gays – and that is in the event that a gay student who has been married within the meaning of the Civil Marriages Act, 2005 applies for admission. However, that unlikely event does not support what, in my respectful opinion, are outrageous and inflammatory statements by Mr Ruby and Ms Chaisson.

Outrageous and inflammatory statements? The same article compares TWU's attitude to the following: "This water fountain is clearly marked whites only – use another". "No Jews allowed." "Stick to your own kind". Obviously, the situations to which TWU's position is compared are all hate-fuelled: apartheid; racism in parts of the U.S. (and elsewhere) during the 1950's and 1960's; rabid anti-Semitism. The use of each of such comparisons is, I submit, intended to evoke strong negative emotional responses. However, before one reacts with the anticipated emotional responses to such comparisons, allow me to suggest that such statements be considered with a little fairness and logic:

- It is acknowledged that blacks and Jews were persecuted minorities in various places and times; however, simply because a group is a minority and might not feel accepted is insufficient to compare it to those minority groups (including Jews or blacks) who endured severe persecution – indeed, such comparison coldly trivialises, for the purpose of promoting one's own argument, the persecution that was experienced by others;

- Incidentally, given that law schools at Queens and York have passed resolutions specifically condemning TWU's proposal, who do you think might feel more uncomfortable or repressed in expressing their opinions – gays wishing to express their sexual views, or Christian law students or faculty members wishing to express their religious views (particularly if they were to dare to support TWU's position!)?

- Indeed, it is possible to adapt the phrase "No Jews allowed" to "No Christians wishing to express their religious convictions allowed" – the level of animosity against Christianity expressed in some of the recent opposition to TWU, by lawyers and law schools, becomes an argument in favour of establishment of a Christian law school that allows Christians to engage in classroom discussions without fear of ridicule or reprisal.

6. There is a danger that TWU law school graduates might bring homophobic attitudes with them into the practice of law, and would therefore not be qualified to meet professional standards.

To the best of my knowledge, this is not an argument raised by Mr Ruby. However, as it is one of the objections to the establishment of a law school at TWU expressed by some of TWU's opponent, the argument should be addressed.

Not surprisingly, there are several responses to that argument:

First, there is no evidence that the teaching at TWU is homophobic;

Secondly, even if it was argued that the culture at TWU was in some way homophobic (an enormous and unjustified leap of logic – I am tempted to say 'leap of faith', but recognize that 'faith' is not one of the opponents' strong points of argument), can it be assumed that the graduates of the law school will be discriminatory in their professional activities? The Supreme Court of Canada has already dismissed this argument as illogical, ordering the B.C. College of Teachers to give accreditation to TWU's teachers college.

However, the issue is even bigger than that. The assumption appears to have been made that the TWU culture is not positive toward gays, with the conclusion that education in that environment will predispose an individual to discriminate against gays. This assumption is strongly denied by TWU, and as my Submission is not to act as spokesman for TWU, I will leave it to others far more knowledgeable about TWU's culture to respond to that specific assumption. However, I do draw issue with the *conclusion*, and suggest that, ***even if*** the assumption was correct (which is definitely not in any way conceded in this Submission), the following (and other) questions must be asked about the conclusion:

- If a law graduate grew up in a religious culture which appeared to encourage an attitude of male superiority (for example, a culture which emphasised the authority of the father, and insisted on strict separation of males and females in a house of worship), should the Law Society assume that the potential lawyer will be sexist?

- If a student attended a law school in a country (or even an area in a country) that was considered to be racist, would the assumption be that such student should not be considered for admission to the Ontario Bar because of the potential that such student will, as a lawyer, be racist?

- If an individual was raised in a culture that was commonly known as more violent than Canada, would that individual be presumed to be predisposed toward violence?

- More specifically, if a graduate was raised in a family that was deeply opposed to Christianity, is the conclusion that the graduate will discriminate against Christians?

If the Law Society were to decide, in any of such instances, that it would be prudent to carefully examine such student for any such personality flaws, the matter does not end there. The next question would obviously be whether the Law Society should conduct personality tests on all those applying for admission to the Bar, on the basis that much is unknown about the culture in which most applicants were raised, but that there is a possibility of a predisposition toward a particular discriminatory behaviour that should not be tolerated in the Ontario Bar.

CONCLUSIONS

I appreciate that TWU's proposal has encountered considerable hostility. Some of that hostility has been contained in diatribes that are unworthy of their authors; in other cases, the hostility has been simply uninformed; some of the negative responses are understandable but unfairly target TWU; some raise genuine concerns that I trust are adequately addressed in this Submission.

I recognise, also, that there are probably arguments that I have not addressed – despite the fact that I have attempted to conduct as an exhaustive search of the media as time has permitted to identify the negative responses to TWU's proposal.

What is important is that the LSUC, of which I have been a member for almost forty years, consider the arguments and their analysis and assessment (by the undersigned, as well as others who have presumably also provided Submissions) logically, and not (as can often be the case in a situation such as this) emotionally.

I trust that this Submission may assist the Benchers in their considerations.

Paul D. Mack, B.A. (Sydney), LL.B. (Western), LL.M. (Osgoode)

Peterborough Community Legal Centre

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Executive Director

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Martha F. Macfie, B.A., LL.B.
Barrister & Solicitor

March 27, 2014

VIA ELECTRONIC MAIL

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

To Whom It May Concern:

Re: Accreditation of Trinity Western University's School of Law

The Peterborough Community Legal Centre is a community legal clinic providing free legal advice and representation to low income residents of Peterborough City and County.

The Board and Staff of the Legal Centre have reviewed the Trinity Western University "Community Covenant Agreement" and find it offensive to all of us and discriminatory to the LGBT community.

The Board and Staff of the Legal Centre respectfully request that the Law Society of Upper Canada (LSUC) not accredit the Trinity Western University School of Law pursuant to s.7 of LSUC By-Law 4.

In addition, we wish to advise you that we endorse the submission of the HALCO community legal clinic on this matter.

Yours very truly,
PETERBOROUGH COMMUNITY LEGAL CENTRE

Per:
Melinda Rees
Barrister and Solicitor
Executive Director

March 27, 2014

VIA EMAIL (jvarro@lsuc.on.ca)

TWU Submissions
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Mesdames/Sirs:

Re: Accreditation of Proposed Law School Program at Trinity Western University

We thank you for your invitation to provide submissions to the Law Society of Upper Canada as Convocation considers the question of whether the new law school at Trinity Western University ("TWU") should be accredited as an approved faculty of law pursuant to section 7 of By-Law 4.

We are members of what is at present an unincorporated association of Catholic lawyers in British Columbia in the process of forming a society to be called The St. Thomas More Catholic Lawyers Guild of British Columbia. There are similar Guilds located in other jurisdictions in Canada, including in Ontario, and the United States. Our membership spans the spectrum of the profession and includes members from small, mid-sized and national firms, as well as corporate counsel. Our annual Red Mass is attended by lawyers, articled students, law students and members of the judiciary.

We are writing to support the accreditation of TWU's proposed law school program and the acceptance of TWU law graduates as eligible for qualification before their respective law societies, including the Law Society of Upper Canada. We have already written to the Benchers of the Law Society of British Columbia urging them to support the accreditation of TWU's proposed law school program. We also wish to express our grave concerns regarding the position taken by some members of the legal community locally and nationally that TWU law graduates should not be permitted to practice law thereby effectively shutting down TWU's faculty of law before it is even allowed to begin. Our concerns, however, go beyond this fact. The position taken by opponents to TWU's law school accreditation strikes at the heart of the freedom of conscience and religion and seeks to preclude those of a particular faith or belief from entering our profession. As a result, we are compelled to vigorously oppose this effort and everything for which it stands.

At the root of the concern raised by those who oppose the accreditation of TWU's law school and granting qualification to its graduates within each law society is TWU's Community Covenant which requires an undertaking from students to refrain from "sexual intimacy which violates the sacredness of marriage between a man and a woman".

The Decision of the Federation of Law Societies

As you are aware, the Federation of Law Societies, through its Approval Committee, conducted a rigorous and thorough evaluation of all issues relating to TWU's application for accreditation as a law school including whether TWU satisfied all substantive educational training requirements. The Approval Committee identified the issues around TWU's Community Covenant as outside the scope of its mandate and so established a Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee") to consider whether any "special considerations…should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of agreement and employment, respectively".

As part of its assessment, the Special Advisory Committee considered a legal opinion provided by Mr. John B. Laskin of Torys LLP to the Federation dated March 21, 2013 on the extent to which the decision of the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 ("BCCT") applies to TWU's application for accreditation of a law school and whether the BCCT decision is still good law. Mr. Laskin conducted a detailed assessment of the state of the law and evaluated a series of potential arguments both for and against the accreditation of TWU's law school. In the end, Mr. Laskin concluded that the BCCT decision is still good law and will be binding on any challenge to TWU running a law school.

The Special Advisory Committee released its Final Report in December 2013 in which it came to the following as its final conclusion: "…if the Approval Committee concluded that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from the law society bar admission program." The Federation of Law Societies, based on the Special Advisory Committee's Final Report and the recommendation of the Approval Committee, concluded that TWU's law program did in fact satisfy all national requirements to conduct a law program and that the BCCT decision is still good law meaning therefore that there is no reason to disapprove of TWU's law school accreditation application.

The Current State of the Law Relating to the Freedom of Conscience and Religion

The freedom of conscience and religion is enshrined in the *Charter*. Dickson, J. (as he then was) writing for the majority in *Big M Drug Mart* emphasized its importance in the following passage:

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

> reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.
>
> Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.
>
> What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority".

The position of opponents to TWU's application for accreditation as a law school, at its root, holds that those who adhere to a particular belief based on their faith or conscience should not be permitted to engage in the profession of law. This in itself constitutes a blatant exercise of coercion and constraint about which Dickson J. speaks in the passage above. For Convocation to conclude that graduates of TWU's law program should not be admitted to practice law in Ontario, it would be acting contrary to the *Charter* and in a manner that discriminates against and marginalizes those who hold particular beliefs. This cannot be condoned in a free and democratic society.

Opponents to TWU's law school also appear to be suggesting that the very fact of the Covenant and the religious beliefs on which it is based render TWU law school graduates incapable of fulfilling their professional and ethical responsibilities as lawyers. This position was considered and rejected by the Supreme Court of Canada in *BCCT*. As summarized in Mr. Laskin's opinion, the court considered the very same Covenant in relation to an attempt by the BC College of Teachers to exclude graduates of TWU from the teaching profession. While it has been argued by some that this case was considered in a different societal context and has diminished binding authority today, these arguments are effectively rebuffed in Mr. Laskin's opinion. Indeed, Mr. Laskin points out correctly that the recent decision of the Supreme Court of Canada in *Whatcott* reaffirms that the fundamental freedom of religion and conscience "extends broadly" in Canada and is of equal importance today in the balancing of the rights of freedom and equality. Accordingly, the *BCCT* case remains the law of the land and its various statements and findings would be equally applicable to a decision by the Law Society of Upper Canada, or in fact any law society of Canada, to prevent admission to the profession of a TWU law school graduate.

In that case, the majority (which included the Chief Justice), relying on the passage of Dickson J. above, emphasized the importance of freedom of religion and conscience while noting that British Columbia human rights legislation specifically accommodates religious freedoms by allowing private institutions to discriminate in their admissions policies on the basis of religion. They further noted that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, was not sufficient to engage Section 15 of the *Charter* as it would be inconsistent with freedom of religion and conscience, which coexist with the right to equality. The court went on to state that there is nothing in the TWU community standards (which are limited to prescribing conduct of members only while attending TWU) to indicate that graduates of the school will not treat homosexuals fairly and respectfully. On this point, the court stated:

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

Broad Consequences of Refusing to Admit TWU Law Graduates

While TWU is not a Catholic university, the Community Covenant is generally consistent with Catholic teaching and is one to which Catholics would generally ascribe. The logic for excluding TWU graduates from the practice of law would apply equally to any person, whether Catholic, Protestant, Muslim, Jewish, Sikh or non-denominational, who adheres to the same beliefs upon which the Covenant is based. This is not merely the "slippery slope" toward broader based exclusion but rather the next logical step. It is a cause of deep concern and one that was recognized by the Court in the *BCCT* case in the following passage:

> TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools. Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. The BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU. Accordingly, this Court must.

Recommendation to the Law Society of Upper Canada

The signatories to this letter are members of and leaders in British Columbia law firms and corporate organizations. We hire, employ and work with people of differing gender, colour, creed, and sexual orientation. We treat them and in return are treated with respect and dignity. We do not discriminate within our profession or in the workplace, not in spite of but because of our beliefs. We take seriously our professional and ethical obligations both as practitioners and employers. We also happen to share the beliefs upon which the Covenant is based. For the same reason the Law Society would not disbar us for holding these beliefs, it should not exclude TWU graduates.

Opponents to TWU's proposed law school are seeking to convince the law societies to do what the Supreme Court of Canada has deemed unlawful. We respectfully urge the Law Society of Upper Canada and Convocation to comply with the law as confirmed by the Supreme Court of Canada and to follow the determination made by the Federation of Law Societies and conclude that graduates of TWU's law program will be recognized and admitted into the practice of law in Ontario.

Yours truly,

Celso Boscariol - Watson Goepel LLP

Roger Bourbonnais - Alexander Holburn Beaudin + Lang LLP

Andrew Buddle

Michelle Chang

Tai Y Cheng - General Counsel, Fulida Group

Jonathan Conlin - Fasken Martineau DuMoulin LLP

Sergio Custodio - Fasken Martineau DuMoulin LLP

Lauren Dattilo - Hamilton Duncan Armstrong & Stewart

Bruno De Vita - Alexander Holburn Beaudin + Lang LLP

Paul Fang - Fang and Associates

Chris Ferronato - Bull Housser & Tupper LLP

Neysa Finnie

Derek James - Quinlan Abrioux

Rudi Kischer - Maynard Kischer Stojicevic

Timothy Lack - Lunny Atmore LLP

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Jonathan Lim - Fasken Martineau DuMoulin LLP

Hector MacKay - Dunn, Q.C. - Farris, Vaughan, Wills & Murphy LLP

Christopher McHardy - McCarthy Tétrault LLP

Sharon Morrisroe - General Counsel, Raymond James Ltd.

Christine Oberti - Farris, Vaughan, Wills & Murphy LLP
Robert Piasentin - General Counsel, Sierra Systems
Donovan Plomp - McCarthy Tétrault LLP
Brian Poston - MacKenzie Fujisawa LLP
Christopher Rhone - Branch MacMaster LLP
Michael Roche - Alexander Holburn Beaudin + Lang LLP
John Rogers - Clark Wilson LLP
Dale Rondeau – Thomas, Rondeau LLP
Peter Roth - Farris Vaughan Wills & Murphy LLP
Warren Smith - Managing Partner, The Counsel Network
Kenneth Tyler - Borden Ladner Gervais LLP
Michael Vaughan - Owen Bird LLP
Rosemarie Wertschek, Q.C. - McCarthy Tétrault LLP
Michelle Wingert

March 27, 2014

To Whom It May Concern:

I am writing to express my view that the Law Society of Upper Canada should not accredit Trinity Western University's law school. As a current law student and future member of the legal profession in Ontario, I will be ashamed and appalled if the Law Society gives a stamp of approval, on behalf of all legal professionals in the province, to a law school that openly discriminates against certain students, faculty and staff.

TWU's Community Covenant is discriminatory, plain and simple. It prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman." Students who do not comply with the Covenant may be expelled from the university.

A covenant that discriminated against people who engaged in sexual relationships with someone of a different race or religion would never be tolerated by the Law Society, and neither should one that discriminates against anyone who engages in a sexual relationship outside of heterosexual marriage.

Accrediting TWU's law school would be inconsistent with the Law Society's equity and diversity values, which seek "to ensure that both law and the practice of law are reflective of all peoples in Ontario." The Law Society itself has stated its commitment to working to ensure that "legal profession [is] free of harassment and *discrimination*." Moreover, the Law Society pledges to protect the public interest, and recognizes that, "to maintain the privilege of self-governance, the public interest must always be of paramount concern to the Law Society." Endorsing discrimination can never be in the public interest.

At a time when lawyers, firms, and law schools are becoming increasingly aware of the need to promote and ensure diversity within the legal profession, particularly from equity-seeking groups such as the LGBTQ communities, accrediting TWU would be a step backwards.

Thank you,

Aleena Reitsma

JD/MSW Candidate 2015, University of Toronto Law School

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March 26, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Sirs:

Re: Trinity Western University

I have no objection to Trinity Western University's (TWU's) proposed law school and its wish to have its degree program and graduates deemed eligible for admission to the bar. There are any number of organizations in this country catering to what I consider to be odd and questionable interests and beliefs, but I am free to ignore them, as I do, and they do me no harm. The most extreme of these tend to wither on the vine for lack of social support. I have no doubt that in future the success and appeal of TWU's law school will be subject to similar forces. In the mean time, students attending the school will still have to learn the law and swear to uphold it if they wish to be called to the bar. They may even find that reflecting upon the law may serve to alter the threshold of their tolerance for people with other orientations. However, their personal religious views are for them alone, and for the school they choose to attend.

Yours truly,

Richard H. Baker
/sf

I am writing to express my concern with the possibility that the LSUC may accredit Trinity Western's (TW) law program.

TW brands itself as a "Christian University." While this in and of itself is not sufficient grounds for denying accreditation to its law program, an unfortunate consequence of their "wholehearted embrace[ment] [of] all the Bible teaches" is the exclusion of an entire segment of the Canadian population – LGBT citizens. TW considers the "finished product the biblical scriptures [to be] "without error" and it is therefore TW's belief, as expressed in their Community Covenant Agreement, that marriage is only between a man and a woman.

While there may be other laudable aspects of TW, Canada recognizes the rights of all individuals to marry whom they choose, regardless of gender, a fact that the vast majority of Canadians are proud of, and many other citizens of the world are envious of. This right stems from the Charter of Rights of Freedoms, which all lawyers should uphold.

The role of lawyers in Canada is to stand up for the rights of others, particularly minorities. The LSUC recognizes the importance of diversity as illustrated by the Equity and Diversity Resources section on the website, which acknowledges that different groups, including LGBT citizens, bring value to the profession. As such, the Law Society must consider what sort of message it will be sending to LGBT law students, Ontarians, and citizens worldwide, if TW's law program is accredited. The LSUC will be telling the world that discrimination against LGBT individuals is acceptable. Although the LSUC purports to embrace diversity, by accrediting TW's law program, there becomes an appearance of intolerance.

I am immensely proud of the role lawyers have played in fighting for the rights of women, aboriginals, LGBT, and all other minority and marginalized groups. I would be devastated if this role was marred by the decision of the Law Society to recognize a law program that blatantly, and seemingly proudly, excludes LGBT citizens. LGBT youth are already extraordinarily marginalized and significantly more likely to commit suicide. While the Province of Ontario is working to eradicate homophobia by ensuring that all students can create a GSA in their schools, the Law Society is contemplating recognizing a law program at a university with values of exclusion.

I respectfully request that the Law Society of Upper Canada **refuse** to accredit Trinity Western's law program, and in doing so, send a message that the lawyers of the Province of Ontario, a Province with a Premier who identifies as LGBT, fight on *behalf of* marginalized citizens, not encourage institutions that discriminate against them. Do not grant TW the ability to further marginalize LGBT individuals. Deny accreditation.

Sincerely,
Alysha Bayes

MARY E. E. BOYCE
BARRISTER AND SOLICITOR

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69 ELM STREET
TORONTO, ONTARIO M5G 1H2

March 26, 2014

The Benchers
The Law Society of Upper Canada
Osgoode Hall
130 Queen St. W.
Toronto, ON

Dear Sirs and Mesdames:

Re: Question of accrediting Trinity Western University's proposed law school

I write to ask you, in the public interest, to reject accreditation of a law school at Trinity Western University ("TWU").

TWU is a fundamentalist, evangelical Protestant university. It binds its students to its Community Covenant Agreement ("Covenant") which tells students how to behave while at the university but also outside the realm of academia. However much TWU may protest (if it does), it effectively excludes Jews, Muslims, adherents of First Nations' spirituality, Hindus, Sikhs, Catholics, non-fundamentalist and evangelical Protestants, agnostics and atheists.

Furthermore, TWU discriminates against gays and lesbians, based as is the rest of the Covenant on a literal interpretation of selective passages of the Bible. This is particularly troubling now with the proliferation of discriminatory and punitive laws in various places in the world, actions which you, the Benchers, doubtless deplore and may on behalf of all LSUC members publicly denounce.

It is not in the public interest to accredit a law school at TWU and thus recognize law graduates educated in the practice of discrimination, the rejection of diversity, the absence of dissent, and disdain for the *Canadian Charter of Rights and Freedoms* and human rights codes.

It is not in the public interest to accredit a law school whose graduates are urged to distinguish themselves in "the marketplace of life," to quote the crass words of TWU's Covenant. The law is no more a marketplace than it is a pulpit.

Yours very truly,

MARY BOYCE

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Lindsay M. Lyster
President
president@bccla.org

March 27, 2014

By email to jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Sirs and Mesdames:

Re: Accreditation of Trinity Western University Law School

I write in my capacity as President of the British Columbia Civil Liberties Association (the "BCCLA"), in response to the invitation for submissions from the public in respect of the accreditation of Trinity Western University's proposed law school.

The Treasurer of the Law Society has stated the following question for decision by Convocation:

> Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

British Columbia Civil Liberties Association
900 Helmcken Street, 2nd floor
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info@bccla.org
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The BC Civil Liberties Association ("BCCLA") was established in 1962, and is Canada's oldest and most active civil liberties organization. Our mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. We are an independent, non-partisan charity.

In making this submission to Convocation, the BCCLA takes the position that TWU's status as a private, faith-based institution, and more specifically, the Community Covenant which members of the TWU community agree to abide by, ought not to stand in the way of TWU's accreditation nor the right of its graduates to become members of the Law Society of Upper Canada.

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

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

TWU is a private religious educational institution that has proposed to open a new law school. It has received approval from the Federation. In considering the question posed by the Treasurer, Convocation is now deciding whether the Law Society of Upper Canada will consider TWU an accredited law school.

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

The BCCLA

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

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

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

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

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

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

> the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.
>
> What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority". (paragraphs 94-96)

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

Discussion

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

Those freedoms were called "fundamental" by the framers of the *Charter* for a reason – without them, we would have no right to hold or

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

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

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

Were such conditions imposed on students attending a public faculty of law they would rightly be seen as unlawful discrimination contrary to s. 1 of the *Human Rights Code* of Ontario, as well a breach of students' rights to equality under s. 15 of the *Charter*. But it is crucial to remember that TWU is not a public university and these conditions are not imposed on TWU students – they are voluntarily accepted by those

students who choose to attend TWU. The *Charter* does not apply to TWU as a private institution. The Supreme Court held in *Trinity Western University* that as a result of s. 41 of the British Columbia *Human Rights Code* TWU does not contravene the *Code* where it prefers members of its religious constituency (para. 35). The same would be true under s. 18 of the Ontario *Human Rights Act*.

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

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

In this case, the public good is accreditation for the purpose of admission to the bar by students graduating from TWU's proposed law school. The denial of that public good to graduates of TWU's law school would infringe the freedom of religion, of association and of expression of the members of the TWU community. We are unaware of any sufficient rationale being offered that would justify that infringement. Permitting graduates of TWU to enter the legal

profession does not send the message from the state to LGBTQ Canadians that they are less worthy of respect than others nor does it deny them any rights or freedoms to which they would otherwise be entitled. All it does is respect the freedom of those who wish to govern their own conduct in accordance with the religious tenets encompassed within the Community Covenant.

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

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

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

It is fundamentally wrong to assume that because some law students are prepared to agree to conduct themselves in accordance with the Community Covenant while attending TWU that they will not also conduct themselves in accordance with the legal requirement, found both in the *Human Rights Code* and the rules that govern the legal profession, that they not discriminate in their practice of law. Again, the decision of the Supreme Court of Canada in *Trinity Western University* is dispositive:

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

> the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. (paragraph 35) (emphasis added)

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

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

The same reasoning applies to the accreditation of TWU's law school and the training of lawyers. To apply section 15 *Charter* in a way that would deny a public good to a group of people who have adopted a code of conduct based on their religious beliefs would deeply undermine the freedom of religion, and the freedom of association, not only of members of the TWU community, but of all Canadians.

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

Conclusion

We submit that Law Society of Upper Canada should, in accordance with the Federation's decision, accept TWU as an accredited law school. The question is not whether members of Convocation, individually or as a group, agree with TWU's Community Covenant or would choose to abide by it themselves. The question is whether the acceptance by law students attending TWU of the Community Covenant should bar TWU graduates from joining the ranks of the legal profession in Ontario. Our commitment to a society in which LGBTQ people are free from unlawful discrimination on the basis of sexual orientation does not give us licence to discriminate against others on the basis of their conscientiously held religious beliefs, nor to deny them their fundamental freedoms. There is no basis for believing that accreditation of TWU's law school will lead to unlawful discrimination against LGBTQ people, or would otherwise be contrary to the public interest. To the contrary, for the Law Society to deny TWU's application for accreditation would itself be contrary to law, as established by the Supreme Court of Canada, and would result in unlawful discrimination against and infringement of the fundamental freedoms of those who seek only to be able to study law and be allowed entry to the legal profession without discrimination based on their religious beliefs.

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

Yours truly,

Lindsay M. Lyster

President

uOttawa

March 28, 2014

Via Email

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Section de common law

University of Ottawa
Faculty of Law
Common Law Section

Dear Convocation,

RE: TWU Law School

We write in our personal capacities in response to the Law Society of Upper Canada's request for submissions on the question of whether LSUC should accredit the proposed law school program at Trinity Western University (TWU).

Jena McGill is called to the bar in Ontario, and is an Assistant Professor at the Faculty of Law, University of Ottawa. Dr. Angela Cameron is an Associate Professor at the University of Ottawa Faculty of Law, and called to the bar in Nova Scotia. Angela Chaisson is a feminist lawyer with Ruby, Shiller, Chan, Hasan Barristers in Toronto, Ontario, and a graduate of the JD program at the University of Ottawa. We are all deeply committed to the equality rights of gay, lesbian, bisexual, transgendered, and two spirited people in Ontario and in Canada. All three of us belong to the GLBTQ community.

Like many other members of the legal community in Canada, we believe that LSUC should not accredit TWU law school until TWU abandons its overtly discriminatory Community Covenant. A decision by LSUC to approve TWU and its Covenant would be open to legal challenge as a violation of the equality rights of gay and lesbian Canadians guaranteed by the *Canadian Charter of Rights and Freedoms*. In the attached document, you will find a detailed analysis explaining why a decision by LSUC to approve TWU would not comply with the relevant legal frameworks of administrative and constitutional law. We ultimately conclude that a decision to approve TWU would not withstand judicial scrutiny on any proper legal analysis.

While we welcome the opportunity to provide these submissions in writing, we are disappointed that, unlike the law societies of Nova Scotia and British Columbia, LSUC has opted not to provide a public forum for oral submissions and open debate on this important issue.

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Introduction

Trinity Western University ('TWU') is an evangelical Christian institution in Langley, British Columbia, Canada. TWU requires all faculty, staff and students to sign a mandatory Community Covenant. The Covenant includes the following provision:

> In keeping with biblical and TWU ideals, community members voluntarily abstain from the following actions:
> […]
> - sexual intimacy that violates the sacredness of marriage between a man and a woman[1]

Although the term "voluntary" is used in this section, the Covenant is in fact mandatory, as the TWU application for admission requires: "All students are required to read and understand the Community Covenant Agreement and agree to the terms of the document before being permitted to register for classes."[2] Faculty and staff members are also required to sign the Covenant. TWU community members are expected to "hold one another accountable to the mutual commitments outlined in this covenant" and those who violate the Covenant risk disciplinary measures, including expulsion and termination of employment.[3]

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[1] *TWU Community Covenant* [Covenant] online : <https://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html>. The Covenant later expands on the general directive to abstain from same-sex intimacy in the following terms:

> [A]ccording to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation. Honouring and upholding these principles, members of the TWU community strive for purity of thought and relationship, respectful modesty, personal responsibility for actions taken, and avoidance of contexts where temptation to compromise would be particularly strong.

[2] Trinity Western University Application for Admission, online: <https://www1.twu.ca/undergraduate/apply/ugapplication>.

[3] The Covenant, *supra* note 1. The Covenant further provides, in relation to all students, staff and faculty:

> TWU reserves the right to question, challenge or discipline any member in response to actions that impact personal or social welfare.
> […]
> The University also provides formal accountability procedures to address actions by community members that represent a disregard for this Covenant. These procedures and processes are outlined in the Student, Staff, and Faculty Handbooks and will be enacted by designated representatives of the University as deemed necessary.

According to the TWU Student Handbook, online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>: "If a student, in the opinion of the University, is unable,

The TWU Covenant overtly discriminates against all gay, lesbian, and bisexual Canadians, regardless of their marital status under Canadian law.[4]

In December 2013, the Federation of Law Societies of Canada (Canadian Common Law Program Approval Committee) granted "preliminary approval" to TWU's proposed law school program, and the British Columbia Minister of Advanced Education granted his approval two days later. Yet, the final decision to approve TWU lies with the bar societies of each province and territory in Canada. LSUC is now faced with the question of whether it should recognize degrees granted by TWU law school for the purpose of admission to the practice of law in Ontario.

In these submissions, we argue that LSUC must not accredit a law school at TWU unless and until it revokes its discriminatory Covenant. To be clear, we take no position in respect of TWU's proposal except in relation to the Covenant; the integrity of faith-based institutions generally is not at stake.

In particular, we demonstrate in these submissions that the relevant legal principles according to which a decision by LSUC to approve TWU's law school would be adjudged *require* LSUC to reject the TWU proposal. We outline two parallel arguments against the accreditation of TWU by LSUC: first, we imagine that a decision by the LSUC to approve TWU is reviewed under the *Judicial Review Procedure Act*,[5] subjecting the approval decision to the *Charter* values-based administrative law analysis outlined by the Supreme Court of Canada in *Doré v Barreau du Quebec*[6]; and second, we envision a case proceeding by way of application made pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, and analyze the approval decision through the framework of section 15 equality rights.[7] While it appears, after *Doré*, that the administrative law framework is the most likely route a challenge to an LSUC decision to approve TWU's law program would take, these two lines of analysis are not mutually exclusive.[8]

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refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's re-admission to the University."

[4] The Covenant's proscription of "intimacy that violates the sacredness of marriage between a man and a woman" also discriminates against unmarried opposite-sex partners and people who identify as heterosexual, but have occasional sexual contact with people of the same sex. While these forms of discrimination are deplorable, the focus of this analysis is on the impact of the Covenant on those who identify as gay, lesbian or bisexual because of the particularly stark ways in which the Covenant discriminates against these communities. It should further be noted that the Covenant may also discriminate against transgendered people, depending on their sexual orientation. Given that the Covenant sets out its prohibition based on the categories of 'man' and 'woman', without specifying that these categories refer only to cisgendered individuals, it seems possible, for instance, that a male to female transgendered person who identified as lesbian could be subject to sanction under the Covenant.

[5] RSO 1990, Chapter J.1.

[6] *Doré v Barreau du Quebec*, 2012 SCC 12.

[7] *Canadian Charter of Rights and Freedoms*, , Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[8] *L'Association des parents de l'ecole Rose-des-Vents v Conseil scolaire francophone de la Colombie-Britannique*, 2011 BCSC 89 at para 28.

We hope that these submissions assist Convocation in its consideration of the complicated legal issues posed by the TWU proposal.

I. History and Back ground

In June 2012 TWU proposed a law school to the British Columbia Ministry of Advanced Education and the Federation of Law Societies of Canada as an addition to their existing university level curriculum. According to the TWU website the law program plans to accept its first class of 60 students in September 2016.[9]

The Federation of Law Societies of Canada Common Law Approval Committee granted "preliminary approval" to TWU's proposed school of law program in its report issued on December 16, 2013.[10] The mandate of the Approval Committee is to review "proposed common law programs to assess whether graduates will possess the knowledge and skills competencies set out in the National Requirement developed by the Federation and Canada's law societies."[11] Responding to public controversy generated by TWU's proposal, the Federation struck a Special Advisory Committee on Trinity Western University's Proposed School of Law, tasked with answer the following question:

> What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?[12]

The Special Advisory Committee issued a report concluding, "if the Approval Committee concludes that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."[13] The Approval Committee, confining its deliberations to the TWU's proposed curriculum and minimum admission standards, as well as the report of the Special Advisory Committee, granted preliminary approval, finding the TWU

[9] Trinity Western University School of Law, online: <https://www.twu.ca/academics/school-of-law/>.
[10] Canadian Common Law Program Approval Committee, *Report on Trinity Western University's Proposed School of Law Program* (December 2013), online: <http://www.flsc.ca/_documents/ApprovalCommitteeFINAL.pdf> [Approval Committee Report].
[11] Federation of Law Societies of Canada, "Trinity Western University's Proposed Common Law Program", online: <http://www.flsc.ca/en/twu-common-law-program/>.
[12] Federation of Law Societies of Canada, *Special Advisory Committee on Trinity Western's Proposed School of Law: Final Report* (December 2013), online: <http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf> at 3 [Special Committee Report]. In answering this question, the Special Advisory Committee was instructed to consider, *inter alia*, "applicable law, including the *Canadian Charter of Rights and Freedoms*, human rights legislation, and the Supreme Court of Canada decision in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31."
[13] Special Committee Report at para. 66. For an important critique of the conclusions of the Special Committee Report, see Elaine Craig, "Submissions to that Nova Scotia Barristers' Society" (5 February 2014), online: <http://nsbs.org/twu-submissions>.

program would satisfy the National Requirement.[14]

Less than two days after the Federation's preliminary approval, the British Columbia Minister of Advanced Education, The Honourable Amrik Virk, granted his approval for the TWU law school on December 18, 2013.[15]

Now that the TWU law school proposal has received the approvals of the Federation and the province, the final and ultimate decision whether to recognize TWU's proposed law school rests with the individual provincial and territorial law societies. Because each province/territory has constitutional jurisdiction over its own members it is possible that some law societies may approve TWU, while others may not. LSUC has the power to decide whether to accredit TWU's law school pursuant to section 27(1) of the *Law Society Act* (the *Act*), which provides:

> 27. (1) The classes of licence that may be issued under this Act, the scope of activities authorized under each class of licence and any terms, conditions, limitations or restrictions imposed on each class of licence shall be as set out in the by-laws.[16]

In turn, bylaw 4 makes it a general condition of licensing that an applicant have a degree from an "accredited law school", which is defined in s.7 of the by-law as "a law school in Canada that is accredited by the Society".[17] Acting according to its statutory power, LSUC must now determine whether to accredit TWU for the purposes of permitting its graduates to be eligible to be called to the bar in Ontario.

II: A Decision to Accredit TWU Would Not Withstand Judicial Review: *Charter* values and Administrative Law

It is clear that LSUC has the authority to accredit TWU or not pursuant to section 27(1) of the *Law Society Act.* However, the power to accredit a law school vested in the LSUC is not absolute: as with all exercises of discretionary power, LSUC`s decisions must conform with *Charter* values. The concept of applying *Charter* values as a tool in decision-making is not new,[18] but has taken on dominant role in administrative decision-making by the Supreme Court of Canada in its unanimous decision in *Doré*.[19] There, the Court held, " …administrative

[14] Approval Committee Report, *supra* note 10 at para 56.
[15] British Columbia Ministry of Advanced Education, "Statement on Trinity Western University's Proposed Law Degree" (18 December 2014), online: <http://www2.news.gov.bc.ca/news_releases_2013-2017/2013AVED0047-001903.htm>. The Minister's approval was granted pursuant to the *Degree Authorization Act*, [SBC 2002] Ch. 24, s. 3(1). It is noteworthy that Minister Virk's approval was qualified by his understanding that "Trinity Western University is a faith-based, private university that does not receive operating or capital funding from government." As we detail at page 14, below, the assumption that TWU does not receive government funding is inaccurate.
[16] *Law Society Act*, RSO 1990, c L.8 (emphasis added).
[17] By-Law 4, made under subsections 62 (0.1) and (1) of the *Law Society Act*, online: <http://www.lsuc.on.ca/with.aspx?id=1070>.
[18] See eg, *Hutterian Brethren of Wilson Colony v Alberta* 2009 SCC 37 at paras 88 and 96.
[19] *Doré*, *supra* note 6 at paras 28, 32, 35.

decisions are always required to consider fundamental values…administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise."[20]

According to the Court in *Doré*, in order to properly take into account *Charter* values in an administrative decision, a decision-maker must take the following approach:

> How then does an administrative decision-maker apply *Charter* values in the exercise of statutory discretion? He or she balances the *Charter* values with the statutory objectives. In effecting this balancing, the decision-maker should first consider the statutory objectives….
>
> Then the decision-maker should ask how the *Charter* value at issue will best be protected in view of the statutory objectives. This is at the core of the proportionality exercise, and requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives. This is where the role of judicial review for reasonableness aligns with the one applied in the *Oakes* context.[21]

This methodology has been consistently followed in cases where *Doré* is applied to balance *Charter* values against one another, and/or against the statutory objectives of a decision-maker's home statue.[22] Accordingly, it would be the relevant framework in analyzing a decision by LSUC to approve TWU's law school, if that decision was subject to judicial review.

A. Statutory Objectives

In deciding whether or not to accredit TWU's law school, LSUC must balance the *Charter* values of freedom of religion and equality against the statutory objectives of the *Law Society Act*. Section 4.2 of the *Act* outlines the principles the LSUC must apply in exercising its accreditation decision-making powers.

> **4.2** In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
>
> 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
> 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
> 3. The Society has a duty to protect the public interest.
> 4. The Society has a duty to act in a timely, open and efficient manner.

[20] *Ibid* at para 35 (per Justice Abella writing for a unanimous Court). See also: Angela Cameron and Paul Daly, "Furthering Substantive Equality through Administrative Law" (2013) 61 SCLR 169.
[21] *Doré*, *supra* note 6 at paras 55 and 56.
[22] See eg, *Certain Employees of Brandt Tractor Ltd. and IUOE, Local 115, Re*, [2013] BCWLD 816; *Syndicat des travailleuses et travailleurs de ADF - CSN v Syndicat des employés de Au Dragon forgé Inc*, 2013 QCCA 793; *Goldberg v Law Society (British Columbia)*, 2009 BCCA 147; *Pridgen v University of Calgary*, 2012 ABCA 139; *Taylor-Baptiste v Ontario Public Service Employees* 2013 HRTO 180; and *Marceau v Brock University*. 2013 HRTO 569.

> 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.[23]

Of particular importance to the accreditation decision are sections 4.2.1 and 4.2.3: the duties to advance the rule of law and to protect the public interest. The rule of law in contemporary Canada extends equality protection to gay, lesbian and bisexual citizens in all facets of life, from marriage and adoption to education and employment.[24] **The public interest demands that LSUC's decision be made in a way that reflects contemporary societal values, which include rejection of discrimination against gays and lesbians.** The accreditation decision must comply with both the public interest and the rule of law.

B. *Proportionality: Protecting Charter Values in View of the Statutory Objectives*

The *Charter* values at issue in the LSUC's decision on whether to accredit TWU's law school are freedom of religion and equality. In proportionally balancing the relative interference with each of these values against the statutory objectives of the *Act*, above, one first must determine the content of each *Charter* value, that is, what aspects of freedom of religion and freedom from discrimination must be balanced against one another, and against the public interest and the rule of law?

i) Freedom of Religion

TWU argues that the Covenant, including the discriminatory provision against same-sex intimacy and the right to discipline those who contravene it, is an expression of the *Charter* value of freedom of religion.[25] In *Hutterian Brethren of Wilson Colony v Alberta* , decided before *Doré*, the Supreme Court of Canada recognized freedom of religion as a *Charter* value.[26] Applying the *Doré* decision, the Human Rights Tribunal of Ontario in *RC v District School Board of Niagara* likewise recognized freedom of religion as a *Charter* value to be taken into account in reviewing administrative decisions for *Charter* compliance.[27] There is no doubt that freedom of religion would be a relevant *Charter* value for balancing purposes in the context of reviewing a decision by LSUC to approve TWU's law school.

The core of the *Charter* value of freedom of religion, or what the Supreme Court in *Saskatchewan (Human Rights Commission) v Whatcott* calls the "…important aspects of freedom of religion", is outlined in the jurisprudence.[28] The Supreme Court in *Whatcott*, citing

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[23] *Supra* note 16 at s. 4.2.
[24] See eg, *Reference re Same-Sex Marriage*, 2004 SCC 79.
[25] See eg, the video message from TWU President Bob Kuhn circulated to TWU alumni, arguing that opposition to the Covenant "strikes at the very heart of religious freedom in Canada." online: <http://www.twu.ca/video/religious-freedom.html?utm_source=TWU+Alumni&utm_campaign=153d712c47-SSE_Bob_s_Christmas_email12_12_2013&utm_medium=email&utm_term=0_6a17f97323-153d712c47-6655113>.
[26] *Supra* note 1.
[27] *RC v District School Board of Niagara, RC v District School Board of Niagara*, 2012 HRTO 1591 at para 8.
[28] *Saskatchewan (Human Rights Commission) v Whatcott* 2013 SCC 11 at para 159. These same key aspects of

Dickson J. in *Big M Drug Mart*, notes that the essence of freedom of religion includes: preaching and the dissemination of religious beliefs, teaching those beliefs, liberty to choose what religion you belong to, freedom to declare those beliefs openly without fear of reprisal, to worship and practice, and freedom of religious association.[29] The Court in *Hutterian Brethren* adds prayers and sacraments to the vital core of freedom of religion.[30] This means that while individuals mut be free to hold whatever beliefs they wish, they cannot engage in discriminatory practices.

However, throughout this lineage of cases, the Supreme Court has consistently held that these vital aspects of freedom of religion must co-exist with equality rights:

> In judging the seriousness of the limit in a particular case, the perspective of the religious or conscientious claimant is important. However, this perspective must be considered in the context of a multicultural, multi-religious society…. The bare assertion by a claimant that a particular limit curtails his or her religious practice does not, without more, establish the seriousness of the limit for purposes of the proportionality analysis.[31]

TWU's "bare assertion" that opposition to the Covenant curtails its freedom of religion must be considered in the context of our diverse society; a society that is not only multicultural and multi-religious, but that also includes people of different sexual orientations and identities.

ii) Equality

The *Charter* value of equality is well-established in both the pre- and post-*Doré* periods.[32] For example, the Supreme Court in *Whatcott*, in balancing equality rights and freedom of religion, held that essential *Charter* values in a free and democratic society include "…a commitment to equality, respect for group identity and the inherent dignity owned to all human beings."[33] Additionally, the statutory objective of the *Law Society Act* of upholding the public interest is underpinned by the *Charter* value of equality.[34] In *Trinity Western University v British Columbia College of Teachers* (*BCCT*), the Supreme Court of Canada noted that "(e)quality is a central component of the public interest."[35] There is no doubt that equality, in particular the equality interests of gay, lesbian and bisexual Canadians, is a relevant *Charter* value for balancing purposes in assessing a decision by LSUC to accredit TWU.

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freedom of religion are cited in *Trinity Western University v British Columbia College of Teachers* 2001 SCC 31 at para 28 [*BCCT* 2001].

[29] *Ibid* at para 159, citing in part *R v Big M Drug Mart Ltd*., [1985] 1 SCR 295 at p. 336.

[30] *Hutterian Brethren*, *supra* note 18 at para 89.

[31] *Hutterian Brethren*, *supra* note 18 at para 90. See also *Whatcott*, s*upra* note 28 at para. 161; *Hutterian Brethren*, *supra* note 18 at para. 90; and, *BCCT* 2001, *supra* note 28 at para 29.

[32] See eg, Peter W Hogg, "Equality as a *Charter* Value in Constitutional Interpretation" (2003) SCLR (2d) at 121, 122, 126-130; *MacCabe v Board of Education of Westlock Roman Catholic Separate School District*, 2001 ABCA 257 at para 106; and, *Ismail v British Columbia (Human Rights Tribunal)* 2013 BCSC 10779.

[33] *Whatcott*, s*upra* note 28 at para 7. See also *Ismail, supra* note 33 at para 340.

[34] *Supra* note 16.

[35] *BCCT* 2001, *supra* note 28 at para 59.

How, then, should LSUC proceed in balancing its statutory obligations to uphold the public interest and the rule of law against the *Charter* values of freedom of religion and equality live in the TWU scenario?[36] The British Columbia Superior Court, in *Ismail v British Columbia* provides useful guidance on how an administrative decision-maker should undertake the balancing of statutory objectives against two competing *Charter* values.[37] There, the Superior Court was balancing freedom of expression against the equality rights of a lesbian complainant. In this case the complainant had brought a complaint under the British Columbia *Human Rights Act* against a comedian, and restaurant owner, for homophobic comments made against her during a comedy performance. The Court determined:

> The Tribunal's decision must…correctly balance…the statutory objective in the section of eradicating discrimination with the need to protect free expression. I think that is clear from the Supreme Court of Canada decision in *Whatcott*.
>
> Accordingly, I turn to the questions of whether the Tribunal was correct in finding discrimination and whether in the circumstances it interpreted and applied s. 8 (of the *Human Rights* Act) in a manner consistent with the minimal impairment of free speech. Put another way, did the Tribunal correctly balance the severity of the interference of the *Charter* protection with the statutory objective of s. 8? [38]
>
> (The)…right to freedom of expression was minimally infringed and the decision of the Tribunal correctly balanced the *Charter* value of freedom of expression with the statutory objectives underlying s. 8 of the *Code*, which are in pursuit of another *Charter*-protected value: equality.[39]

Thus the Court in *Ismail* suggests that the following three steps would be applicable to assessing a decision of LSUC in relation to TWU's proposed law program: 1) where a statutory objective, here the public interest and the rule of law in the *Law Society Act*; 2) is underpinned by a *Charter* value, in this case, equality; the correct approach to balancing is to engage in an analysis of whether the equality-informed statutory objective minimally impairs the second *Charter* value - in this case, freedom of religion.

This approach conforms with the Supreme Court's ruling in *Doré*, in that it eschews a full analysis pursuant to *R v Oakes* in circumstances where an administrative decision itself is being scrutinised under the constitution, rather than the home statue, but imports the useful framework of minimal impairment into the *Doré* proportionality exercise.[40]

C. *Proportionality: Context and Effects*

[36] The original methodology in *Doré*, *supra* note 6, primarily contemplates balancing the statutory objectives as against a single *Charter* value, by measuring the impact of the decision taken pursuant to the statutory objective against the impact on the single *Charte*r value itself. While the Court in *Doré* at para 55 refers to "*Charter* values" plural, the rest of the analysis addresses the singular *Charter* value of freedom of speech.
[37] *Ismail*, *supra* note 33.
[38] *Ibid* at paras 297-298.
[39] *Ibid* at para 340.
[40] *R v Oakes*, [1986] 1 SCR 103.

In deploying the proportionality analysis from *Ismail*, above, to reach a decision on the accreditation of TWU, LSUC must consider both the social context[41] of the decision and its likely effects.[42] The Supreme Court in *Whatcott* considered the broader social context in which freedom of religion and equality rights must co-exist in a free and democratic society. In particular, the Court held:

> The broader context in which the [homophobic] flyers were published included, among other things, a history of discrimination against those of same-sex orientation and the relatively recent recognition of their equality rights and protection as a vulnerable group; public policy debates about the appropriate content of public school curriculum; and ongoing religious and public interest debates about the morality of same-sex conduct.[43]

One requirement of the balancing required of LSUC in the present case is to give effect, in the exercise of its statutory powers, to the interests of gay, lesbian and bisexual people within the context of competing public attitudes about sexual orientation and identity noted in *Whatcott*. LSUC must take into account the importance of protecting sexual minorities from discrimination — whether this discrimination is rooted in secular homophobia or religious belief.

Failure by LSUC to directly combat homophobic discrimination, regardless of its justification, would not be in accordance with the public interest, particularly given the continuing reality of discrimination against gay, lesbian and bisexual Canadians. The public interest in fighting discrimination and working toward equality for sexual minorities has been clearly reflected in the rule of law in Canada. For example: gays and lesbians are able to marry or live in legally protected common law relationships;[44] gays and lesbians have a legal right build families of their choosing through adoption or by using artificial reproductive technologies;[45] recognizing that homophobia is a significant barrier to education, Ontario passed *The Safe Schools Act* to protect sexual and gender minority children and youth from bullying and discrimination in their schools;[46] and, Ontario's human rights legislation protects against discrimination based on sexual orientation in housing, employment and other publicly offered services.[47] **Gay, lesbian and**

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[41] *Ismail, supra* note 33 at para 326. See also Lorne Sossin and Mark Friedman, "Charter Values and Administrative Justice", online: <http://ssrn.com/abstract=2389809> at 28; Cameron and Daly, *supra* note 20.
[42] *Whatcott, supra* note 28 at para 169. See also Cameron and Daly, *supra* note 20.
[43] *Whatcott, supra* note 28 at para 169.
[44] See *Reference re Same-Sex Marriage*, [2004] S.C.J. No. 75, [2004] 3 S.C.R. 698 (S.C.C.); Bill C-38, *An Act respecting certain aspects of legal capacity for marriage for civil purposes*, 1st Sess., 38th Parl., 2005 (assented to July 20, 2005).
[45] See eg, *D (KG) v. P (CA)*, [2004] OJ No. 3508 (Ont Sup Ct); *Rutherford v Ontario (Deputy Registrar General)* (2006), 81 OR (3d) 81 (SCJ); *AA v BB v CC*, 2007 ONCA 2. See also, Fiona Kelly, *Transforming Law's Family* (Vancouver: UBC Press, 2011); Angela Cameron, Vanessa Gruben & Fiona Kelly, "De-Anonymising Sperm Donors in Canada: Some Doubts and Directions" 26 (2010) Can J Fam L 95; Joanna Radbord, "GLBT Families and Assisted Reproductive Technologies" CBA Paper, online: <http://www.cba.org/cba/niagara2010/PDF/2.1_Radbord_paper_final.pdf>.
[46] *Safe Schools Act, 2000*, SO 2000, c. 12.
[47] *Human Rights Code*, RSO 1990, c. H.19, ss. 1, 2(1), 5(1).

bisexual people occupy a legally protected place in Canadian society – equal access to postsecondary education at any Canadian institution must reflect this reality.

The LSUC decision on whether to accredit TWU's law school must also take account of the historic practices of homophobia and discrimination in Canada that continue to inform and underpin current forms of homophobia and discrimination. Historic and contemporary violence against Canada's sexual minorities is a well-documented reality.[48] Until very recently, same-sex relationships were criminalized, and many Canadians lost jobs, family and housing if their sexuality was discovered by others.[49] Gays and lesbians were denied the right to marry, to share benefits or to adopt children.[50] Being outed as a sexual minority exposed a person to allegations of mental illness, or to being construed as a threat to national security.[51] **A decision by LSUC to effectively block gay, lesbian and bisexual Canadians from legal training or teaching at a post-secondary institution in Canada would re-inscribe and legitimate this history of homophobia in Canada.**

In taking account of the context and effects of its accreditation decision, LSUC must also have regard to the fact that equality seeking groups, including gay, lesbian and bisexual Canadians, already face tremendous discrimination in legal education in Canada.[52] Creating a law school that expressly bars an equality-seeking group from attending would reduce the number of Canadian law school spots a gay, lesbian or bisexual applicant has access to, and would result in a chilling effect on all equality-seeking groups.[53]

Finally, the social context within which the TWU accreditation decision must be made requires LSUC to take into account its public stature as the governing body of Canada's largest law society. LSUC's role includes the promotion of the rule of law, professionalism, ethics and *Charter* values. LSUC must consider the unique effects of a decision to approve TWU in light of its public character: what message does a decision to accredit an institution that overtly excludes gay, lesbian and bisexual people send about the legal profession? How would this

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[48] See eg, Bruce MacDougall, *Queer Judgments: Homosexuality, Expression and the Courts in Canada* (Toronto: University of Toronto Press, 2000) at 150; and, Douglas Victor Janoff, *Pink Blood: Homophobic Violence in Canada* (Toronto: University of Toronto Press, 2005).

[49] See eg, Gary Kinsman & Patrizia Gentile, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver: UBC Press, 2010); and, Tom Warner: *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002).

[50] Warner, *supra* note 49 at 131.

[51] *Ibid* at 17.

[52] See eg Canadian Bar Association, Touchstones for Change: Equality, Diversity and Accountability (Ottawa: Canadian Bar Association, 1993) at 23-42; *Study of Accessibility to Ontario Law Schools: A Report Submitted to Deans of law at Osgoode Hall, University of Ottawa, Queen's University, University of Western Ontario & University of Windsor* (Kingston: Social Policy Evaluation Group, Queen's University, 2004); Elizabeth Adjin-Tetty & Maneesha Deckha, "Promises and Challenges of Achieving Racial Equality in Legal Education in Canada" (2010) 4 CLEAR 171 at 172 and 180; Natasha Bakht, Kim Brooks, Gillian Calder, Jennifer Koshan, Sonia Lawrence, Carissima Mathen & Debra Parkes, "Counting Outsiders: A Critical Exploration of Outsider Course Enrolment in Canadian Legal Education" (2007) 45 Osgoode Hall LJ 667.

[53] See eg, submissions to LSUC on the accreditation of TWU by the Federation of Asian Canadian Lawyers, the National Association of Women and the Law (NAWL) and West Coast Women's Legal Education and Action Fund (LEAF), online: <www.lsuc.on.ca/twu>.

message be received by gay, lesbian and bisexual citizens and members of other equality-seeking gorups who need to access legal services? How would it effect gay, lesbian and bisexual youth who aspire to become lawyers? **If LSUC condones the exclusion of gay, lesbian and bisexual citizens from one of only a handful of law-degree granting institutions in our country, the clear message will be that the legal profession is not willing to support and defend the equality rights of gay, lesbian and bisexual Canadians.**

D. *Proportional Balancing*

The correct approach to balancing competing *Charter* values with a statutory objective, as discussed above, is to engage an analysis of whether the equality-informed statutory objective minimally impairs the second *Charter* value at issue. In the context of LSUC's accreditation decision, this means an inquiry into whether the equality-based statutory objective of decision-making in the public interest under the *Law Society Act* minimally impairs the freedom of religion interests of TWU, the basis upon which TWU seeks to uphold its Covenant.

There is ample jurisprudential guidance on what constitutes minimal impairment of freedom of religion. For example, the Supreme Court in *R v Edwards Books and Art Ltd.*, found that freedom of religion is protected only to the extent that religious beliefs or conduct are reasonably threatened, stating:

> The purpose of s. 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices. The Constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. For a state-imposed cost or burden to be proscribed by s. 2(a) it must be capable of interfering with religious belief or practice. In short, legislative or administrative action which increases the cost of practising or otherwise manifesting religious beliefs is not prohibited if the burden is trivial or insubstantial…[54]

More recently in *Hutterian Brethren*, the Supreme Court confirmed that an impugned provision will be minimally impairing where it falls "within a range of reasonable alternatives", requiring consideration of reasonable alternatives when balancing religious rights against other interests.[55] The minimally impairing solution is to allow a Christian law school that does not discriminate against gay, lesbian and bisexual Canadians.

In order to strike an appropriate balance between its equality-based mandate to act in the public interest, and its obligation to infringe upon TWU's *Charter*-protected religious freedom as minimally as possible, LSUC must make accreditation of TWU's law school contingent upon the elimination of the Covenant.

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[54] *R. v. Edwards Books and Art Ltd.*, [1986] 2 SCR 713, at p 759 (emphasis added, citations omitted).
[55] *Hutterian Brethren, supra* note 18 at para 54, citing in part *RJR- MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199.

LSUC should take this option seriously. This is precisely the solution the American Bar Association (ABA) has reached in balancing non-discrimination and religious freedom in its law schools. The ABA's *Standards and Rules of Procedure for Approval of Law Schools* require that "a law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability." The ABA standards do "not prevent a law school from having a religious affiliation or purpose," and the rules do "not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school."[56] Accordingly, the ABA permits institutions like TWU to deliver religiously-based law school instruction, but does not permit those institutions to categorically exclude equality-seeking groups through admissions policies like the TWU Covenant.

The ABA alterative represents a proportional balancing of the *Charter* values of freedom of religion and equality, allowing TWU to realize its freedom to teach, to worship, and to practice as a religious community while avoiding the zero-sum outcome of excluding gay, lesbian and bisexual Canadians through the Covenant, which, as demonstrated above, is against the public interest and the rule of law. If the Covenant was revoked, TWU professors, students and staff would remain free to express religious objections to same-sex relationships on campus, to teach these views in the classroom and to share these opinions with others in public forums, subject only the boundaries of hate speech.[57] **Requiring TWU to eliminate the Covenant as a condition of LSUC accreditation does not threaten the core of religious freedom and leaves TWU "…with a meaningful choice to follow [its] religious beliefs and practices" in creating a Christian law school and teaching from a religiously-based perspective.**[58] A law school that measures up to the public interest and the rule of law is one where freedom of expression, religion and equality co-exist.

It is true that this balance will require TWU to do something it does not want to do: eliminate the Covenant. However, the constitutional protection of religious freedom does not amount to the freedom to do whatever one wants in the name of religion. The Supreme Court has consistently affirmed "…that not every action will become summarily unassailable and receive automatic protection under the banner of freedom of religion…The ultimate protection of any particular *Charter* right must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises."[59] Given the particular context of this situation, LSUC should reject the argument that freedom of religion extends to protect direct discrimination against gay, lesbian and bisexual Canadians.

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[56] American Bar Association, "Standards", online:<http://www.americanbar.org/groups/legal_education/resources/standards.html>.

[57] See *Whatcott, supra* note 28 at para 163, where the Supreme Court confirmed: "In other words, Mr. Whatcott and others are free to preach against same-sex activities, to urge its censorship from the public school curriculum and to seek to convert others to their point of view. Their freedom to express those views is unlimited, except by the narrow requirement that they not be conveyed through hate speech."

[58] *Hutterian Brethren, supra* note 18 at para 88.

[59] *Syndicat Northcrest v Amselem*, 2004 SCC 47 at paras 61-62.

III: A Decision to Accredit TWU Violates Section 15 of the *Charter*

If LSUC decides to accredit TWU's law school notwithstanding its discriminatory Covenant, its decision would be open to challenge as a violation of the equality rights of gay, lesbian and bisexual Canadians. In this section we engage arguments on the direct application of the *Charter* to a decision by LSUC to accredit TWU and, by extension, give public approve to the discriminatory Covenant. While there is, of course, some overlap between the administrative law analysis advanced in Part II, above, and the constitutional arguments made here, it is worth considering the distinct application of the *Charter* principles likely to be applied in the event of a direct challenge to an LSUC decision to approve TWU's law school under section 24(1) of the *Charter*.

We do not take up the issue of whether the *Charter* might be found to apply to TWU itself. In *BCCT* in 2001, both sides conceded that the *Charter* did not apply to TWU, and the issue was never argued before the Court.[60] The Supreme Court undertook its analysis in *BCCT* on the basis that TWU is a private institution "to which the *Charter* does not apply."[61] Much of the present debate about the TWU law school proposal seems to take this conclusion for granted,[62] however, some have argued persuasively that TWU could, in fact, be classified as a private institution carrying out a governmental function for the purposes of attracting *Charter* scrutiny pursuant to section 32.[63]

These arguments should be taken seriously. The concession in *BCCT* in 2001 on the applicability of the *Charter* to TWU itself would not likely be made in a similar case today. At very least, **any notion that TWU is an entirely private institution that does not draw on public monies and, as a result, ought not be bound by human rights, must be debunked.** It is evident that TWU has received millions of dollars in federal and provincial funding.[64] TWU faculty are eligible for, and have received, research grants funded by taxpayer dollars, and TWU students access public monies through interest-free student loans.[65] Finally, when an individual donates money to TWU, he or she receives a tax credit for a percentage of that donation, and that

[60] Facta submitted in *BCCT, supra* note 28.< http://www.aspercentre.ca/constitutional-cases/scc-facta/alpha-list-cases/184.htm>.
[61] *BCCT, supra* note 28 at para 25.
[62] See eg, Faisal Bhabha, "Let TWU have its Law School" *Slaw*, online: <http://www.slaw.ca/2014/01/24/let-twu-have-its-law-school/>.
[63] See eg Lawyers' Rights Watch Canada, "LRWC Submissions Re: Trinity Western University" (2 March 2014), online: <http://www.lrwc.org/lrwc-submissions-re-trinity-western-university-accreditation-letter/> at p 3-4, concluding that the *Charter* applies directly to TWU because the "Law Society has delegated its jurisdiction in respect of the suitability of candidates for admission to the Bar, and has entirely delegated it to the law schools."
[64] See eg Radio Canada's 2013 report that TWU, on at least one occasion, received $20 million in federal infrastructure funding, online: <http://www.cbc.ca/news/politics/christian-schools-received-20m-from-infrastructure-fund-1.1329280>; in 2009 the federal and provincial governments both chipped in more than $2.6 million dollars through Industry Canada's Knowledge Infrastructure Program, online: <http://www.ic.gc.ca/eic/site/696.nsf/eng/00512.html>; and in 2012 TWU celebrated $465,000 in federal funding to purchase new equipment for its laboratories, online: <http://twu.ca/news/2012/015-govt-of-canada-announces-support.html>.
[65] See eg *Faculty Funding – News and Updates*, online: <https://www.twu.ca/sites/magazine/no-15/faculty-folio/faculty-funding-news-updates.html>.

tax credit is paid from public coffers. It is entirely possible that a court could find that TWU is a private actor carrying out a governmental function in delivering post-secondary education, sufficient to attract *Charter* scrutiny under section 32.[66]

A. *The Charter Applies to LSUC*

In making its decision whether to approve TWU law school, LSUC is properly subject to the *Charter* by operation of section 32. Section 32 stipulates that the *Charter* applies to Parliament and the provincial legislatures.[67] However, the Supreme Court, in a series of cases on the scope of the provision, has determined that "the ambit of s. 32 is wide enough to include all entities that are essentially governmental in nature and is not restricted merely to those that are formally part of the structure of the federal or provincial governments."[68] In *Godbout v Longueuil (City of*), Justice La Forest confirmed the relevance of the *Charter* to the decision-making of LSUC:

> Indeed, it may be that particular entities will be subject to *Charter* scrutiny in respect of certain governmental activities they perform, even if the entities themselves cannot accurately be described as "governmental" *per se*; see, e.g., *Re Klein and Law Society of Upper Canada* (1985), 50 OR (2d) 118 (Div. Ct.), at p. 157, where Callaghan J. held for the majority that even though the Law Society of Upper Canada is not itself governmental in nature, it may nevertheless be subject to the *Charter* in performing what amount to governmental functions.[69]

It is well-established that when LSUC takes a decision pursuant to its statutory powers and obligations, it is implementing the statutory scheme in the *Law Society Act,*[70] and is thus engaged in a "governmental act" sufficient to attract *Charter* scrutiny.[71] For example, in *Re Klein*, cited with approval by the Supreme Court in *Godbout*, above, the Ontario Divisional Court described LSUC as a "statutory authority exercising its jurisdiction in the public interest…performing a regulatory function on behalf of the 'Legislature and government' of Ontario" and found that the *Charter* applied to the LSUC's rules on advertising.[72] In *Black v Law Society of Alberta*, the Supreme Court of Canada, apparently assuming the applicability of the *Charter*, found that the mobility rights guarantee in section 6(2)(b) *Charter* was infringed by a decision of the Law

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[66] *Charter, supra* note 7 at s. 32.
[67] *Ibid.*
[68] *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 47. In *Godbout* Justice La Forest (for himself and L'Heureux-Dubé and McLachlin JJ), concurring in the result, was the only judge to address the application of the *Charter* to municipalities. The other judges were content to dispose of the appeal on the basis of the *Quebec Charter of Human Rights and Freedoms*, and as a result did not address the application of the *Charter* to the municipal resolution at issue. Nevertheless, Justice La Forest's analysis has been adopted by other judges in subsequent cases: see eg, *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86 at para 121.
[69] *Ibid* (emphasis in original).
[70] *Supra* note 16.
[71] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624 at para 44 identified "the implementation of a specific statutory scheme or government program" as examples of acts that are "truly governmental in nature" for the purposes of section 32.
[72] *Klein v Law Society of Upper Canada (*1985), 50 OR (2d) 118.

Society of Alberta to amend its *Law Society Act* to require that members of the provincial bar be residents of Alberta.[73]

There can be no doubt that in determining whether to accredit TWU, LSUC is acting pursuant to its statutory powers, which, as noted above, include obligations to act "so as to facilitate access to justice for the people of Ontario" and "to protect the public interest".[74] Accordingly, LSUC is performing a governmental function for the purposes of section 32 of the *Charter*. **A decision by LSUC to approve TWU would be properly open to challenge on the basis that it fails to comply with the rights and freedoms guaranteed by the *Charter*.**

B. *BCCT* 2001 is Not Dispositive of the *Charter* Analysis

Much has been made of the likely impact of the Supreme Court of Canada's 2001 decision in *BCCT* on a possible *Charter* challenge to a decision of a provincial law society to approve TWU's law school.[75] *BCCT* involved an application by TWU to the British Columbia College of Teachers to have its teacher-training program certified so that its graduates could teach in the public school system. TWU students had previously been required to do a year of the teacher-training program at neighboring Simon Fraser University to become qualified teachers. The British Columbia College of Teachers rejected the request for approval on the basis that TWU's proposed program followed discriminatory practices, contrary to the public interest and public policy. The focus of the BCCT's concern was the requirement that TWU students sign the Covenant, which in 2001 expressly proscribed "sexual sins including…homosexual behavior."[76] The College concluded that TWU graduates would discriminate on the basis of sexual orientation once they became teachers, putting the equality rights of public school students and families at risk. TWU sought judicial review of that decision and by the time the case arrived at the Supreme Court, the central issue was how to reconcile the religious freedom of individuals wishing to attend TWU with the equality concerns of public school students, their parents, and society more broadly.

The Supreme Court of Canada recognized that TWU's Covenant "perpetuates unfavourable differential treatment on the basis of sexual orientation and that a gay or lesbian student could only attend there at considerable personal cost."[77] Nevertheless, the majority of the Court concluded that because section 15 of the *Charter* did not apply directly to TWU in the context of the accreditation of teachers, the Covenant did not constitute discrimination for the purposes of that provision. Nevertheless, as Professor Elaine Craig explains, the "proper interpretation of the majority reasoning in *BCCT* is that the Court concluded that TWU's policies did not constitute *unlawful* discrimination," not that the did not constitute discrimination at all.[78] The Court concluded that "the freedom to hold beliefs is broader than the freedom to act on them" and

[73] *Black v Law Society of Alberta* [1989] 1 SCR 591.
[74] *Law Society Act*, *supra* note 16 at s 4.2 at ss 2-3.
[75] *BCCT* 2001, *supra* note 28.
[76] After *BCCT* 2001 TWU altered the Covenant's provisions on same-sex behavior, implementing the current language, *supra* note 1.
[77] Elaine Craig, "Submissions to NSBS" (5 February 2014) at 2-3, online: <http://nsbs.org/twu-submissions> [Craig, NSBS].
[78] *Ibid* at 4.

found that, absent specific evidence that TWU graduates would act on religiously-based discriminatory beliefs about gay, lesbian and bisexual people in public school classrooms, the College had improperly denied certification of the TWU teacher-training program.[79] The central issue in *BCCT* was evidence – the Court found no evidence that graduates of a TWU teacher-training program would discriminate in the classroom.

In reaching its conclusion to grant "preliminary approval" to the TWU law school, the Federation's Special Advisory Committee relied in part on an opinion solicited from Mr. John Laskin of Torys LPP, on the applicability of the *BCCT* case. Mr. Laskin concluded, "that if approval of the TWU proposal were refused [by the Federation] on the basis of concerns about its discriminatory practices, and that decision were challenged, the *BCCT* decision would govern the result."[80] Mr. Laskin reached this decision on the basis of: 1) the factual similarities between *BCCT* and the current case; 2) the ongoing relevance of the balancing approach used by the Supreme Court to reconcile competing *Charter* rights in *BCCT*; and, 3) the likely absence of evidence that TWU's Covenant results in its students acting in a harmful or discriminatory fashion.

We join the many others who conclude that *BCCT* is not dispositive of a potential *Charter* challenge to a decision by LSUC, or any other law society, to accredit TWU's law school and approve its graduates as eligible to be called to the bar. In fact, there is plenty of evidence suggesting that *BCCT* would not be a controlling precedent in the current scenario.

First, the context of the TWU law school proposal is significantly different from the teacher-training proposal in *BCCT*, making *BCCT* distinguishable on its facts. Professor Dianne Pothier explains:

> Law schools "are mandated to teach legal principles of equality, in the constitutional and statutory context…[W]hile public school teachers carry only the obligation of all members of the community not to discriminate in the provision of public services, lawyers have an extra level of responsibility. Lawyers are potentially involved in the administration of constitutional and statutory equality and anti-discrimination provisions. Thus there is good reason to impose a higher bar than in *BCCT v TWU* ie: good reason for going beyond looking for specific evidence that TWU Law School graduates will, as a group, engage in discriminatory conduct.[81]

Second, the legal and social contexts have evolved significantly since the *BCCT* decision.[82] When the 2001 case was decided, same-sex marriage had not been legalized and in many ways, the gay and lesbian rights movement was in its infancy. Social and legal recognition of the equality interests of gay, lesbian and bisexual Canadians is considerably more robust

[79] *BCCT* 2001, *supra* note 28 at para 36.
[80] Special Advisory Committee Report, *supra* note 12 at Appendix C.
[81] Dianne Pothier, "Submissions to NSBS" (24 January 2014) at 3, online: <http://nsbs.org/twu-submissions>.
[82] For a full enunciation of the context argument see Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25 CJWL 148 at 166-169.

today than it was in 2001: the Supreme Court's "evolving jurisprudence on gay and lesbian equality" confirms increased recognition of and legal protection for, the rights of gay, lesbian and bisexual Canadians.[83] Indeed, in the 2013 case of *Whatcott*, a unanimous Supreme Court confirmed that the law will evolve to reflect changing societal values. In *Whatcott*, the Court expressly rejected the argument that hateful speech targeting sexual conduct is distinguishable from speech targeting people on the basis of sexual orientation:

> Where the conduct that is the target of [hateful] speech is a crucial aspect of the identity of the vulnerable group, attacks on this conduct stand as a proxy for attacks on the group itself. If expression targeting certain sexual behaviour is framed in such a way as to expose persons of an identifiable sexual orientation to what is objectively viewed as detestation and vilification, it cannot be said that such speech only targets the behaviour.[84]

In reaching this conclusion, the Court implicitly rejected the majority position in *BCCT*, which, in characterizing the implications of TWU's Covenant in 2001 seemed to accord some importance to the fact that the Covenant "make[s] no reference to homosexuals or to sexual orientation, but only to practices that the particular student is asked to give up himself, or herself, while at TWU."[85] Instead, the Court in *Whatcott* explicitly adopted the insights of Justice L'Heureux-Dubé, dissenting in *BCCT*, who concluded *inter alia* that [t]he status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected."[86] *Whatcott*'s reliance on Justice L'Heuruex-Dube's dissent in *BCCT* "established that when balancing freedom of religion with the impact on equality interests perpetuated by TWU's Covenant, the fact that the Covenant bans gay sex rather than gay individuals is not relevant."[87]

This contemporary context makes it likely that the balancing exercise between religion and equality today would look different than that undertaken in *BCCT* in 2001. Professor Craig suggests that while "[i]n 2001 [in *BCCT*] the court concluded that an appropriate balance was struck because gays and lesbians could go elsewhere to become teachers…In 2014 it would likely not be sufficiently cognizant of gay and lesbian equality simply to say "TWU is not for everybody" and in the interests of religious liberty the gays can go elsewhere to become lawyers."[88] The jurisprudence reflects this insight: for example, in *Quebec v A*, the Supreme Court's most recent decision on section 15 of the *Charter*, Justice Abella, writing for the majority on the correct interpretation of section 15(1), confirmed, "…this Court has

[83] See eg *R v Tran*, 2010 SCC 58 at para 34, where the Supreme Court rejected the "gay panic" defence in criminal law that it had previously accepted as a valid defence for decades because "the ordinary person standard must be informed by contemporary norms of behaviour, including fundamental values such as the commitment to equality provided for in the *Canadian Charter of Rights and Freedoms*." See also the evolution of the jurisprudence related to equality protections for same-sex couples: *Canada (Attorney General) v Mossop*, [1993] 1 SCR 554; *Egan v Canada*, [1995] 2 SCR 513(1995); *Reference Re: Same-Sex Marriage*, *supra* note 24.
[84] *Whatcott*, *supra* note 28 at para 123.
[85] *BCCT* 2001, *supra* note 28 at para 22, summarizing (and not refuting) the analysis of the Court of Appeal, below
[86] *Whatcott*, *supra* note 28 at para 123, citing *BCCT*, *ibid* at para 69.
[87] Craig, NSBS, *supra* note 77 at 9.
[88] *Ibid.* See *BCCT*, *supra* note 28 at para 25, where the majority concluded "TWU is not for everybody."

repeatedly rejected arguments that choice protects a distinction from a finding of discrimination" because "…choice [is] irrelevant to the question of discrimination."[89]

Finally, the nature of the anticipated challenge here is completely different from that in *BCCT*. At issue in *BCCT* was whether teachers who graduated from TWU's teacher-training program would act in a discriminatory fashion in the public school system, and whether the BCCT had acted reasonably in considering that factor in rejecting TWU's proposed teacher-training program. The College of Teachers made a single broad claim in rejecting the TWU proposal: that because of the Covenant, TWU graduates would, as teachers, discriminate against gays and lesbians. That claim failed the balancing test because the deleterious effect claimed "was too speculative" because there was insufficient evidence that the discriminatory beliefs embodied by the Covenant were resulting in discriminatory conduct by TWU students.[90]

The question in the current case is whether a decision by LSUC to approve a law school with a policy of express discrimination against gay, lesbian and bisexual people complies with the *Charter*. **Because there is no claim that TWU will produce lawyers who discriminate in their legal practice, the lack of evidence that formed the lynchpin of *BCCT* decision is simply not at issue in the current scenario.** Additionally, *BCCT* was not a direct challenge made pursuant to section 24(1) of the *Charter*, like that envisioned here, but a judicial review of the BCCT's original decision. In fact, *BCCT* was not a *Charter* case at all; as noted above, both parties conceded that the *Charter* simply did not apply.

C. *The Community Covenant Discriminates According to Section 15*

The established purpose of section 15 of the *Charter* is the protection and promotion of substantive equality, which is rooted in the idea that "[t]he promotion of equality entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration."[91] In the Supreme Court's most recent decision on section 15, Justice LeBel confirmed the Court's earlier conclusions that the "value of substantive equality at the heart of s.15 is closely tied to the concept of human dignity" and "the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom…and to eliminate any possibility of a person being treated in substance as 'less worthy' than others."[92] The TWU Covenant clearly amounts to discrimination within the meaning of section 15(1). A decision by LSUC to accredit TWU adopts this discrimination and extends it to the public sphere.

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[89] *Quebec (Attorney-General) v A*, 2013 SCC 5 at para 336. See also *Lavoie v Canada*, [2002] 1 SCR 769 at para. 5.
[90] *BCCT*, 2001, *supra* note 28 at para 19.
[91] *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 171. See also *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 25; *R v Kapp*, [2008] 2008 SCC 41 at paras 14-16; and, most recently, *Quebec v A*, *supra* note 89 at paras 137-138.
[92] *A v Quebec*, *ibid.* at para 138, citing in part *Law*, *ibid.* at para 51.

i) The Covenant is Discriminatory

In *Withler v Canada (Attorney General),* a unanimous Supreme Court summarized: "[t]he jurisprudence establishes a two-part test for assessing a claim under section 15(1) of the *Charter*: (1) Does the law [or program] create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?"[93] The Covenant clearly satisfies the first part of this test: the Covenant draws an overt distinction between permissible behavior for same-sex couples versus opposite-sex couples, based on the analogous ground of sexual orientation.[94]

This distinction imposes a differential burden on gay, lesbian and bisexual people: same-sex couples cannot engage in physical intimacy, while opposite-sex couples can. Particularly in light of the Supreme Court's rejection in *Whatcott* of the notion that the targeting of same-sex intimacy is distinct from the targeting of people based on sexual orientation, there is no sustainable argument that the Covenant does not create a distinction on the basis of sexual orientation. Indeed, in attempting to codify marriage as an institution reserved for opposite-sex couples, the Covenant resembles many of the distinctions previously struck down by Canadian courts as unconstitutional violations of the equality rights of sexual minorities.[95]

The second step of section 15(1) requires evidence that the differential treatment results in substantive discrimination because it perpetuates a disadvantage based on prejudice or stereotyping. In *Quebec v A*, Justice Abella clarified that the references to prejudice and stereotyping in this second step "are not discrete elements of the test which the claimant is obliged to demonstrate."[96] While stereotypical or prejudicial attitudes may lead to discriminatory conduct, "[i]t is the discriminatory *conduct* that s. 15 seeks to prevent, not the underlying attitude or motive."[97] Justice Abella concluded:

> The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed. **The key is whether a distinction has the effect of perpetuating arbitrary disadvantage on the claimant because of his or her membership in an enumerated or analogous group. If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory**.[98]

Accordingly, the section 15(1) analysis does not engage the motivations behind the allegedly discriminatory conduct at issue. It would be of no relevance, at this stage of a section 15 *Charter*

[93] *Withler v Canada (Attorney General),* 2011 SCC 12 at para 30, citing *Kapp, supra* note 91 at para 17.
[94] Sexual orientation was affirmed as an analogous ground in *Egan, supra* note 83. See also *Vriend v Alberta,* [1998] 1 SCR 493; *M v H,* [1999] 2 SCR 3.
[95] See eg *Halpern v Canada (Attorney-General*) (2003), 65 OR (3d) 161 (CA) at para 46; *EGALE Canada Inc. v Canada* (Attorney-General) (2003), 225 DLR (4th) 472 (BCCA).
[96] *Quebec v A, supra* note 89 at para 326.
[97] *Ibid* at para 328, citing *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission),* [1987] 1 S.C.R. 1114 (emphasis in original).
[98] *Quebec v A, supra* note 89 at para 332 (emphasis added).

challenge, that the Covenant is based on religious attitudes or beliefs.[99] The sole focus is whether the distinction drawn by the Covenant on the basis of sexual orientation has the effect of perpetuating disadvantage or discrimination, an "analysis [that] involves looking at the circumstances of members of the [targeted] group and the negative impact of the law on them."[100]

In *Withler*, the Supreme Court held that in assessing the discriminatory effect of an impugned law or program, "evidence that goes to establishing a claimant's historical position of disadvantage or to demonstrating existing prejudice against the claimant group, as well as the nature of the interest that is affected, will be considered."[101] The realities of ongoing discrimination against gays, lesbians and bisexuals were recounted above. Additionally, the Supreme Court has consistently acknowledged this historic and continuing disadvantage in equality jurisprudence. For example, in *Egan*, Justice Cory stated:

> The historic disadvantage suffered by homosexual persons has been widely recognized and documented. Public harassment and verbal abuse of homosexual individuals is not uncommon. Homosexual women and men have been the victims of crimes of violence directed at them specifically because of their sexual orientation…They have been discriminated against in their employment and their access to services. They have been excluded from some aspects of public life solely because of their sexual orientation…The stigmatization of homosexual persons and the hatred which some members of the public have expressed towards them has forced many homosexuals to conceal their orientation. This imposes its own associated costs in the work place, the community and in private life.
>
> …
>
> Homosexual couples as well as homosexual individuals have suffered greatly as a result of discrimination. Sexual orientation is more than simply a "status" that an individual possesses. It is something that is demonstrated in an individual's conduct by the choice of a partner…[S]tudies serve to confirm overwhelmingly that homosexuals, whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage.[102]

With this context in mind, the Covenant's exclusion of gay, lesbian and bisexual people is properly understood as having significantly discriminatory impacts on sexual minorities in

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[99] In *Andrews, supra* note 91 at p. 182, affirmed in *Quebec v A, supra* note 89 at para 323, Justice McIntyre concluded that "any justification, any consideration of the reasonableness of the enactment; indeed, any consideration of factors which could justify the discrimination and support the constitutionality of the impugned enactment would take place under s. 1."

[100] *Withler, supra* note 93 at para 37.

[101] *Ibid* at para 38, cited with approval in *Quebec v A, supra* note 89 at para 328.

[102] *Egan, supra* note 83 at p 600-602. See also *Vriend, supra* note 94 at p. 543; and, *M v H, supra* note 94 at pp. 52-55.

violation of their section 15 equality rights. There are at least three key ways that the Covenant perpetuates discrimination.

First, the Covenant codifies an unconstitutional definition of marriage and thus revives the harmful consequences of the opposite-sex definition of marriage recognized by Canadian courts and the federal government as contrary to the equality rights of same-sex couples. For example, in *Halpern v Ontario*, the Ontario Court of Appeal concluded that the opposite-sex definition of marriage violated the section 15 equality rights of same-sex couples because exclusion from the "fundamental societal institution" of marriage "perpetuates the view that same-sex relationships are less worthy of…recognition than opposite sex relationships. In doing so, it offends the dignity of persons in same-sex relationships."[103] **The Covenant's exclusion of same-sex couples from an educational institution perpetuates the same stigma and prejudice as that caused by the opposite-sex definition of marriage deemed unconstitutional by Canadian courts and Parliament a decade ago.**[104]

Second, the Covenant has the troubling effect of imposing a *de facto* quota on available law school seats for gay, lesbian and bisexual people in Canada. TWU's President Bob Kuhn admits that the Covenant provides a significant disincentive for sexual minority individuals to become part of the TWU Community, stating: "[y]ou've got to look at it realistically and say, 'How many gay couples are going to want to come to the Trinity Western law school and become part of our community?'"[105] President Kuhn acknowledges that the Covenant creates a hostile environment for gays, lesbian and bisexuals. This is consistent with the Supreme Court's conclusion in *BCCT*, above, that the "requirement that students and faculty adopt the Community Standards [Covenant] creates unfavourable differential treatment since it would probably prevent homosexual students and faculty from applying" given that they "could only sign the so-called student contract at a considerable personal cost."[106]

Securing a place in one of Canada's 21 law school programs is an uphill battle for any applicant. A direct telephone survey reveals that in 2013-14, there are a total of 3,547 students enrolled in law schools across Canada.[107] While global statistics on the number of applicants to Canadian law schools are not readily available, the Ontario Universities' Application Centre (OUAC)

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[103] *Halpern*, *supra* note 95 at para 107. See also *EGALE*, *supra* note 95; and, *Hendricks v. Québec (Procureur général)*, [2002] RJQ 2506 (Sup. Ct.).
[104] *Civil Marriage Act*, SC 2005, c. 33.
[105] Daniel Fish, "Overturning provincial approval of Trinity Western's law school would be discriminatory, says university president in response to proposed lawsuit" *Precedent* (19 March 2014), online: <http://lawandstyle.ca/overturning-provincial-approval-of-trinity-westerns-law-school-would-be-discriminatory-says-university-president-in-response-to-proposed-lawsuit/>. President Kuhn's statement problematically presumes that it is impossible to be a gay or lesbian Christian, and contradicts earlier confirmations by TWU that, notwithstanding the Covenant, "[a]nyone is welcome to attend Trinity Western University, regardless of their sexual orientation…Many gay students have attended—and graduated—from our university…": *Trinity Western University School of Law: Frequently Asked Questions*, online: <https://www.twu.ca/academics/school-of-law/faq.html>.
[106] *BCCT* 2001, *supra* note 28 at para 34 and 25. See also Craig, NSBS, *supra* note 77 at 4, concluding that these "are the very phrases that the Supreme Court of Canada has used to identify and define discrimination on the basis of sexual orientation in other decisions" including *Egan*, *supra* note 83.
[107] The authors contacted each law school in Canada and asked the admissions department how many students are currently enrolled in the first year law school program.

provides a picture of the situation in Ontario: in 2013, 4,758 students applied for admission to one or more Ontario law schools, competing for one of only 1,502 spaces in Ontario law schools.[108] Extrapolating from these numbers, it is safe to assume that the majority of students who want to go to law school in Canada will not be accepted. The admissions process is highly competitive.

The establishment of a law school at TWU would add to the general pool of law school seats, providing more opportunities for more students to pursue legal education, but those seats would be practically unavailable to would-be law students who are in a same-sex marriage or relationship or who identify as gay, lesbian or bisexual. The result is that members of a marginalized group will be less likely than the general population to be able to pursue a legal education in Canada, an outcome that can only be understood as the imposition of a discriminatory disadvantage on a community that already suffers the barriers of stigma, exclusion and stereotype on the basis of sexual orientation.

If TWU sought to exclude a different historically marginalized group from accessing legal education – for example, if its Covenant prohibited intimacy between persons of different racial backgrounds on the basis of religious beliefs – there can be little doubt that LSUC (along with the other government actors engaged in the TWU approval process) would categorically refuse to approve or accredit the institution. The American case of *Bob Jones v United States* is instructive in this regard.[109] In *Bob Jones,* the Internal Revenue Agency (IRS) retroactively revoked the tax-exempt status of Bob Jones University, a private, Protestant university in South Carolina, because of its anti-miscegenation policies, which included threatened expulsion for any student who dated or married interracially or who advocated interracial marriage. Bob Jones challenged the IRS decision, arguing that its racial discrimination was based on sincerely held religious beliefs that forbid interracial intimacy, and was thereby protected under the First Amendment. The United States Supreme Court ruled against the University, finding that the constitutional protection of freedom of religion did not prohibit the IRS from revoking the tax-exempt status of a university whose practices were contrary to a compelling government public policy, such as eradicating racial discrimination.[110] The Court concluded: "Government has a fundamental, overriding interest in eradicating racial discrimination in education . . . which substantially outweighs whatever burden denial of tax benefits places on [the University's] exercise of their religious beliefs."[111]

The TWU situation is factually analogous to *Bob Jones* in significant ways: like Bob Jones, TWU is a private, religiously-based institution with an express policy prohibiting certain forms

[108] Ontario Universities' Application Centre, *Law School Application Statistics*, online: <http://www.ouac.on.ca/statistics/law-school-application-statistics/>.
[109] *Bob Jones University v United States,* 461 US 574 (1983).
[110] It is noteworthy that the Court in *Bob Jones, ibid* at 592 read into the statue governing tax-exempt charitable status a common law "public interest" requirement, not dissimilar to the public interest requirement that governs LSUC's decision-making process in deciding whether to approve TWU. The United States Supreme Court found that to warrant tax-exempt status, an "institution…must demonstrably serve and be in harmony with the public interest. The institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred."
[111] *Bob Jones, supra* note 109 at 604.

of intimacy; like Bob Jones, TWU seeks a benefit from a public body statutorily obligated to act in the public interest – tax exempt status in *Bob Jones* and public accreditation in TWU; and like Bob Jones, TWU seeks to rely on the constitutional guarantee of freedom of religion to insulate its discriminatory Covenant from critique and constitutional scrutiny. **If we accept the reasoning of the United States Supreme Court in refusing to allow Bob Jones to rely on freedom of religion to justify its anti-miscegenation policy, what principle supports a different result in respect of the TWU Covenant's proscription of same-sex intimacy? In the language of the *Bob Jones* decision, above, shouldn't the LSUC have "a fundamental, overriding interest" in eradicating *all* kinds of discrimination in legal education that properly outweighs whatever burden the denial of TWU accreditation (unless and until the Covenant is eliminated) might place on TWU's exercise of their religious freedom?**

Third, and finally, the Covenant perpetuates prejudicial and stigmatizing attitudes about same-sex intimacy, resulting in dignitary harms to gay, lesbian and bisexual Canadians. In *R v Kapp*, the Supreme Court identified human dignity as "an essential value underlying the s. 15 equality guarantee", continuing, "the protection of all of the rights guaranteed by the *Charter* has as its lodestar the promotion of human dignity."[112] A unanimous Court in *Law v Canada* explained the importance of human dignity in the following terms:

> Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits…Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.[113]

The assessment of whether a law, program or policy has the effect of demeaning the dignity of a target group requires a court "to evaluate whether a reasonable person, in circumstances similar to the claimant, would find that the impugned law differentiates in a manner that demeans his or her dignity."[114] From the perspective of a gay, lesbian or bisexual Canadian, it is clear that the Covenant amounts to unfair treatment and sends the equality-infringing message that sexual minority Canadians are not deserving of equal respect and can be categorically excluded from certain spheres on the basis of their sexual orientation.

It is simply incontrovertible that the Covenant satisfies the test for establishing an infringement of the equality rights of gay, lesbian and bisexual Canadians: the Covenant draws a distinction based on the analogous ground of sexual orientation, and that distinction creates a disadvantage by reviving the discriminatory opposite-sex definition of marriage, by establishing a *de facto* quota for gay, lesbian and bisexual law students and by perpetuating the dignity-harming stigma and disadvantage historically suffered by gay, lesbian and bisexual people on the basis of sexual orientation.

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[112] *Kapp*, *supra* note 91 at para 21.
[113] *Law*, *supra* note 91 at p 530; see also *Quebec v A*, *supra* note 89 at para 326.
[114] *Law*, *ibid* at p 533. See also *Egan*, *supra* note 83 at p 553.

ii) There is a "Sufficient Causal Connection" between the Covenant's Discriminatory Impact and an Approval Decision by LSUC

The most direct source of the discrimination at issue in this case is, of course, the TWU Covenant. However, a decision by LSUC to approve TWU's law school and its Covenant would amount to an endorsement of an institution that intentionally infringes the equality rights of gay, lesbian and bisexual people contrary to section 15 of the *Charter*. LSUC approval of TWU can only be understood as state sanctioning of overt discrimination by a third party institution (TWU). By virtue of a decision to approve, LSUC becomes a party to/complicit in the discrimination imposed by the Covenant.

The fact that LSUC, if it decides to approve TWU, would not itself be the most direct source of an infringement of *Charter* rights established here does not mean it can escape liability under the *Charter*. Recently, the Supreme Court of Canada in *Canada (Attorney General) v Bedford*, clarified that section 7 of the *Charter* is engaged where there is a "sufficient causal connection" between a government action and the ultimate deprivation of life, liberty or security of the person at issue — even where the actions of a non-government, third party are the most immediate cause of the rights-deprivation. A sufficient causal connection standard "does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant."[115] This is a purposive interpretation: the "sufficient causal connection" standard will not permit government to easily delegate discrimination to third parties to avoid its constitutional responsibilities.

The same standard established in *Bedford* should be applied in the context of other *Charter* rights, including the equality guarantee in section 15(1). In other words, section 15(1) is engaged where there is a "sufficient causal connection" between the government action and the ultimate act of discrimination by a third party. **So long as there is a "a sufficient causal connection" between the actions of LSUC in approving TWU and the discrimination effected by the Covenant, section 15 of the *Charter* is properly engaged.**

The case law establishes two ways of making out a "sufficient causal connection" to engage the *Charter* when the government is not the primary causal agent of a *Charter* breach. First, a "sufficient causal connection" is established where the government action is a "necessary link" in the chain of causation and the ultimate *Charter* violation is a foreseeable consequence.[116] Second, a "sufficient causal connection" may be established where the government action is not a "necessary link" in the chain of causation, but merely a "contributing" factor to the ultimate *Charter* infringement.[117]

A decision by LSUC to approve TWU's law school with the existing Covenant would satisfy the "sufficient causal connection" standard under either analysis. LSUC's decision to accredit

[115] *Canada (Attorney General) v Bedford*, [2013] SCJ No 72 at paras 75-76. See also *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at para 60, in the context of section 7 of the *Charter*.
[116] *Bedford, ibid* at paras. 77, 79, 87, 92 .
[117] *Canada (Prime Minister) v Khadr*, [2010] SCJ No. 3 at paras. 19-21.

TWU's program is a "necessary link" in the chain of causation leading to the creation of a law school that expressly discriminates against gay, lesbian and bisexual Canadians; without the authorization of the LSUC, and other provincial and territorial law societies, TWU would not be able to confer a law degree, and would not, therefore, be able to discriminate against gay, lesbian and bisexual students and limit their access to legal education. Moreover, the discrimination effected by the Covenant is an entirely foreseeable consequence of a decision to approve by LSUC.

In *Quebec v A*, above, Justice Abella opined that "[i]f the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory" for the purposes of section 15(1).[118] On this standard, a decision by LSUC to approve TWU and its discriminatory Covenant is unmistakably the kind of conduct that violates section 15 of the *Charter*, sending the message that gay, lesbian and bisexual Canadians continue to stand outside the boundaries of full citizenship and equal protection of the law.

D. *Section 1: Balancing Freedom of Religion and Equality*

A violation of section 15(1) of the *Charter* flowing from a decision by LSUC to approve TWU is not, of course, the end of the *Charter* analysis. The LSUC decision would then be assessed under section 1 of the *Charter* to determine whether it represents a reasonable limit, prescribed by law that "can be demonstrably justified in a free and democratic society."[119] Because there is no question that the *Law Society Act*, the enabling statute pursuant to which the accreditation decision will be taken by LSUC, is constitutional, the focus here is solely on whether a *decision* by LSUC to approve TWU's law school with the discriminatory Covenant can be justified.

It is at this stage that TWU's competing interests related to freedom of religion fall to be considered. In *Multani v Commission scolaire Marguerite‑Bourgeoys,* a majority of the Supreme Court reiterated, "…the Court has on numerous occasions stressed the advantages of reconciling competing rights by means of a s. 1 analysis."[120] In *Multani*, the Court found that "since the decision genuinely affects both parties and was made by an administrative body exercising statutory powers, a contextual analysis under s. 1 will enable us to balance the relevant competing values in a more comprehensive manner."[121] A similar approach to reviewing a decision taken by a government Minister for *Charter* compliance was adopted more recently in the Supreme Court decision in *Canada (Attorney General) v. PHS Community Services Society*.[122]

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[118] *Quebec v A*, *supra* note 89 at para 332.
[119] *Charter*, *supra* note 7 at s.1.
[120] *Multani v Commission scolaire Marguerite‑Bourgeoys*, 2006 SCC 6 at para 26, citing in part *B(R) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 and
[121] *Ibid* at para 29.
[122] *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44. Although section 1 was not argued in *PHS*, a section 7 *Charter* case, the Court did stipulate at para 137 that "[i]f a s. 1 analysis were required, a point not argued, no s. 1 justification could succeed" given that the Minister's decision was found to infringe the claimants' section 7 rights in a manner not in accordance with the principles of fundamental justice. The Court has

There is some uncertainty in the jurisprudence as to the appropriate analytical approach to take post- *Dore. Dore* seems to endorse the approach taken by Abella J. in dissent in *Multani*, which would move the analysis into the administrative realm. The result is some uncertainty as to the exact principles likely to be applied at the section 1 stage of a *Charter* challenge to an approval decision by LSUC.

Because the evolution of these principles are in flux, and because the *Oakes* analysis under section 1 overlaps in significant ways with the administrative law regime (argumetns outlined above) so that arguments made under *Oakes* may find application through other analytical frameworks, we propose a brief analysis according to the traditional application of the *Oakes* test to decisions of statutory decision-makers like LSUC.

i) Prescribed by Law

The first step of any section 1 analysis is a consideration of whether the rights-infringing decision is "prescribed by law". In *Multani,* Justice Charron for the majority of the Supreme Court found that "where the decision maker has acted pursuant to an enabling statute…any infringement of a guaranteed right that results from the decision maker's actions is also a limit "prescribed by law" within the meaning of s. 1."[123] In *PHS Health Services,* the Supreme Court, in reviewing a decision made by a statutory decision maker, confirmed that statutory discretion is not absolute:

> The discretion vested in the Minister of Health is not absolute: as with all exercises of discretion, the Minister's decisions must conform to the *Charter*: *Suresh v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 1…If the Minister's decision results in an application of the CDSA [the home statute] that limits the s. 7 rights of individuals in a manner that is not in accordance with the *Charter*, then the Minister's discretion has been exercised unconstitutionally.[124]

ii) Pressing & Substantial Objective

This step requires consideration of requires that "the objective, which the measures responsible for a limit on a *Charter* right or freedom are designed to serve, must be of sufficient importance to warrant overriding a constitutionally protected right or freedom".[125] In the context of an LSUC decision to approve TWU, this step would seek evidence as to the motivation or goal LSUC sought to achieve in approving TWU notwithstanding its discriminatory Covenant.

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consistently reiterated that a rights-violation not in accordance with the principles of fundamental justice will only be justifiable under section 1 in "exceptional circumstances."

[123] *Multani, supra* note 120 at para 22, citing as a contrary example *Little Sisters Book and Art Emporium v. Canada (Minister of Justice),* [2000] 2 S.C.R. 1120, 2000 SCC 69, at para. 141 re: "when the delegated power is not exercised in accordance with the enabling legislation, a decision not authorized by statute is not a limit "prescribed by law" and therefore cannot be justified under s. 1."

[124] *PHS Health Services, supra* note 122 at para 117. See also *Slaight Communications Inc. v Davidson,* [1989] 1 S.C.R. 1038 at p. 1079-1080.

[125] *Oakes, supra* note 40 at para. 69.

Presumably, LSUC would identify its objectives behind an approval decision as including compliance with the Federation's "preliminary approval" decision; concerns about ensuring that Canadian law societies "maintain and endorse a national approach to defining and applying [admission standards]" so as to realize the National Mobility Agreements and ensure a consistent approach to approving law school programs;[126] and recognition of TWU's unique status as a religious institution with *Charter*-protected rights related to religion. Given that LSUC would act in good faith in deciding to approve TWU's law school, it is reasonable to presume that its objective in a decision to accredit TWU would qualify as "pressing and substantial."

iii) Rational Connection

The first stage of the proportionality determination asks whether the LSUC's decision was "rendered in furtherance of the objective" identified as "pressing and substantial," above.[127] It is likely that a decision to approve TWU, even with its discriminatory Covenant, would be rationally connected to the pursuit of compliance with the Federation recommendations, ensuring consistency and mobility of law degrees and recognizing the religious freedom of TWU.

iv) Minimal Impairment

The minimal impairment analysis is the step where any attempt by LSUC to justify a decision to approve TWU and its Covenant would likely be found to be problematic. Minimal impairment requires a demonstration by the decision-making body that its discretionary decision is

> …carefully tailored so that rights are impaired no more than necessary. The tailoring process seldom admits of perfection…If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement…[128]

In Part II, above, we canvassed some of the minimal impairment considerations in the context of the administrative framework that are equally applicable here. In particular, in considering whether an LSUC decision to approve TWU and its Covenant impairs the equality rights of gay, lesbian and bisexual individuals "no more than necessary", a reviewing court would likely have regard to the less rights-impairing ABA model which, as noted above, proscribes discriminatory admissions criteria but upholds the integrity of faith-based institutions to teach from a religious worldview. All that is required to make a TWU approval decision less rights-impairing is a condition that the Covenant be revoked (preferably) or, at very least, not a mandatory precondition for admission to study law at TWU.

The law school would then be open to qualified persons of every religious persuasion -- Jews and Muslims, etc -- without requiring obedience nor a commitment to this particular literal view of

[126] These reasons were enunciated, for example, by the Law Society of Alberta in deciding to approve TWU's law school. See Law Society of Alberta, "Letter to University of Calgary and University of Alberta Faculties of Law", online: <http://ablawg.ca/2014/03/03/law-society-of-alberta-responds-on-twu-law-school-issue/>.
[127] *Multani*, *supra* note 120 at para 49.
[128] *RJR MacDonald Inc. v. Canada (Attorney General*), [1995] 3 SCR 199 at para. 160.

what conduct the Bible permits. GLBT people could attend openly. To be forced to associate with persons of different beliefs while at a law school does not impair religious freedom; rather, it reflects the laws values of tolerance, understanding and acceptance of difference.

v) Salutary and Deleterious Effects

Briefly, the three harms bred by the Covenant identified above in the analysis of section 15 are compelling as deleterious effects. The salutary effects of the Covenant remain minimal.

Dianne Pothier notes that "Freedom of religion gives adherents the freedom to hold and express beliefs, but it does not exempt those beliefs from critical assessment."[129] This means that while TWU "has the right to determine the content of its Community Covenant…it also has to accept the consequences of its choice."[130]

If no accommodation is possible, that is, if TWU will not give up its Covenant as a prerequisite to having a law school, the question becomes: do the salutary effects of requiring the student to (a) dishonestly sign the Covenant; or (b) attend a different law school; or (c) forego admission to a law school at all if he or she is not accepted somewhere else, outweigh the deleterious effects of doing so?

If no accommodation is possible, the harm is overwhelming. The present practice triggers serious concerns about government sanctioned privacy breaches. The value of privacy, guaranteed by s.7 and 8 of the Constitution, by requiring commitments respecting private life, deeply person in every culture, even intruding into the sexual activities of married students, is frightening. Equality and religious freedom concerns, given the historic discrimination against gays and lesbians are equally important.

Privacy is important, and a ban on sexual intimacy, lawfully engaged in, is not remotely connected to any educational purpose or to the law. Privacy, of course, is not an absolute value. But the nature of the privacy interests implicated by the law school in this case must be considered in striking an appropriate balance between the equality rights of the applicant, and the interests of the university.[131]

As in *Vriend v. Alberta*, fear of discrimination and discrimination itself creates serious psychological harm:

> "Fear of discrimination will logically lead to concealment of true identify and this must be harmful to personal confidence and self-esteem. … The potential harm to the dignity and perceived worth of gay and lesbian individuals constitutes a particularly cruel form of discrimination."

[129] Dianne Pothier, Response re: President Kuhn's March 4, 2014 presentation (Pothier, response) at 2.
[130] Pothier, response at 2.
[131] *Alberta v. United Food and Commercial Workers, Local 401,* [2013] SCC 62 at paras. 19, 38.

Even if the Covenant could be said to target sexual behaviour as opposed to sexual orientation, the harm remains the same. Courts have long rejected this false distinction between the "sin" and "sinner".[132]

In *Syndicat Northcrest v. Amselem* the majority judgment said that even if the proponents of freedom of religion

> "successfully demonstrate non-trivial or non-insubstantial interference with that practice, they will still have to consider how the exercise of their right impacts upon the rights of others in the context of the competing rights of private individuals. Conduct which would potentially cause harm to or inference with the rights of others would not automatically be protected. The ultimate protection of any particular *Charter* right must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises."

The importance of education in a democracy, and the multitude of communities that live harmoniously together are important in this context. The equality rights of GLBTQ people, who have been historically discriminated against, are crucial in terms of whether full protection should be granted to the freedom of religion at Trinity Western University.[133]

The number of places available at law schools is very limited and the demand far exceeds the supply. Gay and lesbian students will have fewer chances to attend law school, and access to the career of a lawyer or a judge diminishes. Some students will hide their sexual orientation, in order to obtain a place at Trinity Western University Law School. Duplicity must not be the price of admission. Others will enter TWU, only to come out as queer part way through their studies. They must not be forced to lie to continue their studies.[134]

Even if the government of British Columbia pledged to create 60 new places solely for gays and lesbians, it would not have solved the problem. This undermines the value of equality as a whole and diminishes not only the discriminated against community, but all of us as well. Separate but equal is not acceptable.

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[132] Justice L'Heureux-Dube wrote in her dissenting opinion in *Trinity Western University v. College of Teachers* [2001] 1 R.C.S. (just endorsed by a unanimous Court in *Saskatchewan (Human Rights Commission) v. Whatcott):* "I am dismayed that a various points in the history of this case the argument has been made that one can separate condemnation of the 'sexual sin' of homosexual behaviour' from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. "The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected…." (at para. 69). See also: *Vriend v. Alberta,* [1998] 1 S.C.R. 493 at para.102; *Saskatchewan (Human Rights Commission) v. Whatcott,* 2013 SCC 11 at para. 123.

[133] *Syndicat Northcrest v. Amselem,* [2004] 2 S.C.R. 551 at paras. 61, 62.

[134] See also: Law School Admission Council, Official Guide to Canadian Law Schools ; *Syndicat Northcrest v. Amselem, supra,* at paras. 97-98.

Allowing TWU to operate an accredited law school would cause the very meaning of equal rights and privacy as legal concepts will suffer. A law school is especially a place that teaches a commitment to equality amongst all individuals.

> "These errors went to the heart of the Board's decision. It is suggested that rejection of the materials did not materially lessen the opportunities for teaching and enforcing tolerance in the classroom, and therefore is of no great moment. Yet to the appellants, it is a matter of importance. The last word -- indeed the only word that counts -- is the word of the legislature and the curriculum. It stresses tolerance and inclusion, and places high importance on discussion and understanding of all family groups. The Board's rejection of these values must be seen as serious."

Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R.. 710 at para. 72

Some of the teaching mandated by the Covenant produces harmful results:

> "A TWU university policy mandating that all faculty members sign a statement of faith in which they pledge, on pain of dismissal, to 'agree with…and agree to support…at all times' the position that the Bible is 'the ultimate authority by which every realm of human knowledge and endeavour should be judged.' Academic staff are required to teach students that the Bible is the ultimate, final and authoritative guide by which all ethical decisions must be made. To teach that ethical issues must be perceived of, assessed with, and resolved by a pre-ordained, prescribed and singularly authoritative religious doctrine is not to teach the skill of critical thinking about these issues. An institutional policy that requires all faculty to teach from this perspective, and only this perspective, is inconsistent with a requirement that the program teach the skill of critical thinking."

The National Requirement requires that:

> "[t]he applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context"[135]

including the capacity to

> "identify and engage in critical thinking about ethical issues in legal practice."[136]

[135] Submission of Schulich School of Law, Dalhousie University to the Nova Scotia Barristers' Society re Trinity Western University Law School, February 5, 2014, Elaine Craig, Ron MacDonald and Amy Sakalauskas, p.11.
[136] Common Law Degree Implementation Committee: Final Report (August 2011) at 17, online: http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf

Conclusion

There is something particularly egregious about the prospect of a Canadian law school that practices discrimination, something antithetical to our legal tradition and *Charter* values. A law school that promotes discrimination and discriminatory attitudes against an historically marginalized group is like a medical school that denounces the Hippocratic oath: it is fundamentally repugnant to the core values the profession embodies.

Lawyers and law societies in Canada are governed by the basic principle that they must conduct their professional affairs in the public interest. This is the ethical price that we pay for the financial, political and legal power we wield within Canadian society. It cannot be in the public interest to condone a law faculty and a law school program that actively discriminates against a group that has been recognized under both provincial human rights law and the *Charter* as warranting protection from discrimination. The public interest demands that the law reflect current societal values.

Sir:

I am a member of the LSUC.

I have serious concerns with accrediting Trinity Western as a law school. While I respect the private views of individuals (and their right to hold such views), I believe it is untenable to have an institution, ostensibly dedicated to the study of law and pursuit of justice, engage in discriminatory and exclusionary tactics against any group.

As lawyers, we have a unique position in society which includes protecting and advocating on behalf of the disenfranchised and marginalized groups. A law school seeking to institutionalize marginalization and to demonstrate such intolerance is inconsistent with my views of our professional responsibilities to the Bar and to the public.

As currently constituted, the LSUC should not accredit this law school or permit its graduates to sit for the Bar exam.

***Quis custodiet ipsos custodes? (*"Who will guard the guards themselves?")**

Respectfully,
Peter Carayiannis

The Catholic Civil Rights League www.ccrl.ca
Ligue Catholique pour les Droits de l'Homme

March 27, 2014

Submission of the Catholic Civil Rights League to the Law Society of Upper Canada (the "Society") regarding the Acceptance of Potential Graduates of Trinity Western's Law School ("TWU") for Admission to the Society

I write on behalf of the Catholic Civil Rights League, and on behalf of its members in the province of Ontario. The League is a national non-profit organization, established to provide a fair hearing for positions of Catholic teachings in the public square.

In addition to countering anti-Catholic defamation, the League has had a history of roughly 40 court interventions over the past 25 years, mostly at the Supreme Court of Canada, in support of a robust understanding of religious and conscientious freedom.

This brief submission is prepared to provide a summary of the League's concerns to the Society, and in particular to Convocation, which will meet to determine the accreditation of the TWU law school program.

The League notes as follows:

1. The TWU proposal has been reviewed and has been approved by both the B.C. Minister of Advanced Education, and the Federation of Law Societies of Canada, to whom the power of approval was previously delegated.
2. The proposed opening of the TWU law school would be available to roughly 60 students/year. That represents roughly 3 per cent of potential law school entry positions in Canada, of the roughly 2,000 current entrants in any given year to other Canadian law schools.
3. The TWU law school does not propose to bar entrance to any individual other than on normal academic qualifications. It appears that the focus of inquiry is that the TWU law school, as with the larger TWU campus, has adopted a Community Covenant, which prospective or current students are expected to honour. TWU, as an evangelical Christian university, believes that sexual intimacy is "reserved for marriage between one man and one woman".
4. It is trite law that religious institutions and individuals have the right to define marriage according to their religious doctrines. This is guaranteed in section 3.1 of the federal *Civil Marriage Act*, S.C. 2005, c. 33.
5. In addition, a similar issue was addressed by the Supreme Court of Canada in the case of *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 (in which the League had previously intervened), which ruled in favour of Trinity Western's teacher education program, which had been challenged by the B.C. College of Teachers for its Community Covenant.

The opposition to the TWU law school proposal does not appear to be based on any assessment of academic shortcoming or inability to deliver a professional law school education. The relevant accreditation authorities have already approved or recommended the TWU application.

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The issue before your Society appears to be whether some decision should be made now, in advance of any application for membership to the Society, so as to prevent a prospective graduate of TWU's law school from becoming a member of the Society.

A denial of recognition of TWU's law school would place your Society at odds with the acceptance of potential TWU graduates by other law societies, such as in Alberta, which appeared to accept the Federation's recommendation in December, and the Federation of Law Societies approval mentioned above.

It should be acknowledged that there is no evidence to suggest that a prospective graduate of the TWU law school may be unable to practise law in the province of Ontario or elsewhere. In fact, it is apparent that many observant religious individuals practise law in Ontario, who are entitled to maintain that marriage be reserved as between a man and a woman, according to their conscience.

The opposition placed before the Society is a perceived "intolerance" of the TWU Community Covenant. That intolerance is perceived as a potential impediment to members of minority sexual orientations, or presumably to single heterosexual students, as it engages a voluntary restriction for students of TWU in respect of sexual relations outside of the traditional understanding of marriage.

TWU, and other religious institutions of higher learning, enjoy constitutionally protected guarantees of freedom of conscience and religion, and they engage in free academic inquiry. While the observance of codes of conduct may vary at such institutions, the law has acknowledged the right of institutions to maintain such codes.

Moreover, it is the League's view that a pre-determined denial of acceptance of graduates of an otherwise qualified law graduate from entrance into your Society would be an unacceptable intrusion into the religious and conscientious liberty of the individual. Such a pre-determination, in our view, is without justification, and contrary to Charter values such as freedom of religion and freedom of speech, and contrary to natural justice. It would also constitute an example of the very hostility to religion and conscience that are contrary to the Society's Statement of Principles concerning the respect for religious and spiritual beliefs.

Ontario is the home of some leading Christian universities, many graduates of which are members of the Society. Presumably, your Society, as with other provincial law societies, may have already recognized graduates of TWU within your ranks, following their later graduation from an existing Canadian law school. In the absence of some evidence of misconduct, what complaints have been raised regarding the demand for a higher standard of education or professional competence, for which the Society has an interest?

The opposition to TWU's law school purports that your Society require an adherence or conformity to norms of thought or belief, a position which maintains a limited notion of "diversity". It is our submission that citizens, including current lawyers within your Society, are allowed to disagree with each other on matters of faithful observance.

A robust pluralism depends on the free exchange of such positions, and the law acknowledges such freedoms. The League submits that your Society is charged to ensure compliance with the Charter, so as to allow freedom of conscience, freedom of religion, freedom of thought, freedom of belief, and freedom of expression.

The Society published a Statement of Principles in Support of Religious and Spiritual Beliefs in 2005, in which religious diversity was recognized as *advancing* the cause of justice, which should govern your current consideration. We submit that opponents to the recognition of TWU law school graduates pose the real menace to a free and democratic society, in that they appear to favour what John Gray described as "convergence liberalism", a forced pseudo social consensus. It is our view that your Society should promote tolerance and respect for difference, especially when it comes to religious and conscientious freedoms.

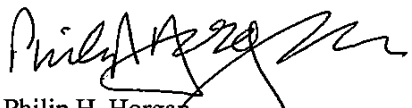
It is not the mandate or competence of the Society to regulate and police the personal beliefs and convictions of its members and to arbitrarily exclude those from the practice of law who exercise their constitutional and legal rights to express and live by their views, religious or otherwise, on the issue of marriage, morality, or otherwise, in a manner consistent with those rights.

We also note that for those who choose not to observe the TWU Code of Conduct, no existing law school position in Canada has been limited, no existing law school position has been deprived, and there can be no argument that any hardship will be incurred.

The TWU law school is merely an extension of the existing recognition of religious institutions of higher learning available to those who choose to pursue their studies in that context. Law schools based at religious schools of higher learning abound in the United States, and other countries, and have produced graduates of distinction.

It is submitted that the Society should continue to welcome such qualified graduates within its ranks, rather than surrender to a closed or fearful pluralism espoused by opponents of TWU.

Respectfully,



Philip H. Horgan
Barrister and Solicitor, Member of the Bar of Ontario
President, Catholic Civil Rights League

Dear Sirs/Madams:

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. I understand that in Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). As a *Charter*-affirming member of the LSUC, I have serious concerns about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[1] Students who do not comply with the agreement may be removed from the university without readmission.[2] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada (FLSC). I was quite disheartened to learn in December of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's LSUC accreditation. I look forward to a properly balanced and progressive decision from the law society on this important issue.

Yours sincerely,

John Clifford

[1] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[2] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

Council for Christian Colleges & Universities®

OUR MISSION:
To advance the cause of Christ-centered higher education and to help our institutions transform lives by faithfully relating scholarship and service to biblical truth.

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March 28, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
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To the Treasurer and Members of the Convocation:

As the interim President of the Council for Christian Colleges & Universities (CCCU) I write to encourage your law society to concur with the accreditation of the new law school that will be opening at CCCU member institution Trinity Western University.

The Council for Christian Colleges & Universities is a higher education association located in Washington, D.C., whose mission is "To advance the cause of Christ-centered higher education and to help our institutions transform lives by faithfully relating scholarship and service to biblical truth." As our mission indicates, all CCCU members and affiliates are institutions whose mission is centered on providing higher education from a Christian worldview. The CCCU is comprised of 175 institutions across 32 states and 20 countries.

All 120 member institutions meet our three membership requirements:

1) The institution has a Christ-centered mission;
2) The institution hires as full-time professors and administrators only professing believers in Jesus Christ; and
3) The institution is fully regionally accredited (or the Canadian equivalent) in both the liberal arts and sciences.

While our member institutions reflect over 28 different denominations from the Christian tradition and have a wide range of theological beliefs, they all hire only Christian faculty. Recognizing some excellent faith-based universities do not have this requirement, CCCU schools believe faculty members with a clear Christian center can explore the boundaries of the most challenging ideas , but do so without leaving the circumference of our Christian mission. Thus, many of the other 119 institutions that join Trinity Western University in CCCU membership have statements of belief and conduct similar to that of Trinity Western. These institutions view them as important documents that express a commitment to the theological beliefs of the institution that help preserve the institution's founding

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principles. While our institutions have many different theological beliefs, they are united in their conviction that each person and institution should be able to live and act in accordance with their religious beliefs –that any change in belief should come from conscience, not coercion.

In addition to being Christian institutions, our colleges and universities are fully recognized and respected within the larger higher education community within the United States. Presidents of CCCU institutions sit on the Board of Directors of secular higher education associations here in Washington, DC, including the Council for Independent Colleges, the National Association of Independent Colleges & Universities, and the American Council on Education. The CCCU is also a member of the Washington Higher Education Secretariat, a group of over 50 higher education associations in Washington, D.C. that provide leadership on higher education issues of national importance.

Graduates of our undergraduate institutions are accepted to graduate school at a broad range of institutions, including the law and medical schools at the most prestigious institutions such as Harvard, Yale, and Stanford. In addition, many of our institutions have their own graduate programs in law, medicine, and many other fields; those graduates go on to gain full licensure by the professional bodies that govern such programs, and serve long careers in both the United States and in Canada. Graduates of CCCU institutions have not faced discrimination in the US or Canada because of the religious perspective of the educational institution they attended, and we hope they will not in the future.

But ultimately it is the religious commitment of our institutions that distinguishes them, forms their identity, mission, and purpose, and allows them to play their important role in contributing to the wide variety of higher education institutions here within the United States and North America that range from art institutes, to music conservatories, to polytechnic institutions, to large public universities, to small private liberal arts institutions, faith-based and secular alike. Here in the United States the government has always treated these institutions with parity, allowing students to take government aid to whatever institution best fits their needs so long as the institution meets the academic and other requirements associated with accreditation. It has done so because it recognizes that our citizenry is best served by allowing free thought, and accordingly it has granted the institutions that generate such thought equal status. Academic and professional accrediting bodies have taken the same approach.

I would respectfully encourage you to afford Trinity Western University the opportunity to contribute to the Canadian Higher Education landscape in the same way. By developing a program of law that is taught from a faith-based perspective, Trinity Western will be able to contribute uniquely to academic and legal thought in Canada, much as its undergraduate and other programs have, and will be able to

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e-mail: council@cccu.org

provide unique, expanded offerings in legal training to the Canadian citizenry. I believe that this is good for academic freedom, thought, and rigor.
The academy in the Western world has always proudly stood for an open marketplace of ideas. Allowing Trinity Western to contribute ideas to the legal profession that stem from a Christian perspective is consistent with this ethos. But in order to do that, Trinity Western has in its best judgment determined that its professors and students must be willing to sign a statement consistent with its interpretation of Christian doctrine. All institutions make judgments about what priorities are necessary for it to fulfill its mission, and we would encourage this body to likewise respect this academic and religious judgment of Trinity Western.

Thank you for this opportunity to contribute to this discussion. We appreciate your willingness to hear our perspective.

Sincerely,

William P. Robinson, PhD
Interim President

CUPE·SCFP / Canadian Union of Public Employees
Syndicat canadien de la fonction publique

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March 28, 2014

VIA email (jvarro@lsuc.on.ca)

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

To the members of Convocation:

Re: Request for public input regarding Trinity Western's application for a law school

I am writing on behalf of the Legal Branch of the Canadian Union of Public Employees ("CUPE") regarding the recent recommendation of the Federation of Law Societies of Canada ("FLSC") to preliminarily approve Trinity Western University's ("TWU") application to create a new law school. CUPE is Canada's largest union, representing more than 627,000 workers in a range of occupations from coast to coast. Our legal branch consists of 23 lawyers and paralegals spread throughout every provincial jurisdiction. Ten of our lawyers and three paralegals are members in good standing of the Law Society of Upper Canada. It is with great concern that we learned of the Federation's decision, and it is our view that the Law Society of Upper Canada should reject this recommendation and refuse to recognize degrees granted by Trinity Western for the purposes of admission to the practice of law in Ontario.

As a trade union, CUPE is devoted to the promotion and advancement of the rights of workers. As Chief Justice Dickson noted in the *Alberta Reference*,[1]

> *"Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being."*

Our concern is that the practices of Trinity Western are incompatible with human rights, the *Charter of Rights and Freedoms*, and Canadian values more broadly. TWU requires its faculty, staff and students to sign a "Community Covenant Agreement" promising not to engage in same-sex sexual intimacy under any circumstances. This Covenant cites biblical passages condemning homosexuality. The prospect of a regulator of the legal profession offering approval/accreditation to a law school with such an explicitly discriminatory policy is disturbing, to say the least. If any of Canada's public universities adopted the kind of covenant that TWU requires they would be in violation of the human rights legislation in their respective provinces.

[1] *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at para. 91.

As already noted by others,[2] there have been significant changes in the law and Canadian society since the *BCCT v. TWU* decision of the Supreme Court of Canada which Convocation will no doubt have to consider carefully in coming to its decision.[3] It is our position that, in 2014, a reasonable balance between freedom of religion and equality for gays and lesbians requires law societies to reject law degree programs that explicitly discriminate on the basis of sexual orientation.

It is notable that in *BCCT v. TWU,* the Supreme Court did find that this type of "unfavourable differential treatment" means that gay and lesbian students could only attend TWU at "considerable personal cost". Lesbian and gay members of our community already face significant issues with employment-based discrimination, including diminished incomes compared to similarly situated heterosexuals.[4] In the context of scarce law school positions for access to the profession, TWU's proposed law school would create a discriminatory quota for access to the profession in Ontario. The FLSC Special Advisory Committee's final report misses the point where it states at para. 53, that "approval of the TWU law school would not result in any fewer choices for LGBT students than they have currently." It is the reduction in the *relative* as opposed to the *absolute* number of opportunities for gay and lesbian persons that makes approval of TWU's law school objectionable. In our view, this represents a critical error in FLSC's report. It cannot be in the public interest for the Law Society to contribute to this kind of labour market discrimination.

As indicated by the FLSC, the decision to accept TWU's law school ultimately rests with the Law Society. At its most basic, the issue facing the Law Society is very simple: Is it in the public interest for the legal profession to express approval of an educational institution which explicitly employs policies that discriminate against gays and lesbians? The Law Society would surely not see fit to approve a law school with a policy that prohibits students from forming intimate relationships with a member of a different racial or ethnic group, or one which proposed to restrict legal education to men because of religious rules. Discrimination that further vilifies marginalized groups cannot be in the public interest which members of the legal profession have committed to serve.

Please provide a copy of this letter to each of the members of Convocation of the Law Society.

Sincerely,

Nancy Rosenberg
Director, Legal Branch
Canadian Union of Public Employees
LSUC # 21517K

cc: Paul Moist, National President; Charles Fleury, National Secretary-Treasurer; Elizabeth Dandy, Director, Equality Branch, CUPE

cope491/cg
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[2] Craig, E., "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program", *Canadian Journal of Women and the Law*, Vol. 25, No. 1, 2013, pp. 148-170; See also, the submission of Dianne Pothier, Professor Emeritus, to the Nova Scotia Barrister's Society regarding Trinity Western University's proposed Law School, January 18, 2014, online: <http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-01-24_Pothier_TWU.pdf>.
[3] [2001] 1 S.C.R. 772.
[4] Carpenter, S., "Sexual Orientation, Work and Income in Canada", *Canadian Journal of Economics*, Vol. 41, Issue 4, pp. 1239-1261, November 2008.

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Web: cupe.on.ca *E-mail:* info@cupe.on.ca

March 28, 2014

Via email: jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

To the members of Convocation:

I am writing on behalf of CUPE Ontario to provide input into the matter of the accreditation of Trinity Western University's new law school. CUPE Ontario has more than 240,000 members across the province. We campaign to ensure that human rights are upheld in the province and that the diverse needs and perspectives of our members are reflected in provincial policy and legislation.

We also work to ensure that our collective agreements, local bylaws, policies and procedures eliminate discrimination and promote pride in our LGBTTI members. We provide education programs for our members and leaders to ensure sensitivity to LGBTTI co-workers, ensuring a safe environment in our province, our workplaces and communities. Through our Pink Triangle Committee, we work on campaigns in partnership with community groups to advocate for the rights of LGBTTI people in our membership and the broader community.

Given your upcoming discussions about Trinity Western University (TWU), I would like to voice CUPE Ontario's strong disapproval of TWU's law school. We believe that TWU should not be allowed to require students, staff and faculty to sign a community covenant, specifically one that discriminates against LGBTTI persons.

Please note that, as an openly gay trade union leader, I have a personal stake in this issue, and know from experience how devastating and damaging such discrimination has on LGBTTI people.

…2

It is estimated that approximately 10% of the Canadian population identifies as Lesbian, Gay, Bisexual, Transgender, Transsexual or Intersex (LGBTTI). This means that over 60,000 of CUPE's national membership of 627,000 members belong to the LGBTTI community. CUPE also represents workers in the university sector and, on behalf of those members and the students they support, CUPE Ontario is concerned to ensure that all institutions of higher learning be free from any and all exclusionary practices.

I understand that the Law Society of Upper Canada (LSUC) upholds and protects the public interest in the practice of law. I was pleased to read on your website that a key goal of LSUC includes ensuring that law and the practice of law reflect the diverse perspectives of equity-seeking groups, in part through increasing the diversity of the legal profession.

CUPE Ontario believes that all members of society deserve equality and respect at work, at school and in our communities.

We encourage you to refuse to recognize degrees granted by TWU for the purposes of admission to the practice of law in Ontario. Discrimination or harassment based on sexual orientation or gender identity is a violation of human rights in Ontario.

Sincerely,

Fred Hahn
President
CUPE Ontario

cc: CUPE National Executive Board

cope 343

DIOCESE OF
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OFFICE OF THE BISHOP

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March 28, 2014

The Law Society of Upper Canada
Osgoode Hall
130 Queen St. W.
Toronto, ON M5H 2N6

Re: Trinity Western University Accreditation

Dear Mr. Varro,

In response to the recent notice concerning the accreditation of the law school of Trinity Western University, I am writing to provide my support in favour of accreditation.

Trinity Western, like many other universities across Canada, is faith based. In the Diocese of London, of which I am the Bishop, there are three Catholic universities. One of them, Assumption University in Windsor, which dates back to 1857, is the oldest Catholic university in Canada. Many in our country would recognize the valuable contribution these institutions have made over many years to our society. Our graduates are found in all the professions, education, health care, social services, business, finances, law and government.

I understand that some object to Trinity Western because it has a moral code associated with attendance. There are, however, many different moral codes in Canadian universities, both religious and secular. These codes reflect the different views that exist in the public forum today.

There is a disturbing trend here in Canada and in other countries of threats to the freedoms of conscience and religion. In 2012, the Canadian Conference of Catholic Bishops published a pastoral letter on *Freedom of Conscience and Religion*. In this document, the Bishops of Canada expressed their concern that people of religious faith were being pressured to act against their religious faith or conscience. The respect for a variety of beliefs is seen as an aspect of the fundamental freedoms of conscience and religion, which are part of the Canadian Charter of Rights and Freedoms. Genuine pluralism in Canada must allow religion to operate freely in our society. In their pastoral letter, the Bishops of Canada emphasize that attempts to limit expressions of religious faith to the private sphere represent a serious curtailment of a right which necessarily involves aspects of public manifestation.

In your consideration of the accreditation of Trinity Western law school, I urge you to take into account the rights of freedom of conscience and religion.

Sincerely yours,

+ Ronald Fabbro, CSB

Most Rev. Ronald P. Fabbro, C.S.B.
Bishop of London

RPF/bk

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March 28, 2014

Dear Benchers:

As members of the Special Committee on the accreditation of Trinity Western University's law school, you are uniquely placed to defend and advance our country's proud history of multiculturalism, secularism, and equality.

As you know, Trinity Western University discriminates against gay and lesbian students. It prohibits "same-sex intimacy" between married gay couples while allowing such intimacy between married heterosexual couples. It says that such same-sex intimacy offends its interpretation of the Bible, because marriage must only occur between a man and a woman. But it can't succeed with its anti-queer law school if the Federation of Law Societies doesn't give its approval.

A decision to accredit TWU's graduates would effectively give the Canadian legal profession's blessing to a school that actively discriminates against queer students. In the words of the Supreme Court of Canada in the 2001 decision in *Trinity Western University v. British Columbia College of Teachers*: "The proper place to draw the line in cases like the one at bar is generally between belief and conduct... The freedom to hold beliefs is broader than the freedom to act on them." Barring students from a law school is action, not mere belief. In addition, and in any event, the British Columbia College of Teachers case did not deal with the equality rights of prospective students under s. 15 of the Charter

There are already not enough law school places for the students who want to apply. By letting Trinity Western create a school that bans gay students from attending, the Federation of Law Societies would create a quota system where fewer law school places are available to LGBTQ students than straight students. If you are heterosexual and want to be a lawyer, you can get into all of the current spots in Canada's law schools plus the additional 60 that TWU proposes to initially create. If you are queer, you can forget about those extra 60 spots — unless you accept that you have to lie by signing a covenant and concealing your sexual orientation. We stopped thinking of this as a legitimate demand a long time ago.

The solution put forward by some is that queer students to go to one of the other law schools. That is precisely what Jews were told in the 1940s and 1950s. This "stick to your own kind" argument is appalling. The quota system was wrong during World War II and it has no place in Canadian society today.

Canada should move forward, not backward — as should its legal profession. I urge you to vote against the accreditation of Trinity Western University's proposed law school.

Sincerely,

Amanda Driscoll
Barrister & Solicitor,

KIRKBY FOURIE LAW OFFICE

BARRISTERS & SOLICITORS

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Mr. Gordon M. Kirkby, B.Sc. (Adv) (Gr. Dist.), LL.B kirkbylaw@sasktel.net
Mr. Philip (P.J.) Fourie, B.L.C., LL.B., M.Env.Mgmt. (Dist.) philip.kirkbylaw@sasktel.net
Ms. Cara-Faye A. Merasty, B.I.S.W., J.D. cara.kirkbylaw@sasktel.net

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Via Email to: jvarro@lsuc.on.ca

Dear Policy Secretariat:

RE: Trinity Western University Consultation

I am a former Military Judge, federal crown prosecutor, Government legal advisor, and Governor of The Saskatchewan Trial Lawyers Association. I currently serve on the Board of Directors of several charitable organizations and companies, but make this submission in my personal capacity. In addition to this submission, I fully support the submission by the Christian Legal Fellowship, of which I am also a member.

I have read, with interest, a number of letters denouncing the accreditation of the Trinity Western Law School. Some of the submissions from law schools make personal attacks upon the faculty and administrators at Trinity Western. The UBC law school resolution even suggested that the Law Society consider disbarring any lawyer who works at Trinity Western and enforces the Community Covenant. Ultimately and without exception, however, these submissions take issue with one singular issue, the Community Covenant and its definition of marriage.

The naysayers' submissions insist on imposing a single definition of marriage. In effect these resolutions insist that those who hold different worldviews or subscribe to a different definition of marriage should be ostracized from the legal community. In short they want one definition imposed on everyone. The state redefined marriage and everyone, including churches, must follow suit.

We cannot help but be reminded of darker times in human history when a select few dictated what people were to believe, if they wished to participate in the public workplace. It becomes even gloomier when a handful of individuals begin to dictate to the masses who should be allowed to participate in the private sector workplace! In an ironic twist, those who denounce the Trinity Western Law School use a moral argument to support their position. They present their arguments as morally right and denounce those who hold an opposite views as morally wrong. They offer no objective source for this moral judgment, but would have us believe that apparent bigotry is whitewashed with honourable titles and

the support of many likeminded souls. They insist that their notions about sexuality and marriage are superior to other ideas or beliefs concerning these subjects. In effect, they demand that people be treated unequally because of their ideas and beliefs.

In 2005, the Civil Marriage Act redefined marriage *for civil purposes*. It specifically states "nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs" and "it is not against the public interest to hold and publicly express diverse views on marriage" (Civil Marriage Act, S.C. 2005, c. 33).

Allowing objections to the TWU law school and its students, expressed by individuals and special interest groups, to stand would run roughshod over freedom of religion and equality on the basis of religion, as guaranteed in the Charter.

If we claim adherence to the principles enshrined in the Charter concerning our freedoms, it is imperative that we be mutually respectful. The Duke of Edinburgh once said, "Freedom can be destroyed, not only by its retraction, but also by its abuse." The very foundation of our culture and constitution allow the autonomous beliefs of an individual and the expression of those beliefs, so long as they do not trample the rights and privileges of another person or group. The moment we are forced to comply with another person's worldview (forbidding the practise of law unless a particular view of morality, as it pertains to marriage, is adopted), autonomy is taken away and we become a culture not dissimilar to Stalin's Russia or Mao's China.

I believe it is fair to state that those who ascribe to the TWU Covenant and its underlying Biblical values sincerely believe, as Ravi Zacharias recently stated, that without the absolute of a transcendent, there is ultimately no moral law, no point of reference, no meaning in life, and no hope beyond the grave. At the same time they would strongly assert that their beliefs enable and mandate them to live fully, give fully, and love fully without any discrimination. Would the opposite be true for those who oppose TWU law School accreditation? They insist that those who wish to teach and practise law need to be subject to their subjective religious test. They would have us believe that if you are not "secular" or "atheist" enough you are not welcome in the legal community because you may, in their subjective view, discriminate against same sex couples.

As a foundational principle of our Canadian society, autonomous, dissenting views ought to be allowed in all spheres of public and private life, without the fear of penalty. I believe it is also important to respect the efforts that the Federation and Government took to consider all the issues. A decision to refuse accreditation and not allow a student from TWU's future law school to practise law would, therefore, be based solely on such a graduate's personal convictions and beliefs, not on his or her so-called discriminatory behaviour. I can only reiterate Barry Bussy's recent assertion that there is no evidence to base a claim that TWU law school graduates would discriminate against potential clients (based on sexual orientation) because they agreed to and may hold religious beliefs that they not personally engage in sexual relations outside of a traditional marriage between one man and one woman while attending law school. Within the Canadian legal profession there are many lawyers who hold personal beliefs similar to the position taken by TWU concerning sexual relations. There is no case

that I am aware of, where a Christian lawyer has discriminated against a client based on sexual orientation.

At most those who willingly sign the TWU Covenant will admit that they personally believe that homosexual behavior is, in accordance with their interpretation of scripture, not God's original design for sexuality. However, their disposition and emphasis to not discriminate against homosexual individuals would remain. Why? Because the bedrock of the Christian lawyer's or student's faith is that they have to love their neighbour. Their neighbour includes everyone, regardless of ethnicity, religious affiliation or sexual orientation. That is why it is important to acknowledge that the foundational aspect of the TWU Covenant, and student's ascribing to these underlying values, is to serve the needs and interests of everyone, irrespective of their faith or sexual orientation, as their neighbour, without discrimination.

For individuals who ascribe to these values, race and ethnicity is something sacred. For the same reason, they sincerely believe that they should make their decisions in life based on the fact that sexuality is sacred. That which is sacred to you in private is undeniably also sacred to you in public. The student who willingly subscribes to the TWU covenant would ascribe great value, respect and reverence to race and ethnicity and apply the same respect and value to sexuality within the context of scripture. Their personal beliefs would not allow them to treat race as something sacred, yet be quick to desacralize sexuality. These values implore the TWU law student to serve the needs and interest of all their clients, irrespective of their faith or sexual orientation. I would submit that those who oppose the accreditation of the law school suggest that people should be treated differently based on their personal beliefs. They want the Law Society of Upper Canada to dictate to lawyers and students what they should and should not deem to be sacred, based entirely on their own personal beliefs on these matters.

Non-accreditation of the TWU law school would be tantamount to extreme intolerance and discrimination in and of itself. Such a decision would not facilitate acceptance of divergent religious beliefs within our pluralistic Canadian society. As Canadians, we pride ourselves on being free to believe and express ourselves without the fear of punishment. When TWU law students are told that you are free to believe whatever you want – you are free to express those beliefs – but if you do, you will not be allowed to practice law – that is not freedom!

Those who denounce the TWU law school accreditation are implicitly stating that the values stated in the TWU covenant, and those ascribing to those views, are not in keeping with the only correct view, a view established by, perhaps a minority of the members, of the Law Society of Upper Canada. Rather the Law Society of Upper Canada will dictate to TWU and all law students, regardless of their school, what they ought to believe.

The Canadian culture I came to know when I arrived as an immigrant many years ago is one where we can disagree with each other and still allow another person's view to be held with dignity. I have come to appreciate the civility of Canadians and their acceptance of each other's beliefs, but where you are not forced to celebrate those beliefs and, even allowed to disagree with those beliefs, in a civil manner.

With the utmost respect, I am imploring the Law Society to approve the TWU law school accreditation and ensure reason rules the day and lawyers and law professors respect what the law says.

Sincerely,

Philip Fourie, B.L.C., LL.B., M.Env.Mgmt. (Dist.)
Partner, Kirkby Fourie Law Firm

In my view, the TWU has the right to decide about the paradigms and lifestyles it favours within its premises and Canadian lawyers of Hispanic descent and our professional associations should not seek to block or boycott its accreditation. Respect for diversity should also include those who stand for traditional marriage between one man and one woman. This model has as much value as the model proposed by LGBT groups. And in this case they are transparent about their position so we should not punish them for that.

The Canadian legal community of Hispanic descent is itself a diverse one. Supporting the agenda of LGBT groups against the TWU on the issue of accreditation is not illustrative of that diversity and has the effect of leaving many voices unrepresented.

Because I stand for diversity and there is no actual harm done to the LGBT community in being transparent about the core values favoured by the TWU, I support its accreditation to become Ontario's newest law school.

Marcelo L. Garcia

Dear Sir or Madam:

I am writing to ask that the *Law Society of Upper Canada* refuse accreditation for Trinity Western University's law program.

It is without question that Trinity Western University requires its students to sign a covenant agreeing to abstain from any same sex relationship. Any student wishing to attend TWU's law school would be required to sign the same agreement.

TWU's covenant requires that students abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". There are "formal accountability procedures to address actions by community members that represent a disregard for this covenant." The TWU Student Handbook provides that "[if] a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's re-admission to the University.

This policy plainly discriminates against any gay, lesbian, bi-sexual or transgendered students. This blatant bigotry cannot be permitted in a civilized society, and least of all by a profession that serves a broad and diverse community.

I strongly feel that it is our obligation as lawyers to make it clear that we do not agree with the discriminatory practices at TWU, practices that are in clear breach of the *Charter of Rights and Freedoms*.

Our voice should be unified and clearly heard on this important subject. I thank you for the opportunity to make this submission.

Respectfully,

Patricia Garcia

March 27, 2014

By Fax: 416 947 7623

Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Attn: Policy Secretariat, TWU Submissions

Dear Honourable Benchers,

Re: Trinity Western

I write as a former criminal and family lawyer, now law professor, member of both the Law Society of Upper Canada and the Law Society of Saskatchewan, legal historian, former Associate Dean of Osgoode Hall Law School and the current Academic Director of the Parkdale Community Legal Services.

Respectfully, the Law Society of Upper Canada should not accredit Trinity Western's law school pursuant to Section 7 of By-law 4.

I could make legal arguments and pedagogical arguments.

I will simply say here that if a covenant like the one proposed by Trinity Western existed when I went to law school, the ranks of today's bar and judiciary of several provinces – gay and straight - would be much thinner.

Thank-you in advance for your consideration,

Professor Shelley A. M. Gavigan

By Email to jvarro@lsuc.on.ca

TWU Submissions
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

March 27, 2014

Dear Law Society of Upper Canada,

As a concerned citizen of Canada, I write in support of the approval of Trinity Western University (TWU) to receive accreditation for a proposed law school by both the BC Ministry of Advanced Education and The Federation of Law Societies of Canada. Law protects TWU's Community Covenant definition of marriage that is being challenged. It guarantees that religious institutions have the right to define marriage according to their religious beliefs without punishment or loss of benefits otherwise available in the public marketplace. The position your organization is considering against TWU Law School graduates is unlawful according to The Charter of Rights in Canada. A decision against the Charter of Rights legislation will also be setting a precedent of discrimination of persons and institutions in the communities you serve. This is the same Charter that protects the rights of opponents to TWU's Law School.

In a submission to provincial law societies regarding TWU's approval, the statement below was submitted within a document:

No matter where a lawyer is educated, what law school they graduate from, or what <u>their personal, political or religious beliefs are</u> – every lawyer is bound by a duty to uphold the Rule of Law, the Charter of Rights and Freedoms and human rights legislation and adhere to our Code of Conduct that prohibits lawyers from discriminating in their professional duties.

Opponents to TWU Law School are discriminating against TWU graduates based on their belief system, not their qualifications as approved by the Federation of Law Societies of Canada.

As a member of a pharmacy profession that polices the actions of its members, I understand your Provincial Law Society's role to ensure ethical behavior of its members. Members must submit to their professional covenant and are reprimanded based on their ACTIONS and not their beliefs. This is the expectation the public has of professional governance associations. I request that you keep this role in the forefront of your decision around TWU graduates.

TWU graduates have served their communities locally, nationally and globally in many roles. I am thankful that TWU Law graduates will have the opportunity to practice their law profession in the public marketplace.

Sincerely,
Darcia Hansen B.Sc. Pharm, RPh

Kelly P. Hart B.A. LL.B.
261 Jersey Tea Circle
Ottawa, ON K1V 2L5
Phone: 613-822-8704

March 28, 2014

BY EMAIL to jvarro@lsuc.on.ca

Policy Secretariat
Law Society of Upper Canada Osgoode Hall
130 Queen Street W.
Toronto, ON
M5H 2N6

Dear Policy Secretariat:

RE: Accreditation of Trinity Western University School of Law Program

I am writing in support of Trinity Western University's School of Law Program approval and accreditation by the Law Society of Upper Canada.

I write this letter from the perspective of being an alumnus of Trinity Western University, where I graduated with a Bachelor of Arts degree in Political Science in 2002. I thereafter applied for, and was accepted by, five law schools, including the University of Ottawa, University of Western Ontario, University of Windsor, University of Manitoba and University of Alberta. I chose to attend the University of Ottawa's English Common Law program, and graduated in 2006.

Upon completion of my articles with the Ottawa litigation boutique firm, Williams McEnery, I was proud and privileged to be called to the Bar of the LSUC in 2007. I then returned to Williams McEnery, where I have been practicing as a civil litigator for the past seven years.

Having attended TWU I can confidently say that it is an academic community that robustly fosters a diversity of backgrounds, thought and debate. The very essence of the University is to develop students who are critical thinkers not afraid to challenge norms, and who are encouraged to wrestle with the issues of the day in a vigorous yet respectful manner.

I am also a proud alumnus of The University of Ottawa School of Law. I cannot say enough good things about my experience at U of O and how the professors there not only taught me as an emerging professional, but continued to develop my critical thinking skills.

Having had thus the experience of a post-secondary education at both a public institution and a private institution, (and indeed the very institution at issue), it is with some irony that I now come to address the apparent consternation that some have expressed about the approval of TWU's School of Law. The irony being that it was my personal experience that TWU in fact fostered the expression of a greater diversity of opinion on a whole range of social and ethical issues than the diversity of opinion I encountered as a student at the University of Ottawa.

The concerns raised by those opposed to TWU's law program seem to be premised on a misguided view of the learning and community environment at TWU.

TWU is unique in Canada in that it is unapologetically a private University founded upon Christian beliefs and values. Those who choose to apply to and attend TWU are aware that in doing so they will be asked to agree to a set of community standards. These standards include

agreeing to abstain from premarital sex, in the context of either a heterosexual or homosexual relationship. The standard applies equally all students, regardless of how they identify themselves sexually.

Quite simply TWU does not discriminate in accepting LGBT students. During my time at TWU I had friends who were gay and who were quite willing and able to abide by the same community standards that I did as a heterosexual student. They were prepared to join a vibrant academic and faith community, even though not all their personal beliefs on sexual orientation or marriage accorded with that of the institution. They still believed TWU to be the right school for them for the many other reasons that it has been recognized as an outstanding place to learn.

During my time at TWU I cannot remember a single occasion where a member of the faculty, administration or student body belittled, ostracized or demeaned any student who held a divergent view. Rather I found the TWU to be a tolerant and supportive place to study and grow both for myself and for those friends of mine who were gay.

It is concerning that the LSUC is being asked by some to oppose accreditation of TWU's School of Law based solely upon the fact that its students, who have voluntarily chosen to attend TWU, have signed its community standards pledge based on their common religious beliefs. This is unacceptable and short sighted.

It would not seem a far stretch that if the LSUC rejects TWU's accreditation, that in fact the very ability for TWU undergraduates to apply for and attend law school in Ontario, and be called to the bar in Ontario would be jeopardized. What of then persons such as myself, a TWU graduate, who is already practicing law in Ontario in good standing? Is my license to practice law in Ontario to be revoked based on my unsuitability to practice as a person of faith who attended an institution which shared my personal religious beliefs?

The result of a rejection of the TWU School of Law would be an implied quashing of dissent in not only the legal community, but the academic community across Canada. This resistance to dissent would not only affect Christian students, and lawyers, but also those of other faiths, the majority of whom hold similar beliefs to most Christians on issues of morality and marriage. The fear of dissent and debate cannot, and should not, trump the rights of those Canadians who wish to learn in an academic community of their choosing.

The presence of a law school at TWU, whose students agree to abide by a set of community standards during their attendance, does not inhibit the belief system of those who do not choose to be educated in that environment. The presence of a law school at TWU rather allows for the very diversity of opinion and thought that is needed in Canada to ensure that as a pluralistic society, each person has the opportunity to freely associate, freely express their religious views and freely learn in the environment of their choosing.

With that said, I strongly encourage you to vote in favour of Trinity Western University's Law School program and I welcome questions by any member or bencher of the LSUC with regards to the above.

Yours truly,

KELLY P. HART B.A. LL.B.

HOLA
Hispanic Ontario Lawyers' Association
390 Bay Street, Suite 802
Toronto, ON M5G 2Y2

March 27, 2014

Via Email

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Sir/Madam:

Re: Trinity Western University

The Hispanic Ontario Lawyers' Association (HOLA) is an organization of legal professionals identifying as Hispanic or Latin American. We seek to promote awareness of issues affecting the Hispanic legal community across Canada, as well as to strengthen and create opportunities for the advancement of those within the Hispanic legal community in Canada.

We are aware of Trinity Western University's (TWU) efforts to establish an accredited law school. As an organization which values and seeks to protect the opportunity of individuals in our country to enter the legal profession regardless of race, creed, religion, or sexual orientation, we feel the need to express concern over this potential accreditation.

We have had the opportunity to review the Federation of Asian Canadian Lawyers' (FACL) statement on the issue, (a copy of which is attached for your reference), and write to express agreement with FACL's position. HOLA adopts and endorses FACL's call for the Law Society of Upper Canada to reject or place conditions on TWU's accreditation in Ontario, and asks the LSUC to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Sincerely,

Marcela Saitua
Executive Director, HOLA
MAS/
Encl.

FACL Speaks Out Against the Approval of the Trinity Western University Law School in British Columbia

As an organization aimed at promoting equity, justice and opportunity, FACL strongly opposes the Federation of Law Societies of Canada's (FLSC's) recommendation that provincial law societies approve Trinity Western University's (TWU's) proposed law school program. FACL is also disturbed by the B.C. Minister of Advanced Education's hasty approval of TWU's law degree program the day after the FLSC concluded its protracted and closed-door process.

Specifically, FACL is of the view that the TWU Community Covenant Agreement, that is required to be signed by all TWU faculty, staff and students, is discriminatory. The Community Covenant Agreement includes a requirement to abstain from "sexual intimacy that violates the sacredness of marriage between a man and woman" and provides TWU with the reserved rights to question, challenge or discipline its members in response to actions that impact personal or social welfare. Past iterations of the Community Covenant included a requirement to refrain from practices that are biblically condemned, including homosexual behaviour.

The mandatory requirement to enter into the Community Covenant Agreement as a condition to school admission and employment at TWU has the effect of excluding applicants from the lesbian, gay, bisexual, transsexual and transgender communities and negatively impacts upon the human dignity of persons in these communities.

FACL believes that all law schools across Canada must create a forum for free exchange of ideas, premised upon inclusion, tolerance, respect and opportunity for equal participation. FACL further believes that law schools and the institutions that authorize the creation of these schools must act in the public interest and ensure that their policies and practices adhere to the principles of the Canadian Charter of Rights and Freedoms and provincial and territorial human rights legislation.

FACL agrees with the Council of Canadian Law Deans that, "Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools."

FACL calls upon the provincial law societies and government decision makers across Canada, to act in the public interest and to reject TWU's application for accreditation of its law school program and to withdraw all approvals and consents on the basis that its policies and practices are discriminatory and contrary to the principles of human rights law in Canada. In addition, FACL advocates for the inclusion of a non-discrimination policy as a condition that all law schools must adhere to in order to maintain its accreditation.

WILLIAM H. HURLBURT, LL.D (Hon), Q.C.

515, 10107 - 111 Street NW
Edmonton, Alberta
T5K 2Z1

March 24, 2014

The Treasurer and Benchers
Law Society of Upper Canada
Toronto, Ontario M5H 2N6

Dear Sirs/Mesdames:

Introduction

This letter is tendered for consideration by Convocation of LSUC in the process outlined in the Lawyers Weekly of March 14, 2014, page 3, under the heading **"LSUC benches to rule on Trinity Western University accreditation"**.. It gives my views about the current controversy over the admission or rejection by provincial Law Societies of graduates who obtain law degrees from the proposed law school of Trinity Western University.

I am a past president of the Law Society of Alberta and of the Federation of Law Societies of Canada. I do not suggest that this history gives me standing or a platform, but, despite the intervening decades, it does establish that I have an interest in the affairs of the legal profession.

I am neither homosexual nor homophobic.

The question

According to the Lawyers Weekly, the active part of the question to be considered by Convocation is: "should the Law Society of Upper Canada now accredit TWU"?

In my submission, this is not the right question because it results in a focus on the institution rather than on the individuals whose qualifications for admission to the practice of law are to be assessed. I think that the better question is that which is set out in the first paragraph of the Lawyers Weekly piece: "whether graduates of the law school proposed by Trinity Western University will be permitted to practise in Ontario", or for that matter in any province.

What FLSC has provisionally approved

What is given preliminary approval is the proposed academic program, which the Federation found to meet the educational requirements of the National Requirement for an Approved Canadian Law Degree, and the Federation will keep TWU's teaching of ethics and public law under review until the first students are graduated. The Federation has not approved the

educational institution nor the Community Covenant, being subjects that fall outside its mandate.

The problem

I am not sure exactly what the debate is about, as I have not seen in so many words the "Community Covenant"that is required of its students by TWU and that appears to be the centre of the controversy. However, as I understand it, in terms, the Community Covenant is a self-imposed restriction on the personal conduct of a subscriber to the Covenant. The restriction, as differentiated from an underlying attitude, would not affect the ability of the subscriber to practise law competently and ethically, and, unless something more flows from it, the existence of the Covenant therefore does not provide a valid reason for refusing to allow a person who observes the restrictions to practise law in Alberta.

Such a covenant excludes the whole of mankind, with one exception, from sexual relations with the covenantor. It excludes heterosexuals to precisely the same extent as homosexuals. It affects only the personal sexual conduct of the covenantor. While such a covenant could be a reflection of an underlying homophobia, I do not see how, by itself, it can be considered homophobic or to be grounds for exclusion from the practise of law.

It may be that there is a general view that TWU is homophobic in other ways. If Convocation is to rule that that is so, in my submission the grounds should be stated and specific references made.

Effect on individuals

I assume for the moment that the law societies should exclude homophobes from admission to practice. If the covenant against sexual relations outside marriage is considered homophobic, or if there is evidence that shows that TWU otherwise endeavours to inculcate homophobia, there will arise a question as to whether individual TWU law graduates will be infected with homophobia.

It does not seem to me that exposure to homophobia necessarily, or even on a balance of probabilities, infects each individual who is exposed to it. To exclude all TWU law graduates from admission to practice because they have put in time in a homophobic atmosphere seems to me to be jumping to a conclusion of unfitness without evidence about the effect on the individual.

I think that it is highly likely, though I have no specific evidence, that in a law society of any considerable size, including the Law Societies of Alberta and Upper Canada, there will at any time be dozens of homophobes, as that is an attitude that is quite common, and lawyers are not immune to bad public attitudes. Nobody, so far as I know, canvasses applicants for admission as to whether they hold homophobic views. For the law societies to make a blanket exclusion of TWU graduates without individual evidence, while not taking any steps to identify and exclude other applicants who hold homophobic views, would seem to me to be discrimination of a kind that the regulators of the legal profession should not engage in.

Should the Law Societies exclude applicants with bad attitudes?
In any law society, there will be lawyers who are anti-Semitic, anti-Muslim, anti-Catholic and so on. While good character is a required qualification for admission to practice, the Law Societies do not go into such prejudices in a general way. I have not heard of a case of exclusion from admission on such grounds.

Even if a lawyer has a prejudice against a specific group that is based on sexual orientation or race, it does not follow that they cannot practise law capably and ethically, and if they fail to do so, the Law Society is there to deal with the specific case. I do not see how a Law Society can set itself up as an arbiter of moral qualities .generally, and if it does not do so I do not see how it can justify imposing a blanket restriction on prospective TWU law graduates on grounds of suspected homophobia. Indeed, the Supreme Court in Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, thought that TWU graduates could act properly as teachers.

Conclusion
I do not think that a case has been made that would justify the Law Societies in refusing graduates of the law school proposed by Trinity Western University permission to practise law in a province of Canada.

Yours truly,

Telephone (780) 452 1305
E-mail wh1@ualberta.ca

W.H. Hurlburt

1. [

Policy Secretariat,
Law Society of Upper Canada
Osgoode Hall

Surely, the irony of this situation is not lost on anyone within the Law Society of Upper Canada. Ours is a secular society. Human rights are protected under our laws - secular laws. Without them, I, a Jewish, lesbian, woman, could find myself excluded from institutions like Trinity Western Law School. Today, it would be for my sexual orientation, but tomorrow it could be because I'm a woman, or because I am Jewish. In our society, exclusion for any one of those attributes is anathema and must continue to be rejected, or conversely, the rights protected. I am a woman whose contribution to Canada has been recognized in various ways, not least of which is as a Member of the Order of Canada. Please, do not accredit an institution that could overtly or covertly deny admissions to people on ground of their sexuality.

Sincerely,

Valerie Hussey

Toronto, ON

I find it unfortunate that the Federation of Law Societies approved the law school in the first place.
I do not think that LSUC should duplicate the error.
TWU should be free to hold homophobic views, but those views do not have to be endorsed by a public body such as the LSUC.
LSUC should vote AGAINST accreditation.

Shin Imai
Associate Professor
Osgoode Hall Law School

Kensington-Bellwoods Community Legal Services
489 College Street, Suite 205, Toronto, Ontario M6G1A5 ☎ 416 924-4244 ❑ Fax 416 924-5904
www.kbcls.org

March 28, 2014

Attn: Treasurer and Members of Convocation

Policy Secretariat (TWU Submissions)
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON. M5H 2N6

RE: TRINITY WESTERN UNIVERSITY ACCREDITATION

Dear Treasurer and Members of Convocation,

Kensington-Bellwoods Community Legal Services is a diverse poverty law clinic, assisting low-income residents in the downtown-west Toronto region. Fundamental to the social justice work we promote, be it through our clients' matters or our commitment to public legal education, are ideals of socio-legal equality, equity and anti-oppressive practices.

As a staff comprised of lawyers, paralegals and community leaders, we appropriately take direction from the Law Society of Upper Canada; particularly in our obligations to serve the public with integrity, honour, civility and utmost professionalism. Access to *just* opportunities and outcomes for clients and peers, is fundamental to the professional obligations and privileges we enjoy, as legal professionals.

Equally, as Benchers of the LSUC, you are not only collectively expected to uphold the integrity of the profession, but you are uniquely-situated to further influence its priorities. The legal community depends on the elected leaders of our self-regulating body to dictate what values will and will not comprise acceptable practice.

Accordingly, our clinic shares the views of numerous submissions you have received to date: in strong opposition of the proposed accreditation of Trinity Western University, in light of its expressed intent to contravene the professional integrity of our profession!

Exclusion in the form of a "*Community Covenant Agreement*" explicitly discriminates against a specific protected group or individual. It is strictly unacceptable and dangerous to empower an institution seeking accreditation with the authority to cultivate and practice such discriminatory and oppressive ideologies.

Intolerance and discrimination towards past, present and future peers, staff colleagues, leaders and allies in the legal community is simply not congruent with model professional ideals of lawyering. Advocates do not enter our privileged profession to accelerate prejudice and inequality. To the contrary, we are committed to remedying injustices.

Kensington-Bellwoods Community Legal Services, comprised of a legal staff in good standing with the Law Society of Upper Canada, is united in urging the April 10th and April 24th, 2014, Convocation benchers to act swiftly and with appropriate balance. Convocation shall consider suspending any vote of the TWU proposal until the impugned covenant is either abolished or significantly amended. Related amendments shall comport with fundamental human rights principles, by ceasing to discriminate against any equality-seeking members of society, both overtly and by effect.

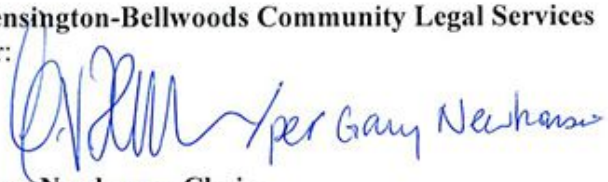
Should a vote persist on the 24th of April, aligned with their obligations to the integrity of the profession, we implore benchers to vote robustly against the voting question, thereby refusing to accredit the TWU application.

Discrimination on the basis of sexual orientation or identity can neither be tolerated, nor promoted in Canadian society. Legal academia, the institutional training ground for future legal professionals, can be no exception.

We look forward to a progressive decision from the Law Society of Upper Canada on this important issue and appreciate the opportunity to participate in the process. Should you require any further information, please feel free to correspond with the clinic.

Sincerely,

Kensington-Bellwoods Community Legal Services
per:



Gary Newhouse, Chair
Board of Directors

donald
william
kilpatrick
(ba llb)barrister & solicitor

100 fullarton street
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March 28, 2014

Mr. Thomas G. Conway
Treasurer
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Mr. Conway,

I am writing to the Law Society of Upper Canada about the question to be dealt with by Convocation in April as to whether the Law Society should accredit Trinity Western University ("TWU") pursuant to Section 7 of By-Law 4 and, thereby, allow graduates of its proposed law school to be licensed to practice law in Ontario. The following are my submissions.

1. TWU Should Not Be Accredited

The Law Society of Upper Canada should not accredit the law school that TWU proposes to establish.

2. The Reasons

Neither the Federation nor the Law Society of Upper Canada should recognize a law school that is not open to Canadians who would otherwise satisfy normal academic qualifications. TWU is not a university that is open to all Canadians.
The website of TWU contains the following statement in the section entitled "About TWU":

"The mission of Trinity Western University:

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

phone: 226-777-2220
fax: 226-777-0070
dwk@donaldkilpatrick.com

Law schools in Canada should be nondenominational and should be open to all Canadians. How many thousands of Canadians would not be candidates for a law school with this kind of mission statement?

As well, TWU's five page community covenant agreement clearly excludes thousands of Canadians by its requirement that members of the TWU community voluntarily abstain from "*sexual intimacy that violates the sacredness of marriage between a man and woman*", (the footnoted authority being Romans 1:26-27; Proverbs 6:25-35).

The community covenant agreement effectively excludes from TWU's student body not only thousands of lesbian, gay, bisexual, transsexual and transgender Canadians but also thousands of heterosexual Canadians living in common law relationships.

The fact that the Federation has given conditional approval to TWU to establish a law school does not mean that we in Ontario should also approve such school. To do so would be to ignore obvious, i.e., that such a law school would exclude thousands of Canadians and that that exclusion would be contrary to Charter values and the core beliefs of our liberal democratic society.

The TWU community may sincerely believe that they are justified in excluding from their campus Canadians whose sexual lives do not meet the biblical standards by which they, the TWU community, aspire to live. However, if TWU establishes a law school whose graduates are destined to become members of the provincial and territorial bars of this country, no Canadians should be excluded from their law school by reason of either their sexual orientation or by not being legally married to their partners, regardless of how sincerely the TWU community may believe that their principles come from God.

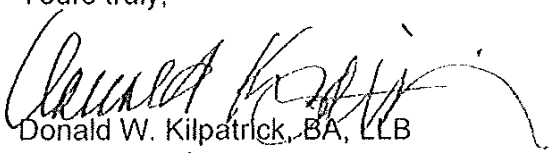
The Bible prohibits sexual relations that many Canadians consider to be normal and acceptable and that are not illegal. The question is whether a sincere belief by the TWU community about what constitutes proper human sexual behaviour should entitle TWU to establish a law school and exclude from attending their school those who do not accept TWU's sexual mores, particularly as discrimination on the basis of sexual orientation is prohibited in the public sphere in Canada.

Once they establish a law school, TWU enters the public sphere and, in my opinion, the answer to the question is clearly no.

Biblical arguments have been made in the past to justify the human behaviour that today are considered abhorrent, including the enslavement of Africans and anti-Semitism. The Law Society would never consider accrediting a law school that attempted to justify the exclusion of Black Canadians or Jewish Canadians on the basis of religious belief. To do so would be unthinkable. Proposing that the Law Society accredit TWU's proposed law school is equally unthinkable. There is no difference.

Those are my submissions.

Yours truly,



Donald W. Kilpatrick, BA, LLB

DWK/cb

March 28, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Mr. Treasurer and Members of Convocation:

Some of you may know me as an associate at Paliare Roland Rosenberg Rothstein LLP or as a board member of the Metro Toronto Chinese and Southeast Asian Legal Clinic.

In this letter, I am writing in my personal capacity on Trinity Western University ("TWU")'s application for accreditation with the Law Society of Upper Canada ("LSUC"). Fully aware of your collective role as administrative decision-makers, I have refrained – with the exception of this letter – from expressing my views on this matter, in person or otherwise, to any member of Convocation.

As a member of this law society and a member of the public, I wish to express my serious concern with the prospect of the accreditation of TWU's law school with the LSUC.

TWU's Admission Policy Constitutes Discrimination

TWU requires its students, faculty members and staff to sign a Community Covenant Agreement (the "Covenant"), under which they undertake to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." Students, faculty members or staff who violate the terms of the Covenant are subject to expulsion or dismissal. There is no doubt the purpose and the effect of the Covenant are to exclude LGBTQ persons from applying to or living openly as themselves within TWU.

As many submissions have already made amply clear, TWU's Covenant – and its consequential admissions and hiring policies – constitutes a discriminatory practice, inconsistent with the Canadian *Charter of Rights and Freedoms* and provincial human rights legislation.

As Elaine Craig, professor of law at Dalhousie University, has rightly pointed out – TWU is allowed to operate in British Columbia only as a result of a quirk in that province's human rights legislation.[1] Section 41(1) of the BC *Human Rights Code* constitutes a

[1] Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program", (2013) 25 CJWL 148 at 156.

broad exemption for religious organizations to prefer members of their organization.[2] While the Ontario *Human Rights Code* contains its own exemptions, at ss. 18 and 24(1)(a), the jurisprudence is not clear that the exemptions would permit a law school similar to TWU's program to operate in Ontario.[3] At the very least, there is a live concern that TWU's discriminatory admissions policy, were it to operate in Ontario, would be contrary to the public policy of this province.

There is certainly a broader concern that TWU's admission policy would be contrary to the public policy of Nova Scotia, Manitoba, Saskatchewan and Alberta, under their respective human rights legislation.[4]

The Supreme Court's Decision in Trinity Western is Distinguishable

The Federation of Law Society's report granting conditional approval of the TWU program relies heavily on the Supreme Court of Canada's 2001 decision in *Trinity Western v. B.C. College of Teachers* ("*Trinity Western*"). While having some bearing to the matter at issue, *Trinity Western* is distinguishable from the matter at issue, on several grounds.

(a) First, in its 2012 decision in *Doré v. Barreau du Québec*, the Supreme Court confirmed that administrative decisions – including a decision by a professional regulator as to whether to approve a program – must consider *Charter* values.[5] The BC College of Teachers in *Trinity Western* were under no obligation to consider *Charter* values.

(b) Second, the Supreme Court in its 2013 decision in *Saskatchewan v. Whatcott* rejected the "hate the sin, love the sinner" justification, employed by TWU in its submission before the Supreme Court in 2001.[6] The notion that the Covenant does not constitute a discriminatory act because it condemns behaviour and not persons, is not a tenable defence.

(c) Finally, the legal and social landscape has changed dramatically in the last 12 years – such that the balancing exercise between protecting religious freedom and protecting individuals from discrimination on the basis of sexual orientation has changed.

    In 2001, same-sex couples were forbidden to marry anywhere in Canada, and it had only been 6 years that LGBTQ persons enjoyed the protection of s. 15 under the Charter.[7]

[2] *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 41(1).
[3] *Human Rights Code*, R.S.O. 1990, c. H. 19, ss. 18, 24(1)(a).
[4] Craig, *supra*, 156.
[5] *Doré v. Barreau du Québec*, [2012] 1 SCR 395 at para. 34.
[6] *Saskatchewan Human Rights Commission v. Whatcott*, 2013 SCC 11 at paras. 121-123.
[7] *Egan v. Canada,* [1995] 2 S.C.R. 513.

> Once thought of as inconceivable, in the last decade, a majority of the courts of appeal in Canada – including Ontario's – ruled that restrictions to same-sex marriage were unconstitutional, culminating in an amendment to the statutory definition of marriage by Parliament in 2005. In 2001, only one country in the world recognized same-sex marriage. Today, 17 countries – nationwide – recognize equal marriage, along with countless subnational jurisdictions.
>
> Since 2001, human rights codes at the federal and provincial levels have been amended to explicitly include protections on the grounds of gender identity and gender expression.
>
> In addition to the evolving jurisprudence in relation to same-sex marriage, courts have increasingly become more protective of LGBTQ persons in criminal law – in rejecting, for instance, the gay panic defence.[8]
>
> Public opinion polls have testified to the dramatic change in public opinion in favour of sexual minorities. Once maligned and unknown, LGBTQ persons are increasingly taking their place as equal and accepted members of Canadian society.
>
> Not unlike past social debates about the role of women and racial minorities in Canadian society, the public's notion of the role of courts in relation to LGBTQ persons has evolved – such that the public increasingly expects courts and administrative decision-makers to intervene in order to prevent discriminatory conduct.
>
> Simply put, we no longer live in the Canada of the year 2001 – and we should not be beholden to the logic of that time.

With the greatest of respect, it is not in the public interest to accredit a program that openly discriminates against a marginalized and stigmatized minority. To be frank, it is not clear that this matter would be as "controversial" if the target of the discrimination were women or a racialized minority. For the foregoing reasons, I would strongly urge Convocation to oppose or place conditions on TWU's accreditation, so long as TWU maintains a discriminatory admission policy.

With warm regards,

Gregory Ko

[8] E.g. *R. v. Tran*, 2010 SCC 58 at para. 34.

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Policy Secretariat
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via email: jvarro@lsuc.on.ca

Re: Trinity Western University request for accreditation of JD studies

Dear Mesdames and Sirs,

The Law Society of Upper Canada has been asked to accredit the JD program proposed by Trinity Western University (TWU) to permit its graduates to be admitted to practice in Ontario. This letter is to urge you to reject this application due to TWU's discrimination against gays and lesbians, other sexual minorities, unmarried heterosexual couples, and women students who may need abortions, as set out in its Community Covenant regulating its hiring and admissions policies. These discriminatory policies make TWU unfit to prepare students for their role in upholding the rule of law and the human rights and equality principles that underlie our legal system in their careers as lawyers.

This letter focuses on the public nature of TWU's undertakings in education to ensure that sufficient information on this issue appears before you. Comments on the direct harms that would be experienced by all TWU students enrolling in any JD program regulated by the terms of the Community Covenant are also included.

I University disciplinary rules are subject to the *Charter of Rights*

In 1986, the Supreme Court of Canada stated that the *Charter* applies both to government action and to 'many forms of delegated legislation, regulations, orders in council, possibly municipal by-laws, and by-laws and regulations of other creatures of Parliament and the legislatures,' such that '[w]here such exercise of, or reliance upon, governmental action is present and where one private party invokes or relies upon it to produce an infringement of the Charter rights of another, the Charter will be applicable.'[1] Since 1990, it has been clear that universities could be subject to *Charter* scrutiny when performing public functions or activities that are governmental in nature,[2]

[1] *RWSDU v Dolphin Delivery Ltd*, 1986 CanLII 5 (SCC), [1986] 2 SCR 573, 33 DLR (4th) 174, par. 46.

[2] *McKinney v University of Guelph*, 1990 CanLII 60 (SCC), [1990] 3 SCR 229, 76 DLR (4th) 545, per LaForest J. at par. 42, L'Heureux-Dube J. at par. 471, Sopinka J. at par. 436, Wilson and Cory

and that even a private entity implementing 'a specific statutory scheme or a government program' can be subject to review under the *Charter* in respect of those acts.[3]

In 2012, the Alberta Court of Appeal concluded in *Pridgen* that universities fall within the scope of *Eldridge* because providing post-secondary education carries out a specific government objective.[4] Adopting Wilson J.'s conclusion in *McKinney* that 'education at every level has been a traditional function of governments in Canada,' the court quoted her at length:

> It is beyond dispute that the universities perform an important public function which government has decided to have performed and, indeed, regards it as its responsibility to have performed. ... Moreover, justification for state activity in this area is not hard to find. The state's interest in education in today's society does not and cannot stop at the point of ensuring basic literacy. The promotion of higher learning and the provision of access to opportunities for study at this level is clearly in the public interest. The state readily acknowledges the important role universities play not only in the education of our young people but also more generally in the advancement and free exchange of ideas in our society. [par. 272]

The court went on to conclude that particularly when universities impose disciplinary sanctions on students, they 'must be *Charter* compliant.' [par. 105], particularly when they regulate student speech or association 'in the context of non-academic misconduct,' which it found is 'analogous to the regulation of expression by professional regulatory bodies' [par. 107]:

> [108] ... The relationship between a university and its students, at least when it comes to misconduct of a non-academic nature, has a public dimension that is missing in purely private situations. ... That expression has as much a public dimension as does advertising for dental services (*Rocket*) or the manner in which veterinarians may hold themselves out to the public (*Bratt*). Moreover, the regulation of non-academic misconduct on a university campus ensures a standard of behaviour in a public institution for the benefit of the public generally, not just for some narrow and arguably outdated conception of a community of scholars. ...
>
> [109] Moreover, access to post-secondary education is a pressing public concern. The sanctions available to the Review Committee here, which include denial of access to public post-secondary education for the affected students, can have consequences as serious for one's ability to practice in one's chosen field as the actions of a professional regulator. *In the case of many professional schools, such*

JJ. at par. 273.

[3] *Eldridge v British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 SCR 624, 151 DLR (4th) 577 at par. 44.

[4] *Pridgen v University of Calgary*, 2012 ABCA 139 (CanLII), <http://canlii.ca/t/fr7w6> retrieved on 2014-03-28, at par. 102.

> *as medicine, dentistry or law, the university acts as gatekeeper to the profession as much as any regulatory body.* [emphasis added]

While the university in *Pridgen* was a public university, the Court of Appeal stressed the complex relationships between universities, society as a whole, and governments. In particular, the court found that universities rely heavily on government supports of various kinds, and that governments increasingly look to universities in meeting governmental objectives of enhancing everyone's 'social, cultural and economic well-being through participation in an accessible, responsive and flexible post-secondary system':

> [120] It would also be wrong to overlook the changing relationship between universities, government, private industry and the public generally. Universities have cultivated partnerships and other similar collaborative relationships with government and industry. Universities are heavily reliant on state funding, as well as on funding from private and corporate donors. Their role in society has become more prominent, public and accessible. Today, universities are an integral part of our societal fabric, offering opportunities for learning and research to a diverse student body for the benefit of all Canadians. To suggest that institutional autonomy is undermined by their relationship to government or "other outside influences" including industry, ignores that those relationships already exist, appear to have been embraced by, if not fostered by, universities and do not appear to have diminished the institutional autonomy so highly valued by them. [par. 121]

In its decision, the Alberta Court of Appeal also relied on *Doré* in pointing out that 'the protection of Charter guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it.' [par. 126]

In finding that the university in *Pridgen* had violated student rights with its disciplinary actions, the appellate court emphasized that even in an administrative proceeding, *Charter* values fundamental to student security must be taken into consideration – 'access to education, fostering an environment of open exchange of ideas, the prevention of incivility, intimidation, disrespect and fear, and the fostering of a safe environment to discuss and debate contemporary issues within and among a diverse student body' – in balancing student *Charter* rights with the governmental policy objectives being carried out by the university. In *Pridgen*, the court decisively concluded that the university made no effort to balance student *Charter* rights under section 1 of the *Charter* with the university objectives, but 'denied the existence of those rights entirely.' [127]

II TWU is an integral part of the BC post-secondary system that is designed to implement the provincial government's educational objectives

It is clear from the terms of the BC *Degree Authorization Act* [5] and the establishment of the Degree Quality Assessment Board that the BC government has taken steps to ensure that both private and public post-secondary institutions meet the BC government's public policy objectives in relation to its post-secondary educational system as an integrated whole:

> Degree Quality Assessment Board
>
> The Degree Quality Assessment Board (the DQAB, the Board) was established by the Ministry to meet the statutory requirement under the Degree Authorization Act (DAA) for a quality assessment process.
>
> The Board conducts quality assessment activities to ensure new proposed degree programs at both private and public post-secondary institutions meet consistent and high quality criteria. The Board is informed by government priorities and exercises its duty to address the following public policy objectives:
>
> - Increasing learner choice;
> - Ensuring quality education in degree programs;
> - Promoting a coherent and integrated post-secondary system; and
> - Promoting the protection of learners' interests and ensuring appropriate use of publicly funded student financial assistance
>
> The Board makes recommendations in support of the Minister's statutory powers to approve new degree programs at BC's public post-secondary institutions and those authorized under the DAA.[6]

These government objectives regarding post-secondary education are further elaborated in the terms of reference of the Degree Quality Assessment Board:

> Degree Quality Assessment Board - Strategic Direction
>
> The Board is informed by terms of reference and by government priorities and will exercise its duty to address public policy objectives by:
>
> - conducting quality assessment processes to ensure that new proposed degree programs at both private and public post-secondary institutions meet consistent and high quality criteria;

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[5] SBC 2002, ch. 24, assented to May 9, 2002, s. 3, at http://www.bclaws.ca/Recon/document/ID/freeside/00_02024_01 .

[6] British Columbia Ministry of Advanced Education, 'Degree Authorization: Degree Quality Assessment Board' at http://www.aved.gov.bc.ca/degree-authorization/board/welcome.htm.

- recommending to the Minister the policies, criteria and guidelines that will apply for the purposes of giving or refusing consent/approval or attaching terms and conditions to consent; and,
- performing other duties that may be requested by the Minister such as monitoring of institutions with consent to offer degree programs under the DAA.[7]

While the integration of the post-secondary system in BC remains a work in progress, Trinity Western University is treated more like one of the province's public post-secondary institutions than like the other institutions regulated by the *Degree Authorization Act* in key regards. For example, the regulations under the *Degree Authorization Act* exempt TWU from providing financial security to ensure that revenue shortfalls will not abruptly disrupt degree programs,[8] and treat TWU teaching programs as automatically exempt from five-year reviews in the same manner as extends to BC public university programs.

Under the procedures implementing the *Degree Authorization Act*, the BC government accepted TWU's 2003 application for exempt status under the Degree Quality Assessment regulations on the basis, *inter alia*, of these representations concerning its 'mission and policies,' including its Community Covenant and disciplinary procedures:

> TWU's programs are designed to prepare students thoroughly for either further study or for entry into a career in an environment of constant change.
>
> TWU is committed to engage students and faculty members in enhancing their intellectual and scholarly development through the exercise of critical reflection, judgment, and action, and *to experience commitment as a process of the internalization of values, character development, and moral behaviour*. ...
>
> Regarding academic freedom and responsibility, TWU models itself after a Danforth Foundation study which concluded that openly "faith-affirming" institutions can make valuable social and academic contributions to society and academia if they present fully, competently, and fairly the development and range of human learning in each discipline and *the normal personal development objectives of a liberal arts curriculum*, and if their faculty members are willing and able to accept the responsibility to prepare students to make their own informed choices. The University has a high regard for honest investigations and gives fair and balanced access to a broad range of representative viewpoints. It upholds respect for truth and human dignity, doing so within a distinctively Christian perspective. TWU's "Academic Freedom" statement is posted and in the

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[7] British Columbia Ministry of Advanced Education, 'Degree Authorization,' at http://www.aved.gov.bc.ca/degree-authorization/board/strategic-direction.htm.

[8] *Degree Authorization Regulation*, B.C. Reg. 405/2003, O.C. 1067/2003, s. 2, at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/405_2003.

> faculty handbook and in the University calendar at http://www.twu.ca/ac/archive/20032004/ai.asp.[9]

This application was duly approved by the BC Ministry of Advanced Education.

When TWU submitted its application for permission to establish a JD program, it did not discuss this aspect of its mission and values. Instead, it emphasized what could be described as distinctly secular justifications for its particular program and for the need for additional law school spaces.

At the program level, TWU emphasized that throughout the JD program, its students would be encouraged to actively engage in legal clinical work, internships in BC and elsewhere, and professional placements at various locations, including at the TWU Ontario campus in Ottawa, where interns in other of TWU's programs spend time working for MPs and government departments.[10]

At the 'marketing' level, all but one of the detailed submissions relating to 'need' for another JD program, 'demand,' 'targeting markets,' and 'marketing venues' made no mention of the religious or faith issues that had been outlined in the degree review exemption document filed in 2003. Instead, this part of the submissions made it sound like TWU's JD program would expand the supply of law school spaces just like all those currently available, with the small exception of a 'faith focus.'

With respect to 'need' for the TWU law program, the university provost stated:

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

Similar submissions were made to establish 'demand' for TWU's proposed 60 annual spaces. After reviewing applications and admissions numbers for BC, the submission culminated with the contention that 'Many qualified candidates have been forced to look for international options for a legal education,' and cited the fact that there were at least 150 Canadian students enrolled in the Bond University law program in Australia. Submissions outlining 'target markets' also referred to generic demand, listing not only TWU graduates but also students attending other BC

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[9] Trinity Western University, 'Notice of Intent, Degree Quality Assessment Exempt Status,' Nov. 20, 2003, at https://www.aved.gov.bc.ca/psips/public/report/document.jsp (emphasis added).

[10] Trinity Western University Office of the Provost, 'Program Proposal: Juris Doctor,' Apr. 29, 2012, at https://www.aved.gov.bc.ca/psips/public/report/document.jsp.

universities and students from universities across Canada, and then adverting again to the fact that applications 'currently vastly outnumber the spaces available' and minimizing reference to its appeal to students who might be interested in a 'faith focus.'

In short, the case made for approving a new JD program at TWU was made in overwhelmingly secular non-faith terms that gives the strong impression that it is being pursued to meet public need and demand for legal services and improved access to justice – the same basis on which Queen's University Faculty of Law, for example, recently decided to increase its annual JD enrolment by 35 students.

III TWU and its students have equal access to all federal and substantial provincial/ territorial sources of post-secondary funding that are available to public universities and their students

In addition to the powers given to TWU to operate degree-granting university programs, the university and its students have equal access to all forms of federal funding extended to public universities and their students by the federal government, and to all but one form of provincial/territorial funding (per student operating and capital grants) extended to public universities and their students. These include numerous tax exemptions and forms of special tax treatment at all levels of government, access to operating, capital, and student grants, and access to interest-free educational loans for students. The one category of government funding not available to TWU is direct provincial funding.

It should be emphasised that TWU is not a registered religious organization. The registration forms and annual tax forms that TWU files with the Canada Revenue Agency state that it has been granted this special tax-favoured status on the basis that it is a 'charitable organization' because it was formed to advance 'education.'[11] Although TWU can report up to three primary areas of programs to achieve its charitable purposes, it reports only one program area: 'Universities and colleges, 100%.'[12] This is the same basis on which universities classified as 'public' hold and use charitable status.

Based on information available for TWU's 2013 fiscal year, the total value of all these forms of financial support came to over $21 million for that year, which is approximately 31% as much as TWU's total expenditures for the year. Not all of these amounts went directly into the hands of TWU; some of them went directly into the hands of its students to reimburse them for amounts already paid directly to TWU for tuition and books, or to third party providers for living expenses during the academic year. Details of these forms of financial support are as follows:

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[11] Canada Revenue Agency, 'Canadian Registered Charities - Detail Page: Trinity Western University,' accessed via http://www.cra-arc.gc.ca/ebci/haip/srch/charity-eng.action.

[12] '2013 Registered Charity Information Return for Trinity Western University,' accessed via http://www.cra-arc.gc.ca/ebci/haip/srch/charity-eng.action.

Income tax exemptions: As an accredited BC university, TWU has the right to operate without any federal or provincial/territorial income tax liability in Canada and the US.[13] The latter exemption is important, because TWU has established a charitable foundation in Washington state that is used to receive donations in the US. If the TWU US foundation had to pay federal or state income tax on those receipts, the total after-tax amount available for transfer to TWU's Canadian accounts each year would be significantly smaller. The statutory basis on which these exemptions are allocated is no different than for public universities.

GST and sales tax rebates: TWU is eligible for a rebate of 67% of all GST paid because it is classified as a 'public service body.' This is consistent with the requirement that a university, which is established to provide 'public benefits' to the community in the charitable category of 'education,' be permitted to claim these rebates. These GST rebates, and their parallel provicincial sales tax rebates (reinstated when BC repealed its HST), are the same rebates extended to public universities as 'public service bodies.'

Property tax exemptions: Provincial/territorial rules regarding property tax exemptions vary. Langley BC provides for standing exemptions for university properties, so these exemptions are not listed in the municipality's annual lists of permissive property tax exemptions. Each BC town has its own Community Charter, but the same treatment would be given to public universities located in this municipality.

Income tax credits for charitable donations: As a registered charitable organization, TWU can provide tax receipts for contributions that produce income tax credits at both the federal and provincial/territorial levels of income taxation. Both individuals and corporations can donate in amounts up to 75% of their income for the year, but the contribution limit can be increased when donations in kind trigger income tax liability for the donor arising out of either taxable capital gains or recaptured depreciation arising from such transfers.[14] These tax benefits can take various forms depending on the specific type of item donated, and can take the form of deductions, non-refundable tax credits, or full or partial exemption from capital gains tax liability that would otherwise have to be paid.

In its 2013 fiscal year, TWU reported that it received total tax-receipted charitable donations of $5.5 million. Using very conservative estimations assumptions (all donations tax-credited at the combined federal and BC charitable donation rates of 20.06%), TWU's donors would have received at least $1.1 million in federal and charitable tax credits to partly reimburse them for those donations.[15]

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[13] *Income Tax Act* as amend. s. 149; US, *Internal Revenue Code* s. 501(c)(3).

[14] *Income Tax Act*, as amend., ss. 110.1, 118.1.

[15] '2013 Registered Charity Information Return for Trinity Western University,' accessed via http://www.cra-arc.gc.ca/ebci/haip/srch/charity-eng.action.

In 2013, TWU also received $1.5 million in gifts transferred from other charities to itself.[16] Without knowing details as to the origins of those contributions, the same conservative assumptions are used in valuing the cost to federal and provincial/territorial governments as above. These transfers put an additional $0.3 million into the hands of TWU donors, effectively reimbursing them for part of what they had given to TWU.

Direct cash grants from federal, provincial, and municipal governments: Since 2009, TWU reports having receiving direct grants from all three levels of government that, over the five years, came to a total of $7.3 million. Detailed breakdowns of these items are not readily accessible, and the amounts reported to the CRA in the TWU charities returns do not completely square with items reported elsewhere. For example, in 2009, TWU reported to the CRA that it received just under $1 million from federal and provincial governments, but there was widespread media coverage of a $2.6 million grant from the federal government from its Knowledge Infrastructure Plan to TWU, and it is well known that such infrastructure funding is not available without 'matched' contributions from other levels of government or private donors.[17] Whether this $2.6 million included the $50,920 federal contribution to the restoration of TWU's Ottawa campus building in 2009 is also unclear.[18] Nor is it clear whether the research funding via the federal university chairs program of $0.5 million per year are included in these totals, or in scholarship totals.[19]

In recent years, the annual average government contributions reported by TWU to the CRA have ranged from a $3.1 million in 2011 to $1.4 million in 2013. All of the programs producing these funds are equally available to TWU and to public universities across Canada.

Provincial student grants and interest-free loans: BC has integrated its student financial aid programs with federal programs so that students attending accredited universities can make one application to both funds in the same process. The loan components of this type of aid are interest-free while students are in continuous fulltime academic attendance. Using very conservative estimates of how much use TWU students make of this source of funding (33% of students borrowing 67% of the maximum annual $12,000 loan, with interest foregone calculated at 0% prime + 6%), this relieves TWU students of a minimum of $250,000 in interest payments per year. If any grant components are also available from the BC government for TWU students, that would be added to this estimated minimum benefit. This type of funding and financial relief

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[16] '2013 Registered Charity Information Return for Trinity Western University,' accessed via http://www.cra-arc.gc.ca/ebci/haip/srch/charity-eng.action.

[17] 'Three areas at TWU will benefit from the Knowledge Infrastructure Program,' Aug. 9, 2009, at https://twu.ca/about/news/general/2009/what-is-kip-funding.html.

[18] 'Canada's Economic Action Plan invests in heritage infrastructure at John R. Booth Residence National Historic Site,' Aug. 10, 2009, at http://www.pc.gc.ca/APPS/CP-NR/release_e.asp?bgid=1179&andor1=bg.

[19] For details of TWU's research professorship chair funding, see https://twu.ca/research/chairs-and-professorships/canada-research-chairs/.

for ongoing educational expenses is equally available to TWU and public university students, and BC residents can use this funding to attend programs located in other provinces/territories, including TWU's Ottawa campus programs.

Federal and provincial income tax credits for tuition, educational living expenses, and books: Students attending TWU are equally entitled to claim tax credits for their educational expenses. These are non-refundable credits, so students can transfer them to their parents or other qualifying adults to 'cash' them out. The combined federal and provincial creditable rate is 20.06%, which suggests that for 2013 alone, based on reported tuitions paid, students would have received a total of $8.85 million in refundable credits, and for living expenses and books, based on costs posted on the TWU website, another $1.8 million in federal and provincial tax credits for living expenses during the academic year and the costs of textbooks.

This comes to some $10.7 million in refundable credits that would directly reduce the costs of TWU education by way of transfers from Canadian taxpayers. These types of credits are equally available to TWU students and to students at public universities in BC or elsewhere in Canada.

Federal and provincial tax exemption of research grants and scholarship funds: TWU reported in its detailed CRA charitable financial statements that it provided a total of $12,749,606 in scholarships and research grants as part of its charitable activities in 2013. These amounts are not taxable so long as the scholarship funds are applied to direct educational or research costs. The tax benefits to students who did not have to pay federal or provincial taxes on these amounts because of TWU's accredited educational charitable status saved them an estimated $2.4 million in total taxes in 2013, significantly increasing their ability to cover their university expenses with this assistance as compared with after-tax proceeds were TWU not accredited. This tax treatment is equally available to all university students across Canada.

IV LSUC accreditation of the TWU JD program would make the LSUC complicit in actively oppressing TWU students during their studies and after graduation

The TWU Community Covenant is by its very terms binding on students on campus and off, wherever they go, whoever they are with. Based on my personal experience as a law professor in Ontario, I know that students who enter into JD programs may not have come out yet, or may have decided to attend law school as closeted individuals who will decide whether it is safe for them to come out while in law school. In my opinion, given the very high demand for JD program spots (over 30,000 applications filed for 2,683 Law I JD positions in 2013), there is nothing 'hypothetical' about expecting that many students will enter a TWU JD program not being aware that they are destined to identify as lesbian, gay, bisexual, transgender or transsexual, intersex, two-spirit, or an ally of sexual minorities. Nor it is at all speculative that students could well choose to attend TWU in order to gain access to a JD degree with the strong personal resolve to remain in the closet while in law school, but find that they cannot carry through on that plan.

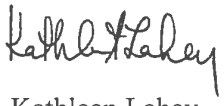
The Community Covenant requires personal adherence to the tenets of the contract by all members of the TWU community. Such students will be under an affirmative duty to disclose themselves to the university should they violate the Covenant, and risk expulsion. Or such students will be required to stifle their identities in order to avoid violating the covenant.

These would both be very serious matters. Students who stifle their true selves will experience lifelong harm from doing this. Students who do not disclose their violations of the covenant will live with the self-knowledge of serious dishonesty throughout their careers, the risk of discovery, and, if they become members of a law society, they will then be at self-risk and risk of professional dishonour should they have violated the covenant but not revealed this at the time or after the fact when applying to the bar.

Such self-help measures expose such students to lifelong risk of intimidation, pressure, coercion, or loss of careers should they out themselves or be outed by others.

These are not speculative harms. When I was a JD student, I knowingly attended a religious law school but was assured that it had no anti-lesbian policies. When I was well into Law I, I was given materials provided by the state law society to fill out, have notarized, and file in order to begin the process of character and fitness review and registration as intending to join the bar on graduation. I had not had any idea that any such papers would be filled out in Law I. One of the forms required me to swear that I was not a homosexual. In an instant, both myself and my very beloved partner recognized that we had to forego our relationship and our lesbian identities because we could not risk ever lying to gain admission to the bar. I lived faithfully by that decision until that bar rule no longer existed. I have never completely healed from that experience. It was extremely damaging and painful, and exposed me to fear and trepidation throughout.

Very truly yours,



Kathleen Lahey
Professor

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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March 28, 2014

BY EMAIL jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Sirs/Mesdames:

Re: Trinity Western University – Covenant and a Law School

We write pursuant to the Law Society of Upper Canada (Law Society) inviting submissions to assist Benchers as they consider a proposal for a new law school at Trinity Western University in Langley British Columbia (TWU).

It is commendable that the Law Society has invited submissions, notwithstanding the Report of the Special Advisory Committee to the Federation of Law Societies and the decision on accreditation by the BC Government.

Lawyers' Rights Watch Canada

LRWC is a committee of lawyers and law students (with membership, and governance among the members of the LSUC) who promote human rights and the rule of law internationally through education, legal research and advocacy for lawyers and other human rights defenders in danger because of their advocacy. LRWC has special consultative status with the Economic and Social Council of the United Nations. . More information about the work of LRWC is available at http://www.lrwc.org.

LRWC hopes these submissions assist the Benchers in their consideration of the complex and difficult issues posed by the TWU proposal.

Facts

LRWC assumes the reader will have had the benefit of numerous other summaries of the facts set out in earlier submissions and publications such as:

a) The submissions of the office of the President of the Canadian Bar Association covering the submissions of the Sexual Orientation and Gender Identity Conference and Equality Committee of the CBA, both dated March 18, 2013.

b) The memorandum of law by John B. Laskin of Torys LLP directed to the Federation of Law Societies of Canada dated March 21, 2013.

c) The submission of Kevin G. Sawatsky, Vice-Provost and University Legal Counsel for Trinity Western University dated April 24, 2013 and submitted to the Federation of Law Societies.

d) The published paper, *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program,* by Elaine Craig, and published by the Canadian Journal of Women in the Law, Volume 25, No. 1 (2013) pp.148-170

e) The *Final Report of the Federation of Law Societies' Special Advisory Committee on Trinity Western's Proposed School of Law,* dated December 2013 and published on December 16, 2013.

f) Submissions of the Deans of Law dated November 20, 2012, and

g) Numerous other submissions and reports.

We are not aware of any significant disagreement in respect of any significant fact.

The Benchers will be aware that, as a condition of employment with TWU or admission into one of its programs, TWU requires students, faculty and staff to sign its Community Covenant Agreement. The Covenant requires those who sign to limit "sexual intimacy" to the context of marriage between opposite genders. The Covenant applies both on and off campus and violations may lead to disciplinary sanctions including dismissal in the case of faculty and staff and removal in the case of students. The precise wording is "If a student, in the opinion of the University, is unable, refuses, or fails to live up to their commitment, the University reserves the right to discipline, dismiss or refuse the students' readmission to the University" (at page 23). The Covenant contains no definition of sexual intimacy. The Community Covenant Agreement is available online at http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf.

Result Being Sought by LRWC

LRWC takes no position in respect of TWU's proposal for a new law school other than in respect of the Covenant. As a result of TWU's ambition to impose the Covenant, LRWC urges that the Law Society deny TWU support and that the Law Society actively pursue reversal of any governmental accreditation granted allowing TWU to issue Juris Doctorate (JD) degrees. For clarity, if TWU were to withdraw its requirement that faculty, staff and students sign the

Community Covenant Agreement, then LRWC would take no position in respect of TWU's proposed law school.

The fact that the Federation of Law Societies has issued a Final Report, rapidly followed by a decision of the BC Provincial Government appears to pose special challenges for the Law Society.

However, given that the process leading to the *Final Report of the Federation of Law Societies' Special Advisory Committee on Trinity Western's Proposed School of Law* (Federation Report) was both secretive and otherwise flawed, it is submitted the Law Society should, in the first instance, make its own decision without taking the Federation Report into account. Then, if the Law Society denies TWU's application, we submit that the Law Society should seek withdrawal of the requirements respecting the Covenant from TWU. If that is not forthcoming, the Law Society should invite all governmental authorities to rescind or refuse accreditation of TWU's proposed law school. If that is not forthcoming, the Law Society, likely in concert with others, should seek judicial review of any decision to grant TWU the authority to issue JDs.

Argument

Application of the Charter

The difficulty with this case stems primarily from the fact that an earlier decision failed, as have advocates and decision-makers, for various reasons, to apply the *Canadian Charter of Rights and Freedoms* (*Charter*) to the question of suitable criteria for admission to law school in all of the circumstances. Strangely, neither advocates nor decision-makers appear to have recognized that the *Charter* must apply. For example, page 3 of the submission to the Federation of Law Societies of Canada by the Sexual Orientation and Gender Identity Community (SOGIC) states:

> "As a private institution, Trinity Western is not subject to the *Charter*."

It is absolutely correct to state that TWU is a private institution. However, that is not the end of the matter. There is a line of Supreme Court of Canada decisions in respect of matters to which the *Charter* applies, interpreting Section 32 of the *Charter,* starting with the decision in *R.W.D.S.U. v. Dolphin Delivery Ltd.*, [1986] 2 SCR 573 (*Dolphin Delivery*) and including the decision in *McKinney v. University of Guelph* [1990] 3 SCR 229 (*McKinney*) and the decision in *Douglas/Kwantlen Faculty Association v. Douglas College* [1990] 3 SCR 570 (*Douglas College*). Those three decisions, which are all good law, support the appropriate analysis. The Supreme Court of Canada in *Douglas College* decided, after reviewing the governance of Douglas College in detail, that Douglas College was an arm of Government and therefore Douglas College was subject to the *Charter* in all it does. As a body where the government effectively had substantial control over day to day functions and power to intervene, Douglas College was found to be "simply in form and in fact part of the apparatus of government" (p. 571) In contrast, on the same day, the Supreme Court of Canada decided in *McKinney* that the University of Guelph, was not sufficiently governmental to warrant application of the Charter to all the activities of the University but was subject to the *Charter* in respect of its governmental functions. Similar issues have arisen with hospitals and transit authorities.

The Supreme Court of Canada decided that the *Charter* applies to a Law Society in *Black v. Law Society of Alberta* [1989] 1 SCR 591. In that case, mobility rights were at issue and the constitutional questions were whether rules limiting partnerships serving to restrict national firms infringed mobility rights guaranteed under Section 6(2)(b) of the *Charter* and secondly, whether those rules could be justified under Section 1 of the *Charter*. The Law Society's decisions respecting who could or should be a member of the Law Society of Alberta (whether they were disqualified if they formed partnerships with Toronto law firms) was an issue that was subject to the *Charter.* The Court applied the *Charter* to the Law Society's decision.

Here, the Law Society has, as an integral part of its duty to protect the public interest, the authority and duty to determine who is qualified to practice law and to ensure that there is non-discriminatory access to admission to the bar. In exercising that jurisdiction, the Law Society must consider and apply the *Charter*.

For practical purposes, the question of who will be admitted to the practice of law depends on who graduates from an accredited law school. For practical purposes, "the gate" to becoming a member of the bar in Canada is admission to law school. As a practical matter, very few students admitted to law school fail to graduate and very few graduates from Canadian law schools who seek admission to the Bar are ultimately denied admission. The small percentage of students who fail to meet the law society's criteria are permitted to reapply. For practical purposes, the Law Society has delegated its jurisdiction in respect of the suitability of candidates for admission to the Bar, and has entirely delegated it to the law schools almost as much as the Courts have delegated their gate-keeping role which is now vestigial. To our knowledge, no judge presiding over a "Call to the Bar" ceremony has actually exercised any criterion or discretion whatsoever for many decades. The question of qualifications to practice law, as a matter of statutory authority resides with the Law Society, but as a matter of practical convenience, resides with the law schools on any functional analysis. The same is true of numerous other professional disciplines such as medicine, engineering and dentistry. As a result of the foregoing, when exercising the delegated statutory power of decision as to who can be admitted to the bar (and therefore to the bench), the question arises whether the law schools are subject to the *Charter*. It is not an answer to say the party to whom the statutory power of decision has been delegated--the law school--is part of a private entity. Neither Government nor the Law Society can escape *Charter* scrutiny by the simple expedient of delegating its authority to a private entity. That entity to which the statutory duty is delegated remains subject to the *Charter*, whether or not it is private, if that entity is performing a governmental function.

As a result of the foregoing, the Benchers must consider whether the decision to admit some candidates to law school and deny others admission is a sufficiently governmental function to attract *Charter* scrutiny. If the answer is yes then the question becomes whether requiring compliance with the Community Covenant is a breach of the *Charter* and it plainly is a breach of Section 15 and others. The question is then whether the breach is a "limit prescribed by law that is demonstrably justified in a free and democratic society" so as to be "saved" i.e., qualify as an exception under Section 1 of the *Charter*.

The Benchers are aware of the vital importance of adequately qualified lawyers in the operation of a legal system. Equally, the Benchers are aware of the crucial importance of suitably qualified lawyers to the existence and operation of the Rule of Law. It is submitted that a suitably qualified

independent Bar is absolutely necessary to the Rule of Law. Such a Bar is as important as a suitably qualified independent judiciary, not least because the judiciary is made up of candidates selected from the Bar. The importance of a suitable and independent Bar cannot be overemphasized. The question of suitability is a matter entirely delegated (because of the necessity of independence) by the government to the Law Society. The Law Society cannot, by further delegating that responsibility, shirk or avoid *Charter* scrutiny. It is hard to imagine a more quintessentially "governmental" function than "quality control" respecting the necessary elements to the Rule of Law to which our profession is and must be entirely dedicated.

Breach of the Charter

Once it is established that the *Charter* applies to the gatekeeper function proposed to be shouldered by TWU, and assuming TWU persists in requiring adherence to the Covenant, the question arises whether the TWU bar preventing admission or graduation of applicants unable to adhere to the Covenant constitutes a breach of the *Charter*, in particular Section 15. In *Law v. Canada (Ministry of employment and Immigration)* [1999] 1 SCR 497, Iacobucci J. speaking for the Court held that determination of discrimination under Sub-Section 15(1) should involve the following three broad inquiries:

1) Does the impugned law draw distinction between the claimant and others on the basis of one or more personal characteristics or fail to take into account the claimant's already disadvantaged position resulting in substantively differential treatment on the basis of one or more personal characteristics?

2) Is the claimant subject to differential treatment based on one or more enumerated and analogous grounds?

3) Does the differential treatment discriminate by imposing a burden upon or withholding a benefit from the claimant in a manner that reflects the stereotypical application of presumed group or personal characteristic or that otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration?

Sexual orientation is such a characteristic and that the effect, if not the purpose, of the Covenant is the very sort of discrimination identified by Mr. Justice Iacobucci's three inquiries.

LRWC adopts the SOGIC submission of March 18, 2013 in the following terms:

> The fact that no student may ever be expelled for breaching the Covenant's sexual intimacy rules is not determinative. As acknowledged by the Supreme Court of Court in *Vriend v. Alberta* [1998] 1 SCR 493 ("Vriend"), the mere fear of discrimination may in and of itself cause serious psychological harm: "Fear of discrimination will logically lead to concealment of true identity and this must be harmful to personal confidence and self-esteem [...] The potential harm to the dignity and the perceived worth of gay and lesbian individuals constitutes a particularly cruel form of discrimination" [*Vriend* paragraph 102 emphasis added by SOGIC]

> The same may be said of the fact that the Covenant reportedly targets sexual behaviour as opposed to sexual orientation as Justice L'Heureux-Dubé wrote in her dissenting opinions in *TWU* which was just endorsed by the unanimous court in the *Saskatchewan (Human Rights Commission) v. Whatcott* 2013 SCC 31 ("*Whatcott*").
>
> > I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the 'sexual sin' of 'homosexual behaviour' from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin [...] The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected' [...] [emphasis added] [*Whatcott* paragraph 123]

To bar entry to, or graduation from, law school on the basis of sexual orientation is a breach of Section 15 of the Charter as that section has been interpreted by the Supreme Court of Canada.

Are the Breaches Saved Under Section 1?

Section 1 of the Charter provides:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The first requirement that comes to be considered is whether the imposition of the Covenant can be seen to be a "limit prescribed by law." Here there would be a host of serious problems for TWU seeking to save their Covenant from the consequences of a *Charter* breach by invoking Section 1. A "limit prescribed by law" must be a definite and defined pre-existing "law". Imposition of the Covenant would be vulnerable to the argument that it is not a "law" but rather a contract, at best, hopelessly vague. Further, the proponent of such a "limit" would have to be a great deal more specific about what is meant by "sexual intimacy" to have the restriction qualify as a written "limit prescribed by law". It is not clear exactly what is meant. Sexual intimacy takes many forms. The appropriate scrutiny will not allow vagueness or generalizations, out of shyness or some perverse decency. What exactly is prohibited? The proponent can't raise the subject and then fail to be clear, as has been required by the Courts in their construction of the term "limit."

Even if the Benchers were to give the stipulation the benefit of the doubt in respect of being a "limit prescribed by law", the limit must also meet the criteria of being "demonstrably justified in a free and democratic society," established by the Supreme Court of Canada in *R. V. Oakes*, [1986] 1 S.C.R. 103 (the *Oakes test*).

The *Oakes* test has four branches and it is submitted that, to the extent we can determine, they are not met. The first branch is the requirement that the limit on the Charter right serve a "real and substantial need". Law schools admit homosexuals, lesbians, bisexuals and transgendered individuals and accept such persons as staff and teachers without any difficulty whatsoever. The Covenant clearly cannot be said to fill a real and substantial need or a public interest in limiting such people from graduation and practice.

It does not seem that the "need" arises from the operation of a law school. If the "need" were argued to arise from the desire of persons adhering to Evangelical Christian doctrine to associate only with adherents to their religion, why would the law school welcome Hindus and Buddhists and even Christians and Jews who do not share TWU's interpretation of religious beliefs? It is submitted that there is no "real and substantial need."

The second branch is that there be a rational connection between the limit and the objective, i.e., the real and substantial need. It is difficult to imagine how a rational connection could be argued but it will depend on the "real and substantial need" identified as the objective by the proponent of the Covenant.

Under the third branch, the "law" must impair the *Charter* freedoms to the minimum extent consistent with pursuit of the real and substantial objective. This branch fails for lack of such an objective. The final branch is the proportionality branch whereby the benefits of the limit are weighed against the deleterious effects of abridgement of the fundamental freedom. It is submitted that the imposition of the Covenant does not pass the *Oakes test*.

Failure to Apply the Charter

Since this argument departs from other advocacy by relying directly on the *Charter*, we pause in our argument to explain why other advocates' arguments have not relied on the *Charter* breaches. Much of the discussion leading to the "Federation Report" has focused on the decision in *TWU v. B.C. College of Teachers* [2001] 1 SCR 772 (*Teachers*). While the Supreme Court of Canada considered *Charter* values in that case, the case was not directly a Charter case. This is apparent from paragraphs 26 to 27 of the reasons. There, *Charter* values came into play but it is noted that the Court in *Teachers* "...was not directly applying either the *Charter* or the province's Human Rights legislation when making its decision,..." [paragraph 27, page 808]

As a result, there was no Constitutional Question defined by the Supreme Court of Canada, in accordance with its practice in *Charter* cases. Presumably, notice to Attorneys General under the *Constitutional Questions Act* was not provided. Here, we apply for an order foreshortening to non-existence the notice requirements under the *Constitutional Questions Act* and acceptance that this submission constitutes the required notice to the Attorney's General/Minister of Justice of Canada and Ontario as required under the *Constitutional Questions Act.* Copies of this submission are being forwarded to both Attorneys General. It is submitted that it is appropriate to treat this present submission as notice under the *Constitutional Questions Act* and we invite input from Federal or Provincial Attorneys General.

It is submitted that it is precisely because the matter was not considered as a *Charter* case by the Supreme Court of Canada that an appropriate *Charter* analysis was not conducted in the *Teachers* case. Further, it is submitted the opinion prepared for the Federation of Law Societies by John Laskin of Torys LLP in the form of a memorandum was explicitly only addressing the application of the *Teachers* decision to TWU's application for the Federations' "blessing". The opening words of his memorandum make it clear he is limited by his instruction to an assessment of the effect of the *Teachers* decision. His opening paragraph reads as follows:

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

And this limitation carries through to the Federation Report, perhaps based upon the Laskin Memorandum.

Balancing Charter Rights and Freedoms

The finding that TWU's Covenant creates a discriminatory bar to one route through the "gate" to become a member of the Bar is a breach of Section 15 equality rights that is not saved by Section 1 of the *Charter*, is not the end of the matter. TWU claims that disallowing the Covenant as a prerequisite would also be a "governmental action" attracting *Charter* scrutiny under Section 2(a) of the *Charter*, "freedom of conscience and religion".

The nature of the *Charter* right and freedom under Section 2(a) of the *Charter* will be discussed in the next section. For present purposes, LRWC acknowledges that TWU raises a separate *Charter* section and that, if more than one *Charter* section applies and might superficially be seen to mandate or direct different or opposite outcomes, then the *Charter* rights must be balanced and reconciled.

Various commentaries have pointed out that the leading Supreme Court of Canada case on reconciling separate *Charter* rights arose in *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835 (*Dagenais*). In that case, the fair trial rights of Mr. Dagenais and three other Christian Brothers under Sections 7-11 of the *Charte*r came into collision with the freedom of expression rights of CBC wishing to broadcast the *Boys of St. Vincent* fictional drama, which rights were under Section 2(b) of the *Charter*. Lamer CJC for the majority, under heading "Rejecting a Clash Model", set out, in detail, numerous considerations raised by a publication ban on fair trial rights, and freedom of expression (at page 882-4).

On the authority of *Dagenais*, it is submitted that the Benchers should seek to reconcile and balance the dictates of any apparently competing *Charter* rights, in a manner similar to that undertaken by Chief Justice Lamer.

Freedom of Religion

The essence of Freedom of Religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal and the right to manifest religious belief by worship and practice or by teaching and dissemination. This section also affords protection against governmental coercion in matters of conscience and religion. Whatever else freedom of conscience and religion may mean, it means at the very least that the government may not coerce individuals to affirm a specific religious belief or to manifest a specific religious practice for a sectarian purpose. The *Charter* protects not only the right to hold and manifest beliefs, but also the right to express and manifest religious non-belief and to refuse to participate in religious practice (*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295).

In his paper *Freedom of Religion Under the Charter of Rights: The Limits of State Neutrality*, (2012) vol. 45:2 U.B.C. L. Rev. 497, Richard Moon addresses freedom of religion under the *Charter*.

At the outset of his paper, Professor Moon discusses change in the course of dealing with freedom of religion over time. He states:

> Freedom of religion, understood as a liberty, precludes the state from compelling an individual to engage in a religious practice and from restricting his or her religious practice without a legitimate public reason. In later judgments, however, there has been a shift in the courts' description of the interest protected by the freedom – from liberty to equality. According to the courts, the freedom does not simply prohibit state coercion in matters of religion or conscience; it also requires that the state treat religious belief systems or communities in an equal or even-handed manner. The state must not support or prefer the religious practices of one group over those of another religion or at least religious contest should be excluded from politics), and it must not restrict the practices of a religious group, unless this is necessary to protect a compelling public interest (religion should be insulated from politics). (pgs. 497-8) [Footnotes omitted]

However, Professor Moon finds that the state cannot be neutral in respect of some items of belief. He says:

> The state's commitment to sexual-orientation equality, even though framed in secular or civic terms, must be understood as a rejection of the belief that homosexuality is wrong.
>
> The problem is that the state cannot remain neutral on important issues of values. While the state may avoid passing direct judgment on the truth of a particular religious belief (as religious truth), it cannot avoid doing so indirectly when determining public policy. When the legislature decides that corporal punishment is wrongful and should be prohibited, it does not frame its judgment in terms of what God has or has not commanded. But unless we maintain an entirely artificial separation of law and religion, or of public and religious morality, the legislature's judgment must be understood as a rejection of the religious view that corporal punishment is right or moral. To use another example, if the state is committed to gender equality and affirms this value in anti-discrimination and other laws, it must be understood as rejecting the view, religious or otherwise, that women are not equal to men or should be treated differently from men in contexts such as employment. … [L]aws sometimes include exemptions from their ordinary application for the practices of religious institutions or communities – for example, when a religious school is permitted to engage in a practice that would ordinarily breach anti-discrimination laws, such as dismissing a teacher who is divorced or gay; but even when the law exempts the "internal" operations of a religious community from the application of a public norm, it is not adopting a stance of neutrality towards the particular religious belief, but is simply creating space for private judgment or creating a zone for autonomous action by the community.

> The second problem with the courts' formal commitment to neutrality is that they may sometimes try to avoid finding a conflict between a religious value or practice and a public value or practice by adopting a narrow or distorted interpretation of one or the other. The courts have sought to avoid finding that a widely accepted religious practice is contrary to public policy, in some cases by interpreting narrowly the religious value or practice so that it does not conflict with the law, and in other cases (or at the same time) by narrowing the scope of the law or public value so that it does not interfere with the religious value or practice. Notably, both approaches have been used to deal with the tension in public or publicly funded schools between the commitment to sexual-orientation equality and respect of deeply held religious beliefs. (at pg. 542) [Footnotes omitted]

In respect of the decision in *Teachers*, Professor Moon states:

> The Court in the *TWU* case seemed to rely on a narrow conception of sexual-orientation equality and a limited view of the role and impact of teachers.
> …
>
> The Court in *TWU* appeared to be unwilling to confront the anti-homosexual content of the TWU program. The most obvious explanation for this is that the Court wanted to avoid rejecting, directly, the religious view that homosexuality is sinful, or at least to avoid excluding from the schools teachers who held this view. But even if the general community must tolerate the expression of a wide range of views, including some that are sexist, racist, or homophobic, it does not follow that the schools should remain neutral on these issues, or that all individuals, regardless of their religious beliefs, can effectively perform the role of teacher, and even more obviously, that a teacher-training program that affirms anti-gay views should be accredited. The Court downplays the teacher's role and describes sexual-orientation equality in narrow terms (narrower than that relied on in other judgments), as a matter of toleration rather than affirmation, to avoid the conclusion that a particular religious teaching program does not adequately prepare its graduates to serve as teachers in the public school system. They do this, I suspect, because they think that the state fails to treat religious believers with equal respect when it explicitly rejects their beliefs. (pgs. 546-547) [Footnotes omitted]

LRWC adopts the arguments of Professor Moon. LRWC proposes that the Benchers consider that:

(a) the Law Society cannot be neutral in respect of the issue of whether homosexuality is wrong;

(b) the *Teachers* decision relied on a narrow conception of sexual-orientation equality; and

(c) the Supreme Court of Canada appeared not to confront the anti-homosexual content of the Covenant.

The academic papers of Richard Moon have been repeatedly acknowledged to have influenced the Supreme Court of Canada's *Charter* jurisprudence.

Balancing

The classic reconciliation of competing rights, in our culture, was well expressed by John Stuart Mill. Essentially, the individual should have liberty up to the point at which his or her liberty impinges on the rights and interests of others in the society. The Covenant is intended to limit sexual intimacy as the price for admission to TWU`s proposed law school. The effect of imposition of the Covenant is to limit the liberty of people aspiring to practice law. It deserves repetition that there is no necessary connection relevant to public interest between operation of a law school and a limitation of sexual intimacy to opposite genders during marriage.

It is instructive to see how the question of balancing discrimination with respect to sexual orientation, with freedom of association and of religion, is addressed in by the American Bar Association in *2012-2013 ABA Standards and Rules of Procedure for Approval of Law Schools.* Standard 211 prohibits discrimination with respect to sexual orientation, but it also raises the possibility that private religious-based institutions may invoke the First Amendment's implied right of expressive association as a means to override the prohibition against discrimination. (Section 211(c)). One of the best analyses of this section is contained in a somewhat dated but incisive paper, Gerdy, Kristin B. *Irresistible Force Meets the Immovable Object: When Antidiscrimination Standards and Religious Belief Collide in ABA-Accredited Law Schools*, OR. L. Rev. 85 (2006): 943. Gerdy poses the question whether religious-based law schools in the U.S. qualify for an exemption to anti-discrimination standards, where the criteria for exemption are those in the Boy Scouts of America case. Of special note is the discussion of the third criterion where the test is whether objection to discrimination based on sexual orientation has reached a "compelling level":

> But in the end, rightly or wrongly, an interest in eliminating discrimination based on sexual orientation and homosexual conduct has not yet reached the compelling level that the elimination of racial discrimination had reached at the time of the *Bob Jones University* decision – the level sufficient to overcome the religious expressive association rights. Although the majority of Americans likely believe that discrimination based on sexual orientation is wrong and even morally reprehensible, such discrimination has not yet been recognized by the [U.S.] Supreme Court as the type that "violates deeply and widely accepted view of elementary justice." And it is not the case that there is "a firm national policy to prohibit...discrimination [based on sexual orientation] in public education." As a result, the interest in eliminating discrimination based on sexual orientation and homosexual conduct is not sufficiently compelling to overcome religiously based expressive association rights. [Footnotes omitted]

Accordingly, the question resolves to whether, now, in Canada, the interest in eliminating discrimination based on sexual orientation is sufficiently compelling to overcome religiously-based expressive association rights.

It is submitted this is a moving target. As recently as 1967, in *Klippert v. The Queen*, [1967] S.C.R. 822, the Supreme Court of Canada dismissed an appeal by Mr. Klippert from a finding that he was a dangerous sexual offender worthy of indefinite incarceration where there was no violence or coercion, but simply admittedly consistent homosexuality. The Canadian interest in

eliminating discrimination has radically increased at an accelerating rate since then. The statements made then by our governing national court and their implications almost seem to be a foreign language now. A language that TWU invokes.

In *Vriend* and a number of other cases cited above, the Supreme Court of Canada has clearly and strongly stated that discrimination on the basis of sexual orientation "violates deeply and widely accepted view of elementary justice," to quote Gerdy. In Canada in 2014 opposition to discrimination on the basis of sexual orientation is compelling.

Application of Human Rights Legislation

While the principal argument of LRWC is based upon the *Charter,* that does not detract from the argument that the proposed imposition of the Covenant constitutes a breach of human rights legislation in Ontario, beyond the scope of this submission.

Conclusion

The Benchers should decide that imposition of the Covenant as a condition of admission to or graduation from the proposed law school would constitute a breach of the applicants' *Charter* rights to equality. Embedded in such a decision would be a finding that the gatekeeper role is governmental, sufficiently to attract *Charter* scrutiny. The Benchers should also declare that the breach is not saved by Section 1. Rejecting the clash model, the Benchers should reconcile and balance TWU`s unchallenged right to exist and its unchallenged freedom of religion, but require that TWU not impose the Covenant on admissions to law school. If TWU will not withdraw insistence on the Covenant, then the Law Society should request all provincial governments to deny or rescind accreditation. If that accreditation is not denied or rescinded, then the Law Society should initiate judicial review of any such decision.

The president of TWU, Bob Kuhn, very recently posted an open letter regarding the issues. Below are two of his statements (numbered by us) and our indented responses.

1. In short, asking law societies to reject graduates of a TWU law school because of its religious nature is discriminatory on the basis of religion.

   This is not what is being asked of Law Societies. What is being asked is that the organizations delegated by government to regulate the legal profession not permit discrimination based on sexual orientation to be built into the system, even when that discrimination is based on some religious views and is practiced by a private, sectarian institution.

2. There is no question of TWU's constitutional and legal right to exist as a religious educational community. It is regrettable that much of the public debate and dialogue within the bar about discrimination at TWU has completely ignored any balancing of rights or even considered the religious freedom issues that were so critical to the Supreme Court of Canada's decision.

   TWU certainly has a right to exist and the balance of equality and religious

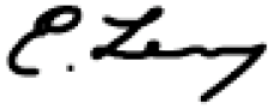
> (association) rights needs to be respected and addressed. In Canada today, national concern against SGOI discrimination is compellingly strong and overrides the right of private institutions to discriminate when that discrimination operates within the government mandated process of entry to the legal profession.

LRWC is willing to assist the benchers with any aspect of this issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

LAWYERS RIGHTS WATCH CANADA
Per:

David F. Sutherland



Dr. Ed Levy

Gail Davidson, Executive Director LRWC

DFS/vc
cc: Attorney General, Ottawa
cc: Attorney General, Queen's Park
cc: Kevin G. Sawatsky
cc: Bob Kuhn

March 27, 2014

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Via Email

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Dear Sir/Madam:

Re: Trinity Western University – Accreditation of Law Program

We are members of the Law Society of Upper Canada (LSUC). We were called to the Bar in 2011. We are writing to urge the LSUC to reject the accreditation of Trinity Western University's (TWU) Law Program in Ontario.

We have had an opportunity to review the November 20, 2012 letter of the Council of Canadian Law Deans to the Federation of Canadian Law Societies as well as the February 27, 2014 letters of Mark Berlin and Paul Saguil to LSUC.

We are writing in our personal capacities to support these letters and the writers' position. Copies of these letters are enclosed for ease of reference.

Like many of our colleagues, we are extremely concerned about TWU's discriminatory policies which have a direct impact on LGBTQ individuals, and the suitability of TWU as an institution to train future lawyers.

We also support the implementation of an accreditation requirement that prevents any law school from discriminating on grounds protected by the Charter and human rights legislation, including sexual orientation, gender identity, and gender expression.

Sincerely,

Catherine Longo, Kim Pearce, Jenn Krob, Alex Sadvari, Brad Allgood, Miranda Serravalle, Pamela Sidey, and Jennifer Macko

Encls.

Council of Canadian Law Deans
Conseil des doyens et des doyennes des facultés de droit du Canada

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Ottawa ON K1N 5N5
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November 20, 2012

Mr. John J.L. Hunter, Q.C. and Mr. Gérald R. Tremblay, C.M., O.Q., Q.C.,
President
Federation of Canadian Law Societies
World Exchange Plaza
1810 - 45, rue O'Connor Street
Ottawa, Ontario
K1P 1A4

Dear Mr. Hunter and Mr. Tremblay,

Re: Trinity Western University School of Law Proposal

On behalf of the Canadian Council of Law Deans, I would like to thank you and your colleagues from the Federation for taking the time to meet with us at our meeting in Kingston on November 9, 2012. It was an excellent opportunity to discuss a number of matters of mutual interest to the CCLD and the Federation, including the accreditation process for the Canadian common law degree programs.

At our meeting, the CCLD expressed its concern with respect to the application by Trinity Western University (TWU) to establish a law school. It is our understanding that the Federation is currently considering this application. We thought it would be helpful to follow up with a formal letter to you outlining our concerns.

As you know, all TWU students are required to sign a "community covenant agreement" which forms part of the application process for all students attending TWU:

http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html

Among other things, the covenant requires abstinence "from sexual intimacy that violates the sacredness of marriage between a man and a woman." There are also "formal accountability procedures to address actions by community members that represent a disregard for this covenant." The TWU Student Handbook provides that if "a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's re-admission to the University."

The covenant specifically contemplates that gay, lesbian or bisexual students may be subject to disciplinary measures including expulsion. This is a matter of great concern for all the members of the CCLD. Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools.

We would urge the Federation to investigate whether TWU's covenant is inconsistent with federal or provincial law. We would also urge the Federation to consider this covenant and its intentionally discriminatory impact on gay, lesbian and bi-sexual students when evaluating TWU's application to establish an approved common law program.

Yours truly,

Bill Flanagan
President of the Canadian Council of Law Deans
Dean of Law

cc: Jonathan S. Raymond, Ph.D., Trinity Western University

Dear Treasurer and members of Convocation,

Some of you may know me from my role on the Law Commission of Ontario, the Ontario Bar Association, the Canadian Bar Association among other professional activities but today I am writing today in my personal capacity regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. I understand that in Ontario, this accreditation process falls within the authority of Convocation. I have serious concerns about TWU's discriminatory policies which have a direct impact on LGBTQ individuals, and the suitability of TWU as an institution to train future lawyers. I urge you to oppose -- or at the very least place conditions on -- TWU's accreditation, until/unless TWU agrees to amend its Community Covenant Agreement. In addition, I ask you to mandate an accreditation requirement that prevents any law school from discriminating on grounds protected by the *Charter* and human rights legislation, including sexual orientation, gender identity, and gender expression. This is what the Canadian Bar Association recently overwhelmingly approved of as its policy at its Mid-Winter meeting in late February 2014. ***Let me be perfectly clear- I do not oppose the right of TWU to establish a law school-- my concern is solely with their covenant that bars me as a gay married man from attending TWU. If I was married to a woman I could however attend TWU. Clearly and blatantly this is direct discrimination based on my sexual orientation.***

As you noted above, TWU mandates its students to sign the Community Covenant Agreement, on pain of expulsion. The Covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Simply put, the effect of the Covenant is to exclude LGBTQ individuals from applying to or living openly within TWU. Aside from being *prima facie* discriminatory (and inconsistent with the *Charter* and human rights legislation), this practice by TWU raises serious public interest issues, which are at the very heart of the statutory mandate of the LSUC. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest. Over the past year, a number of stakeholders (including the Canadian Council of Law Deans, the Canadian Bar Association, the Canadian Federation of Students, prominent lawyers and academics, editorial boards, and over one thousand law students) have expressed similar concerns. They have rightly pointed out that TWU's policies place a *de facto* quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the LSUC for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada. In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school.

This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest, and contrary to LSUC's regulatory mandate. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released. These developments offend more than 2014 sensibilities – they are legally incorrect:

- First, the FLSC relies heavily on a 2001 SCC judgment in a case involving TWU and the B.C. College of Teachers. Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott* departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the Covenant is to exclude anyone who lives in a committed same-sex relationship, an issue that was completely overlooked in the 2001 case.
- Second, the 2012 SCC decision in *Doré* now imposes an obligation on law societies to apply the *Charter* and provincial human rights legislation every time they make a decision. The B.C. College of Teachers was under no such express obligation in 2001. In practice, this means that private religious organizations can adopt rules that reflect their beliefs, but governments and regulators that are required to operate in the public interest are not bound to accredit such institutions if they discriminate against individuals.

Such significant inconsistencies should prompt Convocation to heavily scrutinize and not fetter itself with the FLSC's recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the legal profession in Ontario should demonstrate the same interests in rendering their decision on TWU's accreditation. Currently I am a Professor of Practice at McGill University (after having taught at the Law School at Ottawa U for over 25 years) , I am committed to equality and promoting the values of the *Charter* in all my classes and in all my interactions with my students. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice. Both McGill and Ottawa University impart these values of tolerance, inclusion and acceptance--sadly the covenant at TWU mitigates against such acceptance and tolerance.

As Prof. Elaine Craig of Dalhousie University recently wrote in the Globe and Mail (http://bit.ly/1cpmd0d), this is an important moment in Canadian legal history and

for the pursuit of justice. ***It is simply not in the public interest for the legal profession to accredit an institution with policies that discriminate against LGBTQ individuals.*** At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's accreditation. I look forward to a properly balanced and progressive decision from the LSUC on this important issue.

Sincerely,

Mark L. Berlin

BA; LL.B; M.Phil

Dear Treasurer and members of Convocation,

I hope this correspondence finds you well and that you've had a good start to the new year.

Some of you may know me from my role on the LSUC's Equity Advisory Group, among other professional activities. I am writing today in my personal capacity regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. I understand that in Ontario, this accreditation process falls within the authority of Convocation. I have serious concerns about TWU's discriminatory policies which have a direct impact on LGBTQ individuals, and the suitability of TWU as an institution to train future lawyers. I urge you to oppose -- or at the very least place conditions on -- TWU's accreditation, until/unless TWU agrees to amend its Community Covenant Agreement. In addition, I ask you to mandate an accreditation requirement that prevents any law school from discriminating on grounds protected by the *Charter* and human rights legislation, including sexual orientation, gender identity, and gender expression.
As you may be aware, TWU mandates its students to sign the Community Covenant Agreement, on pain of expulsion. The Covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". Simply put, the effect of the Covenant is to exclude LGBTQ individuals from applying to or living openly within TWU. Aside from being *prima facie* discriminatory (and inconsistent with the *Charter* and human rights legislation), this practice by TWU raises serious public interest issues, which are at the very heart of the statutory mandate of the LSUC. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest. Over the past year, a number of stakeholders (including the Canadian Council of Law Deans, the Canadian Bar Association, the Canadian Federation of Students, prominent lawyers and academics, editorial boards, and over one thousand law students) have expressed similar concerns. They have rightly pointed out that TWU's policies place a *de facto* quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the LSUC for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada. In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest, and contrary

to LSUC's regulatory mandate. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released. These developments offend more than 2013 sensibilities – they are legally incorrect:

- First, the FLSC relies heavily on a 2001 SCC judgment in a case involving TWU and the B.C. College of Teachers. Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott* departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the Covenant is to exclude anyone who lives in a committed same-sex relationship, an issue that was completely overlooked in the 2001 case.
- Second, the 2012 SCC decision in *Doré* now imposes an obligation on law societies to apply the *Charter* and provincial human rights legislation every time they make a decision. The B.C. College of Teachers was under no such express obligation in 2001. In practice, this means that private religious organizations can adopt rules that reflect their beliefs, but governments and regulators that are required to operate in the public interest are not bound to accredit such institutions if they discriminate against individuals.

Such significant inconsistencies should prompt Convocation to heavily scrutinize and not fetter itself with the FLSC's recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the legal profession in ONtarioshould demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

As Prof. Elaine Craig of Dalhousie University recently wrote in the Globe and Mail (http://bit.ly/1cpmd0d), this is an important moment in Canadian legal history and for the pursuit of justice. ***It is simply not in the public interest for the legal profession to accredit an institution with policies that discriminate against LGBTQ individuals.*** At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's accreditation. I look forward to a properly balanced and progressive decision from the LSUC on this important issue.

Thank you for your time and consideration. I wish you all the best for 2014!

Sincerely,

Paul Jonathan Saguil

We would like to thank the Law Society of Upper Canada for the opportunity of allowing members of the public to comment on TWU's proposed accreditation. We are writing in support of TWU's accreditation request.

As residents of Ontario, and citizens of Canada, we are governed by the laws of this province and country and we endeavour to respect those same laws. We appreciate the important role law plays in assisting disadvantaged individuals and communities but we also greatly appreciate the fact that respect for the law is what enables many of those legal developments to come to fruition. We are concerned that in this situation a zeal for the former may come at the expense of the latter.

While we acknowledge and abide by the freedom of all parties and individuals to have different perspectives, and the freedom to voice those positions, regarding TWU's requested accreditation request, we are genuinely concerned about the implications of a legal community's governing body ignoring directly applicable law in either refusing or even delaying a decision on the matter.

It should be recognized that this issue has only received modest and intermittent media attention (we only recently learned about it) and the coverage it has received has often been of a particular perspective. Benchers should at least be aware that there is a segment of the public, including people of faith and otherwise, that strongly believe the appropriate resolution, in light of a relevant Supreme Court decision, is to approve TWU's accreditation request. We do our best to respect the laws of this province and the country (whether we fully agree with them or not) and our basic expectation is that the governing individuals of any law society would do likewise.

Thank you again for allowing all members of the public, as well as the legal community, to have a voice in this deliberation.

Sincerely,

Andrew Lucas of Waterloo
Kenneth Lucas of Kitchener
Reinhard Hirsch of Waterloo
Marcus Hirsch of Waterloo

TEPLITSKY, COLSON LLP
BARRISTERS

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Toronto, Ontario
M5B 1X3
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JENNIFER MATHERS MCHENRY
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March 28, 2014

Our File Number: 22939

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

SENT BY EMAIL TO:
jvarro@lsuc.on.ca

To whom it may concern,

Re: Accreditation of Trinity Western University's ("TWU") law program - *Agrément du programme de droit*

I understand that on April 10, 2014, Benchers of the Law Society of Upper Canada will consider the following question:

> Given that the Federation Approval Committee (the "Committee") has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

With respect, I am of the view that preliminary approval was granted by the Committee based upon too narrow an inquiry and that the Law Society of Upper Canada should not accredit TWU.

As you know, TWU requires students to sign a "community covenant" (the "Covenant") which, among other things, requires abstinence from "sexual intimacy that violates the sacredness of marriage between a man and a woman." TWU expressly reserves the right to discipline, dismiss or refuse admission to a student who is, in the opinion of the university, unwilling or unable to live up to the commitments in the Covenant.

The Covenant clearly contemplates that gay, lesbian, bi-sexual, transgender or queer students will be subjected to disciplinary measures including expulsion. This is of serious

concern to the undersigned and we urge you to refuse TWU accreditation in this jurisdiction.

Discrimination on the basis of sexual orientation is unlawful in Canada. The Supreme Court of Canada made clear in *Dore v. Barreau du Quebec,* 2012 SCC 12 that the *Canadian Charter of Rights and Freedoms* must be applied to administrative decisions. I would argue, but will not take the space to do so comprehensively here, that the Committee failed to appropriately consider the *Charter* in making its decision to provide TWU with preliminary approval. Nevertheless, it is quite clear that the Law Society of Upper Canada has an obligation to apply the *Charter* and the *Ontario Human Rights Code* in its own decision making process. I submit that doing so with the knowledge that TWU's Covenant effectively bans LGBTQ people (and perhaps most clearly anyone in a committed same sex relationship) renders it improper and unlawful to provide TWU the accreditation it seeks.

I suspect that those members who support TWU's accreditation despite the application of the *Charter* will rely heavily on the Supreme Court's decision in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 ("*Trinity Western*"). The parallels are, at a glance, compelling insofar as that case also involved a question of the accreditation of a professional school within TWU (in that case a teacher's college). This precedent cannot be ignored but in my submission its application to the facts the Law Society is considering at present should be very limited.

First, the decision in *Dore* now expressly requires the application of the *Charter* to the accreditation process. This was not considered by the courts in 2001.

Second, it must be recognized that the law has changed substantially in the years since the SCC decided the *Trinity Western* case. In particular, the Supreme Court of Canada in its decision in *Saskatchewan (Human Rights Commission) v. Whatcott ("Whatcott"),* 2013 SCC 11, resoundingly rejected the "hate the sin, love the sinner" line of reasoning adopted by TWU to excuse its discrimination in 2001, and, based on what I have seen in statements from TWU, still being used in an attempt to excuse its continued discrimination now.

In *Whatcott* the Supreme Court considered whether a distinction can be drawn between identity and conduct. The Court of Appeal for Saskatchewan had concluded that the speech impugned in that case was not hate speech relying on an asserted difference between attacking same-sex activity and attacking GLBTQ persons themselves. On further appeal the Supreme Court rejected that reasoning and pointed to a strong connection between sexual orientation and sexual conduct such that attacks on same sex conduct are an attack on the group itself.

I suggest that in the face of the required application of the *Charter* per *Dore* and the inability to distinguish at law attacks or limitations on same sex sexual activity from attacks or limits on the participation of LGBTQ persons themselves, the 2001 *Trinity Western* decision would be very different today.

It should also be noted that the accreditation TWU now seeks is for a law school. Providing accreditation to a law school that bans (effectively and at law) LGBTQ persons is fundamentally antithetical to the special responsibility lawyers have pursuant to Rule 5.04(1) of the Ontario Rules of Professional Conduct which make clear that:

> A lawyer has a *special responsibility* to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of [among other enumerated grounds] sexual orientation... [emphasis added]

I have observed that a number of commenters have framed this debate as one which pits the protection of freedom of religion against the equality rights of LGBTQ people. This is a misleading approach. First, we know that freedom of religion has legitimate legal limits recognized by the Supreme Court of Canada. Those limits are those required to "protect public safety, health or morals, or the fundamental rights and freedoms of others," (See R. v. Big M Drug Mart, [1985] 1 S.C.R. 295 and *Ross v New Brunswick School Dist. No. 15* (1996), 25 C.H.R.R. D/175). Quite simply, freedom of religion does not extend to the right to impose one's religious beliefs on others in what would otherwise be a secular realm.

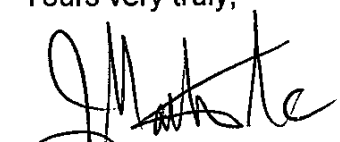
In addition to being unlawful, I believe that it would be simply unjust to accredit a law school that openly discriminates against a vulnerable minority (or perhaps several minorities as I expect that Jewish, Muslim or even agnostic students and faculty would also be effectively excluded from attending or working at a school that requires a commitment to "covenant together to form a community that strives to live according to [Christian] biblical precepts").

It is no answer to this problem to suggest that there are other law schools LGBTQ students can attend. It is long and well accepted law – see *Brillinger v. Brockie* (No. 3) (2000), 37 C.H.R.R. D/15) - that a printer cannot deny me service as a result of the fact he, on religious grounds, disagrees with my marriage. It would be a perverse result indeed if nevertheless I can be excluded from or expelled from an accredited law school as a result of that same marriage. Surely my right to have equal access to legal education unfettered by discrimination is at least as important as my right to have wedding invitations printed at the shop of my choosing?

It is also no answer to this problem to suggest, as President of TWU did somewhat laughably recently (if only he didn't intend it seriously) in Precedent magazine, that gay couples won't want to attend TWU anyway. We would not resuscitate "white only" golf clubs based on the idea that Jewish or black golfers would not realistically want to attend a club that seeks to exclude them and we should not accredit a law school that excludes minorities based even in some small part on an assumption that those people will simply opt to go instead where they are wanted.

I would like to thank the Law Society of Upper Canada for providing members of the bar with the opportunity to inform the debate regarding TWU's accreditation. I write this letter on my own behalf as well as on behalf of the like-minded signatories below, all of whom are also members of the Ontario bar and who work in a wide variety of areas within our profession.

Yours very truly,



Jennifer Mathers McHenry, LL.B, LL.M
TEPLITSKY, COLSON LLP

Also signed and sent on behalf of the following 59 members of the Ontario Bar who have provided me authorization to sign on their behalf:

Robert Colson
Gary Edwards
Devin Jarcaig
Jennifer Lake
Matthew Karabus
Paul Alexander
Kimberly Boara Alexander
Jocelyn Tatebe
Brett Kodak
Helen Burgess
Christa Big Canoe
Gerry Slavin
Kelly Nenniger
Shelley M. Hobbs
Andrea Buncic
Catherine Stewart
Sarah Valair
Robert Maisey
Jenn McMillan
Robert Howe
Stephen Brunswick
Natasha Carew
Robert Wright
Margaret Bramhill
Gatlin Smeijers
Richard Bryce Rudyk
Colleen Feehan
Jennifer Arduini
Lisa Delenardo
Paul Kaufman
Charlotte Kanya-Forstner
Daniel Horovitz
Elena Ruxandia Iosef
Alison McLean
Jesse Harper
Lindsay Merrifield
Donna Glassman
Patricia Garcia
Lisa Cherns
Louise Moher
John Sorensen
Max Munoz
Talia Gordner
Kirsti Mathers McHenry
Adrienne Woodyard
Sara Wisking
David Raposo
George Nathanael
Martin Mendelzon
Beth Beattie
Lisa Amin
Karen Ensslen
Diane Mason
Nicole Bailey
Erin Farrell
Josiah MacQuarrie
Anne Marie Van Raay
Melissa Gibson
Brian Rolfes

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MENEAR WORRAD
& ASSOCIATES

March 28, 2014

Sent by facsimile transmission
to 1-416-947-7623 (2 pages)

TWU Submissions Policy Secretariat
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Michael A. Menear
Brian K. Worrad
Karen E. MacDonald
Michael H. Murray
Mary F. Portis
Retired
William R. Poole Q.C.
Counsel
John J. Eberhard Q.C.
Consultant

Dear Sirs:

RE: TWU Law School Proposal

I am a lawyer practising in London, Ontario. I have been in private practice for more than 30 years. I had my Family Law Specialist Certification for about 15 years. I have argued cases in the Ontario Superior Court of Justice and the Ontario Court of Appeal. I have been part of legal teams that have intervened on cases heard by the Supreme Court of Canada.

I have educated myself with respect to the TWU Law School proposal. I support their proposal.

I am aware of the Code of Conduct required by TWU. It appears to me that Code of Conduct would be in accord with the major faith communities in Canada (Christian, Jewish, and Muslim), as well as other religious traditions. As a practising Roman Catholic, I could see sending my children to TWU as an institution of higher learning that supports and reflects the values of my tradition. I have no doubt that the Law School would educate its law students on our common law tradition, as well as the Canadian Charter of Rights and Freedoms in a way that fully respects the law and the need for civil polity.

Religious-based educational institutions, including those of higher learning, have historically demonstrated an ability to support the beliefs and religious practices of their students while teaching respect for the laws of the land and while advocating tolerance where there is a demonstrable difference between state values and religious ones. As a religious person, I am aware of my obligation not to act in a discriminatory manner with respect to staff I employ and the clients I represent. Fundamentally, religious persons are capable of treating with respect and dignity those who have different values, morals, and ethics. I believe the TWU Law School is capable of doing the same in relation to the students who attend there.

I am disappointed that there are Law Associations that do not think that religious persons and religious institutions are capable of adhering to their own beliefs and practices while, at the same time, teaching respect for the laws of Canada and the necessity of treating people in a non-discriminatory manner. I should not have to remind members of our Law Societies of the tremendous contributions by religious lawyers and jurists to the development of law and that Liberal Arts programs in institutions of higher learning originally developed from religious communities.

The Law Societies that do not support the TWU Law School proposal are demonstrating that secularism is not neutral. The Charter of Rights and Freedoms should not be used to force a religious educational institution to change its character or admissions policy to conform with state values.

Yours Very Truly,

MENEAR WORRAD & ASSOCIATES

Michael A. Menear
MAM/jh
c. Janet Epp-Buckingham, Trinity Western University
c. Ruth Ross, Christian Legal Fellowship
c. Honourable John McKay, MP

TWU Submissions Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Re: TWU Law School Proposal

I have been practicing law in London, Ontario, for over seven (7) years. I graduated from the University of Western Ontario Law School.

I am aware of the TWU Law School proposal. I support the said proposal.

Trinity Western University has produced well-educated and capable teachers for many years. Those teachers have been able to enter into their profession and to make a significant contribution to the field of education. I have no doubt that Law School graduates from a TWU Law School would be well-educated and would make similar contributions in the legal field.

In my view, a religious-based educational institution of higher learning like TWU should be able to support their religious and ethical values in terms of their admission policy and Code of Conduct provided they fulfill the requirements of a curriculum which upholds the rule of law and properly teaches respect for the Charter of Rights and Freedoms.

It seems to me that those who oppose the TWU Law School proposal have already made the decision that religious persons and religious institutions are inherently discriminatory. This is false, wrong, and offensive. The teaching of Liberal Arts and Humanities arose from religious communities and continue to form the basis of our legal tradition (and the Charter itself).

Yours truly,

Michael H. Murray
London, ON

Neighbourhood Legal Services
(London & Middlesex) Inc.

BY E-MAIL

August 6, 2013

Federation of Law Societies of Canada - Special Committee
John J.L. Hunter, Q.C.
Mona T. Duckett, Q.C.
Derry Millar
Madeleine Lemieux
Morgan C. Cooper

National Committee on Accreditation
c/o Federation of Law Societies of Canada
Mr. Gerald Tremblay
Ms. Frederica Wilson

The Law Society of Upper Canada
Mr. Thomas G. Conway, Treasurer

Dear Sir/Madam:

RE: Accreditation of Trinity Western University Law School

Neighbourhood Legal Services is a poverty law clinic that assists low-income residents of London and Middlesex County with social justice issues. We are writing today to oppose the accreditation of the proposed law school at Trinity Western University.

Neighbourhood Legal Services endorses the arguments presented by Clayton Ruby and Gerald Chan in the attached article: "A law school at Trinity Western University will impose a queer quota."

In particular, we believe the following:

- Legal professionals enjoy a unique and privileged position in Canadian society. With that position comes responsibility, including the responsibility to respect and protect fundamental rights and freedoms.

- It is antithetical to the nature of the legal profession to endorse, promote or give credit to programs that seek to discriminate on the basis of "immutable" personal

507-151 Dundas St., London, ON N6A 5R7 519-438-2890 x 48 fax: 519-438-3145, *dicksons@lao.on.ca*

Jeff Schlemmer, *LL.B. Director* Patty Gunness, *C.L.W.* Monica Wolf, *B.A.(Hons.), LL.B.* Michael Joudrey, *Duty Counsel*
Mike Laliberte, *B.A., B. Ed., LL.B.* Bruce Wright, *M.A., LL.B.* Kristina Pagniello, *M.A., LL.B.* Stephanie Dickson, *B.A., LL.B./B.C.L.*

Legal Aid Ontario
Aide juridique Ontario

characteristics, whether they be related to, *inter alia*, race, gender, or sexual orientation.

- It is important to distinguish between a school's right to free speech/beliefs and its right to act on such beliefs by imposing rules and regulations that are fundamentally discriminatory against a specific class of people.

- It is important to reject the distinction, as did the Supreme Court of Canada, between "gay behaviour" and "gay identity". In other words, it is unacceptable for Trinity Western University to purport to admit homosexuals but restrict them from engaging in "homosexual activity".

- The legal system, including its regulatory societies, should not permit religious-based screening for the legal profession. Nor should we endorse what is effectively a "queer quota" in the Canadian legal profession, by supporting the existence of anti-gay schools. This is no less outrageous than a law school that proposes to bar women or blacks based on a system of beliefs.

It is unfortunate that Trinity Western University seeks to teach future lawyers that it is acceptable to discriminate. What kind of beginning is this to a legal career?

The message that ought to be sent to Trinity Western University is that the Federation of Law Societies of Canada will not accredit a law school that restricts access to our noble profession to heterosexual students only.

It is our sincere personal and professional hope that the Federation of Law Societies of Canada will deny this request for accreditation.

On behalf of Neighbourhood Legal Services,

Jeff Schlemmer, Director

Stephanie Dickson, Staff Lawyer

Sandra G. Pallin
2 Windust Gate, Toronto, Ontario, M9C 3N3
Tel: (416) 368-2811 / Email: pallin@istar.ca

Delivered by email to jvarro@lsuc.on.ca

March 28, 2014

TWU Submissions, Policy Secretariat
Law Society of Upper Canada
130 Queen St. W.
Toronto, ON M5H 2N6

Dear Sir/Madam:

Re: Trinity Western University's proposed School of Law

Although I obtained my law degree from Osgoode Hall Law School (1992), I am also a graduate of Brigham Young University-Idaho, a Christian school owned by The Church of Jesus Christ of Latter-day Saints. It is not in spite of my religious values but largely due to them that I have been able to represent clients from diverse beliefs and nationalities without judgment or bias. Long before I learned of constitutions, charters and human rights legislation, I was taught to love others, to reserve judgment, to be honest and to approach difficult issues with civility (a.k.a. peacemaking). My personal experience therefore leads me to support the TWU School of Law proposal. I wish to comment on a few issues.

With concern I have read allegations that TWU graduates' religious beliefs would make them unfit for the bench or to represent gay clients. To suppose that lawyers who believe in traditional marriage between a man and woman could not represent gay clients without bias is to also suppose that gay lawyers would be similarly unfit to represent non-gay clients. I fear that precedent. Would it not then follow that Hindu lawyers couldn't represent Christians, that black lawyers couldn't represent whites and/or that Chinese-Canadian lawyers couldn't represent Mexicans without bias? I do not accept that premise.

My focus of law is immigration, therefore, I work with diversity on a daily basis. I proudly welcome new immigrants to Canada knowing that many have left countries of oppression, depravity, hostility and/or religious intolerance. I encourage their integration by advising them to make friends with neighbours of different cultures, faiths and perspectives. Canada has long been an international example of acceptance and accommodation. A refusal to license a law graduate because of his or her religious commitment to heterosexual marriage would be to restrict or deny the very accommodation and tolerance that our gay community and its supporters espouse to value.

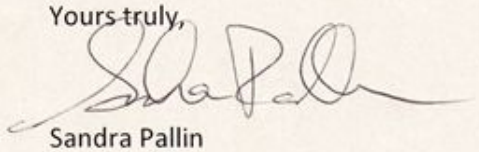
From my study, TWU is not barring gay students from registration. Nor has TWU imposed a sexual double-standard for gay students. TWU is asserting a common sexual ethic for all who attend their school. Their covenant prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman." All students are expected to abstain from sexual intimacy outside of marriage, the very nature of which is deemed to violate the sacredness of marriage. I made a similar religious commitment many years ago. I can't think of even one instance where it has interfered with my ability to give professional advice to my clients.

In addition to constitutional laws that guarantee freedom of conscience and religion and prohibit discrimination on the basis of religion or creed, the Supreme Court of Canada has stated, "absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected." (Trinity Western University v. The British Columbia College of Teachers, 2001 SCC 31) I submit that would also apply to training lawyers.

In its publication Respect For Religious and Spiritual Beliefs; A Statement of Principles of the Law Society of Upper Canada, the LSUC states, "There is great diversity in the religious and spiritual beliefs and practices of people in Ontario and in Canada. This diversity, together with the values and spirituality that are shared in Ontario, in Canada and throughout the world, should be celebrated" (s.2) and "respect for religious diversity advances the cause of justice." (s. 50a) The LSUC further commits to encouraging religious respect in the legal profession (s. 54). I applaud and support this effort and trust that it includes respect for the religious beliefs of TWU law graduates.

I believe it *is* possible for people of different religious backgrounds and/or beliefs to respect and represent each other ethically and without bias. That has been my experience in both giving and receiving professional services. I would welcome professional advice from a TWU law graduate in the same way I welcome advice from my gay financial advisor. I have confidence that both would uphold their professional obligations of conduct.

Yours truly,



Sandra Pallin

Dear Sir,

I am member of the Law Society of Upper Canada (#46068D).

I am **strongly opposed** to the accreditation of any law school that does not understand the rights and freedoms guaranteed under the Charter.

Rohit Parekh

Hello Mr. Varro,

I am writing in regard to the Law Society of Upper Canada's consultations on Trinity Western University's potential law school. I write primarily because I am a TWU alumnus, having completed a Bachelor of Arts degree in philosophy at TWU in 2009 before completing a Juris Doctor degree at the University of Ottawa in 2013. Much of the portrayal of TWU in the public eye has been affected by what appears to me, based on the experience of being a student at TWU, as untrue claims about the University, its community standards, and the application of its policies. These claims are based on presumed interpretations of TWU's policies and not based on fact. My experience at TWU, which was as a resident student on campus, was of a culturally, religiously, and morally diverse community where all were welcome and supported for who they were, in an open and honest manner.

In particular, the Community Covenant has been portrayed by some as requiring TWU students to either lie about their sexual orientation, hide their sexual orientation, or lie about their activities while a student. This is simply not true. TWU accepts students of all sexual orientations and does not expel or punish students who live alternative lifestyles. This misunderstanding appears to be caused by assumed inferences drawn from the Community Covenant, interpreted in isolation from any facts. These assumed inferences profoundly misrepresent TWU and its students.

TWU instilled in me, and in all its students, the importance of loving and welcoming all people regardless of race, gender, sexual orientation, religion, or creed.
An excellent example of how this is actually carried out in the presence of difference in the TWU community is an interview with a TWU gay student, elected to the TWU student council, conducted by CBC Early Edition in 2013. I am including this interview (linked here) as an integral part of this submission as it succinctly addresses the realities of TWU as an outstanding academic community.

As the LSUC considers this important issue, my hope is that any determination would be made on a full and thorough understanding of the facts related to TWU as an existing university and a potential law faculty.

Yours truly,

Joel Reinhardt, B.A., J.D.

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VIA EMAIL

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Sir/Madam:

Re: Trinity Western University

I am writing regarding Trinity Western University's (TWU's) proposed law school, which is currently seeking the approval of the provincial law societies to recognize its degree program and have its graduates deemed eligible for admission to the bar of each jurisdiction. In Ontario, this accreditation process falls within the authority of the Law Society of Upper Canada (LSUC). As a *Charter*-affirming legal professional, I have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. I am writing to urge you to oppose or place conditions on TWU's LSUC accreditation, and to ask you to advance an accreditation requirement that prevents any law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to my concerns is the fact that TWU forces its students to sign a Community Covenant Agreement requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".[*] Students who do not comply with the agreement may be removed from the university without readmission.[†] The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

[*] Trinity Western University Community Covenant Agreement at page 3, available online: <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

[†] Trinity Western University Student Handbook, Student Accountability Process, available online: <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,[‡] the Canadian Bar Association,[§] the Canadian Federation of Students,[**] numerous prominent lawyers and academics, editorial boards,[††] and over one thousand law students.[‡‡] They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing legal ethics, or promoting academic freedom.

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see the LSUC remain silent throughout this ordeal, apparently outsourcing its statutory authority to the Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that I learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade. The FLSC's protracted and closed-door process was patently not in the public interest -- contrary to LSUC's regulatory mandate. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key findings on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

The FLSC's decision offends more than 2013 sensibilities – the decision is legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.[§§] Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*[***] departs from the 2001 *Trinity Western* decision in

[‡] Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>

[§] Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>

[**] Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <http://cfs-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

[††] The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>

[‡‡] Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>; Media Release from Canadian Law Students, March 18, 2013, available online: <http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>

[§§] *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>

[***] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>

important ways, notably by wholly rejecting the "hate the sin, love the sinner" excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban "sexual intimacy that violates the sacredness of marriage between a man and a woman" (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.

- Second, the 2012 SCC decision in *Doré*[†††] now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt LSUC to heavily scrutinize the FLSC recommendation.

Existing Canadian law schools have made great strides towards making legal education more accessible, practical, and representative of Canadian society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. Like my peers, I am committed to equality and promoting the values of the *Charter* within my practice. Such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. I strongly recommend that you oppose or place conditions on TWU's LSUC accreditation. I look forward to a properly balanced and progressive decision from the law society on this important issue.

Yours very truly,

Marcela A. Saitua
MAS/

[†††] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

TWU Submissions
Policy Secretariat, Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6 via email: jvarro@lsuc.on.ca

Re: Trinity Western University (TWU) School of Law

I am a third year law student at Queen's University and am writing in support of TWU's proposed law school.

The Faculty Board of Queen's University Faculty of Law passed a resolution asserting that TWU discriminates against gay and lesbian students in a way that violates the values, freedoms and rights protected in human rights legislation and the *Charter*. But as the Supreme Court of Canada found in *Trinity Western University v British Columbia College of Teachers* (2001), nothing in TWU's Community Covenant indicates that graduates of TWU will not treat homosexuals fairly and respectfully.

This has been reaffirmed by the Final Report of the Special Advisory Committee to the Federation of Canadian Law Societies, released in December, 2013, which states:

> *In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.* (para 65 of the Report)

Moreover, as the Supreme Court expressed in *Trinity Western* (2001), the diversity of Canadian society is reflected through the multiple moral viewpoints that expressed through religious organizations in Canada. This diversity is itself a *Charter* value and freedom of religion is an entrenched *Charter* right. Tolerance of divergent beliefs is the hallmark of a democratic society. Queen's Faculty Board members were reminded of this point by a Queen's professor of constitutional law who did not support the Board's resolution.

TWU's aim is not to discriminate against anyone. Rather, it seeks in good faith to uphold the moral teachings of Christianity. This includes taking a position on sexual morality and to take any position on that subject inevitably means "discriminating" between some kinds of behaviour and others. And although it does not mean abandoning the sexual morality component of its teaching, it should be remembered that the core of Christian ethics is self-giving love for God and neighbour, whatever your neighbour's sexual orientation.

It would be one thing if holding to the teaching of Christianity on sexual morality as TWU understands them resulted in demonstrable harm. However, as the Supreme Court found in *Trinity Western* (2001) and the Special Committee found in its Report, allegations about the negative impact of TWU's Christian worldview on legal education and the practice of law are without merit.

Respectfully submitted,

John Sikkema
J.D. Candidate 2014
Queen's University Faculty of Laws

Université d'Ottawa University of Ottawa
Faculté de droit Faculty of Law
Section de common law Common Law Section

March 28, 2014

TWU Submissions
Policy Secretariat
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Dear Treasurer:

I write this submission in response to the invitation by the Law Society for views from the profession and the public regarding the merits of granting a license to graduates of Trinity Western University law school (TWU) pursuant to section 7 of By-Law 4 of the *Law Society Act*. The bottom line of what follows is that any accreditation of Trinity Western University's law school is premature. My concerns are discussed under the following headings: (a) the relationship between approval at this stage and the Society's mandate to regulate in the public interest (b) ensuring that the criteria used in evaluating the issues related to the accreditation of TWU are consistent with current policy and stated principles of Convocation (c) avoiding a one-off evaluation process for Sectarian law schools (d) the effectiveness of current regulatory mechanisms to address any equality concerns that may arise from the pre-mature accreditation of TWU.

My submission reflects a number of experiential bases including: 8 years of service as a Bencher of the Law Society, two terms as the Chair of the Equity and Aboriginal Issues Committee, my current position as a law professor at the University of Ottawa, the insights gained as the founding Director of its Education Equity Program almost 25 years ago and serving as co-chair of the Canadian Bar Association on Racial Equality. I was raised in a Catholic household and attended Catholic schools until grade 10. More relevantly, I have worked collaboratively on faith issues in the Emergent Spirituality Project lead by Professor Vern

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Redekop of Saint Paul University, the founding Catholic institution that gave birth to what is now the secular University of Ottawa.

My comments focus on By-Law 4 as it pertains to TWU graduates practicing within Ontario. The requirements for the granting of the licence are set out in Section 8. There are three principal routes for a potential TWU law graduate to become part of the Ontario Bar. The first, which appears to be the implicit focus of the majority of the submissions I had the opportunity to review, is by way of graduation from TWU, successful completion of the licensing examinations and completion of their articles of clerkship (s.9) and successful completion of the Professional Conduct and Advocacy Courts (s17.1). In addition, TWU graduates would be able to practice in Ontario without a licence subject to the requirements of the Inter-Provincial Practice/Mobility provisions. Your colleagues in Alberta, Nunavut and Manitoba have already accredited TWU law graduates.

Sections 42 to 45 of By-Law 4 provides for an exemption for the temporary practice of law for members of the Bar from named provinces including Alberta and Manitoba. Occasional practice is defined as up to 100 days in s.42(3). However, it is open to the Society to deny permission under s.44(2) when it is contrary to the public interest. They do require permission of the Society if they are to move to practice on a more than occasional basis (s.43). Of relevance to this discussion are the general requirements in s.8(3) being of good character and (4) the taking of the oath. The requirements for good character are set out in the application form. The required oaths are set out at s.21(1). My observations will take into consideration all of the above.

In speaking of TWU, I want to make clear that my concerns are not limited to the facial discrimination in the terms of its Community Covenant. I respect the authority of the British Columbia legislature to approve this Sectarian institution and the manner in which its human rights framework may recognize the associational rights reflected in the coming into being of this institution. The Society is limited in its capacity to remedy the discrimination in the admissions process or concerns of coercion to sign the Covenant or the consequences of breach that are obvious on a reading of the document. These would have to be resolved within that jurisdiction. However, the Society is entitled to examine any disquiet and/or respond to the very pointed concerns expressed by its members. The meaning of self-regulation is the ability to stand apart.

My concerns go well beyond the clear discrimination against persons based on their sexual practice to the foundation of the proscriptions. The Covenant is clear in sourcing its restrictions in a Biblical authority. This begs the fundamental question that TWU law school must answer directly in its use of the Covenant and its public statements – How is the law school planning to train and educate its students regarding the fundamental obligation that all lawyers have to give primacy to advancing the Rule of Law and protecting the rights of all citizens? This is not a matter for the Society to project and speculate upon with a presumption of conformity. Due diligence requires demonstrated capacity as I discuss further below.

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It is also important to note that the issues of equality are not one-sided. Consistent with many faith-based institutions TWU has an express commitment to access for socially disadvantaged persons which is integrated into its curriculum. Its existence reflects a minority-religious perspective which is seeking more space within the public sphere. I say minority because the dominant Christian voice is not Evangelical.

(a) The relationship between approval at this stage and the Society's self-regulatory mandate

It is self-evident that the Law Society's self-regulatory powers flow from its demonstrated capacity to regulate its members in the public interest (s4.2(3)). The Ontario public which it serves is diverse. The Society recognizes that diversity as being consistent with the stated protected groups identified in human rights legislation and the Charter. For the purposes of this discussion, this includes both persons whose sexual identity makes them vulnerable to discrimination (lesbian, gay, bisexual, transgender and intersex) and those whose expression of faith/spirituality makes they subject to disadvantage. The submissions reflect has a confusing entanglement of rights to dignity, education, expressive and associational rights through competing lens of freedom of religion and sexual identity/equality rights. It is my position that the Society does not need to interfere with freedom of religion or in any way contravene existing jurisprudence to recognize that it was be exceedingly cautious about this particular accreditation. To do so, is not to engage in religious discrimination.

The Society's engagement on the public interest is most often reactive and arises in the disciplinary process. Yet, we are all well aware to wait for matters to appear in the disciplinary process is to fail to acknowledge its limitations.

We do know that the lack of complaints does not mean a lack of discrimination. The power relationship between lawyer-client or lawyer-staff means that many cases pass without coming to attention of the Society. The act of making a complaint, even in the face of vulnerability, requires knowledge of the process. The Society has a broad strategy, lead by its Equity and Aboriginal Issues Department, to engage its members and the public on equity issues but these are not mandatory and we cannot claim universal coverage. The recent 10-year report of the independent Discrimination and Harassment Counsel reveals the sedimentary nature of discrimination particularly in the areas of gender and racialization.

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(c) avoiding a one-off evaluation process for Sectarian law schools

One area that is fraught is for the Law Society to enter into the prohibited sphere of becoming an arbiter on religious values. This would fly in the face of the Supreme Court of Canada proscription in *Syndicat Northcrest v. Amsalem*, 2004 SCC 47 (CanLii). However, examining the Covenant and its relationship to the Society's mandate to regulate in the public interest and its self-regulatory capacity is not to enter into a theological discussion. Respect for Sectarian institutions does not mean that there cannot be transparency around their operation. The starting point is what is a law school? Regardless of its funding structure or the desire of its creators it is engaged in the activity of training persons for the public practice of law. TWU's status as a private institution ought not to insulate it from the Law Society's scrutiny.

At the same time it is important to acknowledge liberalism's tendency to depoliticize religious commitments by relegating them to the private sphere. There are deep connections between democratic struggle and religious practice within Western history such as the anti-slavery and civil rights movements. On the global stage, liberation theology has informed the struggles of many communities. Democracy and faith does have a rich history. However, that potential is belied when a law school seeks to enforce behaviors which are not only lawful but protected and valued in both human rights legislation and the constitution. A public statement at odds with some of the key values in our constitutional democracy invites criticism and obliges the Law Society to respond.

The Covenant indicates that the educational environment is exclusionary on a broad range of sexuality issues. It is hard to see how to see how these limitations would not shape the space for critical discourse, the curriculum and ultimately the manner in which the equality jurisprudence was taught. It is appropriate for the Society to be confident that the actual content/training of the program does not pose specific equality concerns. It is very true that this level of interrogation has not taken place for other recent approved institutions. However, those institutions did not raise concerns related to equality issues on their face.

It is overbroad to suggest that asking these questions infringes upon the religious freedom of TWU and its future graduates. Religious freedom is bounded by the existing framework of the constitution and human rights legislation. Substantive equality for all persons affected by this discussion requires a contextualization that is historical, social and cultural. It can be argued that by making the Covenant mandatory that TWU has gone beyond religious expression to an action, the requirement of adherence to the Covenant and the enforcement mechanism that they have developed.

It is the blurring of the lines contained in the Oath which would give primacy to the Rule of Law that is of concern. To "submit" to the laws of the state is a far more tepid level than the forceful

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language of "championing" the Rule of Law. I believe that one consequence of the reliance on Biblical authority in the manner presently proposed is the disturbing possibility of *theolegal* officials. The phrase, acknowledges that officials "cannot legislated theology, but they can, and

do, use theology to legislate." It is the lack of transparency on how the decision-making of the individual lawyer might be informed by these external/Biblical authorities that could potentially erode the fulfillment of the Oath. It is not inevitable that the use of theology would deny civil rights. It is however disturbing to have no explicit indication that it would not. For further discussion of the challenges posed by this behavior on the part of legislators, lawyers and others see *Whose God Rules: is the United States a Secular Nation or a Theolegal Democracy?* (Palgrave Macmillan, 2011) by Nathan Walker & Edwin J. Greenlee.

(d) the effectiveness of current regulatory mechanisms to address any equality concerns that may arise from the pre-mature accreditation of TWU.

Concern has been raised that the criticisms of TWU which focus on the Covenant and the admission of its signatories to the Ontario Bar are speculative and arbitrary. That it imputes a pre-disposition to breach the Rules of Professional Conduct without a sufficient evidentiary foundation. I am in agreement with this proposition. However, the Covenant calls into question the fundamental values of the law school and its ability to ensure that its graduates are able to fulfill their obligations of the Ontario Bar and/or have been provided with the full opportunity to resolve their public roles as lawyers with their private roles as members of their faith community.

The source of my concern can be found in the text of the Oath found at s.21(1) of By-Law 4. On its face the detailed Covenant grounds its authority in the Bible. Specific provisions are identified some of with do not simply speak to the interior life of the adherent but go to their public/community life. In my view, lawyers are called up to subordinate their personal faith principles to those identified in the oath. On its face the Covenant, when considered as a form of oath, is in potential or actual conflict with the oath that must be taken by TWU law graduates upon admission. It is concerning should the legal education process at TWU law school fail to address these issues directly.

I have set out the oath below and italicized the phrases which give rise to my concerns:

> 21. (1) The required oath for an applicant for the issuance of a licence to practise law in Ontario as a barrister and solicitor is as follows:
> I accept the honour and privilege, duty and responsibility of practising law as a barrister and solicitor in the Province of Ontario. I shall protect and defend the rights and interests of such persons as may employ me. I shall conduct all cases faithfully and to the best of my ability. *I shall neglect no one's interest* and shall faithfully serve and diligently represent the best interests of my client. *I shall not refuse causes of complaint reasonably founded*, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility. I shall seek to ensure access to justice and access to legal services. I shall seek to improve the administration of justice. I shall champion the rule of law and *safeguard the rights and freedoms of all persons.* I shall strictly observe and uphold the ethical standards that govern my profession. All this I do swear or affirm to observe

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and perform to the best of my knowledge and ability.

I am not suggesting that TWU law graduates will lack personal integrity. What I am suggesting is that the institution that trains them has an obligation to assure the Society in more than broad statements that it understand the nature of the professional context in which its graduations will operate. The final phrase of the oath to ensure the "knowledge and ability" of its graduates applies as much to the institution that trains them as the individual candidate. As it now stands, the Covenant appears to be inconsistent with the oath required under By-Law 4.

A companion assessment to evaluation of the conflict between the Covenant and the Oath required under By-Law is to consider how the Society itself will supplement any potential gaps in the preparation for TWU law graduates. I would advance that this will be imperative should the Society go ahead with immediate accreditation. Steps could be taken to review the opportunities the Society has to address the content/requirements for licensing. The only manner to do this with integrity would be to address these matters for all candidates. Some of the areas include:

(a) Addressing equality issues including specific matters related to equality-seeking communities in the required materials provided to candidates pursuant to s.17.1 of By-law 4.
(b) Examine the current definition of good character to incorporate matters related to upholding human rights and Charter values
(c) Further define mandatory CPD requirements to include specific hours/courses related to the Rule on Discrimination (6.3-1)
(d) Consider how the concerns that arise from the Covenant relate to the Rules of Professional Conduct including, Discrimination (6.3-1), requirement to be honest and candid (3.2-2), conflict of interest (3.4-1) and their commentaries.

I would like to note at this point that TWU law graduates who come through the Mobility/Inter-Provincial process or the exemptions under By-Law 4 would not necessarily be subject to these remedial measures.

I will admit that I have a marked preference for a universal approach grounded in equality rights since it is less isolating of the issues of faith. It will also address current gaps. Finally, a more robust regulatory process which embraces equality fully is the best safeguard against discrimination in even its most insidious forms.

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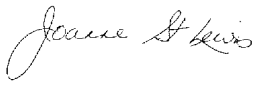
Conclusion:

The main reasons to reject the TWU accreditation at this point include:

(a) premature accreditation at this point may reflect a failure on the part of the Law Society to both be consist with its own equality principles
(b) accreditation quickly given may result in regret at the expense of more vulnerable communities in forms that may never be transparent to our disciplinary processes
(c) consistent with a dialogic approach with TWU law school to encourage them to substantively and transparently articulate their commitment to equality and Charter values
(d) to retain the focus on the institution which still has the opportunity to address these concerns rather than transferring the brunt of the consequence to TWU's individual graduates

Thank you for your consideration,



Professor Joanne St. Lewis

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March 28, 2014

BY E-MAIL (jvarro@lsuc.on.ca)

Attention: Policy Secretariat

Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Re: TWU Submissions

While I do not usually like to involve myself in political debate, as a TWU alumni who will be graduating from UBC Law School in 2 short months, I find myself compelled to contribute to the submissions regarding TWU's proposed law school and the Law Society of Upper Canada's impending decision. You will, no doubt, receive many eloquent, intelligent and passionate arguments on both sides of the debate, so I will, instead, offer a more personal view on the matter.

I graduated from Trinity Western University in 1997 with a B.A. in Religious Studies. During my time at TWU, I spent a semester in Jerusalem, Israel studying world religions and biblical archeology at a Christian institution. During each year of study at TWU, I signed the *Community Covenant* with the intention to follow it (most of the time!).

In 2006 I returned to complete my Masters degree in Christian Studies at ACTS Seminary on the TWU campus. During those years I again signed the *Community Covenant*, although I do recall some discussion about the covenant with my Mennonite professors, some of whom took issue with signing a covenant with an institution due to their personal theological beliefs.

It has been argued, following the lead of the dissent in *TWU v BCCT*, 2001 SCC 31, that through the act of signing the *Community Covenant* contract, TWU students and educators are "complicit in an overt, but not illegal, act of discrimination against homosexuals and bisexuals" (para 72). I find this view to be rather alarming since my personal choice not to engage in sex outside of marriage, view pornography or get drunk should not be considered discrimination against parties who choose such actions. It is simply a personal choice either based on personal values or on the desire to study at a particular private religious institution which requires such a commitment of its community members. My act of signing the Covenant says nothing about my beliefs regarding the homosexual behaviours of others outside of the TWU community but only speaks to the freedom of a religious community to hold and practice its unique belief system.

While I may or may not agree that the *Community Covenant* should be mandated in its current form (or at all), my decision to pursue education at a private accredited religious

institution which requires such a covenant should not impair my ability to work within the public sphere upon graduation.

I can attest to the fact that my educational experience at TWU included lively, engaged debate on pressing contemporary societal issues. Diversity of opinion was not squelched despite the fact that a foundational worldview was offered as the platform from which to launch academic discussion. I have little doubt that the same academic freedom would reign within TWU's proposed law school. It should be remembered that every school - every law school - reflects a set of beliefs. Currently, law schools in Canada have a secular emphasis in which religious views are in the minority and are, at times, openly derided. The legal profession in general and legal institutions in particular benefit greatly from the diverse backgrounds and beliefs held by their practitioners and academics. Expanding legal education into institutions that hold non-mainstream views should not be considered a threat, but instead should be welcomed.

Throughout this debate, graduates of the proposed TWU law school are posited as harms to society, unqualified to practice law and a tarnish on the reputation of the legal community. A legal education at an institution such as TWU is considered to be not only inadequate but destructive.

This seems to run counter to the generally accepted fact that all lawyers and judges hold varying personal beliefs with which the Law Society of Upper Canada does not interfere unless these beliefs lead to behaviour that is in opposition to a lawyer's professional ethics and obligations. One of the most offensive arguments within this debate is the idea that I, as a TWU alumni who signed the *Community Covenant*, need the "cleansing" offered by a public law school such as UBC. It is argued that while law students and lawyers may have any religious beliefs they desire, a public legal education is necessary to ensure that any discriminatory perspectives are curtailed.

First, students at TWU's law school would be taught the law and will be required to uphold the law, just as all judges and lawyers, regardless of their personal beliefs, are expected to apply the law. It is the Law Society's mandate to ensure they do so and I have faith in the Law Society's disciplinary processes if they were ever needed in relation to a TWU graduate. At this point, however, it is pure conjecture that a TWU law school graduate would do anything but fulfill his or her professional obligations.

Second, I can testify to the fact that three years of law school at a secular institution has not "cleansed" me of any minority viewpoints I may personally hold. While I may have been provided with new language with which to express my values and a new context - a legal context - in which to understand them, my personal worldview has not been altered. If anything, it has only been strengthened. I recognize that my personal views will not always be reflected in the law - nor should they be - yet they have been validated as I study concepts such as the rule of law, principles of natural justice and the protection of vulnerable groups.

Third, it has actually been beneficial during my three years at a secular law school to draw upon the depth of my faith and religious belief and practice. One of the common side effects of legal education is the tendency to dehumanize others, to quantify all aspects of life, and to pursue one's own success. The religious beliefs that I hold, and those that were encouraged while studying at TWU, provide me with the foundation from which to offer respect and dignity to all human beings. These same religious beliefs compel me to pursue a career in law in order to practice dispute resolution, mediate challenging conflicts and empower individuals through an understanding of their legal rights and interests.

While you are deliberating the various significant issues at play within this debate, I would urge you to look past the caricatures presented of the fictional TWU law school graduate. Behind those caricatures are faces like mine. I have excelled at law school and competitive moots. I have secured articles and will be clerking for my province's Supreme Court. I have enjoyed mutually respectful and dynamic relationships with professors and fellow students at law school. These accomplishments have been made, not *in spite of* my status as a TWU alumni, but *because* of all that my education and experience has provided thus far.

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

Respectfully Submitted,

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March 28, 2014

VIA EMAIL

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Policy Secretariat
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Dear Treasurer and Esteemed Benchers of the Law Society of Upper Canada;

Re: TWU Accreditation

I write this letter in support of the FSLC's decision in its *Final Report* of December 2013, as given by the *Special Advisory Committee on TWU's Proposed Law School*, recommending that provincial law societies recognize *TWU* as an "accredited law school".

It is not clear on what basis accreditation of *TWU* could or should be denied. The two main issues that have concerned some Toronto lawyers, are the nature of the moral guidelines prescribed by the law school upon its students through the *Community Covenant Agreement* and the nature of the law school course content. If moral guidelines should be an obstacle, it would be a very odd basis upon which to construct an opposition. Moral guidelines are a common aspect of professional regulation found in various professions throughout North America, especially in the legal and medical fields.

In fact, I think the LSUC can take a lesson from the example of *TWU*. As a member of both the New York and the Ontario bar, I have noticed a handful of anomalies that distinguish the Ontario bar from other North American jurisdictions. The most surprising is the complete absence of any LSUC *rule* dealing with the issue of sexual relations between a lawyer and a client.

The Law Society attempted to address this anomaly in 2004 through a report submitted by a *Special Working Group* to the *Professional Regulation Committee*. This report, which was four years in the making, recommended an amendment to the Rules that would have appropriately addressed this issue. In effect, establishing an explicit rule of moral conduct for practising lawyers in Ontario.

The *Working Group's* recommendation, however, unexplainably died in committee. Had it been accepted, the proposed amendment would have made lawyers practicing law in Toronto subject to the same regulated moral conduct with regard to sexual relations standards as lawyers who practice law in Chicago, Philadelphia, Miami and even Las Vegas. In these, and other US jurisdictions, the standard is the one set by the *American Bar Association*, which plainly states that "a lawyer shall not have sexual relations with a client". It is not clear to me how the adoption of a moral guideline by a law school could in any way be an issue when most legal professionals in North America are governed by some rule in regard to moral conduct in each of their jurisdictions.

The no sexual relations rule is the standard that is normally expected and required by professionals in other fields of public service. There is, for example, a zero tolerance standard in the professional codes of medical associations such as the *American Psychological Association*, the *Canadian Nurses Association*, or in the Rules of Ethics and Professional Conduct adopted by professional licensing bodies such as the *Ontario College of Psychologists* or the *Ontario College of Social Workers and Social Service Workers*.

In our own jurisdiction, it is not clear why the *Professional Regulation Committee* voted against adopting the *Working Group's* recommendation. At its first meeting on this issue in January 2004, under the chairmanship of now Justice Todd Ducharme, the *Committee* recommended to Convocation that the *Rules of Professional Conduct* be amended to adopt the *Working Group's* well reasoned and well considered recommendation. However, with the appointment of Mr. Ducharme to the Superior Court of Justice and the chair of the *Committee* being taken over by now Justice Carole Curtis, the *Committee* unexplainably reversed its earlier decision. This doesn't make sense. I would, therefore, also like to take this opportunity to urge our Treasurer and Benchers to have this issue re-examined so that the *Law Society of Upper Canada* can provide some badly needed sound leadership in this area.

I attended a law school requiring all students to agree to abide by a moral guideline. It was my experience that this was for the good of all, for students, for the profession and for the public. As I recall, in one case, a law student was arrested for luring a child through the internet into a meeting for engaging in immoral activities. The student was later dismissed from the law school. Such a person should obviously not be permitted to enter the bar in any jurisdiction. In another case, one female student had become pregnant while out of wedlock, in contravention to the agreed to moral code. It appeared that her partner was also a law student at the same institution. The fact became common knowledge on campus. Not knowing the inside story, of whether the faculty personally met with the students or discussed the matter with them, or whether the students subsequently became engaged and were married, it seemed that the faculty made an exception in their case as both students eventually graduated, despite the circumstances. I think that dealing with such matters can best be left up to the collective wisdom of the faculty and the Dean in deciding what is best for the student involved, the school, the profession and the public at large, should moral guidelines be crossed.

As for the content of the curriculum, if the *LSUC* should decide to not recognize the *TWU* as an "accredited law school" on the basis that its curriculum is imbibed with certain religious convictions, I think it would be necessary, for the purposes of logical coherence, to deny the acceptance of the greater part of the tradition behind the history of the common law itself. From Bracton to Chief Justice Coke to Lord Denning, some of the greatest legal minds of the English common law were invested with the spirit of Christianity.

Many law schools across the world are now in the process of attempting to re-integrate into their studies that same perspective on law that was inherent in the common law throughout most of its history, namely, a Judeo-Christian worldview. To name a few of the institutions explicitly engaged in this endeavour internationally, both Catholic and Protestant, there is, among others, the *Handong International Law School* in South Korea and the *Law School at the University of Santo Thomas* in the Philippines. In North America, where this tradition took root having been transplanted from its European birthplace, some of the more well known law schools presently engaging in theologically informed course content delivery are, of course, *Emory*, *Baylor*, *Trinity*, *Regent*, and the *Oak Brook* Colleges of Law, not to mention the host of Catholic law schools such as *Notre Dame*, *Ave Maria*, *St. John's*, *Fordham*, *DePaul*, and *Boston College*. There are others, but this is a good core sampling of what is happening in legal education and of where legal education is presently heading. The idea behind many if not most of these endeavours is to incorporate theological considerations into legal education in an attempt to recapture what has been eroded from legal education over the last century or century and a half due to the increasing secularization of the academic enterprise.

I might add that, speaking as a University of Toronto graduate, religion was a fundamental core of all education at U of T until just after World War II. Until that time, students were divided according to religious affiliations into the various colleges; Anglicans went to Trinity and Catholics went to St. Michael's, for example, where each student received theological based instruction according to each person's religious tradition.

By analogy, if the astronauts on Apollo 8, who were the first to enter into the orbit of another celestial body other than the earth, namely the moon, were able to read freely and publicly from the Book of Genesis on Christmas Eve in allusion to the creation of all things by God, or if the first men to land on the moon were able to read a verse from the Bible while on the moon and quote from the Bible during a live broadcast upon their descent back to earth, I cannot imagine things have changed so much that *TWU* could in any way experience any negative treatment from the *LSUC* for participating in exactly the same kind of activity, namely, for engaging with the Bible. To do so would literally be to imitate the persecution and oppression that was, and still is, perpetrated against religious institutions, or upon anybody who has even a minimal inclination to think theologically about him or herself or the world in which they live, by the likes of the Soviet, North Korean and other regimes.

I pray the *LSUC* will not pursue this course. I don't think the Canadians who died in Korea, Vietnam or in some other part of the world and who gave their lives to oppose this kind of ideological tyranny would ever appreciate such an oppression at home. Verses in our National Anthem, the preamble to

our Constitution, the inscriptions on our coins (*Deus Gracia Regina*), even the title of our Monarch, the *Defender of the Faith*, all attest to a deep rooted tendency among citizens and institutions in this nation to identity with religious convictions. To my mind, this should be honoured, respected and encouraged.

Thank you for your time and consideration of my submission.

Sincerely,

Victor Tchor
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The Advocates' Society

PROMOTING EXCELLENCE IN ADVOCACY

March 28, 2014

VIA EMAIL AND FAX: jvarro@lsuc.on.ca / (416) 947-7623

Mr. Thomas G. Conway
Treasurer
c/o TWU Submissions
Policy Secretariat
Law Society of Upper Canada
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Toronto, ON M5H 2N6

Dear Treasurer:

RE: Trinity Western University

1. Introduction

The Advocates' Society ("TAS")[1] makes these submissions to the Law Society of Upper Canada ("LSUC") in response to its request for submissions on the issue of the accreditation of the proposed law school at Trinity Western University ("TWU").

The LSUC has posed the following question to be considered by Convocation:

> Given that the Federation Approval Committee has provided conditional approval to the TWU Law Program in accordance with processes Convocation approved in 2010 respecting the National Requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to Section 7 of By-Law 4?

2. Overview of TAS' Submission

It is TAS' submission that accrediting a law school that operates under a policy of discrimination is contrary to the *Charter*, the values of the legal profession, and the LSUC's statutory mandate to protect the public interest and advance the cause of justice.

A person wishing to become a licensed lawyer in Ontario must attend an accredited law school. The LSUC could not and would not discriminate on the basis of sexual orientation when issuing licenses to practice law. Equally, the LSUC cannot and should not condone such discrimination when it is imbedded in the process of determining whether a

[1] TAS is a not-for-profit association dedicated to promoting access to justice and excellence in advocacy. TAS' membership is made up of over 5,000 lawyers who practise as advocates in various areas of the law throughout Ontario and the rest of Canada. TAS was established in 1963 to ensure the presence of a courageous and independent bar and the maintenance of the role of the advocate in the administration of justice.

prospective student should be admitted to a law school. Given the importance of the accreditation of law schools to the process leading to the licensing of lawyers, it is the duty of the LSUC to require that the admission of students to accredited law schools be decided on a non-discriminatory basis.

TAS opposes the accreditation of a law school that expressly discriminates against potential and actual law students on the basis of sexual orientation and marital status. These are prohibited grounds of discrimination under the *Charter*, representing a recognition by Parliament and by courts across the country that individuals in same-sex or unmarried relationships are members of minority groups who have suffered historical marginalization and disadvantage. Accrediting a law school that promotes such values and disadvantages some students by restricting their entry into law school on the basis of irrelevant personal characteristics or beliefs is inconsistent with the *Charter*, the duties and responsibilities of lawyers, and the LSUC's mandate.

The Federation of Law Societies of Canada ("FLSC") Approval Committee (the "FLSC Approval Committee"), in its report, noted concerns regarding discriminatory practices in the curriculum of TWU.[2] Specifically, the FLSC Approval Committee saw "a tension between the proposed teaching of these required competencies and elements of the Community Covenant". The FLSC Approval Committee proposed that the concerns could be alleviated through additional reporting of course content at a future time.

Although not the focus of these submissions, TAS shares the concerns of the FLSC Approval Committee about the effect of TWU's policies on the curriculum and notes that the education of Canadian law students in the twenty-first century necessarily involves discussion of *Charter* values and professional responsibilities that are at odds with TWU's policies.

However, and without taking away from other concerns,[3] TAS is most concerned with, and these submissions will largely focus on, the barriers to entry into law school created by TWU's policies and the particularly overt and discriminatory exclusion of lesbian, gay, bisexual, transgendered and queer ("LGBTQ") students from admission. Deferring the issue of course content, as suggested by the FLSC Approval Committee, does nothing to alleviate these concerns. Equality rights cannot be advanced or protected through a wait-and-see approach.

Moreover, what the FLSC has decided is not determinative of the LSUC's decision on accreditation of the TWU law school. As will be discussed, the roles and mandates of the

[2] FLSC, Canadian Common Law Program Approval Committee, Report on Trinity Western University's Proposed School of Law Program, December 2013 at p. 9-10 ("FLSC Approval Committee Report"). The Approval Committee's concerns were related in part to the teaching of ethics, professionalism, and public law as it relates to the *Charter*, in light of the Covenant. It was satisfied that these were concerns and not deficiencies, however, in part due to TWU's undertaking that courses at TWU would teach students about the full scope of protection offered by the *Charter* and human rights law "in the public and private spheres of Canadian life".

[3] The Covenant arguably also offends the expressive, associational, liberty and security interests of gays and lesbians, unmarried people and members of certain religious groups, contrary to ss. 2, 7, 15 and 28 of the *Charter* by demanding that individuals conceal or suppress their personal beliefs or characteristics as a condition of admission or attendance.

FLSC and the LSUC are fundamentally distinct. This distinction is critical to the issue faced by the LSUC at this time.

For the reasons detailed below, TAS submits that the LSUC should reject TWU's application for accreditation in Ontario.

3. Relevant Facts

In June 2012, TWU, a private Christian faith-based university in British Columbia, submitted a proposal for a law school program to the Approval Committee of the FLSC. TWU identifies as one of its objectives the integration of a Christian worldview into the law school curriculum. TWU requires all prospective students, faculty and staff of the proposed law school to sign the Community Covenant Agreement (the "Covenant"). As a result, it appears to TAS that the Covenant impacts upon admissions, the personal lives of students who are admitted, the faculty who teach them and the educational experience of students who are being trained in the law.

The Covenant is in the form of a contract. Its execution is a pre-requisite to studying law at TWU. The Covenant requires students to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman". The provisions of the Covenant are designed "to ensur[e] […] the integrity of the TWU community." The only logical reading of these provisions is that if LGBTQ people are permitted to be part of the TWU community, the TWU community would lack integrity. In other words, even associating with LGBTQ people at TWU would affect the integrity of the TWU educational environment.

The Covenant reads in part as follows:

> **Our Pledge to One Another**
>
> Trinity Western University (TWU) is a Christian university of the liberal arts, sciences and professional studies with a vision for developing people of high competence and exemplary character who distinguish themselves as leaders in the marketplaces of life.
>
> […]
>
> **3. Community Life at TWU**
>
> […]
>
> In keeping with biblical and TWU ideals, community members voluntarily abstain from the following actions: [...]
>
> • sexual intimacy that violates the sacredness of marriage between a man and a woman
>
> […]
>
> **Healthy Sexuality**
>
> People face significant challenges in practicing biblical sexual health within a highly sexualized culture. A biblical view of sexuality holds that a person's decisions regarding his

> or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to one's (future) spouse, to others in the community, and to oneself. Further, according to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation. Honouring and upholding these principles, members of the TWU community strive for purity of thought and relationship, respectful modesty, personal responsibility for actions taken, and avoidance of contexts where temptation to compromise would be particularly strong.
>
> […]
>
> **5. Commitment and Accountability**
>
> This covenant applies to all members of the TWU community, that is, administrators, faculty and staff employed by TWU and its affiliates, and students enrolled at TWU or any affiliate program. Unless specifically stated otherwise, expectations of this covenant apply to both on and off TWU's campus and extension sites. Sincerely embracing every part of this covenant is a requirement for employment. Employees who sign this covenant also commit themselves to abide by TWU Employment Policies. TWU welcomes all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University's Christian identity. Students sign this covenant with the commitment to abide by the expectations contained within the Community Covenant, and by campus policies published in the Academic Calendar and Student Handbook.
>
> Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility. The University also provides formal accountability procedures to address actions by community members that represent a disregard for this covenant. These procedures and processes are outlined in TWU's Student Handbook and Employment Policies and will be enacted by designated representatives of the University as deemed necessary.
>
> **By my agreement below I affirm that:**
>
> I have accepted the invitation to be a member of the TWU community with all the mutual benefits and responsibilities that are involved;
>
> I understand that by becoming a member of the TWU community I have also become an ambassador of this community and the ideals it represents;
>
> I have carefully read and considered TWU's Community Covenant and will join in fulfilling its responsibilities while I am a member of the TWU community.
>
> (Emphasis added.)

The Covenant makes clear the expectation that students police each other to "ensure the integrity of the TW community", and "hold each other accountable" for any breach of the Covenant. According to TWU's stated policy, students who do not comply with the Covenant will be subject to sanctions which could include discipline, dismissal, or refusal of a student's re-admission to TWU:[4]

[4] Trinity Western University Student Handbook, online at http://twu.ca/studenthandbook/university-policies/student-accountability-process.html.

> If a student fails to maintain his or her commitment to the Community Covenant and/or policies and guidelines of the University as outlined in the Student Handbook, Academic Calendar and TWU website, an accountability process exists that is structured around the goal of bringing the student back into relationship with the community while contributing to the student's personal and spiritual growth. Initial and/or minor violations may be dealt with through a discussion process facilitated by Student Life staff. Subsequent and/or more serious breaches of the Community Covenant may be dealt with in a formal process overseen by the Director of Community Life or Associate Provost. Such cases may be referred to a Community Council or the University's Accountability Committee, consisting of faculty, staff and students, for resolution.
>
> […]
>
> If a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student's re-admission to the University.

It appears that students, faculty, and staff at TWU are expected to police perhaps the most intimate aspect of each other's personal lives *and* that TWU will impose meaningful sanctions for "breaches" of the Covenant.

The Covenant's institutionalization of discrimination at TWU manifests itself in two distinct ways: restricting admission to straight applicants and/or policing and controlling intimate behaviour of those who are admitted. It also appears that unmarried cohabitants would be offered the same false "choices" as a term of admission: adopt and act upon the proscriptions contained in the Covenant, and thereby conceal or renounce one's identity, or face rejection or dismissal.

When considering any claim grounded in substantive equality, the appropriate inquiry is into the *effect* of the provision. This is the essence of substantive equality – the consideration of, in this case, the effect of the Covenant, from the perspective of the LGBTQ student. It should be apparent to all that the Covenant creates significant personal cost to individuals. Justice L'Heureux-Dubé explained the effect of a similar covenant in these terms:

> I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the "sexual sin" of "homosexual behaviour" from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. But, in the words of the intervener EGALE, "[r]equiring someone not to act in accordance with their identity is harmful and cruel. It destroys the human spirit. Pressure to change their behaviour and deny their sexual identity has proved tremendously damaging to young persons seeking to come to terms with their sexual orientation."[5]

[5] *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 [2001] 1 S.C.R. 772 [*BCCT*] at para. 34. As explained elsewhere in this letter, Justice L'Heureux-Dubé's dissenting opinion in this case is consistent with how the equality jurisprudence in Canada has developed since 2001.

4. The Role of the LSUC is distinct from that of the FLSC Approval Committee

a) The FLSC's Role

The FLSC is the umbrella organization of the 14 provincial and territorial law societies that govern lawyers and notaries.

The FLSC Approval Committee is responsible for assessing whether a law school curriculum meets the national requirement. However, in the case of TWU's proposed law school, there were a significant number of submissions received by the FLSC Approval Committee from groups and individuals opposed to TWU's proposed law school, and these submissions raised issues which were deemed to be outside the mandate of the Approval Committee. As such, the FLSC established the Special Advisory Committee on TWU's proposed law school.

Specifically, the Special Advisory Committee considered whether the requirement that students and faculty at TWU must agree to abide by the Covenant raises additional considerations that should be taken into account in determining whether graduates of the proposed law school program should be eligible to enter law society admission programs.

After reviewing the many submissions received by it, the Special Advisory Committee concluded that so long as the FLSC Approval Committee concludes that the TWU law school curriculum meets the national requirement, there is no public interest reason to exclude future TWU graduates from law society bar admission programs.[6]

The Approval Committee subsequently reviewed the application by TWU for approval of the law school program and concluded that TWU's program meets the national requirement, subject to the concerns and comments regarding the teaching of ethics, professionalism and certain aspects of public law (see Section 2, and in particular Footnote 2, above).

The LSUC should consider the Approval Committee's report pursuant to its statutory mandate to set policies for admission to the legal profession in Ontario. However, the Approval Committee report is only one of a number of factors the LSUC should consider in making its decision. The LSUC must arrive at its own decision, consistent with its statutory mandate and duties.

b) The LSUC's Duties

The LSUC has a much broader mandate than the FLSC.

The FLSC's Approval Committee's mandate is restricted to the delegated authority of determining whether existing and proposed common law programs meet the national requirement. The national requirement establishes the knowledge and skills that all applicants for entry to the bar admission programs of the law societies in the Canadian common law jurisdictions must possess.[7]

[6] FLSC, Special Advisory Committee on Trinity Western's Proposed School of Law, Final Report, December 2013 at pp. 18-19 ("FLSC Special Advisory Committee Report").

[7] FLSC Approval Committee Report, *supra* note 2 at p. 1.

The LSUC has a statutory responsibility to regulate the legal profession in the public interest, which includes the responsibility of admitting lawyers to the profession in Ontario.

Included in the LSUC's mandate is a duty to advance the cause of justice, to facilitate access to justice, and to protect the public interest. Sections 4.1 and 4.2 of the *Law Society Act* were added to the legislation in 2006[8] to provide:

> **Function of the Society**
>
> 4.1 It is a function of the Society to ensure that,
>
> (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
>
> (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.
>
> **Principles to be applied by the Society**
>
> 4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
>
> 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
>
> 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
>
> 3. The Society has a duty to protect the public interest.
>
> 4. The Society has a duty to act in a timely, open and efficient manner.
>
> 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

The language in s. 4.2 of the *Law Society Act* is mandatory, not discretionary. The LSUC is obliged to consider its duties to maintain and advance the cause of justice and the rule of law, facilitate access to justice, and protect the public interest, in rendering a decision on any issue within its mandate, including the decision to accredit a particular law school. The LSUC cannot defer to another entity's evaluation of an issue within the LSUC's statutory mandate. In determining pursuant to By-Law 4[9] whether a law school meets the

---

[8] See *Access to Justice Act, 2006*, S.O. 2006, c. 21, Sched. C, s. 7.

[9] By-Law 4 sets out the requirement for admission to the Law Society of Upper Canada:

Requirements for issuance of Class L1 licence

9. (1) The following are the requirements for the issuance of a Class L1 licence:
1. The applicant must have one of the following:

LSUC's criteria for accreditation, the LSUC must act in accordance with its statutory mandate. The LSUC cannot abdicate its statutory obligations by engaging in an inquiry that begins and ends with the ability of a law school to simply deliver legal education, or by relying on the decision of another body such as the FLSC.

The LSUC also recognizes and affirms the unique obligation held by itself and by its members to stamp out discrimination as contrary to the rule of law and the advancement of justice.

The LSUC's Rules of Professional Conduct state:

> **5.04 DISCRIMINATION**
>
> **Special Responsibility**
>
> 5.04 (1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identify, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other licensees or any other person.
>
> **Commentary**
>
> The Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.
>
> This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

The LSUC has a duty to decide on its own, pursuant to its statutory mandate, whether accreditation of TWU's law school is in the public interest, advances the cause of justice and the rule of law, and facilitates access to justice for the people of Ontario. The LSUC is a public institution whose mandate and decisions are governed by the *Charter* and the Ontario *Human Rights Code*. In addition, the Benchers voting on this matter will have to do so in a way that is consistent with every Ontario lawyer's "Special Responsibility" to promote equality as set out in Rule 5.04.

5. Application of the LSUC's Duties: Accreditation of TWU is Contrary to the LSUC's Mandate, Initiatives and Rules of Professional Conduct

It is respectfully submitted by TAS that the LSUC simply cannot reconcile its obligations with the accreditation of the proposed TWU law school.

> i. A bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school. […]

An "accredited law school" is defined as "a law school in Canada that is accredited by the Society" (s. 7 of By-Law 4). (R.S.O. 1990, c. L.8.)

Accrediting a law school that utilizes an admission policy which discriminates against a vulnerable group is contrary to the LSUC's statutory mandate of maintaining and advancing the cause of justice and protecting the public interest and undermines the LSUC's diversity/equity initiatives. It also offends fundamental *Charter* rights and values and creates an unfair disadvantage to LGBTQ students..

The LSUC has a duty to render this decision in a manner consistent with the public interest and the cause of justice. What does that mean? How can the concept be defined, particularly in the context of a body that licenses and regulates the legal profession?

In one of the earliest *Charter* cases, *R. v. Oakes*, Chief Justice Dickson was called upon to define "the values and principles of a free and democratic society" for the first time. TAS submits that in the context of the LSUC's mandate, this language illuminates the core values of the public interest and the cause of justice. The Chief Justice wrote:

> The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.[10]

TAS submits that accrediting TWU's law school would be inconsistent with the principles enunciated by the former Chief Justice and would not be consistent with the public interest or the LSUC's mandate to advance the cause of justice.

Accrediting TWU's law school will send a message to the legal profession and the public that discrimination on the basis of sexual orientation is acceptable and is supported by the LSUC. Such a message will undermine the evolution of equality rights generally, and LGBTQ rights in particular, in Canada. As Justice L'Heureux-Dubé wrote in the 1995 decision *Egan and Nesbitt v. Canada*,

> Given the marginalized position of homosexuals in society, the metamessage that flows almost inevitably from excluding same-sex couples from such an important social institution is essentially that society considers such relationships to be less worthy of respect, concern and consideration than relationships involving members of the opposite sex. This fundamental interest is therefore severely and palpably affected by the impugned distinction.[11]

The damage of this message, particularly when sent by a law school or law society, cannot be underestimated. As Justice Cory wrote in *M. v. H.*:

> The exclusion of same-sex partners … implies that they are judged to be incapable of forming intimate relationships of economic interdependence as compared to opposite-sex couples, without regard to their actual circumstances. […] [S]uch exclusion perpetuates the disadvantages suffered by individuals in same-sex relationships and contributes to the erasure of their existence.[12]

[10] *R. v. Oakes*, [1986] 1 S.C.R. 103.

[11] *Egan v. Canada*, [1995] 2 S.C.R. 513 at 567.

[12] *M. v. H.,* [1999] 2 S.C.R. 3 at para. 73.

A requirement that students comply with the Covenant as a condition of admission is as equally offensive as a statute that expressly excludes members of the LGBTQ community. There is no difference between the two. The Covenant not only has the practical effect of denying admission to LGBTQ students, but also perpetuates a stereotypical view that fails to recognize their dignity and equality, without any regard to their actual circumstances. Such an outcome is clearly contrary to the public interest and the advancement of the cause of justice.

The LSUC would not accredit any proposed law school that expressly discriminated on a constitutionally protected ground, such as race, gender or disability, even if the discrimination was the result of sincerely held beliefs. The LSUC would never accredit a law school with a "No Women" or "No Blacks" or "No Jews" admission policy, regardless of whether that policy was based on sincerely-held religious beliefs, and particularly where the direct and stated objective of these groups' exclusion was to "ensure the integrity" of the educational "community". The LSUC should not, therefore, accredit a law school with a "No Gays or Lesbians" admission policy.

The LSUC also has a long history and has played a key role in promoting and celebrating LGBTQ equality in Ontario. Education programs offered by the LSUC are required to be in compliance with *Charter* values. The Rules of Professional Conduct make the promotion of equality, including sexual orientation, a professional obligation as set out in Rule 5.04. The Law Society's Equity Initiatives Department was created in 1997 following the adoption of the Bicentennial Report on Equity Issues in the Legal Profession by the Law Society's governing body. In 2013, the LSUC released an inclusivity guide for sexual orientation and gender identity issues for law firms. The LSUC has been outspoken about human rights offences; recently, the LSUC has made public efforts to raise concerns about harassment of lawyers representing LGBTQ individuals in Nigeria and Uganda.[13] Over the past decade, at least four lawyers have been awarded the Law Society Medal for their work in achieving and promoting LGBTQ equality. It is not an understatement to say that equality is a cherished value and critical ideal to the Law Society of Upper Canada. Accrediting a law school, like TWU's, that discriminates on the basis of sexual orientation will only serve to undermine the LSUC's leadership and credibility in promoting these issues. Once that ground is lost, it will not easily be won back.

6. The LSUC would be Breaching the *Charter* and Unfairly Discriminating by Accrediting TWU's Law School

a) Accreditation of TWU's Law School Is Contrary to *Charter* Values

Perhaps few things are more important than the freedom to choose the spouse of one's choice and make other decisions about intimate personal relationships. The Supreme Court of Canada has repeatedly referred to such decisions as engaging our fundamental

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[13] See Law Society of Upper Canada News Release, "The Law Society of Upper Canada Expresses Concern that Human Rights Lawyers Representing LGBTI Clients in Nigeria Face Possible Harassment" (February 28, 2014); and Law Society of Upper Canada News Release, "The Law Society of Upper Canada Expresses Concern that Human Rights Lawyers Challenging Uganda's Anti-Homosexuality Bill Face Possible Harassment" (February 28, 2014).

liberty and security interests.[14] Policies that require censorship or concealment of the very identity of a student are patently inconsistent with *Charter* values.

In this case, admission to and full participation in TWU student life would be denied to a whole class of people on the basis of sexual orientation in a manner that offends the human dignity of gays, lesbians and bisexuals. It exacerbates pre-existing disadvantage by deeming same-sex relationships less worthy of respect and recognition and fails to recognize the lived realities of gay and lesbian commitments. Any decision that involves the sanction of this policy by the LSUC would, in TAS' respectful submission, be contrary to s. 15 of the *Charter*.

The Covenant also clearly would have an impact on the academic environment for LGBTQ students (and others whose conduct might offend the Covenant due to their unmarried status). The broader effect is illustrated by the comments of the B.C. Court of Appeal in *Kempling*. In that case, a teacher believed, wrote and lectured that gays and lesbians could be "fixed" with a form of therapy. Lowry J.A. wrote:

> As I have said, the harm in evidence in this case is not that of discriminatory actions directed against particular individuals, but rather is that sustained by the school system as a whole. In his writings, Mr. Kempling made clear that his discriminatory beliefs would inform his actions as a teacher and counsellor. His writings therefore, in themselves, undermine access to a discrimination-free education environment. Evidence that particular students no longer felt welcome within the school system, or that homosexual students refused to go to Mr. Kempling for counselling, is not required to establish that harm has been caused. Mr. Kempling's statements, even in the absence of any further actions, present an obstacle for homosexual students in accessing a discrimination-free education environment. These statements are therefore inherently harmful, not only because they deny access, but because in doing so they have damaged the integrity of the school system as a whole.[15]

Discriminatory treatment and exclusion is not less damaging because it is long-standing or common, or because it is based on "firmly held beliefs." There would be no end to discrimination if traditional beliefs provided a defence to equality claims. Section 15 guarantees the "unremitting protection of the individual rights and liberties" of minorities who have been historically vulnerable to stigma and stereotyping. It aims to protect the traditionally disadvantaged from discrimination, however deeply ingrained, accepted, and longstanding. While freedom of religion is constitutionally recognized and should be given force and expression, it is not unlimited and must be balanced with competing *Charter* rights when they conflict and cannot co-exist.[16]

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[14] *M. v H.*, *supra* note 12; *Miron v. Trudel*, [1995] 2 S.C.R. 418; *Nova Scotia (Attorney General) v. Walsh*, 2002 SCC 83, [2002] 4 S.C.R. 325; *Quebec (Attorney General) v. A*, 2013 SCC 5, [2013] 1 S.C.R. 61.

[15] *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327, 43 B.C.L.R. (4th) 41 (C.A.) at para. 79 [*Kempling*].

[16] *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497 at para. 72 [*Law*]; *Hunter v. Southam*, [1984] 2 S.C.R. 145 at 155. See also *R. v. N.S.*, 2012 SCC 72, [2012] 3 S.C.R. 726, especially at paras 46-49.

Freedom of religion does not operate as a sort of trump card to extinguish the rights of others. In fact, when equality claims compete with religious values, the opposite is true. Where freedom of religion is asserted as the basis on which equality rights are denied, the Supreme Court of Canada recently (and unanimously) held that only a limited justification for the equality infringement should even be considered. In its 2013 decision in *Whatcott*,[17] the Court affirmed its previous (and also unanimous) ruling in the Malcolm Ross[18] appeal, as follows:

> In *Ross*, La Forest J. recognized that there could be circumstances in which the infringement of an exercise of freedom of religion, like that of freedom of expression, could merit only an attenuated level of s. 1 justification. La Forest J. noted that the respondent's religious views in that case sought to deny Jews respect for dignity and equality. He went on to state, at para. 94, that "[w]here the manifestations of an individual's right or freedom are incompatible with the very values sought to be upheld in the process of undertaking a s. 1 analysis, then, an attenuated level of s. 1 justification is appropriate."[19]

On that basis, despite accepting that the actions of Mr. Whatcott against LGBTQ individuals were motivated by a sincerely held religious belief, the Supreme Court of Canada upheld certain findings of discrimination and hate speech against Mr. Whatcott. Like Mr. Ross and Mr. Whatcott, TWU has over-reached and ought not to be permitted to hide its expressly discriminatory admission policy behind a claim of freedom of religion.

Although TWU is a private institution, the LSUC is a public institution whose mandate and decisions are governed by the *Charter* and the *Human Rights Code*. It strains credulity to say that, when considering the accreditation of a private or faith based law school, the LSUC can exercise its public interest role without regard to the *Charter* and human rights principles, both of which expressly prohibit the very type of discrimination that TWU promotes.

b) Accreditation of TWU will Impose an Unfair Disadvantage on LGBTQ Students

In addition to being overtly discriminatory, the impugned provisions of the Covenant are irrelevant to whether LGBTQ students and unmarried individuals in a common law relationship should be admitted to and will succeed in their legal education, which surely should be the core objective of a law school's admission policy. This irrelevance highlights the offensive and capricious nature of the Covenant.

An additional concern is that accrediting TWU's law school will impose an unfair disadvantage on LGBTQ students applying to law school. There are a limited number of first-year law student openings across the country. The fact that a new law school has been approved would be positive, were it not for the fact that only some applicants will be admitted or will be welcome. An express barrier to entry (and one that would be sanctioned by the LSUC if the law school is accredited) will mean one fewer law school

[17] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467 [*Whatcott*].

[18] *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 [*Ross*].

[19] *Ross*, *ibid.* at para. 162 (per Rothstein J.).

open to LGBTQ applicants than to others. No evidence is required to confirm the negative impact it will have on a community that has just recently achieved equality in Canada. No evidence is required to demonstrate how particularly offensive it would be to sanction anti-gay barriers to *legal education* when the right to be free of such barriers has been achieved in the legal context, by lawyers and judges, and by virtue of the supreme law of our land.

7. Distinguishing the *BCCT* Decision

In TAS' view, the decision of the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*[20] is not determinative of the question before Convocation. This is because: (1) the LSUC's public interest mandate is broader than that of the BCCT; (2) societal acceptance of LGBTQ rights and the law in that regard has evolved in the 13 years since the BCCT decision, and (3) courts will be deferential to the LSUC's decision.

a) The LSUC's Public Interest Mandate is Broader than the BCCT's

There are important differences between the *Law Society Act* and the former BC *Teaching Profession Act*, R.S.B.C. 1996, c. 449 (the "BC *Teaching Profession Act*"), which was the legislation considered in *BCCT*. Under its enabling statute, the BCCT may consider the public interest *only with respect to considering the qualifications of individual applicants*.[21] Unlike the BCCT and its statute, the *Law Society Act* requires the LSUC to consider the public interest and the advancement of the cause of justice in everything it does.

In *BCCT*, the Supreme Court held that, by virtue of the reference to "the public interest" in s. 4 of the BC *Teaching Profession Act*, the BCCT could "consider the effect of public school teacher education programs <u>on the competence and professional responsibility of their graduates</u>."[22] The Court went on to consider whether TWU graduates would be unworthy teachers. The Court concluded that, in the absence of concrete evidence that they would discriminate in the school environment, TWU graduates should not be denied licensing on the basis that they might hold the discriminatory beliefs reflected in the predecessor Covenant document.

By contrast, the *Law Society Act*, since its amendment in 2006, imposes a duty on the LSUC to "maintain and advance the cause of justice and the rule of law" and "protect the public interest." The LSUC's mandate to consider the public interest and advance the cause of justice is thus not limited to a consideration of the suitability of TWU's graduates

[20] *Supra* note 5.

[21] The former BC *Teaching Profession Act*, R.S.B.C. 1996, c. 449, s. 4, reads:

> It is the object of the college to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage the professional interest of its members in those matters.

[22] *BCCT*, *supra* note 5 at para. 13 (emphasis added), citing the dissenting judgment in the Court of Appeal in that matter.

to practice law. In everything the LSUC does – including the accreditation of law schools – it has a mandatory duty to "maintain and advance the cause of justice and the rule of law" and "protect the public interest".

The LSUC's statutory duty requires it to consider whether accreditation of TWU's law school would be contrary to the cause of justice. Whether graduates of such a law school would act in a discriminatory fashion is not the issue. The issue is whether TWU's discriminatory policies are contrary to the public interest and the cause of justice.

b) The Legal Context has Evolved since the *BCCT* Case

In our view, a court reviewing a decision in this matter by the LSUC will be required to consider several changes that have occurred since 2001 when the *BCCT* case was decided. In particular, the evolution of the legal recognition of LGBTQ rights since 2001 has been significant and was only just beginning when the *BCCT* case was decided.

In 1999, just two years before the *BCCT* case, the Supreme Court of Canada released its decision in *M. v. H.* The decision was legally ground-breaking and had significant implications, requiring widespread legislative amendment at the federal and provincial levels, so that same-sex couples had the same rights and obligations as unmarried opposite-sex couples across all laws, across the country.[23] In 2003, the *Halpern* decision was released, requiring full and equal marriage for same-sex couples in Ontario. In 2004, other court decisions rolled out equal marriage in B.C. and Quebec[24] and the Supreme Court of Canada decided the *Marriage Reference*.[25] In 2005, Parliament passed the federal marriage statute, the *Civil Marriage Act*.[26] In 2007, the Court of Appeal for Ontario released its decision in *A.A. v. B.B.*,[27] recognizing the reality of three-parent families for same-sex couples and permitting declarations of parentage for same-sex parents.

A significant amount of time and debate on the *Marriage Reference* centred on the so-called "tension" between the freedom to marry and the religious views of those opposed to it. The parenting cases, including *A.A. v. B.B.*, also engaged religious and firmly held, traditional beliefs. The dialogue and legal understanding of these issues has continued since that time, with new challenges arising from new facts and claims, including pensions, benefits, divorces, and the rights of transgendered people. As discussed, the law has also continued to evolve with respect to religious freedom and in particular we have seen a shift away from the concept of "competing rights" in these cases.[28] Such

[23] 68 Federal Statutes were amended; 67 Ontario Statutes were amended; similar numbers were amended in other provinces.

[24] *Catholic Civil Rights League v. Hendricks*, [2004] RJQ 851 (Que. C.A.); *EGALE Canada Inc. v. Canada*, 2003 BCCA 251, 13 B.C.L.R. (4th) 1 (C.A.); *Dunbar v. Yukon*, 2004 YKSC 54, 122 C.C.R. (2d) 149 (Yukon S.C.).

[25] *Reference re Same-Sex Marriage*, 2004 SCC 79. [2004] 3 S.C.R. 698 [*Marriage Reference*].

[26] S.C. 2005, c. 33.

[27] 2007 ONCA 2, 83 O.R. (3d) 561 (C.A.).

[28] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567 and *Whatcott*, *supra* note 17.

issues had not even been considered when the *BCCT* case was decided. The sensitivities, the conceptualization and the understanding of the legal context of same-sex equality claims have evolved significantly since 2001.

So too has our courts' understanding about evidence in *Charter* cases. One of the critical reasons for the *BCCT* decision is that there was insufficient evidence demonstrating a connection between the private institution's policies and the effect on the education and the teachers who would graduate from TWU. TAS submits that many *Charter* cases decided since that time have moved away from formalistic comparisons and evidentiary requirements.[29] Perhaps the best example of this is the *Halpern* case, in which over thirty experts opinions were filed, only to be met by both levels of court recognizing the obvious and common sense propositions offered by the applicants seeking equal marriage.[30] Such an obvious "connect the dots" approach could be applied in the current context when the LSUC or a reviewing court considers the issue of whether the Covenant and in particular the obligation it places on teachers will have an effect on the quality and content of the legal education. In fact, that is precisely what the British Columbia Court of Appeal concluded, without the necessity of extrinsic evidence, in the *Kempling* decision – released four years after the *BCCT* decision.[31]

Even the basic test for equality cases has evolved since 2001. At that time, *Law v. Canada*[32] set out a multi-part test for a successful equality claim. That test has not just been refined in subsequent years; it has been entirely restated and *Law* has been specifically discredited in not one but two cases – *Kapp* in 2008 and *Withler* in 2011. The test is now more flexible, less comparative, and less formulaic than in the past. The Court has instructed that the dignity of all citizens and the goal of substantive equality should be the main considerations.[33]

These fundamental shifts in equality analysis have occurred since BCCT was decided. It is difficult to imagine how it could be predicted with any degree of certainty that a case decided then would be decided similarly today. Times change. Law and society evolve. When *M. v. H.* was released in 1999, two judges of the Supreme Court of Canada, including the Chief Justice, literally reversed their positions since the *Egan* decision four years earlier.[34] Even in its own judgments, the Supreme Court has recognized the evolving concepts of equality and attitudes towards LGBTQ people.[35] If the LSUC

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[29] *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483 at para. 22 [*Kapp*]; *Withler v. Canada (Attorney General)*, 2011 SCC 12 at para. 66.

[30] *Halpern v. Canada (Attorney General)* (2002), 60 O.R. (3d) 321 (Div. Ct.), aff'd (2003) 65 O.R. (3d) 161 (C.A.) [*Halpern*].

[31] See the passage written by Lowry J.A. in *Kempling*, *supra* note 15, cited above in Section 6(a).

[32] *Law*, *supra* note 16.

[33] *Kapp*, *supra* note 29.

[34] Contrast the positions of Chief Justice Lamer and Justice Major in *Egan* and *M. v. H.*

[35] Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25 Canadian Journal of Women and the Law 148. See also *R. v. Tran*, 2010 SCC 58, [2010] 3 S.C.R. 350.

considers two snapshots in time – 2001 when BCCT was decided and 2014 – it is apparent that the legal context of this controversy has changed drastically between those dates.

Based on the foregoing, TAS submits that it is reasonable to conclude that a reviewing court today would reach a substantially different conclusion regarding TWU's compliance with societal norms regarding the respect and fair treatment of gays and lesbians than it did in the *BCCT* case.

c) LSUC Decision Will Be Accorded Deference by the Courts

The governing principles of the standard of review to be applied on the judicial review of administrative action have also undergone marked changes since the Supreme Court considered *BCCT*. Formerly, the courts considered it their original mandate to resolve questions of law and questions involving the *Charter* and human rights statutes. Where those questions were under review, the courts previously substituted their own views by using a standard of correctness.

In *BCCT*, the Court applied a correctness standard based on the finding that BCCT did not have expertise in interpreting human rights legislation and in balancing *Charter* values. Even under the old standard of review regime, the LSUC would be afforded greater deference than the BCCT in this regard. Unlike the BCCT, the LSUC has exclusive and long-standing jurisdiction to govern the conduct of its members and the criteria for admission to the Bar of Ontario. In contrast to the BCCT, the Attorney General cannot disallow the LSUC's by-laws. The LSUC is also capable of forming its own legal opinion on the intersection of *Charter* values and the accreditation of TWU.

In any event, under the modern approach to standard of review,[36] administrative decision makers' expertise over their home statutes and the intersection of the *Charter* and human rights laws with their own jurisdiction properly demands that the reviewing courts will show deference to the decisions of the tribunal. Such decisions are reviewed on a standard of reasonableness – not to limit litigation or to ease the task of reviewing courts, but because the courts have recognized that the decision is for the statutory decision-maker, not the courts. Wherever an administrative decision maker is interpreting its home statute, the presumption is that its decisions – even decisions on pure questions of law – will only be overturned where they are unreasonable.[37]

The LSUC's public interest mandate, as discussed above, arises from Section 4.2 of the *Law Society Act*. The LSUC has a responsibility to decide on its own, pursuant to its statutory mandate, whether accreditation of TWU's law school is in the public interest. If the LSUC were to simply follow the *BCCT* decision, it would be abdicating its responsibility to consider the public interest in light of its own statutory regime and the

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[36] *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 44-64.

[37] *Alberta (Information and Privacy Commissioner) v. Alberta Teachers Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 at paras. 30-34, 37-49 [*Alberta Teachers*]; see also *Canada (Canadian Human Rights Commission) v. Canada (A.-G.)*, 2011 SCC 53, [2011] 3 S.C.R. 471 at paras. 16, 18, 21-25; *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395 at paras. 43-48 and 71 [*Doré*]; and Craig, *ibid.* at p. 166.

change in the equality landscape since the *BCCT* decision. This primary responsibility, and expertise, lies at the foundation of the substantial shift in the courts' approach to judicial review and the Supreme Court's near-uniform deference to administrative tribunals interpreting their home statute.

In *Doré v. Barreau du Québec,*[38] the Supreme Court recently emphasized the need for all administrative decision makers, and particularly the law society at issue in that appeal, to balance *Charter* considerations as part of the exercise of their expertise and discretion.

This change in judicial attitudes not only ensures that the LSUC's decision on this issue will be reviewed on a standard of reasonableness - it obliges the LSUC to undertake its own evaluation of the public interest. The bases articulated in the case law to rebut the presumption of a reasonableness standard would not apply in this case.[39]

8. The LSUC Process

TAS congratulates the LSUC on its open and transparent consultation process in this matter. As we hear so often, it is important not just that justice be done, but that it be seen to be done as well. TAS greatly appreciates the opportunity to provide these submissions and to assist the LSUC in its deliberations.

9. Conclusion

The LSUC, and the Province of Ontario, have a long history of championing equality rights and the other fundamental freedoms found in the *Charter*. The first same-sex adoption case,[40] the first same-sex parenting case,[41] the first gay and lesbian spousal status case,[42] the first equal marriage case,[43] even the first same-sex divorce[44] – all of these firsts were achieved in Ontario courts, in decisions written by Ontario judges, in cases argued by members of the Ontario bar.

These decisions have had significant impact across the country, and indeed around the world. The first equal marriage decision in the United States relied heavily on the Ontario Court of Appeal decision in *Halpern*, citing the case at the remedial stage.[45] *M. v. H., A.A. v. B.B.* and *Halpern* have also had widespread international attention and have been cited

[38] *Doré*, *ibid*.

[39] *Alberta Teachers*, *supra* note 37 at paras. 30-34.

[40] *Re K.* (1995), 23 O.R. (3d) 679 (Prov. Div.).

[41] *Rutherford v. Ontario* (2006), 81 O.R. (3d) 81 (S.C.J.); *A.A. v. B.B.*, *supra* note 27.

[42] *M. v. H.*, *supra* note 12.

[43] *Halpern*, *supra* note 30.

[44] *M.M. v. J.H.* (2004), 73 O.R. (3d) 337 (S.C.J.).

[45] *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003).

in cases in the U.K., Ireland, Israel, Australia, New Zealand and South Africa.[46] Ontario is not simply a province that recognizes the equality rights of its LGBTQ citizens. Ontario has been an international leader in this area.

The decision before the Law Society does not require it to break new ground. The law in this area is clear and settled. It does, however, require the LSUC to recognize and be consistent with the equality jurisprudence in this province.

The Covenant is a barrier to LGBTQ students seeking to attend TWU and the Covenant creates an environment for students, teachers and staff that is offensive to our fundamental and cherished *Charter* values. For the LSUC to accept and sanction this discriminatory practice would be a significant step backwards that would undermine so many of the finest human rights accomplishments we have witnessed in this province in the last two decades.

Given that graduation from an accredited law school is a prerequisite to entry to the profession, TAS respectfully submits that the LSUC, in determining whether to accredit a law school, must not accredit a law school which discriminates on prohibited grounds. Any law school that effectively bars prospective students from admission on the basis of immutable personal characteristics – whether it be race, gender, or sexual orientation – should not be accredited by the LSUC.

TAS submits that Convocation should reject TWU's application for accreditation of its law school in Ontario.

Yours very truly,

Alan H. Mark
President

CC: Policy Secretariat

[46] See, for example: *Fitzpatrick v. Sterling Housing Association Ltd,* [2001] 1 A.C. 27 (H.L.); *Fourie and Another v. Minister of Home Affairs and Another*, [2005] ZACC 19 (Constitutional Court of South Africa); *In re Marriage Cases*, 43 Cal.4th 757 (2008); *Zappone and Another v. Revenue Commission and Others*, [2006] IEHC 404 (Ireland H.C.); *Ben-Ari v. The Director of the Population Administration in the Ministry of the Interior*, HCJ 3045/05 (21 November 2006) (Israeli Supreme Court). The recent landmark decision of the Supreme Court of the United States in *United States v. Windsor*, 570 U.S. 12 (2013) which will result in equal marriage opening up across the United States concerned a couple who were married in Ontario (Edith Windsor and Thea Spyer).

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March 27, 2014

RE: LSUC Accreditation of Trinity Western University School of Law

Dear Honourable Treasurer and Members of Convocation:

As a group of concerned members of the legal community, we the undersigned of Thompson Rivers University Faculty of Law Outlaws, a student club that promotes awareness of queer issues within the legal community, along with members of the administration and faculty of Thompson Rivers University Faculty of Law, are writing in regards to your decision of whether to admit graduates of the proposed Trinity Western University School of Law ("TWU Law") to the Ontario Bar. We urge you to fully consider the important equality dimensions of your decision and its implications for the role of Ontario lawyers as advocates of justice and equality.

We learned of the recommendation by the Federation of Law Societies of Canada that provincial authorities approve TWU Law and the subsequent decision by the BC government to approve TWU Law with disbelief and dismay. We understand that some law societies, such as those in Nova Scotia, British Columbia, and Ontario, will be considering whether to grant TWU Law graduates the ability to practice law in their jurisdictions. We believe that you should oppose or at least qualify the admission of TWU Law graduates to the Ontario Bar on the basis that Trinity Western University applies discriminatory practices in relation to sexual orientation as part of its admissions process. In particular, by requiring students to sign the Community Standards Agreement (and threatening those who fail to comply with expulsion from the University)[1], TWU Law will actively discriminate against LGBTQ students and limit the access of LGBTQ students to legal education and the legal profession. This discrimination has the potential to diminish public confidence in the independence of the bar as advocates for promoting social justice and the rule of law, especially given that the legal profession has a responsibility to uphold human rights, promote access to justice, and to represent minority and sometimes unpopular interests.

There are three reasons why we urge you to oppose or at least qualify the admission of TWU Law graduates to the Ontario Bar.

First, in deciding whether to grant preliminary approval to TWU Law, the Federation of Law Societies of Canada's Special Advisory Committee concluded that "there is no public interest reason to exclude future graduates of the program from law society bar admission programs as

[1] TWU Student Handbook, "Student Accountability Process", online: Trinity Western University <http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>.

long as the program meets the National Requirement."[2] However, the Committee expressed concern about the tension between the values espoused by Trinity Western University's Community Standards Agreement and the law school's ability to instill in its students an understanding of the core principles of public law in Canada, including the *Charter of Rights and Freedoms* and human rights.[3] We echo this concern and argue that the conflict between these values unjustifiably infringes section 15(1) of the *Charter*, which constitutionally guarantees that every person has the right to equal protection and benefit of the law without discrimination on the basis of certain enumerated and analogous grounds. As held by the Supreme Court of Canada, section 15(1) includes sexual orientation as a protected ground given that those of a minority sexual orientation have been subject to significant prejudice and discrimination in the past.[4]

Second, the current accreditation process for new law schools in Canada was never designed to consider the creation of a law school that was grounded in a religious curriculum. The stages of accreditation that TWU Law has already passed have been unable to grapple with the issue at hand, which lies at the intersection of discrimination based on sexual orientation and freedom of religion. As a private religious institution which does not rely on government funding, Trinity Western University is entitled to follow a religious curriculum. Its requirement to sign the Community Standards Agreement was upheld by the Supreme Court of Canada in 2001 in relation to the training of teachers.[5] However, institutions that operate in the public interest have a duty to comply with the values espoused by the *Charter*. We would argue that the admission and training of future lawyers are sufficiently in the public interest to attract these duties. We urge you to consider the potentially serious consequences of allowing the admission of graduates of a private religious institution to the Ontario Bar given the unique and important responsibility of lawyers to promote justice, equality, and the anti-discriminatory values of our Constitution, especially in relation to the most vulnerable members of our society.

Third, in light of the decision of the Supreme Court of Canada in *Saskatchewan Human Rights Commission v Whatcott*,[6] we would encourage you to consider that discrimination in this matter involves "the likely *effect* of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination."[7] The result of the Community Standards Agreement is the effective banning of LGBTQ individuals from TWU Law as the Agreement prevents couples from living in same-sex relationships. Admitting the future graduates of TWU Law to the Ontario Bar, unless appropriate anti-discrimination measures are put in place, would send the message that the Law Society of Upper Canada endorses TWU Law's discriminatory

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[2] "Trinity Western University's Proposed Common Law Program", online: Federation of Law Societies of Canada <http://www.flsc.ca/en/twu-common-law-program/>.

[3] Canadian Common Law Program Approval Committee, *Report on Trinity Western University Proposed School of Law Program* (2013), at 25-26 online: <http://www.flsc.ca/_documents/ApprovalCommitteeFINAL.pdf>.

[4] *Egan v Canada*, [1995] 2 SCR 513, online: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1265/index.do?r=AAAAAQAfRWdhbiB2IENhbmFkYSwgWzE5OTVdIDIgU0NSIDUxMwAAAAAB>.

[5] *Trinity Western University v. British Columbia College of Teachers,* 2001 SCC 31, online: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do>.

[6] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, online: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/12876/1/document.do>.

[7] *Ibid* at para 58. Emphasis added.

practices in favour of anti-discrimination objectives that exist as pillars of a just and democratic society.

We believe that your Convocation has a responsibility to ensure that the values of diversity and equality are enshrined in the legal process in your decision. We urge you to oppose or at least place reasonable conditions on the admission of TWU Law graduates, such the creation of appropriate anti-discrimination measures with respect to TWU Law, with the aim of preserving the fundamental role of lawyers in Ontario to act as advocates of justice, fairness, and equality. We appreciate the opportunity to provide input and look forward to your decision on this important matter.

Sincerely,

The Outlaws

Geea Atanase
President

Kendra Morris
Co-President

Sarah Marsh
Administrative Officer

Brent Ryan
Outreach Chair

Lorne Neudorf
Faculty Advisor
Assistant Professor of Law
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National Secretary-Treasurer
Secrétaire-trésorier national

March 28, 2014 **By EMAIL:** jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Trinity Western University Accreditation

Unifor was founded in September, 2013 by its predecessor unions: the Canadian Auto Workers union (CAW-Canada) and the Communications, Energy and Paperworkers Union of Canada (CEP). Unifor represents more than 300,000 workers in nearly every sector of the Canadian economy. Unifor is Canada's largest union in the private sector.

Unifor is committed to promoting the interests of working people across Canada. Chief among those interests are the basic and fundamental human rights that are enshrined by law in this country, and which serve to promote the principles of equality and respect for diversity in our workplaces, schools, and democratic institutions. Unifor, like its predecessors before it, is strongly committed to the advancement of LGBTQ rights both in and outside of the workplace.

In response to the Law Society of Upper Canada's call for written submissions with respect to the accreditation of Trinity Western's proposed School of Law, Unifor wishes to add its voice to the growing opposition to any such proposal.

Unifor recognises there is a place for faith based academic institutions in Canada, and further understands that there are students, faculty and staff who would no doubt benefit and desire an opportunity to study and work in an environment that places a Christian worldview at the core of its mandate.

However, the accreditation of Trinity Western's proposed School of Law, which would enable graduates of the program to gain entrance into Ontario's legal profession, must be considered against the backdrop of the Community Covenant – a discriminatory impediment to LGBTQ students, faculty, and staff who wish to teach, work and study in connection with the program.

It is the restrictive nature of the Community Covenant which necessarily requires the Law Society of Upper Canada to consider whether its mandate to ensure the protection of the public interest would be respected if accreditation is approved.

It is without question that the restrictive covenant discriminates against LGBTQ individuals in that it demands adherence to a requirement to abstain from same-sex practices, and that it would further disqualify LGBTQ individuals who have entered into a vow of marriage with their same-sex spouse.

While those in support of accreditation insist that the covenant would not prevent LGBTQ individuals from being admitted into the School of Law, such a sentiment ignores that the price of admission for LGBTQ individuals is to deny their legal, moral, and ethical right to equality and dignity of their person. Such a requirement runs afoul of the spirit and requirements of Canada's *Charter of Rights and Freedoms*, notwithstanding the applicability of the Charter to so-called "private" academic institutions such as Trinity Western University. Such a requirement is also arguably inconsistent with human rights legislation in Ontario.

The effect of the Community Covenant is to restrict access to LGBTQ individuals who are unwilling to pursue their legal education in an environment which demands that they forgo their right to equality as a pre-condition to their admission. Accordingly, accreditation of Trinity Western's proposed School of Law will render the Law Society complicit with discriminatory practices intended to deny opportunities to LGBTQ students at Trinity Western University.

It is for these reasons that Unifor strongly encourages the Law Society of Upper Canada to make accreditation of Trinity Western's proposed School of Law contingent upon the removal of the requirement for its students to enter into the Community Covenant.

Sincerely,

Vinay Sharma
Director,
Human Rights Department
Unifor

cc: Lewis Gottheil, Jerry Dias

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THE UNITED CHURCH OF CANADA

L'ÉGLISE UNIE DU CANADA

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March 27, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear colleagues:

The United Church of Canada
and the proposed offering of law degrees by Trinity Western University

I offer to you the compliments of The United Church of Canada.

I write to you at an important time for the advancement of human rights in Canada, and the particular matter of how education of those who would enter our legal profession are to be equipped and effectively ensure the rule of law for the realization of those rights.

In recent months, Trinity Western University of British Columbia has proposed to open a law school, one that would confer a juris doctor (or bachelor of laws) accredited academic degree for entry into the legal profession.

As you know, Trinity Western University (TWU) is a private, faith-based university affiliated with the Evangelical Free Church of Canada. All persons in the University (faculty, staff and students) must annually sign a faith statement known as a *Community Covenant* that prescribes a code of conduct. Section 3 of the *Covenant* commits persons to " … treat all persons with respect and dignity … " and to abstain from "… sexual intimacy that violates the sacredness of marriage between a man and a woman …" The *Community Covenant* also holds that signatories "become an ambassador of this community and the ideals it represents."

It is the respectful submission of The United Church of Canada that the Law Society of Canada must necessarily refuse to admit to the profession graduates of a TWU law degree program as long as the University's *Community Covenant* continues to prohibit sexual intimacy outside of heterosexual marriage.

There are several reasons for this request of the United Church.

Compendiously, the requirement of TWU's *Community Covenant* in respect of human sexuality is arrived at by particular reading and understanding of Biblical authority and Christian doctrine, one which is not shared by the United Church. We believe that such a reading leads directly to unwarranted discrimination.

There is also fairness in the matter. The exclusion of students who would study law on the basis of their identified or declared sexual orientation and marital status is unfair. It is correspondingly unfair to those law schools which accord a place for such would-be students, in that they would take on directly or by the result of skewed applications, a greater burden to ensure a place for such students. Consider an analog from *apartheid* South Africa. The denial of entry to persons studying law at nearly all of the country's academic institutions on the basis of race during the second half of the 20TH century was manifestly unfair to them and indirectly unfair to those persons and institutions which did receive them. Fairness often does not count for much in the law. Here it underscores the inequality of requirements to attend an academic professional degree program.

Law schools occupy an important place in Canadian society. They are the required places of learning for those who would enter the legal profession. The critical protections for – and advancement of – human rights in our civil society are rooted in the quality of a law school education, together with exacting standards to enter a self-regulated profession that enjoys exclusivity of practice solely for the public good. Law schools, in other words, have a unique place in Canadian society to equip those who have unique access to and obligations to represent all persons and causes, in our courts, human rights tribunals and before our governments in the protection and progress of human rights. The values instilled in academic legal education are intrinsic to human rights protection in Canada. They are vital to a pluralistic society.

It is my first suggestion that such an overtly discriminatory requirement – one that excludes persons of different sexual orientation apart from those in traditional heterosexual married relationships – can have no place in the academic and professional education of future lawyers. The very norm suggested by such exclusion in a Canada of the 21ST century is inimical to the law's protection of all persons; of *equality* regardless of who we are. By defining marriage only as something possible for heterosexual couples is in fact contrary to Canadian law.

It is not that the Law Society should refuse or deny persons entry into the profession who would have a law degree conferred by TWU. Such a result would amount to exclusion upon exclusion which, given the otherwise merit of such persons seeking to enter the profession, would be improper at a purely individual level. Rather, what the Law Society must address is whether such a law degree has the necessary credibility and implicit assurance of intellectual rigour, including the comprehension of human rights in Canada in our time, to allow its recipients to practice in an independent profession overwhelmingly for the public interest.

The exclusion of persons of non-heterosexual and married-status sexual orientation from participating wholly in Canadian life is now almost an historic relic. Human rights obligations, including formally in law under provincial codes and Canada's *Charter of Rights and Freedoms*, are intrinsically a part of the fabric of our institutions: government and private, educational and professional. Any educational program that would reject persons on the basis of an irrelevant distinction (gender, racial heritage, marriage status, sexual orientation, to name a few) is one that is inherently impaired, in other words, legally suspect and ethically defective.

Much is made of TWU's status as a private institution and the place religious (that is, theological) precepts hold in its university degree programs. No one can deny TWU's right to offer university degrees, although the intersection of the University with Canadian public life is irrefutable; for example,

government support and funding, and the vital imprimatur of accreditation as a university by the government of British Columbia. Canadian universities are, by tradition and role, profoundly at the heart of civil society in our country. They have an obligation to reflect and to educate to the accepted norms now found in a tolerant land.

The present case of TWU's proposed offering of professional practice law degrees is said to require a balancing of rights – that of the equality of all persons heedless of their sexual orientation and marital status in competition to the right of persons and institutions to exercise religious (and conscientious) freedom.

The distinction is a false one when it comes to the purported exclusion of persons on the basis of irrelevant personal characteristics or qualities. One could substitute the category of race or gender, (a "black person" or a woman), instead of sexual orientation, as justifiably excluded because of religious belief (both of which in the past have been justified by Christian, Biblical interpretations) to realize the truth of this. Scripture and Biblical doctrine are held out as authority to ground a *Community Covenant* that demands persons at TWU realize their human sexuality only within the boundaries of heterosexual marriage, as such. The United Church would argue strongly that this is not a true understanding of Scripture.

Those who would suggest that TWU's imposition of its *Community Covenant* on those studying to enter the legal profession is the exercise of a permitted religious freedom are incorrect. No doctrine or norm of Christian faith supports such a result. Indeed, the opposite is true. A thoughtful reading of the Bible leads inexorably to the conclusion that tolerance is urged as a principal theological construct. Only by not rejecting others, not casting them out from society and its institutions, is a life of faith to be fully realized.

We know that human sexuality is so intrinsic to our identity and agency that it cannot be separated as "mere act" from a person. TWU's Community Covenant necessarily denies any sexual expression to homosexual persons; enforced (and policed) celibacy is the only acceptable behavior. As such, the argument that the evident exclusion of persons from an institution on the basis of imposed norms is somehow a permissible exercise of religious freedom ultimately has no merit. It stands revealed as nothing more than social preference, unacceptable in Christian faith, and rejected across secular society in Canada.

I write to you in the week that a new book, *A Call to Action: Women, Religion, Violence, and Power*, by former United States President Jimmy Carter has been published. The book's urgent message is that humanity must no longer allow misconceived religious doctrine across all faiths be used as a pretext for the oppression of women:

> "However, some selected scriptures are interpreted, almost exclusively by powerful male leaders within the Christian, Jewish, Muslim, Hindu, Buddhist and other faiths, to proclaim the lower status of women and girls. This claim that women are inferior before God spreads to the secular world to justify gross and sustained acts of violence against them." (page 3)

If we substitute for "women and girls" the words "persons realizing their human agency through sexual expression outside of heterosexual marriage", the call to action in this letter is clear.

Let me conclude by thanking you for ensuring the Convocation of the Law Society of Upper Canada carefully considers afresh the question of TWU's proposed law degree program. The United Church of Canada is grateful that the Convocation's concern and intellectual inquiry is again directed to this pivotal issue.

Yours faithfully,

The Right Reverend Doctor Gary Paterson
Moderator
The United Church of Canada

cc: Professor Mary Jane Mossman, Professor of Law Osgoode Hall Law School
Rev. Dr. Linda Yates, St. John's United Church Halifax Nova Scotia

Faculty Council Motion Regarding Trinity Western University
College of Law, University of Saskatchewan
March 17, 2014

Faculty Council of the College of Law, University of Saskatchewan endorses the following statement, drawn largely from statements of principle by law faculties at Osgoode Hall Law School and at the University of Victoria, with respect to the approval by the Federation of Law Societies of the law school at Trinity Western University:

WHEREAS the College of Law, University of Saskatchewan is committed to the principle that diversity among faculty, students and staff is vital to an open and engaged environment for the study of law;

WHEREAS all law schools should provide an inclusive climate both for persons of diverse faith traditions and religions and spiritual communities, and for members of the Lesbian, Gay, Bisexual, Trans*, Two-spirit, Intersex and Queer and Questioning ("LGBTTIQQ") communities;

WHEREAS Trinity Western University requires that its faculty, staff and students sign a "Community Covenant," which by virtue of section 3 commits them to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman," and by virtue of section 4 defines "healthy sexuality" as intimacy that "is reserved for marriage between one man and one woman" and which in its penultimate paragraph further states that signatories "become an ambassador of this community and the ideals it represents;"

WHEREAS this Covenant excludes persons in same-sex marriages and in the wider LGBTTIQQ communities by requiring that they commit to a set of beliefs and a course of conduct that is inconsistent with their legal and personal relationships and their sexual identities;

AND WHEREAS the Covenant will result in a disproportionate reduction in the relative proportion of places for the study of law in Canada - for LGBTTIQQ students and their allies - and this disproportionate reduction in access to legal education, and in turn the legal profession, constitutes discrimination in principle and a denial of equality and access to justice for excluded persons;

AND WHEREAS law schools have a singular symbolic and material role in society, in that they not only represent justice and access to justice to the broader society but also are the sole route to the judicial branch of government and a common route to public office in legislatures and executive bodies, with lawyers as a group having significant social and political capital;

THEREFORE, Faculty Council of the College of Law, University of Saskatchewan respectfully requests that Trinity Western University commit to the principles of equality and non-discrimination in access to, and in the provision of, legal education for students, staff and faculty.

IN ADDITION, Faculty Council requests that the Dean of the College of Law, University of Saskatchewan and staff, along with faculty and students, reaffirm a commitment to an inclusive climate within the College of Law for both persons of faith and LGBTTIQQ students and explore concrete ways to encourage inclusion so that a range of voices can engage with these issues without fear of backlash.

IN PASSING THIS MOTION, College of Law, University of Saskatchewan agrees that:

The Chair of Faculty Council will forward this motion to Trinity Western University; and

The motion may be circulated by members of Faculty Council and the College community to other interested parties.

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Treasurer and Members of Convocation:

We are a broad coalition of faculty, staff, students, and alumni of the University of Toronto Faculty of Law. As members of the University of Toronto Faculty of Law community we are committed to the principle that diversity among faculty, students and staff is integral to an open and vibrant environment for teaching and learning law.

Trinity Western University has received conditional approval for a new law school from the Federation of Law Society of Canada. We are aware that the Law Society of Upper Canada will be meeting on April 10 and 24 to discuss the accreditation of Trinity Western University's proposed faculty of law. Section 4.2 of the *Law Society Act* provides that,

> "In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
>
> 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
>
> 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
>
> 3. The Society has a duty to protect the public interest."

A decision that sanctions discrimination does not uphold these principles and is not in the interests of the legal profession.

Trinity Western University is a private religious university that requires all students, faculty, and staff to sign a "Community Covenant". The Community Covenant prohibits sexual intimacy outside of marriage between a man and a woman - this in turn discriminates against all LGBTQ students, staff, and faculty on the basis of sexual orientation as well as others on the basis of marital status.

The "Community Covenant" at Trinity Western University will result in a disproportionate reduction in the relative proportion of places for the study of law in Canada for students and potential students seeking to study law who are within the group excluded from Trinity Western University's law school (particularly LGBTQ students). This disproportionate reduction in access to legal education in Canada constitutes discrimination and a denial of equality and access to justice for excluded persons.

We urge the Law Society of Upper Canada to deny accreditation unless Trinity Western University eliminates the discriminatory language and content in its "Community Covenant".

Sincerely,

University of Toronto Students' Law Society
Adam Sproat, J.D. Candidate, 2014
Aimee Letto, Class of 2012
Alannah Fotheringham, J.D. Candidate, 2015
Aleena Reitsma, J.D. Candidate, 2015
Alex Carmona, J.D. Candidate, 2018
Alex Fidler-Wener, J.D. Candidate, 2014
Alex Ognibene, J.D. Candidate, 2016
Alison Mintoff, J.D. Candidate, 2015
Andrew Lynes, J.D. Candidate, 2016
Anna Cooper, Alumni, 2013
Aria Laskin, J.D. Candidate
Aruna Dahanayake, J.D. Candidate, 2014
Ash-Lei Lewandoski, J.D. Candidate, 2014
Aurora Curtis, J.D. Candidate, 2015
Avery Au, JD Candidate 2014
Bailey Rudnick, J.D Candidate, 2015
Beatrice Marry, J.D. Candidate 2015
Ben Iscoe, J.D. Candidate 2014
Bernard M. Dickens, Professor Emeritus, U. Toronto
Bo Luan, J.D. Candidate, 2015
Brendan Stevens, J.D. Candidate, 2014
Brendon Smith, J.D. Candidate
Brent K. Lemon, J.D. Candidate, 2016
Brittany Tovee, J.D. Candidate, 2015
Bruce McRae, J.D. Candidate, 2014
Caitlin, J.D. Candidate
Carina Chan, J.D. Candidate, 2015
Carol Rogerson, Professor
Caroline Senini, J.D. Candidate, 2015
Chad Pilkington, J.D. Candidate, 2015
Chad Podolsky, J.D. Candidate, 2016
Chris Anzenberger, J.D. Candidate, 2016
Christie Campbell, J.D. Candidate, 2014
Cindy Yi, J.D. Candidate, 2015
Clara Rozee, J.D. Candidate, 2016
Colleen McKeown, J.D. Candidate, 2015
Craig Mullins, J.D. Candidate, 2014
Dana Shen, J.D. Candidate 2014
Daniel Paton, J.D. Candidate 2016
Daniel Urquhart, J.D. Candidate 2015
Dave Kumagai, J.D. Candidate, 2015
David Gruber, J.D. Candidate, 2015
Dharsha Jegatheeswaran, J.D. Candidate, 2015
Dragana Rakic, J.D. Candidate, 2016
Drew Beesley, J.D. Candidate, 2015
Elizabeth Winter, J.D. Candidate, 2014

Ella Henry, J.D. Candidate, 2015
Elliot Pobjoy, J.D. Candidate, 2015
Emilie Lahaie, J.D. Candidate, 2014
Emily Bloxom, J.D./M.A. (Criminology) Candidate, 2015
Emily Hubling, J.D. 2012
Emma Carver, J.D. Candidate 2014
Eryn Fanjoy, J.D. Candidate, 2015
Esther Lexchin, J.D. candidate 2014
Ethan McCarthy, J.D. Candidate 2014
Hamish Stewart, Professor
Hanna Gros, J.D. Candidate, 2016
Ila Mada, J.D. Candidate, 2016
Jacob Jaskiewicz, J.D. Candidate 2016
James Rendell, J.D. Candidate 2016
Janet Lunau, J.D. Candidate, 2014
Jeffery Couse, J.D. Candidate
Jeffrey Ma, J.D./MBA Candidate 2015
Jennifer Aziz, J.D. Candidate, 2016
Jennifer Bush, J.D. Candidate, 2014
Jennifer Lillie, J.D. Candidate, 2016
Jessica Fay, J.D. Candidate, 2016
Jessica Millar, J.D. Candidate, 2015
Jim Phillips, Professor
John Koziar, J.D. Candidate, 2014
Jordan Birenbaum, J.D. candidate, 2014
Josh Teichman, J.D./MBA Candidate 2016
Justin Flavelle, J.D. Candidate 2015
Kaitlin Owens, J.D. Candidate, 2015
Kathleen Elhatton-Lake, J.D. Candidate
Keith Crawford, J.D. Candidate, 2015
Kellie Mildren, J.D. Candidate, 2016
Kerry Andrusiak, J.D. Candidate, 2016
Kirsty Collins, J.D. Candidate
Krista Nerland, J.D. Candidate, 2014
Kristy Warren, J.D. Candidate, 2015
Kurt McLeod, J.D. Candidate, 2014
Lane Krainyk, Alum, 2013
Laura Spaner, J.D. Candidate, 2014
Lauren M. Pearce, J.D. Candidate, 2015
Lina Nikolova, J.D. Candidate
Lisa Roszell, Lawyer
Lisa Wilder, J.D. Candidate, 2014
Lisana Nithiananthan, J.D. Candidate 2016
Louis Peter Tsilivis, J.D. Candidate, 2014
Lynn Khazzam, J.D./ MBA Candidate 2015
Madeleine Burkhardt-Jones, J.D. Candidate, 2016
Maeve Clougherty, J.D. Candidate, 2014
Malini Vijaykumar, J.D. Candidate, 2016
Marcus McCann, J.D. Candidate, 2014
Margaretta H Hanna, J.D. Class of 2013

Maria Wei, J.D. Candidate, 2014
Marianne Salih, J.D. Candidate, 2014
Marin Leci, J.D. Candidate, 2014
Maya Ollek, J.D. Candidate
Mayleah Quenneville, J.D. Candidate 2015
Megan Andrews, J.D. Candidate, 2014
Megan C., J.D. Candidate
Megan Strachan, J.D. Candidate 2014
Melayna Williams, J.D., LLM Candidate, Osgoode Hall Law School
Michael Beamish, J.D. Candidate, 2014
Michael Elder, J.D. Candidate, 2014
Michael Macrae, J.D. Candidate
Michael Meguid, J.D./M.B.A. Candidate, 2016
Michelle Hayman, J.D. Candidate, 2016
Natalie Lum-Tai, J.D. Candidate 2015
Natasha Chin, J.D. Candidate 2016
Nicole Wilkinson, J.D Candidate, 2016
Nita Khare, Student-at-Law
Niusha Arbabi, J.D. Candidate, 2016
Paloma van Groll, J.D. Candidate, 2015
Pat Chapman, J.D. Candidate, 2016
Pedram Moussavi, J.D./MBA Candidate, 2015
Peter Georgas, J.D./M.B.A. Candidate, 2016
Petra Molnar Diop, J.D. Candidate, 2016
Rahim Andani, J.D. Candidate 2016
Renatta Austin, J.D., 2012
Robert Prichard, Professor Emeritus
Samantha Greer, J.D. Candidate, 2015
Sara Khajavi, J.D. Candidate, 2015
Sarah Beamish, J.D. Candidate, 2015
Sarah Rankin, J.D. Candidate, 2014
Sheena Lessard, J.D. Candidate, 2014
Sophie Giguere, J.D. Candidate, 2016
Stefanie Oliveri, J.D. Candidate, 2014
Stephen Crawford, J.D. Candidate, 2014
Taylor Cao, J.D. Candidate 2016
Teresa MacLean, J.D. Candidate, 2014
Tijana Micanovic, J. D. Candidate 2016
Tom Wagner, J.D. Candidate, 2014
Tyler Cohen, J.D. Candidate, 2015
Tyler Wentzell, J.D. Candidate, 2014
Vanessa Chung, J.D./MBA Candidate, 2016
Vidushi Hora, J.D. Candidate, 2016
Xi Jia, J.D. Candidate 2015
Zach Mammon, J.D. Candidate, 2016
Nikki Gershbain, Alumni 2000
Justin Basinger, J.D. Graduate, 2012

Ursel Phillips Fellows Hopkinson LLP

JUSTICE AT WORK

Susan Ursel
Direct Dial: 416-969-3515
E-mail: sursel@upfhlaw.ca

March 28, 2014

Via E-mail: jvarro@lsuc.on.ca

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Sir/Madam:

Re: Trinity Western University Accreditation – Submissions

Introduction

Thank you for an opportunity to make representations to the Law Society of Upper Canada with respect to the accreditation of Trinity Western University's (TWU) proposed law school program.

The question before the Society is whether it should accredit TWU pursuant to section 7 of By-law 4?

I write in support of the position that the Law Society of Upper Canada should not accredit TWU, for the following reasons.

Religious Freedom and Sexual Orientation Generally

Religious convictions provide a personal roadmap to one's own life, and are personal acts of conscience and have been recognized as such by our laws. The state should interfere with these acts of personal life choices and conscience as minimally as possible. But we do have to acknowledge that acts of conscience are inherently choices. They consist of ideas, thoughts, moral convictions, and other exercises of the intellect or mind. We privilege the capacity to exercise these functions because they are a function of being human which we cherish. But religion is a human social construct and participation in it (or not) is a human choice.

Similarly, we protect public or relational displays of religiosity such as congregating, special buildings, observance of sacred days or festivals, and we accommodate

personal arrangements of one's own life at work and school (i.e. observance of holidays). We believe and have expressed in law that such accommodations should be respected to the point of undue hardship. But undue hardship must in this context, take into account others' rights and freedoms.

Sexual orientation is similarly personal, but it is not, according to all the best evidence available at this point in a human construct. In fact, the evidence tends to point to it being a complex creation rooted in genetics, biology, physical components of the brain and, at the far end of all of this, social context or opportunity for expression. But same sex attraction is not the same kind of choice as choosing to believe in trans-substantiation as truth rather than metaphor. Nor is it the same kind of choice as belief in Mohammed rather than Jesus. One may feel these religious choices deeply and they may resonate throughout one's life, but they are nevertheless deliberate acts of human conscience. On the other hand, we can see sexual orientation and gender identity as manifestations of the constellation of systems that make up a human being, sometimes deliberately chosen, but often not.

There is also a public component of identity in sexual orientation. It is this public component of identity which is most often needing protection through law from erasure, prejudice, bigotry, and other harmful acts. Sexual orientation is the subject of this protection because without it, there is very little scope for expression of that identity. A sexual identity is essentially a profound individual expression and an expression of relationship with others, not an individual act of private conscience.

Balancing Competing Values

TWU is a private institution in B.C., associated with the Evangelical Free Church of Canada. The TWU Community Standards, applicable to all students, faculty and staff, embody discrimination against homosexuals. Specifically, the list of "PRACTICES THAT ARE BIBLICALLY CONDEMNED", encompass "sexual sins including ... homosexual behaviour". TWU community members were asked to sign a document in which they agreed to refrain from such activities.

TWU's position on homosexual relationships and activities continues to be, according to its interpretation, that such are biblically prohibited. It continues to require commitments from its community members to refrain from such activities. It has a clear and often expressed goal that all persons should adhere to its view of Christian values, whether or not they are Christian, which would include this biblical prohibition. Such a prohibition is clearly at odds with the aspirations of members of the LGBT community in Ontario to live their lives openly and free from discrimination.

When the Supreme Court of Canada observed in the original TWU[1] case that the proper place to draw the line between balancing rights to religious conscience and freedom from discrimination on the basis of sexual orientation is generally between belief and conduct, it was attempting to state a guiding principle for the participation of the religious person in public culture. As the Court observed, the freedom to hold beliefs is broader than the freedom to act on them.

From this, the Court determined that TWU could educate its students and require of them their adherence to strict precepts against homosexuality, but that those convictions could not be taken into the public sphere, in that case, the public education system. It is not acceptable in a public education system to act on discriminatory beliefs.

Following this delineation of guidelines by the Supreme Court, Ontario's Divisional Court in Brockie v. Ontario (Human Rights Commission)[2] dealt with the need for non-discrimination in the provision of publicly available services:

> 41 The right to freedom of religion includes the right to believe, the right to declare the belief openly by word or in writing and the right to manifest that belief by worship, practice and teaching without coercion or constraint. However, the right is not unlimited. It is subject to such limitations as are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others: Big M at pp. 336-337; Ross v. New Brunswick at p. 868.
>
> 42 The freedom to hold beliefs is broader than the freedom to act on them. The freedom to exercise genuine religious belief does not include the right to interfere with the rights of others: Trinity Western University v. British Columbia College of Teachers (2001), 199 D.L.R. (4th) 1 (S.C.C.) at p. 33.
>
> ...
>
> 53 The Code describes values which the people of Ontario, speaking through their legislature, deem worthy of protection. These include the right of homosexuals to participate openly and equally in society, free of discrimination because of their sexual orientation in the supply of goods, services and facilities.
>
> 54 Mr. Brockie's exercise of his right of freedom of religion in the commercial marketplace is, at best, at the fringes of that right. The

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[1] Trinity Western University v. British Columbia College of Teachers, [2001] 1 S.C.R. 772
[2] [2002] O.J. No. 2375

> exercise of his right in this case impacts adversely on the rights of homosexuals in private commercial transactions under s. 1 of the Code to participate fully in the community and the province free of discrimination in the marketplace because of sexual orientation. Their rights are similar to those protected by s. 15 of the Charter from discrimination by the conduct of state actors because of sexual orientation.
>
> 55 Accordingly, limits on Mr. Brockie's right to freedom of religion in the peripheral area of the commercial marketplace are justified where the exercise of that freedom causes harm to others; in the present case, by infringing the Code right to be free from discrimination based on sexual orientation in obtaining commercial services.

TWU Crosses the Line Drawn by the SCC

TWU now seeks to provide publicly available legal educational services designed to provide graduates with an opportunity to enter into and practice the profession of law. Those services on their face will:

1. discriminate against homosexual students, and

2. promote a particular Christian viewpoint with an explicit intention to transform culture and cultural institutions to conform to that viewpoint, including but not limited to its discriminatory viewpoint about the permissibility of homosexual relationships.

In this ambition, TWU crosses the boundary line drawn by the Supreme Court between private conscience and public action.

TWU's Intention to Fundamentally Alter Social Institutions, Culture and Behaviour

TWU is expressly an "arm of the Church" with which it is affiliated, (https://twu.ca/about/), the Evangelical Free Churches of America (EFCA) (https://twu.ca/about/history.html). It is intended to express the "unique vision" of its founders.

> Trinity Western University is a unique, Canadian advanced education community. It is a Christian university, with a mission and core values that reflect a high calling that engages the heart and soul, not just the head. TWU stands unashamed of its commitment to Jesus Christ and Biblical truth.
>
> - https://twu.ca/governance/presidents-office/

TWU expresses six core values as guiding its work. Among them are:

1. Obeying the Authority of Scripture: "We believe the Scriptures, both Old and New Testaments, to be the inspired Word of God, without error in the original writings, the complete revelation of His will for the salvation of men, and the Divine and final authority for all Christian faith and life." and

2. Having a Transformational Impact on Culture: "God calls His followers to influence both individuals and the culture in which they live and ultimately draw people to Him. Trinity Western's programs encourage thought, word and deed that affect the dynamics and institutions of our society on the basis of biblical principles such as justice, mercy and hope." [emphasis added]

More clearly, in TWU's own words, it seeks to convert all to their particular form of Christianity:

> Our greatest hope is that the TWU community influences people to forsake an unbelieving way of life. The kind of radical change we intend to effect is rooted in conversion that leads persons to embrace the Christian faith.
>
> - https://twu.ca/about/values/transformational-impact.html

Students are to "...strive to develop a thoroughly Christian mind and consider the impact of Christian faith on their own lives, their university student culture, their communities, and their nation as they seek to understand our culture and the role of Christians within it." (https://twu.ca/about/values/transformational-impact.html)

TWU states repeatedly that its goal is to transform culture to reflect the values it maintains: "The Bible makes clear that God calls His followers to influence the culture in which they live."

And this change is intended to be profound and impact and transform the institutions and foundations of the culture they live in and to change the behaviour of people in this culture: "To impact culture means to have an effect or influence that propels individuals or elements of society in different directions. To have a transformational impact means that this impact radically changes, not merely modifies, adjusts, or "tinkers around the edges." The change must go to the essence so persons and their acts are truly different than they were before the change occurred." [emphasis added] (https://twu.ca/about/values/transformational-impact.html)

More explicitly, TWU states it aspirations: "Our greatest hope is that the community that is Trinity Western University influences people to forsake an unbelieving culture or way of life and adopt a Christian countercultural way of life." [emphasis added]

Particularly as it relates to law, TWU states its goals to be as follows:

> Jesus Christ has come to overcome the world and its false gods. He sends Christians into the world to proclaim His gospel in thought, word and deed and thus to effect radical change within the larger culture. Even though our faithfulness will stimulate Satan to promote other ideologies, God has not given up on this world and neither should we. God restrains the full power of Satan so that our thought, word and deed may still glorify His name. We believe that this core value rightly calls us to influence the dynamics and the institutions of our society whether or not those who function within them are Christians. Christians have an interest in impacting how laws are made and enforced, how professional bodies conduct their activities, how communities treat their powerless and disenfranchised, and how as a society we make decisions about what we value. We must appeal to our cultures own highest sense of what is good, fair, honest, worthy, and just, and thus attempt to bring it closer to upholding Biblical principles.
>
> - https://twu.ca/about/values/transformational-impact.html

Whether or not others subscribe to the Christian views and values of TWU is not a consideration in TWU's own vision of its mission:

> The kind of radical change we intend to effect in our culture is rooted in conversion that leads persons to embrace the Christian faith. *But even where such conversion does not take place, as an academic community we desire and encourage our society to recognize and adopt the following standards:*
>
> •Live in accordance with the values of human dignity, integrity, responsibility, and justice; these are part of all peoples consciences; and
>
> *•Practice the personal and social implications of a Christian worldview as the key to knowing the truth about reality and to living in accord with it.*

There is no reason to believe, based on its public statements about its vision, values and mission, that TWU would conduct its legal education program in any other way but in conformity with those stated principles.

The Values of TWU Undermine its Capacity to Provide Publicly Available Legal Education Services in a Non-Discriminatory Manner

It is self-evident that TWU's religious values and requirements to adhere to them would create a poisoned learning environment for any homosexual person who sought to lead an open, fully expressed life consistent with his or her sexual orientation while attending that school.

The import of this is not just in the fact of a poisoned learning environment and the restriction on access to educational services this creates; the import is also in the fact that law schools act as gatekeepers to the profession. The narrower the gate, the fewer who have access, and TWU's policies, values and requirements narrow the gate to the profession for LGBT students. We should be concerned about endorsing, through the accreditation of TWU's proposed law school, such a restriction.

However, of greater concern to the Law Society should be TWU's capacity to properly and appropriately educate law students.

Rule 4.06 of the Society's Rules of Professional Conduct state that a lawyer shall encourage public respect for and try to improve the administration of justice. This duty includes the fact that the admission to and continuance in the practice of law implies on the part of a lawyer a basic commitment to the concept of equal justice for all within an open, ordered, and *impartial* system.

TWU's values as carried out through its educational activities are *expressly partial and partisan*. Further, it does not matter to TWU whether others subscribe to their beliefs or not- it still seeks to influence and change the culture, institutions, and people's behaviors to conform to these beliefs.

In this sense, TWU's vision, mission and educational imperatives are completely at odds with the values of a modern, secular, diverse and inclusive society and with a legal education designed to serve such a society.

A legal education based upon the promotion of a partial, partisan and particular religious viewpoint is not consistent with the professional requirement of a basic commitment to an equal and impartial system of law. In particular, TWU has clearly demonstrated that it does not and will not respect the secular values of Ontarians as expressed through their legislation and system of law that LGBT citizens be afforded equal dignity and respect as all other citizens in all fundamental expressions of their identity and relationships.

Rather than find ways for all to live in harmony with difference and diversity, TWU intends to educate its law students to work to advance its particular Christian views in society, and to apparently bring about, through profound institutional and cultural "transformation", general adherence to these values in society, to the exclusion of other

secular values. It seeks to achieve this goal through its educational initiatives, including its law school proposal.

It should be very much a concern to the Society that TWU, through its legal educational program, seeks to promote its particular religious viewpoints and rules, and to bring about fundamental change to our legal culture and legal institutions.

It is not wrong to have values and to seek to express those values in society and through proposals for legal reform. Our society protects the free expression and debate of ideas subject only to such reasonable limits as may be imposed by law.

But those freedoms can only exist within a legal system *which itself respects diversity*. Those educated to uphold the legal system that promotes such freedoms must in turn respect that fundamental tenet and subscribe to it. TWU as a learning institution does not subscribe to that fundamental tenet nor does it apparently intend to educate its students to subscribe to it.

TWU's values are at not co-extensive with and in some cases are completely at odds with those our legal system currently embodies and which are expressed through our Charter of Rights and Freedoms and various human rights laws.

TWU's vision and core values express its aspiration and educational intent to attempt to shift the entire system of law towards its values through the education of its students in those values and the encouragement of them to seek profound cultural change.

While such aspirations and intentions are of course permitted as expressions of personal conscience, and perhaps of political or religious conviction, they are not an appropriate basis for a legal education or curriculum.

Legal education is intended to familiarize students with the systems of law in our country which have been developed and spring from a fundamental respect for and enhancement of diversity. *Legal education is not a political or religious education. There are other institutions for those purposes.*

Conclusion

Ironically, TWU is not a suitable institution to provide a legal education or to be accredited as such because it seeks, through its educational activities, to undermine the very values of diversity and respect for difference which enable it to exist as a religious educational institution in the first place.

Thank you for this opportunity to make submissions in support of the position that the Law Society of Upper Canada should not accredit TWU.

Yours very truly,

Ursel Phillips Fellows Hopkinson LLP

Susan Ursel
SU/js

To Whom It May Concern:

Please accept this submission in support of Trinity Western University's proposed law school. As a law student and Trinity Western alumnus, I am happy to speak to my positive experience as well as the role that Trinity Western could play as a legal institution in Canada.

I attended Trinity Western University from 2006 to 2010. I appreciated Trinity Western's high academic standards, small class sizes, and emphasis on establishing a supportive community for students. I lived on campus all four years, met my husband at TWU, and was happy when my sister chose to attend TWU as well. Upon graduation, I was accepted to all four law schools that I had applied to.

As a private Christian institution, Trinity Western recognizes Biblical standards of personal conduct and has sought to establish a community that fosters those principles. That said, Trinity Western's code of conduct, vision, and other rules were freely debated and, in some cases, amended during my time there. Thus, while Trinity Western University operates differently than other Canadian universities, this commitment to faith-based principles has not come at the cost of respect and compassion for those who do not share these views.

I am currently in my third year of study in the English Common Law Program at the University of Ottawa. I am very excited to begin practicing in Ontario and to officially be called to the bar next year. I am confident that my Christian faith will only enhance my ability to advocate for my clients; I find the suggestion that Trinity Western University graduates might discriminate against homosexual or other individuals unfounded and unfair. In *TWU v British Columbia College of Teachers*, the Court noted that allegations against Trinity were "speculative" (paragraph 19) and went on to find that the BCCT had presented no *evidence* of discrimination. I commend the Law Society of Upper Canada to respect the constitutionally protected freedom of religion and to bear in mind Trinity Western's excellent academic record and reputation in its community in considering this matter.

Sincerely,

Erin VanderVeer

Trinity Western University's Proposal for a Law School

Whereas Trinity Western University (TWU), in Langley, British Columbia, has received preliminary approval by the Federation of Law Societies of Canada (FLSC) in December 2013 to offer a law degree program, with the first cohort of law students to begin their studies in September 2015; and

Whereas TWU has adopted a *Community Covenant Agreement* that requires all members of the university community – including students – to pledge that they will abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman"; and

Whereas a failure to abide by these terms can result in the removal of the offending student from TWU without readmission; and

Whereas the FLSC decided that concerns that TWU's *Community Covenant Agreement* would have a discriminatory impact on lesbian, gay, bisexual, transgender, intersex and queer (LGBITQ) students and staff were outside of its approval mandate;

1. The Western Law Gender and the Law Association is of the view that:
    - The TWU requirement that students and staff comply with the terms of the *Community Covenant Agreement* discriminates against LGBITQ people;
    - Such discrimination offends the policies, values, rights and freedoms associated with equality and human rights in Canadian society;
    - Such discrimination is also contrary to the concept of academic freedom and the professional canon of ethics.

2. The Western Law Gender and the Law Association calls on the FLSC:
    - To reconsider its decision to grant preliminary approval to the accreditation to TWU's proposed law program; and
    - To make a fresh determination on the basis that TWU's admission, hiring and faculty appointment policies fall within the scope of the FLSC's mandate when deciding whether to grant accreditation.

3. The Western Law Gender and the Law Association calls upon the Law Society of Upper Canada:
    - To uphold the values of equality, diversity and access to justice as matters of professional ethics, human rights obligations and its duty to safeguard the public interest when deciding whether it will accredit the TWU law degree program for the purposes of admission to the practice of law in Ontario.

Sincerely,
Denise Brunsdon, 2014-2015 President, on behalf of:
The Western Law Gender and the Law Association

26 March 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Re: Trinity Western University – Proposal for Law School – Ontario Accreditation

Dear Honourable Benchers:

We, the undersigned, are writing as members of the Faculty of Law at Western University, including professors, senior administrators, and staff lawyers at the Community Legal Services Clinic at the Faculty. In addition, several of us are members in good standing of the Ontario Bar.

Trinity Western University (TWU) in Langley, British Columbia has received preliminary approval by the Federation of Law Societies of Canada (FLSC) to establish a law school. We are deeply concerned with the requirement by TWU for faculty, staff, and students to sign a *Community Covenant Agreement* that commits the individual to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman." For a law student, the failure to honour the *Agreement* can result in his or her removal from the University without readmission. In deciding to extend its preliminary approval of TWU's application, the FLSC did not consider whether the *Agreement* would have a discriminatory impact upon lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) students, faculty, and staff.

We are asking the Law Society to withhold approval or accreditation of the TWU law degree, including the admission of TWU law graduates for admission to the practice of law in Ontario, until such time as its legal program provides for the admission of students and the hiring of faculty and staff without discrimination on human rights grounds.

The legal profession in Ontario and Canada has a special responsibility to promote the rule of law, to advance the *Charter* and human rights, to recognize the diversity of the community in our province and country, and to combat discrimination.[1] Likewise, legal education programs in Ontario and Canada contribute to this special responsibility by promoting respect for human rights and *Charter* ideals, by encouraging diversity, by teaching the values of equality and non-discrimination, and by ensuring equal access to legal education. These responsibilities are not satisfied, and these standards are not met, by a legal education program that excludes, or

[1] *Law Society Act*, RSO 1990, Chapter L.8, s. 4.2; Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 5.04 (1); *Doré v Barreau du Québec*, 2002 SCC 12.

discriminates against, a historically vulnerable group of people within our community based on a protected ground of human and *Charter* rights.

Sincerely,

Professor Andrew Botterell

Associate Dean Craig Brown

Margaret Capes – Review Counsel, Community Legal Services

Professor Chi Carmody

Associate Dean Erika Chamberlain

Assistant Dean Mysty Clapton

Professor Michael Coyle

Professor Gillian Demeyere

Professor Anna Dolidze

Professor Jennifer Farrell

Doug Ferguson – Director, Community Legal Services

Professor Randal Graham

Assistant Dean Danielle Istl

Professor Mohamed Khimji

Professor Michael Lynk

Professor Carl MacArthur

Professor Christopher Nicholls

Professor Valerie Oosterveld

Professor Stephen Pitel

Professor Melanie Randall

John Sadler – Director, John & Dotsa Bitove Family Law Library

Dean Iain Scott

Professor Sara Seck

Professor Chris Sherrin

Professor Zoë Sinel

Professor Thomas Telfer

Professor Sam Trosow

Jason Voss – Review Counsel, Community Legal Services

Professor Bruce Welling

March 28, 2014

TWU Submissions
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Re: Trinity Western School of Law

I write in response to the Law Society's invitation for input in its consideration of the proposed Trinity Western University (TWU) law school. I had the great privilege of attending both TWU for my undergraduate studies in political science and the University of Victoria (UVIC) for my law degree. Each of those educational experiences was integral in shaping me as a lawyer. At TWU, I learned invaluable critical thinking skills and the ability to scrutinize problems from myriad angles. At UVIC, I learned law, advocacy and principles of legal analysis.

I am blessed to have had some success in the legal realm. I graduated valedictorian from TWU and was the gold medalist at the University of Victoria. I clerked at the British Columbia Court of Appeal, articled with the Ministry of Justice (Criminal Justice Branch) for Criminal Appeals and Special Prosecutions, and am currently a Crown prosecutor with the British Columbia Attorney General.

It would be a mistake to assume that I somehow had to divest myself of my TWU experience in order to succeed in law; quite the opposite. My TWU education has been foundational to my understanding of legal practice. At TWU, I was imprinted with a profound respect for others' views that is rooted in recognition of the contingency of my own. My time at TWU made me more sensitive to diversity of belief and as a result, has made me a better lawyer.

Respectfully, greater danger for prejudice inheres in the assumption of a monolithic worldview than in the articulation of a perspective. Only the latter is conscious of its contingency and thus able to subject itself to scrutiny. This kind of awareness is ultimately a prerequisite for tolerance, not an enemy. Without an awareness of the fact that our values are culturally, temporally and socially located, we are prone to presume the singularity of our views and judge others'. Recognizing contingency facilitates greater respect for divergent perspectives and enables us to appreciate the passion, commitment, and sincerity with which others hold disparate beliefs.

TWU's Community Covenant articulates one such perspective. It asks students to adhere to a conservative sexual ethic during their tenure at TWU. This ethic is explicitly premised on a Christian worldview. It is one component of a larger

theological perspective that many segments of Canadian society do not share, but it is one that recognizes its own contingency and is thus capable of self-scrutiny.

The argument that graduates from a TWU law school would be prejudiced in their practice overlooks the reality that deep-seated and often unspoken views and values are inherent to human experience. Those in the legal profession are not immune, nor does public secular education insulate students from the inevitability of perspective. All of us come to the study and practice of law indelibly laden with perspective, be it from a theistic worldview, life experience or a political orientation. Lawyers are adept at seeing multiple sides to problems and arguments. By trade, they are able to set aside personal feelings or preferences for the sake of effective advocacy. Lawyers routinely advance positions they may not personally embrace or condone. Government lawyers may be tasked with defending policies they would not enact. Criminal lawyers may defend individuals who have acted in ways that defy their personal morality. Family lawyers may advocate for persons who have conducted their familial affairs in a manner that is contrary to the lawyer's own relational ethic.

The legal profession has never demanded that its members purport to embrace a defined moral worldview and should not. Rather, it should ask that its members act impartially and with integrity, defend the weak and value justice above personal gain. I credit TWU for instilling these very principles in me, all of which I endeavor to apply in my daily practice.

There is unsettling irony in using the banner of law as a blunt mechanism to bar the establishment of an educational institute that subscribes to a divergent perspective, when legal training—and the permanence of the legal profession as a whole—is premised on an assurance that people will perpetually disagree. Law is tasked with sketching the boundaries and rules of engagement for these disputes, not eliminating them.

This is exactly what the Supreme Court of Canada did when it grappled with TWU's community covenant in its 2001 decision: ***Trinity Western University v. British Columbia College of Teachers***, 2001 SCC 31. There, the Majority struck a delicate balance between competing values, recognizing that the meaningful exercise and protection of conflicting rights requires their mutual tailoring and circumscribing. The TWU decision effected this equilibrium by delineating between conduct and belief. It was a principled, if imperfect, means of reconciling equality and freedom of religion in a pluralistic democratic society.

Respectfully, attempts to distinguish the legal profession from the realm of public education—the context of the 2001 TWU decision—are ill conceived. Public education plays an integral role in the moral formation of children and helps prepare them for civic and social participation. Surely the teacher's ability and responsibility to propagate these values at least approximates that of the lawyer's.

I urge the Law Society to consider this issue in view of the Supreme Court's decision, and to give meaningful effect to the established balancing of rights in Canadian society by approving TWU's proposed school of law.

Sincerely,

Lauren Witten, J.D.

*The above views are my own and do not reflect those of my employer.

March 27, 2014

Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Trinity Western School of Law

I am a lawyer and member of the British Columbia bar. I graduated with a biological science degree from Trinity Western University and a law degree from the University of Victoria. I also attended Medical School at the University of British Columbia, though I chose not to complete that degree. Following law school, I clerked at the British Columbia Court of Appeal and currently practice with the BC Ministry of Justice.

It is with some trepidation that I sit down to write this letter in support of the proposed TWU law school. I have seen the placards stating, "Their grads on the bench? No thanks." As the closest thing to a TWU law grad that currently exists, I cannot help but interpret the anti-TWU rhetoric as an attack on my right to fully participate in my chosen profession as a person of faith. I fear that making my support public could have career implications. It saddens me that Christians should feel this way in a country like Canada.

To start, I can unequivocally say that TWU provided the highest quality education I have ever received. I found it to be an intellectually vibrant campus where students were encouraged to think freely and question their worldview and presuppositions. The classes were small, the professors passionate, and the community unlike anything I have ever experienced. TWU students and professors bear no resemblance to the caricatured religious fundamentalists I have seen described in newspapers and online comment sections over the past several months. The TWU students I knew were passionate about making a difference in the world and deeply committed to social justice. I never met students or professors who exhibited discriminatory or prejudicial views towards the gay community. By contrast, I remember gay rights being a subject that was handled with enormous sensitivity and circumspection.

One of the main arguments I have heard against TWU is that law students who sign the Community Covenant may discriminate against or refuse to accept gay clients. The problem with this argument is that all lawyers have beliefs that sometimes conflict with those of their clients. There is no basis to assume that lawyers who hold religious beliefs will abandon objectivity or fail to satisfy their professional responsibilities when engaged by clients whose views and lifestyles differ from their own. Christian lawyers currently in the profession already conduct

themselves in this way; to presume that graduates of a TWU law school would, by virtue of having agreed to adhere to the Community Covenant while attending TWU, conduct themselves differently, defies logic and inheres a prejudicial attitude towards people of faith.

To give a personal example, during the time I attended TWU (2002-2006) I did not feel at all conflicted in both supporting same sex marriage and signing the Community Covenant. Making an individual choice to abide by a conservative set of community standards does not mean one will discriminate against people that do not hold those values. The guiding principle of the Christian faith is to treat everyone as you would want to be treated.

The TWU law school will be a private Christian school that receives no public funding. Even if the Community Covenant did not exist, I suspect most potential law students would be more interested in attending one of Canada's eighteen public common law schools or six civil law schools. I understand that TWU's intention is to offer an alternative to public, secular institutions that presently have a monopoly on legal education.

I do not know if I would have chosen to attend TWU law school, but I certainly would have appreciated the option. I had several great professors at UVIC, and I would not characterize the experience as a negative one. However, I did often feel marginalized as a result of my religious beliefs and, at times, the classroom environment felt hostile towards Christianity. While most UVIC students openly expressed their sincerely held beliefs and opinions, my Christian colleagues generally kept their heads down and their mouths shut for fear of ridicule. I do not say this to criticize UVIC, but to illustrate that secular legal education is far from neutral. I experienced my legal education as being taught from a distinct ideological perspective. There is nothing inherently wrong with this perspective, but similarly, there is nothing wrong with teaching from a religious perspective. We are a tolerant and diverse enough nation to accommodate both.

To exclude graduates of a private religious law school from the bar on the basis of religious beliefs, however, *is* antithetical to Canadian values of tolerance and pluralism. It would permit the majority to silence and exclude the minority, and runs contrary to the guarantee of freedom of religion. During the Law Society bencher interview that is required before being called to the bar, I was told that the interviews were once used to screen communists. Ironically, the only substantive question I was asked in my own interview was whether I thought TWU should be allowed to have a law school. If the Law Society were to find that religious beliefs are a proper basis for excluding people from the bar, it is only natural for Christians to wonder what these bencher interviews could look like in the future.

Consider another example. What if I were to attend TWU for a masters program and sign the Community Covenant as a member of the BC bar. Would that be a proper basis for disbarment? I

should hope not. But the difference is tenuous. The quality of the TWU legal education is not at issue; only TWU's religious covenant is being put forward as the reason why its graduates are unfit for the bar. If the religious covenant is a proper basis for exclusion, why shouldn't current members of the bar that subscribe to that same covenant also be excluded? That questions like these are even engaged is beyond startling to me.

At the end of the day, there is no question that the religious beliefs TWU upholds represent a minority position within Canadian society. The test of tolerance, however, is not whether to tolerate easily palatable beliefs, but rather what to do with distasteful, divergent beliefs that conflict with the dominant worldview. Should we tolerate, or silence and exclude? Fortunately, we live in a country that cherishes freedom and tolerates divergent viewpoints. Indeed, as the Supreme Court of Canada held in the course of affirming TWU's teacher education program, "tolerance of divergent beliefs is a hallmark of democratic society". I trust that the Law Society's decision will ultimately reflect this quintessential aspect of Canadian law and culture.

Sincerely,

Mark Witten