REPLY SUBMISSION OF:

TRINITY WESTERN UNIVERSITY ("TWU")

TO:

THE LAW SOCIETY OF UPPER CANADA ("LSUC")

WRITTEN REPLY SUBMISSION WITH RESPECT TO ACCREDITATION OF THE TWU SCHOOL OF LAW

April 22, 2014

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CONTENTS

PAGE

A. INTRODUCTION AND EXECUTIVE SUMMARY ................................................... 3

B. TRINITY WESTERN UNIVERSITY .................................................................................. 5

C. THE QUESTION TO BE ANSWERED BY CONVOCATION ................................... 7

D. OFFENSIVE ANALOGIES AND LACK OF FAIRNESS ........................................... 10

E. TWU v. BCCT IS BINDING LAW ............................................................................ 12
   (i) Different Arguments? ......................................................................................... 13
   (ii) Statutory Mandate ............................................................................................. 13
   (iii) The Same Considerations Apply ...................................................................... 14
   (iv) Societal Changes Do Not Undermine the Rights of the TWU Community ..... 15
   (v) Decision in Whatcott ......................................................................................... 16
   (vi) Perception that TWU Graduates May Discriminate or that Convocation
       Would be Approving TWU’s Religious Beliefs ................................................... 17
   (vii) The Work of the Federation of Law Societies of Canada ................................ 19

F. FREEDOM OF RELIGION AND RELIGIOUS EQUALITY .................................. 20

G. ALLEGATIONS OF DISCRIMINATION ............................................................... 24
   (i) Analytical Approach in the Pinto Opinion is Incorrect ....................................... 27
   (ii) Consideration and Application of the Ontario Code ........................................... 27
   (iii) Potential Claims against LSUC under the Ontario Code ................................ 28
   (iv) Misconstrues the Question Before Convocation .............................................. 29
   (v) In Any Event, TWU Complies with the Ontario Code .................................... 29
   (vi) Conclusion on the Pinto Opinion ...................................................................... 30

H. ANSWERS TO QUESTIONS ASKED BY BENCHERS ....................................... 30

I. SUMMARY AND CONCLUSION .............................................................................. 44

Appendix 1: Questions Raised by Benchers – Where Answers in Record

Appendix 2: Non-Issues Raised, Not in Record

Appendix 3: Excerpts from Factum of B.C. College of Teachers
A. INTRODUCTION AND EXECUTIVE SUMMARY

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

2. TWU is a religiously based educational community, as mandated by legislation, and maintains a Community Covenant that implements its religious faith and objectives.

3. TWU has established a reputation for academic excellence and successfully operates a number of other professional programs.

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

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

6. TWU respectfully suggests that appropriate regard be paid to the substantial work carried out by the Federation and the Ministry. Other law societies, including those in British Columbia, Alberta, Saskatchewan, Prince Edward Island, Newfoundland and Labrador and Nunavut have indicated that they will recognize and enrol TWU graduates. As a result:

   (a) A refusal by the LSUC to recognize TWU graduates has the potential to seriously damage and undermine the considerable work done by all of the law societies and the Federation to establish and accept a uniform national requirement; and

   (b) The LSUC will be obligated to recognize TWU graduates that become lawyers elsewhere in Canada as a result of its obligations under the Agreement on Internal Trade as implemented by the Ontario Labour Mobility Act. Subsection 9(2) of that legislation restricts the ability of the LSUC to require, as a condition
of certifying an individual called to the bar elsewhere in Canada, that she or he 
undertake any material additional training or assessments.

7. TWU embraces its obligations to teach Canadian equality law and professional ethics, 
including equality based on sexual orientation. All of the evidence unequivocally 
indicates that graduates from TWU’s School of Law will be properly educated in 
substantive law and prepared to meet their professional and ethical obligations.

8. Very little, if any, mention was made of these facts at the April 10, 2014 Convocation. 
TWU understands this to mean that these facts are accepted by Convocation and beyond 
any reasonable dispute. They are very strong indicators that there is no harm to the public 
interest by accepting TWU School of Law graduates. Failing to do so would be punitive 
as against well-educated law students who have sought out a learning environment that 
values and embraces a traditional evangelical Christian worldview.

9. The objections to TWU’s Community Covenant are in many cases based on intolerance 
toward the Christian beliefs that TWU’s community seeks to uphold. This is true of some 
statements made by Benchers on April 10.

10. There is nothing inimical to Canadian society contained in the Community Covenant. Its 
contents are to be expected in the context of an evangelical Christian organization. As 
noted by a number of others, the Community Covenant promotes positive values, 
effecting community members to “treat all persons with respect” and “cultivate Christian 
virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, 
self-control, compassion, humility, forgiveness, peacemaking, mercy and justice”. The 
legal profession can always use lawyers inculcated in all of these values. Most opponents 
focus on only one aspect of the Community Covenant, ignoring the balance of its 
contents.

11. As stated by Dickson J. (as he then was) in Big M Drug Mart, “a truly free society is one 
which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, 
customs and codes of conduct”. As then noted in TWU v. BC College of Teachers 
(“TWU v. BCCT”) “the diversity of Canadian society is partly reflected in the multiple 
religious organizations that mark the societal landscape and this diversity of views should 
be respected”.¹ A TWU School of Law would enhance, not undermine, diversity in legal 
education in Canada.

12. By implementing its religious beliefs and mandate, TWU is only doing what it has been 
legislatively chartered to do, and in a manner authorized by law. A refusal to recognize

¹ Trinity Western University v. College of Teachers, 2001 SCC 31 at para. 33 [TWU v. BCCT]
TWU graduates because of the Community Covenant would violate Charter rights and values, including those rights and freedoms guaranteed under s.2(a) (freedom of religion), s.2(d) (freedom of association) and s.15 (equality and non-discrimination on the basis of religion). It would also violate the rights of TWU graduates under human rights legislation.

13. TWU does not seek approval of the religious beliefs on which the Community Covenant is founded. In fact, the law does not allow Convocation to express an opinion on such beliefs. It certainly does not allow Convocation to withhold a benefit to TWU graduates because it may disagree with the validity of the religious beliefs of TWU’s community.

14. In the April 1, 2014 letter from Supreme Advocacy to the LSUC, TWU asked to be advised of the “grounds and considerations that Convocation considers most relevant to its determination”. The only substantive response received was through the statements made at the April 10, 2014 Convocation. While TWU is of the view that many of the issues raised in those statements are not relevant to the question before Convocation it will address the questions and issues raised by Benchers.

B. TRINITY WESTERN UNIVERSITY

15. Some of the comments made by Benchers at the April 10 Convocation indicated a limited knowledge of TWU.

16. TWU was originally founded in 1962 as a junior college. In 1969, the B.C. Legislature passed the Trinity Junior College Act\(^2\), mandating that TWU’s education would be provided “with an underlying philosophy and viewpoint that is Christian”. The Legislature gave TWU the privilege to grant degrees in 1979\(^3\) and in 1984 TWU became a member of the Association of Universities and Colleges of Canada.

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

18. TWU’s main campus is in Langley, British Columbia. It offers all of the facilities and services of a modern, advanced and sophisticated university setting. It has residences, food services, fitness facilities, advanced laboratories, and performing arts facilities. It

\(^2\) S.B.C. 1969, c.44  
\(^3\) Trinity Western College Amendment Act, 1979, S.B.C. 1979, c.37
Supreme Advocacy LLP

operates a highly successful C.I.S. Athletics program that has won eight national team championships in the last decade.

19. TWU operates an extension campus in Washington State. It also has two ecological research areas (Crow’s Nest Ecological Research Area on Salt Spring Island and Blaauw’s Eco Forest in Langley, BC). TWU was also recently granted approval by both the Ministry and the Chinese government to offer an M.B.A. program in Tianjin, China.

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

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

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

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

5 The Religion in Canada Institute (RCI) is an interdisciplinary research centre and intellectual community of scholars at Trinity Western University committed to understanding the multifaceted role of religion in Canada for culture, individuals, and social institutions. See: TWU, Religion in Canada Institute, online: <http://www.twu.ca/research/institutes-and-centres/university-institutes/religion-in-canada-institute/>. 
23. Over 57% of TWU undergraduate students volunteer in local communities or participate in humanitarian work internationally. TWU believes that this is significantly higher than any other university in Canada. This integration of learning and service transforms students into thoughtful, globally-aware citizens.

24. TWU is, of course, a religious based educational community. It primarily serves the evangelical Christian community in Canada. It makes no apologies for that and strongly believes that its success in developing students into service-oriented citizens is partially the result of its religious character.

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

26. As recognized by the Supreme Court of Canada: “it can reasonably be inferred that the B.C. Legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985.” There is no rational argument that such a religious educational community is somehow against the public interest and virtually all of TWU’s opponents properly concede this point.

C. THE QUESTION TO BE ANSWERED BY CONVOCATION

27. Convocation has revised the question (the “Question”) to be answered in relation to the TWU’s School of Law a number of times. As it now reads:

Given that the Federation Approval Committee has provided preliminary 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?

28. Many of the statements of Benchers on April 10, 2014 focused on the “public interest” mandate of the LSUC. They did so with little reference to the regulatory framework under which LSUC operates or the fact that the matter before Convocation is whether TWU graduates will be entitled to become licensed to practice law in Ontario.

29. The functions of the LSUC as stated in s.4.1 of the Law Society Act are to “ensure that”:
(a) All persons who practice law in Ontario meet the standards of learning, professional competence and professional conduct that are appropriate; and

(b) The standards of learning, professional competence and professional conduct for the provision of legal services are met.

30. In that capacity, the LSUC issues licenses, admitting people to the practice of law and for the provision of legal services (section 27). Pursuant to this authority, the LSUC created By-Law 4 – “Licensing”, which includes reference to applicants having graduated from a law school that is “accredited”. Accreditation occurs only in the context of graduates having their academic achievements recognized by the LSUC.

31. LSUC is not accrediting TWU’s School of Law in a broader sense. TWU has the approvals it needs from the B.C. government to open and operate the law program. The LSUC does not have any direct statutory authority over TWU or its School of Law. It is not a regulator of TWU. The Question is not about whether it is in the public interest to recognize or approve the Community Covenant or TWU itself.

32. The only matter to be decided by Convocation is whether TWU graduates will be recognized. To satisfy its statutory obligation, the LSUC must focus on graduates of TWU and ask whether it is contrary to the public interest to admit those individuals to the practice of law in Ontario.

33. It is only in this context that Convocation may consider the “public interest” under s.4.2(3) of the Law Society Act. The jurisprudence as summarized in the opinion of Cavalluzo, Shilton McIntyre Cornish LLP dated April 4, 2014 identifies that the public interest mandate of the LSUC is to ensure that the public has access to quality and reliable legal services. Given that the matter of accreditation arises only in the context of approving TWU graduates, the public interest concern must centre on whether such graduates will be adequately prepared, educationally and professionally, to practise law in Ontario.

34. On April 5, 2014, Mahmud Jamal of Osler provided the LSUC with a legal opinion (the “Osler Opinion”) addressing how Convocation should deal with claims of competing Charter values. In that opinion, Mr. Jamal concluded:

...the pivotal question is whether there is “concrete evidence” that accrediting the TWU School of Law would result in actual discrimination or a real risk of discrimination if TWU’s graduates were to join the legal profession.
This is consistent with the decision in *TWU v. BCCT*. Convocation must focus on whether TWU graduates are properly prepared to practise law. There is simply no evidence that undermines the conclusions of the Federation and the Ministry that TWU graduates will be so prepared.

35. As noted, TWU does not ask for approval of its Community Covenant or the religious beliefs on which it is based. It is not proper for Convocation to approach the Question based on whether its decision will amount to an imprimatur or approval of such beliefs or the Community Covenant itself.

36. In this respect, TWU accepts that it is legitimate for LSUC to consider any perceived “discriminatory practices” to the extent that this allegation is relevant to the preparedness of TWU graduates to practice law in Ontario. In order to comply with the directions of the Supreme Court of Canada, Convocation must do so in a manner that takes into account all rights and freedoms and, most importantly, whether such alleged “discriminatory practices” impact on the education to be provided at TWU’s School of Law or the ability of its graduates to practice law.

37. It is not sufficient, as argued by a number of Benchers, to allege “discriminatory practices” or that TWU’s Community Covenant may have the effect of limiting admission to members of the LGBT communities. Concluding the analysis at that point amounts to adopting a hierarchy of rights, contrary to the repeated admonitions of the Supreme Court of Canada and is inconsistent with the LSUC’s statutory obligation to maintain and advance the rule of law.6

38. Contrary to the statements of a number of Benchers, and for reasons articulated in more detail below, the Supreme Court of Canada’s reasons in *TWU v. BCCT* are directly applicable in these circumstances. The BCCT also made its determination after concluding that TWU engaged in “discriminatory practices” that it found were contrary to the “public interest”. Specifically, the College of Teachers decided that:

> ...approval of a Teacher Education Program be denied because Council still believes that the proposed program follows discriminatory practices which are contrary to the public interest and public policy which the College must consider...7

A good summary of the Supreme Court of Canada’s evaluation of this imprecise and erroneous consideration of the “public interest” can be found at para. 42 of its reasons:

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6 *Law Society Act*, RSO c.L.8, s.4.2(1)
7 *TWU v. BCCT* at para. 5
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. The actual impact of the sectarian nature of TWU on the educational environment is what was examined in these reasons. [Emphasis added]

39. Despite the clear warning of the Supreme Court of Canada on indistinguishable facts, the majority of Bencher speeches on April 10, 2014 suggest that the LSUC may be poised to make precisely the same error.

40. The history of the approvals granted to TWU’s School of Law and of TWU’s previous struggle to overcome objections to its teacher education program should cause the LSUC to be extremely reluctant to overturn the substantial process that has already occurred. Giving effect to the opposition would repeat the very wrong that occurred in the case involving the BC College of Teachers with no legitimate purpose or effect.

D. OFFENSIVE ANALOGIES AND LACK OF FAIRNESS

41. Mr. Campion graciously assured TWU that it was “among friends” during Convocation. TWU certainly appreciated the kind words of welcome spoken by a number of Benchers. Unfortunately, that reassurance was not universally communicated by the Benchers who spoke.

42. TWU’s Community Covenant was compared to racism, sexism and Muslim extremism. It was said that TWU is like a Residential School. Analogies were drawn to human rights abuses in Uganda and apartheid in South Africa.

43. TWU’s Community Covenant was compared with the Chinese Head Tax and Exclusion Act and racist restrictive covenants that precluded the sale of land to Jewish persons and other races.

8 Transcript of LSC Convocation (April 10, 2014) at p. 144 [Transcript]
9 Transcript at pp.73, 112-113
10 Transcript at p.105
11 Transcript at p.83
12 Transcript at pp.75-77
13 Transcript at pp.67-68
14 Transcript at p.109
15 Transcript at p.89
44. TWU’s religious beliefs were denigrated as comparable to human sacrifice, the execution of heretics and the belief that the sun revolves around the earth.\(^\text{17}\)

45. These statements or analogies were inflammatory, derogatory, unfair and unreasonable. Their impact was exacerbated by the fact that Mr. Ruby, a highly publicized opponent who is on record as calling TWU and its administration hateful and bigoted, and on record as fund-raising, was allowed to address Convocation over the objection of at least one Bencher. No other advocate was allowed to speak, and neither was TWU.

46. These comparisons were unwarranted and offensive. Given the public and televised nature of the proceedings, many comments were unnecessarily hurtful to the TWU community and many other Canadians with similar religious beliefs. TWU has done nothing other than live out its statutory mandate to be a Christian university. It is acknowledged that the religious beliefs held within the TWU educational community are not accepted by many, or even most, Canadians. That is not required. What is required is that TWU’s religious beliefs, which may now be a minority view, be tolerated and treated with respect. These statements by individual Benchers did neither.

47. These statements, and others like them made by various opponents of TWU’s School of Law, belie an antipathy or prejudice towards traditional religious beliefs on marriage. They also ignore or deny the most important and overarching commitment of members of TWU’s community to “treat people and ideas with charity and respect”, “demonstrate concern for the well-being of others” and “model service-oriented citizenship”, consistent with “the person and work of Jesus Christ.”

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

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

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

> ... And if I was to behave in a discriminatory way to a gay or lesbian student or coworker or anyone else, I would be betraying the very ideals of my education, which

\(^{16}\) Transcript at p.113  
\(^{17}\) Transcript at p.161
taught me that my personal beliefs do not interfere or override my public responsibilities. And if I want to be a person of character, it means I treat all people with dignity, respect and equality, regardless of our differences.

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

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

We have long since given up on the belief of trying to assimilate all Canadians to a single point of view. [Emphasis added]

49. The issues raised on April 10 are emotive. However, as a decision-maker with statutory authority, the LSUC cannot allow its deliberations to include or be motivated by such prejudicial, unfair and derogatory statements about TWU’s religious community.

E. **TWU v. BCCT IS BINDING LAW**

50. On April 10, a number of Benchers questioned the applicability of the Supreme Court of Canada’s decision in **TWU v. BCCT**. One Bencher went so far as to argue that Convocation “is not bound by *stare decisis*”, noting that “public attitudes have changed”. Another suggested that the decision, only 13 years old, “smacks of another era” and that the LSUC should risk being wrong and have the courts “tell us if we are wrong”. Such statements suggest a disregard for the rule of law and respect for legal principles.

51. Unquestionably, Convocation is bound by the law and is statutorily mandated to uphold the rule of law. A number of the Benchers of the Law Society of British Columbia, when voting 20-6 in favour of recognizing TWU School of Law graduates on April 11th, specifically noted that they were bound by the Supreme Court of Canada’s decision.  

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19 Transcript at pp.26 & 27
20 Transcript at p.72
52. Convocation should eschew any attempt to avoid the proper and applicable legal principles. An approach that ignores the law would be contrary to Convocation’s statutory mandate.

53. The arguments against the applicability of the TWU v. BCCT decision take a number of forms, each of which will be addressed.

(i) Different Arguments?

54. Mr. Ruby argued\(^\text{22}\) that the BCCT “made one claim and one claim only”\(^\text{23}\) with respect to graduates being unfit to teach. This is false.

55. The BCCT argued before the Supreme Court of Canada that “TWU’s discriminatory practices raised two issues, one of perception, and another relating to risk”.\(^\text{24}\) It argued that a “matter ceases to be altogether a private matter, however, and acquires a public dimension when TWU applies for approval by … a public regulatory body”.\(^\text{25}\) Citing Bob Jones University, the BCCT argued that as a result of Charter and human rights values, it was entitled to deny accreditation as contrary to the “public interest”.\(^\text{26}\) (Appended as Appendix 3 are excerpts from the BCCT’s factum in the Supreme Court of Canada.)

56. These are the same arguments made by Mr. Ruby and other opponents of TWU. They were clearly not accepted by the Supreme Court of Canada as justifying a denial of accreditation of TWU and should not be accepted by Convocation either.

(ii) Statutory Mandate

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

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\(^\text{22}\) Given Mr. Ruby’s well publicized opposition and antipathy to TWU’s School of Law, his speech at Convocation can only be taken as advocacy. As a life bencher, he may not be entitled to vote, but the point of order taken at the April 10 Convocation should have precluded him from speaking. No other advocate was permitted to speak and neither was TWU.

\(^\text{23}\) Transcript at p.82

\(^\text{24}\) BCCT Factum to the Supreme Court of Canada at para.106 filed in TWU v. BCCT

\(^\text{25}\) Ibid, para. 109

\(^\text{26}\) Ibid, paras. 114-116
58. Similarly, the Law Society Act mandates the LSUC to ensure that “all persons who practice law in Ontario … meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.” It is in this regard that the LSUC considers the “public interest”.

59. These mandates are very similar. This is not a legitimate or reasonable basis upon which to distinguish TWU v. BCCT.

(iii) The Same Considerations Apply

60. Some attempt was made to avoid the binding result of TWU v. BCCT on the basis that Convocation can consider the “public interest with respect to accreditation” of graduates of TWU. With respect, that was exactly the issue and argument unsuccessfully advanced by the BCCT. The BCCT decided not to approve TWU’s program “because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest…”

61. The Court held that while the BCCT could consider alleged discriminatory practices as part of its review of the public interest, it also had to consider religious freedom and was wrong to have “inferred without any concrete evidence that such views will limit consideration of social issues …[or] have a detrimental impact on the learning environment…” The case is directly applicable to, and clearly undermines, the reasoning advocated by TWU’s opponents.

62. The arguments advanced by the opponents of TWU’s School of Law were made by the BCCT and expressly rejected by the Supreme Court of Canada. The decision in TWU v. BCCT was a recognition and balancing of TWU’s constitutional rights. It fully considered the issues of competing and balancing of rights. It was not, as suggested by some, a narrow and reluctant decision to allow TWU to exist within British Columbia.

63. This is the same conclusion reached by John Laskin, who specifically reviewed and rejected the arguments made by opponents of the TWU proposal. He included specific reference to arguments articulated by Professor Craig, in concluding that her proposed grounds for refusing approval “would be highly questionable.” Mr. Laskin’s opinion was the same conclusion reached by Mr. Gomery Q.C. who provided a legal opinion to the Law Society of B.C., noting that the Supreme Court of Canada in Whatcott and Doré

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27 Law Society Act, RSO 1990, c L.8, s.4.1(a)
28 Transcript at p.94 and 102
29 TWU v. BCCT at para. 5
30 TWU v. BCCT at paras. 26 and 32
“reaffirmed its commitment to an analytical approach that balances equality rights against other rights protected under the Charter.”

64. The Osler Opinion states clearly that “[t]he Trinity Western decision remains relevant to the Society’s balancing of the Charter values … Changes in the law in the last decade relating to the standard of review and the law of equality do not alter the need to avoid an hierarchical approach to rights … Nor … has the evidentiary standard articulated in Trinity Western changed materially since 2001.” As such, the Court’s reasoning is very much applicable to Convocation’s decision, which is, as stated in the Osler Opinion, “an aspect of the Society’s duties related to the licencing of individual applicants for admission to the Society.”

65. One Bencher attempted to distinguish TWU v. BCCT on the basis that the BCCT “did not have … their own by-law making power.” That is simply not true as evident from para.9 of the Supreme Court of Canada’s reasons.

66. Other Benchers suggested that the decision was specific to British Columbia law and that, as a result, acknowledging TWU’s freedom of religion and association rights to maintain the Community Covenant is unnecessary because not all human rights legislation across the country contain the same provisions. Similarly, others argue that the Supreme Court of Canada’s analysis related to TWU’s right to equal treatment is merely a finding that TWU is in compliance with B.C. legislation. These submissions are incorrect for reasons detailed below.

(iv) Societal Changes Do Not Undermine the Rights of the TWU Community

67. While there is no question that there have been some important societal changes since TWU v. BCCT was decided, these changes have not undermined or eroded in any way the constitutional protection afforded TWU and the members of its religious community. A number of opponents of TWU’s School of Law emphasize the recognition of same-sex marriage in Canada as a societal change since 2001. However, they ignore or entirely dismiss the preamble and s.3.1 of the legislation that created same-sex marriage in Canada.

68. The preamble and section 3.1 of the Civil Marriage Act state:

31 Memorandum of Geoffrey Gomery, Q.C., to the FLSC (May 8, 2013) at p. 9, online: [http://www.lawsociety.bc.ca/docs/newsroom/TWU-material.pdf].
32 Legal Opinion of Mahmud Jamal, to the LSUC (April 5, 2014) at p. 3.
33 Legal Opinion of Mahmud Jamal, to the LSUC (April 5, 2014) at p. 1.
34 Transcript at p.102.
35 Civil Marriage Act, SC 2005, c 33.
WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

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

...  

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

69. This language again shows that the recognition of same-sex marriage was not intended to negatively impact the freedom of religion or freedom of association enjoyed by those holding and expressing religious beliefs that marriage is “the union of a man and woman to the exclusion of all others”. The portion of the Community Covenant to which TWU’s opponents object indicates nothing beyond the recognition of such religious beliefs within a religious educational community.

70. It has always been recognized and acknowledged in the Civil Marriage Act and in human rights legislation that there must be a balancing to ensure that freedom of religion and equality on the basis of religion are protected. The Supreme Court of Canada has already determined how that balancing is to occur in the present circumstances. This is confirmed in the Osler Opinion.

(v) Decision in Whatcott

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

(a) As noted by Mr. Laskin and in the Osler Opinion, the Supreme Court of Canada confirmed that courts are required to balance equality and freedom of religion values to the point at which conduct linked to religious belief results in actual harm. This was exactly the approach taken in TWU v. BCCT. Perceptions and unsubstantiated anticipation of harm are simply not sufficient. Specifically, the Osler Opinion states:
The question thus arises as to whether Whatcott reduced the evidentiary standard articulated in Trinity Western. In my view, it did not. On closer examination, these formulations do not involve different standards. ... The Court stated that BCCT could have denied TWU accreditation only on the basis of “specific evidence” ... [A] real risk of harm would suffice to find that the Charter values of freedom of religion and equality cannot be reconciled; however, to qualify as “real”, such risk must be based on more than “perceptions” or involve ascribing what the Court called “stereotypical attributes” to TWU graduates.

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

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

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

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

(vi) Perception that TWU Graduates May Discriminate or that Convocation Would be Approving TWU’s Religious Beliefs

73. TWU does not seek affirmation or approval of its religious beliefs with respect to the morality of sexual behaviour. In fact, LSUC is not entitled to opine on the validity of the religious beliefs of the TWU community. A decision to acknowledge that TWU’s School of Law will adequately prepare students for the practice of law cannot be legitimately seen as an imprimatur or approval of such beliefs.

74. TWU’s opponents ask the LSUC to deny recognition of the graduates for admission to the practice of law simply because of one aspect of TWU’s Community Covenant that affirms the traditional Christian view of marriage and sexual relationships.

Legal Opinion of Mahmud Jamal, to the LSUC (April 5, 2014) at p. 16
75. Opponents articulate this objection in a variety of ways, but it amounts to the same thing: they suggest that the LSUC should not accredit or recognize TWU graduates because of the nature of TWU as a religious educational community including a traditional Christian view of marriage. This is not, as suggested by some, merely a separate “institutional test” that is distinct from an assessment of the quality and qualifications of graduates. It is all about (and certainly should be about) whether TWU can adequately and appropriately educate lawyers. TWU is not seeking agreement with, or approval of, the religious beliefs of its community. Neither should the LSUC withhold recognition of TWU graduates simply because some, or even all, members of Convocation do not agree with or approve of the religious beliefs of TWU.

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

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

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

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

78. It is simply inappropriate to deny accreditation of graduates based on perceptions. TWU does not ask the LSUC or any other regulatory body to agree with or endorse its religious principles. It would be inappropriate to do so. It is equally inappropriate for Convocation to express or take into account disagreement with TWU’s religious beliefs.

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38 TWU v. BCCT at para. 19
39 TWU v. BCCT at para. 38
79. To paraphrase the Supreme Court of Canada, the freedom of religion of TWU and its students is not accommodated if the consequence of its exercise is the denial of the right to full participation in the bar of Ontario.\(^{40}\)

80. TWU asks only that its program be assessed on proper criteria, not a general sense that the religious beliefs on which TWU is founded are wrong. TWU’s opponents are entitled to their views on TWU’s religious beliefs, as TWU and the members of its community are entitled to theirs. But such views are not a proper basis upon which TWU’s graduates should be refused admission to the practice of law in Ontario. To speak plainly, LSUC Benchers are entitled to their own set of opinions; they are not entitled to their own set of facts.

(vii) The Work of the Federation of Law Societies of Canada

81. The Special Advisory Committee considered the relevant law, including the Supreme Court of Canada’s decision in \textit{TWU v. BCCT}. It obtained a legal opinion from John Laskin who, after thorough review, concluded that \textit{TWU v. BCCT} is binding law and applicable in these circumstances. Specifically, he opined that “if the TWU teachers program could be relied on to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same.” TWU agrees with this conclusion as it is consistent with its commitment to do exactly that.

82. To quote Mr. Laskin:

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

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

\(^{40}\) \textit{TWU v. BCCT} at para. 35
83. The Special Advisory Committee, after detailed consideration, concluded that there was no valid public interest reason to refuse approval to TWU’s proposal. Specifically, it concluded at paras. 65-66:

In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public interest bar to approval of TWU’s proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

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

84. There is no objectively justifiable basis for Convocation to now reach a different conclusion.

F. FREEDOM OF RELIGION AND RELIGIOUS EQUALITY

85. A number of Bencher speeches at Convocation on April 10th reflected a troubling misunderstanding and misapprehension of the freedom of religion and religious equality in Canada.

86. Some Benchers argued that the religious beliefs of TWU’s community are wrong. Mr. Ruby stated that the traditional religious belief pertaining to sexual morality within the TWU community “is hateful, it is destructive, it is bigotry”.41 To characterize someone, or in this case a whole community, as being hateful, destructive and bigoted is more than advocacy. Such statements exhibit a lack of the tolerance and respect to which the TWU community is entitled to receive from Convocation. It does nothing to further reasoned discussion, careful consideration or the public interest.

87. Mr. Evans denigrated such beliefs as “homophobia” and preferred his own definition of Christian belief saying that the beliefs of TWU’s community have “no place in the Christian faith.”42

41 Transcript at p.80
42 Transcript at p. 148
88. These Benchers are entitled to their personal beliefs. However, neither Convocation nor individual Benchers are entitled to disparage the religious beliefs of the TWU community and those of millions of other Canadians with similar religious beliefs.

89. In *R. v. Jones*\(^{43}\) the court expressly stated that “a court is in no position to question the validity of a religious belief, notwithstanding that few share that belief.” This was expressly upheld in *Ross v. New Brunswick School District No. 15*\(^{44}\) and *Syndicat Northcrest v. Amselem.*\(^{45}\)

90. The correctness, validity or desirability of the religious beliefs of TWU’s community is a private matter that neither the Courts nor Convocation are entitled to question, let alone vilify. The statements made by Benchers that sought to delegitimize such beliefs were not appropriate or germane to the question of accrediting TWU’s graduates. The beliefs of TWU and the members of its community are entitled to respect.

91. Other Benchers questioned whether freedom of religion and religious equality rights were engaged in this matter. Mr. Swaye quoted an article that “this is not about the freedom of individuals to practice their religion.”\(^{46}\) Mr. Wright reduced freedom of religion to “freedom of our own conscience.”\(^{47}\) Ms. Symes repeatedly questioned whether freedom of religion was even engaged, indicating that it might be engaged if TWU were simply a “divinity school.”\(^{48}\) Mr. Ruby suggested that religious belief would only be protected within a church environment.\(^{49}\) These statements seriously misconstrue religious freedom and equality in Canada as interpreted and applied by the Supreme Court of Canada.

92. As recognized by the Supreme Court of Canada, religious belief is integral to all aspects of the lives of religious people.\(^{50}\) 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.\(^{51}\) The members of TWU’s religious community are entitled to associate together and pursue education in a religious environment without hindrance, reprisals or constraint.

\(^{43}\) [1986] 2 S.C.R. 284 at 295  
\(^{44}\) [1996] 1 S.C.R. 825 at para. 70  
\(^{45}\) [2004] 2 S.C.R. 551  
\(^{46}\) Transcript at p.113  
\(^{47}\) Transcript at p.160  
\(^{48}\) Transcript at pp.130-134  
\(^{49}\) Transcript at p.81  
\(^{50}\) *Chamberlain v. Surrey School District,* 2002 SCC 86 at para. 19  
\(^{51}\) *R. v. Big M Drug Mart,* supra. at pp.336-337; *Ross v. New Brunswick,* supra at p.868
93. In *Reference Re Same Sex Marriage*, the Supreme Court of Canada confirmed that “the protection of freedom of religion afforded by s.2(a) is broad and jealously guarded.” Even in *Whatcott*, the Supreme Court concluded that freedom of religion “should extend broadly”. The Court confirmed the test for finding an infringement of s.2(a) of the Charter:

An infringement of s. 2(a) of the Charter will be established where: (1) the claimant sincerely holds a belief or practice that has a nexus with religion; and (2) the provision at issue interferes with the claimant's ability to act in accordance with his or her religious beliefs: *Hutterian Brethren of Wilson Colony v. Alberta*, at para. 32; *Syndicat Northcrest c. Amselum*, 2004 SCC 47, [2004] 2 S.C.R. 551 (S.C.C.), at para. 46 and paras. 56-59; and *Multani*, at para. 34.

94. It is clear from the *Syndicat Northcrest v. Amselum* decision that the right to establish and maintain a law school within a Christian university need not be required or mandated by religious belief to be protected.

95. There is no question that the members of TWU’s community sincerely hold their religious beliefs pertaining to sexual morality. The question is whether a refusal to accredit TWU’s graduates would interfere with their ability to act in accordance with their beliefs or impose a burden on them.

96. Actions or decisions that directly or indirectly impose burdens or withhold benefits as a result of religious belief or practice breach s.2(a) of the Charter. This has been confirmed by the Supreme Court of Canada numerous times, starting with *Big M Drug Mart*:

> [C]oercion 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.

In *R. v. Videoflicks*, Chief Justice Dickson reiterated this approach:

> In my opinion indirect coercion by the state is comprehended within the evils from which s. 2(a) may afford protection. The court said as much in the *Big M Drug Mart* case, supra, and any more restrictive interpretation would, in my opinion, be inconsistent with the court's obligation under s. 27 to preserve and enhance the multicultural heritage of Canadians.

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52 2004 SCC 79 at para. 53
53 [2013] SCC 11 at para.154
54 [2004] 2 S.C.R. 551 at paras.46-47
56 [1986] 2 S.C.R. 713 at para. 97
Cases that confirm this approach are numerous and include *R. v. Edwards Books and Art Ltd.*, *Hutterian Brethren v. Alberta*, *Multani v. Marguerite-Bourgeoys (Commission scolaire)*, *R v. S.(N.*) and *Whatcott*, in which the Supreme Court of Canada relied on the oft-cited words of Dickson J. (as he then was) in *R. v. Big M Drug Mart* that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal…” (emphasis added).

Of course, the most applicable Supreme Court of Canada statement in this regard comes from the *TWU v. BCCT* case in which the court clearly found that a refused to accredit TWU’s program engaged and breached freedom of religion rights:

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

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. [Emphasis added]

It is beyond any reasonable question that if Convocation rejects TWU graduates on the basis of the perceived “discriminatory practices”, the decision directly relates to the religious beliefs of TWU’s community, places a burden on them, and therefore breaches their rights under s.2(a) and s.15 of the *Charter.*
G. ALLEGATIONS OF DISCRIMINATION

99. There is nothing unlawful about the Community Covenant. The Community Covenant is relevant to the Question, but only if there is an impact on the qualification of future TWU graduates. Since there is no evidence that the Community Covenant negatively impacts on the education to be provided at the TWU School of Law, the allegations of discrimination by TWU are simply that, allegations that are entirely beside the point. However, it is worthwhile to point out that many opponents of TWU either fail to recognize the human rights of members of the TWU community or support an unjustifiably narrow and penurious view of those rights.

100. The question of “discrimination” should not be considered in the abstract. It must be anchored by the question of whether impugned conduct is legal or not. That was the approach taken by the Supreme Court of Canada in TWU v. BCCT when it said that:

"Although the BCCT was right to evaluate the impact of TWU’s admission policy on the public school environment, it should have considered more. The Human Rights Code, R.S.B.C. 1996, c. 210, specifically provides for exceptions in the case of religious institutions, and the legislature gave recognition to TWU as an institution affiliated to a particular Church whose views were well known to it."

“Discrimination” can only be meaningfully considered in the context of what is, and is not, prohibited by law.

101. Legal counsel obtained by the Law Society of British Columbia and the Federation agreed that the Community Covenant does not contravene applicable human rights laws. Mr. Gomery Q.C. specifically advised that:

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

102. In TWU v. BCCT, the Court made reference to section 41 of the Human Rights Code in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution. It has been suggested that this was simply a passing reference, but the

64 Memorandum of Geoffrey Gomery, Q.C., to the FLSC (May 8, 2013) at p. 9, online: <http://www.lawsociety.bc.ca/docs/newsroom/TWU-material.pdf>. 65 TWU v. BCCT at paras. 32 and 35
Court’s analysis was much broader, based on the preservation of the values of human rights legislation and the Charter in acknowledging TWU’s right to a teacher education program, which is conveniently summarized by the following quotes:

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

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In Ontario Human Rights Commission v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a “natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it”.

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

103. This is consistent with the broad interpretation that courts have afforded provisions such as section 41 of the B.C. Human Rights Code (the “BC Code”) and section 18 of the Ontario Human Rights Code (the “Ontario Code”). They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In Caldwell v. Stuart, [1984] 2 S.C.R. 603 the Supreme Court of Canada expressly wrote that the predecessor of section 41 “confers and protects rights” and “permits the promotion of religion”. In Brossard (Town) v. Quebec (Commission des droits de la personne) [1988] 2 S.C.R. 279 at 324 (S.C.R.), Beetz J. held that a similar provision promotes “the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits”.

104. Provisions such as s.41 of the BC Code and s.18 of the Ontario Code protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.

66 TWU v. BCCT at paras. 34-35
67 [1984] 2 S.C.R. 603
68 [1984] 2 S.C.R. 603 at 626
105. Based on the noted Supreme Court of Canada jurisprudence, these provisions should be interpreted to recognize and accommodate religious expression and association within the TWU educational community.

106. In this regard, note the following words and opinion of Professor Mary Anne Waldron, Q.C., former Acting Dean of UVic’s Law School:

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

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

*... What you, as benchers of the Law Society are being asked to do by those who would have you deny access to the profession of properly trained graduates of Trinity Western University is to deny those students their freedom to be trained in an institution that reflects their religious beliefs and their right to associate with one another in the expression and pursuit of those beliefs. You are not, in this case, being asked to strike a balance between the rights of two groups. ...*

*You are, in fact, being asked to set aside the freedom of conscience and religion and the freedom of association of staff and students at TWU and to impose upon them one side of a contested moral issue...*\(^72\)

107. It would be curious indeed if the LSUC, which is required by section 4 of the Law Society Act to uphold and advance the rule of law, denied TWU graduates the right to practise law because of the lawful and constitutionally protected beliefs and conduct of the university they attended.

108. On April 7, 2014, the LSUC received an opinion form Pinto Wray James LLP (the “Pinto Opinion”) in which Mr. Pinto proposes that Convocation adopt an analytical framework for the Question that is inconsistent with both the statutory framework under which the LSUC operates and the Supreme Court of Canada’s approach in *TWU v. BCCT*. The Pinto Opinion is incorrect in a number of respects and contradicts the Osler Opinion:

\(^72\) Professor Mary Anne Waldron QC, February 21, 2014  [http://www.lawsociety.bc.ca/docs/newsroom/TWU-submissions.pdf](http://www.lawsociety.bc.ca/docs/newsroom/TWU-submissions.pdf)
(i) Analytical Approach in the Pinto Opinion is Incorrect

109. The Pinto Opinion advises that the LSUC “must” take into account the Ontario Code in considering the Question. It suggests that alleged discrimination “may be occurring in British Columbia, but it becomes a concern for the Law Society here in Ontario because the accreditation is taking place in this province”. It then treats as equivalent potential human rights challenges by TWU graduates whose credentials are refused by the LSUC and other persons whose theoretical “opportunities to be licensed in Ontario are more restricted” if TWU graduates are recognized. The Pinto Opinion then analyzes the question of discriminatory practices at TWU under the Ontario Code.

110. Conversely, the analytical framework used by the Supreme Court of Canada in TWU v. BCCT was to “avoid” a conflict of rights through “the proper delineation of the rights and values involved”. It said that the religious freedom of TWU’s community must be reconciled with equality concerns by analyzing the impact of TWU’s admission policies on the environment into which its graduates enter upon graduation.

111. This is the proper analytical approach for Convocation as well. The LSUC should determine whether recognizing TWU graduates will result in lawyers practicing in Ontario that do not adequately meet the appropriate standards of practice and professional ethics. This was confirmed in the Osler Opinion:

As a result, in my view the Court’s framework in Trinity Western continues to be relevant to the question of how to reconcile the Charter values of equality and freedom of religion in the present context.

112. There are other serious analytical flaws in the Pinto Opinion.

(ii) Consideration and Application of the Ontario Code

113. The Pinto Opinion acknowledges that there is no case “where an administrative body making a discretionary decision considers the [Ontario Code]”. Despite that, the advice given is that Convocation “must take into account” the Ontario Code where human rights issues arise.

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73 Legal Opinion of Andrew Pinto, to the LSUC (April 7, 2014) at p. 14 [Pinto]
74 Pinto at p. 15
75 TWU v. BCCT at para. 29
76 TWU v. BCCT at para. 28
77 TWU v. BCCT at paras. 32-37
78 Pinto at p.13
114. The difficulty with this conclusion and advice is that the Ontario Code does not apply to TWU. While the Pinto Opinion simply does not address this point, the Ontario Human Rights Tribunal has done so. In Hughes v. 507417 Ontario,79 the Tribunal properly held that the Code is a provincial statute that cannot be applied “extra-territorially”:

*The Tribunal was created by a provincial statute and the rights provided for in the Code are statutory in nature. As a provincial statute, the Code is subject to the constitutional limitation that provinces may not legislate “extra-territorially”. The Constitution Act, 1867, makes it clear that provincial legislative jurisdiction is confined to “property and civil rights in the province” (section 92(13)), and “generally all matters of a merely local or private nature in the province” (section 92(16)).*

115. Even more on point, in Cohen v. Law School Admission Council,81 the Tribunal found that it could not apply the Ontario Code to the law school at Dalhousie University because the Ontario Code cannot apply to acts occurring outside of Ontario.82 The proceedings against Dalhousie were therefore dismissed.

116. Simply put, the Ontario Code does not apply to TWU. Neither the Ontario Human Rights Tribunal nor the LSUC can impose obligations under the Ontario Code on TWU and it is not proper for Convocation to address the Question by considering whether TWU complies with the Ontario Code.

(iii) Potential Claims against LSUC under the Ontario Code

117. It is appropriate for the LSUC to consider whether its decision to approve TWU graduates to article and practise in the province will cause it to breach the Ontario Code.

118. In this respect, the Pinto Opinion properly notes83 that if Convocation rejects TWU graduates, one of them could bring a human rights complaint against the LSUC because the denial to practise law in Ontario was based on the religious beliefs of the university that she or he attended.

119. However, the Pinto Opinion is incorrect in equating that discriminatory decision by Convocation with a potential “claim by a person …[whose] … opportunities to be licensed in Ontario are more restricted by the Law Society’s accreditation…”84 if TWU’s graduates are authorized to practise law in Ontario.

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79 2010 HRTO 1791
80 2010 HRTO 1791 at para. 10
81 2011 HRTO 703
82 2011 HRTO 703 at paras.7-9
83 Pinto at p.16
84 Pinto at p. 16
120. The recognition of a TWU graduate to article and practise in Ontario cannot limit opportunities of another person wishing to also be licensed to practice law in Ontario. The Question is not whether TWU can operate its School of Law or even whether the LSUC “has given its stamp of approval to [TWU’s School of Law]”\textsuperscript{85} TWU already has the requisite approvals to operate the School of Law. The Question is whether its graduates will be accredited in Ontario. Such accreditation of TWU graduates has no impact on the accreditation of non-TWU graduates.

121. In short, while denying accreditation of TWU graduates would breach the Ontario Code, allowing them to practise law in Ontario does not.

\textit{(iv) Misconstrues the Question Before Convocation}

122. As with others, the Pinto Opinion raises the issue of whether Convocation would grant an “imprimatur to the clause in TWU’s Community Covenant that requires voluntary abstinence.” For the reasons set out in these submissions, this is not the Question for Convocation and neither is it appropriate for the LSUC to approve or disapprove of the religious beliefs or other content of the Community Covenant. Convocation must decide whether the existence of the Community Covenant impacts on the ability of TWU graduates to practice law.

\textit{(v) In Any Event, TWU Complies with the Ontario Code}

123. The fact that TWU complies with the BC Code was confirmed by the Supreme Court of Canada and has been addressed above. TWU is not subject to and cannot be required to comply with the Ontario Code; but even if this were not true, the Community Covenant does not breach the Ontario Code, either.

124. As identified in the Pinto Opinion, section 18 of the Ontario Code protects religious organizations such as TWU from allegations of discrimination when making decisions based on their religious beliefs and practices. As noted above, such provisions have been found by the Supreme Court of Canada to be rights granting provisions, deserving of a broad and expansive interpretation.

125. The Ontario Code, including s.18, is subject to and must be read to comply with the Charter protection of freedom of religion. The Ontario Code and the Charter do not have equivalent impact at law. The provisions and application of the Ontario Code are required to comply with the constitution as the supreme law of Canada, not the reverse. The Pinto Opinion omits reference to cases such as Ontario (Human Rights Commission).

\textsuperscript{85} Pinto at p. 15
v. Brockie in which the courts have limited the application of prohibitions on discrimination on the basis of sexual orientation where to do so would cause a person to violate core elements of religious belief.

126. In its analysis, the Pinto Opinion cites Whatcott for the proposition that “it is contrary to separate a person’s status from his or her conduct.” As noted above, this goes beyond what the Supreme Court of Canada actually said in Whatcott. The Court expressly recognized and acknowledged that “sexual orientation and sexual behaviour can be differentiated for certain purposes”. Whatcott must be understood and applied in its context, dealing with the constitutionality of restrictions on hate speech. The Court said this expressly:

However, in instances where hate speech is directed toward behaviour in an effort to mask the true target, the vulnerable group, this distinction should not serve to avoid s. 14(1)(b).

127. It is lawful for TWU, when exercising its rights under provisions such as s.41 of the BC Code and s.18 of the Ontario Code (if it were to apply) to distinguish between status and sexual behaviour for religious reasons. In granting preferences to members of the evangelical Christian community that it serves, TWU is protected in applying its religiously motivated behavioural standards.

(vi) Conclusion on the Pinto Opinion

128. For these reasons, the Pinto Opinion is incorrect when it concludes that “Convocation should be in a position to determine whether and to what extent discriminatory practices may be occurring”. The Question is whether the alleged “discriminatory practices”, legal though they are, negatively impact the ability of TWU graduates to practise law in Ontario.

H. ANSWERS TO QUESTIONS ASKED BY BENCHERS

129. At the April 10th Convocation, a number of Benchers directed questions to TWU, the answers to which are below.
Supreme Advocacy LLP

(i) Ms. MacLean asked why the matter was before Convocation before the Law Society of BC made its final determination.\(^{89}\)

130. The process and timing was determined by the LSUC, not TWU. In any event, the Law Society of BC has now made its determination. It decided to abide by the decision of the Federation and will recognize graduates of the TWU School of Law. In doing so, a number of Benchers commented that they did not agree with the Community Covenant, but recognized that the applicable legal principles and available evidence provided no valid reason to reject TWU’s graduates.

(ii) Ms. Symes asked how freedom of religion is engaged\(^{90}\)

131. This has been addressed above. The law, including as articulated in \textit{TWU v. BCCT}, is very clear that freedom of religion is engaged on these facts and that a rejection of TWU graduates would infringe religious freedom.

(iii) Ms. Symes then asked if freedom of religion is engaged, how equality rights are preserved\(^{91}\)

132. This question was specifically answered by the Supreme Court of Canada:

\textit{The issue at the heart of this appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns ...}

\textit{In our opinion, this is a case where any potential conflict should be resolved through the proper delineation of the rights and values involved. In essence, properly defining the scope of the rights avoids a conflict in this case.}

\textit{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.}

\(^{89}\) Transcript at pp.123-124

\(^{90}\) Transcript at pp.128, 130 and 131

\(^{91}\) Transcript at p.134
Acting on those beliefs, however, is a very 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 in this appeal can be circumscribed and thereby reconciled.

For the BCCT to have properly denied accreditation to TWU, it should have based its concerns on specific evidence. 92

133. Similarly, absent evidence that TWU graduates will be unable to meet their professional obligations with respect to equality and non-discrimination, there is no legitimate basis to deny their recognition. Simply put, it does not advance equality rights to deny TWU graduates the right to practise law in Ontario.

(iv) Mr. Falconer asked how members of the TWU community are able to “hold diverse views” in light of the Community Covenant 93

134. This question suggests that academic discussion and inquiry would be limited at TWU. There is no evidence that such would be the case. Even if there were such evidence, the LSUC should then equally ensure that all other law schools are completely and fully welcoming of all opinions and perspectives. In this regard, note the following statement of a University of Victoria (“UVic”) law graduate:

I do not know if I would have chosen to attend TWU law school, but I certainly would have appreciated the option. I had several great professors at UVIC, and I would not characterize the experience as a negative one. However, I did often feel marginalized as a result of my religious beliefs and, at times, the classroom environment felt hostile towards Christianity. ... I do not say this to criticize UVIC, but to illustrate that secular legal education is far from neutral. I experienced my legal education as being taught from a distinct ideological perspective. There is nothing inherently wrong with this perspective, but similarly, there is nothing wrong with teaching from a religious perspective. We are a tolerant and diverse enough nation to accommodate both. 94

135. There is no basis to suggest that TWU classrooms will be impoverished of critical thinking. The fact that a TWU graduate was recently the gold medalist at UVic’s law

92  TWU v. BCCT, paras. 28, 29, 36, 37 and 38
93  Transcript at p.119
94  Submission of Mark Witten to LSUC, March 28, 2014
Supreme Advocacy LLP

school strongly suggests otherwise. So do the experiences of other people who actually attended TWU:

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

136. TWU maintains a strong policy on academic freedom that was affirmed by British Columbia’s Degree Quality Assessment Board in 2004. TWU is a member of Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. The statements made by TWU alumni, some of which are referenced above, show the fulsome and extensive debate and inquiry within the TWU community. There will equally be a full range of academic inquiry and debate within TWU’s School of Law.

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

(v) Mr. Falconer also asked whether the Community Covenant is “necessary.”

138. Mr. Falconer referred to the Community Covenant as “steamrolling somebody”, a characterization to which TWU takes exception.

139. As it states, the Community Covenant is based on the TWU community’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

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95 Submission of Lauren Witten to LSUC, March 28, 2014
96 Submission of Natalie Hiebert to Law Society of B.C. (e-mail of Jan 29, 2014), online: <http://www.lawsociety.bc.ca/docs/newsroom/TWU-submissions.pdf>.
97 Transcript at p.117
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.

140. The Community Covenant is an expression of the sincerely held religious beliefs of TWU and its community that is necessary for TWU to live out is purposes as a Christian university. It is critical that TWU, as a private religious educational community, be able to define its important religious values consistent with its biblical beliefs. TWU is a Christian university that primarily serves the evangelical Christian community (which may also include others who agree to and are prepared to learn in an environment governed in party by the Community Covenant).

141. The religious beliefs concerning marriage and human sexuality are fundamental to TWU’s community and as such are included in the Community Covenant. It speaks of the sacredness of marriage, not for civic purposes but for religious purposes. This is partially because marriage between a man and woman is a metaphor and a reference point for Christ and his church; for marriage is spoken of throughout the Bible as a relationship between a man and a woman. It is a fundamental part of what makes TWU an evangelical Christian community. Asking TWU to abandon this aspect of the Community Covenant is asking it to remove a fundamental sincerely held religious belief that has been part of traditional Christian teaching for centuries.

142. These beliefs were not created and do not exist to communicate anything disparaging about members of the LGBTQ communities. The Community Covenant speaks to that most strongly in terms of treating all persons with “respect and dignity, and uphold their God-given worth”. This is equally a fundamental aspect of TWU’s religious beliefs.

143. TWU’s sincerely held religious beliefs concerning marriage and human sexuality may not be widely held by others in society. As a result, these beliefs may not be valued, or even seen as legitimate to some. This is precisely why s.2(a) and s.15 of the Charter protects TWU’s community from interference. The Charter shields TWU and allows it to define its own religious beliefs and values.
Ms. Hare asked if TWU respects its non-heterosexual students. The answer, of course, is yes.

TWU’s religious character and objectives are summarized in the introductory words of its Community Covenant:

The University’s mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible. This identity and allegiance shapes an educational community in which members pursue truth and excellence with grace and diligence, treat people and ideas with charity and respect, think critically and constructively about complex issues, and willingly respond to the world’s most profound needs and greatest opportunities.

The University is an interrelated academic community rooted in the evangelical Protestant tradition; it is made up of Christian administrators, faculty and staff who, along with students choosing to study at TWU, covenant together to form a community that strives to live according to biblical precepts, believing that this will optimize the University’s capacity to fulfill its mission and achieve its aspirations.

This biblical foundation inspires TWU to be a distinctly Christian university in which members and others observe and experience truth, compassion, reconciliation, and hope. TWU envisions itself to be a community where members demonstrate concern for the well-being of others, where rigorous intellectual learning occurs in the context of whole person development, where members give priority to spiritual formation, and where service-oriented citizenship is modeled.

Too much attention has been paid to, and severe criticism leveled against, one aspect of the Community Covenant. These types of criticisms are unfair and unbalanced, in part because they have ignore the most important and overarching commitment of members of TWU’s community to “treat people and ideas with charity and respect”, “demonstrate concern for the well-being of others” and “model service-oriented citizenship”, consistent with “the person and work of Jesus Christ.”

Ms. Leiper asked whether the ethical commitments in the Community Covenant will form “a critical or any part of the pedagogy of the law program” and asked for an explanation of the relationship between the Community Covenant and the curriculum.
147. There is no conflict between the Community Covenant and the legal education that TWU must provide in order to comply with the National Requirement and the commitments that it has made.

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

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

150. TWU’s program of study has two required courses on professionalism and ethics (LAW 508 and LAW 602), the latter of which will specifically challenge students to “reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities”. This is, of course, the obligation of every practising lawyer in Canada.

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

152. Opponents cannot legitimately complain that TWU will fail to adequately and appropriately address substantive equality or ethics and professionalism. The Federation’s two committees and the Ministry agreed that these topics will be properly and appropriately covered. As stated by the Federation’s Special Advisory Committee at paras.43-44:

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100 Trinity Western University School of Law Proposal, Appendix “D”, page 22, 93.
43. TWU has made strong representations in response to the suggestion that it cannot and will not teach legal ethics, constitutional and human rights law appropriately and that students in its proposed program will not develop critical thinking skills. The May 17, 2013 letter from TWU to the Federation includes a clear commitment to “fully and appropriately” teaching legal ethics and professionalism and a recognition of its duty to teach equality and non-discrimination in both its legal ethics and substantive law courses. The letter highlights the fact that course outlines contained in its proposal indicate that TWU intends to rely on standard texts for teaching in the areas of legal ethics, constitutional and human rights law. TWU has also unambiguously acknowledged “its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism.” In its May 17th letter, TWU also states that “TWU agrees with Egale Canada that ‘the dignity and value of all individuals irrespective of their sexual orientation . . . now form part of the fabric of professional ethics and the rule of law.’”

44. In the view of the Special Advisory Committee the argument that TWU’s Christian worldview will have a negative impact on the quality of legal education at the proposed law school and that students will fail to acquire necessary critical thinking skills is without merit. Such a finding cannot be based on TWU’s stated religious perspective or its Community Covenant; as the Supreme Court made clear in BCCT it could be based only on concrete evidence. Not only has no such evidence been brought to the attention of the Special Advisory Committee, the evidence that we do have demonstrates an understanding by TWU of its obligation to appropriately teach legal ethics and other substantive law subjects. We see no basis to conclude, as some have suggested, that individuals holding particular religious views are incapable of critical thinking and of understanding their ethical obligations, or that the quality of the legal education provided by a law school at TWU would not meet expected standards. There can be no doubt that TWU’s Christian worldview is shared by many current members of the profession and the judiciary. There is no evidence that such individuals are any less capable of critical thinking or any less likely to conduct themselves ethically than any other members of the bar or the bench. Graduates of the proposed law school admitted to the profession would be subject to the supervision of the law societies and would be obliged to follow the ethical rules governing all members of the profession. Individuals breaching those ethical rules would be subject to disciplinary sanctions.

(viii) Ms. Leiper further asked about the difference between offering an accredited program and the teaching of law without accreditation101

101 Transcript at p.31

153. There will be no difference. TWU graduates will be accepted by many law societies, including BC, Alberta, Saskatchewan, PEI, Newfoundland and Labrador and Nunavut. No other Canadian law society has decided to refuse accreditation of TWU graduates.
TWU will teach students as it has always planned to, in accordance with the National Requirement approved by all Canadian law societies.

(ix) *Mr. Bredt asked about what limits there are on freedom of religion and how TWU falls within those limits*\(^{102}\)

154. The Supreme Court of Canada has clearly answered this question. In *R. Big M Drug Mart*, Dickson J. (as he then was) stated that freedom is subject to limitations necessary to protect public safety, order, health morals or the fundamental rights and freedoms of others (subject to a section 1 proportionality analysis).\(^ {103}\)

155. This principle from *Big M Drug Mart* cited in *TWU v. BCCT.* by Iacobucci and Bastarache JJ. just prior to stating:

> It is interesting to note that this passage presages the very situation which has arisen in this appeal, namely, one where the religious freedom of one individual is claimed to interfere with the fundamental rights and freedoms of another.\(^ {104}\)

156. The Supreme Court of Canada found that the absence of any evidence that graduates would themselves discriminate or cause harm meant that freedom of religion must be respected. In other words, the Courts have spoken on this issue and concluded that TWU and Community Covenant fall within the acceptable scope and limits to the freedom of religion.

(x) *Mr. Bredt also asked if Convocation rejects TWU graduates, would its graduates be in a “worse position than a graduate of a religious school outside of Canada”*

157. The answer is yes. Religious schools outside of Canada are not eligible to have their graduates automatically approved for admission to Canadian law societies through the Federation process. If TWU graduates are treated as though they went to a foreign law school, it would be a direct result of their religious beliefs, practised within a faith community. That would amount to a breach of both their Charter and human rights.

158. Even though they are accepted for certifications in other provinces, TWU students would be obligated to file more paper with the Federation, pay a fee and possibly delay articles for what will undoubtedly be a foregone conclusion of acceptance through the NCA.

\(^{102}\) Transcript at p.155
\(^{103}\) [1985] 1 S.C.R. 295 at para. 95
\(^{104}\) [1985] 1 S.C.R. 295 at para. 28
Forcing TWU graduates through such an additional step is unnecessary, punitive and does nothing to advance the public interest in Ontario.

159. Once again, reference must be made to *TWU v. BCCT*. The BCCT argued that it was appropriate for TWU graduates to be required to complete additional requirements outside of TWU.\(^{105}\) The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. *Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.*\(^{106}\) [Emphasis added]

160. The reasoning that TWU graduates should be required to take an extra step to have their academic qualification recognized is deeply offensive to lawyers and law students holding religious beliefs similar to those embodied in the Community Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages those values, require some form of extra educational experience or additional entrance requirement to be permitted to practise law.

161. There is also a serious logical flaw in the argument since existing law schools: (1) have students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. Lawyers need not all believe the same way concerning issues of sexual morality, provided their conduct is ethical and professional.

(xi) Mr. Bredt then asked if the National Committee on Accreditation ("NCA") were to inquire into the religious nature of an institution, would that constitute a breach of freedom of religion\(^{107}\)

162. As far as TWU is aware, the NCA has never inquired into the individual religious beliefs of applicants or the community codes of conduct of any university from which such applicants have obtained their law degrees, whether in Canada, the USA or elsewhere. Such inquiries are not material to, or the appropriate subject matter of, the NCA’s

\(^{105}\) B.C. College of Teachers Factum in *TWU v. BCCT* at para. 118

\(^{106}\) *TWU v. BCCT* at para. 32

\(^{107}\) Transcript at p.158
approval of individual applicants. The same standard ought to be applied when law societies consider whether to approve graduates from TWU.

163. If such an inquiry occurred it would suggest that certain religious beliefs are relevant to whether a person may or may not become a competent lawyer and for the reasons articulated above, this would be discrimination and a breach of freedom of religion.

164. Such reasoning perpetuates a presumption about students holding religious beliefs similar to those espoused by TWU and stereotypes them as intolerant. If a commitment to Biblical principles results in the denial of a private institution as capable of teaching law, it implies that all law students with similar beliefs about sexual relationships would fail to be competent or professional as future lawyers.

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

> The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.¹⁰⁸

> ... 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.¹⁰⁹

> ... In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.¹¹⁰

> ... 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.¹¹¹

¹⁰⁸ TWU v. BCCT at para. 19
¹⁰⁹ TWU v. BCCT at para. 33
¹¹⁰ TWU v. BCCT at para. 35
¹¹¹ TWU v. BCCT at para. 36
166. The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be determinative in Convocation’s deliberations.

(xii) Mr. Bredt’s final question was with respect to the possibility of TWU graduates practicing law in Ontario despite being rejected by Convocation

167. This is a distinct possibility, assuming that such a rejection occurs and is not overturned by the courts. This possibility would exist for the following two reasons;

(1) Once TWU graduates are practising lawyers in other jurisdictions, they should be able to transfer into Ontario under the National Mobility Agreement, the Agreement on Internal Trade and the Ontario Labour Mobility Act.

(2) TWU graduates may be able to obtain approval through the NCA, although the NCA was established to consider graduates from law schools outside of Canada.

168. This means that the only purpose in rejecting TWU graduates is to express moral disapprobation concerning the Community Covenant and the religious beliefs of the TWU community. As noted above, this is not a valid or constitutionally permissible purpose.

169. Further, if a TWU law degree is acceptable for a transferring lawyer or one approved by the NCA, it cannot reasonably be concluded that a TWU law degree is insufficient for admission by the LSUC to practise in Ontario. This would be an absurd result.

(xiii) Ms. Boyd asked a number of questions pertaining to whether the Community Covenant is theologically justifiable112

170. It is not appropriate to ask TWU to justify the validity of its religious beliefs. Convocation cannot make its decisions based on whether or not such beliefs are theologically sound or concordant with the weight of contemporary Christian thinking.

171. If freedom of religion means anything, it must protect the religious minority. “Religious fulfilment is by its very nature subjective and personal.”113 As the Supreme Court of Canada stated in Syndicat Northcrest, those “seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively

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112 Transcript at pp.166-168
113 2004 SCC 47 at para. 72
recognized as valid by other members of the same religion, nor is such an inquiry appropriate for courts to make.”

(xiv) Ms. Boyd also asked about the process by which members of the TWU community are held accountable to their commitment to the Community Covenant. Ms. Symes raised a similar issue.

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

173. Consistent with the fact that they have voluntarily joined a religious educational community, students are invited to consider whether they are still prepared to abide by the terms of their original commitment to the TWU community through the Community Covenant. Students are encouraged to reflect upon their own goals and values to ensure that they are not in conflict with the religious educational environment in which they have chosen to learn.

174. The Community Covenant is designed to create a living and learning situation that adheres to the religious beliefs of the TWU community in all respects. The top four issues of discipline at TWU are the same as other universities, and have little to do with sexual conduct out of step with the Community Covenant. These top areas of student discipline are: (1) academic dishonesty and plagiarism; (2) abuse of alcohol (underage consumption, public consumption and alcohol related inappropriate behaviour); (3) use of illegal drugs and drug-related inappropriate behaviours; and (4) sexual harassment, assault and/or unwanted sexual advances.

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

114 2004 SCC 47 at para. 43
115 Transcript at p.169
116 Transcript at p.130
176. In light of the requirements of the Community Covenant to treat everyone with dignity and respect, TWU takes a very firm position on sexual harassment and unwanted sexual advances towards others. The religiously motivated restrictions on certain sexual behaviour has created a particularly safe and welcoming environment for members of the TWU community and, notably, one that is much less sexually charged than in many public universities. Please note the comments of TWU alumnus Sabrina Ferrari, now a lawyer practising in BC:

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

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

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

has been able to create. Of course, secular universities could choose any set of principles to set this standard from. Trinity Western being a faith based institution chose to exercise its freedom of religion and draw from biblical principles in creating this standard. 117

177. Given that TWU primarily serves evangelical Christians that willingly choose to attend TWU as a religious educational community, instances of non-adherence to the Community Covenant are rare. In the past ten years, no student has been expelled for this reason.

178. Attached as Appendix 1 and 2 are two charts that address:
   - Further questions raised by Benchers – along with where answers to questions can be found in the Record;
   - Non-issues raised by Benchers.

I. SUMMARY AND CONCLUSION

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

180. TWU’s graduates should only be rejected if, on a proper evidentiary foundation, Convocation concludes that the education provided by TWU will be insufficient to prepare graduates for the practice of law. TWU submits that its School of Law should be accredited under Bylaw 4. This is for the following reasons:

   (a) The LSUC should only limit recognition of TWU graduates as lawyers in a manner permitted by the NMA and the AIT, as made applicable in Ontario under the Ontario Labour Mobility Act.

   (b) The Federation’s findings and conclusions should not be treated lightly or rejected, both for reasons of lawyer mobility and because of the extensive work it undertook. Its work in evaluating TWU’s proposal included consideration of the precise issues that continue to be raised by TWU’s opponents.

117 Submission of Sabrina Ferrari to the Nova Scotia Barristers’ Society (February 7, 2014)
(c) The only reasons raised by TWU’s opponents for refusing accreditation of its J.D. graduates in Ontario are directly related to the religious beliefs on which the TWU religious educational community is founded. That community is protected under the Charter and is able to define for itself the religious precepts on which it is based. Other than relying on prejudicial stereotypes about Christians and their beliefs, TWU’s opponents have not pointed to anything that undermines the conclusion of the Federation and the Ministry that TWU will properly educate lawyers.

(d) TWU embraces its obligations to teach Canadian equality law and professional ethics, including equality based on sexual orientation. TWU’s opponents have said that they do not believe TWU when it willingly undertakes this obligation or, more perniciously, argue that its Christian principles make it incapable of doing so. There is no legitimate basis for either position. In any event, the School of Law will be subjected to annual reviews by the Federation to ensure that the national standard is met and that TWU lives up to its commitments.

(e) To paraphrase the Supreme Court of Canada, the continuing focus on “discriminatory practices” is a focus on TWU’s religious nature and is “disturbing”\(^{118}\). A decision to reject TWU graduates, or place additional burdens on them based solely on the one impugned element of the Community Covenant, ought not be adopted or even countenanced by the LSUC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Supreme Advocacy LLP

Per: Eugene Meehan, Q.C. Per: Marie-France Major

\(^{118}\) TWU v. BCCT at para. 42
ATTACHED AS APPENDICES

APPENDIX 1: Questions Raised by Benchers, Where Answered in Record
APPENDIX 2: Non-Issues Raised, Not in Record
APPENDIX 3: Excerpts from Factum of B.C. College of Teachers
## QUESTIONS RAISED BY BENCHERS – WHERE ANSWERED IN RECORD

<table>
<thead>
<tr>
<th>BENCHER</th>
<th>PG.</th>
<th>QUESTION</th>
<th>TOPIC &amp; NOTES</th>
<th>SOURCE &amp; ANSWER IN MATERIALS FILED</th>
</tr>
</thead>
</table>
| MR. MACKENZIE | 28-29 | “…lawyers have a special responsibility to honour the obligation not to discriminate on grounds that include sexual orientation. Lawyers who contravene that rule of professional conduct may be disciplined by the Law Society. If that’s a rule of professional conduct that we require all lawyers to comply with, how can it not be a rule that we must honour ourselves?” | Analysis regarding Rules of Professional Conduct is included in the legal opinions of John Laskin and Freya Kristjanson. Relationship between discriminatory policies and rights of special interest organizations under human rights legislation is included in:  
- TWU Submission to LSUC;  
- FLSC Approval Committee Report;  
- FLSC Special Advisory Report;  
- Legal Opinion of Mahmud Jamal; and  
- Legal Opinion of John Laskin. | Discussion Regarding Rules of Professional Conduct  
CAVALUZZO at pp. 19-20; LASKIN at p. 6. |
| MS. LEIPER   | 30-31 | “Is the TWU Community Covenant an example of the ethical commitments mentioned in the core values? If so, is it anticipated that those ethical commitments and, by extension, the Community Covenant, will form a critical or any part of the pedagogy of the law program planned for TWU? Could TWU expand on the relationship between this expression of values and ethical commitments and the curriculum, and if not, why not? Are there areas of public law, including human rights legislation, Charter of Rights jurisprudence, for example, that TWU would anticipate conflicting with the scriptural sources of ethical commitment among its students? How would these conflicts be resolved?” | TWU’s ability to adequately and competently teach law is addressed in:  
- TWU Submission to LSUC;  
- FLSC Approval Committee Report;  
- FLSC Special Advisory Report;  
- Legal Opinion of Mahmud Jamal; and  
- Legal Opinion of John Laskin. | Religious Educational Institution – TWU Ability and Competence to Teach Law as a Religious Educational Institution  
FLSC AC at paras. 49-52, pp. 20-29; TWU Submission at paras. 46-48; FLSC SAC at paras. 44-45, 65-66; LASKIN at pp. 8-9; OSLER at pp. 14-16 |
| MS. LEIPER   | 31   | “… given that there is no impediment to teaching law at TWU, and the question before us relates to accreditation in Ontario of graduates from TWU, can TWU assist us in understanding the relationship between offering an accredited program and a religious practice or activity? How does that differ from the relationship between the teaching of law without accreditation and religious practice?” | TWU and its graduates’ freedom of religion and association are addressed in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal; and  
TWU Submission at paras. 57-62, 102-104, 107-108; LASKIN at pp. 5-8; OSLER at pp. 3, 10-16; FLSC SAC at paras. 21,27,37-39 |
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| MR. McDOWELL | 44 | “Now, I do have some questions, and these arise from the Pinto opinion, and I appreciate Trinity Western's position that Ontario Human Rights Code principles have nothing to do with what we do here, but like a court, I say if we imagine that they do have relevance for our exercise of the public interest jurisdiction which we have, should that change our analysis? And I draw your attention, in particular, to questions 1 to 9 at page 22 of the Pinto opinion. Because it does seem to me that, notwithstanding everything I've said here, if the lens is the questions that are in that part of the Pinto opinion, it may change their analysis. Then a further question would be to the extent that that analysis is inconsistent with the Charter jurisprudence which I've reviewed, does the Charter nonetheless prevail, given that section 52 of the Constitution Act says it's the supreme law of Canada.” | Material addressing the application of human rights legislation is included in:  
- TWU Submission to LSUC;  
- FLSC Special Advisory Report;  
- FLSC Approval Committee Report;  
- Legal Opinion of Mahmud Jamal;  
- and  
TWU Submission at paras. 72-84 (in particular paras. 75-76)  
109-110; FLSC SAC at paras. 19-20, 23-28, 35, 39; 65-66  
FLSC AC at para. 51; OSLER at pp. 11-12; LASKIN at pp. 3, 5-6 |
| MR. ANAND | 53 | “I question whether that determination was consistent with other Supreme Court jurisprudence that would rely on the impact of the covenant on the dignity and self respect of individuals plain and simple. Indeed, is it good law after the Supreme Court's decision in Whatcott, another decision that balanced fundamentalist religious rights against non-discrimination based on sexual orientation. More important is the earlier case in the Supreme Court binding on us with our independent mandate to make a discretionary decision in the public interest, taking account of and following the rule of law and the cause of justice.” | Analysis on applicability of Supreme Court of Canada decision of BCCT v TWU, 2001 SCC 31, is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal;  
- and  
TWU Submission at paras. 70-84 (in particular paras. 70-73);  
LASKIN at pp. 5-9; OSLER at pp. 15-16; FLSC SAC at paras. 18-28 (in particular para. 28), 65-66 |
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| MR. ANAND | 55-56 | “Does it accord with the rule of law, the public interest and the cause of justice for Convocation to accredit a law school which seeks to promote and advance what are acknowledged to be genuine minority religious beliefs, but in doing so, requires exclusionary policies that harm the interests of several segments of society, those coming within the very large groups that are covered; marital status and sexual orientation prominently.” | Discussion on legality of accrediting TWU is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal; and  
TWU Submission at paras. 57-62, 70-84, 102-104, 107-108;  
| MR. ANAND | 56 | “Can accreditation be reconciled with our Law Society's long standing and abiding commitment to promote equity and diversity in the legal professions? These are interests which must be protected by the Law Society, a secular institution that serves a diverse Ontario society in which gays and lesbians are entitled to participate fully and openly in all aspects of society.” | Analysis regarding Rules of Professional Conduct is included in the legal opinions of John Laskin and Freya Kristjanson.  
Relationship between discriminatory policies and rights of special interest organizations under human rights legislation is included in:  
- TWU Submission to LSUC;  
- FLSC Approval Committee Report;  
- FLSC Special Advisory Report;  
- Legal Opinion of Mahmud Jamal; and  
- Legal Opinion of John Laskin.  
Allegation that there will be fewer opportunities for aspiring law students is addressed in the FLSC Special Advisory Report. | Discussion Regarding Rules of Professional Conduct  
CAVALUZZO at pp. 19-20;  
LASKIN at p. 6. |
| MR. ANAND | 56 | “Does it advance the cause of justice and the rule of law for the Law Society to provide its imprimatur to an institution which reserves required educational opportunities to enter into the practice of law to a small segment of the population and concurrently decreases the proportionate opportunities available to a historical disadvantaged group, members of the vulnerable LGBTQ community.” | Allegation that there will be fewer opportunities for aspiring law students is addressed in the FLSC Special Advisory Report. | Allegation of Fewer Law School Opportunities  
FLSC SAC at paras. 52-53 |
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| MR. ANAND | 56-57 | “Will our Law Society, if it accredits TWU, violate section 9 of the Ontario Human Rights Code which prohibits a body from discriminating directly or indirectly? If an applicant at TWU is denied admission because of the covenant, does accreditation implicate the Law Society, a secular and public institution, in adopting or assisting in what would undoubtedly be discriminatory policies in a public institution such as ours and thereby violate the Human Rights Code and the Charter that govern us quite independently of TWU.” | Material relating to the application of human rights legislation is included in: • TWU Submission to LSUC; • FLSC Special Advisory Report; • FLSC Approval Committee Report; • Legal Opinion of Mahmud Jamal; and • Legal Opinion of John Laskin. Section 9 of the Ontario Human Rights Code states “No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.” Section 18 of the Ontario Human Rights Code states “the rights…are not infringed where membership or participation in a religious…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.” | Applicability of Human Rights Legislation to TWU and LSUC
TWU Submission at paras. 72-84 (in particular paras. 75-76), 109-110; FLSC SAC at paras. 19-20, 23-28, 35, 39; 65-66 FLSC AC at para. 51 OSLER at pp. 11-12; LASKIN at pp. 3, 5-6 |
| MR. SCHABAS | 70-71 | “I read with alarm a statement in the materials by someone I respect who suggested that there was no real public interest basis to refuse this application. Since when is the prevention of discrimination not in the public interest? What is the public interest, if not, among other things, eradication of discrimination?” | Analysis and conclusions concerning consideration of the public interest is included in: • FLSC Special Advisory Report; • Legal Opinion of Freya Kristjanson; • Legal Opinion of John Laskin; and • Legal Opinion of Mahmud Jamal. | Public Interest Analysis and Conclusions
FLSC SAC at paras. 35-40; 65-66; CAVALUZZO at pp. 11-20, 20-26; LASKIN at pp. 2-5; OSLER at p. 13 |
| Mr. RUBY | 80-81 | “The question, then, is what is the scope of freedom of religion? What are we protecting under that rubric? How broad does that protection go, where does it extend?” | Discussion and analysis on limits to the freedom of religion are addressed in: • Legal Opinion of John Laskin; • Legal Opinion of Mahmud Jamal; • TWU Submission to LSUC; and • FLSC Special Advisory Report. | Scope and Limits to Freedom of Religion
LASKIN at pp. 2-3, 5-6; OSLER at pp. 13-16; TWU Submission at paras. 57-62, 70-71, 79-82; FLSC SAC at paras. 25-28, 65-66 |
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| Mr. RUBY | 81  | “… is this a religious activity akin to prayer, for those religions that adopt prayer, or is it a commercial activity, are people charged money for it? Is it the kind of institutional activity that the rest of the culture charges money for and conducts in public? Again, this is a law school, not a voluntary Sunday school teaching.” | Discussion and analysis of protection of sincerely held religious beliefs is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal;  
- FLSC Special Advisory Report. | Freedom to Hold and Practice Sincerely Held Beliefs in Association with Others  
TWU Submission at paras. 98-101, 104-110, 57-62 (in particular para. 59);  
LASKIN at pp.2-3, 5-8;  
OSLER at pp. 3, 10-16;  
FLSC SAC at paras. 21,27,37-39, 65-66 |
| MS. GO   | 92  | “What are the values that we should uphold when we decide whether or not to accredit TWU; would such values include the principles of equality, respect for human rights and the rule of law, and twenty years from now if we're to look back at our decision that we're making on April 24th, are we going to say that we have made the right decision because of the values that we're trying to uphold and live up to or are we going to say we have made the decision that we are authorized to make based on the rules laid down by somebody else?” | Discussion and analysis of applicable criteria to be considered by LSUC in making its decision is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal;  
- Legal Opinion of Freya Kristjanson;  
- FLSC Special Advisory Report. | Criteria to be Applied to Decision, and the Rule of Law  
TWU Submission at paras. 32-38 (in particular para. 33);  
OSLER at pp. 7-11;  
CAVALUZZO at pp. 6-10;  
FLSC SAC at paras. 25-28 (in particular para. 28), 65-66 |
| MS. MINOR| 96-97| “My question is how do we further that principle if we are permitting accredited -- if we are permitting the pool to be -- and this is my language -- skewed by a different admission policy which excludes or prefers groups? …So to my mind, what I ask us to consider and what I'm very concerned about is what is the effect of accrediting a school which limits the pool of applicants and extends the pool of applicants to groups on a differential basis and on a basis that's not consistent with the Human Rights Code or the Charter?” | Allegation that there will be fewer opportunities for aspiring law students is addressed in the FLSC Special Advisory Report.  
Discussion and analysis of human rights legislation and Charter values is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal;  
- FLSC Special Advisory Report. | Allegation of Fewer Law School Opportunities  
FLSC SAC at paras. 52-53 |
|          |     |          |               | Human Rights Legislation and Charter Protection  
TWU Submission at paras. 57-62, 70-84, 104, 107-108;  
LASKIN at pp. 3, 5-9;  
OSLER at pp. 3, 10-16;  
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| MS. ROTHSTEIN       | 105-106 | “I ask myself the question if a private religious institution, a private religious university had a covenant which required First Nations not to engage in sacred practices while they were students at that university, would we say we were obliged in the public interest and in the name of freedom of religion, to accredit that university? And I ask us, what is different? What is different if a private religious university prohibits sex and intimacy between an unmarried heterosexual couple; sex and intimacy between same-sex couples, whether married or unmarried? And I say to myself, although my mind is not closed, that is the important question to ask.” | Discussion and analysis of protection of sincerely held religious beliefs is included in: TWU Submission to LSUC; Legal Opinion of John Laskin; Legal Opinion of Mahmud Jamal; and FLSC Special Advisory Report. | Freedom to Hold and Practice Sincerely Held Beliefs in Association with Others
TWU Submission at paras. 98-101 (in particular paras. 99-100), 57-62; LASKIN at pp.2-3, 5-9; OSLER at pp. 3, 10-16; FLSC SAC at paras. 18-28, 35, 37-39 |
| MR. SWAYE           | 114   | “To permit the covenant to stand, will that not permit other institutions to take that as a precedent to allow discrimination if we ever have to decide this question in this Convocation again?”                                                                                                                                                                                                                                                                   | Analysis concerning applicable legal framework to decide allegations of discrimination in the context of exercising religious freedom is included in: TWU Submission to LSUC; Legal Opinion of John Laskin; Legal Opinion of Mahmud Jamal; Legal Opinion of Freya Kristjanson; FLSC Special Advisory Report. | Applicability & Binding Nature of BCCT v TWU, 2001 SCC 31.
TWU Submission at paras. 70-84 (in particular paras. 70-73); LASKIN at pp. 5-9; OSLER at pp. 15-16; FLSC SAC at paras. 18-28 (in particular para. 28), 65-66 |
|                     |       |                                                                                                                                                                                                     |                                                                                                                                                                                                             | Human Rights Legislation and Charter Protection                                                                                                                                                                                                                               |
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<td>MR. FALCONE</td>
<td>119-120</td>
<td>“The president, President Raymond, is writing to the Federation of Law Societies of Canada, and he expresses at page two of the letter, top paragraph, &quot;The Civil Marriage Act includes a preamble which states “It is not against the public interest to hold and publicly express diverse views on marriage.” I agree with President Raymond. My concern is how does one -- and I hope and look forward to the answer to my question, how does one hold diverse views at TWU with that Community Covenant? Or is the answer that you don't hold diverse views if you go to TWU and we don't concern ourselves with that particular public interest that the president is referring to, but, in fact, we have a different approach. And if, in fact, the president is espousing a different approach that is different than this public interest and this fostering of diverse views, how do I reconcile it with my public interest that I have to apply as a bencher?”</td>
<td>Explanation of why it is not inherently offensive to hold the belief and practice of traditional marriage of one man and one woman to the exclusion of all others. Addressed in the TWU Submission to LSUC.</td>
<td>Holding and Maintain a Traditional Definition of Marriage is Not Inherently Offensive (Civil Marriages Act) TWU Submission at paras. 98-101</td>
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<td>MS. MACLEAN</td>
<td>124-126</td>
<td>“Why today, before this matter is heard by the Law Society of British Columbia, which I understand is to be tomorrow, are we asked to consider this matter? And furthermore, why are we asked to consider this matter before final determination has been made by the application to the B.C. Law Society? I would have thought that the law school would have been better served to address the issue in one jurisdiction, rather than spreading itself as it has in the multiple jurisdictions, including this one, which I would submit is probably one of the most difficult jurisdictions for them to address, and for that reason, I would like an answer to that question, perhaps in a written response. ...Thank you, Mr. Treasurer. I guess the question is they have to go with their application to a particular province, and I'm just, you know, wondering why we are debating this today. That's all.”</td>
<td>Procedural question.</td>
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| MS. SYMES | 130-131, 134 | “But what about freedom of religion? My first question is, is it really engaged? On these facts, that is, a law school at a Christian university, is freedom of religion really engaged as the Supreme Court of Canada set out in N.S.?... And so that’s my first question. What is Trinity Western’s response to the Supreme Court of Canada in N.S. as to whether or not in these particular facts, freedom of religion is, in fact, engaged? ...So my first question to Trinity Western, if you can help me: How is freedom of religion engaged? And in having a new law school and in coming to Ontario for accreditation of it, how is your freedom of religion engaged?” | Analysis of protections granted in human rights legislation interpreted through the lens of the Charter is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal; and  
TWU Submission at paras. 70-84 (in particular paras. 70-73);  
LASKIN at pp. 5-9; OSLER at pp. 15-16; FLSC SAC at paras. 18-28 (in particular para. 28), 65-66. |
| MS. SYMES | 133-134 | “The Supreme Court has said that Trinity Western University is free to believe, to teach, to preach to its students religious beliefs which say that abortion, homosexuality and sex outside marriage are morally wrong, in fact, a sin, but this is a law school. It’s not a school of divinity. And the question really is, why should the Law Society accredit Trinity Western University, which will, as a number of my colleagues have said, discourage and prevent gays, lesbians, bisexuals and trans, from applying to your law school, but also once there, will subject them to isolation and to discipline, including expulsion, if they act consistent with their true nature. To do so is, in fact, inconsistent with Charter values. ... And a second question: If freedom of religion is engaged, how does Trinity Western University propose that the equality rights of women, of gay, lesbian, bisexual, trans, and unmarried be preserved, because religion doesn’t trump.” | Discussion and legal framework to be applied in cases of balancing of competing Charter interests in the context of human rights cases is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin;  
- Legal Opinion of Mahmud Jamal; and  
TWU Submission at paras. 70-84 (in particular paras. 70-73);  
LASKIN at pp. 5-9; OSLER at pp. 15-16; FLSC SAC at paras. 18-28 (in particular para. 28), 65-66. |

Human Rights Legislation and Charter Protection  
TWU Submission at paras. 57-62, 70-84, 104, 107-108;  
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| MR. CALLA GHAN | 140-141 | “…are we not limiting the participation of those who have the right to congregate in accordance with their beliefs, who have the right to educate them in that while congregating, to participate in our society?” | Discussion regarding the legal risks to LSUC of denying accreditation to TWU is included in:  
  - TWU Submission to LSUC; and  
  TWU Submission at paras. 103-110; OSLER at pp. 9-16 (in particular p.10 identifies risks to LSUC the choice is to deny TWU accreditation). |
| MR. BREDT | 154-155 | “And what I need to understand more here are what are the limits within which TWU is entitled to discriminate on the basis of religion? I'm troubled by the examples. I have to say I'm very troubled by the examples that Linda Rothstein gave us. If there was a religious institution that discriminated against their adherents on the basis of race, I don't like that. If there is -- Ms. Rothstein talked about a yeshiva that separated men and women and said, you know, they can't study together. I don't like that. Ms. Minor suggested that it's okay to discriminate at the primary or the secondary levels, but colleges and universities are different. I need to understand why. I need to understand why in law we can draw those kind of lines. And so my first question here, and I say this honestly as someone who is struggling, and I am struggling with these issues, they're not easy issues, what does Trinity Western say are the limits on the scope of freedom of religion, and how do they fall within those limits?” | Discussion of scope and limits of freedom of religion are addressed in:  
  - Legal Opinion of John Laskin;  
  - Legal Opinion of Mahmud Jamal;  
  - TWU Submission to LSUC; and  
  - FLSC Special Advisory Report. | Scope and Limits to Freedom of Religion  
  LASKIN at pp. 2-3, 5-6; OSLER at pp. 13-16; TWU Submission at paras. 57-62, 70-71, 79-82; FLSC SAC at paras. 25-28, 65-66 |
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| MR. BREDT | 155, 157-158 | “… what we do as a Law Society if we choose not to accredit Trinity Western and a graduate of Trinity Western applies to our licensing process… if we refuse to accredit, does that mean that a graduate of Trinity Western is in a worse position than a graduate of a religious school from outside of Canada?... If the National Committee were to inquire into the religious nature of the institution and deny access to our licensing process, would that itself constitute a breach of freedom of religion?” | Discussion regarding the legal risks of LSUC denying accreditation to TWU (including potential violations of the National Mobility Agreement and the *Ontario Labour Mobility Act*) is included in:  
- TWU Submission to LSUC; and  
- Legal Opinion of Mahmud Jamal. | Legal Risks of Denying TWU Accreditation including Mobility Issues  
TWU Submission at paras. 85-89, 103-111; OSLER at pp. 9-16 |
| MR. BREDT | 158-159 | “If we deny accreditation to Trinity Western and its students are in any event able to gain access to our licensing process, and in a discussion I had with Ms. Rothstein which has got me thinking, Linda, thank you, these are not easy issues, what she suggested to me was yes, these people -- let's not accredit because we're participating, we're giving sanction to discriminatory conduct by accrediting, and I have a concern that she may well be right in what she says, but then what I say is that if we refuse accreditation and the students graduate and they come to the NCR [sic] and the NCR says, well -- TREASURER CONWAY: NCA. MR. BREDT: Sorry, the NCA, and the NCA process might -- "You studied all our topics. You don't need to do anything. Come on in to our licensing process," then what I ask is, is that approach to the problem itself in the public interest? And it may well be, but I think it's something that we need to think about here as we grapple with these difficult issues.” | Discussion concerning the legal risks to LSUC of denying accreditation to TWU (including potential violations of the National Mobility Agreement and the *Ontario Labour Mobility Act*) is included in:  
- TWU Submission to LSUC; and  
- Legal Opinion of Mahmud Jamal. | Legal Risks of Denying TWU Accreditation including Mobility Issues  
TWU Submission at paras. 85-89, 103-111; OSLER at pp. 9-16 |
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| MS. BOYD | 166 | “If, as a religious person, I believe that God created us all and that God loves us all, then what do I make of a human institution that tells people they can't be who God created them to be? I have a problem with that, and I don't see anything in your materials that helps me with that. So I'd like an explanation for that.” | Legal analysis used to determine if freedom of religion is engaged was established in Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551 and is discussed in the TWU Submission to LSUC. | Sincerely Held Beliefs Having a Nexus with Religion  
TWU Submission at paras. 59-61 |
| MS. BOYD | 168-169 | “But as I understand it, if you sign this community covenant, which you are required to do each year, all of those behaviours are not allowed, and as I understand it, people may be subject to expulsion as the extreme penalty there. I need more information about that. I need to know whether a second-year law school who goes away somewhere for a world experience in the summer and comes back and as a result of those experiences, for any of those grounds, finds they cannot in good conscience sign the covenant, have they wasted two years of legal education?” | Discussion related to the TWU Community Covenant is included in:  
- TWU Submission to LSUC;  
- Legal Opinion of John Laskin; and  
- FLSC Special Advisory Report. | TWU Community Covenant  
FLSC AC at para. 50, Appendix-E; LASKIN at pp. 2 and 5; FLSC SAC at paras. 37-40, 65-66 |
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<td>MS. KRISTJANSON</td>
<td>15-16; 19-20</td>
<td>“The reasons of Convocation will be provided through the transcript of both sessions, as well as the written record and, ultimately, the vote… So the record, the transcripts of today and the transcripts of April 24th, will act as a sufficient surrogate for formal written reasons so that the purpose of reasons, that TWU as applicant or a reviewing court can understand the rationale behind your decision.”</td>
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<td>TREASURER CONWAY</td>
<td>114-115</td>
<td>“I've noted that in making remarks, some benchers have referred to issues or matters that are not actually in the record that is before Convocation. I would just ask benchers to consider -- the benchers that are on the waiting list -- on the speakers' list, if you would keep in mind the advice that we've received that it's important to limit our consideration of the matter before Convocation to the record.”</td>
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<td>MR. MacKENZIE</td>
<td>28</td>
<td>“…mid-1980s in the Bob Jones University case. In that case the issue that the U.S. Supreme Court had to face was whether a university that discriminated based on race in the sense that they had an equivalent, I suppose, of a Community Covenant that prohibited interracial dating and interracial marriage was entitled to tax advantages. Now, I think perhaps we can draw a useful analogy between public attitudes towards interracial dating and interracial marriage in 1985 and discrimination based on sexual orientation in 2014, and I find that a useful analogy.”</td>
<td>INTERRACIAL DATING</td>
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<td>INTERRACIAL MARRIAGE</td>
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<td>MR. SCHABAS</td>
<td>67-68</td>
<td>“…Convocation approved the issuance of letters and a public statement regarding the antigay laws passed in Uganda, specifically expressing concern over the persecution of gay lawyers or of other lawyers or advocates who advocate on behalf homosexuals or wish to challenge those horrible laws. A no-brainer. The motion passed with the usual overwhelming support of this body. But do we not apply the same standards and commitment to human rights at home? Because in my view today I would say make no mistake, approving Trinity Western's application would be a discriminatory act by our Law Society. By approving or accrediting this law school, we approve and accredit a path to licensing that is open to some and not to others.”</td>
<td>UGANDA</td>
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<td>MR. SCHABAS</td>
<td>73</td>
<td>“We wouldn't be wrong to say no, indeed, I daresay we wouldn't be having this debate if Trinity Western excluded blacks or persons of, say, Chinese descent, as the Association of Chinese Canadian Lawyers points out in their submission. This is just the same.”</td>
<td>RACISM</td>
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<td>BENCHER</td>
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<td>MS. HARE</td>
<td>74-75</td>
<td>“…the combination of religious schools, disadvantaged groups and laws upholding the same has led to disaster in the past. I bring to you, I guess, a cautionary tale today and I bring to you the obvious. I speak today about the aboriginal children's experience with religious schools in Canada. About the laws that upheld them and the religious institutions that caused great harm. These religious institutions, religious individuals and the newcomer laws imposed with respect to the same used and were used by the faith-based churches who were given the exclusive authority to teach aboriginal children. Legal agreements were signed between the government and the churches. They were all legal, laws were passed to punish the parents if they tried to interfere with their children being sent to these religious schools. And I think there is something we can learn from this, or at least something to provide us with caution and open eyes. During that period, aboriginal spirituality or religion was suppressed and outlawed in Canada, and today are we talking about fundamental rights regarding sexual orientation being suppressed as well?”</td>
<td>RESIDENTIAL SCHOOLS</td>
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<td>Ms. HARE</td>
<td>76</td>
<td>“My family went to Indian residential schools and I, along with others, including Ms. Backhouse, who is not here today, adjudicated some of the worst cases of institutionalized abuse of aboriginal children within those Christian institutions. Granted, most students we speak of at TWU are adults, but I would think that some are still under 18 and still children as well.”</td>
<td>RESIDENTIAL SCHOOLS</td>
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<td>MS. HARE</td>
<td>76</td>
<td>“…the beliefs that came with the Christians largely from the papal rolls dating back to the 15th century were that people of colour, colonized -- people in the colonized world were not considered human. They were considered savages, they were considered like animals, so mistreatment was almost preordained. And while their Bibles said to love thy neighbour as thyself, aboriginals and others were excluded from that and it was only the Christian neighbours who fell into that Christian precept.”</td>
<td>15TH CENTURY PAPAL ROLLS</td>
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<td>Mr. RUBY</td>
<td>83</td>
<td>“Let me focus on one change. In 2001 people were alive to the problem that almost anything could be made subject to a claim of freedom of religion. I believe as a Muslim extremist that women should not be taught, neither reading nor writing nor law, and so I'm setting up schools that don't allow any of that. There has to be an answer because that's not part of freedom of religion.”</td>
<td>MUSLIM EXTREMISM</td>
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<td>Mr. RUBY</td>
<td>87</td>
<td>“Now, last time I looked at the Bible, and I don't study it carefully, there was no command, no teaching from anyone, go out, be fruitful and found a law school. That is not central to any belief of which I know, certainly not to the Christian one.”</td>
<td>BIBLE</td>
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<tr>
<td>Mr. RUBY</td>
<td>88</td>
<td>“So welcome to the 21st century, this kind of discrimination is unacceptable, but don't sell religion short. It's not freedom of religion that justifies this bigotry. If anybody justifies this bigotry you are on your own.”</td>
<td>BIGOTRY</td>
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<td>MS. GO</td>
<td>89</td>
<td>“...I was involved in a movement to seek redress for the Chinese Head Tax and Exclusion Act. During the late 1800s tens of thousands of Chinese labourers were brought to Canada to work on the Canadian Pacific Railway in order to help realize the national dream that the first Canadian Prime Minister, Sir John A. Macdonald, had to connect Canada from coast to coast. But as soon as the railroad was completed in 1885, the same prime minister immediately imposed a head tax on all and only Chinese who wished to come to Canada. Starting at 50 dollars, the racist tax was raised to one hundred dollars in 1900 and then $500 in 1903.”</td>
<td>1800’s CHINESE HEAD TAX</td>
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<td>MS. MINOR</td>
<td>98</td>
<td>“What we have is the application from a general education institution, that is, say, general in the sense of professional. It's not a religious school. And in my mind that should be very separated from the right to have a seminary or some institution that produces religious officers or ordains, whatever the appropriate expression is, for other religions. So why -- to accept this would be the first time that we in Ontario would countenance, would legitimize different standards for being admitted to the profession, which would limit, as I say -- and I'm concerned about this, limit those who are not of that particular faith and who cannot accept the admission requirement.”</td>
<td>LSUC AS A REGULATOR OF BELIEFS</td>
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<td>MS. ROTHSTEIN</td>
<td>105</td>
<td>“Are we really living here at the Law Society in a world where if a private religious university prohibits admission to female students, and I pick that example because I know TWU does no such thing and would find it offensive to do any such thing, but I do know that members of my religious heritage have done such things in other jurisdictions. I'm a Jew, and that has happened in some of the orthodox communities.”</td>
<td>SEXISM</td>
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<td>MS. ROTHSTEIN</td>
<td>105</td>
<td>“I say to us, would we really say as governors of this profession that we are obliged to accredit that religious institution in the name of freedom of religion? I ask myself the question if a private religious university prohibits interracial marriage, this example has been given, or interracial dating, would we say it's any different because the focus is on the behaviour and not the identity of any particular individual?”</td>
<td>RACISM</td>
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<td>MR. LERNER</td>
<td>108-109</td>
<td>“I'm not sure that I know what is the public interest, but as someone said before, I think I know what it isn't. I suggest to you that a group that on a monthly basis condemns abuses of human rights around the world may be in the position of having asked our Treasurer to write a letter to himself at a subsequent Convocation as a result of a decision we might make.”</td>
<td>HUMAN RIGHTS ABUSES</td>
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### NON-ISSUES RAISED, NOT IN RECORD

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<tbody>
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<td>MR. LERNER</td>
<td>109</td>
<td>“I took the position that if we accepted South Africa unconditionally, the action would be taken as approval, or at least condonation of racial policies which are abhorred by Canadians as a whole.” I never thought the day would come when I would quote John G. Diefenbaker, but I have. I think that statement reflects the position adopted by the world community, not just by Canada, but by the world community to the atrocities of apartheid and the restriction imposed upon South African athletes who attempted to participate in the Olympics games from 1972 through 1978.”</td>
<td>SOUTH AFRICA</td>
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<td>MR. SWAYE</td>
<td>110-111</td>
<td>“…let me refer you to a New York Times article, and it recalls the State of Colorado recently had issues, and there's a headline, &quot;Religious Right in Arizona Cheers Bill Allowing Business to Refuse to Serve Gays.&quot; The date of the article is February 21, 2014. &quot;In New Mexico, a photographer declined to take pictures of a lesbian couple's commitment ceremony. In Washington State, a florist would not provide flowers for a same-sex marriage. And in Colorado, a baker refused to make a cake for a party celebrating the wedding of two men.&quot; The business owners cited religious beliefs in declining to provide services celebrating same-sex relationships, and in each case they were sued.” &quot;Now, as states around the nation weigh how to balance the rights of same-sex couples with those of conservative religious business owners, Governor Jan Brewer of Arizona must decide whether to sign legislation that would allow business owners to cite religious beliefs as a legal justification for denying service to same-sex couples.” We know that the governor would not sign the bill.”</td>
<td>COLORADO ARIZONA NEW MEXICO</td>
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<td>MR. SWAYE</td>
<td>112</td>
<td>“The article further says, &quot;It sounds like it's opening the door to hate and bigotry of all stripes, said Rocco DiGrazia, a Tucson pizzeria owner, who on Friday attracted national attention via social media because he had posted signs on the restaurant's doors declaring &quot;We reserve the right to refuse service to Arizona legislators.&quot;&quot;”</td>
<td>TUCSON PIZZERIA</td>
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<td>MR. SWAYE</td>
<td>112-113</td>
<td>&quot;I submit here it is not right or wrong for TWU to take the position that they choose, but it's rather one of discrimination in general. Today it's gays, tomorrow it's Jews and blacks.”</td>
<td>JEWS &amp; BLACKS</td>
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<td>MR. SWAYE</td>
<td>113</td>
<td>“The principle is there. I submit that the Supreme Court of Canada, in a judgment indicated called Noble versus Ali, 1951 SCR, page 64, had to do with a restrictive covenant in a deed drawn in 1933 that provided that the lands herein shall never be sold to any person of the Jewish, Hebrew, Semitic, negro or coloured race or blood, and the restriction should remain in place until August 1, 1962.”</td>
<td>SCC 1951 RACISM</td>
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<tr>
<td>MR. CALLAGHAN</td>
<td>136-137</td>
<td>“I could not sign a lot of that covenant, and yet I hold on to my heterosexuality like I'm holding on to the wreckage. --- Laughter. MR. CALLAGHAN: I have hockey cards in the basement. I bring it out once in a while, but I don't do much with it. --- Laughter. TREASURER CONWAY: Can we get back to the matter.”</td>
<td>HOCKEY CARDS</td>
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<td>MS. BOYD</td>
<td>165-166</td>
<td>“If, as a religious person, I believe that God created us all and that God loves us all, then what do I make of a human institution that tells people they can't be who God created them to be? I have a problem with that, and I don't see anything in your materials that helps me with that. So I'd like an explanation for that.”</td>
<td>GOD</td>
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<td>MS. BOYD</td>
<td>173</td>
<td>“…we all are going to have to search our hearts very carefully around where the public interest action lies and where it doesn't here, and I don't for a moment assume that we're all going to end up in the same place. I would be awfully surprised if we did, but I do think we all have to do that work.”</td>
<td>PERSONAL VALUES</td>
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<td>MR. WRIGHT</td>
<td>161</td>
<td>“Now, for thousands of years, religions held that it was perfectly justifiable and proper to engage in human sacrifice. It was, for hundreds of years, it was perfectly proper to ignore the commandment &quot;Thou Shalt Not Kill&quot;, and burn heretics at the stake. For hundreds of years, religions held, in the face of scientific evidence to the contrary, that the sun revolved around the earth. No problem in believing that the sun does revolve around the earth. There's no problem in believing that other people are heretics. The problem arises when you impose your religious views on other people to their great harm.”</td>
<td>HUMAN SACRIFICE</td>
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<td>SUN v. EARTH</td>
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<td>MR. WRIGHT</td>
<td>161-162</td>
<td>“We'd like to think that we're independent actors, but the reality is humans and human societies obey the laws of physics. It's our hubris that thinks we don't. Biologically speaking, embryos all start off female. If X chromosome is present, then at about the six-week mark, the embryo receives the chemical bath which converts about 52 percent of them into males. That's an extra step. It's a complication. As a result, there is a slightly larger number of male embryos that miscarry because of this extra complication. By the way, it's the last time men are more complicated than women.”</td>
<td>PHYSICS</td>
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<td>MR. WRIGHT</td>
<td>162-163</td>
<td>“…at that moment of the chemical bath, well, you could end up with a live birth featuring somebody with female sensibilities and male genitalia or the opposite, and our First Nations’ lovely expression that describes somebody in that situation: Two-spirited. They can no more choose their sexual orientation than anyone else can. As the song says, they're born that way, and it is grossly unfair, it is the fight of the past to discriminate against two-spirited people. I favour religious freedom. I favour freedom of conscience, but that's an individual thing. We should not be accrediting an institution, a legal institution that will promote, sustain, spread discriminations that we have relatively recently in our history successfully fought.”</td>
<td>FEMALE SENSIBILITIES</td>
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<td>MALE GENITALIA</td>
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IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

TRINITY WESTERN UNIVERSITY and DONNA GAIL LINDQUIST

RESPONDENTS
(RESPONDENTS)

AND:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

APPELLANT
(APPELLANT)

_____________________________________

APPELLANT’S FACTUM

_____________________________________

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Kevin G. Sawatsky
Kevin L. Boonstra
<table>
<thead>
<tr>
<th>PART</th>
<th>SECTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART I</td>
<td>STATEMENT OF FACTS</td>
<td>1</td>
</tr>
<tr>
<td>PART II</td>
<td>ISSUES</td>
<td>11</td>
</tr>
<tr>
<td>PART III</td>
<td>ARGUMENT</td>
<td>12</td>
</tr>
<tr>
<td>PART IV</td>
<td>NATURE OF ORDER SOUGHT</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>APPENDICES</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>LIST OF AUTHORITIES</td>
<td>42</td>
</tr>
</tbody>
</table>
105. It is not a question of determining whether TWU, if it were subject to federal or provincial human rights law, would be guilty of discrimination. Rather the question is whether it was patently unreasonable for the Council to regard TWU’s policy as discriminatory and to conclude that it may have “discriminatory ramifications” (to use Rowles, J.a.’s phrase) owing to the requirement that faculty and students at TWU must sign the contract incorporating community standards.

2. The Issue of Perception

106. In the court below the Appellant argued that the attitudes towards homosexuality and homosexual persons exemplified by TWU’s discriminatory practices raised two issues, one of perception, and another relating to risk.

107. Dealing with the issue of perception: in Ross v. New Brunswick School District No. 15 the Supreme Court held that the public schools should foster “principles of tolerance and impartiality”. In Ross, La Forest, J., at para. 44, held that a teacher should be “perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system”.

108. Our society encourages pluralism in views and values. No doubt the particular definition of Christianity adopted by the Evangelical Free Church obliges it to regard homosexual conduct as Biblically condemned. It may be that it has the right to establish a catalogue of sins, including homosexual practices, and effectively to deprive homosexual persons, indeed anyone who does not share the belief that homosexual behaviour is a sin, of the opportunity to study or teach at TWU. That is TWU’s business.

109. The matter ceases to be altogether a private matter, however, and acquires a public dimension when TWU applies for approval by the College of Teachers, a public regulatory body, of its teacher education program.

110. May a public body, in particular, a body governing admission to a profession, in a secular society, consider Charter values and human rights values in deciding whether to extend a
public benefit to a private institution? The Court has indicated that the self-governing professions must be given a certain latitude: *Pearlman v. Manitoba* [1991] 2 S.C.R. 869.

111. Guidance can be obtained in U.S. law. There a similar issue arose in this form: private schools were established in the South which discriminated against blacks. In *Green v. Connally* 330 F. Supp. 1150 (1971), black parents of school children attending public schools in Mississippi brought a class action to enjoin the U.S. Treasury from according tax exempt status and allowing deductibility of contributions. The issue was one of the proper construction of the *Internal Revenue Code*. The U.S. District Court, District of Columbia, held that the Code should be interpreted so as to exclude such tax benefits for the schools. It was held that although parents had the undoubted right to have their children educated in a school of their choice, there was no right to government support for policies of racial discrimination among students.

112. Leventhal, Circuit Judge, confronted the argument in support of pluralism, that is, society's interest in fostering a wide variety of views and values. He said, at pp. 1162-1163:

"The indulgence of individual whim of preference has value but like all principles it cannot be pushed beyond sound limits to extremes that cannot be approved. The individual philanthropist cannot be indulged in his own vagaries as to what is charitable; he must conform to some kind of norm, else he cannot obtain subsidy or tax exemption. Similarly, the general principle of a 'desire to benefit one's own kind' is an acceptable incentive to philanthropy as applied to a wide range of causes. But it takes on a different and unacceptable hue when it is manifested as racial discrimination. We are persuaded that there is a declared Federal public policy against support for racial discrimination in education which overrides any assertion of value in practicing private racial discrimination, whether ascribed to philosophical pluralism or divine inspiration for racial segregation."

(Emphasis added)

113. The language in the last two sentences may be applied by analogy to the discriminatory policy of Trinity Western University with respect to homosexual persons. We have a declared federal and provincial policy against support for discrimination on the ground of sexual orientation. The College has the right, if not the obligation to recognize and uphold that policy when approving programs designed to prepare teachers for classrooms in the public school system.
114. According to Goldie J.A., a public body, in seeking to come to grips with the policies of a private university, may not apply Charter values or human rights values in determining the question of professional preparedness to teach in the public schools, for that would be to assume “a mandate” to interpret and apply the Charter (Goldie J.A., at Reasons, Appellant’s Record, Vol. 3, p. 497 (para. 105). Such values, on this reasoning, may only be considered by a court or competent tribunal in a proceeding in which the Charter is invoked or in connection with a human rights complaint.

115. But the Charter and federal and provincial human rights statutes are high affirmations of Canadian values, solemn declarations by Parliament and the Legislatures of the bonds that give meaning to and strengthen our citizenship. A consideration of the values they embody certainly falls within the “public interest” under s. 4 of the Teaching Profession Act.

116. Suppose a university was founded on a belief, said to be Biblically-inspired, that promoted anti-Semitism? Would that be something which ought to be countenanced by the College in the name of pluralism and tolerance? Or suppose there was a Bob Jones University in B.C. promoting segregation of the races? Or a university which, on the strength of Biblical language, promoted hatred of the Pope and of the Roman Catholic Church? Would such an institution’s proposed program of teacher education be entitled to approval by Council without any consideration of such a policy? Would the adoption of the motto, “hate the sin and love the sinner” suffice to render the whole subject immune from scrutiny?

117. It may be said that TWU’s practices, even if opposed to the fundamental values of Canadian society, ought not to be weighed in the balance, that ignoring them is consistent with the idea of a healthy pluralism in education. This is, of course, an argument that would weigh on one side of the scale. But the Council, having regard to its mandate under s. 4, s. 21 and s. 23 of the Teaching Profession Act came down on the other side.

118. The Council’s disposition still permits students to continue to complete their degrees at TWU, but requires them to complete their fifth year of professional teacher education through an approved program at a public university. This is now available for TWU students through the
current arrangements between TWU and SFU. If that arrangement were to be discontinued, students could still apply to complete their Professional Development year at any of the four post-secondary institutions in B.C. with approved teacher education programs.

119. These were matters properly taken into consideration by the Council and the Court should not substitute its opinion for the decision of the Council.

3. Measuring The Risk: No Evidence?

120. We have dealt with Canadian values and the issue of perception. Now we turn to professional preparedness and the issue of risk.

121. Is there a risk that graduates of a five-year TWU program, teaching in the public schools, will treat students of homosexual orientation or students struggling with their sexual identity in such a way as to discount their worth, their identity, to cause a loss of self-esteem? Will they be equipped to deal with students who are bullying students thought by their peers to be homosexual? Will they be able to offer comfort and support to the students who are the object of such bullying? Even if there are no students of homosexual orientation in the classroom, will the attitude of TWU graduates cause students (undoubtedly impressionable) to think of homosexuals in the same way as their teachers do? What of children in the classroom being raised by same-sex parents? Or who have homosexual siblings? What attitude will TWU graduates have to these family situations?

122. We know of the damage done in the Indian residential schools. Students were taught to reject their culture, their language, their parents, their very identity. What is the difference here? Teachers in the residential schools did not set out to do harm. They sought to “civilize” their students according to a set of values, a world view which necessarily denigrated the identity of their students, and led to immense damage. Here the Council is entitled to decide whether there is a risk which it should take into account with regard to TWU’s attitude towards homosexuality.

123. Rowles, J.A. in discussing Ross wrote at Reasons, Appellant’s Record, Vol. 3, p. 531 (paras. 176 and 177):