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CONVOCATION

PUBLIC SESSION

THURSDAY, APRIL 24, 2014 - 9:00 A.M.

OSGOODE HALL, TORONTO

1 CONVOCATION ATTENDANCE - MORNING SESSION

2 TREASURER - Thomas G. Conway

3 Robert P. Armstrong (ph.) Lee Ferrier

4 George D. Hunter (ph.) Vern Krishna

5 Gavin MacKenzie Harvey Strosberg (ph.)

6 Marion Boyd Seymour Epstein

7 Jack Rabinovitch Jan Richardson (ph.)

8 Gerald Sheff Baljit Sikand

9 Catherine Strosberg Larry Banack (ph.)

10 Patrick Furlong (ph.) Ron Manes (ph.)

11 Ross Murray Heather Ross

12 Gerald A. Swaye Bradley H. Wright (ph.)

13 Roger Yachetti (ph.) Raj Anand

14 Constance Backhouse Jack Braithwaite

15 Christopher D. Bredt Robert Burd

16 John Callaghan John A. Campion

17 Cathy Corsetti Mary Louise Dickson

18 Adriana Doyle Ross F. Earnshaw

19 Lawrence Eustace Robert Evans

20 Julian Falconer Peter Festeryga

21 Avvy Go Howard Goldblatt

22 Michelle Haigh Susan M. Hare

23 Carol Hartman Jacqueline Horvat

24 Brian Lawrie Janet Leiper

25 Michael Lerner (ph.) Marian Lippa

1	Virginia MacLean	William McDowell
2	Susan T. McGrath	Malcolm Mercer
3	Janet E. Minor	Barbara Murchie
4	Julian Porter	Judith M. Potter (ph.)
5	Nicholas John Pustina	Susan Richer
6	Linda Rothstein	Mark Sandler
7	James Scarfone (ph.)	Paul Schabas
8	Alan G. Silverstein	Joseph Sullivan
9	Beth Symes	Peter Wardle
10	Laurie H. Pawlitzka	
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1 --- Upon commencing at 9:00 a.m.

2 TREASURER'S REMARKS:

3 TREASURER CONWAY: Good morning,
4 everyone. I would like to review the instructions for
5 the phone system and those participating by phone.
6 Once we determine who is on the telephone I will get --
7 I will let everyone know that we will be placing those
8 calling into the meeting into what we call lecture
9 mode.

10 This means that from our end we are
11 muting all callers and, once muted, they will be able
12 to hear the meeting that is in progress but they will
13 not be able to speak. Well, they can speak, but nobody
14 will be able to hear them here. So it is star 6 from
15 our end for everyone.

16 We, of course, will need to come out of
17 lecture mode to hear those participating in the meeting
18 by conference call and we will -- if they wish to speak
19 and vote, and we will do that following presentations
20 of reports and motions. At that time, unless callers
21 wish to speak, they are to star 6 their telephones as
22 we have done in the past and we'll repeat this process
23 throughout the meeting as necessary.

24 First, I'd like to take the roll call of
25 those who are participating in the meeting by telephone

1 and I have a list here. Starting with Larry Banack.

2 MR. BANACK: Here, thank you.

3 TREASURER CONWAY: Patrick Furlong?

4 Patrick Furlong? Michael Lerner?

5 MR. LERNER: Good morning, present.

6 TREASURER CONWAY: Jan Richardson?

7 MS. RICHARDSON: Present.

8 TREASURER CONWAY: Harvey Strosberg?

9 MS. STROSBERG: Here. Love you, Cathy.

10 TREASURER CONWAY: Is there anyone on
11 the phone -- is there anyone on the phone whose name I
12 have not called?

13 MR. YACHETTI: Roger Yachetti.

14 TREASURER CONWAY: Thank you, Mr.
15 Yachetti.

16 MR. ARMSTRONG: Bob Armstrong.

17 TREASURER CONWAY: Thank you,
18 Mr. Armstrong.

19 MS. POTTER: Judith Potter.

20 TREASURER CONWAY: Thank you,
21 Ms. Potter.

22 MR. WRIGHT: Brad Wright.

23 TREASURER CONWAY: Thank you,
24 Mr. Wright.

25 MR. HUNTER: George Hunter.

1 TREASURER CONWAY: Thank you, Mr.
2 Hunter.

3 MR. MANES: Ron Manes.

4 TREASURER CONWAY: Thank you, Mr. Manes.
5 Anyone else? Thank you. So we'll put the phone in
6 lecture mode.

7 First, as I mentioned, in April -- on
8 April the 10th, our bencher colleague, Robert Wadden,
9 was appointed to the Ontario Court of Justice on April
10 the 8th, 2014. To fill a vacancy created by that
11 appointment, on April 10th we elected Peter Festeryga,
12 who joins us today as a new bencher. Mr. Festeryga.

13 -- Applause.

14 TREASURER CONWAY: Peter was called to
15 the bar in 1986 and is from Leamington, Ontario, in
16 southwest Ontario. I'm not sure why I have to say
17 southwest Ontario. Everyone knows where Leamington is.
18 Peter's practice focuses on civil litigation. I would
19 like to congratulate you on your election as bencher
20 and welcome you to your first Convocation.

21 When we last met on April the 10th we
22 received the sad and shocking news of the death of The
23 Honourable James Flaherty, PC MP, and now two weeks
24 later it is still shocking to me.

25 Mr. Flaherty was, most notably, the

1 former federal Finance Minister. He was, of course,
2 also our former Attorney General, as well as an
3 ex-officio bencher of the Law Society. Born in
4 Lachine, Quebec in 1949, he grew up in nearby Montreal,
5 until attending Princeton University on a hockey
6 scholarship. He then went on to study law at Osgoode
7 Hall Law School, and after his call to the bar in 1975,
8 he practised law for twenty years, founding Flaherty
9 Dow, Elliott in the process before entering politics in
10 1995.

11 After his re-election in 1999 he was
12 named Attorney General, a position he held until being
13 appointed Minister of Finance and Deputy Premier in
14 February of 2001.

15 Members of Convocation will recall that
16 Mr. Flaherty was a guest of the Law Society on a number
17 of occasions over the years as his influence in the
18 provincial and then federal governments grew.

19 It is fair to observe that
20 Mr. Flaherty's skill and reputation in public life grew
21 over time to the point that on his retirement as the
22 Federal Minister of Finance, he was recognized around
23 the world as one of the world's most highly respected
24 Ministers of Finance.

25 Even as his stature grew, both at home

1 and abroad, he continued to connect with everyday folks
2 with his considerable intellect and Irish charm.

3 You may recall that we last hosted Mr.
4 Flaherty at a luncheon during our Remembrance Day
5 Ceremony last November. He was in Toronto on
6 government business and accepted our invitation and he
7 joined us with members of his staff.

8 Several observations about the event
9 stand out in my mind. First, Mr. Flaherty was
10 completely devoid of pretension. He didn't act like
11 the Minister of Finance, he was just Jim.

12 Second, when I spoke to him about the
13 Abilities Centre in Whitby, Ontario, a unique
14 charitable organization that delivers enriching sports,
15 fitness, arts, life skills, research and educational
16 opportunities for people of all ages and abilities,
17 which Mr. Flaherty and his spouse, MPP Christine
18 Elliott, were instrumental in founding, he said to me
19 that of all of his accomplishments in politics and
20 public life, and as we know, they were considerable,
21 founding, funding and building this unique facility for
22 able bodied and disabled members of his community was
23 the most satisfying and significant achievement of his
24 public life.

25 Finally, you may recall that on that day

1 Mr. Flaherty had given an emotional press conference at
2 Toronto City Hall and came over directly to the Law
3 Society after that press conference. My strong sense,
4 which I know was shared by many of you, is that on that
5 day, the day when he arrived here, he felt that he was
6 among friends and colleagues. He wasn't in a hurry to
7 leave us and lingered long after his scheduled
8 departure time.

9 I like to think that we gave him some
10 small respite on a particularly tough day for him.
11 What greater compliment can a guest give to his hosts
12 than to want to linger a while, to continue to enjoy
13 the hospitality and the company of friends and to rest
14 a little before moving on.

15 I wrote to Mr. Flaherty a letter on
16 March 20th, and here, in part, is what I wrote.

17 "Mr. Flaherty, like others, I was
18 surprised to learn of your resignation as Minister of
19 Finance, but understand and appreciate your reasons for
20 doing so. Even though my own public life is vastly
21 smaller than yours, I have come to appreciate the
22 commitment, personal sacrifices and tremendous toll
23 extracted from those who choose to serve their fellow
24 citizens in public life. The commitments you have made
25 are well known.

1 We are very proud that we can call you
2 one of our own. On behalf of the Law Society I extend
3 our thanks and gratitude. As a lawyer, you have
4 exemplified the qualities of professionalism in the
5 discharge your duties to which we can all aspire."

6 "On a personal note, and as a parent of
7 an adult with a mental disability, I wish also to
8 commend you for the measures you have introduced to
9 make the lives of persons with disabilities and their
10 families easier to endure. You have made a direct and
11 positive impact. I only wish that the media could have
12 acknowledged that contribution more than they have
13 done."

14 Little did I know when I wrote that how
15 soon my wish would be answered.

16 Au nom du conseil, je désire offrir nos
17 plus sincère condoléances à sa famille, son épouse, la
18 députée provinciale Christine Elliott, et leurs trois
19 fils.

20 On behalf of Convocation, I wish to
21 extend our deepest condolences to his family, his wife,
22 Ontario MPP Christine Elliott, and his three sons. He
23 leaves a legacy as a first class lawyer, a skillful
24 politician and an exemplary man.

25 On another sad note, we were also

1 saddened to learn of the death of The Right Honourable
2 Herb Gray on April 22nd. Mr. Gray was one of Canada's
3 longest serving Parliamentarians and the first member
4 of the Jewish faith to be appointed to the federal
5 cabinet.

6 Mr. Gray represented the people of
7 Windsor West for nearly 40 years, making him one of the
8 longest serving MPs in Canadian history. When he left
9 parliament in January 2002, he was the Deputy Prime
10 Minister of Canada.

11 On behalf of Convocation I would like to
12 extend our condolences to the Gray family and to all of
13 the people of Windsor whom Mr. Gray served so well and
14 for so long.

15 I would like to briefly report on a
16 dialogue the Law Society has begun with the real estate
17 bar. The Law Society, together with LawPro, met with
18 representatives of the County and District Law
19 Presidents Association and the Ontario Bar Association
20 in January, and our efforts have progressed to form the
21 Real Estate Liaison Group.

22 I have asked Ross Earnshaw, Bencher Ross
23 Earnshaw, to represent the Law Society in this group
24 and requested that he keep us apprised as appropriate.
25 I've also asked Bencher Alan Silverstein to participate

1 where possible.

2 The group is scheduled to meet in May
3 and updates on its work and progress will be provided
4 as the dialogue continues.

5 I would note that May 1st has been
6 announced as the day that the Ontario government will
7 table its budget. We look forward to seeing the budget
8 as this year we participated directly in the pre-budget
9 consultation, raising awareness about Legal Aid and
10 eligibility cut-offs.

11 This past Tuesday evening I was pleased
12 to participate in a very successful event with the Jury
13 Review Implementation Committee, that is addressing key
14 issues in aboriginal relations and access to justice.
15 Former Justice Frank Iacobucci helped us understand the
16 context for his report on aboriginal juries and
17 speakers provided their views on whether and how
18 progress is being made, albeit slowly.

19 I was pleased that we were able to host
20 this reception and we look forward to working with them
21 as part of our role in facilitating access to justice.

22 Just a few upcoming events I want to
23 remind you about. April the 28th is Holocaust
24 Remembrance Day with keynote speaker, The Honourable
25 Rosalie Abella of the Supreme Court of Canada.

1 On May 7th the Law Society holds its
2 annual general meeting, which I hope will be relatively
3 short this year, and on May 14th the 16th County and
4 District Law Presidents Association Plenary will be
5 held in London, Ontario. And May 21st is the Law
6 Society Awards ceremony and May 22nd is the South --
7 the South Asian Heritage event.

8 I'm also very pleased that the newly
9 appointed Attorney General, The Honourable Madeleine
10 Meilleur will be joining us for Convocation lunch
11 today. The Honourable Madeleine Meilleur is the second
12 woman to be appointed as Attorney General, our bencher
13 colleague, Marion Boyd, of course, was the first, but
14 she is the first woman lawyer to be Attorney General,
15 which seems to be a little bit backwards, but that's
16 how that works, and the first francophone Attorney
17 General, and that is an achievement I think that we can
18 all support and applaud.

19 Je suis ravi que la nouvelle Procureure
20 Générale, l'honorable Madeleine Meilleur, se joindra à
21 nous au déjeuner du conseil.

22 L'honorable Madeliene Meilleur est non
23 seulement la deuxième femme Procureure Générale, mais
24 aussi la première avocate et première francophone
25 Procureure Générale en Ontario.

1 Minister Meilleur has represented the
2 riding of -- my riding, actually, of Ottawa Vanier
3 since her election in 2003. She has held various
4 cabinet posts, including Culture, Community and Social
5 Services and most recently, Community Safety and
6 Correctional Services.

7 Minister Meilleur continues in her role
8 as minister responsible for Francophone affairs. She
9 is also a registered nurse in addition to being a
10 lawyer and a member of the Barreau du Québec. I look
11 forward to having the minister join us for Convocation
12 luncheon today.

13 TRINITY WESTERN UNIVERSITY ACCREDITATION:

14 TREASURER CONWAY: The first order of
15 business on our agenda is the Trinity Western
16 University accreditation matter. Before we begin, I
17 would like to briefly outline today's process. Before
18 that, however, I would like to acknowledge the
19 representatives from Trinity Western University who are
20 joining us today in Convocation room.

21 Bob Kuhn, the president and
22 vice-chancellor of Trinity Western University. Janet
23 F. Buckingham, LLC director and associate professor of
24 political studies and history at Trinity Western
25 University, and intern Brayden Volkenant. I'm not sure

1 if I've got that correct. An intern. And Eugene
2 Meehan, of Supreme Advocacy LLP Ottawa, counsel to
3 Trinity Western University.

4 The representatives of TWU are the
5 applicants in this matter and will be addressing
6 Convocation shortly.

7 As you know, we are webcasting
8 Convocation and anyone can view our proceedings from
9 their desktop computer. For those benchers who are
10 following the debate by telephone and were thinking of
11 also watching the webcast, you should know there is a
12 60 second delay, and as a result, I suggest you do not
13 try to follow the webcast or at least mute the volume
14 when you're doing that.

15 In addition, the Lamont Learning Centre
16 is being used here at the Law Society for lawyers,
17 paralegals and members of the public to watch the
18 webcast.

19 I would like to highlight a few points
20 from my February statement found at tab 1 of BoardBooks
21 to remind Convocation of the process we are following.
22 The first Convocation for the TWU matter was on April
23 the 10th. It gave Benchers the opportunity to raise
24 any questions or concerns they have relevant to the
25 issues before them.

1 The transcript of that debate is at tab
2 5 and has been provided to TWU. TWU has responded in
3 writing to the issues and concerns raised on April the
4 10th, and that material is found at tab 7 of
5 BoardBooks.

6 Following TWU's presentation, I will
7 take the speakers' list for those who wish to speak.
8 At the end of the deliberations, we will vote in answer
9 to the question read by the secretary on April the 10th
10 and which I would ask the secretary to read now.

11 SECRETARY: Thank you, Treasurer.
12 Treasurer and Benchers, the question to be put to
13 Convocation today is as follows: Given that the
14 Federation Approval Committee has provided preliminary
15 approval to the Trinity Western University law program,
16 in accordance with processes Convocation approved in
17 2010 respecting the national requirement and in 2011
18 respecting the approval of law school academic
19 requirements, should the Law Society of Upper Canada
20 now accredit Trinity Western University pursuant to
21 section 7 of by-law 4?

22 TREASURER CONWAY: The question will be
23 read once again prior to the vote.

24 I would like to remind Benchers that for
25 those who were not in attendance at the April the 10th

1 Convocation, in order to vote today, you must have read
2 the transcript of the April 10th Convocation, and for
3 all Benchers, in order to vote today, you must be
4 physically in attendance at Convocation or be on the
5 telephone for Convocation for TWU's oral submissions.

6 All of the material for today's
7 Convocation is posted on our website on the dedicated
8 TWU page. We have also posted the equivalent of the
9 Convocation material the Benchers have through their
10 BoardBooks on our Convocation page on the website, so
11 that all page references are identical for anyone using
12 the web version of the material.

13 For those who wish to speak today, as I
14 mentioned on April the 10th Convocation, while I am not
15 setting a time limit for speaking, I am asking Benchers
16 to use their best efforts to be on point and to be
17 concise in their remarks. I will not recognize
18 Benchers to speak a second time as long as there remain
19 Benchers who have not yet spoken for the first time on
20 the speakers' list.

21 If you are recognized to speak a second
22 time, please use the additional time for any new
23 information that you may have. I will be encouraging
24 Benchers to keep any second opportunity to speak to a
25 few minutes. I ask Benchers to consider not repeating

1 at length points that have already been made by others.

2 We will now hear from Trinity Western
3 University, and I've agreed to allow them approximately
4 two hours for their address to Convocation. Mr. Kuhn.

5 MR. KUHN: Je vous memercie de m'avoir
6 invité ici. My name is Bob Kuhn. With me are Eugene
7 Meehan, TWU Ontario legal counsel, and Dr. Janet F.
8 Buckingham, an internationally recognized author and
9 speaker on the topic of religious freedom, as well as
10 an Ontario lawyer and associate professor at Trinity
11 Western University.

12 Janet and one other lawyer professor
13 from TWU are primarily responsible for leading the
14 development of the law school proposal which received
15 such positive remarks from the Federation.

16 Also with me is Brayden Volkenant. He
17 is also an alumnus of Trinity Western University,
18 having graduated in 2013 with a bachelor's degree in
19 business. Currently he serves as one of two
20 president's interns and has worked with me over the
21 past year.

22 His desire is to pursue a career in law,
23 like his father, and ideally taken at the Trinity
24 Western School of Law. He has asked if he could come
25 here not just to observe the process of the Law Society

1 of Upper Canada, but to represent Trinity Western
2 students who wish to have the opportunity to study law
3 at TWU, followed by the right to practice this legal
4 career anywhere in Canada that the calling would lead.

5 Before I begin the substance of my
6 remarks, let me thank the Law Society of Upper Canada
7 for the opportunity to speak. Let me thank them for
8 the diligence which they have put into the days that we
9 have been present and watched the debate, the material
10 that has been read. And if I could please ask your
11 forgiveness for my tremor. Due to the travel schedule
12 lately, my Parkinson's disease is perhaps more
13 noticeable than normal.

14 I've practised law for almost 34 years.
15 I have had the privilege of serving a very large
16 variety of clients, including devout religious
17 organizations, as well as clients who are suing their
18 churches. I have served as legal counsel for gay men
19 and lesbian women, as well as those who would be
20 opposed to sexual expressions of those individuals.

21 I, like Trinity Western University, have
22 never had a formal complaint against me on the grounds
23 of discrimination of any kind. I'm Christian and have
24 a faith that informs my life. The Bible is my handbook
25 for living and I believe it sets out God's truth.

1 In addition to being a practising lawyer
2 and a Christian, I'm a graduate of Trinity Western
3 University and am currently the president of that
4 university.

5 Today I must speak boldly. This was the
6 manner chosen by many Benchers to whom I listened
7 intently on April 10, and on that day neither I nor
8 Trinity Western had the means of response. Today is
9 our day for response. I understand that I take the
10 potentially calamitous risk of offending some who
11 spoke. This is an emotive matter for many people.

12 For Trinity Western it is particularly
13 important. Its community has been made to feel that
14 its religious beliefs and Christian character are under
15 attack. I do not wish to make anyone feel as the
16 members of Trinity Western have over the past number of
17 months. If I do offend, please forgive me, because I
18 do not intend any disrespect to any person or any
19 group.

20 I would like to read something that's
21 very familiar to you. "A truly free society is one
22 which can accommodate a wide variety of beliefs, a
23 diversity of tastes and pursuits, customs and codes of
24 conduct." Throughout the ordeals that have been faced
25 with respect to this matter, I have often wondered

1 whether the Canada of today is, in the words of former
2 Chief Justice Dickson and Big M Drug Mart, a truly free
3 society anymore.

4 Rather, in so far as it relates to
5 religious beliefs and codes of conduct, many times
6 Canadian society appears unwilling to accommodate.

7 I speak with conviction today as I am
8 not here as a mere advocate who represents the views of
9 another. I'm a member of a community of more than
10 4,000 students, faculty, staff and others, people who
11 have been mischaracterized often, misunderstood and,
12 unfortunately, maligned through the process.

13 Evangelical Christians are a minority in
14 Canada and regrettably have become one of the final
15 groups it seems acceptable to vilify and make subject
16 to hurtful comment and criticism.

17 They have become the target of
18 intolerance without any virtual -- or with virtual
19 impunity. Why this is so from a sociological
20 perspective is beside the point. Too often during this
21 process it has been accepted that traditional Christian
22 beliefs can be disparaged and subjected to public
23 criticism, even by those wielding government powers.

24 Let me say a few things about TWU that
25 you may not yet know. I can avow firsthand that TWU is

1 a wonderful place. It's filled with educators and
2 students who are vibrant and striving to make the world
3 better for everyone. The reality of TWU bears no
4 resemblance to statements and characterizations that
5 have been made in the press, mostly by those who oppose
6 TWU, and also during Convocation on April 10th.

7 Unfortunate metaphors have been applied
8 to the TWU community and its beliefs as set out in the
9 Community Covenant. These include comparisons to
10 racism, fascism, sexism, Muslim extremism. It uses
11 analogies to residential schools, human rights abuses
12 in Uganda and apartheid in South Africa. Comparisons
13 have been drawn between the Community Covenant and the
14 Chinese Head Tax and Exclusion Act, as well as racist
15 prescriptive covenants precluding the sale of land to
16 Jewish persons. Human sacrifice, the execution of
17 heretics and the belief that the sun revolves around
18 the earth were all analogies used to denigrate the
19 faith of my community.

20 Not only are these analogies, metaphors
21 and comparisons unsupportable and inappropriate and
22 inaccurate, they are evidence of the disregard for the
23 beliefs of others. TWU was called hateful and bigoted,
24 which statements seem specifically designed to
25 denigrate and vilify TWU and its religious community.

1 Many of these statements and comparisons
2 are more appropriate when applied to the forces that
3 oppose Trinity Western University and its
4 beliefs. Given such statements, TWU and any Christian
5 community, for that matter, would rightly be concerned
6 that it will not be treated fairly and with tolerance
7 and with respect.

8 Add to these metaphors and consider the
9 words used in public response to the issues raised by
10 Trinity Western's application to have a law school and
11 consider it in the context of these hearings.

12 I quote, "In keeping with biblical and
13 TWU ideals, TWU should go to hell." Someone referred
14 to Trinity Western as Taliban West. One commentator
15 said, "Screw your religious delusions and your pathetic
16 fantasy of a God. Who are these TWU wackos?"

17 Another commentator said, "They can't
18 practice their contempt, backwardness and homophobia
19 here." Somebody else said, "The mindless collectives
20 would be the religious ones. People who can't think
21 for themselves, but instead subscribe to a belief
22 system made up by the desert tribesmen 2500 years ago.
23 This is just another example of hypo-Christian bigotry.
24 Want to hand out law degrees in the bizarre world of
25 fairy tales? Then practice law in the same world and

1 keep your narrow minded faith-based BS away from the
2 real world."

3 "TWU, frightened insecure bullies. Pull
4 your head out of your Bible's ass and think for
5 yourself. If you're religious, you suffer from a
6 mental illness."

7 "Thump your bible at home all you want,
8 but keep it at home."

9 "The beliefs of racists, sexists,
10 neo-Nazis are just as deeply held as those of
11 homophobes. Their beliefs are just as sincere as those
12 of Trinity. It's no surprise that evangelical hate
13 group, Trinity, will continue to attack gay rights,
14 cult-like intrusion into the lives of students. Time
15 to join the 21st century, Mr. Kuhn. Why would anyone
16 in their right mind want to go to this outdated and
17 bigoted school? Christianity is a cult that needs to
18 be abandoned, and let's not stop there. Abandon all
19 the rest of the religious cults and just start over.
20 This kind of idiocy, discrimination and religious
21 nuttery is religion's bullshit tied up with a silk
22 ribbon. I would have second thoughts of hiring a
23 person who had been hoodwinked their entire life into
24 believing all that crap."

25 Or as one lawyer put it in a Facebook

1 post, "Trinity Western University is a wacko
2 fundamentalist Christian university with homophobic
3 policies, but I'm encouraged by the fact that the
4 voices for justice are increasingly drowning out the
5 voices of bigotry and ignorance."

6 Those are hurtful voices. Those are
7 voices of intolerance. These are the words spoken
8 without consideration of the respect or the legal
9 rights to which Trinity Western is entitled. This is
10 harmful language adopted by the Trinity Western Law
11 School opponents.

12 Surely this kind of pejorative statement
13 is unbecoming a member of the legal profession, a
14 person responsible for educating our young lawyers and
15 a person who purports to represent major firms in our
16 country.

17 This kind of public commentary has been
18 and remains hurtful and harmful, and it is not just
19 Trinity Western that's the subject of intolerance and
20 inflammatory invective. Every religious person or
21 organization which dares to hold contrary religious
22 views to that of secular society is derided by these
23 comments. The language impugns the importance of
24 religion in our culture and those who live lives that
25 are defined by their faith, some of who have escaped

1 faith oppressive regimes, only to find they and their
2 religious institutions are threatened again with being
3 marginalized and driven from the public square of
4 pluralism.

5 Now, I recognize that the issues raised
6 in this matter are highly emotional, personal and
7 political. However, law societies cannot allow such
8 unfair language used in the opposition to Trinity
9 Western University community and its faith-based values
10 informed -- cannot allow that language to inform the
11 decisions that they make under statutory authority.

12 I'm proud that the Law Society of B.C.
13 did not allow this to occur and I'm trusting the Law
14 Society of Upper Canada to do likewise.

15 Let it be understood, let there be no
16 doubt, Trinity Western has done nothing to deserve the
17 treatment it has received at the hands of those who
18 oppose TWU and abandon legal reasoning for rhetoric.
19 Many of these individuals are lawyers who must be
20 committed to safeguard the rule of law and, of course,
21 the Law Society requires that you maintain and advance
22 the rule of law.

23 This is not a battle of ideologies,
24 philosophies or theologies. It is a decision that must
25 be made on the basis of the rule of law. Further, the

1 opposition has made this personal attack, and I don't
2 just mean the hate mail that I've received or the
3 pejorative statements, some of which I can't read
4 because of their expletives, but, for example, the UBC
5 faculty council proposed that the Law Society of
6 British Columbia conclude that any lawyer serving a
7 senior position at Trinity Western University couldn't
8 perform his professional duties ethically. That
9 implied the suggestion that after 34 years of practice
10 I should be disbarred.

11 I suspect that none of you have ever
12 been to Trinity Western, or very few of you at best.
13 Let me paint a picture of Trinity Western University.
14 For contrast and the slightly uninformed conclusions of
15 some opponents, let me describe the TWU that I know.

16 It is a community of safety where young
17 men and women can learn, grow, can be stretched and
18 understand and contribute to a world in need. It is a
19 world and a place where extraordinarily gifted and
20 caring teaching staff model rigorous scholastic
21 excellence within the classroom and in interpersonal
22 relationships that brings out the best in students.

23 It is a university of a widely diverse
24 and international student body that often experience
25 their first truly independent decisions in this

1 environment.

2 It is a compassionate and
3 service-oriented environment that focuses on positive
4 Christian values of love and respect for all others.
5 It is a community where the dedicated staff focus on
6 relationships rather than rules, serving out a personal
7 commitment to the students, rather than serving
8 economic gains.

9 It is a place characterized by critical
10 thinking, disciplined learning and leadership
11 opportunities. As a much recognized elite level
12 championship-winning sport environment, it is the envy
13 of many schools ten times its size and the choice of
14 top level athletic talent from across the country and
15 around the world, not because they get paid, but
16 because they chose to come to Trinity.

17 It's a self-supporting university where
18 tuitions are necessarily higher, but students choose to
19 sacrifice and work very hard, many from humble
20 backgrounds, many who went, like me, with \$300 in their
21 pocket and worked solidly part-time all the way through
22 school and took out loans in order to have the kind of
23 education that we felt was important.

24 But most of all, it's a Christian
25 educational community that a course of 24,000 alumni

1 and current students almost invariably say, "I love
2 this place." Show me a university that has that effect
3 on people. It's not a university of bigotry or a
4 university of intolerance or a university that's
5 characterized with the most negative terms
6 possible. It's a university that students leave
7 saying, "I love this place."

8 The caricatures that have been created
9 by the inferences or express references by many of
10 those who oppose Trinity Western's law school are
11 simply unjustified and based on ignorance of the facts
12 in many cases. These comments lack balance and seem
13 intended to defame or demean the character and
14 incompetence of my community of learning.

15 The facts -- the facts and the evidence
16 before you are clear. Trinity Western has a 52 year
17 old unblemished history of excellence in every respect.
18 It's a Christian university by reason of its statutory
19 mandate, its charter to offer a university education
20 with an underlying philosophy and viewpoint that is
21 Christian. It is a growing faith-based educational
22 community that offers 42 undergraduate degrees and 17
23 graduate programs.

24 It has achieved recognition for academic
25 excellence, having attained an unprecedented and

1 unequaled A plus rating seven years in a row with the
2 Globe & Mail university report card. A national survey
3 of student engagement and the Canadian University
4 Survey Consortium consistently ranked Trinity Western
5 among the top universities in Canada for educational
6 experience.

7 Trinity offers often over-subscribed
8 professional degree programs like nursing and
9 education, as well as professional postgraduate
10 programs in business, leadership, counselling and
11 psychology.

12 Trinity Western has been in good
13 standing with the Association of Universities and
14 Colleges in Canada for thirty years.

15 Trinity Western's experience -- students
16 experience an extraordinarily high level of community
17 involvement. 57 percent of undergraduates are involved
18 in community involvement. This involvement includes
19 working with the disadvantaged, the homeless, the
20 members of the sex trade in the downtown east side of
21 Vancouver, all the way to international relief efforts
22 all around the world, in Africa, Asia, Eastern Europe,
23 Central and South America. This is unmatched by any
24 secular University of any size in Canada and represents
25 Trinity's reaching out and serving the local and

1 international needs that our community faces.

2 As the Supreme Court of Canada said in
3 the Trinity Western University decision 2001, "There is
4 no rational argument that such a religious educational
5 institution is somehow against the public interest."
6 And that was said in the context of a community
7 covenant very similar to what we face today.

8 As a matter of public record, TWU has
9 gay and lesbian students, a number of which have openly
10 responded over the last few months to media requests
11 for interviews. There is no evidence of gay bashing;
12 the evidence is quite to the contrary.

13 In summary, on the definition of who
14 Trinity Western actually is, it's a broad-based open
15 learning environment which encourages critical thinking
16 and analysis, not just of ideas that threaten its
17 Christian world view, but the very Christian world view
18 from which it gains its perspective.

19 Arguably, and having been educated in
20 both the secular university environment and at Trinity,
21 I compare -- or I can echo this comment. Arguably, the
22 Trinity Western learning environment enables a broader
23 community dialogue which is greater than that permitted
24 at public universities which eschew and often denigrate
25 any perspective that comes from religion. Evidence of

1 that discriminatory view can be found in the
2 anti-Christian rhetoric used by academics during this
3 very process.

4 What is the path that has brought us
5 here? I've thought long and hard about the
6 circumstances in which we find ourselves. It all
7 started rather innocently enough. The university
8 decided to act upon its long held desire to add a
9 school of law to its flourishing professional schools
10 and programs. It consulted with a large number of
11 people regarding the start-up of a law school. That
12 included law deans, legal academics, Law Society
13 leadership, bar association leadership, government
14 ministries and other lawyers. No one, no one expressed
15 opposition. So we proceeded.

16 After many years of planning,
17 consultation and preparatory work, TWU submitted a
18 proposal to the Federation and the B.C. government
19 Ministry of Advanced Education, June of 2012. As you
20 know, the Federation undertook a rigorous 18 month
21 process of applying the national congress rules,
22 requirements and agreed -- requirements that are agreed
23 by all law societies, including the Law Society of
24 Upper Canada, and in December of 2013, the Federation
25 concluded that the Trinity Western proposal was

1 comprehensive and designed to ensure that students
2 acquire each competency included in the national
3 requirement.

4 Included in their analysis was the
5 Community Covenant, the document which has gathered so
6 much attention through these proceedings, and the
7 Federation concluded that that Covenant was not a
8 deficiency in the proposal.

9 Recognition must be made of the
10 Federation's special advisory committee struck
11 specifically to consider the opposition that had been
12 mounted to the Community Covenant and the Christian
13 character of TWU. A well respected group of objective
14 legal counsel, including a former Law Society of Upper
15 Canada Treasurer, was formed, and in concluding its
16 deliberations after considering all the applicable
17 legal and public interest issues, as well as the legal
18 opinions of an Ontario-based legal counsel, John
19 Laskin, the special advisory committee stated "There
20 will be no public interest reason to exclude future
21 graduates of the program from law society bar admission
22 programs." "There will be no public interest reason to
23 exclude future graduates of the program from law
24 society bar admission programs."

25 Of course, this includes future

1 graduates of Trinity Western who sought law society bar
2 admission in Ontario. At the same time, the B.C.
3 Ministry of Advanced Education took a similar period of
4 18 months of rigorous assessment, including an analysis
5 by an expert evidence review panel comprised of
6 existing university law school faculty, including four
7 former law school deans. This process included
8 consideration of the Community Covenant and resulted in
9 approval in mid-December 2013.

10 On April 11th, 2014, after reviewing
11 approximately 300 submissions, at least half a dozen
12 legal opinions, and other relevant material, the
13 Benchers of the Law Society of British Columbia
14 concluded that there was no legal or public interest
15 reason to disapprove Trinity Western's law school.
16 That's the home jurisdiction of Trinity Western
17 speaking, people that know the institution and
18 students, its faculty and staff best, and the province
19 that will inevitably be most impacted by Trinity
20 Western's law school graduates. They voted
21 overwhelmingly in favour of the Trinity Western law
22 school proposal.

23 They expressly did so not because they
24 agreed with the sincerely held religious views that are
25 recognized in Trinity Western's Community Covenant, but

1 because they rose above their personal views and made a
2 decision based on the law.

3 So what's at stake? What's the decision
4 here? What's at stake here today is the critically
5 important question, does an evangelical Christian
6 educational community, Trinity Western University and
7 its members, have freedom of religion such that its law
8 school graduates will be permitted to practice law in
9 Ontario? Is there a willingness, in the words of
10 former Chief Justice Dickson, to accommodate Trinity
11 Western's code of conduct, definition of marriage and
12 the religious beliefs upon which they are based.

13 This is not an issue of discrimination
14 against anyone except those students who may, five
15 years from now, apply to practice law in Ontario.

16 Opponents of TWU's law school would have
17 you judge those students as being inadequately prepared
18 to practice law in this province. They would have you
19 bar the door to entry, regardless of their personal
20 qualifications. And why would they condemn those young
21 lawyers? Because they attended a law school that
22 maintained the traditional religious definition of
23 marriage as being between one man and one woman, a
24 belief that is protected by law and is still widely
25 held in Canada.

1 To bar entry to the practice of law in
2 Ontario on such a basis constitutes, in my opinion,
3 prejudice. Prejudice is defined as an opinion formed
4 beforehand, especially an unfavourable one based on
5 inadequate facts, a decision formed five years ahead of
6 any actual students making this application. Formed on
7 the basis of inadequate facts about those students.

8 The irony of the situation is that the
9 assault on this small Christian community is being led
10 by a powerful moral majority who seek to impose their
11 views and enforce conformity and compliance on TWU as a
12 price for entering the public arena, which is
13 overwhelmingly dominated by public institutions.

14 There is no meaningful discussion of
15 accommodation of religious views, there is no
16 meaningful consideration being given to the harm done
17 to my religious community. Rarely does Trinity's
18 opposition make any attempt to balance competing
19 interests, and given the Supreme Court of Canada's
20 direction as to how such competing interests should be
21 analyzed on indistinguishable facts, this is most
22 surprising.

23 As a religious community, TWU has done
24 nothing improper, illegal or immoral. If the opponents
25 to Trinity Western's law school are committed to impose

1 their value judgments on the minority as proposed, then
2 religious communities, organizations and individuals
3 who dare to maintain their religious principles will be
4 excluded from public -- full participation in our
5 pluralistic society, and that, ladies and gentlemen,
6 would be a travesty in a free and democratic society,
7 which is committed to pluralism, diversity and mutual
8 respect.

9 Now, what's the document that we're
10 actually talking about? It's the Community Covenant.
11 Please recognize this is critical for everyone to have
12 reviewed the complete documentation related to the
13 application and the approval, but specifically the
14 Community Covenant. Looking at it in context, I'm
15 going to read from a portion of that to make sure that
16 the context is at least before you.

17 Now, it's a five page document and I'm
18 sure most of you --

19 TREASURER CONWAY: The document can be
20 found at tab 3.3.5 of BoardBooks. I believe it's page
21 2094.

22 MR. KUHN: "Trinity Western University
23 is a Christian University of the liberal arts, sciences
24 and professional studies, with a vision for developing
25 people of high competence and exemplary character to

1 distinguish themselves as leaders in the marketplaces
2 of life." Hardly contestable.

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

13 "The university is an inter-related
14 community rooted in the evangelical protestant
15 tradition and it is made up of Christian
16 administrators, faculty and staff who, along with
17 students, choose to study at TWU, covenant together and
18 form a community that strives to live according to
19 biblical precepts, believing this will optimize the
20 university's capacity to fulfill its mission and
21 achieve its aspirations."

22 I would stop there to say we believe
23 that's been done and continues to be done.

24 "The Community Covenant is a solemn
25 pledge in which members place themselves under

1 obligations on the part of the institution to its
2 members and the members to the institution and the
3 members to one another. In making this pledge, members
4 enter into a contractual agreement and a relational
5 bond. By doing so, members accept reciprocal benefits
6 and mutual responsibilities and strive to achieve
7 respectful and purposeful unity that aims for the
8 advancement of all, recognizing the diversity of
9 viewpoints, life journeys, stages of maturity and roles
10 within the TWU community. It is vital that each person
11 who accepts the invitation to become a member of the
12 TWU community carefully considers and sincerely
13 embraces this Community Covenant."

14 Over the page it talks about the
15 biblical foundation that inspires TWU to be a
16 distinctly Christian university in which members and
17 others observe and experience truth, compassion,
18 reconciliation and hope. TWU envisions itself to be a
19 community where members demonstrate concern for the
20 well being of others, where vigorous intellectual
21 learning occurs in the context of whole person values,
22 where members give priority to spiritual formation and
23 where service oriented citizenship is modelled."

24 Under community life, "TWU Community
25 Covenant involves a commitment on the part of all

1 members to embody attitudes and to practice actions
2 identified in the Bible as virtues and to avoid those
3 portrayed as destructive. Members of the TWU community
4 therefore commit themselves to cultivate Christian
5 virtues, set out there. "Live exemplary lives
6 characterized by honesty" and so on, communicate in
7 ways that build others up according to their needs for
8 the benefit of all, and treat all persons with respect
9 and dignity and uphold their God-given worth from
10 conception to death."

11 Now, at the bottom of the page, "In
12 keeping with biblical and TWU ideals, community members
13 voluntarily abstain from the following actions.
14 Communication that is destructive to TWU community life
15 and interpersonal relationships, including gossip,
16 slander, vulgar, obscene language and prejudice.
17 Harassment of any form, verbal or physical
18 intimidation, including hazing, lying, cheating or
19 other forms of dishonesty, including plagiarism,
20 stealing, misusing and destroying the property
21 belonging to others." And most operative it seems for
22 some, "Sexual intimacy that violates the sacredness of
23 marriage between a man and a woman."

24 It is those values and others that are
25 reflected in the Community Covenant. It's a Community

1 Covenant that, apart from a few items in it, would be
2 the desire of every institution of advanced learning in
3 this country. And, in fact, we have been asked how do
4 you avoid some of the things that have occurred on the
5 campuses of this country where under-aged rape is
6 seemingly acceptable, where discipline and consequences
7 are immaterial in many cases.

8 To the bottom of the page, "The
9 university is committed to promoting and supporting
10 habits of healthy self care." It goes on to talk about
11 positive living. It talks about drug and alcohol,
12 tobacco use, entertainment which is of questionable
13 value. And it ends or close to ends with a statement,
14 "TWU welcomes all students who qualify for admission,
15 recognizing that not all affirm the theological views
16 that are vital to the university's Christian identity.
17 Students sign this covenant with a commitment to abide
18 by the expectations contained within the Community
19 Covenant and by the campus policies published in the
20 academic calendar and student handbook."

21 It is, if nothing else, a manifesto of
22 positive living. It is what I have been told by a
23 number of presidents of public universities, a
24 fantastic place to start for their own need to control
25 the kind of activities that occur on student campuses.

1 It expresses the historical and spiritual definition of
2 our community. It's a community that has an
3 untarnished record of academic freedom and compliance
4 with human rights legislation spanning more than fifty
5 years.

6 As proof positive of that untarnished
7 record, the Law Society of British Columbia actively
8 sought evidence from university records in British
9 Columbia, other universities, including law schools,
10 and from its own records of complaints at the Law
11 Society in order to determine whether there was any
12 objective evidence of TWU graduates being guilty of
13 discriminatory behaviour.

14 They checked with the nurses, they
15 checked with the teachers, they checked with the Human
16 Rights Commission. Not a single formal complaint has
17 been lodged. Not a single scrap of evidence has been
18 produced to indicate that anyone from Trinity Western,
19 anyone who has graduated or even gone there, has been
20 guilty of discriminatory behaviour. There is no
21 evidence of discrimination. In fact, it's interesting,
22 some of the letters in response, including the
23 University of Victoria, said they had nothing but
24 approval for Trinity Western grads, including one who
25 had graduated just recently with the gold medal from

1 that school.

2 I should add that months ago, Trinity
3 Western offered freely and agreed with the B.C. branch
4 of Canadian Bar Association to encourage TWU law school
5 students to become members of the CBA, and in
6 consideration of them becoming or choosing to become
7 members, Trinity would pay their memberships.

8 In addition, Trinity Western offered,
9 without being asked, to invite the B.C. branch of the
10 CBA to hold a session on TWU's campus led by SOGIC or
11 any other comparable section of the Canadian Bar
12 Association for the purpose of identifying legal issues
13 related to the LGBT community.

14 So what exactly is so contentious?
15 First, I want to start by saying the student body is
16 diverse in every way. Second, the offending language
17 focuses on two things, behaviour and belief. With
18 respect to behaviour, TWU students, faculty and staff
19 agree to abstain from sexual intimacy. This is
20 applicable to the sexual activity of both heterosexuals
21 and homosexuals, and while some have suggested that
22 this limits a person's sexual identity, there is no law
23 to suggest that a religious community cannot constrain
24 sexual behaviour in accordance with religious
25 principles.

1 As we pointed out in the written
2 submissions, the Supreme Court of Canada in Whatcott
3 stated that conduct and status are not conflated for
4 all purposes.

5 Virginity before marriage and celibacy
6 outside of marriage constitute such a religious
7 principle at TWU. It is not a widely recognized
8 societal value, but marriage is very important in a
9 Christian context. It's a sacred state and it's not
10 limited to the civil definition.

11 As is clear from the Civil Marriage Act,
12 section 3.1, the drafters of that legislation made it
13 absolutely certain that religious organizations would
14 be neither penalized nor refused benefits as a result
15 of taking a definition of marriage that they held as
16 religiously and as faith-based as does Trinity.

17 Now, with respect to belief, the
18 objection of those opposing Trinity Western's law
19 school comes down to two quite simple questions. Can
20 the community that is Trinity Western University, in
21 accordance with evangelical Christian beliefs and as a
22 means of defining its religious community subscribe to
23 a definition of marriage that is limited to being
24 between one man and one woman? The answer to that
25 question ten years ago would have been of course.

1 Few, if any, would disagree with the
2 answer being yes. Today they're entitled to hold that
3 view. It's incontrovertible that the view was part of
4 the historical traditional belief of the church. How
5 could anything in society dictate otherwise?

6 The second point is that given the
7 religious definition of marriage acceptable to TWU that
8 does not include same-sex marriages, does that
9 belief-based fact constitute unlawful discrimination
10 against same-sex married couples such as to preclude
11 Trinity Western University from having a law school
12 that graduates men and women who may article in
13 Ontario.

14 Simply put, can the Law Society of Upper
15 Canada discriminate against TWU and its students
16 because TWU holds the belief that when constituting the
17 agreed terms of membership in its community, Christian
18 marriage does not include same-sex married couples.

19 I'd like you to think about who is being
20 harmed here. Is it an undefined unidentified couple
21 involved in a same-sex marriage who might apply to
22 Trinity Western law school, but is insisting that only
23 if the six offending words in the Community Covenant
24 were deleted, or is it the Trinity Western community
25 which is being pressured into abandoning its beliefs

1 about human sexuality and the sacred state of marriage?

2 Look at the recent legal action in
3 British Columbia. It's not just attacking TWU's
4 definition of marriage, it's claiming that TWU must
5 accept same-sex common-law relationships as part of its
6 community as well. And further, to suggest that TWU
7 cannot refuse to accept the beliefs of some Christians
8 who have adopted newer standards applicable to the
9 definition of marriage based on their own biblical
10 interpretation.

11 Where does it stop? Doesn't each
12 religious community get to determine the religious
13 views and moral standards to which they have
14 historically held to be true or are we going to have
15 someone dictate what is acceptable in the public
16 sphere?

17 It's troubling to me, as I'm sure it
18 would be troubling to you, to hear direct reports from
19 universities in some of the cities in Ontario make
20 public statements that they will not be satisfied until
21 Trinity Western is shut down. So the significance of
22 this process, without exaggeration, literally millions
23 of people of religious faith in Canada and, indeed,
24 elsewhere will be watching the Law Society of Upper
25 Canada and these proceedings. They will all be asking

1 in one way or another one question. Is there still
2 meaningful freedom of religion in Canada? Is there
3 still a place for me and my church in this country?

4 I'm sure you recognize the process that
5 we have embarked on in this matter is both
6 unprecedented and unpredictable. The process itself
7 puts Trinity Western on trial.

8 Trinity Western has done everything
9 required of it. It obtained the necessary B.C.
10 government and Federation approvals after arduous and
11 lengthy examination of all the materials and
12 submissions. The same parties that are currently
13 arguing the same points here were involved there. The
14 necessary approvals required and received were careful
15 and comprehensive analysis of a large volume of
16 material answering all the required questions over a
17 lengthy period of time, including concerns about public
18 interest.

19 In my submission, it appears to be the
20 goal of the current process to seek a means by which to
21 remove the benefit to which TWU has become entitled.
22 It is to anticipate after the fact legislation intended
23 to prevent Trinity Western from graduating law students
24 who are acceptable to practice law in the province of
25 Ontario.

1 To compound the unfairness of this
2 process and potential conclusion, any judgment about
3 Trinity Western's graduates constitutes prejudgment
4 five years hence regarding the ability of those yet
5 unknown graduates of the future to practice law in
6 Ontario in an ethical and professional manner, and it
7 seeks to do that on the basis of no evidence to the
8 contrary.

9 How can the Law Society of Upper Canada
10 possibly make such a decision? Such a conclusion would
11 necessitate a finding based on a graduate's
12 disqualification due to his or her faith or a
13 disqualification based on faith-based principles of the
14 law school that he or she attended, even if that
15 graduate didn't agree with them.

16 There are a number of reasons why
17 Trinity Western's law school -- Trinity Western should
18 have its law school. There is no sustainable logical
19 or legal basis upon which the Law Society of Upper
20 Canada should deny future graduates of Trinity Western
21 law school the right to practice law in Ontario.

22 This is not a question of the majority
23 having to agree with the religious beliefs sincerely
24 held by a religious educational community. Trinity
25 Western asks only that its religious beliefs be

1 tolerated as part of a pluralistic society that
2 encourages diversity. The Law Society of Upper Canada
3 should not engage in any determination, opinion or
4 position on the validity or acceptability of religious
5 tenets or beliefs. This would be effectively to create
6 a faith test as a prerequisite for practising law here.

7 Assuming that the Law Society of Upper
8 Canada does not intend to investigate or disqualify
9 religious lawyers whose beliefs may differ from those
10 of a secular society, the Law Society should extend the
11 same tolerance and understanding of TWU's school of law
12 graduates, provided they display professional
13 competence and ethical behaviour.

14 Certainly it would appear to be no
15 impediment in Ontario that limits acceptance of others
16 who qualify as law students from American or
17 international law schools without regard as to whether
18 those law schools have a faith-based code of conduct
19 similar to the one that's received such scrutiny in
20 these proceedings.

21 In order to frame my concluding remarks
22 I wish to read portions of an opinion of the B.C. Civil
23 Liberties Association. Opinion which was delivered as
24 part of our initial submissions, and it will be very
25 short. The last page reads, "Conclusion; we submit

1 that the Law Society" and I'll use B.C. because, in my
2 view, there's no lack of comparability in the
3 conclusions raised in the Civil Liberties Association
4 opinion, "The Law Society of B.C. should, in accordance
5 with the Federation's decision, approve Trinity
6 Western's application for accreditation. The question
7 is not whether the Benchers individually or as a group
8 agree with TWU's Covenant or choose to abide by it
9 themselves, the question is whether the acceptance by
10 law students attending TWU of the Community Covenant
11 should bar Trinity Western graduates from joining the
12 ranks of the legal profession in British Columbia," and
13 I would say Ontario. "Our commitment to a society in
14 which LGBTQ people are free from unlawful
15 discrimination on basis of sexual orientation does not
16 gives us a licence to discriminate against others on
17 the basis of their conscientiously held religious
18 beliefs, not to deny them their fundamental freedoms.
19 There is no basis for believing that accreditation of
20 TWU's law school will lead to anything unlawful in
21 terms of discrimination against LGBTQ people or would
22 otherwise be contrary to the public interest. To the
23 contrary, for the Law Society to deny TWU's application
24 for accreditation would itself be contrary to law as
25 established by the Supreme Court of Canada and would

1 result in unlawful discrimination against an
2 infringement of the fundamental freedoms of those who
3 seek only to be able to study law and be allowed entry
4 into the legal profession without discrimination based
5 on their religious beliefs."

6 In my submission, there cannot be a more
7 objective opinion expressed than that of the Civil
8 Liberties Association.

9 I must admit that I find this all very
10 strange. Let me summarize. Both the B.C. government
11 and the Federation of Law Societies has spent years
12 developing appropriate assessment systems and expertise
13 to evaluate educational programs. In the case of the
14 Federation, it was created to act effectively as agent
15 for the law societies.

16 Trinity Western submitted its law school
17 program to the arduous process of applying to the B.C.
18 government and the Federation, both of whom are highly
19 qualified to assess such programs. Trinity only
20 proceeds after considerable due diligence with other
21 law schools, the B.C. Law Society, lawyers, judges,
22 legal academics, politicians and others without any
23 indication of objection from any of them. Objective
24 experts acting on behalf of both the B.C. government
25 and the Federation scrutinized TWU's application for

1 over 18 months and during that time a significant
2 number of complaints made their views known to both
3 government and Federation, making the same arguments as
4 they do now, all such arguments assessed and responded
5 to in detail, and after due consideration, approval of
6 Trinity Western's law school was granted by the
7 Federation with its reasoning supported in detailed
8 form and appropriate follow-up assessments being
9 required.

10 Subsequent to the Federation's approval,
11 the B.C. government Ministry of Advanced Education came
12 to the same conclusion as did the Federation and
13 approved the law school program, appropriate follow-up
14 assessments required.

15 The careful process and approval
16 reasoning of both the B.C. government and the
17 Federation have not been shown to be in error. The Law
18 Society of British Columbia voted 20 to 6 to approve
19 the Trinity Western law school located within its own
20 jurisdiction. But now the Law Society of Upper Canada
21 is petitioned by the same parties who had complained
22 and made submissions to the Federation. Those
23 submissions were heard, those complaints are urging the
24 Law Society of Upper Canada to ignore or discard the
25 national approval process and the conclusions arrived

1 at, supplementing its own views in place of the
2 Federation's conclusions.

3 The Law Society of Upper Canada is being
4 pressed to conclude without any evidence whatsoever
5 that five years from now a small new law school on the
6 west coast of Canada will produce graduates, some of
7 whom may seek to work as lawyers in Ontario, but who
8 are otherwise unacceptable. These graduates are
9 preemptively to be excluded from the ranks of the legal
10 fraternity of Ontario because of the religious views
11 held by the university they attended.

12 Neither the Law Society of Upper Canada
13 nor the Federation's NCA currently inquire into the
14 faith or beliefs of any person applying to be a member,
15 nor does it exclude potential membership where an
16 education has been received in a university with
17 comparable religious values to that of Trinity Western
18 University.

19 The Law Society of Upper Canada is being
20 pressured to refuse graduates from Trinity Western's
21 law school because of the complaints to four -- rather,
22 six words in the Covenant. These six words reflect
23 important and sincerely held religious views, not just
24 of the community known as Trinity Western University,
25 but millions of other religious people. These six

1 words are protected by both legislation and the
2 decision of the highest court in the land.

3 In both legislation and court decisions,
4 it has been determined that these words of religious
5 conviction are not to be considered contrary to the
6 public interest, but are part of the religious freedom
7 of those who use them. Those six words. "Between a
8 man and a woman."

9 But let's face it, that's really not
10 what it's about. It's not about six words. It's about
11 accommodating, about tolerating the religious views of
12 my community, views that differ from the majority. It
13 is about men and women who wish to have the freedom to
14 participate fully in society without penalty or loss of
15 benefit due to those religious views.

16 Let me share my expectations of a future
17 based on what your disapproval of anyone educated at
18 Trinity Western University might look like. If you
19 disapprove, your decision will have validated the
20 vitriolic verbal and written attacks made against my
21 community. Your decision will have endorsed
22 institutional bullying whereby powerful organizations
23 have, without warning or justification, threatened and,
24 in fact, carried out the imposition of their moral
25 judgments on my religious community. You will have set

1 yourselves up as a court of appeal over the conclusions
2 of qualified and objective bodies whose mandate it was
3 to carefully assess and judge the sufficiency of the
4 law school proposal put forward by my university.

5 Your decision will have eroded, if not
6 eliminated, the uniform national requirements and
7 function of the Federation in relation to approval of
8 law schools. Your decision will be the first
9 jurisdiction to refuse approval of the TWU law school,
10 thereby creating the beginning of a potential patchwork
11 quilt of confusion and inconsistency. Your decision
12 will be inconsistent with that of British Columbia,
13 Alberta, Saskatchewan, Prince Edward Island,
14 Newfoundland, Labrador and Nunavut. Mobility rights
15 will obligate the Law Society of Upper Canada to accept
16 TWU graduates, in any event.

17 Your decision will have discarded the
18 diligence of the B.C. Ministry of Advanced Education,
19 The Federation of Law Societies of Canada and the Law
20 Society of British Columbia, not to mention the
21 extraordinary efforts of my community. Your decision
22 will have thrown your weight in with the popular
23 opinion of the day, thereby approving the diversity,
24 destruction by the moral majority sharing the view that
25 marginalizes anyone who would disagree.

1 Your decision will have relegated
2 freedom of religion to a subservient position and
3 ironically given so-called legal equality rights a
4 trump card.

5 Your decision, contrary to virtually
6 every reason and impartial legal opinion submitted on
7 this question, will have unilaterally set aside a 13
8 year old judgment in the Supreme Court of Canada,
9 despite an eight to one decision that involved the same
10 university with virtually the same Community Covenant
11 opposed by virtually the same parties making the same
12 arguments.

13 Your decision will have communicated to
14 millions of Canadians that because of their religious
15 views they are not welcome in the public marketplace,
16 thus threatening the very premise of a pluralistic
17 society in Canada.

18 Your decision will have prejudged the
19 adequacy of TWU law school students who graduate five
20 years from now, having determined that they are either
21 inadequate in some undefined and unproven way or are
22 guilty by association or by reason of their faith.

23 Your decision will have sullied the
24 fifty year unblemished reputation of my institution of
25 learning, challenging its value and its very existence,

1 and aligning the Law Society of Upper Canada with the
2 intolerance of secularism. But perhaps most important,
3 your decision will not serve or protect the public
4 interest at all. It will, rather, reduce the public
5 interest to a tool of political conformity and
6 punishment.

7 I have spoken frankly and perhaps in my
8 passion to protect my community I may have overstepped.
9 If I have done so, it is because I fear that a great
10 injustice may be perpetrated upon my community, my
11 university, my faith and those who share it. I submit
12 that there is no legal or logical basis for the Law
13 Society of Upper Canada to refuse to accept future
14 Trinity Western law school graduates seeking to work in
15 the legal profession in Ontario.

16 I urge you to decide this matter in a
17 manner consistent with the rule of law and every other
18 authority that has considered the fate of Trinity
19 Western University's law school, and I commend that
20 decision to you in the good faith that you will see
21 your task as upholding the rule of law and upholding
22 the place of religious freedom in this country. Thank
23 you.

24 TREASURER CONWAY: Thank you, Mr. Kuhn.
25 Is there any other representative of TWU that's going

1 to speak to the matter?

2 MR. KUHN: No, sir.

3 TREASURER CONWAY: We're going to take
4 the morning break.

5 --- Recess taken at 10:26 a.m.

6 --- On resuming at 10:46 a.m.

7 TREASURER CONWAY: Members of
8 Convocation, we have now received the oral submissions
9 of Trinity Western University and we are now entering
10 into our deliberations phase. I already have a fairly
11 lengthy speakers' list, but I'm going to go to the
12 phone first and just take roll call. So I have Mr.
13 Banack? Mr. Banack? Mr. Furlong?

14 MR. FURLONG: Furlong.

15 TREASURER CONWAY: You're there. Thank
16 you. Mr. Lerner?

17 MR. LERNER: Present.

18 TREASURER CONWAY: Ms. Richardson?

19 MS. RICHARDSON: Present.

20 TREASURER CONWAY: Mr. Strosberg?

21 MR. STROSBERG: Yes, I wanted to speak,
22 please.

23 TREASURER CONWAY: You're noted. I'll
24 put you on the list. Mr. Armstrong? Mr. Armstrong?
25 Mr. Yachetti?

1 MR. YACHETTI: Yes, sir, present.

2 TREASURER CONWAY: Ms. Potter?

3 Ms. Potter? Mr. Wright?

4 MR. WRIGHT: Present, and please add me
5 to the speakers' list, depending on what's said between
6 now and then.

7 TREASURER CONWAY: Do you want to be
8 added to the list or not?

9 MR. WRIGHT: I do, but if my points are
10 made then I'll consider it at that time.

11 TREASURER CONWAY: Thank you, Mr.
12 Wright. Mr. Hunter?

13 MR. HUNTER: Present.

14 TREASURER CONWAY: Mr. Manes?

15 MR. MANES: Present.

16 TREASURER CONWAY: Anyone on the phone
17 whose name I have not called?

18 MS. HORVAT: It's Jacqueline Horvat.
19 I'm on the phone now.

20 TREASURER CONWAY: Anyone on the phone
21 who wants at this point to be added to the speakers'
22 list? I've noted that Mr. Strosberg and Mr. Wright are
23 going on the speakers' list. Is there anyone else on
24 the phone that wants to be added to the list at this
25 point?

1 MR. LERNER: Please add me; Mr. Lerner.

2 TREASURER CONWAY: Thank you, Mr.

3 Lerner. The first I have on my list is Constance
4 Backhouse.

5 MS. BACKHOUSE: Thank you, Treasurer.

6 On behalf of myself and the rest of the Benchers and
7 the Treasurer, I want to thank the president of Trinity
8 Western for his written reply brief and his oral
9 submissions today, to which we have all listened.

10 I wish to speak to a very small matter
11 that has been raised in the previous Convocation by
12 Janet Minor and it's raised in some of the submissions
13 and it has not, I don't think, been distressed fully
14 yet. So I will keep my remarks brief and address a
15 piece of the discussion that I think has been missed.

16 Some of our debate is hinged on the
17 characterization of Trinity Western University as a
18 private university, an institution that is funded
19 without public resources. With the greatest of
20 respect, I wish to take issue with this and to make a
21 few comments about why Trinity Western law school would
22 be a public institution.

23 First of all, law school positions are
24 public in nature. Access to legal expertise is deeply
25 beneficial to those who wish to understand and

1 influence legislation, regulation, all aspects of
2 justice. Not only does going to law school give people
3 access to that expertise, but it positions law
4 graduates in places of economic privilege and social
5 stature.

6 Without a law degree, one cannot be a
7 lawyer, can cannot be appointed a judge, the latter
8 being a position of enormous power and influence.

9 The consequence? Students who receive
10 acceptance to a law school obtain a public good.
11 Trinity Western defines itself as private, but all law
12 school positions cross over into the public domain. As
13 a result, when we approve a law school for admission to
14 our bar, we must ensure that we keep access to those
15 important law student positions open to the full
16 diversity of our population. No group should be
17 prevented or discouraged from attending because of
18 same-sex affiliation, because of gender, race or
19 religion.

20 Secondly, this public good is in short
21 supply. At the University of Ottawa, for example, for
22 every law student we admit, there are approximately ten
23 qualified applicants who do not obtain a spot. Over
24 the past thirty years, no new law schools were
25 established between 1980 and 2010. That's a thirty

1 year period where there were no new law schools and,
2 indeed, Canada remains the country with the lowest
3 number of law schools per capita of any Commonwealth
4 country.

5 As we know, offshore law schools have
6 ramped up to service the wealthy members of the
7 overflow at tuition rates that are substantially higher
8 than most Canadian rates.

9 Provincial governments have slowly begun
10 to set up new law schools, but these are by no means
11 equipped to capture the full demand and once a new law
12 school is established, governments will be disinclined
13 to approve others in the same geographic area.

14 Approval of Trinity Western will shut
15 down applications and approvals for other law schools
16 in its wake and its existence will reduce open access
17 to prized positions.

18 Thirdly, and here I am drawing most of
19 my material from the submission that is in our
20 BoardBooks from a tax expert, Professor Kathleen Lahey
21 at Queen's University. My third point, Trinity Western
22 does not operate free of public funding. Trinity
23 Western students are eligible for post secondary
24 governmental funding, this includes student grants,
25 interest-free student loans, and numerous tax

1 exemptions for tuition, educational living expenses,
2 books, research grants and scholarship funds.

3 In 2013, Trinity Western reported
4 \$21-million in student financial support. As a
5 university, Trinity Western operates without having to
6 pay governmental income tax. It obtains rebates on GST
7 and sales tax, it qualifies for property tax exemption.
8 And because Trinity Western is a registered charitable
9 organization, its private donors receive income tax
10 credits for charitable donations.

11 In 2013 private donors gave Trinity
12 Western 5.5 million, which would have triggered
13 deductions, non-refundable tax credits, and partial or
14 full exemption from capital gains liability.

15 In addition, since 2009, Trinity Western
16 has reported receiving direct cash grants from all
17 three levels of government that over five years came to
18 a total of 7.3 million.

19 Now, Trinity Western claims to be a
20 private university and this is the first time that the
21 Law Society of Upper Canada has had to consider an
22 application by an institution claiming to be private.
23 We should be under no illusions here. To the extent
24 that the designation as a private university will be
25 used by some members of the Law Society to sit on its

1 hands in the face of discriminatory restrictions in
2 access, it is a misnomer at best and a deceptive
3 argument on the whole. Thank you.

4 TREASURER CONWAY: Mr. Champion.

5 MR. CAMPION: Thank you, Treasurer, and
6 welcome to my friends from Trinity Western.

7 I start off where I started off the last
8 time, and that is you are among friends and you are
9 among defenders. In my respectful view, all of us will
10 defend your right to hold your beliefs and I hold many
11 of the beliefs that you hold, but some of them I don't.

12 In my respectful view, Treasurer and
13 Benchers, this is best analyzed in one single moment.
14 When a student is asked and required to sign the
15 covenant. It's not about the nature of the graduates,
16 it's not about whether they're qualified or not.

17 As some of you know, I was the president
18 of The Federation of Law Societies, I was on the
19 Federation of Law Societies for five or six years on
20 its executive. I set up the committee that our
21 Treasurer chaired dealing with the accreditation of law
22 schools. I have been involved in this debate
23 intimately for a very long time. The proudest thing
24 that we have done, in my view, in my time is to have
25 made the Federation come to life.

1 We have done it by uniform standards,
2 and one of those issues was giving the job of the
3 Federation to accredit law schools looking at what are
4 the requirements of a law school. But the Federation
5 was not, did not and has not considered the issue, in
6 my respectful view, of the public interest of Ontario
7 in accrediting a law school if there is a
8 discriminatory part.

9 It is my personal view that the Covenant
10 has nothing or little to do with religious freedom.
11 The Covenant has to do with sexuality, sexual
12 practices. Some may say that is a religious matter. I
13 don't think it is, but that's my view and we're not
14 here to discuss my view. But with that view I say
15 this. I don't think that the rejection of -- or not
16 accrediting today is an attack on the Trinity Western
17 religious freedom. I support their religious freedom,
18 I'll defend it, I'll defend it if asked, but it doesn't
19 mean that when I come to analyze at the point of
20 signing what the implications are for the person who
21 has to sign it. If it's discriminatory in a way that's
22 contrary to the public policy of Ontario we are obliged
23 to reject the accreditation.

24 The Federation, then, is put into a
25 quandary, my friends have told me. The Federation is

1 one robust organization. It will survive a difference
2 of views between Ontario and British Columbia, Alberta,
3 PEI and all the rest. It will survive it. It will
4 find a way through it. It is complicated, but we only
5 have one issue today. What's the public policy of
6 Ontario, we're obliged to deal with it, we have a
7 statute that is nothing more than saying we are
8 exercising the authority that the legislature would
9 exercise, and they've given it to us. And would the
10 legislature of Ontario credit and allow a policy which
11 is discriminatory in the field in which we are now
12 dealing? In my view, and I'll come to it in a moment,
13 I think the answer is no.

14 My second point is, is that besides the
15 issue of sex and sexuality and sexual diversity not
16 being a purely religious point from my perspective, and
17 I recognize my friends have a different view possibly,
18 the freedom of religion is not engaged for a second
19 point. We aren't attacking the freedom of religion.
20 People can go to the school, sign whatever covenant
21 they want, and some of us may even support many parts
22 of the Covenant.

23 But the question is, at the point of
24 signing does that lead to -- and this is my third
25 point, a position where the person who has to sign, and

1 I'm assuming they're signing it with all solemnity, do
2 they feel a sense of guilt, humiliation, restriction,
3 feelings of inferiority when they have to sign it if
4 they happen to be of a particular community or sexual
5 persuasion or sexual activity. What if they're
6 common-law married or living common-law? Do they have
7 to not tell the truth and go to the university in any
8 event because they're so desperate to do it?

9 But the feelings of inferiority at the
10 point of signing is the only time I'm concerned about.
11 I'm not concerned about the graduates, I'm not
12 concerned with what they teach them. I know they're
13 going to have a brilliant law school, the Federation
14 has told us so. That's not our problem. Our problem
15 today is one thing and one thing only. If it's
16 discriminatory and contrary to the policy public of
17 Ontario, we cannot approve it.

18 We, as you have heard me say, and this
19 is my fourth point, are exercising the Law Society's
20 public Ontario discretion. The Federation couldn't do
21 it, can't do it, doesn't know it, wasn't obliged to do
22 it and shouldn't have done it.

23 The central interest, and this, in my
24 respectful submission, is identifying what that public
25 interest is. It's plain it's overwhelmingly in favour

1 of diversity of sexual orientation and sexual relations
2 outside of marriage. Gay marriage is embraced in this
3 province. Common-law relationships are recognized in
4 this province. Sex and sexuality are left to the
5 private bedrooms of the province.

6 This Covenant would necessarily, in my
7 respectful submission, restrict sexual preference,
8 orientation and activity between consenting adults,
9 which is either no concern to the province in terms of
10 the private sexual activity, or supported by the
11 province in terms of diversity.

12 So what's the public interest in
13 Ontario? In my respectful submission, it is the kind
14 of diversity that would say we cannot allow this
15 Covenant to be part of us accrediting a law school,
16 because it's one step backwards.

17 And what about all the men and women
18 who -- some of whom are living and some of whom are
19 dead, who were in my world? Lawyers, prominent
20 lawyers, superb lawyers. I won't name them, but they
21 lived in great pain because they were gay, and I was
22 junior to them, I was colleagues with them, still am.
23 Were they men, women, transgender, whatever they are in
24 terms of their sexual orientation, they lived under
25 humiliation, and I saw it happen in the profession. I

1 knew what it was to be an outsider through the eyes of
2 these people in the Ontario in which I grew up.

3 It was a less tolerant place. And the
4 proudest thing that I have been part of is to watch --
5 and usually through the efforts of others, but I've
6 sort of helped it along as best I could, is to watch
7 how this province has become a diverse place. It is
8 astonishing to see, when I think of where I was when I
9 went downtown with my father in 1950 compared to today.
10 There is no comparison in terms of the issues of
11 tolerance and diversity, and I don't think we should
12 take even a millimetre step backwards. We can't do it.

13 All that work and all that trouble and
14 all that pain, and we're going to take one little step
15 backwards? I say no. It has got nothing to do with
16 the freedom of religion of TWU. I support them. I'll
17 defend them. The allegations of placing them in the
18 same categories that some of my colleagues have placed
19 them I reject.

20 I heard Mr. Kuhn speak. It was
21 obviously very painful, but that's not where the issue
22 lay, in my respectful view. My respectful view, it
23 lies at one point. It's the point of signing and is
24 that point of signing discriminatory to the person who
25 does live in a common relationship, who is sexually

1 active and homosexual or gay or transgender or
2 whatever.

3 In my respectful submission, much to my
4 great sadness (inaudible). As the president of the
5 Federation, a prior one, we will survive whatever this
6 difference is, but I believe we are obliged to apply
7 the public policy of Ontario and we ought not to
8 accredit it. I'm much obliged.

9 TREASURER CONWAY: Ms. Leiper.

10 MS. LEIPER: Thank you, Mr. Treasurer.
11 Treasurer and members of Convocation, representatives
12 of TWU, I wish to first acknowledge the rich legal and
13 policy opinions and the submissions that we've received
14 to assist us with this question. I thank TWU for its
15 reply submissions and presentation this morning.

16 We heard from you, President Kuhn, about
17 hurtful public remarks today, so I need to begin by
18 acknowledging our shared humanity and a desire that our
19 deliberations and decision today will be made and
20 received respectfully.

21 So we meet here at an intersection
22 between public policy and privately held belief and the
23 tension has been described by many about competing
24 rights. Right to freedom from discrimination on
25 religious grounds versus right to freedom on the ground

1 of sexual orientation and marital status.

2 This approach to balancing these two
3 sets of rights was followed in TWU and BCCT. And TWU
4 submits to us that BCCT and TWU has virtually decided
5 the question and we are bound to follow the reasoning
6 from the Supreme Court of Canada in 2001. Significant
7 portions of our materials focus on the application of
8 that case here today.

9 I have three points to make. The first
10 is my reason for why I've concluded that TWU and BCCT
11 does not bind us. The second point is why this case is
12 helpful to our decision and the third is my reason for
13 the decision.

14 First point. We are not mandated to
15 follow BCCT because of the development of the law
16 around when freedom of religion is engaged since that
17 decision took place. This relates to my question from
18 last day. I asked about the relationship between
19 freedom of religion and accreditation of a law school,
20 and I wanted to understand how our decision for or
21 against engages freedom of religion.

22 I did find help in the TWU submission,
23 paragraph 94, page 3046 of BoardBooks, citing a portion
24 of the case called Syndicat Northcrest and Amselem, a
25 2004 decision of the Supreme Court of Canada.

1 TWU cites Syndicat Northcrest to support
2 its position that the right to establish and maintain a
3 law school within a Christian university need not be
4 required or mandated by religious belief to be
5 protected. I thought at first maybe this was a case
6 involving the law school, I was hopeful, but it wasn't.
7 In Syndicat Northcrest, the Supreme Court of Canada
8 carefully considered when and how a given set of facts
9 gives rise to a claim of freedom of religion. There is
10 no need to prove that a particular practice is an
11 established practice, a part of dogma, or is even
12 condoned by a majority of religious officials, and to
13 question adherence closely would be objectionable,
14 because the state would be intruding into the religious
15 affairs of synagogues, churches, mosques, temples and
16 religious facilities. But, nevertheless, there is a
17 test articulated at paragraph 56 in Syndicat
18 Northcrest.

19 Two parts. "The practice or relief,
20 having a nexus with religion which calls for a
21 particular line of conduct, either by being objectively
22 or subjectively obligatory or customary or by, in
23 general, subjectively engendering a personal connection
24 with the divine or with the subject or object of an
25 individual spiritual faith, irrespective of whether a

1 particular practice or belief is required by official
2 dogma or is in conformity with the position of
3 religious officials and is the individual sincere in
4 their belief."

5 Here in this case, the TWU BCCT case is
6 mentioned twice; once by the majority and once by
7 Justice Binney. The majority cites BCCT for the
8 proposition that not every action will be summarily
9 unassailable. Justice Binney notes that freedom to act
10 is narrower than belief.

11 TWU again was very helpful. They've
12 described the importance of its Community Covenant to
13 its evangelical beliefs in the metaphor of Christ and
14 the church. Marriage is defined as part of this
15 practice as having this special, particular meaning and
16 this is the aspect of conduct that is a manifestation
17 of a religious belief.

18 TWU says to us the Covenant and its
19 values are not our business here, not the business of
20 the Law Society. The Covenant is protected, it has a
21 nexus with religion, and TWU says it's not our job to
22 regulate the Covenant. I agree with that. However,
23 our duty lands on the examination of the nature of a
24 proposed law school, which degree we are asked to
25 accredit. This must include policies that could engage

1 broader public interest concerns, including whether
2 there is a discriminatory impact on members of the
3 proposed law school. At this stage and for these
4 purposes, it is not material whether the beliefs stem
5 from a religious or other world view, it is what the
6 policy does in relation to members of the law school
7 that is our concern.

8 It is not yet about balancing rights at
9 that point, because you only get there when the conduct
10 being affected and accreditation of a law school is
11 itself part of the religious practice. As La Forest
12 noted in the Ross decision, also referred to in the
13 materials, you need to place conflicting values,
14 allegedly conflicting values in factual and social
15 context.

16 So coming back to my question, does the
17 operation of an accredited law school, is it a vehicle
18 through which students and faculty exercise freedom of
19 religion? Is its primary purpose the dissemination or
20 teaching of religious beliefs? These are some of the
21 contextural questions that assist us with understanding
22 the role of 2(a) of the Charter.

23 In my view, respectfully, the
24 accreditation of TWU's law school does not have a nexus
25 with religion. Instead, it is coincidental with a code

1 of conduct for students that is grounded in religious
2 belief, but is not itself a religious practice or a
3 manifestation of that belief and it's tempting, and
4 many have done it, to intertwine the teaching of law
5 with freedom of religion but ultimately it is not
6 logically connected.

7 As far as the institution of accredited
8 law schools is concerned, it has departed from the
9 private domain, it has now crossed over into the public
10 domain, the pathway to licensing. The factual context
11 has shifted.

12 TWU and BCCT did not apply the Syndicat
13 Northcrest test. It didn't exist yet. It assumed the
14 engagement of freedom of religion. Intervening
15 jurisprudence has assisted us in similar questions by
16 defining more carefully how freedom of religion is
17 engaged by a given factual situation. So when I apply
18 that test, I arrive at a different answer on the
19 critical threshold question.

20 My second point. BCCT and TWU continue
21 to be applicable on the propriety of an accredited
22 institution considering equality concerns in the public
23 interest where the public interest is part of their
24 statutory framework. In fact, our statutory duties are
25 arguably broader than those of BCCT, but either way,

1 equality concerns are important and deserve
2 consideration following that decision.

3 And my final point, my reason for voting
4 not to accredit. Our power to accredit law school
5 degrees amounts to a statutory power decision. Our
6 duties and authority under statute is to advance the
7 cause of justice and the rule of law, and we have a
8 positive duty to protect the public interest. Our
9 regulatory framework engages principles of equality
10 that are protected by the Charter of Rights,
11 protections from discrimination by the Ontario Human
12 Rights Code, our rules of professional conduct make
13 professional misconduct on the part of our licensees to
14 discriminate.

15 This is our framework. These are our
16 values. When they apply to the regulation of the
17 practice of law we teach them, we model them and we
18 enforce them, and it is appropriate that we expect law
19 schools seeking accreditation to respect them and
20 ensure their programs of teaching law conform to these
21 principles.

22 It has been argued that if we do not
23 accredit, we ourselves will be open to a claim of
24 religious discrimination against graduates of TWU's law
25 school. Respectfully, I disagree. The law school

1 proposed is the source of the discrimination and that
2 institution will be responsible to its students for the
3 impact of its own policy because the TWU Covenant does
4 not relate to the teaching and practice of law. It is
5 part of a broader religious community within which it
6 is proposed to create a law school, but its existence
7 is not a condition precedent to the teaching of law,
8 and in that sense it is arbitrary.

9 TWU has committed to teaching human
10 rights law, the Charter of Rights, public law and
11 ethics in conformity with an established law school
12 curriculum. TWU does not object to teaching the
13 constitution or human rights laws. At this
14 intersection between the values underlying the
15 Community Covenant and the teaching of public laws and
16 values, TWU has recognized and understood it must give
17 way. It does not object on religious grounds to these
18 aspects of the curriculum and it recognizes without
19 articulating it that law school teaching is not, per
20 se, a religious practice.

21 So I conclude that the public
22 accreditation of the TWU law school is but a larger
23 example of where and why it is appropriate to give way.
24 I hope that TWU will consider that from an analogous
25 perspective. The learning environment described by

1 President Kuhn deserves such careful consideration by
2 TWU. Accordingly, as a matter of public interest and
3 public policy, I must respectfully decline to vote to
4 accredit a program for entry licensing when students
5 attending and faculty employed at such a law faculty
6 are required to conform to a code of conduct which is
7 discriminatory and arbitrary to the study of law.

8 This is analogous to authorizing another
9 institution to do what this institution could not do
10 and what this institution insists its licensees must
11 not do. Thank you, Treasurer.

12 TREASURER CONWAY: Mr. Mercer.

13 MR. MERCER: The issue before
14 Convocation today raises fundamental principles;
15 freedom of religion, freedom of association, equality
16 rights and the rule of law. The rule of law plays
17 central in this discussion and I propose to start with
18 a brief discussion of that.

19 And I focus in that context on two cases
20 from the Supreme Court of Canada that you'll all know
21 and I don't really need to tell you about, but suffer
22 me anyway. The first is Dunsmuir. Why is Dunsmuir
23 important? Because Dunsmuir says that authorities such
24 as Convocation, such as the Law Society, who are given
25 authority by society are responsible to exercise that

1 authority, to exercise that authority within the limits
2 of law.

3 The fundamental importance of *Dunsmuir*
4 in my understanding of it to the rule of law was that
5 the courts acknowledge that they should not take on
6 authority that was given to other decision makers, but,
7 rather, they should ensure that those decision makers
8 made their decisions within the limits of law. The
9 rule of law principle requires that the appropriate
10 authorized decision maker make decisions.

11 The second case is *Doré*. And Justice
12 LeBel for the court in *Doré* asked the question, how
13 then does an administrative decision maker, which we
14 are, apply Charter values in the exercise of statutory
15 discretion? And to be clear, we're exercising
16 statutory discretion. Justice LeBel said the decision
17 maker should first consider the statutory objectives,
18 and I think that is fundamental to the exercise before
19 us and I think we have to think long and hard about the
20 statutory objectives pursuant to which we must decide.

21 Justice LeBel then went on to say then
22 the decision maker should ask how the Charter values at
23 issue will be best protected in view of the statutory
24 objectives. This requires the decision maker to
25 balance the severity of the interference with Charter

1 protection with the statutory objectives.

2 As I said, we are called on today to
3 exercise discretion. We must do so within legal
4 limits. The wisdom of the rule of law principle is
5 that we must be modest and only exercise the decision
6 making power that is assigned to us. We must do so as
7 Benchers, not as individuals merely making and
8 expressing personal views and decisions.

9 The written reply submissions of TWU
10 rightly caution us to take care, not to pretend to
11 authority that we do not have. TWU also relies
12 strongly, as a matter of the rule of law, on the
13 decision of the Supreme Court of Canada in TWU versus
14 B.C. College of Teachers, and I'll call it College of
15 Teachers just to make it easier.

16 On the other hand, the rule of law
17 requires that we make the decisions that are our
18 responsibility. We cannot and should not evade that
19 responsibility. We must do our job, and I commend to
20 you the advice from Freya Kristjanson in setting out
21 what are well known to us. We must exercise our
22 discretionary powers in good faith and for a proper
23 purpose. We must consider only that which is relevant
24 and we must consider what is relevant.

25 We must exercise our discretion

1 independently and not act under the dictation or at the
2 behest of any third party or body. We must give proper
3 genuine and realistic considerations to the merits of
4 the issue before us.

5 So what does that mean in practical
6 terms? We all know that that's our job as
7 administrative decision makers. Where we have to start
8 is interpreting the Law Society Act, because that's
9 where we learn what our statutory objectives are. We
10 have to come to grips as a matter of law with what is
11 relevant. We cannot delegate this to the Federation.
12 We cannot delegate this to the B.C. Law Society, the
13 Alberta Law Society or anyone else.

14 And to state the obvious, the Supreme
15 Court of Canada, dealing with the decision of the
16 College of Teachers in British Columbia, did not decide
17 or interpret the Law Society Act in Ontario. They
18 couldn't do it, it would be silly for us to think that
19 they did.

20 In my comments in last Convocation I
21 expressed the tentative view that our jurisdiction was
22 not merely to consider the quality of TWU law school
23 graduates. I expressed the view that the faith of
24 members of our diverse society and our democratic
25 institutions depends on the rule of law and equal

1 access, that that requires no limitations to entry to
2 the practice of law other than learning, training and
3 character, and that a diverse profession and equal
4 access to the profession is important to the rule of
5 law and the cause of justice.

6 I referred to section 4.2, which has
7 also been referred to, and I won't say it again. I
8 expressed my tentative views last day expressly hoping
9 that the subsequent submission by TWU would clarify and
10 challenge my current thinking. I therefore read TWU's
11 written reply submissions and listened to President
12 Kuhn's submissions today with great interest.

13 I noted particularly the three
14 paragraphs in the written submission that address our
15 statutory mandate. I won't read all three paragraphs.
16 They're at 57 through 59. What was said about our
17 mandate in 58, "Similarly, the Law Society Act mandates
18 the Law Society to ensure that all persons who practice
19 law in Ontario meet standards of learning, professional
20 competence and professional conduct that are
21 appropriate for the legal services they provide."

22 And then TWU says, "It is in this regard
23 that the Law Society of Upper Canada considers the
24 public interest." The point which is made in this
25 paragraph is essentially that all we are entitled to

1 consider, the only public interest that is engaged is
2 with respect to the standards of learning, the
3 qualifications of the individuals who graduate. And
4 then the reasoning, having referred first to the
5 teachers' mandate in B.C. These mandates are very
6 similar. There is not a legitimate or reasonable basis
7 upon which to distinguish the College of Teachers case.
8 That is the extent of the response to the tentative
9 view that I put in the last Convocation.

10 I also noted two other paragraphs, 99
11 and 180, which state, in part, "The Community Covenant
12 is relevant only if there is an impact on the
13 qualification of future TWU graduates." And then in
14 180, "TWU graduates should only be rejected if, on a
15 proper evidentiary foundation, Convocation concludes
16 that the education provided by TWU will be insufficient
17 to prepare graduates for the practice of law."

18 I was disappointed that the reply
19 submissions failed entirely to address the proposition
20 that the Law Society should not accredit law schools
21 that effectively limit or impair admission on the basis
22 of race, creed, religious belief, gender, sexual
23 orientation and the like because of the importance of
24 the diverse profession and equal access to the rule of
25 law and the cause of justice.

1 I initially thought TWU may not have
2 seen this proposition as an issue. When I looked to
3 their other non-issues in schedule 2, I did not find
4 this amongst them.

5 It was curious to me that TWU would
6 merely assert in a conclusory manner that the only
7 relevant factor to consider is the qualification of its
8 graduates. It may be that they think this is plain and
9 obvious and needs no debate. It may be the failure to
10 address the point is tacit admission that it's an
11 argument that can't be met. I don't know what the
12 answer is.

13 Convocation shouldn't underestimate the
14 importance, pivotal importance of TWU's position that
15 there is but only one relevant factor to consider;
16 namely, the qualification of the graduates. That's why
17 they argue that the College of Teachers case binds us
18 as a matter of law, because if the quality of the
19 graduates is the only issue, then the Supreme Court of
20 Canada has sensibly said wait until they misconduct
21 themselves, don't decide it now. And if TWU is right,
22 that's the only thing we can think about properly, then
23 I understand almost everything else that they say.

24 But the College of Teachers case does
25 not tell us anything about the rule of law, the pursuit

1 of justice, the importance of a diverse legal
2 profession, or equal access to the legal profession.
3 On these issues, our failure to consider whether these
4 are relevant considerations would be a failure of our
5 responsibility to honour the rule of law, because the
6 rule of law commands us to decide when it's our job to
7 decide.

8 I understand that people may take a
9 different view than I do. My view is that we have long
10 understood that confidence in the legal profession is
11 fundamental to the rule of law, administration of
12 justice and the pursuit of justice. We have done that.
13 Ms. Kristjanson described in our rule statement which
14 expressly says just that. We have done it in
15 discipline cases, we have done it in looking at
16 character assessment for licensing. We have done it in
17 the context of defining what is professional misconduct
18 in the rules of professional conduct.

19 We know that making the public confident
20 in the profession is fundamental and I say and submit
21 to you in these deliberations that a diverse profession
22 with equal access to that diverse profession is part of
23 that underpinning. It seems to me that ensuring a
24 diverse legal profession and equal access to that
25 profession is a proper statutory objective under our

1 act.

2 Said simply, I do not accept this is
3 just about the quality of TWU grads, and to be clear,
4 the interpretation that I place is not focused on the
5 proposition that some applicants may have their rights
6 impaired.

7 My approach is to look at the outcome
8 for the administration of justice and the rule of law
9 more generally.

10 So I want to turn very briefly to Doré,
11 because we are commanded to look at Charter values in
12 the context of our statutory objectives.

13 It is possible to look at this at a
14 micro level and think through what I described last day
15 as the Hobson's choice. Ms. Leiper put it nicely, it's
16 not one we make, but one which is put to us and put to
17 the students. But I think, stepping back, I see no
18 inconsistency, I see nothing to balance, because it
19 seems to me that Charter values are entirely consistent
20 with the statutory objective of equal access to the
21 profession and diversity in the profession. I don't
22 see an inconsistency. I think there is an alignment
23 and no need to make them work together.

24 A couple of final thoughts. First, a
25 reflection on religious freedoms. It seems to me there

1 is a spectrum here; belief and expression must be
2 amongst the most protected. Association, freedom of
3 religious association must be important. We know that
4 conduct is less important. The College of Teachers
5 case tells us that.

6 It seems to me to follow that freedom to
7 control the conduct of others, including the sexual
8 conduct of others, would be worthy of even lesser
9 protection. I think this might properly be part of the
10 Doré analysis. We have to get there.

11 I also think that, reflecting on
12 President Kuhn's statement, submissions, that
13 underneath the strong opinions expressed by many is an
14 underlying debate that's going on in our society. I
15 think we are working through in a really important way
16 whether freedom of religion, freedom of association
17 includes the ability to restrict or exclude people
18 because of who they are as opposed to what they think
19 or what they believe, and that's why I think the
20 analogies of apartheid, the analogy of Arizona
21 pizzerias, other analogies which were said to be
22 irrelevant, some offensive, actually are relevant
23 because I think that we're coming to the conclusion as
24 a democratic society that a religion that excluded
25 blacks, a religion that excluded women, a religion that

1 excluded people because of sexual orientation, would be
2 exercising a freedom that we would choose not to
3 consider a protected freedom. If we're not there now,
4 I think we almost are.

5 So let me conclude by making one final
6 observation. Some here, and I listened to the
7 Benchers' debate in British Columbia very carefully,
8 had expressed the view that they feel compelled to
9 accredit TWU as a matter of law, but with unease and
10 concern. I come to the opposite conclusion after
11 anxious, long reflection, during which I held exactly
12 the opposite view to which I express now. I freely
13 admit that it was a difficult choice, but today I'm
14 entirely comfortable with the legal reasoning and with
15 the statutory interpretation of my view.

16 What I don't accept is that in coming to
17 it, I am condoning religious bigotry or that I'm doing
18 anything other than my job. If there was any
19 suggestion that those of us in the room who may choose
20 not to vote in favour of accreditation are expressing
21 or condoning religious bigotry, I wish not to associate
22 myself with that thought.

23 TREASURER CONWAY: Mr. Falconer.

24 MR. FALCONER: Mr. Treasurer,
25 colleagues, members of the TWU community who have

1 attended today, I want to say, first of all, that there
2 are a few moments in our careers where we can
3 comfortably say without overstatement that history may
4 well judge how we do business and ultimately the
5 conclusions we arrive at. This is one of those days.

6 I remember using words like this before
7 the senate following the 911 tragedies and the
8 extraordinary legislative overreaction of government.

9 I remember saying to the senate that one day my son or
10 sons will be old enough to read these transcripts and I
11 want to be confident that when my sons read these
12 transcripts they believed in their father and they
13 supported him and are confident he did the right thing.

14 To my 13 year old, who will not read
15 this transcript today, but when he does five or ten
16 years from now, I say to him, I will do the right
17 thing. I will vote against accrediting TWU.

18 I heard President Kuhn's heartfelt
19 remarks and I say they're heartfelt for a number of
20 reasons. One can't but help sympathize for one who
21 issues a plea to be protected against hatred. I do not
22 support the kinds of commentary that President Kuhn and
23 TWU has been subjected to, it's wrong. It's wrong no
24 matter what interest you purport to protect. It's
25 wrong to promote hatred.

1 On last occasion, April 10th, I raised a
2 number of questions because I needed answers to those
3 questions and I looked to the materials and I listened
4 carefully to President Kuhn today. The first question
5 that I had raised was play this out in real time for
6 me. A student finds themselves during their attendance
7 at law school. What of their future at your law
8 school? The student discovers their identity,
9 determines that they're not exactly like the other
10 students at TWU, and, indeed, may well be a member of
11 the lesbian, gay, bisexual, transvestite, transsexual,
12 inner-sex, two-spirited or queer communities. Or
13 simply they may wish to live common-law with someone
14 whom they love or don't love.

15 I listened carefully for an answer and,
16 with all due respect, President Kuhn, you did not give
17 me an answer. I looked at the materials to search out
18 the answer. And I refer my colleagues and those
19 listening to the Community Covenant, because the answer
20 is right there. Page 2094 of BoardBooks. This is all
21 about this Covenant and I don't think we've put enough
22 time into it. I leave it to my colleagues who do much
23 better than I at citing Supreme Court of Canada prose.
24 My steamroller legal analysis did not impress my
25 colleague Bencher Wardle, but I insist that the

1 steamroller I worried about last day is actually here
2 in this Covenant.

3 If you look at page 2094 of BoardBooks
4 under TWU Community Covenant, you will see that this
5 Covenant is held out as follows. Reading from the
6 fourth paragraph, "The Covenant is a solemn pledge in
7 which members place themselves under obligations on the
8 part of the institutions to its members, the members to
9 the institution and the members to one another. In
10 making this pledge, members enter into a contractual
11 agreement and a relational bond."

12 It is an agreement, it is a bond, it is
13 a pledge. Any doubt about the sincerity and the
14 expectation of enforcement of that pledge is clarified
15 at page 5, page 2098 BoardBooks, of this Covenant.

16 "This covenant applies to all members of the TWU
17 community; that is, administrators, faculty and staff
18 employed by TWU and its affiliates and students
19 enrolled at TWU. Expectations of this Covenant apply
20 to both on and off TWU's campus and extension sites.
21 Sincerely embracing every part of this Covenant is a
22 requirement for employment."

23 And this is the part that I was --
24 particularly found helpful to answer my question about
25 that student who discovers themselves. "Ensuring that

1 the integrity of the TWU community is upheld may at
2 times involve taking steps to hold one another
3 accountable to the mutual commitments outlined in this
4 covenant. As a Covenant community, all members share
5 this responsibility. The university also provides
6 formal accountability procedures to address actions by
7 community members that represent a disregard for this
8 Covenant."

9 That student, and make no mistake about
10 it, that student who comes back after the summer,
11 becomes a target. They have to be by the rules of TWU.

12 I say with respect then it becomes
13 important to determine what are these rules. So we go
14 to the covenant very quickly, page 2095 BoardBooks.

15 "In keeping with biblical and TWU
16 ideals, community members voluntarily abstain from the
17 following actions. "Sexual intimacy that violates the
18 sacredness of marriage between a man and a woman." Top
19 of page 2096.

20 Then further, 2097, "Further, according
21 to the Bible, sexual intimacy is reserved for marriage
22 between one man and one woman. Honouring and upholding
23 these principles, members of the TWU community strive
24 for purity of thought and relationship."

25 So we know, one, the methods of

1 enforcement and, two, what the rules are. This is not,
2 in my view, a healthy environment in the public
3 interest. Why? Because I can't help but envisage the
4 obligation of a fellow student, a teacher, an employee
5 would feel to, in essence, report someone's sexuality
6 to the dean.

7 Imagine a world in which your very
8 movements are furtive for fear of being thrown out of
9 law school. How can this be in the public interest?

10 I said before and I'll say it again, I
11 have little doubt that the graduates of TWU have no
12 greater chance of being biased and no less chance of
13 being biased than many other judges and lawyers I've
14 met in my life. I believe that the school no doubt
15 passes the adequacy standards the Federation looked at.
16 That's not the issue. It's whether the environment
17 being created is in the public interest.

18 Not every lawyer does, but I find most
19 do, certainly all of them in this room, see the
20 practice of law as a calling. It is our profession, it
21 is a calling, make no mistake about it. It is a
22 calling worthy of protection.

23 I intend to act to protect my profession
24 today. I intend to insist that members of the LGBTTI2Q
25 communities are part of the public, and as long as they

1 are not protected, then accrediting TWU cannot be in
2 the public interest. Thank you, Mr. Treasurer.

3 TREASURER CONWAY: Mr. Wardle.

4 MR. WARDLE: Thank you, Treasurer,
5 members of Convocation. I'm going to start by thanking
6 all of those who have participated in the debate and
7 whose views have informed my decision. I want to thank
8 in particular my friend, Mr. McDowell, who took what
9 may prove to be a somewhat unpopular position and
10 expressed it eloquently. I also want to thank Mr. Kuhn
11 and Mr. Meehan, whose reply submissions were excellent
12 and I read and re-read.

13 I have to say, I found this a difficult
14 decision, professionally, personally, morally, and as a
15 practising Catholic, and I envy my colleagues who found
16 it an easy decision and found it straightforward,
17 because I have not.

18 I don't want to debate the religious
19 conviction sincerely held by the faculty and students
20 of TWU, as tempting as it is to weigh in, that is not
21 our issue.

22 For me, as for others, this decision has
23 to be informed by the Society's governing principles.
24 Our duty to maintain and advance the cause of justice
25 and the rule of law and our duty to protect the public

1 interest.

2 Having read it and thought about it
3 carefully, I have to say I disagree with the position
4 articulated by Mr. Meehan in the reply submission, that
5 the accreditation decision has to be constrained --
6 construed narrowly based solely on whether TWU
7 graduates will be adequately prepared, educationally
8 and professionally, to practice law in the province.

9 I'm prepared to assume that they will
10 be, but to me that does not answer the question. In my
11 view, our obligation as Benchers is to consider broader
12 dimensions of the public interest.

13 Accreditation is outlined in our by-law
14 4 and it involves giving recognition and approval to
15 the TWU law program. In other words, our sanction. In
16 my view, we can't turn a blind eye to the
17 discriminatory aspects of the TWU program as embodied
18 in the Charter. We have to consider it and we have to
19 engage with it.

20 I accept that TWU as a religious
21 institution has certain rights, the right of freedom of
22 association, and the right to practice their beliefs
23 sincerely held, and I don't think anybody here believes
24 that those rights shouldn't be respected and I don't
25 think anybody believes that TWU adherents do not

1 sincerely believe they're right.

2 But the Community Covenant, in my view,
3 goes beyond that. And I, like Ms. Leiper, went back
4 over the last couple of days and I'm reading more human
5 rights law than I normally read, and I read the
6 Syndicat Northcrest case. This isn't simply like a
7 religious believer erecting a religious hut on his
8 balcony and being asked to remove it by the
9 municipality.

10 In other words, there are other
11 fundamental rights at stake, and those rights are the
12 right of gay, lesbian, bisexual and transgender persons
13 to have access, unfettered access to an institution
14 that can give them a law degree and ultimately access
15 to this great profession. As my friend Ms. Backhouse
16 said, that's the public good.

17 With all due respect to my friend Mr.
18 Meehan, the analogy to Bob Jones University case that
19 was made the last time is apt. It wasn't the religious
20 beliefs of the students or faculty that was at issue in
21 that case, but a disciplinary code of conduct that
22 prohibited interracial dating and marriage.

23 What was said by Justice L'heureux-Dubé
24 in her dissent of the TWU decision talking about the
25 Bob Jones university case, she said, "In my view, to

1 paraphrase Chief Justice Burger, there can no longer be
2 any doubt that sexual orientation, discrimination in
3 education violates deep and widely accepted views of
4 elementary justice."

5 So with respect to Mr. Meehan, it's not
6 an offensive analogy. It's a worrying and disturbing
7 analogy. This private institution has exemptions,
8 which, as I understand it in my limited understanding
9 of human rights law, allow it to exclude others at
10 least for certain purposes or to limit their access for
11 certain purposes.

12 But this is not about TWU's religious or
13 private status as an institution. This is about TWU's
14 seeking the right to have us accredit their law school,
15 and we are a public institution. We are the
16 accrediting body and we have to balance and recognize
17 all the rights involved, not only freedom of religion,
18 but equality rights. And the core of this issue, and
19 it seemed to me at times to be a very complex issue,
20 but the core of it is that the code, as Justice
21 L'heureux-Dubé puts it, or the Covenant embodies
22 discriminatory practices. It's not a proxy for
23 religious belief.

24 And as Mr. Campion said eloquently this
25 morning, the point to consider is when a student is

1 others have done. Over the Easter weekend in my family
2 I had a discussion with a group of young Catholic
3 teenagers about this issue. None of them could
4 understand why we're even engaging in it. For them
5 it's a very straightforward answer. And one of my
6 nephews, who is disabled, said, "Don't the gays have
7 the right?" And the answer is they do have the right
8 and we have made so much progress in this country where
9 people of my faith can sit down and it's no longer even
10 a matter for sensible debate.

11 So with respect to Mr. Kuhn and his
12 sincerely held beliefs and to the eloquent and
13 thoughtful submissions of his counsel, I will have to
14 vote no. Thank you very much.

15 TREASURER CONWAY: Mr. Bredt.

16 MR. BREDT: Treasurer, colleagues, and
17 our visitors from Trinity Western. Like some who went
18 before, I have found this issue to be a difficult one
19 on all the same levels that Mr. Wardle just talked
20 about.

21 And my starting point, and I think I
22 started in a different point to highlight where I'm
23 going, than Mr. Mercer, and wound up at a different
24 point. My starting point is my own strong personal
25 view that discrimination against individuals based on

1 sexual orientation is wrong and cannot be supported.

2 As I noted in my remarks to Convocation
3 several weeks ago, I fought for same-sex rights on a
4 pro bono basis, including the M and H case, the Jane
5 Doe case that involved lesbians' access to our
6 healthcare system for assisted insemination.

7 I personally find it difficult to accept
8 that the Law Society should accredit an institution
9 that discriminates against individuals based on sexual
10 orientation. Over the past few weeks, I've struggled
11 to find a principal means to deny accreditation to TWU,
12 and I'm indebted to many of the Benchers who I
13 discussed this issue with, particularly Mr. McDowell,
14 who, in my view, showed great courage to take the lead
15 in making a difficult and unpopular view to bring it
16 forward.

17 I also want to thank Professor Benjamin
18 Berger, who teaches up at Osgoode, and my spouse,
19 Professor Jamie Cameron. We had long conversations
20 about the issue. I recognize that the decision before
21 us cannot be governed by my personal views. It must be
22 governed by the law.

23 What does the law tell us about how we
24 are to balance the right not to be discriminated
25 against on the basis of sexual orientation with TWU's

1 right to freedom of religion? My first point. The law
2 is clear that freedom of religion includes the right
3 for people of the same faith to establish schools and
4 universities and exclude from those schools persons who
5 do not share their religious views.

6 The Supreme Court of Canada made that
7 clear in TWU, and for the record, I'm just going to
8 quote from paragraph 25 of the decision.

9 The Supreme Court of Canada said, "TWU
10 is not for everybody. It is designed to address the
11 needs of people who share a number of religious
12 convictions. That said, the admissions policy of TWU
13 is not in itself sufficient to establish discrimination
14 as it is understood under our section 15 jurisprudence.
15 It is important to note that this is a private
16 institution that is exempted in part from the British
17 Columbia human rights legislation and to which the
18 Charter does not apply.

19 "To state that voluntary adoption of a
20 code of conduct based on a person's own religious
21 beliefs in a private institution is sufficient to
22 engage section 15 would be inconsistent with the
23 freedom of conscience and religion which co-exists with
24 the right of equality."

25 There is an important point here. TWU

1 is not for everybody. I could not, in good conscience,
2 attend TWU, nor could my friends of other faiths, the
3 Jewish faith, the Muslim faith, or my friends in the
4 gay and lesbian community, but the Supreme Court makes
5 clear that persons of the same faith are
6 constitutionally entitled to form universities like
7 TWU.

8 Let me turn to my second point. As many
9 have noted, the focus our discussion has been the
10 Community Covenant. There's no suggestion that the
11 curriculum of the law school would not otherwise meet
12 our standards. There is no suggestion that the
13 graduates of TWU are any more likely to discriminate
14 than graduates of any other Canadian law school or
15 of foreign law schools.

16 This leads me to the conclusion that if
17 we decide not to accredit TWU, then the graduates of
18 TWU would have to come into our process through the
19 National Committee on Accreditation, the NCA process.

20 That process makes no inquiry into
21 whether the applicant is from a faith-based law school,
22 but only looks at whether our curriculum requirements
23 have been met. It would not be constitutional to admit
24 students from foreign faith-based law schools and to
25 deny entry to graduates of a Canadian faith-based

1 school, nor would it be constitutional to deny entry to
2 our licensing process to individuals because they
3 exercise a constitutional right to attend a faith-based
4 school.

5 I also note that we make no inquiries
6 into whether graduates from accredited law schools
7 share the religious beliefs of those who attend TWU and
8 nor should we. I say that everyone who is called to
9 the bar in Ontario swears the same oath, which is to
10 uphold the rule of law and the Constitution of Canada,
11 and whether you're a graduate of TWU or any other law
12 school and you discriminate on the basis of sexual
13 orientation, you're subject to our sanction.

14 So I conclude on this point by noting
15 that while our focus is on the Community Covenant, it
16 is clear to me that regardless of the Covenant, TWU
17 graduates will be permitted to enter our licensing
18 process through the NCA process if our decision is that
19 TWU should not be accredited.

20 This leads me to my third point. Is the
21 principled approach here to deny accreditation to TWU,
22 but to permit entry to our licensing process through
23 the NCA process? And I confess that this is the point
24 that I struggled with the most. Because I say to
25 myself, perhaps we don't need to accredit because the

1 students can come in through the NCA process. I say to
2 myself, would it be in the public interest for the Law
3 Society to lend its public imprimatur to the
4 discriminatory nature of the Covenant by accrediting
5 TWU? I've heard the people who spoke before me and I
6 respect their views, I don't like that either.

7 Although this approach was initially
8 attractive to me, I ultimately came to the conclusion
9 that it ran contrary to what the Supreme Court of
10 Canada said in TWU. In essence, that approach would
11 say to persons of faith that there are two doors to our
12 licensing process. One for those who attend a
13 faith-based school in Canada and another for those who
14 attend secular schools in Canada. In other words, a
15 separate, but equal approach.

16 But the Supreme Court of Canada in
17 Trinity Western said that it's not permissible to
18 impose a burden on an individual because of his or her
19 religious beliefs.

20 Here's what the Supreme Court said, and
21 I'm quoting from paragraph 32. "There is no denying
22 that the decision of the BCCT places a burden on
23 members of a particular religious group and, in effect,
24 is preventing them from expressing freely their
25 religious beliefs and associating to put them into

1 practice. If TWU does not abandon its Community
2 Standards, it renounces certification and full control
3 of a teacher education program permitting access to the
4 public school system. Students are likewise affected
5 because the affirmation of their religions belief and
6 attendance at TWU will not lead to certification as
7 public school teachers unless they attend a public
8 university for at least a year."

9 Let me provide one example of the
10 perilous nature of adopting the separate, but equal
11 approach here. Canada has a shameful history of
12 discrimination against those of the Jewish faith,
13 including discrimination against Jews on the entry to
14 professional schools. That happened in Canada for many
15 years. And I say that if persons of the Jewish faith
16 had decided to establish a law school that was only
17 open to those of the Jewish faith, would we deny them
18 accreditation and say we will not accredit you because
19 you're engaged in religious discrimination, but we'll
20 allow your graduates in through the back door. In my
21 view the answer to that question is obvious.

22 I conclude as follows. I've read
23 carefully the Supreme Court of Canada decision in TWU,
24 the memorandums of John Laskin and Mahmud Jamal and
25 substantially all of the other vast material that was

1 before us today. Although I wanted to come to the
2 conclusion that we could not accredit TWU, I could not
3 find a principled approach in law to come to any
4 conclusion other than that we are required to accredit
5 the law school.

6 I recognize that many of my colleagues
7 have reached a different conclusion and that they have
8 followed a line of thought that is principled as well,
9 but it's not one that I could follow.

10 Personally, the conclusion I've come to
11 is not one that I came to easily and, unlike
12 Mr. Mercer, it's not one that I'm particularly
13 comfortable with; however, as a Bencher of the Law
14 Society, I believe my role is to apply the law,
15 regardless of my personal views. From my perspective,
16 it would have been preferable had we sought advice and
17 guidance from the courts, but that wasn't the approach
18 that was adopted.

19 And I say regardless of the decision
20 that is made here today, it seems inevitable that the
21 issue will be the subject of litigation which will
22 ultimately make its way to the Supreme Court of Canada.

23 And perhaps the Supreme Court will
24 determine that my legal analysis is not correct, and if
25 that's so, this will be one instance that I will not be

1 upset to have the court tell me I'm wrong. Thank you.

2 TREASURER CONWAY: I have on the list
3 Susan McGrath, followed by Adriana Doyle, followed by
4 Raj Anand. So get ready. Ms. McGrath. And there are
5 more on the list. I don't want anybody to think that I
6 haven't been putting names on the list.

7 MS. McGRATH: Treasurer, members of
8 Convocation, representatives of TWU. I stand to
9 express the same view as my colleague, Chris Bredt.
10 Likely not quite as eloquently, but I'll do my best.

11 This is an issue of possible exclusion
12 from the admissions process at TWU law school. Any
13 student provisionally accepted who refuses to sign and
14 adhere to the Covenant will be denied admission, and
15 that's to a program which has very coveted positions.

16 Given the intense competition for law
17 school admission, the requirement that they sign and
18 adhere to a Covenant that may offend their sexual
19 orientation or marital status, because it certainly
20 affects people in common-law relationships as well,
21 will effectively bar admission to this law school for
22 many.

23 While this is personally abhorrent to
24 most of us in this day and age, particularly given the
25 struggles to obtain equality, it is still incumbent

1 upon us to consider the following five points.

2 First, the Federation has approved TWU's
3 law school. They have an approved curriculum which
4 will properly equip the graduates to enter the
5 licensing process in all jurisdictions in Canada.

6 Second, our Law Society has reserved to
7 itself the right to determine accreditation in this
8 province of a law school approved by the Federation.
9 The factors that we must consider are the standards of
10 learning, professional competence and professional
11 conduct, and in that regard we are required to consider
12 the cause of justice and rule of law and to protect the
13 public interest. The rule of law includes Charter
14 rights to freedom of religion and freedom of
15 association.

16 Third, if we vote against accreditation
17 in Ontario, students will apply to the NCA for a
18 certificate, which they will certainly almost
19 immediately receive given that they have taken all of
20 the approved and required curriculum. In other words,
21 that decision would be more symbolic than effective.

22 Fourth, if we vote against accreditation
23 we are punishing non-LGBT students and possibly
24 LGBTQ students who may choose to sign the Covenant and
25 attend TWU.

1 Fifth, if we accredit TWU, their
2 graduates will enter our licensing program, which
3 includes education in legal ethics, the oath to
4 champion the rule of law and safeguard the rights and
5 freedoms of all persons, and the rule of professional
6 conduct not to discriminate on grounds that include
7 sexual orientation.

8 The fact that a TWU law grad has signed
9 and adhered to the Community Covenant gives me more
10 confidence that he or she will abide by the oath and
11 the rules of professional conduct.

12 I believe that the TWU law curriculum,
13 like the others approved in Canada, will properly
14 prepare its graduates to practice -- to enter the
15 licensing process and practice law in Ontario. In the
16 BCCT case, the College of Teachers did just what many
17 here are proposing we do today, to make our own
18 personal judgments about whether the TWU Covenant is
19 discriminatory and, therefore, against the public
20 interest and the interests of justice.

21 The Supreme Court indicated that we
22 cannot ignore the right to freedom of religion and
23 freedom of association. Despite many of the
24 impassioned arguments to the contrary, we are required
25 to balance the competing rights under the Charter. If

1 in that balancing exercise we find that freedom of
2 religion and freedom of association justify the
3 Covenant, despite the discrimination against sexual
4 orientation and marital status, I am hard pressed to
5 reach the conclusion that consideration of the
6 provision of the Ontario Human Rights Code would trump
7 the Charter analysis.

8 We can send a message that
9 discrimination against sexual orientation and marital
10 status is unacceptable in Ontario, which likely accords
11 with the personal beliefs of many, if not all of
12 Convocation, but to what end? If that decision is
13 neither legally defensible or practically effective in
14 excluding TWU law grads from practising in Ontario.

15 Despite the fact that it pains me to
16 agree with Bencher Callaghan, I am at this point
17 inclined to vote in favour of accreditation.

18 TREASURER CONWAY: We're going to try to
19 break for lunch at about twelve-thirty, so we may not
20 be able to get through two more speakers, but the next
21 up is Ms. Doyle.

22 MS. DOYLE: I wanted to first welcome
23 our guests here from Trinity Western. Thank you very
24 much for your participation.

25 I think I wanted to start with what Mr.

1 Wardle had mentioned when he spoke to young people,
2 because I have had the opposite reaction from the young
3 people in my family, who range from 20 to 30, and
4 they're on both sides of the fence with respect to this
5 decision. And for me it's been very agonizing. I have
6 been listening all morning and last time around with
7 respect to people's views and I have been very much
8 informed with my colleagues' very thorough review of
9 the case law.

10 I believe -- and I want to acknowledge
11 the Treasurer and the Law Society for setting up this
12 process that I believe adheres to the principles of
13 procedural fairness and have been giving ample
14 opportunity for Trinity Western University to provide
15 their submissions.

16 I'm also grateful for the 3500 pages on
17 the BoardBooks and the ability -- and all on our
18 website. I can't think anybody would criticize us with
19 respect to the process. We have all been given the
20 opportunity to review numerous submissions from
21 numerous legal organizations, special interest groups,
22 numerous individuals, law schools, students, equity
23 groups. We have been given the transcript, we have
24 been given the cases.

25 I listened very intently, Mr. Kuhn, to

1 your remarks today and how you brought the life of the
2 community of Trinity Western to this Convocation to
3 describe what life is there. I have been attentive and
4 I have been listening to both sides and I can tell you,
5 I also am agonizing over this.

6 My contribution to this debate today is
7 really a summary of the journey that we have come to in
8 this decision making process and remind us of the
9 various signposts we must consider when we make and
10 reach our destination.

11 I have listened to Mr. McDowell and his
12 brave comments last time and I have heard Mr. Bredt and
13 Ms. McGrath.

14 I want to remind everybody today what
15 TWU has gone through to get here today. TWU has gone
16 through curriculum that has met the academic and
17 professional standards set by the Federation. Its
18 program has preliminarily been approved. I've read
19 through the process and where they embarked on
20 accreditation to The Federation of Law Societies and
21 one, in my view, cannot but admire their program which
22 has a curriculum which ensures that law students obtain
23 the necessary courses to earn his or her law degree.

24 In fact, if you read the program and the
25 process of modifying and tweaking some of the courses

1 TWU underwent in order to address the Federation's
2 concerns, you cannot be but impressed with the program.
3 I'm especially intrigued with the practical component
4 where there is an emphasis on law students going out
5 into the community, and the mentoring program and the
6 clinical components of the program highlights TWU's
7 interest and commitment to ready students for the
8 outside world and the practice of law.

9 It is also cognizant of current issues
10 facing the profession as a whole. It plans to devote
11 resources to address concerns that our own law society
12 grapples with, such as the shortage of articling
13 positions and access to justice issues. It is
14 talking -- it's walking the talk in the proposal of the
15 law school.

16 As I read through the very engaging
17 process embarked by the Federation, I observed that the
18 process was robust and defensible and that TWU did meet
19 the criteria. So should students who graduate from
20 this law school with this accreditation blessing from
21 the Federation be able to apply to any province or
22 territory in the country? Are we not discriminating
23 against these students because their law school happens
24 to be an educational institution that requires students
25 and faculty to sign a Covenant that mandates an

1 adherence to a conduct that many of us may find
2 abhorrent, that requires sexual intercourse only
3 between a man and woman who are married and is
4 discriminatory in its sense.

5 I do not need to repeat what my more
6 eloquent and well-versed and human rights lawyers and
7 people in this room have talked about with respect to
8 the case law, the Law Society mandate, our professional
9 rules of conduct, the fact that the 2001 decision of
10 the Supreme Court of Canada may not be decided the same
11 today because the lens that they would have to look at
12 today would be through the rule of law and our
13 legislation.

14 Thirteen years lots has happened. The
15 Criminal Lawyers Association submissions talked about
16 Charter cases that have developed in the past thirteen
17 years. There is talk of -- there are limits to
18 religious freedom. Law schools are gatekeepers, we
19 talk about the fact that we at the Law Society continue
20 to have the monitoring group, through the Treasurer,
21 send admonitions against countries that do not respect
22 the rule of law or are discriminatory.

23 I note that the majority of those who
24 have provided submissions and are opposed to the
25 accreditation of TWU believe that there is no real

1 evidence that its graduates would not possess the
2 necessary skills and knowledge to become good lawyers.
3 I'd like us to all consider these factors. I'm, at
4 this point, considering accrediting and voting yes for
5 TWU, and in doing so I would like you to continue to
6 think about TWU for the legislation and social values,
7 but also be reminded that the B.C. Human Rights Code,
8 section 41, allows this educational institution that
9 promotes the interest and the welfare of religion, that
10 does not discriminate because it grants a preference to
11 members of the identifiable group or class of persons.

12 B.C.'s Law Society has approved
13 accreditation, so has other law schools. If we believe
14 that students graduating there will be abiding by the
15 rule of law and adhere and practice in accordance with
16 human rights legislation and the Charter, should we not
17 allow them in when we are governing in the cause of
18 justice in accordance with the law.

19 I'm asking us to continue to consider
20 and weigh what we have heard and will hear today. I
21 urge us all to continue to be insightful, fair,
22 impartial and just.

23 It is not an easy decision. I think it
24 is obviously, from what I hear so far, probably in
25 everybody's best interest to listen and make a just

1 decision. Thank you.

2 TREASURER CONWAY: I think before we --
3 given the hour, it's nearly 12:30, we'll break for
4 lunch now and we'll come back and continue our
5 deliberation starting with Mr. Anand after lunch.

6 I do want to say that our colleagues
7 from Trinity Western University have accepted my
8 invitation that they dine in Convocation Hall so that
9 they will not be with us over the lunch hour and as we
10 continue our deliberations this afternoon.

11 So we'll rise now for lunch and we will
12 come back in the afternoon and continue our debate.

13 --- Luncheon recess at 12:55 p.m.

14 --- On resuming at 1:54 p.m.

15 TREASURER CONWAY: Okay, everybody,
16 we're going to go through the list of those who are on
17 the phone again. Just going to the phone right now.

18 Is Mr. Banack on the phone?
19 Mr. Furlong? Is the phone on? Mr. Lerner? I'll start
20 again. Mr. Banack? How's the rocket ship going? Mr.
21 Banack are you on the line? Mr. Furlong?

22 MR. FURLONG: I am here, thank you.

23 TREASURER CONWAY: Mr. Lerner?

24 MR. LERNER: Present.

25 TREASURER CONWAY: Ms. Richardson?

1 MS. RICHARDSON: Present.

2 TREASURER CONWAY: Mr. Strosberg?

3 MR. STROSBERG: Yes, here.

4 TREASURER CONWAY: Mr. Armstrong? Mr.
5 Yachetti? Ms. Potter? Mr. Wright?

6 MR. WRIGHT: Here.

7 TREASURER CONWAY: Mr. Hunter? Mr.
8 Manes? Ms. Horvat?

9 MS. HORVAT: I'm here, thank you.

10 TREASURER CONWAY: Thank you. Is there
11 anyone who's on the phone whose name I have not called?

12 MR. SCARFONE: Jim Scarfone. I was
13 unable to attend this morning, but I'm on the line now.

14 TREASURER CONWAY: Thank you, Mr.
15 Scarfone. Just before I call on Mr. Anand to make his
16 remarks, I wanted to direct Convocation's attention to
17 page 1860 of BoardBooks, just to address a factual
18 matter.

19 As Ms. Kristjanson has said in her
20 letter to us outlining process, you will find at that
21 page this statement. Just before the paragraph
22 starting with mobility issues, there's this statement.
23 "Currently there is no process in place by which
24 graduates of a non-accredited Canadian common-law
25 university may enter the Law Society's licensing

1 process."

2 The Federation's National Committee of
3 Accreditation's mandate is to evaluate the
4 qualifications of those with degrees from outside
5 Canada, international degrees and from Québec. It was
6 not established to consider additional qualifications
7 that graduates of non-accredited Canadian common-law
8 schools would have to meet.

9 So presently, graduates from Trinity
10 Western University, as things stand at the moment,
11 would not have the process of the National Committee on
12 Accreditation open to them to become qualified to
13 practice in Ontario through that particular route. All
14 right. I'll call on Mr. Anand.

15 MR. CAMPION: Point of process, that may
16 not be completely accurate. Should I just ask to speak
17 to it later?

18 TREASURER CONWAY: No, let's speak to it
19 now.

20 MR. CAMPION: Sure. Very simply, if
21 somebody applied and was accepted in B.C., they could
22 then use the mobility provisions to come to Ontario.

23 TREASURER CONWAY: Okay. That's not the
24 issue I was addressing.

25 MR. CAMPION: I take your point.

1 TREASURER CONWAY: But that's not
2 correct. Mr. Anand.

3 MR. ANAND: Thank you, Treasurer. Like
4 many others, I want to express my --

5 TREASURER CONWAY: Mr. Anand, could you
6 just hold on for a moment.

7 Mr. Campion, I would direct you to the
8 mobility paper that was offered by Ms. Sperdakos that's
9 in the materials that explains why the statement you
10 just made is not accurate.

11 MR. CAMPION: I have an answer, but I
12 won't bother now.

13 TREASURER CONWAY: Mr. Anand.

14 MR. ANAND: Thank you, Treasurer. I was
15 saying, like others, I'd like to express my thanks to
16 Mr. Kuhn and to Mr. Meehan and your colleagues for your
17 very helpful oral and written submissions.

18 I agree with Trinity Western's
19 submission that this is a difficult question and that
20 it's a legal question and that it's not a question to
21 be answered based on analogies to other legislation or
22 practices that are discriminatory and of which we
23 should all be ashamed.

24 I want to address what I continue to
25 regard, as I spoke to this last time, as a central

1 legal issue and it relates to sections 9 and 18 of the
2 Ontario Human Rights Code. They were cited last day
3 and neither has been answered, in my respectful
4 submission, by Trinity Western. Paragraphs 123 to 127
5 of TWU's submissions barely touch upon these issues.

6 Section 9 of the Ontario Human Rights
7 Code would put the Law Society of Upper Canada in
8 violation of the Human Rights Code if it participates,
9 assists or sanctions discrimination by Trinity Western
10 University. Section 9 is the prohibition on indirect
11 discrimination by a party.

12 Section 18 -- and I might say that I
13 raise this issue, and in the chart of responses the
14 response that's given is to quote section 9. Section
15 18 of the Code says that a religious institution
16 doesn't commit a discriminatory act by limiting
17 enrollment to those who share its religious beliefs.

18 Now, we are bound by section 9 and by
19 the Charter, and the Charter operates in the same
20 effect as section 9. On its face, the Community
21 Covenant requires gay or common-law heterosexual
22 students or persons of another religion to choose
23 between their education on the one hand and their
24 dignity and self respect as individuals on the other.
25 But we read Trinity Western saying that it won't and

1 indeed it doesn't exclude persons who are gay, lesbian
2 or common-law opposite sex students and who, therefore,
3 don't and can't share the Covenant's expression of
4 religious beliefs. In other words, you can sign the
5 Covenant and get in.

6 So the conclusion that is stated is that
7 Trinity Western says it's not excluding students based
8 on -- well, the conclusion is that it's not excluding
9 students based on religious belief if they are allowing
10 students who clearly don't share the prescriptions of
11 the Covenant to be admitted.

12 Now, as a preliminary point, that
13 disqualifies them to the defence under section 18 of
14 the Human Rights code. The Human Rights Code, as I
15 said, allows what would otherwise be discrimination
16 where there is an exclusion, an absolute exclusion of
17 persons based on religious belief.

18 This idea of signing the Covenant and
19 getting in regardless of whether you, in fact, meet the
20 requirement of the Covenant is the American Bar
21 Association compromise that we talked about last time
22 and which I don't think has been addressed at all in
23 the submissions by Trinity Western since then.

24 So if I'm a student who is LGBTQ or
25 common-law opposite sex, I have two choices. The first

1 is to sign the Covenant -- sorry, to refuse to sign the
2 Covenant and to be excluded on grounds of sexual
3 orientation or marital status. The second is that I
4 can sign the Covenant and be admitted, despite the
5 clear prohibition of my conduct as an individual
6 student. In other words, sign the undertaking to abide
7 by the Covenant which precludes sexual intimacy that
8 violates the sacredness of marriage, and that's a
9 quotation, between a man and a woman, as stated in six
10 words or more in the Covenant a few times.

11 And so if I'm a student who has signed,
12 despite my sexual orientation or marital status, two
13 things have happened. One is that I've made a false
14 declaration, which is an issue of good character, and
15 we're actually talking about the issue of admission to
16 the bar, and that may render me ineligible for
17 licensing in this province.

18 The second is if I'm a gay or common-law
19 student who has to live in the closet to conduct my
20 life as if I'm not gay or common-law or be subject to,
21 and I quote, the formal accountability procedures --
22 this is at page 2098 of the Community Covenant, "the
23 formal accountability procedures to address actions by
24 community members that represent a disregard for this
25 Covenant."

1 Now, I think it's clear that to prevent
2 a student from manifesting his or her personal sexual
3 identity and relationship is itself a violation of the
4 Human Rights Code. One of my colleagues may call it a
5 steamroller. I've concluded it's a violation of the
6 Human Rights Code and it's clearly a burden placed on
7 students in that situation under the Charter to the
8 extent that the Law Society becomes implicated.

9 The best illustration of the connection
10 between conduct and identity is, in fact, in Trinity
11 Western's submissions at page 3045, paragraph 92 of Mr.
12 Meehan's submission. It reads, "As recognized by the
13 Supreme Court of Canada, religious belief is integral
14 to all aspects of the lives of religious people. The
15 right to freedom of religion includes the right to
16 believe, the right to declare the belief openly by word
17 or in writing, and the right to manifest that belief by
18 worship, practice and teaching without coercion or
19 constraint. The members of Trinity Western's religious
20 community are entitled to associate together and pursue
21 education in a religious environment without hindrance,
22 reprisals or constraint."

23 And we know from Ms. Leiper's comments
24 earlier that the Amselem case in the Supreme Court of
25 Canada also applied the scope of the Charter to a

1 particular course of conduct.

2 Now, paragraph 92 is in the religious
3 freedom context, and we have Trinity Western telling us
4 quite correctly that religious freedom involves
5 conduct. I simply state that there's no hierarchy of
6 rights. The assimilation of conduct to status applies
7 equally to other grounds involving historically
8 disadvantaged individuals, including, clearly and most
9 prominently, the LGBTQ community.

10 So Trinity Western's submission amounts
11 to an assertion that the prohibition of conduct is
12 prevented when it comes to religion, but it's permitted
13 when the disadvantaged group is gays, lesbians or
14 common-law couples. My submission and my view is that
15 Trinity Western's analysis is legally flawed.

16 The 2001 -- upon this issue of conduct
17 versus status, the 2001 Trinity Western decision didn't
18 address discrimination experienced by affected Trinity
19 Western students, faculty and staff while attending or
20 employed by Trinity Western. The Christians Horizons
21 case in the Divisional Court of this province struck
22 down conduct-based prohibitions in a religious
23 organization preventing support workers from engaging
24 in same-sex relationships, and the Whatcott case, which
25 has been referred to earlier, in fact, confirmed the

1 dissenting view of Madam Justice L'heureux-Dubé in the
2 Trinity Western decision of several years before,
3 saying that human rights law rejects the separation of
4 sexual orientation status from conduct or identity from
5 practice.

6 So under the Ontario Human Rights Code,
7 which applies to us and the Charter, the Law Society
8 can't be a party and can't exercise our gatekeeper role
9 so as to facilitate discrimination. I tried to set out
10 last day my analysis of the independent duties that we
11 have, leaving aside whether Trinity Western in and of
12 itself is violating any human rights laws under section
13 4.1, 4.2 and so on, in compliance with the code on our
14 part and in compliance with the Charter on our part and
15 guided by the values of those documents, including Law
16 Society Acts, concerns with rule of law, public
17 interest and the cause of justice.

18 Given my analysis of the situation of
19 LGBTQ or common-law opposite sex students who are
20 required to sign the Covenant, my view is that the
21 application of these provisions require a vote against
22 accreditation.

23 TREASURER CONWAY: Ms. Murchie.

24 MS. MURCHIE: Thank you, Treasurer. I
25 should confess that it would be easier and much more

1 comfortable for me to vote against accreditation, as
2 that aligns with my personal views and with the views
3 of many of my colleagues around the table who have
4 argued very persuasively against accreditation. But to
5 paraphrase the Trinity Western Covenant, I've thought
6 critically and constructively about this complex issue
7 for the last two weeks and I have been forced to
8 conclude that I must vote for accreditation for two key
9 reasons. In fact, one key reason.

10 The first is that I think we're bound to
11 do so by the law, and the second is that we should be
12 abiding by the Federation decision.

13 With respect to the law, I say the
14 Supreme Court of Canada case in the Trinity Western and
15 Teachers case governs. It was, in fact, the law and
16 the submissions about the law at this table and in all
17 of the writings and documents that we had to review
18 that persuaded me that we had to accredit.

19 Mr. Mercer argues very persuasively that
20 the Law Society Act is different from the governing
21 legislation that was at issue in the Teachers' case,
22 and that may be so, but in my view at least, in my
23 analysis, the Law Society Act does not promote equality
24 rights to trump religious freedom, particularly in a
25 situation where the balancing act has already been

1 undertaken by the Supreme Court of Canada in the
2 Teachers case.

3 So as we all know, the Supreme Court of
4 Canada considered equality rights in respect of the
5 Trinity Western Covenant and they concluded that
6 freedom of religion was not accommodated if
7 accreditation was denied, and they went on to conclude
8 that the proper place to draw the line in considering
9 accreditation was between belief and conduct, and as
10 Trinity Western has pointed out, and the materials are
11 clear, there is no evidence that anyone graduating from
12 Trinity Western law school would, in fact, behave in a
13 discriminatory manner while practising law.

14 So Mr. Bredt, I think, has analyzed that
15 case much more carefully than I have done and I'm
16 prepared to rely upon his analysis, and, indeed, on
17 Mr. McDowell's before, but it seems to me that the
18 Supreme Court of Canada has already balanced the rights
19 of the LGBT community and we can't ignore their clear
20 determination that denying to accredit TWU would be a
21 denial of religious accommodation. This is the same
22 Supreme Court of Canada and, indeed, the rest of our
23 courts that have led the way in recognition of equality
24 rights.

25 So from my perspective, the diverse

1 profession we all want and are required to protect
2 includes those with religious beliefs that may be
3 contrary to our own, if, indeed, we have them.

4 On the second issue, the Federation
5 issue, I'm not saying we're bound by it, but having, in
6 my view, initiated a process in 2010 and agreed that
7 the Federation should look at the requirements, in my
8 view we should respect that determination, particularly
9 in the circumstances when there's no reason not to.

10 So in closing, Treasurer, I say we're
11 bound by the law and that there is no legal reason that
12 we have not to accredit. Thank you.

13 TREASURER CONWAY: Ms. Go.

14 MS. GO: Thank you, Treasurer. Last
15 time I spoke I began by speaking about my fear that if
16 I did open my mouth I would be accused of having a
17 closed mind, and if I didn't I would be accused of
18 being unfair as I did not give TWU an opportunity to
19 comment. But as it turned out, it didn't matter one
20 way or another, because the same accusation is being
21 leveled against me for being unfair, mainly because I
22 dared remind Convocation of the historical facts about
23 racism against Chinese Canadians, most notably within
24 the legal profession, especially in the Province of
25 British Columbia, and how far we have come since then.

1 And I stand by my comment.

2 As someone who has fought against racism
3 for close to, I think, three decades, I personally have
4 received more than my fair share of hate mails and
5 offensive comments in response to my stand on these
6 issues, so I do have sympathy towards TWU for having
7 received hate mails.

8 In fact, I have had on occasion reported
9 some of the most violent ones to the police, not
10 because I'm scared, but because I want to have them on
11 record.

12 These are often the common themes
13 outlined in some of the hate mails that I get. That
14 the real victims in our society are not the Chinese or
15 the blacks or the aboriginal people who experience
16 racism, but the white men who are the real minority in
17 Canada, whose rights have been violated by the special
18 interest groups. That Canada is overrun by people of
19 colour and white people are being pushed aside. That
20 in speaking out against racism and hate, people of
21 colour are trying to silence the white majority by
22 taking away their freedom of speech.

23 Regardless of the actual content of
24 these hail mails, they are all deliberately and
25 intentionally designed with one purpose and one purpose

1 only, to intimidate and threaten their opponent into
2 submission. They have never succeeded in silencing me.
3 I'm, therefore, very used to the argument of reverse
4 discrimination, I just did not expect to hear them
5 being made so loud and clear in this room.

6 I want to thank TWU for their
7 presentation. Whatever questions I once had about
8 whether I should be voting yes or no to the application
9 for accreditation, and I do share some of the, I guess,
10 concerns that have been raised by some of my fellow
11 Benchers. Their submission and their presentation
12 removes all lingering doubt and I will be voting no to
13 the motion. Voting yes, in my respectful submission,
14 is a huge step backward in the progress of human
15 rights, since the days of the Chinese Head Tax and
16 Exclusion Act.

17 TREASURER CONWAY: Mr. Goldblatt.
18 Mr. Goldblatt will be followed by Mr. Strosberg and
19 Mr. Wright.

20 MR. GOLDBLATT: Thank you, Treasurer,
21 colleagues and representatives from TWU. I wish that I
22 had had the opportunity to speak earlier, because had I
23 done so, I would have obviously echoed some of the very
24 incisive and I think quite compelling arguments of
25 those who have spoken previously with respect to not

1 accrediting TWU.

2 Had I done so, however, you would have
3 had to listen to me much longer, which is to your
4 disadvantage, but I, nonetheless, feel there are a
5 couple of points that need to be made, and I will make
6 them as briefly as I possibly can.

7 At the outset of Mr. Kuhn's submissions,
8 he provided -- first of all, he warned us that he might
9 be seen as provocative and did not mean to be
10 insulting, and these are my words, not necessarily his,
11 but he then read a number of comments from e-mails and
12 Facebooks and so on, which could only be viewed as
13 being inciteful, horrible, demeaning, and perhaps
14 unprofessional. Comments that none of us in this room
15 would associate with, none of us, more importantly, in
16 this room, have uttered in a record which I think is
17 replete with civility and respect in terms of the
18 debate.

19 I understood that as an advocate and as
20 someone making submissions, it was perhaps appropriate
21 to provide the extreme view. Then towards the end of
22 his submissions, Mr. Kuhn brought us into those
23 comments, and I don't know if I have this verbatim, but
24 I think it's pretty close. You'll recall that he
25 described what would happen or what message would be

1 sent if, in fact, Convocation voted against
2 accreditation. And he said if we did so, amongst other
3 things, we would be validating the comments that were
4 made and we would be approving institutional bullying.
5 He then said that we would be providing a definition to
6 the public interest which would make it a tool of
7 political conformity and punishment.

8 Now, I apologize, Mr. Kuhn, if I have
9 not gotten those words exactly accurate, but I think
10 it's pretty close. I want to say that when I vote
11 against accreditation, as I will, I'm not doing so in
12 any way to validate the comments that have been made.
13 In fact, I entirely disassociate myself from them and
14 I'm sure that I speak on behalf of everyone in this
15 room on either side of this issue when they do so.

16 I also want to say that I have no
17 question that Mr. Kuhn truly believes in the position
18 that he has taken and in the freedom of religion that
19 he is advocating and I, like others who have spoken,
20 entirely support him in that position and would defend
21 him with respect to that position, but in the course of
22 his submissions he showed very little, with respect,
23 tolerance, if I may use that word, to the sexual
24 orientation aspect of the matter before us and I think,
25 quite tellingly, when he took us through the Covenant,

1 he left out that whole section that he read to us,
2 except the section that says "healthy sexuality".
3 Somehow that was not specifically read into the record
4 for reasons that I am sure Mr. Kuhn could explain.

5 I understand the Charter principles, I
6 believe. I've argued a number of Charter cases
7 successfully and maybe more unsuccessfully. I've
8 argued as well many human rights cases. I understand
9 the legal principles. But we are not here as a court,
10 we are here exercising our statutory discretion to
11 determine whether we will accredit this institution and
12 it is not the quality of the education, but the
13 character of the institution that we are being called
14 upon to consider.

15 From the very first orientation I had as
16 a Bencher, it was drilled into me that we were elected
17 to serve in the public interest, and I cannot accept
18 that it would be in the public interest to accredit an
19 institution such as Trinity Western, which does not
20 accept and embrace equality among individuals who wish
21 to practice and live a sexual orientation which might
22 not be, quote, unquote, biblical, but is nonetheless
23 something that deserves and requires respect and
24 protection.

25 I cannot vote to accredit a law school

1 commend President Kuhn for his thoughtful and well
2 reasoned presentation and Mr. Meehan's written
3 submissions.

4 When I was growing up in Windsor in the
5 1950s and early 1960s, I was taught by fundamental
6 orthodox rabbis and by Basilian priests. The orthodox
7 rabbis and the Basilian priests, each taught me lessons
8 about love your neighbour, truth, justice and public
9 service.

10 Trinity will graduate law students who
11 will be responsible, competent professionals who will
12 act in the public interest, especially in British
13 Columbia. Some day in the future, a very rare Trinity
14 law student graduate will become a red neck, just like
15 the Ontario lawyers who delivered hate mail to me when
16 I was the Treasurer because I established a gay,
17 lesbian and transgender reception at Osgoode Hall in
18 1998.

19 The essence of the question before
20 Convocation today is about competence, professional
21 conduct and the public interest. There is no evidence
22 of discrimination from Trinity's graduates. Maybe the
23 Covenant is good or bad or ugly, but the Covenant is
24 clothed by freedom of religion. The Covenant is not my
25 cup of tea, but it is irrelevant to Convocation's

1 decision.

2 And I ask another question. Why is B.C.
3 public interest different from Ontario's public
4 interest? The answer is the B.C. public interest is
5 generally the same as the Ontario public interest.
6 There is no material difference, and Trinity will
7 graduate lawyers who will be called to the B.C. bar.

8 The answer to the question is yes.
9 Thank you, Treasurer.

10 TREASURER CONWAY: Mr. Wright, are you
11 on the phone?

12 MR. WRIGHT: I am.

13 TREASURER CONWAY: Would you like to
14 speak now? You have the floor if you'd like to make
15 your remarks.

16 MR. WRIGHT: Thank you. One never likes
17 to disagree with Mr. Strosberg, but I have to say that
18 I don't think that the position of TWU is particularly
19 well reasoned.

20 I look at it from (inaudible) riddled
21 with inconsistencies. If religious freedom can be
22 invoked to deny the rights of others, then those rights
23 have little meaning or protection. Religious freedom
24 can be shaped to justify almost anything, from bringing
25 a Big Brother culture to bear on a person (inaudible)

1 which is determined in the womb, not by (inaudible) to
2 endorsing clitorectomies (inaudible) to the subjugation
3 of women generally.

4 This is a crack in a door that could be
5 kicked wide open and make a mockery of the protection
6 of rights (inaudible) over centuries. Nothing stops
7 TWU from having a law school, but common sense, reason
8 and, I say, Christian human decency requires TWU not to
9 discriminate against a protected right, and that's very
10 easy to do.

11 They need to bear in mind that the
12 freedom to swing your arm ends at your neighbour's
13 nose. The freedom to dictate sexual preferences stops
14 before you reach the person that you're trying to
15 affect. TWU desires that we accommodate a group that
16 wishes not to accommodate others and, worse, wants
17 others to rat out those who would fall afoul of the
18 discriminatory Covenant. They ask for respect while
19 denying respect for that group.

20 They have invoked extreme criticisms of
21 their position to tarnish the moderate and reasonable
22 criticisms of their position, and that's unfair. They
23 claim that there's no evidence that they have ever been
24 guilty of discrimination, yet the evidence of their
25 intent to discriminate is written into their very

1 application for accreditation.

2 We are not pre-judging the students when
3 they apply to be called to the bar. The Law Society
4 will not inquire into their sexual orientation or
5 personal beliefs. What we are asking is that TWU
6 behave toward their students as law societies should
7 and we should behave towards them when they come before
8 us. We will not discriminate against them and we ask
9 that they not discriminate against them either.

10 The Law Society is prohibited from
11 discriminating against applicants on that basis, so we
12 should not allow universities to do so. If we do, then
13 --

14 TREASURER CONWAY: Mr. Wright, could I
15 just ask you for an indulgence for a second? Would
16 everyone else who is on the phone right now please mute
17 your line, because we're getting a lot of interference
18 and we're having some difficulty hearing Mr. Wright.
19 So star 6, if you could press star 6.

20 Mr. Wright is the only one that has the
21 floor, so the rest of you on the phone, if you could
22 press star 6 until we call on you. Thank you. Go
23 ahead, Mr. Wright.

24 MR. WRIGHT: Thank you. The Law Society
25 should not allow TWU to discriminate when the Law

1 Society itself is not allowed to and would not and
2 should not.

3 If we were to allow TWU to do what we
4 cannot do and should not do, then the Law Society is
5 guilty of discrimination by proxy, and that is an
6 untenable position.

7 Mr. Bredt mentioned that we would not
8 discriminate against a Jewish law school if one had
9 been founded to get around past discrimination against
10 them. With respect, I think that's looking at the
11 issue through the wrong end of the telescope. What
12 we're trying to avoid is the creation of any
13 discriminatory barriers in respect of protected rights.
14 If I had a vote, and I don't, I would naturally vote
15 against accreditation and I'm encouraged by the
16 comments that so many Benchers have made in support of
17 denying accreditation and I fully endorse the views of
18 Benchers who have said this in no way restricts the
19 religious freedom of people who do not wish to engage
20 in such sexual orientation. They're free to live their
21 lives, but they're not free to discriminate against a
22 group that has struggled long and hard to place
23 themselves at the centre of society, and having done so
24 with pride.

25 Whichever Benchers said we don't want to

1 go one millimetre backwards, I fully endorse that.

2 Thank you very much.

3 TREASURER CONWAY: Mr. Lerner, are you
4 on the phone?

5 MR. LERNER: I am, sir.

6 TREASURER CONWAY: You have the floor.
7 Go ahead.

8 MR. LERNER: Thank you. I certainly do
9 not question the validity of Trinity Western's belief
10 and I acknowledge their right to those beliefs.

11 I'm troubled when a right protected by
12 human rights legislation is used to justify an apparent
13 act of discrimination that results in the violation of
14 another protected group's rights. While I recognize
15 the right of TWU to freedom of religion, I do not
16 believe, nor do I accept that it permits or ought to
17 infringe upon the protected right of another.

18 No right is accident. There is no
19 hierarchy of rights. Each right is equal and equally
20 deserving of protection. I cannot believe anyone ever
21 contemplated that the assertion of a protected right
22 could result in a violation of another protected right
23 in an outright act of discrimination.

24 Having read the material, having heard
25 two days of debate, having attempted to inform myself

1 to the best of my ability, rightly or wrongly I
2 consider this decision to be a matter of law as well as
3 a matter of conscience. I am therefore compelled to
4 vote against accreditation. However, if I am wrong I
5 will willingly accept any decision to the contrary.

6 Thank you.

7 TREASURER CONWAY: Ms. Minor.

8 MS. MINOR: Thank you, Treasurer. And
9 like others, I thank the representatives of TWU for
10 their responsive material and oral presentation today
11 and, like others, I believe all of us here would
12 disassociate ourselves from many of the remarks which
13 were characterized as hate messages. That is not what
14 this Convocation is about and I believe that our
15 remarks are all offered with the greatest of respect to
16 the ability to hold religious beliefs.

17 On that note, I, nonetheless, am of the
18 view that we should vote against accreditation. And I
19 will simply add some points made -- to points made by
20 others so that I am not repeating submissions.

21 Mr. Anand noted that we are also bound
22 by the Human Rights Code and, as I've noted last day,
23 if there was any doubt about whether our public
24 interest responsibilities extended -- in accreditation
25 extended beyond looking at individual competence, the

1 Human Rights Code section 6, I believe, confirms that
2 it does.

3 Section 6 guarantees membership in self
4 governing organizations and professions on a
5 non-discriminatory basis. We cannot run a licensing
6 process which would discriminate or present barriers
7 based on protective grounds. I asked last day how is
8 it that we can maintain that responsibility if we, in
9 fact, accredit a law school which would change that
10 composition of the people who are able to be licensed.
11 Right now the only people who can enter our licensing
12 process are those who graduate from accredited law
13 schools. That's the pipeline or that's the pool. And
14 that pool, at the moment, exists without restriction to
15 religion, gender, marital status, sexual orientation.

16 If we accredit this, we immediately
17 change the composition of those who may enter our
18 licensing process because persons will be excluded on
19 those grounds and preferred on one particular religious
20 ground.

21 When the courts tell us -- and, in fact,
22 TWU reminded us that we need to balance here and they
23 said they didn't hear much balancing. Well, when we're
24 balancing, what the court says is you first must look
25 at the context in which you're balancing and the

1 context here is the availability of professional
2 spaces; that is to say, spaces in professional schools.

3 We all know that there are insufficient
4 places to meet the demand by qualified people, both in
5 Ontario and in Canada. So the context is a shortage, a
6 scarcity of available professional places. This
7 proposal would not only reinforce the lack of
8 availability to some groups, it would then give
9 preference to others. I would say that, along with the
10 other sections that Mr. Anand has referred to, that we
11 would not be abiding by our responsibilities to have a
12 non-discriminatory licensing and admission to
13 membership program.

14 The courts have also told us that when
15 we are balancing rights that there is no hierarchy.
16 That's been said by a number of people. They also said
17 that when you are looking at the particular right
18 claiming to protect a particular group, you look at the
19 nature of the right. It is not absolute. So a right
20 to associate for religious purposes is a spectrum of
21 rights.

22 Clearly at the highest end of protection
23 would be the right to congregate to worship. That
24 would be protected, I would guess, at a very high
25 level, but you have to look at what the nature of the

1 right is. If it was a religious requirement to observe
2 one's religion in a particular way, if it related to a
3 particular practice that had to be conducted in order
4 to comply with one's religious beliefs, that would
5 receive a higher end.

6 Where are we here? And I invited the
7 TWU applicants to confirm or correct me when I said the
8 last day I understand this is not a requirement. The
9 code of conduct may be a requirement for its own
10 adherents, but when we're talking about the code here,
11 the Covenant, it's with respect to admission to a
12 school, to a law school, where there are limited
13 places.

14 There has been no assertion that these
15 people, this religious group must study -- as adults,
16 must study only in the company of their own religion or
17 persons who agree with their precepts. That's what
18 this is about. Can there be an exclusion of those who
19 do not practice the religion or agree? Is that a
20 requirement? It could well be that there is a religion
21 that requires some kind of separate study for its
22 adherents. There no assertion that this is.

23 And with respect to religious
24 accommodation, and Mr. Bredt mentioned the problem of
25 other groups, Jewish lawyers or Jewish candidates who

1 were not able to be admitted to public law school,
2 would we disagree that there could be a private law
3 school for them or a law school with restricted
4 admission? Obviously that's not before us, but I
5 submit it would be an entirely different legal
6 analysis. If groups are shown to be disadvantaged and
7 subject to historic discrimination, it is open under
8 both the Human Rights Code as a special program or
9 under section 52 of the Charter to have remedial
10 programs for them, and they can be exclusive.

11 That is not the case here. There is
12 absolutely no assertion that any member of the TWU
13 religious view has been denied admission to another law
14 school. There is no assertion whatsoever that this is
15 some kind of special program or that there needs to be
16 a special program.

17 At the same time, accommodation normally
18 relates to a religious requirement, for instance, Sikhs
19 must wear turbans. Does that requirement have to be
20 accommodated when we are looking at other safety
21 issues? For instance, the need to wear helmets in
22 particular cases. And that's an issue of
23 accommodation, to what extent can it be accommodated.

24 There is no issue here that one needs a
25 law school for any kind of accommodation of religious

1 belief. So I say that kind of language is misleading
2 and not helpful. What is helpful, I would suggest, is
3 remembering that we are looking at the public interest
4 of our whole licensing process and we are looking at it
5 from the prospect of Ontario.

6 While others, and I respect the views,
7 assume that the public interest is the same all over,
8 that's not what federalism is all about. Legislatures
9 in different provinces pass twelve different
10 legislation. They would all say they are passing it in
11 the public interest. That's what federalism is all
12 about.

13 If, with respect, the province of
14 British Columbia or another Law Society views it in the
15 public interest to have that kind of accreditation
16 which would have that kind of effect on its pool of
17 applicants, then so be it. There's no reason we have
18 to and it does not logically follow and, in fact, it's
19 our responsibility to look at it carefully before we do
20 it and not just follow the train.

21 So, in my submission, there is no
22 compelling reason to afford the claim for religious
23 rights or religious freedom a higher acknowledgment
24 than the rights of those who would enter into the law
25 school process eventually to enter into our licensing

1 program. And in my mind, that is balancing, that is
2 how I would do it. It is respectful of the right to
3 have a law school, in fact, if they are -- is simply a
4 matter of what you can do with accreditation. Some
5 provinces have accredited. So be it.

6 If we down the line want to look at the
7 MCA process or the interjurisdictional mobility process
8 in order to afford some accommodation to the
9 individuals, so be it, we can do it. That's down the
10 line, we've got some years to do it. That shouldn't be
11 what determines our position now on whether or not this
12 school should be able to exclude those who do agree
13 with their religious views. Those are my submissions.

14 TREASURER CONWAY: Mr. Braithwaite
15 followed by Mr. Schabas followed by Ms. Potter.

16 MR. BRAITHWAITE: Treasurer,
17 distinguished representatives of Trinity Western
18 University. Let me say from the outset that I truly
19 appreciate the words of Mr. Kuhn that you delivered
20 this morning. They were certainly spoken with meaning
21 and were clearly heartfelt.

22 I've also taken into account the words
23 I've heard from my fellow Benchers, both at our last
24 meeting of April the 10th and this morning. The choice
25 of what to do is a difficult one, as everyone has

1 indicated. This has been made clear by those who have
2 spoken before me. The choice is difficult I believe,
3 in part, because we are advocates. It is our job to
4 argue positions on behalf of our clients. We may not
5 necessarily agree or ascribe to the position of our
6 client, but we would argue that position on behalf of
7 our client, in order for our clients to be heard.

8 The difficulty I find that we face today
9 is that we are really not being asked to advocate a
10 position, we're being asked to render a decision on our
11 actual positional beliefs, and this can be
12 uncomfortable and may even put us in not familiar
13 territory.

14 We have heard good analyses of our case
15 law and precedents. We have heard a good analysis
16 distinguishing those particular cases, and I've taken
17 from each one of those and I certainly appreciate the
18 effort and the time consuming work that went into each
19 of previous speakers and, as such, I will not enter
20 into such an exercise myself.

21 My comments to follow are not to endorse
22 any pejorative statements or engage in any attacks such
23 as we heard this morning from comments that were
24 delivered to Mr. Kuhn. We heard from everyone that
25 these are things that we certainly don't accept and

1 abhor for a number of reasons.

2 I accept freedom of religion, but I do
3 so within limits. I accept the law of this state, but,
4 again, I reserve the right to question those laws at
5 all times. The Charter provides me with that
6 opportunity and the right to do so.

7 So herein lies the issue before me, as I
8 see it. I do not see the debate before us as a
9 hierarchical determination of laws or belief. I do not
10 see this debate as one between freedom of religion
11 and/or sexual orientation. I view the issue before me
12 as freedom from discrimination.

13 The issue for me is about equality. So
14 taking such viewpoint, the issue in determination which
15 I will come to and I will be asked to vote on, become
16 much clearer. Although it had been argued that the
17 issue before us is not about race, it's not about
18 colour, creed, or any other of the protected factors or
19 analogous to such, I would disagree. The issue is
20 about discrimination.

21 The Covenant in the six words constitute
22 constructive discrimination. I do not wish to compare
23 levels of discrimination. History tells me engaging in
24 comparative discrimination is fruitless and makes bad
25 public policy.

1 We as regulators must operate in the
2 public interest. Now, this may be heresy, but I have
3 difficulty religiously, no pun intended, following the
4 letter of the law where it leads to an unjust result.
5 Discrimination in my view leads to such and requires
6 that it be reviewed.

7 Now, the history that has been alluded
8 to before me of this country, of other countries, has
9 been filled with examples of discrimination.
10 Historically we have acts of discrimination within this
11 very country alone, in the early founding of this
12 country, in the early part of this country there has
13 been discrimination. Discrimination was in the laws of
14 this particular country. But we'll also note that
15 discrimination in canon law, also.

16 That is the difficulty I have. The
17 difficulty I have is not wholly accepting canon law
18 and/or state law where it raises issues of
19 discrimination. In the early part of the history of
20 this country, the history books will tell us
21 anecdotally, as well as case law, that it has been
22 bereft in terms of justice in terms of how to treat
23 people of colour, blacks, aboriginals, Chinese. There
24 has been a sad history. And some of these cases have
25 actually made it to the Supreme Court of Canada.

1 And it's interesting if we look at the
2 history of those particular cases which have permeated
3 our society and permeated our society when referring
4 every aspect of society. And that discrimination would
5 also include issues of employment, education, housing,
6 recreation. There was no limit to it. We have laws
7 which supported that type of operation.

8 There's one particular case which really
9 set out and identified, if not supported,
10 discrimination on the basis of race prior to the Human
11 Rights Code, prior to, obviously, our Charter. I mean
12 a famous case called Christie versus York. The Supreme
13 Court of Canada talked about that case, and that was a
14 case that dealt with a black person trying to have a
15 beer at the Montreal Forum, but it didn't work out in
16 terms of that person being able to have his beer and he
17 was told, quite frankly, that we do not serve people of
18 your colour here.

19 That's a case that worked its way
20 through the lower courts, all the way up to the Supreme
21 Court of Canada. The interesting thing about that is
22 that it's a case that really established that race is
23 not a factor, but the interesting thing about this was
24 really something that was permeated through all of the
25 cases, generally all of the cases dealing with

1 discrimination in this country, particularly when it
2 was dealing with race, because they've always found a
3 way to get around the issue of race.

4 So although race was at the forefront of
5 this particular case, and clearly it was because that's
6 what the owner said, you cannot have a beer here
7 because of your race. By the time they got to the
8 Supreme Court of Canada they did a balancing of issues,
9 a balancing of factors, and they found that on --
10 because there was nothing specific in the legislation
11 at the time dealing with race, and they said there was
12 no positive duty to deal with the right to serve, they
13 said that the real issue before us, they changed the
14 issue, was freedom of commerce, so that the individual
15 had the right to discriminate on the basis of freedom
16 of commerce.

17 Those are the kinds of things that have
18 been permeating our society. They're subtle things and
19 that's the concern I have when we talk about the law.
20 I don't accept the law because because it is the law.
21 I don't accept religion just because it is religion
22 where it believes that discrimination is acceptable.
23 That's the difficulty that I have.

24 And in this case, the discrimination
25 comes out of those six words, and what we're dealing

1 with here is sexual orientation. That is
2 discrimination and that violates our Human Rights Code.
3 That's the issue that I have.

4 And it's because of that I cannot accept
5 the accreditation of Trinity Western University.
6 Because in signing that particular Covenant, I find
7 signing that Covenant is rather odious, because when
8 you sign that particular Covenant, what's happening
9 here is that all that was doing is perpetuating this
10 type of discrimination.

11 And when I hear the argument that, well,
12 we might as well just lie down and accept it because
13 the Federation has or it can get through the back door
14 of the NCA, that doesn't give me an answer at all.
15 That just tells me that we're abdicating our obligation
16 to ensure equality.

17 If we're on that particular road and if
18 that is -- can happen, you can get through the back
19 door, then I say we have to take at least the first
20 step. We may not be able to stop discrimination, but
21 we at the very least must take whatever steps are
22 necessary in the public interest.

23 If the denial of accreditation is the
24 first step, then we must do it. Let us take that first
25 step. I believe with the evolution of time that will

1 be on our side. I simply can find no justification to
2 support discrimination because I believe we have no
3 other choice.

4 If I am wrong on my understanding of the
5 law I'm honoured to be so wrong. I believe the law
6 then, if that is the case I'm wrong, it's inherently
7 wrong and it's an affront to human dignity.

8 In short, I cannot accept the
9 accreditation of an entity which engages in a
10 discriminatory practice. Religion or state law. It is
11 discriminatory and runs against any personal beliefs,
12 as well as public policy, and our role to act in the
13 public interest. It is demeaning, humiliating and an
14 affront to personal and human dignity. Thank you.

15 TREASURER CONWAY: If members of
16 Convocation who have not spoken yet are wondering where
17 they are on the list, I want to tell you that there's
18 twelve on the list now. So I just want everyone to
19 keep that in mind as they're making their comments,
20 please. At the rate that we're going it's not going to
21 be very soon before we get out of here.

22 MS. ROTHSTEIN: If I may just say that
23 for some it's going to be very difficult to stay much
24 past four or four-fifteen, and we're very desperate to
25 get --

1 TREASURER CONWAY: I'm not sure what I
2 can do about that except encourage members to be
3 concise in their submissions.

4 MS. ROTHSTEIN: That's all I'm
5 suggesting.

6 TREASURER CONWAY: Mr. Schabas.

7 MR. SCHABAS: Taking your lead, in light
8 of the comments of Mr. Goldblatt and Ms. Minor and
9 especially the extremely eloquent and heartfelt
10 comments of Mr. Braithwaite, I don't have anything to
11 add.

12 TREASURER CONWAY: Thank you,
13 Mr. Schabas. Ms. Potter, you're on next. Ms. Potter?
14 She's not on the line, so I'll come to her later.
15 Ms. Symes.

16 MS. SYMES: Treasurer, Benchers,
17 representatives of Trinity Western University, I
18 listened carefully, President Kuhn, this morning as you
19 described the pain that evangelical Christians are
20 facing in this debate in terms of vilification and what
21 might be described as hate speech. It is unacceptable
22 that anyone in Canada has to endure this.

23 And the perspective of evangelical
24 Christians has been well represented in this debate,
25 but what's missing, what's missing around this room are

1 the voices of out gays and lesbians, who are not
2 represented equitably in our profession.

3 It's not just as Mr. Campion described
4 in ancient history -- not quite ancient, Mr. Campion --
5 that gays and lesbians were excluded or marginalized
6 from our profession, but that the status within our
7 profession today remains iffy if a person is out and
8 asserts their sexuality.

9 What hasn't been acknowledged today, and
10 I want to do it, is that how difficult this discussion
11 must be to gays and lesbians, who will be excluded from
12 entrance to Trinity Western University because they
13 will not be able to sign that Covenant and how
14 exclusionary that is to young men and women who seek a
15 legal career.

16 Now, we are mandated by the Supreme
17 Court of Canada in its Doré decision to apply Charter
18 values and in its Tranchemontagne decision to interpret
19 and apply -- it's the Ontario Human Rights Code.

20 So I want to explain why I will be
21 voting no. The freedom of religion in Canada includes
22 the right to believe virtually anything. It is not an
23 objective test, what would a reasonable woman believe.
24 The only test is whether the belief is sincerely held.
25 And there's no question, President Kuhn, that your

1 belief and your beliefs on behalf of Trinity Western
2 are sincerely held.

3 And, as you told us this morning, a
4 person's religion is how men and women live out their
5 lives, but, sir, it's not a right to compel another
6 person to comply with your beliefs, beliefs and
7 conduct.

8 For example, everyone in this room, I
9 presume, would defend to the end the freedom of your
10 religion to not perform same-sex marriages. That's
11 guaranteed; the freedom of your religion not to ordain
12 women, that's guaranteed.

13 But whether or not to open a law school
14 that specifically excludes gays and lesbians and
15 unmarried persons from sex is in fact, I say, not
16 freedom of religion as engaged in your seeking of
17 accreditation by the Law Society for your law school.
18 And I simply adopt -- I guess I could say concur with
19 Ms. Leiper's reasoning.

20 So we come to the second reason and that
21 is the balancing point. You've heard over and over
22 again that there is no hierarchy of rights in our
23 Charter or in human rights.

24 And so as we face this decision today,
25 my concern is the direction of the Supreme Court of

1 Canada in the recent case of N.S. And what the Supreme
2 Court of Canada in that case said is that in making
3 this decision we must strike a just and proportional
4 balance between freedom of religion on one side and
5 freedom from discrimination on the basis of sexual
6 orientation and marital status, as found in Trinity
7 Western's mandatory Covenant.

8 I suggest that Ms. Minor's addition to
9 this test, which is that it must be done in context,
10 that is, when are you balancing, and the answer to that
11 as we divide the sides is admission to law school, do
12 we do the balancing at the beginning of the process of
13 law, at the admission to law school, or as Mr. Bredt
14 and others said, at the end of the process when Trinity
15 Western graduates apply for accreditation -- admission.

16 My submission is we do it at the
17 admission point. We balance these two rights at the
18 point in which a potential law student has to sign this
19 Covenant or not be admitted.

20 What has been said over and over again
21 is that in that decision, the admission decision to
22 Trinity Western law school, freedom of religion does
23 not trump the other rights in the Charter. The rights
24 must be balanced.

25 And I asked you, Trinity Western, to

1 respond how do you propose balancing these rights at
2 the moment that someone applies to law school and I
3 didn't get an answer.

4 Those of you who practice in the area of
5 human rights and in employment and labour law know that
6 there are many ways that Trinity Western University
7 could, if it wanted to, accommodate the rights of gays
8 and lesbians and unmarried persons to their sexual
9 identity. But at least publicly, Trinity Western
10 University has not even entertained, not even
11 entertained the possibility of accommodating
12 differences. For example, the Covenant does not apply
13 to Jewish people. The Covenant does not apply to gays.
14 The Covenant does not apply to unmarried couples who go
15 to law school, who are wishing to go to law school. It
16 is the wish or the dream of Trinity Western University
17 but that these people with different religious beliefs,
18 moral beliefs, et cetera, are not compelled to sign the
19 Covenant. That's what accommodation is, attempting to
20 find a way to balance rights.

21 Instead, what has happened is that
22 Trinity Western University has drawn a line in the
23 sand, an absolute. It's their right, it's their
24 university, but without the trump card that religion
25 supercedes all other rights, they cannot ask us to

1 accommodate -- they cannot ask us to accredit their
2 program because fundamentally it negates the rights to
3 be free from discrimination on the other protected
4 grounds.

5 We have a long way to go in our
6 profession to provide an environment that is equitable
7 for gays and lesbians. We are by no means there. By
8 accrediting Trinity Western, we are saying at the
9 beginning of the process that gays and lesbians are
10 less worthy of protection, they're not sufficiently
11 important to protect.

12 Not only is this a step backwards, but
13 this is dead wrong. Thank you.

14 TREASURER CONWAY: I'm going to go back
15 to the phone now for Ms. Potter.

16 MS. POTTER: Thank you, Treasurer. Can
17 you hear me this time?

18 TREASURER CONWAY: Yes, thank you,
19 Ms. Potter.

20 MS. POTTER: Thank you. I was
21 star 6ed from before and I didn't realize that it was
22 still on. My apologies.

23 TREASURER CONWAY: No problem. You have
24 the floor.

25 MS. POTTER: Let me begin by saying --

1 hello?

2 TREASURER CONWAY: Yes, we can hear you,
3 Ms. Potter. Go ahead.

4 MS. POTTER: Thank you, Treasurer. I
5 want to begin by first of all saying how much I feel
6 for my fellow Benchers. They have been so elegant and
7 so thoughtful in their expressions regarding this issue
8 and I think it's not only important for them to hear
9 this, but particularly for the bar at large.

10 I've read the materials. I was present
11 for the April 10th debate and today, although I'm not
12 there in person, I have listened carefully to President
13 Kuhn's presentation.

14 The president read out a list of
15 offensive statements that he and TWU have received on
16 this issue. He alleged that these statements, and I
17 quote, were adopted by TWU opponents.

18 Well, the record must be amended. Such
19 statements were adopted by some TWU opponents, not by
20 all. Any inference that all opponents of accreditation
21 to TWU is in itself offensive.

22 The statements read out by the president
23 are indeed truly offensive, not only to TWU, but to all
24 who value civil discourse and the protection embodied
25 in the Charter and would include both those who support

1 and those who oppose accreditation.

2 We must however guard against being
3 swayed to vote to accredit TWU because we do not want
4 to be seen as supporting such vitriolic and offensive
5 statements made by some. To do so out of some appeal
6 to political correctness would ignore the blatant
7 discrimination contained in the Community Covenant
8 deemed by President Kuhn to be, and I quote, value
9 judgments. These value judgments offend other charters
10 rights.

11 President Kuhn stated that opponents of
12 accreditation "are denigrating TWU's religious
13 community". That is simply not so. TWU's right to
14 have their faith-based school is not the issue. The
15 issue is the Community Covenant, a discriminatory
16 requirement, the details of which were articulated by
17 previous speakers, for admission into an environment
18 that trains lawyers who must take an oath to comply
19 with the rule of law, to adhere to our legislative
20 requirement to include access to justice within our
21 mandate to protect the public interest and who are
22 required to comply with the Human Rights Code.

23 The TWU Community Covenant is a document
24 requiring one's agreement to accept conditions that are
25 in total contradiction to the requirements for

1 graduating lawyers in Ontario being called to the bar.
2 As a member and supporter of the equity and aboriginal
3 affairs committee, this requirement should be viewed as
4 not only discriminatory against a number of groups or
5 communities, but is regressive and unacceptable by
6 today's standard.

7 In my view the issue before Convocation
8 is not one of religion. TWU as a body can believe what
9 it wants to believe. The issue is the requirement that
10 individuals not only agree to comply with
11 discriminatory behaviours, but also are required to
12 report those who are believed to have violated the
13 Covenant.

14 Interestingly enough, the Covenant that
15 was referred to earlier under the commitment and
16 accountability states that people -- TWU welcomes all
17 students who qualify for admission, recognizing that
18 not all affirm the theological views that are vital to
19 the university's Christian identity, but students sign
20 this Covenant with commitment to abide by the
21 expectations contained within the Covenant.

22 So they don't actually have to agree
23 with everything in the religious forum, but they have
24 to agree with the Covenant, which is quite interesting.

25 So we have not heard anything that

1 addresses what would happen to such individuals for
2 having violated the Covenant. Would they be expelled
3 or simply shamed and shunned? Either way the
4 repercussions would not be good.

5 TWU, in my opinion, cannot hide behind
6 allegations of religious discrimination against them
7 when the real and only discrimination is being
8 perpetrated by TWU by the requirements of their
9 Community Covenant.

10 Finally, the approval by other bodies
11 referred to by President Kuhn is not reason enough for
12 us to do the same. Several wrongs do not make a right.
13 The argument that all TWU law graduates would have to
14 be accepted by our Law Society and licensed, if not by
15 the conventional route then by some other option, is
16 simply one side of an argument to be determined at the
17 appropriate time if necessary. An hypothesis or belief
18 is just that and no more and should not provide the
19 basis for accrediting TWU.

20 I urge my fellow Benchers to be mindful
21 of our mandate to let right prevail. It is not right
22 to put our stamp of approval on discrimination. Do the
23 right thing and vote against accreditation.

24 And, Treasurer, I would ask for a roll
25 call vote on this motion when it comes before us.

1 Thank you.

2 TREASURER CONWAY: I've already
3 indicated that there would be a roll call vote, so
4 that's not an issue. Mr. Evans.

5 MR. EVANS: Treasurer, colleagues and
6 our visitors from TWU, in my view it is in the public
7 interest, both on behalf of our profession and on
8 behalf of the future students of the TWU law school
9 that we accredit the law school.

10 When our daughter left home for TWU
11 quite a number of years ago my wife and I were not
12 excited about the fact that she was going so far away;
13 however, we soon took comfort in the fact that she was
14 in a safe and secure environment and that she was
15 happy.

16 Our daughter has been very successful in
17 her life and my wife and I give some of the credit for
18 her success to her four years at Trinity Western, where
19 she received an excellent education and great life
20 experience.

21 TWU is well regarded, as we have heard,
22 for the high quality of its academic program. Because
23 of its emphasis on such qualities as virtue and
24 morality TWU is a great home away from home, a place
25 where students feel comfortable and safe.

1 We have been critical of the Community
2 Covenant, but in fairness I think we can acknowledge
3 that there is much in it that is positive, that
4 supports the university's efforts to ensure high
5 standards of morality among the student body, even if
6 we don't agree with all the provisions in what is quite
7 a lengthy document.

8 We all come to terms with changes in
9 society and changes in behaviour or in customs that
10 used to be looked down upon but are now embraced as
11 enabling us all to live in ways which are more
12 fulfilling and more real for each of us. We each come
13 to terms with these changes in our own ways and in our
14 own time.

15 We see this in our churches. What is
16 acceptable in some churches is not accepted in other
17 churches. Indeed, what is acceptable to some members
18 of a congregation is not acceptable to other members of
19 the same congregation.

20 If some of us are slower to move with
21 the times than others, can we not still be respectful
22 of other points of view? If I disagree with you it
23 doesn't mean that I am right and you are wrong or that
24 I am wrong and you are right.

25 It is our challenge as decision makers

1 to make the best decision we can, knowing that there is
2 no absolute right or wrong.

3 I believe that our beloved Bencher and
4 former Attorney General Marion Boyd came closest to the
5 mark two weeks ago when she said we are all children of
6 God. Should we not love all God's children and
7 recognize the spark of God which exists in each of us?

8 Let us look at the realities of the
9 situation at TWU. It has a diversity of students. It
10 does not ban gay and lesbian students nor does it expel
11 them. They take their place in their participation in
12 campus life and activities.

13 Jennifer Watton, an associate director
14 at the university, advised me that anyone is welcome to
15 attend TWU regardless of their sexual orientation or
16 religious beliefs and that many gay students have
17 attended and graduated from TWU, as have have students
18 from many faiths and ethnicities.

19 President Kuhn in his recent newsletter
20 stated that the Community Covenant, quote, "asks
21 students to respect our belief that marriage is defined
22 for our religious community as being between a man and
23 a woman."

24 I think this is a fair request to
25 respect their belief. I'm sure that most of us respect

1 this definition of marriage and that many of us are
2 united with our spouse in the traditional type of
3 marriage.

4 For myself, I respect this traditional
5 view of marriage and I also respect same-sex marriage
6 as permitted by recent legislation. I rejoice that the
7 United Church performs same-sex Christian marriages,
8 although it took members of the church about fifteen or
9 twenty years and a great deal of soul-searching to
10 reach this decision.

11 Perhaps the evangelical church and other
12 Christian churches will make this decision some day,
13 but that is not the issue for us today.

14 I personally would like to see the
15 Covenant worded in such a way that gays and lesbians
16 feel that they are included and that their form of
17 marriage is accorded respect; however, I take great
18 comfort in the message of President Kuhn, who stated in
19 his recent message, and again I quote, "The essence of
20 Christian values is found in Jesus Christ, who taught
21 us to demonstrate love and respect for all people at
22 all times, regardless of their faith, the colour of
23 their skin or their sexual orientation."

24 It would indeed be ironic if a gay
25 graduate of the TWU law school were denied the

1 opportunity of working in Ontario because of a decision
2 we might make today.

3 Treasurer, I will vote in favour of the
4 accreditation of the TWU law school.

5 TREASURER CONWAY: Mr. Silverstein
6 followed by Mr. Eustace followed by Mr. Festeryga.

7 MR. SILVERSTEIN: Thank you very much.
8 Heeding your words, Treasurer, I will be brief.

9 At the outset I would just like to say
10 that I will be supporting the accreditation process or
11 accreditation approval today, as TWU in my opinion has
12 satisfied all the necessary criteria in order to be
13 accredited.

14 We've heard a lot of talk about the rule
15 of law. That's one of the reasons I want to talk about
16 the rule of law at the end of my comments. But I've
17 heard a lot of talk around the room today using the
18 D word, discrimination, and I'm concerned that if we
19 fail to approve this application we're discriminating
20 against the beliefs of students who subscribe to the
21 Charter, people who believe in the traditional
22 definition of marriage and who do not want to
23 participate in a same-sex relationship.

24 Is it wrong for them to subscribe to
25 that belief? Should we deny them a legal education

1 because they hold traditional beliefs?

2 I still believe there is a vast
3 majority -- a vast number of people, maybe not a
4 majority, but certainly a vast number of people who
5 still maintain those traditional views about marriage.
6 I don't know if any polls have been taken, but again I
7 don't think it's universally held.

8 Today's discussion about discrimination
9 indicates that they're prepared to discriminate against
10 religious beliefs in a manner that is akin to what is
11 being complained about with TWU in the first place.

12 The discussion about discrimination
13 indicates that some Benchers are basically prepared to
14 impose a secular Charter of values that here before has
15 not existed in the creation of a law school. What the
16 discussion today indicates about discrimination is that
17 some Benchers are prepared to discriminate in the name
18 of discrimination.

19 Now, no matter how you look at it, it's
20 discrimination. We have heard that there's not to be a
21 hierarchical approach to rights and yet I believe
22 that's what would be happening if we were to turn down
23 this application.

24 I talked about a rule of law at the
25 beginning -- and this is my final point. I don't think

1 anybody today has commented on the Civil Marriage Act.
2 Federal legislation. Section 3.1 says, "No person or
3 organization shall be deprived of any benefit by reason
4 of the expression of their beliefs in respect of
5 marriage as the union of a man and woman to the
6 exclusion of all others." The traditional definition
7 of marriage.

8 We're bound by that legislation perhaps
9 even more than some of the legislation that's been
10 cited today because it is federal legislation. In
11 other words, to me, the Covenant complies with federal
12 legislation and we would be thumbing our nose, unlike
13 other Law Societies, if we were to turn down the
14 application because the Covenant, in my opinion,
15 complies with this legislation and we should not ignore
16 it. Thank you.

17 TREASURER CONWAY: Mr. Eustace.

18 Mr. Eustace followed by Mr. Festeryga.

19 MR. EUSTACE: Thank you, Treasurer,
20 honoured guests.

21 I think a lot of the commentary that's
22 gone on today would be very applicable if we were
23 approving the law school; we're not. The law school
24 has already been approved.

25 So I think we have to sort of gear our

1 comments to what happens next. Are we going forward?
2 Are we going backwards?

3 The last two Treasurers of this Law
4 Society participated in the formation of the reports
5 which are before us. Those reports are positive. So
6 where are we going?

7 The Government of British Columbia has
8 approved this law school, the British Columbia Law
9 Society has approved this law school. I understand
10 Alberta and Saskatchewan has as well.

11 Somewhere along the way we're going to
12 have a graduate, whether the graduate is set up by Bob
13 here and Eugene is arguing, one of these graduates is
14 going to come to Ontario and say, "I want to practice
15 in Ontario." Is the Law Society here then going to say
16 they can't practice here? Eugene will bring an
17 application with the Law Society as a respondent.
18 They're going to go to court, we're going to lose.
19 This Law Society will lose and I think there will be
20 consequences of embarrassment coming from that.

21 So what I'm saying is on a common sense
22 basis I think we have to approve this. Thank you.

23 TREASURER CONWAY: Mr. Festeryga.

24 MR. FESTERYGA: Good afternoon,
25 Treasurer. Thank you.

1 Fellow Benchers -- and I'm very proud to
2 say that for the first time -- I also wish to again, as
3 everyone else has, welcome our very distinguished
4 guests.

5 Mr. Kuhn, I don't agree with much of
6 what you said, but I thought you conducted yourself
7 very professionally and showed a great deal of courage
8 in coming and speaking to us here today.

9 One thing I got to say for Trinity
10 Western University is they have done something I never
11 thought would be done and hasn't occurred in 34 years,
12 which is my wife and I agree about some social and
13 political issue.

14 I don't think that Audrey and I could be
15 any more different. When you get a chance, which I
16 hope you will soon, to meet her, you won't believe
17 she's actually married to me. Not only is she
18 beautiful, she's incredibly intelligent. Joe will tell
19 you she's beautiful, but I will corroborate that right
20 now.

21 But I was born and raised in a very
22 urban requirement, very urbane. I was talking to
23 Retired Justice Ferrier about my dad at lunch today.
24 My dad grew up and played professional football for a
25 long time at the CFL and he was in the CFL when African

1 American players were coming over the border because
2 they couldn't play in the NFL.

3 And my dad spent an enormous amount of
4 time with men of what we now say of colour, and they
5 were in our home as I was growing up all the time,
6 because even after my dad retired we had professional
7 football players all the time coming into our home.

8 When we went to Alberta we met with
9 Norman Kwong, who became Lieutenant Governor of
10 Alberta, and my dad said, "Whatever you do, never play
11 cards with Norman Kwong. They don't call him the China
12 Clipper for nothing."

13 But in any event, we spent a lot of time
14 with a lot of people -- Harry Jerome, who I understand
15 was from British Columbia and passed away on Lions Gate
16 Bridge, was a great Canadian track star and who was an
17 extremely good friend of my dad's and who my dad lived
18 with.

19 He also had this strange relationship
20 with a very unusual man who my dad referred to as Lee,
21 who is also known as Liberace.

22 Now, my dad would always tell me that
23 there were gay players, but from '47 to '54 when he
24 played, you didn't indicate that you were gay. It was
25 something that was kept extremely secret.

1 He also dealt with racism towards
2 team-mates and was always very proud when the teams
3 stuck together, particularly in Montreal. It seemed it
4 wasn't as bad for some reason when they went out west.

5 My wife's family, she was born and
6 raised on a small family farm. She was German
7 Mennonite. Didn't speak English until she went to
8 public school, which was a one-room schoolhouse in
9 Essex County. She is a very true Mennonite, except for
10 her clothes, and I assure you that her church would
11 make TWU look like UCLA in the 1960s.

12 But when we read the issues which are
13 being discussed here today, when we looked at the
14 issues of the Covenant, we both agreed that we would
15 never want to sign that Covenant or to participate in a
16 school which required people to sign the Covenant and
17 we both agreed we wouldn't want our children to sign
18 their Covenant. Our son is presently in law school and
19 our daughter hopes to go to law school very soon.

20 But we both agreed that it is important
21 that the Law Society approve accreditation of this law
22 school and I firmly believe that's important.

23 I'm not going to take up a lot of time
24 going over a lot of academic stuff because I'm just a
25 simple country lawyer from way down in Southwestern

1 Ontario.

2 TREASURER CONWAY: Yes, you told me that
3 once before and I believed you.

4 MR. FESTERYGA: I seem to remember
5 winning that case.

6 TREASURER CONWAY: Yeah, you did, I'll
7 admit that.

8 MR. FESTERYGA: But my position on this
9 is that Mr. Bredt is correct and that Mr. Eustace, I
10 thought, spoke well on the common sense approach to the
11 thing.

12 I'm very cognizant to the very strong
13 academic arguments made by people such as my classmate,
14 Mr. Wardle, who I have no problem disagreeing with, and
15 I also appreciate all of the arguments that have been
16 put forward and I've listened to them very carefully,
17 read all the documentation and I read all the stuff
18 from April 10th.

19 But it seems to me, ladies and
20 gentlemen, that you have to make this decision based on
21 what we are here to deal with, which is will these
22 people make good lawyers in Ontario when they get
23 called -- when they finish law school and then come
24 here to be called to the bar. That's the issue. And
25 the seminal point, the important point, is when they

1 take the oath here. If they take the oath here and
2 they abide by it, then there's no issue.

3 If they discriminate, "they" being
4 individuals who have graduated from TWU, if they
5 discriminate against people with regard to sexual
6 orientation or race or anything, then the Law Society
7 is here to take steps.

8 I'm not going to -- and I don't think we
9 should, please -- deal with what people may or may not
10 do down the road. If they get called to the bar then
11 we can deal with those issues as they materialize.

12 I'm not going to hold it or deal with it
13 on the basis of what some person between 19 to 22, 23
14 years old signs, but what they do when they are out
15 practising law, which is what we really should be
16 concerned about.

17 We're not agreeing with or approving
18 TWU's policy by giving them accreditation; we're
19 dealing with the issue of are they a law school which
20 will provide an appropriate legal education to people
21 who will come to Ontario, write the bar and take the
22 oath and I see nothing in the material that's been
23 provided to suggest they're not.

24 So I don't think it's appropriate to
25 deal with this on the basis that we're not going to

1 provide accreditation and I agree with Mr. Eustace, I
2 don't think it's a position that's going to be upheld
3 in the long run.

4 I don't agree with Mr. Kuhn when he
5 says -- and I just want it very clear and I wouldn't
6 have taken that tack if I was him -- that anybody who
7 votes against accreditation is in any way pandering to
8 any political or social interest.

9 Those are my submissions and I thank you
10 very much and I look forward to working with each and
11 every one of you as things proceed.

12 TREASURER CONWAY: Mr. Krishna followed
13 by Mr. Sullivan followed by Mr. Porter.

14 MR. KRISHNA: Thank you, Treasurer. I
15 have entered through the back door of many rooms in my
16 time. I was seventeen years of age in England, ready
17 to go to university and I applied for a job in a hotel
18 as a waiter. Big job as a waiter. They said, no, you
19 cannot serve in the front room. We'll give you a job
20 as a porter in the back room, which is where I worked.

21 And why could I not serve in the front
22 room? Because no coloured boy was going to serve white
23 people. So I have lived my fair share in various
24 shapes and forms.

25 I'm sorry, President Kuhn, that we have

1 put you through this stress and exacerbated your
2 medical condition and I am not going to go into the
3 erudite and intellectual and learned arguments which I
4 have heard in this room for two days. I have them all
5 filed appropriately under "for" and "against" and when
6 the time comes occasionally in the future if I'm ever
7 called to argue the point I will press the right button
8 and bring it out.

9 But I want to talk about some more
10 prosaic matters and I realize we are at the end of a
11 long two days' debate.

12 You'll notice, President Kuhn, that I am
13 not being tentative. I am being firm. I have never
14 heard so many tentative people as I heard on April the
15 10th, people who have never been tentative in the last
16 fifty years suddenly were tentative about everything.

17 I want to speak about three or four
18 issues and they are prosaic issues, this is not at the
19 high level of intellectual debate that you have come to
20 appreciate over two days.

21 The accreditation process. I know a
22 little bit about that. For 26 years I was the
23 executive director of the national committee on
24 accreditation and during those 26 years we accredited
25 foreign graduates from approximately 60 different

1 countries and some of those countries were very
2 well-known countries such as the United States and the
3 United Kingdom and Australia and New Zealand and some
4 of those countries were countries which had very
5 backward human rights or legal systems.

6 We have accredited people from Nigeria
7 and Uganda, which have their own views and treatment of
8 gays. We have accredited people from Iran during the
9 height of their crisis and Iraq and Saudi Arabia, which
10 won't allow women into law schools, no matter of what
11 sexual persuasion. From China, one of the most
12 repressive regimes, Russia, and so on.

13 We never once asked what was the moral
14 value of the school or the religious value of the
15 school or the rule of law, the ethical value of the
16 country that you have come from. We evaluated on the
17 basis of the academic criteria and then we said you
18 must do thus and so in order to become equivalent to a
19 Canadian law graduate from an accredited Canadian law
20 school.

21 If they, these graduates, go to Trinity
22 Western and graduate from British Columbia, which has
23 an accredited school, then what happens to these
24 students when they come out? Some have suggested they
25 go through the national committee on accreditation.

1 Well, first of all -- and that's just a minor
2 procedural issue, or is it? The national committee on
3 accreditation does not have any mandate at all over
4 domestic graduates, except Quebec, and its mandate
5 would have to be changed and that mandate change would
6 have to be approved by the thirteen law societies.
7 They cannot do it unilaterally.

8 TREASURER CONWAY: It's up to fourteen
9 now.

10 MR. KRISHNA: Fourteen, there we are.

11 So that would be a process. Then if
12 they got to the national committee, let's say, after
13 all of this, what would the national committee say to
14 all these graduates? It would say you are required to
15 take Canadian courses to bring yourself up to an
16 equivalent that we require of foreign graduates and
17 they will say but I have a certificate that says I have
18 taken all these courses, constitutional law,
19 administrative law, criminal law, all these other
20 courses and they'll say no, no, you have to first of
21 all pay us a fee to have your credentials evaluated, go
22 through the process for six months and then we'll tell
23 you to take the same thing.

24 Do you really think that would withstand
25 judicial scrutiny? Are our judges of that calibre that

1 they're going to buy into that and say oh, yes, that's
2 all entirely proper. They've got a route. A little
3 extra money, six months more, but we haven't done
4 anything untoward.

5 I don't have a solution for you; I'm
6 just telling you about some of the issues because
7 you're bright enough to work out your own solutions.

8 Mobility. We fought for mobility. It
9 was a long process of negotiation and last year or
10 was it -- just last year Quebec came on board and
11 everybody is on board and for once we have true
12 national mobility. And there are two distinct wings to
13 mobility, what we call temporary mobility and permanent
14 mobility.

15 Under the scheme that is being discussed
16 with British Columbia having acknowledged and
17 accredited, a TWU graduate who is a member of the bar
18 of British Columbia can as of right under the mobility
19 agreement come and argue a case and represent a case,
20 represent a client for 180 days in Ontario. We cannot
21 exclude that person. So they have temporary mobility.
22 For 180 days we have to tolerate their abhorrent views.

23 Permanent mobility is more complicated
24 because you have to satisfy the requirement of the
25 place where you're seeking admission and one of those

1 requirements is that you will have to -- and if you
2 want to look at the requirements they are at page 1743
3 of BoardBooks at paragraph 5 -- one of those
4 requirements is Ontario could impose any other
5 qualifications that ordinarily apply for lawyers to be
6 entitled to practice and one of those would be a degree
7 from an accredited institution and this institution
8 would not be accredited. So you'd have a bit of an
9 issue to resolve.

10 Now, I say mobility is not a big issue
11 because, frankly, we are a country that believes in
12 provincial conformity and different provinces can have
13 different rules.

14 We've got thirteen securities
15 regulators. The Supreme Court turned down the national
16 securities regulator and said, no, no, Nunavut should
17 have its own securities regulator, very important
18 jurisdiction in the floatation of equities.

19 It's a little unfortunate, President
20 Kuhn, and I really feel very sorry about this, because
21 the process that we adopted, now that it's water under
22 the bridge we can't do anything, is slightly flawed.
23 We should have probably had this debate before we sent
24 the approval forward, rather than having the debate
25 after the approval has gone forward to British Columbia

1 and the government, but anyway that is water under the
2 bridge, there's nothing that we can do.

3 Two short points. What do we do with an
4 Ontario lawyer who takes up a faculty position at TWU
5 and has to sign the Covenant? What do we do with that
6 lawyer? Is that professional misconduct for signing
7 that Covenant and agreeing to this form of
8 discrimination?

9 And at the end of the day, Treasurer, I
10 ask this question. If we do not accredit these people,
11 who is actually going to suffer at the end of the day?
12 Who is going to suffer? The students who do not get
13 admitted into law school? The students whom we deny
14 the opportunity to pursue their hopes and ambitions and
15 career? The students who will be forced to foreign law
16 schools and will have to go through additional cost and
17 expense? Who is going to benefit?

18 I am uncomfortable with the tension of
19 religion and sexuality. I spent twelve years from the
20 age of four to the age of sixteen under the Jesuits. I
21 went to the Catholic church twice a day for twelve
22 years. I suspect that's a little bit more than some of
23 my Catholic friends in this room. And look what good
24 it's done me.

25 But, more importantly, what harm did it

1 do me? I did not have to sign a Covenant, but I'm
2 talking about the 50s and there were certain moral
3 expectations in a Jesuitical institution. You did not
4 have to sign a Covenant.

5 I had a choice not to go. They said if
6 you do not believe in our moral expectations you don't
7 need to come. You're a free person. You just won't
8 get a good education. And my father said, well, given
9 the balancing of the two, the desire for a good
10 education and this theoretical Covenant, which was an
11 expectation rather than something written, you made a
12 decision.

13 The story, however, has a happy ending.
14 I never converted. After twelve years I never
15 converted. I remain a devout Hindu to this day and
16 proud of it. It didn't do any harm.

17 So anyway, I'd like you to consider some
18 of these issues in making your choices, because they
19 are issues that are going to arise down the road and I
20 know some of you have said, well, we'll confront those
21 issues when they come up down the road. It reminds me
22 of Wolf Goodman, who when he was an articling student
23 started working on case called Imperial General
24 Properties. He was in the Supreme Court of Canada
25 twenty years later on that case, by which time he was a

1 named partner and Wolf was up there arguing with the
2 bench and he was saying to them, "Well, Your Honour, if
3 you go that way what would happen in this situation
4 and, Your Honour, if you say what you're saying what
5 would happen in this situation." And the bench looked
6 at him and said, "Mr. Goodman, we'll cross that bridge
7 when we come to it."

8 He had been at it for twenty years. He
9 was at the bridge. They wanted him to go another
10 twenty to cross the bridge.

11 Mr. Kuhn, I'm very sorry to have put you
12 through this, but I must say I was impressed by your
13 advocacy. It was absolutely superb.

14 But my final comment, Mr. Kuhn, for what
15 it is worth is this. Although I have entered through
16 the back doors of many rooms, I will assure you that in
17 this chamber, in this building, I have been treated
18 with nothing but the highest of respect and
19 collegiality and friendship. No Bencher ever -- and I
20 have been here 24 years and there have been a motley of
21 Benchers in that period of time.

22 This is the place of the highest
23 integrity. It makes me proud to be a member of this
24 bar and the sentiments that were expressed to you I can
25 assure you will never be shared by anybody in this

1 room. I disagree with half of them 50 percent of the
2 time and not the other 50 percent, but that 50 percent
3 keeps changing. Sometimes it's made up of one group,
4 sometimes it's made up of the other, but they're
5 always, always just absolutely delightful, respectful,
6 honest, good lawyers. Thank you.

7 TREASURER CONWAY: Mr. Sullivan.

8 MR. SULLIVAN: Thank you. Given the
9 hour, Treasurer, I'll just say I support accreditation.
10 The reasoning has been given before. Thank you.

11 TREASURER CONWAY: Thank you,
12 Mr. Sullivan. Mr. Porter.

13 MR. PORTER: This has been again a
14 wonderful debate. I've listened to Susan Hare, Jack
15 Braithwaite, Vern Krishna, it's a privilege.

16 Canada is a brew of diversity and I hope
17 that diversity will work. I am uncomfortable with our
18 screening thoughts of our graduates.

19 The Law Society is exercising a
20 licensing function. That function, to my knowledge,
21 has never entailed a litmus test for opinions which the
22 Benchers of the Law Society may regard as correct.

23 When we attend the graduations, we
24 observe the people walking across in front of us, we
25 have not the faintest idea of what they're thinking.

1 All sort of people with views that are in conflict with
2 accepted legal norms get called to the bar, including
3 misogynists, racists, anarchists, the list would go on
4 and on.

5 It would not be proper, in my opinion,
6 for the Law Society to single out evangelical
7 Christians with special exclusion on the theory that a
8 TWU education is insufficient to correct what are
9 perceived by critics to be character defects rooted in
10 their religious world view.

11 We should not be monitors of proper
12 thought. Thoughts change. We will become a police
13 over thought, thought varied, thought and belief is our
14 clarion call of liberty.

15 TREASURER CONWAY: Ms. Hare.

16 MS. HARE: I decline, thank you,
17 Treasurer.

18 TREASURER CONWAY: Thank you, Ms. Hare.
19 Mr. McDowell.

20 MR. McDOWELL: Let me first of all thank
21 everyone who has commended me for my courage, using
22 that word in the "Yes Minister" sense, I suppose,
23 usually courage coming before a fall.

24 Let me speak to the intersection of
25 faith and the public interest; secondly, applying the

1 law with a question mark after it; and, third, a word
2 directly to Trinity Western.

3 You may have thought, and I've thought
4 of this over the past few days, the story of a man who
5 is marooned on a desert island and his rescuers come
6 after a year or so and he's showing them around the
7 island and he said "I built two churches over here" and
8 they said, "Why two?" and he said, "Well, I worship in
9 this one but I won't set foot in that one."

10 To me we can smile at that because it
11 points up the power that still lies in sectarian
12 difference and in the exercise of our discretion we
13 have to put aside our differences of faith and our
14 views of the repugnance of other faiths and in this
15 case of some of the aspects are indeed repugnant.

16 So I say respectfully that, for example,
17 Ms. Boyd's excellent theological question, to which
18 I'll return, is for another day.

19 Something that the opponents of
20 accreditation have simply ignored is the accommodation
21 that was made when same-sex marriage came into being in
22 the Civil Marriages Act. I won't read it for you
23 again, but it preserved a zone of protected thought and
24 belief around traditional marriage so that we're going
25 to give every benefit of the law federally and

1 subsequently provincially to same-sex marriages, but it
2 carved out a zone of freedom of conscience and religion
3 around the tenets of traditional marriage.

4 And so this is why for me I can't look
5 at this situation through the lens of Dr. King in the
6 speech from the Birmingham Jail, I can't look at it in
7 the same terms as Jack Braithwaite looks at it. I
8 think that it is too easy to look at this and say it's
9 like the Bob Jones University case.

10 In our consideration of the rule of law,
11 as many have implored us we have to consider, we have
12 to consider this zone of protection which surrounds the
13 intersection of the law, of faith and of same-sex
14 marriage.

15 This is why we can't grant conditional
16 approval, as attractive as that might be, but you can't
17 protect freedom of conscious and religion by saying we
18 recognize that you have that right, but we're going to
19 ask you to renounce part of that right in order to be
20 approved.

21 So Mr. Mercer in his submission that TWU
22 was a gatekeeper should not impose limitations that the
23 Law Society would not impose itself.

24 There is a clean logic to this, but I
25 say that this conflates the role of the regulator and

1 the regulated, first of all.

2 Secondly, we make no inquiries of
3 anybody else, as a number of people have said, whether
4 on gender issues, whether particular institutions
5 protect equality in the way we would like and I
6 question -- and I'll return to this -- whether we're
7 entitled to make these inquiries of Trinity Western
8 given what I see as the choice just touched on by
9 Mr. Krishna, the choice of association in a community
10 with minority religious views.

11 So I ask myself the question if we don't
12 accredit are we applying or creating the law? The
13 passage which I just can't seem to get myself around
14 comes from TWU, one, to state that the voluntary
15 adoption of a code of conduct based on a person's own
16 religious beliefs in a private institution sufficient
17 to engage section 15 would be inconsistent with freedom
18 of conscience and religion.

19 So I hear Mr. Champion, but when we're
20 talking about the imposition of the Covenant, we have a
21 clear question that needs to be sorted out, whether
22 this is a voluntary decision or whether this is a
23 coercive decision.

24 As matters stand in my reading of
25 Amselem, we don't inquire into the tenets of faith and

1 as I read Whatcott we permit the expression of
2 religious beliefs which offend the dignity of gay and
3 lesbian persons. This is why the B.C. Civil Liberties
4 Association said we have a long history of supporting
5 the LGBT community in every one of its important
6 battles, but we can't do it here.

7 Now, Mr. Mercer in a moment of what I
8 thought was great candour said, "We are working through
9 the place of freedom of religion in our public and
10 constitutional law" and I think that's a fair way of
11 putting it.

12 I acknowledge that I'm not omniscient
13 about what the Supreme Court of Canada will do. First
14 there's the Securities reference and then there's the
15 *Nadon case. We may get to a place where the court
16 says that we will not protect religious beliefs to the
17 extent that they collide with our notions of equality.
18 We might no longer give public funds to separate
19 schools. We might want to create a hierarchy of rights
20 within the Charter. We might advocate a secular
21 Charter, as Justice L'Heureux-Dube has done in Quebec
22 with great vigour. We might want to withdraw
23 charitable tax status from institutions which do not
24 adhere to our notions of equality.

25 But these are all big questions. These

1 are all big questions and I don't think on my reading
2 of case law that we are there yet.

3 I look at the primacy of faith both in
4 the preamble to the Constitution Act and in assigning
5 within the Charter the fundamental status to the right
6 to freedom of conscience and religion in saying that.

7 So distracting myself by watching
8 Mr. Braithwaite and Mr. Anand's team, my team, the
9 Montreal Canadiens, I have been about thinking this and
10 I'm thinking that Mr. Mercer and Ms. Rothstein and
11 Ms. Minor are the Gretzkys and the Lemieuxs, they're
12 seeing, well, here is where the play is developing,
13 here's what the Court is going to do, here's where I
14 have to go because that's where the puck is going to
15 be. I'm the big stay-at-home defenceman. I'm the
16 Moose Dupont. Unfortunately I can't get myself to that
17 point, that if we have to apply the law in our
18 consideration of the public interest, I don't think we
19 are permitted as a matter of law not to accredit
20 Trinity Western for all the reasons that I've said.

21 Now, let me close with this. These are
22 observations. President Kuhn, sir, you said that you
23 would be provocative. Let me be provocative back and I
24 say this as someone who supports your accreditation.
25 But Ms. Boyd's question, I think, does deserve an

1 answer, not here, but within your own prayer and
2 reflection and fellowship and consideration. Ms. Boyd
3 asks if as a religious person I believe that God
4 created us all, that God loves us all, then what do I
5 make of a human institution that tells people they
6 can't be who God created them to be?

7 And I say that just as our jurisprudence
8 is not immutable, the Covenant is not immutable. It
9 has changed in relation to sexuality, it has been
10 relaxed a little bit, in my reading of it. It has
11 changed in relation to the questions of smoking and
12 drinking.

13 And I'm sure that you will reflect and
14 probably you are reflecting whether it should evolve to
15 treat matters of sexuality, whatever the Biblical
16 origins are thought to be in matters of conscience.

17 In saying that I have reflected that for
18 35 years after Benchers first sat in this room
19 homosexuality or sodomy was a capital crime, it was
20 until 1869. It remained a crime until 1967 and
21 Mr. Trudeau's omnibus bill.

22 It was treated as a mental illness until
23 that changed in the late 1970's. It became a
24 prohibited ground of discrimination in the 1980s. It
25 goes on and on and on, and my point is the world is

1 changing and it isn't changing back. The importance of
2 this, I think, is reflected in some of the submissions
3 you've heard from my colleague Ms. Hare, from my
4 colleague Ms. Go. I struggled to try and fit those
5 into my thinking, but the importance is this, that
6 particularly for our young people, the feeling that
7 this is tantamount to racial discrimination becomes a
8 self-fulfilling thing, that this is seen as and it will
9 continue to be seen as the civil rights movement of our
10 generation and the generation after.

11 I predict that the Covenant will change,
12 not because of anything we do, but because your own law
13 students will make you change it, the same way that
14 Queen's law students made Queen's secularize its
15 convocation processes in the 1980s.

16 I think that will be a good thing for
17 Trinity Western. I think it will make a great
18 university a greater university because of the
19 inclusion that that will mean for your university,
20 which is, like any university, a community of scholars.
21 I believe that every university deserves to have my
22 friend Mark Berlin teach there.

23 And I say all of that with the greatest
24 of respect, sir. Eventually, as seen through the lens
25 of history, as Mr. Falconer says, I believe our

1 children will say this is all irrelevant because
2 Trinity Western with the passage of time has changed
3 its own Covenant.

4 Thank you, Treasurer.

5 TREASURER CONWAY: I want to make sure
6 that everyone has an opportunity to speak. I have
7 three speakers left on the list, Ms. Rothstein followed
8 by Mr. Callaghan followed by Mr. Ferrier.

9 MR. PORTER: Treasurer, who was Moose
10 Dupont?

11 TREASURER CONWAY: I've admonished
12 Benchers from making reference to materials that are
13 not in the ... especially references to hockey cards.

14 MS. ROTHSTEIN: In response to you,
15 President, I want to make very clear where I come from.
16 I agree that TWU is entitled, very entitled, to
17 religious freedom and religious conscience and freedom
18 of conscience and that we Benchers, Ontarians and
19 Canadians, must accommodate TWU's adherents those
20 rights to deeply and sincerely follow their faith.

21 But in my view it is, nevertheless,
22 hypocritical for TWU to complain that we who oppose
23 accreditation are intolerant of TWU's adherents'
24 religious freedom when it is TWU that will not tolerate
25 conduct by its prospective students and students which

1 is absolutely integral to their human dignity to
2 practice their own religious beliefs and to engage in
3 loving and sexually intimate acts with whomever they
4 choose within the privacy of their own homes.

5 In my view, it is unfair to say that
6 those from whom TWU seeks a very significant privilege,
7 we the Law Society, the privilege to be accredited by
8 us, that we must nevertheless be tarred with the label
9 of religious intolerance because we as a Law Society
10 insist on this, that all law schools which we accredit,
11 all law schools which we accredit permit access to the
12 halls of the legal academy without direct or indirect
13 barriers based on prohibited grounds. That's all we
14 insist on, nothing more.

15 We are not intolerant of TWU's views or
16 of their teachings or their sincerely-held beliefs or,
17 indeed, how they govern their lives in the privacy of
18 their homes or in their churches, but, yes, we are
19 intolerant of what we view as the Covenant's coerced
20 imposition of those views on the rights of
21 non-adherents. So I may not and cannot accredit TWU.

22 TREASURER CONWAY: Mr. Callaghan.

23 MR. CALLAGHAN: When we last spoke I had
24 outlined my preliminary thoughts and I have thought a
25 great deal about it since then.

1 If you recall, my view was that this was
2 a legal determination at its core, that we are
3 dispensing with a privilege or a right and that we had
4 to have a standard of correctness. In other words,
5 this isn't a matter of our own personal views, our own
6 beliefs, and for that reason I looked last day at the
7 law as I understood it.

8 Since then I have come to the view that
9 it is a matter of Charter values and a determination as
10 to how to reconcile two conflicting Charter values,
11 fortified in part by the opinions from Torys and Oslers
12 on that point, in that we will be held to a standard of
13 correctness when someone looks back on this.

14 And so it leaves us having to look, in
15 my view, to what the law as it is. As Mr. McDowell so
16 eloquently pointed out in yet another hockey analogy,
17 that history may judge those of us who are interpreting
18 the law today as not being as advanced as those who are
19 going by their own personal views. But there you are.
20 That's where we're at. They're entitled to
21 determination of their rights as it exists today.

22 In my view, we have to look to what in
23 particular the Supreme Court of Canada has said. I say
24 that because the determination made in this room and
25 the debate in this room is not about our own statute,

1 per se; it is really about how we view the public
2 interest and how we view the public interest as it
3 relates to the conflict between the religious freedoms
4 and the freedom of equality.

5 So I feel compelled to look to the case
6 law and I last time referred to TWU, the case, and I am
7 cognizent that the Supreme Court of Canada spent a
8 great deal of time considering and balancing those
9 rights, not for the benefit of TWU, not for the benefit
10 of Convocation, but for the benefit of all Canadians,
11 and that if we're going to live in a rule of the Law
12 Society where precedent matters, where we're going to
13 have decision makers who follow the rule of the law of
14 the day, then we, as subordinate decision-makers,
15 albeit with a modicum of discretion, are going to have
16 to listen to the Supreme Court of Canada.

17 That's the way our system works. It
18 ought to work that way because we are just one of many
19 administrative bodies making decisions about people's
20 rights and people must have the confidence that they
21 come to these administrative bodies and that we apply
22 the law as it is seen for all Canadians, not our own
23 personal view necessarily. It sounds unfair.

24 As I said last day, in Regina versus
25 Bedford, the Supreme Court of Canada was unashamed

1 about saying it's unfair. We lie on the vertical axis
2 of precedent we must follow, they lie on the horizontal
3 axis. And there are many people in this room who
4 probably have a better insight into the Supreme Court
5 Canada than I and, indeed, would probably tell you the
6 Supreme Court of Canada as it currently proposed may go
7 this way or that. I don't have that luxury.

8 So I went back, because I was most
9 intrigued, particularly by Bencher Symes' eloquent
10 comments, and I tried to look to see how much since TWU
11 things have changed and there certainly are some
12 changes, but I don't see that there's a fundamental
13 change.

14 In N.S., for example, the Supreme Court
15 of Canada said to remove religion from the courtroom is
16 not in the Canadian tradition and then went on to
17 balance those rights. That's in the courtroom. That's
18 not in a private institution. That's not in a private
19 institution coming to ask for accreditation.

20 So religion, even at the base of our
21 civil society and our civil dispute, exists and is
22 accepted.

23 I went to Whatcott and that case, as
24 we've heard, dealt with hate speech as it related to
25 homosexuals. And yet the Supreme Court of Canada said

1 Mr. Whatcott and others are free to preach against
2 same-sex activities, to urge its censorship from the
3 public school curriculum and to seek to convert others
4 to their point of view.

5 They went on to say it's not unlimited,
6 it's limited so far as they can't use hate speech, but
7 clearly they were entitled to preach, to urge
8 censorship and to convert others to their point of
9 view, no matter how repugnant many other people believe
10 those views to be.

11 And I came away from looking at the
12 cases that, yes, there are changes, but at the core of
13 what TWU discussed, things had not changed to that
14 great a degree.

15 Some here have said, oh, well, that
16 was -- they don't have the same statutory mandate, but
17 in that case they were talking about teachers,
18 educating teachers. Can it be said that there should
19 be less diversity in our teaching faculty than there is
20 in our legal world? I wouldn't think so. Should
21 teachers be less tolerant of secular values in society
22 such as equality? The Supreme Court of Canada didn't
23 think so then and I don't think so now. I'm not sure I
24 see the difference.

25 I come back to the passage I read last

1 month and said if this private institution can create
2 itself under its auspices of its religious beliefs, if
3 it can educate, then it cannot be reasonably
4 concluded -- and this is the Supreme Court of Canada --
5 that private institutions are protected but their
6 graduates are de facto considered unworthy of fully
7 participating in public activities.

8 So I look at where we sit, as I said
9 last time, in the spectrum. We sit at a point in time
10 not where we can actually tell Trinity Western not to
11 exist, we can't tell them not to exist, not to have the
12 Covenant, we're at a point in time where thus far the
13 Supreme Court of Canada say they can exist and they can
14 have their Covenant.

15 The question is can we de facto tell
16 their members or their students that they can't be
17 admitted to the Society. Are we going to say to them
18 that the Law Society of Upper Canada is not for
19 everyone? It's not for you. And if we are, as
20 Mr. Krishna says, and we've said it to others, is it
21 the standard we're applying to others.

22 I say all this with full recognition
23 that at any time the Supreme Court of Canada may decide
24 that that balance is not the balance that was in the
25 TWU decision, that they may well say that the balance

1 of society is now in favour of equality rights and that
2 this is too much action against equality rights to be
3 protected by religion. I accept that that can be an
4 outcome and it may be the outcome that we live with at
5 the end of the day.

6 But as I sit here today when I look at
7 trying to determine the rights of these de facto
8 students and the rights of this institution, the law
9 doesn't drive me there and I'm sorry that -- I'm not
10 sorry, I accept that in our role that's what I have to
11 do.

12 I should say to TWU, the views around
13 this room are heartfelt. It's not with anger, though
14 some are very strong in their views. These are people
15 who are really grappling with a social issue that
16 they're trying to assess and where we as a Law Society
17 fit. I hope everybody recognizes that watching and
18 hearing these debates. This is a societal issue and
19 will remain a societal issue for years to come.

20 TREASURER CONWAY: Mr. Ferrier. I
21 believe you have the last word before we take the vote.

22 MR. FERRIER: Thank you, Treasurer. I
23 will be very brief. I think the issues have been dealt
24 with thoroughly.

25 I agree with the submissions made to the

1 effect -- I think Mr. Campion was the first to say
2 this -- that the issue is at the time of admission to
3 law school. That's what this is about. And some
4 students will be discriminated against in their
5 application for admission because they will not be able
6 to undertake the Covenant and that lies at the core of
7 my position.

8 I agree with the legal analyses that
9 have been made by Mr. Mercer, Ms. Rothstein and others
10 and I respect the opposing point of view, but I don't
11 agree with it.

12 And some of the speakers have made
13 personal references, which I didn't think we were going
14 to be permitted, but there were, so I'm going to make a
15 personal reference.

16 TREASURER CONWAY: Not permitted.

17 MR. FERRIER: With a brief anecdote.

18 TREASURER CONWAY: It's better to ask
19 forgiveness than permission.

20 MR. FERRIER: This concerns a Protestant
21 Christian in a Catholic university. In 1959, when I
22 was admitted to its law school, the University of
23 Ottawa was a Catholic university run by the Oblates of
24 Mary Immaculate, which was an order of Catholic
25 priests.

1 In our first year law we even had a
2 priest as one of our lecturers in legal history and
3 philosophy.

4 I had been born into a protestant family
5 and was so raised during my formative years. And I add
6 it was a baptist family. And I was baptised when I was
7 fourteen years of age, not with the holy water on my
8 forehead, I was a fully immersed baptist. That was the
9 term in those days.

10 The tenets of the Catholic church, of
11 course, were well-known, as they are today. I did not
12 then and do not now adhere to many of the tenets of the
13 Catholic Christian church.

14 Had I been required to undertake a
15 Covenant adhering to those tenets, I would have not
16 been able to attend law school in Ontario because my
17 personal circumstances at the time were such that
18 Ottawa U was my only option. I would not have become a
19 lawyer, a Bencher, Treasurer of the Law Society of
20 Upper Canada, or a judge of the Ontario Superior Court
21 of Justice.

22 Although the Catholic church, the
23 presence of the Catholic church was everywhere on
24 campus, everywhere, no Covenant was required of me.
25 That is the difference.

1 I respectfully will be voting against.

2 TREASURER CONWAY: That concludes our
3 deliberations. We're now going to move to the vote. As
4 I mentioned earlier, the vote will be recorded. I'm
5 going to ask Mr. Varro to read the question. The
6 response for each Bencher should be yes, no or abstain.

7 Mr. Varro.

8 SECRETARY: Thank you, Treasurer. The
9 question: Given that the Federation approval committee
10 has provided preliminary approval to the Trinity
11 Western University law program in accordance with
12 processes Convocation approved in 2010 respecting the
13 national requirement and in 2011 respecting the
14 approval of law school academic requirements, should
15 the Law Society of Upper Canada now accredit Trinity
16 Western University pursuant to section 7 of by-law 4?

17 TREASURER CONWAY: So the question on
18 the floor has been put. All right. So we will start
19 the roll call.

20 SECRETARY: Mr. Anand?

21 MR. ANAND: No.

22 SECRETARY: Mr. Armstrong?

23 Mr. Armstrong? Ms. Backhouse?

24 MS. BACKHOUSE: No.

25 SECRETARY: Ms. Boyd?

1 MS. BOYD: No.

2 SECRETARY: Mr. Braithwaite?

3 MR. BRAITHWAITE: No.

4 SECRETARY: Mr. Bredt?

5 MR. BREDT: For.

6 MS. POTTER: Excuse me, we can't hear
7 the votes on the phone.

8 SECRETARY: Mr. Burd?

9 MR. BURD: Yes.

10 SECRETARY: Mr. Callaghan?

11 MR. CALLAGHAN: Yes.

12 SECRETARY: Mr. Champion?

13 MR. CAMPION: No.

14 SECRETARY: Ms. Corsetti?

15 MS. CORSETTI: Yes.

16 SECRETARY: Ms. Dickson?

17 MS. DICKSON: No.

18 SECRETARY: Ms. Doyle?

19 MS. DOYLE: Yes.

20 SECRETARY: Mr. Earnshaw?

21 MR. EARNSHAW: No.

22 SECRETARY: Mr. Epstein? Mr. Eustace?

23 MR. EUSTACE: Yes.

24 SECRETARY: Mr. Evans?

25 MR. EVANS: Yes.

1 SECRETARY: Mr. Falconer? Mr. Ferrier?
2 MR. FERRIER: No.
3 SECRETARY: Mr. Festeryga?
4 MR. FESTERYGA: Yes.
5 SECRETARY: Ms. Go?
6 MS. GO: No.
7 SECRETARY: Mr. Goldblatt?
8 MR. GOLDBLATT: No.
9 SECRETARY: Ms. Haigh?
10 MS. HAIGH: Yes.
11 SECRETARY: Ms. Hare?
12 MS. HARE: No.
13 SECRETARY: Ms. Hartman?
14 MS. HARTMAN: Yes.
15 SECRETARY: Ms. Horvat?
16 MS. HORVAT: No.
17 SECRETARY: That was a no, Ms. Horvat?
18 MS. HORVAT: That was a no.
19 SECRETARY: Thank you. Mr. Hunter?
20 MR. HUNTER: Yes.
21 SECRETARY: Mr. Krishna?
22 MR. KRISHNA: Yes.
23 SECRETARY: Mr. Lawrie?
24 MR. LAWRIE: No.
25 SECRETARY: Ms. Leiper?

1 MS. LEIPER: No.

2 SECRETARY: Mr. Lerner?

3 MR. LERNER: No.

4 SECRETARY: Ms. Lippa?

5 MS. LIPPA: No.

6 SECRETARY: Mr. MacKenzie?

7 MR. MACKENZIE: No.

8 SECRETARY: Ms. MacLean?

9 MS. MACLEAN: Yes.

10 SECRETARY: Mr. McDowell?

11 MR. MCDOWELL: Yes.

12 SECRETARY: Ms. McGrath?

13 MS. McGRATH: Yes.

14 SECRETARY: Mr. Mercer?

15 MR. MERCER: No.

16 SECRETARY: Ms. Minor?

17 MS. MINOR: No.

18 SECRETARY: Ms. Murchie?

19 MS. MURCHIE: Yes.

20 SECRETARY: Mr. Porter?

21 MR. PORTER: Yes.

22 SECRETARY: Ms. Potter?

23 MS. POTTER: No.

24 SECRETARY: Mr. Pustina?

25 MR. PUSTINA: Yes.

1 SECRETARY: Mr. Rabinovitch?
2 MR. RABINOVITCH: No.
3 SECRETARY: Ms. Richardson?
4 MS. RICHARDSON: No.
5 SECRETARY: Ms. Richer?
6 MS. RICHER: No.
7 SECRETARY: Ms. Rothstein?
8 MS. ROTHSTEIN: No.
9 SECRETARY: Mr. Schabas?
10 MR. SCHABAS: No.
11 SECRETARY: Mr. Sheff?
12 MR. SHEFF: Yes.
13 SECRETARY: Mr. Silverstein?
14 MR. SILVERSTEIN: Yes.
15 SECRETARY: Ms. Strosberg?
16 MS. STROSBERG: No.
17 SECRETARY: Mr. Strosberg?
18 Mr. Strosberg? Mr. Sullivan?
19 MR. SULLIVAN: Yes.
20 SECRETARY: Ms. Symes?
21 MS. SYMES: No.
22 SECRETARY: Mr. Wardle?
23 MR. WARDLE: No.
24 SECRETARY: Is there anyone whose name I
25 have not called?

1 MR. SCARFONE: Mine, Scarfone, and I
2 have to abstain because I did not hear the submissions
3 of the university.

4 SECRETARY: Thank you, Mr. Scarfone.
5 Anyone else?

6 The answer to the question is no 28, yes
7 21, with one abstention.

8 TREASURER CONWAY: Ladies and gentlemen,
9 we will be taking a short break. I will be attending a
10 press conference right now, but we do have other
11 business so please return after the break so that we
12 can conclude the agenda for today.

13 We've got a number of items. They're
14 mostly consent agenda items. There's one or two issues
15 that we haven't got to today.

16 MR. BREDT: Financial statements.

17 TREASURER CONWAY: I beg your indulgence
18 and your patience and come back for those of you who
19 can so that we don't lose quorum for today's business.

20 --- Whereupon the proceedings adjourned at 4.25 p.m.

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I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability

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