

**SUBMISSION OF:**

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

**TO:**

**LAW SOCIETY OF UPPER CANADA (“LSUC”)**

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Written Submission for the Consideration of Convocation in Relation  
to the Matter of the Accreditation of the TWU School of Law

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## **BRIEF EXECUTIVE SUMMARY**

### **A deliberately very brief Executive Summary:**

- TWU is a religious community, a statutory religious institution, not publically funded.
- The question the Benchers are being asked to consider herein has already been answered by the Supreme Court of Canada in *TWU v. BCCT* 2001 SCC 31.

### **TWU snapshot:**

- Founded (originally as a college) over 50 years ago
- 42 undergraduate majors
- 17 graduate programs
- 80% of faculty have doctorates
- Over 22,000 alumni
- Professional accredited degrees in Education (B.Ed & M.A.) and Nursing (B.Sc.N. & M.Sc.N.)
- Faculty of Business, and graduate M.B.A., and well as separate M.A. in Counselling Psychology
- Four Canada Research Council Chairs, seven academic Institutes, four Centres of Excellence.

### **B.C. Ministry of Advanced Education approval:**

- An external as well as on-site review was conducted by the B.C. Ministry of Advanced Education.
- Done so with the assistance of an external expert review panel, which included former law school deans/current associate deans (U.B.C., Victoria, Alberta, Queens, Windsor, Thompson Rivers).
- After TWU was passed by the B.C. Degree Quality Assessment Board, meeting all quality assessment criteria, the B.C. Advanced Education Minister announced “As Advanced Education Minister, I have granted consent for Trinity Western University’s application for its proposed new law school program.” (Dec. 18, 2013).

### **Federation approval:**

- TWU has been approved by the Federation, and on the basis of an externally sourced legal opinion – subject to certain conditions, and to annual review – like other existing approved law schools.
- The conclusions of the Federation’s Common Law Degree Approval Committee and the Special Advisory Committee should be respected, and not interfered with – the latter specifically concluding:

- "...none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies..."
- "...there will be no public interest reason to exclude future graduates of the program from law society bar admission programs." [paras. 65-66]
- The Special Advisory Committee included Derry Millar (LSUC Treasurer 2008-2010).
- Not to accede to the Federation's prior approval would result in a patchwork system where TWU grads are permitted to practise in one jurisdiction and not another.

**Dangers of re-reviewing approval decision already made:**

If Benchers are to engage in a critical analytical review (*de novo* or otherwise) of decisions already made:

- then Convocation would be making a complex legal decision that significantly and directly affects the interests of others – of TWU and its graduates
- a "No" decision could trigger violations of
  - s.2(a) freedom of religion
  - s.2(d) freedom of association
  - s.15 equality rights
  - *Ontario Human Rights Code*
  - *Ontario Labour Mobility Act*
  - *Agreement on Internal Trade, Chapter 7*
  - *The National Mobility Agreement.*

## **WHERE WE'VE BEEN**

### **I. BRIEF FACTUAL CHRONOLOGY**

#### ***(a) A Historic Thriving University & Religious Community***

1. Trinity Western University (“TWU”) is a private faith-based university located in Langley B.C. It does not rely on any government monies to fund its educational programs. TWU was founded on religious principles and was always intended to be a religious community. This was and continues to be recognized by the B.C. Legislature. Subsection 3(2) of the *Trinity Western University Act* charters TWU to offer university education “with an underlying philosophy and viewpoint that is Christian.”
2. TWU was originally founded in 1962<sup>1</sup>, around the very same time as many universities in Ontario including Waterloo, 1957; York, 1959; Laurentian, 1960; Trent, 1963; Brock, 1964; Guelph, 1964; Lakehead, 1965; and Saint Paul, 1965.<sup>2</sup>
3. TWU currently offers 42 undergraduate majors, 17 graduate programs, serves approximately 4,000 students per year, and has over 22,000 alumni. TWU has built a reputation for academic excellence;<sup>3</sup> 80% of its faculty have doctorates;<sup>4</sup> and is consistently ranked among the top universities in Canada for Educational Experience<sup>5</sup> (as reported in *Maclean's* magazine). TWU has four Canada Research Council Chairs, seven academic Institutes, four Centres of Excellence, and has won eight C.I.S. national team championships in the last decade.

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<sup>1</sup> TWU was originally founded in 1962 as a junior college. The Legislature gave TWU the privilege to grant degrees in 1979. In 1984 TWU became a member of the Association of Universities and Colleges of Canada.

<sup>2</sup> For more information about TWU's history, service, academics, and other achievements see [TWU, Submission of Trinity Western University to Nova Scotia Barristers' Society, February 28, 2014](#) pages 2-6 (see Appendix O).

<sup>3</sup> TWU rates A+ for “Quality of Teaching and Learning” (formerly called “Quality of Education”) seven years in a row in the Globe and Mail University Report Card.

<sup>4</sup> Statement refers to full-time faculty members.

<sup>5</sup> By the National Survey of Student Engagement and the Canadian University Survey Consortium (“CUSC”), as reported in *Maclean's* magazine.

4. TWU offers professional degrees including Nursing (M.Sc.N., B.Sc.N.),<sup>6</sup> and Education (B.Ed., M.A.). TWU has other professional programs as well which include Business (M.B.A., B.B.A., B.A.), Leadership (M.A.) and Counselling Psychology (M.A.).
5. As a flourishing, vibrant, and successful educational community, TWU sought to add a School of Law to its professional schools and programs, and began taking steps towards that goal in 1993.

***(b) Federation & Ministerial Approval***

6. TWU submitted its School of Law Proposal to the Federation of Law Societies of Canada (“the Federation”) on June 15, 2012. TWU concurrently submitted its School of Law Proposal to the B.C. Ministry of Advanced Education (“the Ministry”).<sup>7</sup>
7. The Federation’s Common Law Degree Approval Committee (“Approval Committee”), whose mandate<sup>8</sup> is to apply the national competency requirement that all law societies approved (approved by the Law Society of Upper Canada [“LSUC”] in 2010),<sup>9</sup> granted preliminary approval to the TWU proposed program on December 16, 2013.<sup>10</sup> The decision was the product of extensive review and analysis (approximately 18 months), conducted by a team of experienced and respected legal professionals from across Canada.
8. The Approval Committee concluded that TWU’s proposal was:

**comprehensive and is designed to ensure that students acquire each competency included in the national requirement.**<sup>11</sup>

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<sup>6</sup> Approved by the College of Registered Nurses of B.C.; TWU is a member of the Canadian Association of Schools of Nursing.

<sup>7</sup> The full proposal is attached to the [FLSC, Canadian Common Law Program Approval Committee, Report on TWU Proposed School of Law Program, December 2013](#) at page 38 [FLSC, Approval Committee Report] (see Appendix D).

<sup>8</sup> [FLSC, Canadian Common Law Program Approval Committee, Mandate, 2013](#).

<sup>9</sup> [LSUC Treasurer Thomas G. Conway, “Treasurer’s Public Remarks Respecting TWU for February Convocation \(in public\)”, February 27, 2014 at pg. 1 \[Conway, Remarks, February 27, 2014\] \(see Appendix L\)](#).

<sup>10</sup> [LSUC Treasurer Thomas G. Conway, “For the Record – Trinity Western University proposal”, Remarks to Convocation, January 23, 2014 \(see Appendix K\)](#).

<sup>11</sup> [FLSC, Approval Committee Report at para. 47](#).

9. The committee expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching. The Approval Committee concluded it was not a deficiency in the proposal.<sup>12</sup> The full report is available at Appendix D.
10. The B.C. Ministry granted approval to the J.D. program at TWU shortly thereafter.<sup>13</sup> The Ministry's review was done through its Degree Quality Assessment Board ("DQAB") and its appointed expert review panel, with authority under the *Degree Authorization Act*.<sup>14</sup> The expert review panel included former and existing university law school faculty (including four former law school deans) from Queens, U.B.C., Victoria, Alberta, Windsor, and Thompson Rivers.
11. On April 17, 2013, the expert review panel provided its report to the Ministry. The DQAB found that TWU's proposal would meet all quality assessment criteria. The expert panel and thus the DQAB considered the specific character of TWU as a religious educational community, including consideration of the Community Covenant.
12. On December 18, 2013 the government issued a statement from B.C. Minister Amrik Virk stating:

As Advanced Education Minister, I have granted consent for Trinity Western University's application for its proposed new law school program.<sup>15</sup>

**(c) Federation Special Advisory Committee**

13. TWU's application provoked a response to the Federation, based primarily on its Community Covenant and Christian character.<sup>16</sup> These are substantively the same concerns raised before LSUC in opposition to approval of TWU's School of Law. To address those concerns, the Federation established its Special Advisory

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<sup>12</sup> FLSC, Approval Committee Report at paras. 51-52.

<sup>13</sup> Government of B.C., *Statement on Trinity Western University's Proposed Law Degree*, December 18, 2013.

<sup>14</sup> *Degree Authorization Act*, SBC 2002, c 24.

<sup>15</sup> Government of B.C., *Statement on Trinity Western University's Proposed Law Degree*, December 18, 2013.

<sup>16</sup> FLSC, Special Advisory Committee on Trinity Western's Proposed School of Law, Final Report, December 2013 at para. 4 [FLSC, Special Advisory Committee Report].

Committee (“the Advisory Committee”) made up of “respected leaders of the legal profession”<sup>17</sup> including Derry Millar, former LSUC Treasurer.

14. Chaired by John Hunter, Q.C. (Past President of the Federation and also Past President of the Law Society of British Columbia [“LSBC”]), the Advisory Committee’s mandate was to advise on the implications of the confessional nature of TWU and in particular it’s Community Covenant. The specific mandate of the Advisory Committee was to address considerations (if any), that should be taken into account in determining whether future law school graduates of TWU “should be eligible to enroll in the admission program of any of Canada’s law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU’s Community Covenant Agreement as a condition of admission and employment, respectively?”<sup>18</sup>
15. In making its decision in the public interest<sup>19</sup> (just as Convocation must now do) the Advisory Committee was to apply “applicable law, including the *Canadian Charter of Rights and Freedoms*, human rights legislation, and the Supreme Court of Canada decision in *Trinity Western University v. British Columbia College of Teachers* (2001 SCC 31).”<sup>20</sup>
16. After a full and comprehensive analysis, including obtaining a legal opinion from John Laskin, the Advisory Committee concluded there was no valid public interest reason to refuse approval to TWU’s proposal. Specifically, it concluded:

in light of applicable law **none of the issues, either individually or collectively raise a public interest bar to approval of TWU’s proposed law school or to admission of its future graduates to the bar admission programs** of Canadian law societies...there will be **no public interest reason to exclude future graduates of**

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<sup>17</sup> FLSC, News Release: Preliminary Approval of TWU Proposed Law Program, December 16, 2013 at pg. 1.

<sup>18</sup> FLSC, Special Advisory Committee Report at para. 6, 1.

<sup>19</sup> Evidenced in its mission statement opening with the words “acting in the public interest...” from FLSC, *Statement of Mission, Vision, and Values*; FLSC, Special Advisory Committee Report at para. 12.

<sup>20</sup> FLSC, Special Advisory Committee Report at para. 6, 2.(b).

**the program from law society bar admission programs**  
[Emphasis added].<sup>21</sup>

17. That review included and considered entry into the Law Society of Upper Canada.

**WHERE WE ARE**

**I. GENERAL PRELIMINARY CONCERNS**

18. TWU has been invited to make a submission by LSUC as an affected party and has done so. TWU, however, wishes to be on the record as having a number of serious concerns regarding the process.

***(a) Uncertainty***

19. It is unclear what considerations LSUC consider relevant or on what grounds Convocation will (if at all) be reassessing the accreditation work already done by the Federation's two committees.
20. TWU has never been advised of the grounds and considerations that Convocation considers most relevant to its determination of accreditation. The voluminous submissions from third parties, which may well include references to issues Convocation considers most relevant, also include many irrelevant documents and listed issues. TWU is entitled to a meaningful understanding of the grounds on which its rights, and those of its community members, will be determined.

***(b) No Oral Submissions***

21. TWU has not been provided the opportunity to make oral submissions.

***(c) Written Reasons?***

22. A further concern is the uncertainty regarding whether or not Convocation will produce written reasons. In light of the fact that allegations, submissions, reports, and legal opinions involving complex jurisdictional, administrative, legislative, and constitutional principles are "*en jeu*", written reasons are all the more required. The

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<sup>21</sup> FLSC, Special Advisory Committee Report at paras. 65-66.

Supreme Court of Canada has confirmed that in certain circumstances the duty of procedural fairness requires a written explanation where the decision has important significance for a person.<sup>22</sup>

## II. A CALL FOR DISPASSIONATE AND IMPARTIAL ADJUDICATION

23. TWU acknowledges that not all people believe in the Bible or the person, works and teachings of Jesus Christ—but as a religious community TWU, its faculty and staff do. TWU (and its graduates) do not seek to impose their own beliefs upon others, but instead to enjoy the constitutionally protected freedom to exercise those beliefs within a religious educational community.
24. The debate surrounding TWU (in both the media and written submissions) has at times been emotive.<sup>23</sup> While some of the debate and commentary has been thoughtful, engaging, and respectful (TWU is appreciative of those who have participated and added value to the discussion), some of the commentary (now before Convocation for its consideration) is deeply troubling.
25. Some examples include:
  - alleging TWU is incapable of producing graduates who meet LSUC standards of education, professional competence, and professional conduct;
  - casting TWU as legitimizing “religious bigotry”<sup>24</sup>;
  - affirming TWU is “proud to discriminate against those in same-sex marriages”<sup>25</sup>; and
  - stating TWU has a “mission and aspirations poisonous to those of the LSUC.”<sup>26</sup>
26. Statements such as these not only reveal intolerant and stereotypical attitudes about members of TWU’s religious community (and others across Canada that hold

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<sup>22</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 43.

<sup>23</sup> As was noted by the Federation in [FLSC, Letter to Canada’s Law Societies, Re: TWU Proposed Law School Program, December 16, 2013 at pg. 2](#) (see Appendix E): “consideration of TWU’s application took place in the midst of a very public discussion that brought out strong and often emotional views.”; See also [Submission of Mark Witten to LSUC, March 27, 2014](#). Mark writes as a graduate of TWU and a practising member of the British Columbia bar.

<sup>24</sup> To see quote in full context see submission to LSUC of [March 3, 2014](#).

<sup>25</sup> To see quote in full context see submission to LSUC of [February 28, 2014](#).

<sup>26</sup> To see quote in full context see submission to LSUC of [February 28, 2014](#).

similar beliefs), but also demonstrate a narrow appreciation of the complex legal issues engaged.

27. In light of this highly emotive context, it is crucial that the accreditation decision be approached dispassionately and be based on evidence, not on discriminatory unfounded presumptions.<sup>27</sup> With empowerment comes responsibility – and with responsibility comes accountability.

### **III. QUESTION BEFORE CONVOCATION & PRELIMINARY CONCERNS WITH THE NATURE OF THE QUESTION**

28. The question to be decided by Convocation, as stated by the LSUC Treasurer is as follows:

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?<sup>28</sup>

29. The question raises difficulties both from the position of a decision maker, as well as affected parties attempting to address their concerns through written submissions.
30. Past “questions” for approval of Lakehead University and Thompson Rivers University have been phrased and approached very differently. As seen in the case of Thompson Rivers University, approval was not phrased in the form of a question at all, but was instead more akin to an instruction:

That Convocation approve Thompson Rivers University’s proposed academic program leading to the conferral of a common law degree that would entitle its holders to apply for admission to the Law Society of Upper Canada on the following conditions...<sup>29</sup>

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<sup>27</sup> TWU echoes the wise remarks of the Treasurer Conway when he notes that in keeping with the process benchers “should refrain from reaching a final view until the decision is made on April 24, 2014.”

<sup>28</sup> Conway, Remarks, February 27, 2014 at pg. 1.

<sup>29</sup> LSUC Minutes of Convocation, April 28, 2011 at pgs. 7-8.

31. As phrased, the question raises the issue of whether Convocation is being asked to affirm the underlying decision which has approved the TWU law program, review the Federation's decision with deference, or conduct its own review *de novo*? Each brings with it substantially different considerations.

#### IV. JURISDICTION OF THE LAW SOCIETY OF UPPER CANADA

32. Convocation will be rendering “an administrative decision that affects rights, privileges and interests.”<sup>30</sup> This decision must be made in the public interest and comply with requirements of the *Human Rights Code*, the *Charter*, common law, the *Law Society Act* and its By-laws, rules, and policies.<sup>31</sup> As a creature of statute, Convocation must also make a decision that falls within its statutorily defined mandate - although the issues before Convocation may raise peripheral *Charter* issues, it is only within the confines of its function that it is permitted to consider *Charter* values.
33. Convocation is not a court of law nor does it have authority or discretion to change the law, alter its precedents, engage in judicial activism, or protest against it. In carrying out its function, Convocation has “a duty to maintain and advance the cause of justice”, however it must do so while obeying and submitting to the “rule of law”<sup>32</sup>—it is not free to depart from it.<sup>33</sup>
34. The jurisdiction of Convocation is found in LSUC's enabling statute, the *Law Society Act*.<sup>34</sup> The *Act* establishes that it is a function of LSUC to ensure that “all persons who practise law in Ontario ... meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.”<sup>35</sup> LSUC's function under the *Act* is to govern persons, and only persons - it is not a regulator of universities.

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<sup>30</sup> Conway, Remarks, February 27, 2014 at pg. 1.

<sup>31</sup> Conway, Remarks, February 27, 2014 at pg. 1.

<sup>32</sup> Letter from Elliot Spears, LSUC General Counsel to Bob Kuhn, J.D. President of TWU, February, 24, 2014 at pg. 2 (see Appendix M) [Letter from Elliot Spears, February 24, 2014].

<sup>33</sup> *Re Manitoba Language Rights*, [1985] 1 SCR 721 at paras. 61-63.

<sup>34</sup> *Law Society Act*, RSO 1990, c L.8 s.2-9 (The Society) and 10-25 (Benchers).

<sup>35</sup> Letter from Elliot Spears, February 24, 2014 at pg. 2 citing *Law Society Act*, RSO 1990, c L.8 s.4.1(a).

35. LSUC accomplishes this function by passing by-laws that govern the licensing of persons to practise law in Ontario which includes “prescribing the qualifications and other requirements” a person must meet “in order to be licensed” in Ontario.<sup>36</sup> LSUC has done this by enacting By-Law 4 titled “Licensing.”
36. Under By-Law 4, the requirements for the issuance of licences to practise law in Ontario include “a bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, *an accredited law school*.”<sup>37</sup> An accredited law school is defined as “a law school in Canada that is accredited by the Society.”<sup>38</sup> Law students must additionally complete the applicable licensing examinations set by the Society.<sup>39</sup>
37. By-law 4 designates “*the Society*” as the body responsible for deciding what schools are (or are not) *accredited law schools*. Although there is nothing in the By-law that sets out a process or provides decision criteria for this task, guidance is provided from LSUC’s function<sup>40</sup> which is restricted by the *Act* to ensuring practitioners meet standards of learning, competence, and professional conduct.
38. LSUC’s jurisdiction circumscribes and confines the scope of Convocation’s decision. To deny TWU accreditation, there must be evidence (as opposed to assumptions or preconceptions) that:
- TWU graduates will fail to meet LSUC standards of learning, competence, and professional conduct; and
  - the inability is directly related to TWU’s religious beliefs and practice of the Community Covenant upholding TWU’s understanding of the Biblical traditional definition of marriage.

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<sup>36</sup> Letter from Elliot Spears, February 24, 2014 at pg. 2 citing *Law Society Act, RSO 1990, c L.8 s.62 (0.1) 4.1*.

<sup>37</sup> *LSUC By-Law 4 – Licensing, s9(1)(i)*.

<sup>38</sup> *LSUC By-Law 4 – Licensing, s9(2)*.

<sup>39</sup> *LSUC By-Law 4 – Licensing, s9(2)*.

<sup>40</sup> *Law Society Act, RSO 1990, c L.8 s.4.1*.

**OPTION A – SAYING YES**  
**WHY LSUC SHOULD ACCREDIT TWU**

39. Should LSUC accredit TWU? The answer is “YES”.
40. Some of the practical and substantive reasons why LSUC should arrive at this conclusion include:
- I. FEDERATION APPROVAL COMMITTEE CONFIRMS TWU MEETS THE NATIONAL REQUIREMENT CRITERIA**
  
  - II. SPECIAL ADVISORY COMMITTEE CONFIRMS THERE IS NO PUBLIC INTEREST REASON TO DENY TWU GRADUATES**
  
  - III. THE ACCREDITATION DECISION IS CONSISTENT WITH EXISTING LAW**
    - a. Freedom of Religion
    - b. Equality Rights
    - c. SCC decision in *BCCT v TWU*
    - d. No Evidence:
      - i. No Evidence – Saying TWU Graduates Will Not Understand Principles of Equality and Non-discrimination is Presumptuous and Unfounded
      - ii. No Evidence – Alleging TWU Graduates Will Not Comply with Their Ethical Obligations is Presumptuous and Unfounded
    - e. National Mobility Agreement: Saying Yes Prevents Patchwork Inconsistency
    - f. *Ontario Labour Mobility Act* and the *Agreement on Internal Trade* (AIT)
    - g. *Civil Marriage Act*

**I. FEDERATION APPROVAL COMMITTEE: TWU MEETS NATIONAL REQUIREMENT CRITERIA**

41. The Federation’s Approval Committee, whose mandate<sup>41</sup> is to apply the national competency requirement that all law societies approved (approved by the LSUC in 2010<sup>42</sup>) granted preliminary approval to the TWU School of Law. The Approval Committee concluded that TWU’s proposal was “comprehensive and is designed to ensure that students acquire each competency included in the national requirement.”<sup>43</sup> The committee expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching. TWU satisfied the committee that it would not affect teaching and the committee found that it was not a deficiency in the proposal.<sup>44</sup>
42. LSUC should not depart from the conclusions of the Approval Committee for the following reasons:
- (a) Intent of Decision is to Bind*
43. Some law societies, like the Law Society of Alberta, have decided to defer the approval of law degree programs to the Federation’s Approval Committee.<sup>45</sup> Although LSUC has not yet chosen to do this, it nonetheless was involved in and approved the establishment of the Approval Committee - the intent was that the Committee would render decisions on which the LSUC could rely.
- (b) Considered LSUC Approved Criteria*
44. In fulfilling its mandate and deciding that TWU should be accredited, the Approval Committee considered and applied LSUC approved criteria.<sup>46</sup>

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<sup>41</sup> Conway, Remarks, February 27, 2014 at pg. 3.

<sup>42</sup> Conway, Remarks, February 27, 2014 at pg. 1.

<sup>43</sup> FLSC, Approval Committee Report at para. 47.

<sup>44</sup> FLSC, Approval Committee Report at para. 51-52.

<sup>45</sup> *The Rules of the Law Society of Alberta*, Rule 50(2).

<sup>46</sup> LSUC Treasurer’s Public Remarks Respecting TWU for February Convocation (in public), Feb 27, 2014 at pg. 1.

**(c) Decision Result of Rigorous Research and Analysis**

45. TWU's proposal has undergone extensive and comprehensive reviews. The formal review process alone took approximately 18 months and involved significant research and dialogue:
- the Approval Committee's review began during a teleconference in September 2012;
  - it continued during six days of in-person meetings and five conference calls between January and December 2013;<sup>47</sup>
  - on June 28, 2013, the Federation's National Accreditation Committee requested further information on certain aspects of the proposal, including contingency plans, funding, facilities and admissions - TWU provided a detailed response on August 13, 2013;
  - on October 30, 2013, the National Accreditation Committee sought further information concerning the particulars of the criminal law courses and legal research competency - TWU responded on November 1, 2013.<sup>48</sup>
46. The Approval Committee concluded that TWU's proposal was "comprehensive and is designed to ensure that students acquire each competency included in the national requirement."<sup>49</sup> It expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching and found that it would not. The Approval Committee specifically referenced and relied on TWU's statements that:
- TWU is committed to fully and appropriately addressing ethics and professionalism;
  - TWU recognizes and acknowledges its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of both substantive law and ethics and professionalism; and
  - TWU acknowledges that human rights laws and Section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation and that "the courses that will be offered at the TWU School of

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<sup>47</sup> FLSC, Approval Committee Report at para. 34.

<sup>48</sup> TWU, Submission of Trinity Western University to Nova Scotia Barristers' Society, February 28, 2014 at pgs. 9-10.

<sup>49</sup> FLSC, Approval Committee Report at para. 47.

Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.”<sup>50</sup>

47. TWU stands behind each and every one of those statements (see paras. 50-52 of the Federation’s report).<sup>51</sup>
48. The decision and reports “are the culmination of a rigorous process,”<sup>52</sup> a process and decision made by an appointed body approved by LSUC to carry out its specialized mandate.

***(d) Conducted by Senior Members of the Bar from Across Canada***

49. The Federation’s Approval Committee was comprised of senior members of the bar from across the country, each of whom possesses specific qualifications and experience relevant to the role of assessing TWU’s proposal and law school programs.<sup>53</sup> The Approval Committee was made up of legal professionals of the highest quality “ensuring that the review of TWU’s application was thorough and fair.”<sup>54</sup>

***(e) Approval Subject to Annual Review and Monitoring***

50. The Federation has a careful comprehensive process that individual law societies can, and should, trust and depend on.<sup>55</sup> Preliminary approval will be followed by an annual review - TWU will be scrutinized through all phases of the School of Law’s establishment, as it hires a dean and faculty, as students enter and progress through the curriculum and as it produces its first graduates. This process will ensure that the national standard is met and that TWU lives up to its commitments.

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<sup>50</sup> TWU, Submission of Trinity Western University to Nova Scotia Barristers’ Society, February 28, 2014 at pgs. 9-10.

<sup>51</sup> FLSC, Approval Committee Report at paras. 50-52.

<sup>52</sup> FLSC, Letter to Canada’s Law Societies, Re: TWU Proposed Law School Program, December 16, 2013 at pg. 2.

<sup>53</sup> TWU, Submission of Trinity Western University to Nova Scotia Barristers’ Society, February 28, 2014 at pg. 9.

<sup>54</sup> FLSC, Letter to Canada’s Law Societies, Re: TWU Proposed Law School Program, December 16, 2013 at pg. 2: “From the outset, the Federation has been committed to ensuring that the review of TWU’s application was thorough and fair. We are satisfied that the Approval Committee met the highest standards of fairness in fulfilling its task.”

<sup>55</sup> TWU, Submission of Trinity Western University to Nova Scotia Barristers’ Society, February 28, 2014 at pg. 10.

## **II. SPECIAL ADVISORY COMMITTEE: NO PUBLIC INTEREST REASON TO DENY TWU GRADUATES**

51. The conclusions of the Special Advisory Committee merit appropriate deference in light of the following considerations:

### ***(a) Responding to Concerns***

52. TWU's proposal, which identifies as one of its objectives the integration of a Christian worldview into the law school curriculum, provoked a strong response from many in the legal community.<sup>56</sup> To address those concerns, the Federation established its Special Advisory Committee "to provide advice on a number of issues raised in response to TWU's application that were not within the mandate of the Approval Committee."<sup>57</sup> After a comprehensive analysis, the Advisory Committee concluded:

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

It is the conclusion of the Special Advisory Committee that if the Approval Committee concludes that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs<sup>58</sup>.

### ***(b) Similar and Overlapping Question and Mandate***

53. Not only was the mandate of the Special Advisory Committee essentially the same as that of Convocation, but the question and criteria applied to answer the question

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<sup>56</sup> FLSC, Special Advisory Committee Report at para. 4.

<sup>57</sup> FLSC, Letter to Canada's Law Societies, Re: TWU Proposed Law School Program, December 16, 2013 at pg. 1.

<sup>58</sup> FLSC, Special Advisory Committee Report at paras. 65-66.

are similar - the decision of the Advisory Committee overlaps with and subsumes that to be made now by Convocation.

Law Society	Special Advisory Committee
<p style="text-align: center;"><b><u>Question</u></b></p> <p>Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?</p>	<p style="text-align: center;"><b><u>Question</u></b></p> <p>Whether TWU law graduates “should be eligible to enroll in the admission program” of <u>any</u> of Canada’s law societies, given “the requirement that all students and faculty of TWU must agree to abide by TWU’s Community Covenant Agreement as a condition of admission and employment, respectively?”<sup>59</sup></p>
<p style="text-align: center;"><b><u>Take into Account and Comply</u></b></p> <p><i>Human Rights Code, the Charter, common law, the Law Society Act and its By-laws, rules, and policies.</i></p>	<p style="text-align: center;"><b><u>Take into Account and Comply</u></b></p> <p>“Applicable law, including the <i>Canadian Charter of Rights and Freedoms</i>, human rights legislation, and the Supreme Court of Canada decision in <i>Trinity Western University v. British Columbia College of Teachers</i> (2001 SCC 31)” (“<i>BCCT v TWU</i>”).<sup>60</sup></p>
<p style="text-align: center;"><b><u>Consider/Decide</u></b></p> <p>In public interest.</p>	<p style="text-align: center;"><b><u>Consider/Decide</u></b></p> <p>In public interest.</p>

***(c) Conducted by Senior Members of the Bar from Across Canada***

54. The Special Advisory Committee was made up of competent and respected leaders of the legal profession including:

- |                               |   |
|-------------------------------|---|
| <b>Derry Millar,</b>          | former Treasurer of the Law Society of Upper Canada;                      |
| <b>John J.L. Hunter, Q.C.</b> | Past President of the Federation and the Law Society of British Columbia; |

<sup>59</sup> FLSC, Special Advisory Committee Report at para. 6, 1.

<sup>60</sup> FLSC, Special Advisory Committee Report at para. 6, 1.

<b>Mona T. Duckett, Q.C.</b>	former Council member representing the Law Society of Alberta and Past President of the Law Society of Alberta;
<b>Madame la Bâtonnière Madeleine Lemieux, Ad. E.</b>	former Council member representing the Barreau du Québec and former Bâtonnière of the Barreau; and
<b>Morgan C. Cooper</b>	Past President of the Law Society of Newfoundland and Labrador. <sup>61</sup>

55. That team reviewed all of the submissions made to the Federation, together with TWU's response.<sup>62</sup> These submissions included many of the same arguments now before LSUC, including allegations that TWU graduates would not be able to meet standards of learning, competence and professional conduct – allegations directly confronted and addressed in the legal opinion provided to the Federation by John Laskin.<sup>63</sup> The full opinion is available at Appendix B.

56. At the culmination of this public interest study, the Advisory Committee concluded:

[I]n light of applicable law none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

...

It is the conclusion of the Special Advisory Committee that if the Approval Committee concludes that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs.<sup>64</sup> [emphasis added]

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<sup>61</sup> [FLSC, Special Advisory Committee Report at para. 7](#). In addition "Support to the Advisory Committee was provided by Frederica Wilson, Federation Senior Director, Regulatory & Public Affairs and Daphne Keevil Harrold, Federation Policy Counsel."

<sup>62</sup> [FLSC, Special Advisory Committee Report at para. 8](#).

<sup>63</sup> Legal Opinion of John B. Laskin, Torys LLP to the FLSC, "Re: TWU School of Law Proposal – Applicability of Supreme Court decision in *TWU v BCCT*", March 21, 2013 at pp. 8-9 [Legal Opinion of John B. Laskin to FLSC, March 21, 2013].

<sup>64</sup> [FLSC, Special Advisory Committee Report at paras. 65-66](#).

### III. ACCREDITATION DECISION IS CONSISTENT WITH LAW

#### (a) *Freedom of Religion of TWU and its Graduates*

57. In making its decision, Convocation has a duty to uphold *Charter* rights and values. The Supreme Court of Canada reminded us of the importance of freedom of religion in *Reference re Same-Sex Marriage*: “The protection of freedom of religion afforded by s.2(a) of the *Charter* is broad and jealously guarded in our *Charter* jurisprudence.”<sup>65</sup>
58. The broad nature of the protection of freedom of religion means that it incorporates both a personal and individualistic aspect and collective, associational and expressive aspect. Almost thirty years ago in *R. v. Big M Drug Mart Ltd.*, the Court defined the essence of freedom of religion as “the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.”<sup>66</sup>
59. The Court has continued to recognize the need for protection for all aspects of freedom of religion. The personal aspect was emphasized by the Supreme Court of Canada in *Syndicat Northcrest v. Amselem* where it stated at para. 46:
- [F]reedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.<sup>67</sup>
60. The collective aspects were highlighted more recently in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, where the Court explained that religion

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<sup>65</sup> *Reference re Same-Sex Marriage*, 2004 SCC 79 at para. 53.

<sup>66</sup> *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at para. 94.

<sup>67</sup> *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para. 46.

is about beliefs as well as relationships and the maintenance of communities of faith. It described the content of freedom of religion as follows:

[Freedom of religion] is an expression of the right to believe or not. It also includes a right to manifest one's belief or lack of belief, or to express disagreement with the beliefs of others. It also incorporates a right to establish and maintain a community of faith that shares a common understanding of the nature of the human person, of the universe, and of their relationships with a Supreme Being in many religions...<sup>68</sup>

61. Accordingly, TWU's students and graduates, and the TWU community as a whole, are all entitled to protection of freedom of religion.
62. In the present situation, we have a secular majority seeking to impose its ideals on a private religious community. There are calls (for a second time) to disallow a TWU program, ironically in the name of equality and diversity, from upholding sincerely held beliefs and practices. Are arguments for non-discrimination being used to discriminate against persons of faith and their religious communities?<sup>69</sup>

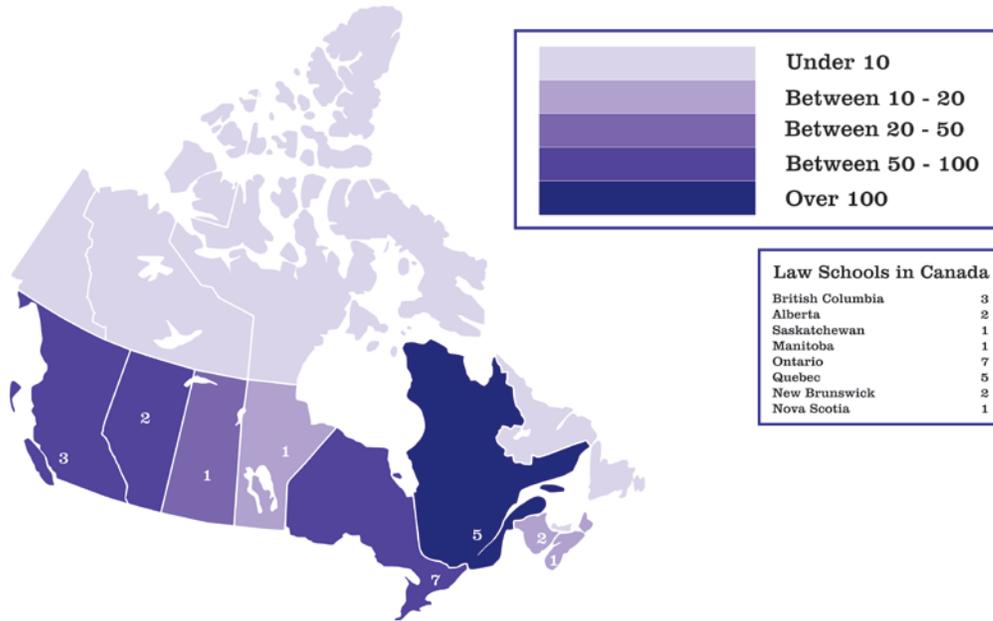
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<sup>68</sup> *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para. 181.

<sup>69</sup> The Justice Centre for Constitutional Freedoms, "In Defence of the Free Society", Submission to LSUC, March 21, 2014 at pgs. 3-14; Iain Benson, "The Attack on Western Religions by Western Law Re-framing Pluralism, Liberalism and Diversity", September 20, 2013 (see Appendix H).

63. There are over 398 Universities and Colleges in Canada.

### Universities and Institutions Across Canada



64. Diversity is not achieved by excluding the one and only private faith-based law school in Canada (among 18 other non-faith-based law schools) because of its religious belief and practices.<sup>70</sup>

65. It is fundamental to emphasize that TWU and its student population do not seek to make the public adhere to their religious beliefs. All they ask for is to be afforded the same rights as all other Canadians, that is the right to freedom of religion.

66. The Supreme Court of Canada has recognized that since the *Charter* includes an express guarantee of freedom of religion, distinct from other guarantees, it must be given meaning and effect. In a similar vein, Convocation must consider how it will satisfy its legal obligations to give freedom of religion meaning and effect in terms of its present decision and how it will apply the clear pronouncements of the Supreme Court of Canada.

<sup>70</sup> Statistic represents schools offering common law degrees only.

**(b) Equality Rights of TWU Graduates**

67. Every individual has the right to the equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>71</sup> Although much of the debate surrounding TWU has been framed in terms of the Christian freedom of religion, it is crucial to remember that people of faith also have s.15 equality rights (they do not lose them because they are Christian).
68. If LSUC were to deny TWU graduates the right to be licensed on the basis of the existence of the Community Covenant, that decision would infringe TWU graduates' equality rights - any decision that denies entrance into LSUC graduates on the basis of their decision to associate, form, and exercise their freedom of religion, would be a denial of their equality rights, on an enumerated ground and in a manner not demonstrably justified in a free and democratic society.
69. TWU is capable of, and will, train its graduates to comply with requisite standards of learning, competence and conduct. It is wrong and discriminatory to assume that, because of its Christian character and the religious beliefs of the members of its community, TWU will fail to, or is somehow incapable of, teaching substantive law and ethics to the standard required.

**(c) BCCT v TWU Would Apply on Review**

70. In *BCCT v TWU* the Supreme Court of Canada stated:
- “The present controversy stems from a 1996 decision by the Council of the British Columbia College of Teachers (“BCCT”), which refused to approve an application for teacher training accreditation submitted by Trinity Western University (“TWU”).”<sup>72</sup>
  - “The issue at the heart of this appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.’s public school system, concerns that may be shared with their parents and society generally.”<sup>73</sup>

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<sup>71</sup> *The Constitution Act, 1982*, s.15.

<sup>72</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 48 (see Appendix A).

<sup>73</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 28.

71. In *BCCT v TWU* the Supreme Court of Canada held:

- “In considering the religious precepts of TWU instead of the actual impact of these beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly.”<sup>74</sup>
- “We would add that the continuing focus of the BCCT on the sectarian nature of TWU is disturbing.”<sup>75</sup>
- “Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute.”<sup>76</sup>
- “Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate.”<sup>77</sup>
- “Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.”<sup>78</sup>
- “Acting on those beliefs, however, is a very different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT.”<sup>79</sup>
- “In this way, the scope of the freedom of religion and equality rights that have come into conflict in this appeal can be circumscribed and thereby reconciled.”<sup>80</sup>

72. The *BCCT v TWU*<sup>81</sup> case would apply if TWU were refused accreditation and its graduates excluded based on the existence of the Community Covenant, and that decision were challenged. This is confirmed by:

- the John Laskin Opinion,<sup>82</sup>

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<sup>74</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 43.

<sup>75</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31, at para. 42.

<sup>76</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 29.

<sup>77</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 35.

<sup>78</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 36.

<sup>79</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 37.

<sup>80</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 37.

<sup>81</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31.

<sup>82</sup> Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 1.

- the Special Advisory Committee conclusion,<sup>83</sup> and
- the opinion of Geoffrey Gomrey, Q.C. to the Law Society of British Columbia (“LSBC”).<sup>84</sup>

73. The issue in *BCCT v TWU* is almost identical to the issue now before Convocation. Both cases involve:

- a professional governing body
- with jurisdiction to approve a program of education
- for the purposes of certifying its graduates as eligible to enter a profession
- exercising that authority and making an administrative decision
- affecting rights, privileges, and interests
- attempting to reconcile the freedom of religion and equality concerns
- attempting to act within the scope of its statutory jurisdiction
- which is to uphold standards of education, professional responsibility, and competence of its members
- for the purpose of issuing certificates (in this case a licence)
- addressing concerns of discriminatory practices (Community Covenant)
- allegedly protecting the public interest
- with no evidence of future discriminatory conduct by graduates
- considering *Charter* values and human rights legislation within the context of public interest.

**i. TWU is not Subject to the *Charter* but LSUC is**

74. Because of its status as a private university, the *Charter* does not apply to TWU.<sup>85</sup> However, unlike TWU, LSUC is subject to the *Charter* and must make decisions

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<sup>83</sup> FLSC, Special Advisory Committee Report at para. 28: “the approach of the Supreme Court in *BCCT* to reconciling competing rights under the *Charter* and the requirement of evidence of actual harm continue to be the law in Canada.”

<sup>84</sup> Legal Opinion of Geoffrey B. Gomery, Nathanson, Schachter & Thompson LLP to the Law Society of British Columbia, “Re: TWU: Application of the *Charter*”, February 25, 2014 at pg. 2 (see Appendix F) [Legal Opinion of Geoffrey B. Gomery to LSBC, February 25, 2014]: the same analytical framework [in *BCCT*] governs the decision now confronted by the [LSBC] Benchers.

<sup>85</sup> See *BCCT v. TWU* and leading jurisprudence that holds universities are treated as private actors even where they are publicly funded (TWU is privately funded): Legal Opinion of Geoffrey B. Gomery to LSBC, February 25, 2014 at pg. 2 citing *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229; *Harrison v UBC* [1990] 3 SCR 451 at 17; *Lobo v Carleton University* 2010 ONSC 254 at paras. 16-17.

and rules according to its principles<sup>86</sup> - LSUC is accountable to the *Charter* in respect to TWU graduates (e.g. religion, association, equality).

**ii. The Community Covenant is protected under Human Rights Legislation**

75. In *BCCT v TWU*, the Supreme Court of Canada found that TWU “is a private institution that is exempted, in part, from British Columbia human rights legislation.”<sup>87</sup> Under s.19 (now s.41) of the B.C. *Human Rights Code*<sup>88</sup>, a religious organization is not considered to breach that *Code* when it prefers adherents of its religious constituency.<sup>89</sup> The *Human Rights Code*, in this respect, grants (rather than limits) rights and is consistent with *Charter* principles that guard the right of a religious organization to give full effect to its true nature and character.<sup>90</sup>
76. By analogy, TWU would enjoy similar protection in Ontario, if it were subject to that *Code*. There is, however, no need to decide this question as TWU’s rights must be interpreted in accordance with the legislation that applies to it. Otherwise, LSUC must ensure that each law school in Canada fully complies with Ontario legislation.

**iii. S.C.C. Rejects a Hierarchical Approach to Rights and Freedoms**

77. Neither the “freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute.”<sup>91</sup> When the expression of those rights conflict, those conflicts must be balanced. The Supreme Court of Canada has consistently rejected a hierarchical approach to valuing or interpreting one *Charter* right or freedom over another.<sup>92</sup>
78. Although this general SCC approach is relevant, it is important to remember that the *Charter* does not apply to TWU.

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<sup>86</sup> Legal Opinion of Geoffrey B. Gomery to LSBC, February 25, 2014 at pg. 2.

<sup>87</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 25.

<sup>88</sup> *Human Rights Code*, RSBC 1996, c 210, s.41.

<sup>89</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 35.

<sup>90</sup> *Caldwell et al v. Stuart et al*, [1984] 2 S.C.R. 603, at p. 618.

<sup>91</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 29.

<sup>92</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 877; *Saskatchewan v. Whatcott*, 2013 SCC 11; Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 5.

**(d) Evidentiary Burden Based on Jurisdiction Under Enabling Statute**

79. The question to be addressed is not whether TWU discriminates against any particular group but whether it can be proven that the existence of the Community Covenant and the practice of religious belief creates a class of students that fail to meet requisite LSUC standards of education, competence and conduct. It is not for TWU to prove the negative. If there is a legitimate basis upon which to deny recognition of TWU graduates (there is not), it must be demonstrated by objective evidence, not presumptions or stereotypical assumptions about evangelical Christians.
80. The fact is that there simply is no evidence that TWU graduates are hostile to any particular group, that TWU hides homophobia in Christian values, or that TWU graduates will fail to uphold the basic values of non-discrimination.<sup>93</sup> To the contrary, in *BCCT* the Supreme Court of Canada concluded graduates of TWU would indeed “treat homosexuals fairly and respectfully”<sup>94</sup> and it was “implicit in its decision that their education at TWU did not detract from their ability to comply with “principles of equality, non-discrimination, and the duty not to discriminate.””<sup>95</sup>
81. Like the Special Advisory Committee exercising its mandate in the public interest, LSUC must agree with the following conclusions:

Absent evidence for example, that graduates of the proposed law school would engage in discriminatory conduct or would fail to uphold the law, freedom of religion must be accommodated. No such evidence has been brought to the attention of the Special Advisory Committee; nor is it aware of any.<sup>96</sup>

...

In the view of the Special Advisory Committee the argument that TWU’s Christian worldview will have a negative impact on the quality of legal education at the

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<sup>93</sup> Letter of K. Sawatsky, Vice-Provost (Business) and University Legal Counsel of Trinity Western University, to the Federation of Law Societies, May 17, 2013 at pp. 8-13 (see Appendix N).

<sup>94</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 35.

<sup>95</sup> Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 9 citing Elaine Craig, “The Case for the Federation of Law Societies Rejecting Trinity Western University’s Proposed Law Degree Program” (2013) 25:1 C.J.W.L. 148 at pp. 169.

<sup>96</sup> FLSC, Special Advisory Committee Report at para. 37.

proposed law school and that students will fail to acquire necessary critical thinking skills is without merit. Such a finding cannot be based on TWU's stated religious perspective or its Community Covenant; as the Supreme Court made clear in BCCT it could be based only on concrete evidence.<sup>97</sup> Not only has no such evidence been brought to the attention of the Special Advisory Committee, the evidence that we do have demonstrates an understanding by TWU of its obligation to appropriately teach legal ethics and other substantive law subjects.<sup>98</sup>

82. As stated in Mr. Laskin's opinion (in the context of debating the applicable standard of review) a "finding based on no evidence is not just incorrect; it is unreasonable."<sup>99</sup>

**i. No Evidence – Saying TWU Graduates Will Not Understand Principles of Equality and Non-discrimination is Presumptuous and Unfounded**

83. Principles of equality and non-discrimination can competently be taught in a Christian learning environment.<sup>100</sup> Since the decision of the Supreme Court in 2001, TWU is not aware of any teachers trained at TWU being disciplined for discrimination. To the contrary, TWU has been producing qualified students on par with any university in Canada.

**ii. No Evidence – Alleging TWU Graduates Will Not Comply with Their Ethical Obligations is Presumptuous and Unfounded**

84. The skill of critical thinking about ethical issues can be taught at TWU regardless of its religious nature.<sup>101</sup> The contrary proposition is extremely offensive to all faith adherents, especially parents and teachers.<sup>102</sup> A contrary conclusion is not tenable as it rests on presumptions and assumptions, not evidence.

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<sup>97</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 32-33.

<sup>98</sup> FLSC, Special Advisory Committee Report at para. 44.

<sup>99</sup> Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 8 citing *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 SCR 487 at para. 44.

<sup>100</sup> Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 9.

<sup>101</sup> Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 8-9.

<sup>102</sup> Legal Opinion of John B. Laskin to FLSC, March 21, 2013 at pg. 8-9; *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at paras 94-95; *Reference re Same-Sex Marriage*, 2004 SCC 79.

**(e) National Mobility Agreement**

85. The law societies of each Canadian province, including LSUC, entered into the National Mobility Agreement (“NMA”) in 2002 and 2013.<sup>103</sup> The NMA is aimed at facilitating temporary and permanent mobility of lawyers between common law provinces. Section 32 of the NMA provides that each law society “will require no further qualifications for a member of another governing body to be eligible for membership” other than:

- (a) entitlement to practice in the lawyer’s home jurisdiction<sup>104</sup>;
- (b) good character and fitness on the standard ordinarily applied to applicants for membership; and
- (c) other qualifications that ordinarily apply.<sup>105</sup>

86. As such, under the NMA, TWU School of Law graduates will have the right to have their qualifications recognized across common law jurisdictions once they have been admitted to practice by any law society in Canada, as can now occur in at least Alberta and Saskatchewan.<sup>106</sup>

**i. Saying Yes Prevents Patchwork Inconsistency**

87. Given that TWU’s proposal has received approval by the B.C. Ministry and National Federation (including supplemental approval regarding public interest concerns), nothing is legally preventing it from opening its doors and issuing degrees. Because law societies such as Alberta and Saskatchewan have indicated acceptance of the Federation’s conclusions, if LSUC were now to refuse accreditation this would present the real possibility that TWU law graduates would be admitted to practice in some, but not all, law societies in Canada.

88. Such a result raises a number of concerns or problems, including:

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<sup>103</sup> The 2013 NMA was signed by all law societies and the Chambre des notaires du Quebec to replace the existing NMA and the Quebec Mobility Agreement. It will come into effect once implemented by each law society; [FLSC National Mobility Agreement 2013](#).

<sup>104</sup> [FLSC National Mobility Agreement 2002, s.10](#); [FLSC National Mobility Agreement 2013, s.11](#).

<sup>105</sup> Same as [FLSC National Mobility Agreement 2013, s.33](#).

<sup>106</sup> [Open Letter from Carsten Jensen, Q.C., President, Law Society of Alberta, January 14, 2014](#), he writes: “The Federation’s common law degree approval process was designed to ensure consistency in the approval of law degrees across Canada. The Law Society of Alberta has subscribed to these principles by delegating the approval of law degree programs to the Law Degree Approvals Committee of the Federation of Law Societies. The Law Society of Alberta delegated this authority because we are firmly of the view that common law degree programs must be assessed at the national level in order to preserve uniform standards and mobility rights.”

- creation of a patchwork result which undermines the considerable work done by all law societies and the Federation to establish a national requirement;
  - creation of lawyer mobility issues and potential infringements of labour mobility agreements and the *Ontario Labour Mobility Act*<sup>107</sup> (described in more detail below).
89. On the other hand, a decision to accredit is harmonious and consistent with upholding agreements that LSUC has entered into in good faith.

*(f) Ontario Labour Mobility Act and the Agreement on Internal Trade (AIT)*

90. The Agreement on Internal Trade (“AIT”) is an inter-governmental contract between the Federal Government and the Provinces and Territories. Rules of the AIT are directly binding on the Province of Ontario. Under the AIT, Ontario has agreed to ensure that LSUC (and other regulatory bodies) comply with obligations related to labour mobility. Ontario is contractually bound by the AIT to take such action as may be necessary to ensure compliance.<sup>108</sup>
91. Article 706(1) of the AIT expressly states:
- ... any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.
92. There are limited exceptions, and Article 708 allows parties (Ontario) to impose additional measures of certification, provided that “the purpose of the measure is to achieve a legitimate objective; the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and the measure does not create a disguised restriction to labour mobility”.<sup>109</sup> Such measures ***cannot be approved by regulatory authorities***. They must be approved by the applicable

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<sup>107</sup> [Ontario Labour Mobility Act, 2009, SO 2009, c 24.](#)

<sup>108</sup> [AIT Article 703\(1\)](#); see Legal Opinion of Jeffrey Thomas and Patrick Foy, Q.C., Borden Ladner Gervais to the Law Society of British Columbia, “Re: Application of *Labour Mobility Act* and the Agreement on Internal Trade in Relation to TWU’s proposed Faculty of Law”, March 17, 2014 at pg. 2 (see Appendix I) [Legal Opinion of Jeffrey Thomas and Patrick Foy, Q.C. to LSBC, March 17, 2014].

<sup>109</sup> [AIT Article 708\(1\)](#).

provincial or territorial government.<sup>110</sup> To the extent that a decision by LSUC seeks to impose additional measures of certification as contemplated under Article 708 of AIT, those measures must be approved by the Ontario government.

**i. Imposing an Additional Requirement (i.e. Test) to Recognize TWU Grads**

93. In Ontario, regulatory authorities (such as LSUC) are restricted by Articles 706(3) and 706(4) which permit regulators, as a condition of certification of any worker, to impose certain requirements related to payment of fees, background checks, evidence of good character and demonstration of knowledge. Such requirements must be the same as, or substantially similar to, but no more onerous than, requirements imposed by the regulatory authority as part of its normal certification process. Additionally, such requirements must “not create a disguised restriction on labour mobility”.<sup>111</sup> Given the nature of the debate surrounding TWU, any attempt to indirectly do what LSUC cannot do directly under the AIT would come under scrutiny.
94. If a new condition however, were seen to be a “legitimate objective” the province of Ontario could impose additional measures of certification. “Legitimate objective” is defined in Article 711, as meaning one or more of: public security and safety; public order; protection of human, animal or plant life or health; protection of the environment; consumer protection; protection of the health, safety and well-being of workers; provision of adequate social and health services to all its geographic regions; and programs for disadvantaged groups.<sup>112</sup>
95. Article 708(2) cautions that “a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a

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<sup>110</sup> [AIT Article 708\(3\)](#).

<sup>111</sup> [AIT Article 706\(3\)\(i\)](#) and [AIT Article 706\(4\)\(f\)](#).

<sup>112</sup> [AIT Article 711\(1\)](#).

legitimate objective.”<sup>113</sup> Therefore, to impose any additional requirement against TWU graduates for admission to LSUC, Ontario would have to demonstrate an actual material deficiency in knowledge or ability, and that would have to be demonstrable (or proven through sufficient evidence).<sup>114</sup> The threshold for departure justifying an additional requirement is a “high one.”<sup>115</sup>

96. If LSUC were to add an additional educational requirement to TWU (B.C.) law graduates called to the bar in Alberta or Saskatchewan, for example, on the basis of perceived educational deficiencies, then this may result in Ontario violating Article 706(1) of the AIT. This type of unilateral action might then also be contrary to the *Ontario Labour Mobility Act*, which demands the fulfillment of obligations listed under Chapter 7 of the AIT.<sup>116</sup>

97. On the other hand, a decision to accredit TWU and uphold the conclusions of the Approval Committee and the Special Advisory Committee would be consistent with the law of Ontario.<sup>117</sup>

**(g) *Civil Marriage Act***

98. It is a sincerely held religious belief by TWU that sexual intimacy must fall within the definition of “marriage between a man and a woman.”<sup>118</sup> Marriage is a religious practice in the TWU community. As a private Christian university, TWU is permitted at law to require members of its community to respect the Christian values on which the university is based.<sup>119</sup>

99. Section 3.1 of the *Civil Marriage Act*, SC 2005, c 33 specifically states:

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<sup>113</sup> [AIT Article 708\(2\)](#).

<sup>114</sup> See Legal Opinion of Jeffrey Thomas and Patrick Foy, Q.C. to LSBC, March 17, 2014 at pg. 3; [LSUC, \*Inter-Jurisdictional Mobility of Lawyers in Canada\*, Background Information Tab 3.2.2](#) at para. 26 and pp. 4-8 (see Appendix J).

<sup>115</sup> [Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario’s Notice of Measure with respect to Public Accountants](#), Agreement on Internal Trade, January 13, 2012 at p. 10.

<sup>116</sup> [Ontario Labour Mobility Act](#), 2009, SO 2009, c 24 s.1; see also Legal Opinion of Jeffrey Thomas and Patrick Foy, Q.C. to LSBC, March 17, 2014 at pg. 3-4.

<sup>117</sup> [Conway, Remarks, February 27, 2014](#); [LSUC Treasurer Thomas G. Conway, “For the Record – Trinity Western University proposal”](#), Remarks to Convocation, January 23, 2014 (see Appendix K).

<sup>118</sup> [Trinity Western University Community Covenant Agreement](#), at pg. 3 “The TWU Community Covenant involves a commitment on the part of all members to embody attitudes and to practise actions identified in the Bible as virtues, and to avoid those portrayed as destructive. Members of the TWU community, therefore, commit themselves to...”

<sup>119</sup> And similarly by refusing to admit TWU grads to LSUC.

For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.<sup>120</sup>

100. While s.3.1 is Federal law, it specifically recognizes the rights of religious communities to maintain their religious practices with respect to marriage – the very legislation that changed the definition of marriage set out the balance to be struck between equality rights for same-sex couples and religious freedom.
101. A decision to accredit TWU would be consistent with the principles set out in the *Civil Marriage Act* and would adhere to the spirit of “jealous” protection and broad construction of religious freedom under the *Charter*.

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<sup>120</sup> *Civil Marriage Act*, SC 2005, c 33 s.3.1.

**OPTION B – SAYING NO**  
**POTENTIAL CONSEQUENCES OF DENIAL**

**I. POTENTIAL CONSEQUENCES LSUC MAY FACE IF CONVOCATION CHOOSES TO DENY TWU ACCREDITATION AND FAIL TO ACCEPT ITS GRADUATES**

102. A question is now before Convocation. In answering that question Convocation must take in account:

- its function/mandate;
- applicable law; and
- public interest.

103. Similarly, in answering that question, Convocation must ask itself if LSUC would be violating the law or discriminating if it chose to deny TWU or its students accreditation based on religious grounds.<sup>121</sup>

***(a) Violation of s.2(a) Charter Rights***

104. If LSUC refuses to accredit TWU and refuses to recognize that its graduates can practise in Ontario because of their adherence to a Community Covenant, that decision would be an unjustified infringement of the s.2(a) freedom of religion of TWU and TWU graduates.

***(b) Violation of TWU Graduates' s.15 Equality Rights***

105. Every individual has the right to the equal protection and benefit of the law without discrimination based on race, national, or ethnic origin, colour, ***religion***, sex, age or mental or physical disability.<sup>122</sup> Religious persons, like every single Canadian, have equality rights under s.15 of the *Charter*.

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<sup>121</sup> Argument expanded upon from pg. 2 of Legal Opinion of Geoffrey B. Gomery to LSBC, February 25, 2014.  
<sup>122</sup> [Constitution Act, 1982 s.15.](#)

106. Denying TWU accreditation based on its religious nature imposes differential treatment between TWU graduates and other law graduates that offends the human dignity of TWU graduates as adherents and practisers of the Christian faith.<sup>123</sup>

**(c) Violation of TWU Graduates s.2(d) Freedom of Association**

107. Section 2(d) of the *Charter* protects the freedom of individuals to form lawful associations; to peacefully join together for a common purpose, in the spirit of cooperation to aid in the attainment of individual goals.<sup>124</sup> When determining if the freedom of an individual to associate has been unjustly offended, the analysis commands one single inquiry: “has the state precluded activity because of its associational nature, thereby discouraging the collective pursuit of common goals?” [Emphasis in original].<sup>125</sup>

108. As noted in *BCCT v TWU*:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year [Emphasis added].<sup>126</sup>

**(d) Violation of Ontario Human Rights Code**

109. Under Part I of the *Human Rights Code*, TWU graduates have a right to equal treatment with respect to services, goods, and facilities, without discrimination

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<sup>123</sup> *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497.

<sup>124</sup> *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at para. 152.

<sup>125</sup> *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 at para. 16; see also British Columbia Civil Liberties Association, *Letter and Submissions Re: Trinity Western University School of Law Proposal*, March 2004 in particular pp. 5-11 (Appendix G).

<sup>126</sup> *Trinity Western University v. College of Teachers*, 2001 SCC 31 at para. 32.

because of creed.<sup>127</sup> The Ontario *Human Rights Code* applies to actions and decisions of LSUC - LSUC is not exempted from the provisions in Part I of the *Act*.

110. Denying TWU graduates eligibility based on their religious beliefs, in the absence of evidence, would be a violation under s.1 of the *Human Rights Code*. Does LSUC ask graduates of other law schools about their religious beliefs regarding marriage?

**(e) *Violation of the Ontario Labour Mobility Act, 2009 and Inconsistent with Ch. 7 of the Agreement on Internal Trade (AIT).***

111. As discussed above, the addition of an educational requirement for TWU graduates and/or the denial of TWU graduates who are licensed by another law society in Canada would likely offend provisions of the *Ontario Labour Mobility Act* and cause Ontario to be in violation of the inter-provincial Agreement on Internal Trade (AIT).<sup>128</sup> In light of that conclusion, denying TWU graduates would be in violation of Ontario law.

## II. CONCLUSION

112. Given that:

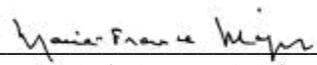
- the Federation Approval Committee has provided approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement as well as in 2011 respecting the approval of law school academic requirements;
- the Special Advisory Committee, in accordance with its public interest mandate, concluded there is no public interest reason to exclude future graduates of the program from law society bar admission programs; and
- a decision to refuse accreditation would be inconsistent with *Charter* principles and disrespect the rule of law

TWU requests Convocation:

- confirm the Federation's approval.

**Supreme Advocacy LLP**

  
Per: Eugene Meehan, Q.C.

  
Per: Marie-France Major

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<sup>127</sup> *Human Rights Code*, RSO 1990, c H.19 s.1.

<sup>128</sup> See AIT Articles 706, 708, and 711(1); *Labour Mobility Act*, 2009, SO 2009, c 24 s.1.

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- Legal Opinion of Geoffrey B. Gomery, Nathanson, Schachter & Thompson LLP to the Law Society of British Columbia, "Re: TWU: Application of the Charter", February 25, 2014.
- Legal Opinion of Jeffrey Thomas and Patrick Foy, Q.C., Borden Ladner Gervais to the Law Society of British Columbia, "Re: Application of *Labour Mobility Act* and the Agreement on Internal Trade in Relation to TWU's proposed Faculty of Law", March 17, 2014.

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- *Re Manitoba Language Rights*, [1985] 1 SCR 721
- *Reference re Same-Sex Marriage*, 2004 SCC 79
- *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295
- *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37
- *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551
- *Trinity Western University v. College of Teachers*, 2001 SCC 31
- *McKinney v. University of Guelph*, [1990] 3 SCR 229
- *Harrison v. UBC* [1990] 3 SCR 451
- *Lobo v. Carleton University* 2010 ONSC 254
- *Caldwell et al v. Stuart et al*, [1984] 2 S.C.R. 603
- *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835
- *Saskatchewan v. Whatcott*, 2013 SCC 11
- *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497
- *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313
- *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94

## Legislation

- [Degree Authorization Act, SBC 2002, c 24](#)
- [Law Society Act, RSO 1990, c L.8](#)
- [The Constitution Act, 1982](#)
- [Human Rights Code, RSBC 1996, c 210](#)
- [Ontario Labour Mobility Act, 2009, SO 2009, c 24](#)
- [Civil Marriage Act, SC 2005, c 33](#)
- [Human Rights Code, RSO 1990, c H.19](#)

## Rules and By-Laws

- [LSUC By-Law 4 – Licensing](#)
- [The Rules of the Law Society of Alberta](#)
- [FLSC National Mobility Agreement 2002](#)
- [FLSC National Mobility Agreement 2013](#)

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- [LSUC Treasurer Thomas G. Conway, “For the Record – Trinity Western University proposal”, Remarks to Convocation, January 23, 2014](#)
- [Government of B.C., \*Statement on Trinity Western University's Proposed Law Degree\*, December 18, 2013](#)
- [FLSC, News Release: Preliminary Approval of TWU Proposed Law Program, December 16, 2013](#)
- [FLSC, Statement of Mission, Vision, and Values](#)
- [FLSC, Letter to Canada’s Law Societies, Re: TWU Proposed Law School Program, December 16, 2013](#)
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- [Letter from Elliot Spears, LSUC General Counsel to Bob Kuhn, J.D. President of TWU, February, 24, 2014.](#)
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- [Open Letter from Carsten Jensen, Q.C., President, Law Society of Alberta, January 14, 2014](#)
- [Trinity Western University Community Covenant Agreement](#)
- [Submission of Mark Witten to LSUC, March 27, 2014](#)

# Appendix A

**British Columbia College of Teachers** *Appellant*

v.

**Trinity Western University and Donna Gail Lindquist** *Respondents*

and

**The Evangelical Fellowship of Canada, the Ontario Secondary School Teachers' Federation, the Canadian Conference of Catholic Bishops, the British Columbia Civil Liberties Association, EGALE Canada Inc., the Christian Legal Fellowship, the Seventh-Day Adventist Church in Canada and the Canadian Civil Liberties Association** *Interveners*

INDEXED AS: TRINITY WESTERN UNIVERSITY v. BRITISH COLUMBIA COLLEGE OF TEACHERS

Neutral citation: 2001 SCC 31.

File No.: 27168.

2000: November 9; 2001: May 17.

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Administrative law — Judicial review — Jurisdiction — British Columbia College of Teachers — Private institution with religious affiliations applying to College for permission to assume full responsibility for teacher education program — College denying application — Whether College had jurisdiction to consider discriminatory practices of private institution in dealing with its application — Teaching Profession Act, R.S.B.C. 1996, c. 449, s. 4.*

*Administrative law — Judicial review — Standard of review — British Columbia College of Teachers — Private institution with religious affiliations applying to College for permission to assume full responsibility for*

**British Columbia College of Teachers** *Appelant*

c.

**Université Trinity Western et Donna Gail Lindquist** *Intimées*

et

**L'Alliance évangélique du Canada, la Fédération des enseignantes-enseignants des écoles secondaires de l'Ontario, la Conférence des évêques catholiques du Canada, la British Columbia Civil Liberties Association, EGALE Canada Inc., la Christian Legal Fellowship, l'Église adventiste du septième jour au Canada et l'Association canadienne des libertés civiles** *Intervenantes*

RÉPERTORIÉ : UNIVERSITÉ TRINITY WESTERN c. BRITISH COLUMBIA COLLEGE OF TEACHERS

Référence neutre : 2001 CSC 31.

N° du greffe : 27168.

2000 : 9 novembre; 2001 : 17 mai.

Présents : Le juge en chef McLachlin et les juges L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

*Droit administratif — Contrôle judiciaire — Compétence — British Columbia College of Teachers — Établissement privé affilié à une religion demandant l'autorisation d'assumer l'entière responsabilité d'un programme de formation d'enseignants — Demande rejetée par le College of Teachers — Le College of Teachers avait-il compétence pour prendre en considération les pratiques discriminatoires de l'établissement privé en traitant la demande de ce dernier? — Teaching Profession Act, R.S.B.C. 1996, ch. 449, art. 4.*

*Droit administratif — Contrôle judiciaire — Norme de contrôle — British Columbia College of Teachers — Établissement privé affilié à une religion demandant l'autorisation d'assumer l'entière responsabilité d'un*

*teacher education program — College denying application — Whether College's decision justified — Standard of review applicable to College's decision — Manner of resolving potential conflict between religious freedoms and equality rights.*

Trinity Western University ("TWU") is a private institution in B.C., associated with the Evangelical Free Church of Canada. TWU established a teacher training program offering baccalaureate degrees in education upon completion of a five-year course, four years of which were spent at TWU, the fifth year being under the aegis of Simon Fraser University ("SFU"). TWU applied to the B.C. College of Teachers ("BCCT") for permission to assume full responsibility for the teacher education program. One of the reasons for assuming complete responsibility for the program was TWU's desire to have the full program reflect its Christian world view. The BCCT refused to approve the application because it was contrary to the public interest for the BCCT to approve a teacher education program offered by a private institution which appears to follow discriminatory practices. The BCCT was concerned that the TWU Community Standards, applicable to all students, faculty and staff, embodied discrimination against homosexuals. Specifically, the concern stemmed from the list of "PRACTICES THAT ARE BIBLICALLY CONDEMNED", which encompassed "sexual sins including . . . homosexual behaviour". TWU community members were asked to sign a document in which they agreed to refrain from such activities. On application for judicial review, the B.C. Supreme Court found that it was not within the BCCT's jurisdiction to consider whether the program follows discriminatory practices under the public interest component of the *Teaching Profession Act* and that there was no reasonable foundation to support the BCCT's decision with regard to discrimination. The court granted an order in the nature of mandamus, allowing approval of the TWU proposed teacher education program for a five-year period subject to a number of conditions. The Court of Appeal found that the BCCT had acted within its jurisdiction, but affirmed the trial judge's decision on the basis that there was no reasonable foundation for the BCCT's finding of discrimination.

*Held* (L'Heureux-Dubé J. dissenting): The appeal should be dismissed.

*programme de formation d'enseignants — Demande rejetée par le College of Teachers — La décision du College of Teachers est-elle justifiée? — Norme de contrôle applicable à la décision du College of Teachers — Façon de régler un conflit éventuel entre les libertés religieuses et les droits à l'égalité.*

L'université Trinity Western (« UTW ») est un établissement privé situé en Colombie-Britannique et associé à l'Evangelical Free Church of Canada. L'UTW a établi un programme de formation des enseignants menant à un baccalauréat en enseignement après cinq années d'études, dont quatre à l'UTW et la cinquième sous l'égide de l'université Simon Fraser (« USF »). L'UTW a demandé au British Columbia College of Teachers (« BCCT ») l'autorisation d'assumer l'entière responsabilité du programme de formation des enseignants. L'une des raisons pour lesquelles l'UTW souhaitait assumer l'entière responsabilité du programme était sa volonté d'assurer que tout ce programme reflète sa vision chrétienne du monde. Le BCCT a refusé d'approuver la demande parce qu'il était contraire à l'intérêt public qu'il approuve un programme de formation des enseignants offert par un établissement privé qui paraissait se livrer à des pratiques discriminatoires. Le BCCT craignait que les normes communautaires de l'UTW, applicables à tous les étudiants et à tous les membres du corps professoral et du personnel, soient discriminatoires envers les homosexuels. Cette crainte émanait plus précisément de la liste des « PRATIQUES QUE LA BIBLE CONDAMNE » qui comprenaient « les péchés sexuels, y compris [ . . . ] le comportement homosexuel ». Les membres de la communauté de l'UTW étaient tenus de signer un document dans lequel ils acceptaient de s'abstenir de se livrer à de telles activités. À la suite d'une demande de contrôle judiciaire, la Cour suprême de la Colombie-Britannique a conclu que le BCCT ne pouvait pas se servir de la disposition relative à l'intérêt public contenue dans la *Teaching Profession Act* pour décider si le programme suivait des pratiques discriminatoires, et que la décision du BCCT relative à la discrimination n'avait aucun fondement raisonnable. La cour a délivré une ordonnance de type mandamus enjoignant d'approuver, sous réserve de certaines conditions, le programme de formation des enseignants de cinq ans proposé par l'UTW. La Cour d'appel a jugé que le BCCT avait agi dans les limites de sa compétence, mais a confirmé la décision du juge de première instance pour le motif que la conclusion du BCCT relative à la discrimination n'avait aucun fondement raisonnable.

*Arrêt* (le juge L'Heureux-Dubé est dissidente) : Le pourvoi est rejeté.

*Per* McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.: The BCCT had jurisdiction to consider discriminatory practices in dealing with the TWU application. The suitability for entrance into the profession of teaching must take into account all features of the education program at TWU and the power to establish standards provided for in s. 4 of the *Teaching Profession Act* must be interpreted in light of the general purpose of the statute. Public schools are meant to develop civic virtue and responsible citizenship and to educate in an environment free of bias, prejudice and intolerance. It would not be correct, in this context, to limit the scope of s. 4 to a determination of skills and knowledge. The standard of correctness must be applied to the BCCT's decision to consider discriminatory practices because it was determinative of jurisdiction and beyond the expertise of the members of the BCCT.

The absence of a privative clause, the expertise of the BCCT, the nature of the decision and the statutory context all favour a correctness standard of review on the issue of whether the BCCT's decision is justified. While this case deals with the discretion of an administrative body to determine the public interest, the BCCT is not the only government actor entrusted with policy development. Furthermore, its expertise does not qualify it to interpret the scope of human rights nor to reconcile competing rights. The Court of Appeal was wrong in applying a lower standard to the findings of the BCCT with regard to the existence of discriminatory practices and whether any such practices create a perception that the BCCT condones this discrimination or create a risk that graduates of TWU will not provide a discrimination-free environment for all public school students. The existence of discriminatory practices is based on the interpretation of the TWU documents and human rights values and principles. This is a question of law that is concerned with human rights and not essentially educational matters.

At the heart of the appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.'s public school system, concerns that may be shared by society generally. While TWU is a private institution that is exempted, in part, from the B.C. human rights legislation and to which the *Canadian Charter of Rights and Freedoms* does not apply, the BCCT was entitled to

*Le* juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel : Le BCCT avait compétence pour prendre en considération des pratiques discriminatoires en traitant la demande de l'UTW. Pour déterminer l'aptitude à devenir enseignant, il faut tenir compte de toutes les caractéristiques du programme de formation de l'UTW et le pouvoir d'établir des normes, prévu à l'art. 4 de la *Teaching Profession Act*, doit être interprété en fonction de l'objectif général de la Loi. Les écoles publiques sont censées développer le civisme, former des citoyens responsables et offrir un enseignement dans un milieu où les préjugés, le parti pris et l'intolérance n'existent pas. Il ne conviendrait donc pas, dans ce contexte, de limiter la portée de l'art. 4 à la détermination des compétences et des connaissances. La norme de la décision correcte doit s'appliquer à la décision du BCCT de prendre en considération des pratiques discriminatoires parce que celle-ci était déterminante sur le plan de la compétence et excédait l'expertise des membres du BCCT.

L'absence de clause privative, l'expertise du BCCT, la nature de la décision et le contexte législatif militent tous en faveur de l'application de la norme de la décision correcte pour déterminer si la décision du BCCT est justifiée. Quoique la présente affaire porte sur le pouvoir discrétionnaire d'un organisme administratif de déterminer ce qui est dans l'intérêt public, le BCCT n'est pas le seul intervenant officiel qui soit chargé d'établir des politiques. Il ne possède pas non plus l'expertise nécessaire pour interpréter la portée des droits de la personne ou pour concilier des droits opposés. La Cour d'appel a eu tort d'appliquer une norme moins stricte aux conclusions que le BCCT a tirées relativement à l'existence de pratiques discriminatoires et quant à savoir si de telles pratiques engendrent la perception qu'il tolère cette discrimination ou si elles créent un risque que les diplômés de l'UTW n'offrent pas à tous les élèves des écoles publiques un milieu libre de toute discrimination. L'existence de pratiques discriminatoires est fondée sur l'interprétation des documents de l'UTW et des valeurs et principes en matière de droits de la personne. Il s'agit d'une question de droit qui touche le domaine des droits de la personne et non pas essentiellement celui de l'enseignement.

La question au cœur du présent pourvoi est de savoir comment concilier les libertés religieuses d'individus qui souhaitent fréquenter l'UTW avec les préoccupations d'égalité des élèves du système scolaire public de la Colombie-Britannique, préoccupations qui peuvent être partagées par la société en général. Bien que l'UTW soit un établissement privé qui échappe en partie à l'application de la législation de la Colombie-Britannique

look to these instruments to determine whether it would be in the public interest to allow public school teachers to be trained at TWU. Any potential conflict between religious freedoms and equality rights should be resolved through the proper delineation of the rights and values involved. Properly defining the scope of the rights avoids a conflict in this case. Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. The proper place to draw the line is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. Acting on those beliefs, however, is a different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT. In this way, the scope of the freedom of religion and equality rights that have come into conflict can be circumscribed and thereby reconciled.

Here, by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU, the BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU. Consideration of human rights values in the present circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values. Freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation. Even though the requirement that students and faculty adopt the Community Standards creates differential treatment since it would probably prevent homosexual students and faculty from applying, one must consider the true nature of the undertaking and the context in which this occurs. Many Canadian universities have traditions of religious affiliations. Religious public education rights are enshrined in s. 93 of the *Constitution Act, 1867*. Moreover, a religious institution is not considered to breach B.C. human rights legislation where it prefers adherents of its religious constituency. It cannot be reasonably concluded that private institutions are protected but that their graduates are *de facto* considered unworthy of fully participating in public activities. While homosexuals may be discouraged from attending TWU, a private institution based on particular

relative aux droits de la personne et auquel la *Charte canadienne des droits et libertés* ne s'applique pas, le BCCT avait le droit de consulter ces instruments pour décider s'il serait dans l'intérêt public de permettre la formation d'enseignants d'école publique à l'UTW. Il y a lieu de régler tout conflit éventuel entre les libertés religieuses et les droits à l'égalité en délimitant correctement les droits et valeurs en cause. Une bonne délimitation de la portée des droits permet d'éviter un conflit en l'espèce. Ni la liberté de religion ni la protection contre la discrimination fondée sur l'orientation sexuelle ne sont absolues. Il convient généralement de tracer la ligne entre la croyance et le comportement. La liberté de croyance est plus large que la liberté d'agir sur la foi d'une croyance. En l'absence de preuve tangible que la formation d'enseignants à l'UTW favorise la discrimination dans les écoles publiques de la Colombie-Britannique, il y a lieu de respecter la liberté des individus d'avoir certaines croyances religieuses pendant qu'ils fréquentent l'UTW. Cependant, il en va autrement si quelqu'un agit sur la foi de ces croyances. L'enseignant du système scolaire public qui a un comportement discriminatoire peut faire l'objet de procédures disciplinaires devant le BCCT. Ainsi, il est possible de concilier la liberté de religion et les droits à l'égalité qui sont en conflit, en en circonscrivant la portée.

En l'espèce, en ne tenant pas compte de l'incidence de sa décision sur le droit à la liberté de religion des membres de l'UTW, le BCCT n'a pas soupesé les différents droits en jeu dans son évaluation des prétendues pratiques discriminatoires de l'UTW. La prise en considération des valeurs relatives aux droits de la personne dans ces circonstances comprend celle de la place des établissements privés dans notre société et la conciliation de droits et valeurs opposés. La liberté de religion, de conscience et d'association coexiste avec le droit d'être exempt de toute discrimination fondée sur l'orientation sexuelle. Même si l'exigence que les étudiants et les membres du corps professoral adoptent les normes communautaires engendre un traitement différentiel du fait qu'elle dissuaderait probablement les étudiants et les enseignants homosexuels de tenter de rejoindre les rangs de l'université, il faut prendre en considération la vraie nature de l'engagement en cause et le contexte dans lequel il est pris. Bien des universités canadiennes ont été par tradition affiliées à une religion. Le droit à l'enseignement confessionnel public est consacré à l'art. 93 de la *Loi constitutionnelle de 1867*. De plus, on ne considère pas qu'un établissement confessionnel enfreint la législation de la Colombie-Britannique relative aux droits de la personne quand il donne la préférence aux membres de sa confession. On ne saurait raisonnable-

religious beliefs, they will not be prevented from becoming teachers. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the public school system. There is nothing in the TWU Community Standards, which are limited to prescribing conduct of members while at TWU, that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. The evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct. In addition, there is no basis for the inference that the fifth year of the TWU program conducted under the aegis of SFU corrected any attitudes which were the subject of the BCCT's concerns. On the evidence, the participation of SFU had nothing to do with the apprehended intolerance from its inception to the present. Rather, the cooperation was intended to support a small faculty in its start-up stage.

The order of mandamus was justified because the exercise of discretion by the BCCT was fettered by s. 4 of the Act and because the only actual reason for denial of certification was the consideration of discriminatory practices. In considering the religious precepts of TWU instead of the actual impact of these beliefs on the public school environment, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly.

*Per L'Heureux-Dubé J. (dissenting):* This case is about providing the best possible educational environment for public school students in British Columbia. The *Teaching Profession Act* confers jurisdiction on the BCCT to consider discriminatory practices in evaluating TWU's application. The BCCT's statutory mandate gives it a broad discretion to set standards for the approval of teacher education programs, as well as for their graduates. The presence of discrimination is relevant and within the BCCT's jurisdiction.

ment conclure que les établissements privés sont protégés, mais que leurs diplômés sont de fait jugés indignes de participer pleinement à des activités publiques. Quoique les homosexuels puissent être dissuadés de fréquenter l'UTW, un établissement privé qui préconise des croyances religieuses particulières, cela ne les empêchera pas de devenir enseignants. Manifestement, la restriction de la liberté de religion doit être justifiée par la preuve que l'exercice de cette liberté aura, dans les circonstances de la présente affaire, une incidence préjudiciable sur le système scolaire public. Rien dans les normes communautaires de l'UTW, qui ne font que dicter la conduite des gens qui fréquentent l'UTW ou qui y travaillent, n'indique que les diplômés de l'UTW ne traiteront pas les personnes homosexuelles d'une manière équitable et respectueuse. La preuve révèle que les diplômés du programme de formation des enseignants, offert conjointement par l'UTW et l'USF, sont devenus jusqu'à maintenant des enseignants compétents dans des écoles publiques, et notre Cour ne dispose d'aucune preuve de comportement discriminatoire. En outre, rien ne permet de déduire que la cinquième année du programme de l'UTW sous l'égide de l'USF corrigeait des attitudes qui faisaient l'objet des craintes du BCCT. Il ressort de la preuve que la participation de l'USF n'avait rien à voir avec l'intolérance appréhendée depuis le début jusqu'à aujourd'hui. La collaboration avait plutôt pour but d'épauler une petite faculté qui en était à ses tout débuts.

L'ordonnance de mandamus était justifiée parce que l'art. 4 de la Loi entravait l'exercice du pouvoir discrétionnaire du BCCT et parce que le rejet de la demande d'agrément reposait, en réalité, uniquement sur la prise en considération de pratiques discriminatoires. En tenant compte des préceptes religieux de l'UTW au lieu de l'incidence réelle de ces croyances sur le milieu scolaire, le BCCT s'est fondé sur des considérations non pertinentes. Il a donc agi inéquitablement.

*Le juge L'Heureux-Dubé (dissidente):* Le présent pourvoi porte sur l'établissement du meilleur milieu d'enseignement possible pour les étudiants des écoles publiques de la Colombie-Britannique. La *Teaching Profession Act* habilitait le BCCT à prendre en considération des pratiques discriminatoires en évaluant la demande de l'UTW. D'après le mandat qui lui est confié par la Loi, le BCCT a un large pouvoir discrétionnaire d'établir les normes applicables à l'approbation des programmes de formation des enseignants, de même qu'à leurs diplômés. L'existence de discrimination est pertinente et relève de la compétence du BCCT.

The standard of patent unreasonableness is the appropriate standard of review for the BCCT's decision. While *Pushpanathan's* privative clauses factor does not apply to this case, the other relevant factors all weigh in favour of patent unreasonableness. First, the BCCT has relative expertise in the area of setting standards for admission into the teaching profession. Deference should be accorded to self-governing professional bodies like the BCCT. Second, on the question of the purpose of the Act as a whole and of the particular provision at issue, the BCCT's decision concerning TWU's teacher education program goes to the heart of the *Teaching Profession Act's* *raison d'être* and should only be disturbed by judges, who lack the specialized expertise of teachers, if it is patently unreasonable. The BCCT is entrusted with policy development. This policy-making mandate is reflected in the words of s. 4 of the Act. Moreover, the BCCT has wide discretion to review teacher training programs under the Act. Its polycentric decision in this case was made pursuant to s. 21(i) of the Act, which involves the application of vague, open-textured principles, requiring curial deference. Finally, the BCCT's decision is fact-based, concerning an issue the nature of which implicates the tribunal's expertise. Determining how TWU's program may affect its graduates' preparedness to teach in the public schools is a factual rather than a legal inquiry and requires the specialized expertise of the BCCT's members, the majority of whom have classroom experience.

The BCCT fulfills the role of gatekeeper to the profession of public school teaching. Statutory interpretation of the BCCT's "public interest" responsibilities should be purposive and contextual, not nebulous. It is a misconception to characterize the BCCT's decision as being a balancing or interpretation of human rights values, an exercise that is beyond the tribunal's expertise. Equality is a central component of the public interest that the BCCT is charged with protecting in the classrooms of the province. The BCCT was required to consider the value of equality in its assessment of the impact TWU's program will have on the classroom environment. The BCCT was not acting as a human rights tribunal and was not required to consider other *Charter* or human rights values such as freedom of religion which are not germane to the public interest in ensuring that teachers have the requisites to foster sup-

La norme du caractère manifestement déraisonnable est la norme de contrôle applicable à la décision du BCCT. Bien que le facteur des clauses privatives énoncé dans l'arrêt *Pushpanathan* ne s'applique pas en l'espèce, les autres facteurs pertinents militent tous en faveur de l'adoption de la norme du caractère manifestement déraisonnable. Premièrement, le BCCT possède une expertise relative dans le domaine de l'établissement des normes d'admission à la profession d'enseignant. Il y a lieu de faire preuve de retenue à l'égard d'un ordre professionnel autonome comme le BCCT. Deuxièmement, en ce qui concerne l'objet de la Loi dans son ensemble et de la disposition particulière en cause, la décision du BCCT relative au programme de formation des enseignants de l'UTW touche au cœur même de la raison d'être de la *Teaching Profession Act* et les juges, qui n'ont pas l'expertise des enseignants, ne devraient la modifier que si elle est manifestement déraisonnable. Le BCCT est chargé d'établir des politiques. Ce mandat relatif à l'établissement des politiques se reflète dans le libellé de l'art. 4 de la Loi. De plus, le BCCT possède, en vertu de la Loi, un large pouvoir discrétionnaire d'examiner les programmes de formation des enseignants. Sa décision polycentrique en l'espèce a été rendue conformément à l'al. 21i) de la Loi, qui fait intervenir des principes vagues et non limitatifs, ce qui commande la retenue judiciaire. Enfin, la décision du BCCT porte sur une question de fait dont la nature fait appel à l'expertise de ce tribunal administratif. La question de savoir de quelle façon le programme de l'UTW peut influencer sur le niveau de préparation de ses diplômés à l'enseignement dans les écoles publiques est une question de fait plutôt que de droit, à laquelle seule l'expertise des membres du BCCT qui, en majorité, ont l'expérience des salles de classe permet de répondre.

Le BCCT joue le rôle de gardien de la profession d'enseignant dans une école publique. L'interprétation législative des responsabilités du BCCT eu égard à l'« intérêt public » doit se faire en fonction de l'objet visé et du contexte, et non pas de façon nébuleuse. Il est erroné de caractériser la décision du BCCT comme une évaluation ou une interprétation de valeurs relatives aux droits de la personne, qui va au-delà de l'expertise de ce tribunal. L'égalité est une composante centrale de l'intérêt public que le BCCT est chargé de protéger dans les salles de classe de la province. Le BCCT devait tenir compte de la valeur de l'égalité en évaluant l'incidence que le programme de l'UTW aurait sur le climat des salles de classe. Il n'agissait pas à titre de tribunal des droits de la personne et n'était pas tenu de prendre en considération d'autres valeurs véhiculées par la *Charte* ou relatives aux droits de la personne, qui n'ont rien à

portive classroom environments in public schools. The BCCT's inquiry was reasonably limited to its area of educational expertise.

The BCCT's decision not to accredit a free-standing TWU teacher-training program should be upheld. The BCCT's conclusion that TWU's Community Standards embodies a discriminatory practice is not patently unreasonable. Signing the contract makes the student or employee complicit in an overt, but not illegal, act of discrimination against homosexuals and bisexuals. It is not patently unreasonable for the BCCT to treat TWU students' public expressions of discrimination as potentially affecting the public school communities in which they wish to teach. Although tolerance is also a fundamental value in the Community Standards, the public interest in the public school system requires something more than mere tolerance.

The BCCT was not patently unreasonable in concluding that, without spending a year under the auspices of SFU, TWU graduates, due to their signature of the Community Standards contract, could have a negative impact on the supportive environment required in classrooms. The BCCT could reasonably find that without a fifth year of training outside the supervision of TWU there would be an unacceptable pedagogical cost in terms of reduced exposure of TWU students to diversity and its values. It is reasonable to insist that graduates of accredited teacher training programs be equipped to provide a welcoming classroom environment, one that is as sensitive as possible to the needs of a diverse student body.

The modern role of the teacher has developed into a multi-faceted one, including counselling as well as educative functions. Evidence shows that there is an acute need for improvement in the experiences of homosexual and bisexual students in Canadian classrooms. Without the existence of supportive classroom environments, homosexual and bisexual students will be forced to remain invisible and reluctant to approach their teachers. They will be victims of identity erasure. The students' perspective must be the paramount concern and, even if there are no overt acts of discrimination by TWU

voir avec l'intérêt public veillant à garantir que les enseignants aient les qualifications requises pour favoriser le maintien d'un climat favorable dans les salles de classe des écoles publiques. Le BCCT a confiné raisonnablement son examen à son champ d'expertise pédagogique.

Il y a lieu de confirmer la décision du BCCT de ne pas agréer un programme autonome de formation des enseignants offert par l'UTW. La conclusion du BCCT que le Code des normes communautaires de l'UTW comporte des pratiques discriminatoires n'est pas manifestement déraisonnable. La signature du contrat des normes communautaires par l'étudiant ou l'employé le rend complice d'un acte de discrimination manifeste, mais non illégal, contre les homosexuels et les bisexuels. Il n'est pas manifestement déraisonnable que le BCCT considère que les manifestations publiques de discrimination des étudiants de l'UTW peuvent influencer sur les milieux scolaires publics dans lesquels ils souhaitent enseigner. Bien que la tolérance soit également une valeur fondamentale des normes communautaires, l'intérêt public dans le système scolaire public commande davantage que la simple tolérance.

Il n'était pas manifestement déraisonnable que le BCCT conclue que, s'ils ne passaient pas une année sous l'égide de l'USF, les diplômés de l'UTW pourraient avoir une incidence négative sur le climat favorable requis dans les salles de classe en raison de leur signature du contrat des normes communautaires. Le BCCT pouvait raisonnablement conclure que la suppression d'une cinquième année de formation sous la supervision d'un autre établissement que l'UTW engendrerait un coût pédagogique inacceptable en ce sens que les étudiants de l'UTW seraient moins exposés à la diversité et aux valeurs qui s'y rattachent. Il est raisonnable d'insister pour que les diplômés des programmes agréés de formation des enseignants soient en mesure de faire en sorte qu'il règne, dans les salles de classe, un climat accueillant qui tienne compte le plus possible des besoins d'une population étudiante variée.

Le rôle moderne de l'enseignant s'est diversifié et comporte autant un volet de conseiller qu'un volet d'éducateur. La preuve montre qu'il existe un besoin pressant d'améliorer la situation des étudiants homosexuels et bisexuels dans les salles de classe au Canada. En l'absence d'un climat favorable dans les salles de classes, les étudiants homosexuels et bisexuels seront forcés de rester dans l'ombre et hésiteront à se confier à leurs enseignants. Ils seront victimes d'effacement identitaire. C'est le point de vue des étudiants qui importe avant tout et, même si les diplômés de l'UTW n'accom-

graduates, this vantage point provides ample justification for the BCCT's decision. The BCCT's decision is a reasonable proactive measure designed to prevent any potential problems of student, parent, colleague, or staff perception of teachers who have not completed a year of training under the supervision of SFU, but have signed the Community Standards contract. The courts, by trespassing into the field of pedagogy, deal a setback to the BCCT's efforts to ensure the sensitivity and empathy of its members to all students' backgrounds and characteristics.

The respondents' *Charter* claims should be dismissed. The effect of the BCCT's decision is to restrict TWU students' expression. Assuming that TWU's expression is also fettered, these violations are saved under s. 1. First, the objective behind the BCCT's decision to protect the classroom environment in public schools is pressing and substantial. Second, the BCCT's decision satisfies the proportionality test. The burden placed on expression is rationally connected to the BCCT's goal of ensuring a welcoming and supportive atmosphere in classrooms. By falling within an acceptable range of solutions, the BCCT's decision also minimally impairs s. 2(b). The extent of the violation's deleterious effects on TWU and its students is more than offset by the salutary gains that will plausibly accrue in classrooms. With respect to s. 2(d), since no unjustified individual rights violations were found in this case, and since TWU students are not unconstitutionally restrained from exercising their individual rights collectively, the respondent student's s. 2(d) claim must also fail.

Assuming without deciding that TWU can advance a s. 2(a) claim, the impugned state action does not offend religious freedom but accommodates it. The BCCT's decision permits the existence of schools such as TWU which have a religious orientation. There is also no impairment of the respondent student's s. 2(a) rights. Her assertion of religious freedom should be appraised under s. 15. Based on the guidelines assembled and applied in *Law*, no violation of the student's s. 15 equality rights has been established. The distinction and differential treatment resulting from the BCCT's decision are not based on the student's religion. There is every

plissent ouvertement aucun acte discriminatoire, ce point de vue justifie amplement la décision du BCCT. La décision du BCCT se veut une mesure proactive raisonnable destinée à prévenir tout problème de perception que pourraient avoir les étudiants, les parents, les collègues ou les membres du personnel à l'égard des enseignants qui n'ont pas complété une année de formation sous la supervision de l'USF, mais qui ont signé le contrat des normes communautaires. En empiétant sur le domaine de la pédagogie, les tribunaux infligent un revers aux tentatives du BCCT d'assurer la réceptivité et l'empathie de ses membres à l'égard des antécédents et des caractéristiques de tous les étudiants.

Il y a lieu de rejeter les arguments des intimées fondés sur la *Charte*. La décision du BCCT a pour effet de restreindre la liberté d'expression des étudiants de l'UTW. En présumant qu'il y a également entrave à la liberté d'expression de l'UTW, ces violations sont justifiées au regard de l'article premier. Premièrement, l'objectif sous-jacent de la décision du BCCT, qui est de protéger le climat des salles de classe dans les écoles publiques, est urgent et réel. Deuxièmement, la décision du BCCT satisfait au critère de proportionnalité. La restriction de la liberté d'expression comporte un lien rationnel avec l'objectif du BCCT de maintenir un climat favorable et accueillant dans les salles de classe. Du fait qu'elle se situe dans une gamme acceptable de solutions, la décision du BCCT porte également atteinte de façon minimale à l'al. 2b). L'ampleur des effets préjudiciables de la violation sur l'UTW et ses étudiants est plus que compensée par les gains salutaires qui résulteront vraisemblablement dans les salles de classe. En ce qui concerne l'al. 2d), l'argument de l'étudiante intimée fondé sur cet alinéa doit également échouer étant donné qu'on a conclu en l'espèce à l'absence de violation injustifiée de droits individuels et que les étudiants de l'UTW ne sont pas inconstitutionnellement empêchés d'exercer collectivement leurs droits individuels.

En présumant, sans toutefois le décider, que l'UTW peut invoquer l'al. 2a), la mesure étatique contestée ne porte pas atteinte à la liberté religieuse, mais compose avec elle. La décision du BCCT autorise l'existence d'écoles, comme l'UTW, qui ont une orientation religieuse. De même, il n'y a aucune atteinte aux droits que l'al. 2a) garantit à l'étudiante intimée. Son argument fondé sur la liberté religieuse devrait être apprécié au regard de l'art. 15. Compte tenu des lignes directrices réunies et appliquées dans l'arrêt *Law*, on n'a pas démontré l'existence d'une atteinte aux droits à l'égalité que l'art. 15 garantit à l'étudiante. La distinction et la

indication that the BCCT would be as concerned if a private secular institution were to require a discriminatory practice. Furthermore, a subjective-objective examination of *Law's* four contextual factors reveals that the student's human dignity is not demeaned by the BCCT's decision to attach consequences to TWU students' signature of the Community Standards contract.

### Cases Cited

By Iacobucci and Bastarache JJ.

**Applied:** *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; **referred to:** *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825; *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Vriend v. Alberta*, [1998] 1 S.C.R. 493; *Egan v. Canada*, [1995] 2 S.C.R. 513; *M. v. H.*, [1999] 2 S.C.R. 3; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, 2000 SCC 69; *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141; *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536; *Khalil v. Canada (Secretary of State)*, [1999] 4 F.C. 661; *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742, aff'd [1994] 3 S.C.R. 1100.

By L'Heureux-Dubé J. (dissenting)

*Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825; *R. v. Jones*, [1986] 2 S.C.R. 284; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *Casson v. British Columbia College of Teachers*, [2000] B.C.J. No. 1038 (QL); *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Lindsay v. Manitoba (Motor Transport)* (1989), 62 D.L.R. (4th) 615; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5;

différence de traitement qui résultent de la décision du BCCT ne sont pas fondées sur la religion de l'étudiante. Il y a tout lieu de croire que le BCCT serait tout aussi préoccupé si un établissement laïque privé imposait une pratique discriminatoire. En outre, une analyse à la fois subjective et objective des quatre facteurs contextuels de l'arrêt *Law* révèle que la décision du BCCT d'attacher des conséquences à la signature du contrat des normes communautaires par les étudiants de l'UTW ne porte pas atteinte à la dignité humaine de l'étudiante en question.

### Jurisprudence

Citée par les juges Iacobucci et Bastarache

**Arrêt appliqué :** *Pushpanathan c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [1998] 1 R.C.S. 982; **arrêts mentionnés :** *Ross c. Conseil scolaire du district n° 15 du Nouveau-Brunswick*, [1996] 1 R.C.S. 825; *U.E.S., Local 298 c. Bibeault*, [1988] 2 R.C.S. 1048; *Pezim c. Colombie-Britannique (Superintendent of Brokers)*, [1994] 2 R.C.S. 557; *Canada (Directeur des enquêtes et recherches) c. Southam Inc.*, [1997] 1 R.C.S. 748; *Saumur c. City of Quebec*, [1953] 2 R.C.S. 299; *R. c. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295; *Vriend c. Alberta*, [1998] 1 R.C.S. 493; *Egan c. Canada*, [1995] 2 R.C.S. 513; *M. c. H.*, [1999] 2 R.C.S. 3; *Little Sisters Book and Art Emporium c. Canada (Ministre de la Justice)*, [2000] 2 R.C.S. 1120, 2000 CSC 69; *P. (D.) c. S. (C.)*, [1993] 4 R.C.S. 141; *B. (R.) c. Children's Aid Society of Metropolitan Toronto*, [1995] 1 R.C.S. 315; *Dagenais c. Société Radio-Canada*, [1994] 3 R.C.S. 835; *Commission ontarienne des droits de la personne c. Simpsons-Sears Ltd.*, [1985] 2 R.C.S. 536; *Khalil c. Canada (Secrétaire d'État)*, [1999] 4 C.F. 661; *Apotex Inc. c. Canada (Procureur général)*, [1994] 1 C.F. 742, conf. par [1994] 3 R.C.S. 1100.

Citée par le juge L'Heureux-Dubé (dissidente)

*Ross c. Conseil scolaire du district n° 15 du Nouveau-Brunswick*, [1996] 1 R.C.S. 825; *R. c. Jones*, [1986] 2 R.C.S. 284; *Pushpanathan c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [1998] 1 R.C.S. 982; *Casson c. British Columbia College of Teachers*, [2000] B.C.J. No. 1038 (QL); *Pearlman c. Comité judiciaire de la Société du Barreau du Manitoba*, [1991] 2 R.C.S. 869; *Pezim c. British Columbia (Superintendent of Brokers)*, [1994] 2 R.C.S. 557; *Lindsay c. Manitoba (Motor Transport)* (1989), 62 D.L.R. (4th) 615; *Hill c. Église de scientologie de Toronto*, [1995] 2 R.C.S. 1130; *Cuddy Chicks Ltd. c. Ontario (Commission des relations*

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21(b), (c), (i), 23(1)(d), (e), (f), (l), 24(1) [am. 1997,  
c. 29, s. 39], (2), 40.

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*Loi de 1870 sur le Manitoba*, L.R.C. 1985, app. II, n° 8,  
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tions de l'union de Terre-Neuve au Canada, clause 17.  
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*Thomas R. Berger, Q.C., Gary A. Nelson and Erin F. Berger, for the appellant.*

*Robert G. Kuhn, Kevin G. Sawatsky and Kevin L. Boonstra, for the respondents.*

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POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (1998), 59 B.C.L.R. (3d) 241, 116 B.C.A.C. 1, 190 W.A.C. 1, 169 D.L.R. (4th) 234, 58 C.R.R. (2d) 189, [1999] 7 W.W.R. 71, [1998] B.C.J. No. 3029 (QL), qui a rejeté l'appel de l'appelant contre un jugement de la Cour suprême de la Colombie-Britannique (1997), 41 B.C.L.R. (3d) 158, 2 Admin. L.R. (3d) 12, 47 C.R.R. (2d) 155, [1998] 4 W.W.R. 550, [1997] B.C.J. No. 2076 (QL), qui avait accueilli la demande de contrôle judiciaire présentée par les intimées. Pourvoi rejeté, le juge L'Heureux-Dubé est dissidente.

*Thomas R. Berger, c.r., Gary A. Nelson et Erin F. Berger, pour l'appelant.*

*Robert G. Kuhn, Kevin G. Sawatsky et Kevin L. Boonstra, pour les intimées.*

*David M. Brown and Adrian C. Lang*, for the intervener the Evangelical Fellowship of Canada.

*Susan Ursel and Maurice A. Green*, for the intervener the Ontario Secondary School Teachers' Federation.

*William J. Sammon*, for the intervener the Canadian Conference of Catholic Bishops.

*Timothy J. Delaney and James Gopaulsingh*, for the intervener the British Columbia Civil Liberties Association.

*Kenneth W. Smith and Pam MacEachern*, for the intervener EGALE Canada Inc.

*Dallas K. Miller, Q.C., and Corina Dario*, for the intervener the Christian Legal Fellowship.

*Gerald D. Chipeur and Barbara B. Johnston*, for the intervener the Seventh-Day Adventist Church in Canada.

*Andrew K. Lokan and Heather E. Bowie*, for the intervener the Canadian Civil Liberties Association.

The judgment of McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ. was delivered by

IACOBUCCI AND BASTARACHE JJ. — Trinity Western University (“TWU”) is a private institution located in Langley, British Columbia and incorporated under the laws of British Columbia. It succeeded Trinity Western College in 1985; that junior college was itself the successor of a private society founded in 1962. TWU is associated with the Evangelical Free Church of Canada. It is an accredited member of the Association of Universities and Colleges of Canada and the Council for Christian Colleges and Universities. TWU confers six baccalaureate degrees and offers four masters programs. Donna Lindquist was a third year student at TWU who had planned to attend the

*David M. Brown et Adrian C. Lang*, pour l'intervenante l'Alliance évangélique du Canada.

*Susan Ursel et Maurice A. Green*, pour l'intervenante la Fédération des enseignantes-enseignants des écoles secondaires de l'Ontario.

*William J. Sammon*, pour l'intervenante la Conférence des évêques catholiques du Canada.

*Timothy J. Delaney et James Gopaulsingh*, pour l'intervenante la British Columbia Civil Liberties Association.

*Kenneth W. Smith et Pam MacEachern*, pour l'intervenante EGALE Canada Inc.

*Dallas K. Miller, c.r., et Corina Dario*, pour l'intervenante la Christian Legal Fellowship.

*Gerald D. Chipeur et Barbara B. Johnston*, pour l'intervenante l'Église adventiste du septième jour au Canada.

*Andrew K. Lokan et Heather E. Bowie*, pour l'intervenante l'Association canadienne des libertés civiles.

Version française du jugement du juge en chef McLachlin et des juges Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel rendu par

LES JUGES IACOBUCCI ET BASTARACHE — L'université Trinity Western (« UTW ») est un établissement privé situé à Langley, en Colombie-Britannique, et constitué sous le régime des lois de cette province. Elle a succédé au Trinity Western College en 1985; ce collège d'enseignement supérieur de premier cycle avait lui-même succédé à une société privée fondée en 1962. L'UTW est associée à l'Evangelical Free Church of Canada. Elle est un membre agréé de l'Association des universités et collèges du Canada et du Council for Christian Colleges and Universities. L'UTW offre six baccalauréats et quatre programmes de maîtrise. Donna Lindquist, une étudiante de troisième

Teacher Education Program at TWU in January of 1998.

année à l'UTW, comptait suivre le programme de formation des enseignants à l'UTW en janvier 1998.

2 In 1985, TWU established a teacher training program offering baccalaureate degrees in education upon completion of a five-year course, four years of which were spent at TWU, the fifth year being under the aegis of Simon Fraser University. In 1987, TWU applied to B.C.'s Minister of Education for permission to assume full responsibility for the teacher education program. Although there appears to have been approval in principle in Cabinet, the Minister did not act on the request because of the creation in that year of the British Columbia College of Teachers ("BCCT") which would become the appropriate body to consider the application. TWU applied to the BCCT in January of 1988, but the College was not ready to consider the application. The application was therefore withdrawn and presented again in January of 1995. One of the reasons for assuming complete responsibility for the program was the desire of TWU to have the full program reflect the Christian world view of TWU.

En 1985, l'UTW a établi un programme de formation des enseignants menant à un baccalauréat en enseignement après cinq années d'études, dont quatre à l'UTW et la cinquième sous l'égide de l'université Simon Fraser. En 1987, l'UTW a demandé au ministre de l'Éducation de la Colombie-Britannique l'autorisation d'assumer l'entière responsabilité du programme de formation des enseignants. Malgré l'approbation de principe qui semble avoir été donnée au Cabinet, le Ministre n'a pas donné suite à cette demande en raison de la création, cette année-là, du British Columbia College of Teachers (le « BCCT » ou l'« Ordre ») qui deviendrait l'organisme compétent pour l'examiner. En janvier 1988, l'UTW a présenté une demande au BCCT, mais ce dernier n'était pas prêt à l'examiner. La demande a donc été retirée et présentée de nouveau en janvier 1995. L'une des raisons pour lesquelles l'UTW souhaitait assumer l'entière responsabilité du programme était sa volonté d'assurer que tout ce programme reflète sa vision chrétienne du monde.

3 The philosophy of TWU is specifically described in a document entitled "Responsibilities of Membership in the Community of Trinity Western University". It is implemented through the adoption of "Community Standards" which are intended to reflect the preferred lifestyle of persons belonging to the TWU community; they apply both off and on campus and are the object of a statement of acceptance by students, faculty and staff. An extract of the application made in 1995 is instructive:

La philosophie de l'UTW est expressément décrite dans un document intitulé [TRADUCTION] « Responsabilités des membres de la communauté de l'université Trinity Western ». Elle est mise en œuvre au moyen de [TRADUCTION] « normes communautaires » destinées à refléter le mode de vie préféré des membres de la communauté de l'UTW; ces normes s'appliquent à la fois sur le campus et en dehors du campus et font l'objet d'une déclaration d'acceptation par les étudiants, le corps professoral et le personnel. Un extrait de la demande présentée en 1995 est intéressant :

Trinity Western is a relatively unique Canadian university in that it offers academically responsible education within a distinctive Christian context. Its mission is to equip Christians to serve God and people throughout society. TWU's educational program, like those in public universities, is based on a particular worldview perspective. At TWU, that worldview is a Christian one. It includes (but is not limited to) a deep respect for integrity and authenticity, responsible stewardship of resources, the sanctity of human life, compassion for the

[TRADUCTION] Trinity Western est une université relativement unique au Canada du fait qu'elle offre un enseignement supérieur responsable dans un contexte chrétien distinctif. Elle a pour mission de préparer des chrétiens à servir Dieu et leur prochain dans la société. Le programme d'enseignement de l'UTW, comme celui des universités publiques, repose sur une vision particulière du monde. À l'UTW, cette vision est chrétienne. Elle comprend notamment un profond respect pour l'intégrité et l'authenticité, une gestion responsable des res-

disadvantaged, and justice for all. This provides a framework for the leadership development that is emphasized throughout TWU's program. Although its program is oriented towards those who profess the Christian faith, the university welcomes anyone who wishes to pursue a liberal arts education and is willing to be part of the Trinity Western community. While maintaining structural ties with its founding denomination, the Evangelical Free Church, the university serves the needs of the whole Christian community. Both the faculty and the student body represent a wide range of denominational backgrounds.

The "Community Standards" document that students attending TWU must sign contains the following paragraph, which is at the root of the present controversy:

REFRAIN FROM PRACTICES THAT ARE BIBLICALLY CONDEMNED. These include but are not limited to drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). Furthermore married members of the community agree to maintain the sanctity of marriage and to take every positive step possible to avoid divorce. [Emphasis added.]

Faculty and staff are required to sign a "Community Standards" document that contains a similar paragraph, including the prohibition of homosexual behaviour.

Following established policies, the BCCT appointed a program approval team ("PAT") to assess the TWU application. The PAT recommended the approval of the application for accreditation with conditions on March 21, 1996. On April 19, 1996, the Teacher Education Programs Committee ("TEPC") approved the PAT report but modified some of the conditions. On May 17,

sources, le caractère sacré de la vie humaine, la compassion pour les personnes défavorisées et la justice pour tous. Cela fournit un cadre pour le développement des qualités de chef qui occupe une place importante dans le programme de l'UTW. Bien que son programme soit conçu pour les gens qui professent la foi chrétienne, l'université accueille quiconque souhaite entreprendre une formation de culture générale et est disposé à faire partie de la communauté de Trinity Western. Bien qu'elle conserve des liens structurels avec son église fondatrice, l'Evangelical Free Church, l'université répond aux besoins de toute la communauté chrétienne. L'appartenance confessionnelle des membres du corps professoral et de la population étudiante est très variée.

Le document des « normes communautaires », que les étudiants fréquentant l'UTW doivent signer, comporte le paragraphe suivant qui est à l'origine de la présente controverse :

[TRADUCTION] S'ABSTENIR DE SE LIVRER À DES PRATIQUES QUE LA BIBLE CONDAMNE. Sont notamment visés l'ivresse (Éph. 5:18), les jurons ou les blasphèmes (Éph. 4:29, 5:4; Jacq. 3:1-12), le harcèlement (Jean 13:34-35; Rom. 12:9-21; Éph. 4:31), toute forme de malhonnêteté, dont la tricherie et le vol (Prov. 12:22; Col. 3:9; Éph. 4:28), l'avortement (Ex. 20:13; Ps. 139:13-16), toute activité liée à l'occultisme (Act. 19:19; Gal. 5:19) et les péchés sexuels, y compris les relations sexuelles avant le mariage, l'adultère, le comportement homosexuel et le visionnement de matériel pornographique (I Cor. 6:12-20; Éph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). En outre, les membres mariés de la communauté acceptent de préserver le caractère sacré du mariage et de prendre toutes les mesures concrètes possibles pour éviter le divorce. [Nous soulignons.]

Les membres du corps professoral et du personnel sont tenus de signer un document des « normes communautaires » qui comporte un paragraphe similaire, y compris l'interdiction de tout comportement homosexuel.

Conformément aux politiques établies, le BCCT a confié à une équipe chargée d'approuver les programmes la tâche d'examiner la demande de l'UTW. Le 21 mars 1996, cette équipe a recommandé l'approbation de la demande d'agrément sous réserve de certaines conditions. Le 19 avril 1996, le comité des programmes de formation des enseignants a approuvé le rapport de l'équipe sus-

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1996, the Council of the BCCT rejected the report and recommendations. The motion was passed on two grounds: TWU did not meet the criteria stated in the BCCT bylaws and policies; and approval would not be in the public interest because of discriminatory practices of the institution. TWU applied for a reconsideration. After obtaining a legal opinion on the issue, the Council confirmed its denial of the application on June 29, 1996. The motion adopted on June 29 gives the following reason for the denial:

That Trinity Western University's appeal in regard to the College's denial of its application for approval of a Teacher Education Program be denied because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest and public policy which the College must consider under its mandate as expressed in the *Teaching Profession Act*.

6 The BCCT gave no written reasons explaining its initial denial of the application or rejection on reconsideration. The May 22, 1996 letter of the Registrar of the BCCT to TWU however refers to discriminatory practices and "specifically the requirement for students to sign a contract of 'Responsibilities of Membership in the Trinity Western University Community'". The only other written explanation for denial of the application comes from the Fall 1996 quarterly newsletter of the BCCT, where the whole matter becomes abundantly clear. The BCCT writes:

Both the *Canadian Human Rights Act* and the *B.C. Human Rights Act* prohibit discrimination on the ground of sexual orientation. The Charter of Rights and the Human Rights Acts express the values which represent the public interest. Labelling homosexual behaviour as sinful has the effect of excluding persons whose sexual orientation is gay or lesbian. The Council believes and is supported by law in the belief that sexual orientation is no more separable from a person than colour. Persons of homosexual orientation, like persons of colour, are entitled to protection and freedom from discrimination under the law.

mentionnée, en modifiant toutefois certaines conditions. Le 17 mai 1996, le conseil du BCCT (le « Conseil ») a rejeté le rapport et les recommandations. La motion a été adoptée pour deux motifs : l'UTW ne satisfaisait pas aux critères énoncés dans les règlements et les politiques du BCCT, et l'approbation ne servirait pas l'intérêt public en raison des pratiques discriminatoires de l'établissement. L'UTW a sollicité un nouvel examen. Après avoir obtenu un avis juridique sur la question, le Conseil a confirmé son rejet de la demande le 29 juin 1996. La motion adoptée le 29 juin motive le rejet en ces termes :

[TRADUCTION] Que l'appel que l'université Trinity Western a interjeté contre le rejet par l'Ordre de sa demande d'approbation d'un programme de formation des enseignants soit rejeté parce que le Conseil est toujours d'avis que le programme proposé suit des pratiques discriminatoires qui sont contraires à l'intérêt et à l'ordre publics dont l'Ordre doit tenir compte en vertu du mandat qui lui est confié par la *Teaching Profession Act*.

Le BCCT n'a pas rédigé de motifs expliquant son premier rejet de la demande ou celui qui a suivi un nouvel examen. La lettre du 22 mai 1996 que le registraire du BCCT a envoyée à l'UTW mentionne cependant des pratiques discriminatoires et [TRADUCTION] « en particulier, l'exigence que les étudiants signent un contrat de "Responsabilité des membres de la communauté de l'université Trinity Western" ». La seule autre explication écrite du rejet de la demande provient du bulletin d'information trimestriel d'automne 1996 du BCCT, dans lequel tout devient très clair. Le BCCT écrit :

[TRADUCTION] La *Loi canadienne sur les droits de la personne* et la *Human Rights Act* de la Colombie-Britannique interdisent la discrimination fondée sur l'orientation sexuelle. La charte des droits et les lois en matière de droits de la personne véhiculent les valeurs qui représentent l'intérêt public. Qualifier un comportement homosexuel de péché a pour effet d'exclure les personnes ayant une orientation homosexuelle. Le Conseil croit, et la loi l'appuie sur ce point, que l'orientation sexuelle est aussi inséparable d'une personne que la couleur. Les personnes ayant une orientation homosexuelle, comme les personnes de couleur, ont droit à la protection contre toute discrimination en vertu de la loi.

On application for judicial review of the BCCT decision, Davies J. of the Supreme Court of British Columbia ((1997), 41 B.C.L.R. (3d) 158) found that it was not within the BCCT's jurisdiction to consider whether the program follows discriminatory practices under the public interest component of the *Teaching Profession Act*, R.S.B.C. 1996, c. 449. He was of the view that matters of public interest in the Act relate to teaching standards and could not be extended to cover religious beliefs. Davies J. also found that there was no reasonable foundation to support the decision of the BCCT with regard to discrimination. The decision of the Supreme Court of British Columbia was affirmed by a majority of the Court of Appeal ((1998), 59 B.C.L.R. (3d) 241), Rowles J.A. dissenting.

The appellant before this Court describes the nature of the appeal in these terms:

This case is really an administrative law case. Did the Council exceed its jurisdiction, when it denied approval to TWU's five-year B.Ed. program, by taking into account TWU's discriminatory practices? Was this an extraneous consideration? This is a question of law, and the standard of correctness applies.

If the Council was entitled to consider "discriminatory practices", was there evidence of such practices and of discriminatory ramifications . . . ? Here the test is whether the decision of the Council was patently unreasonable.

We believe this approach is convenient and will adopt it, except for the determinations of the applicable standards of review.

#### I. Relevant Constitutional, Statutory and Non-Statutory Provisions

##### *Canadian Charter of Rights and Freedoms*

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can

À la suite d'une demande de contrôle judiciaire de la décision du BCCT, le juge Davies de la Cour suprême de la Colombie-Britannique ((1997), 41 B.C.L.R. (3d) 158) a conclu que le BCCT ne pouvait pas se servir de la disposition relative à l'intérêt public contenue dans la *Teaching Profession Act*, R.S.B.C. 1996, ch. 449, pour décider si le programme suivait des pratiques discriminatoires. Il était d'avis que les questions d'intérêt public dans la Loi ont trait à des normes d'enseignement et qu'elles ne pouvaient pas viser les croyances religieuses. Le juge Davies a également conclu que la décision du BCCT relative à la discrimination n'avait aucun fondement raisonnable. La Cour d'appel, à la majorité, madame le juge Rowles étant dissidente ((1998), 59 B.C.L.R. (3d) 241), a confirmé la décision de la Cour suprême de la Colombie-Britannique.

L'appelant devant notre Cour décrit ainsi la nature du pourvoi :

[TRADUCTION] La présente affaire relève vraiment du droit administratif. Le Conseil a-t-il excédé sa compétence en prenant en considération les pratiques discriminatoires de l'UTW pour refuser d'approuver son programme de baccalauréat en enseignement de cinq ans? Était-ce un facteur extrinsèque? Il s'agit là d'une question de droit et la norme de la décision correcte s'applique.

Si le Conseil avait le droit de prendre en considération des « pratiques discriminatoires », l'existence de telles pratiques et de conséquences discriminatoires était-elle prouvée [. . .]? Il faut déterminer, en l'espèce, si la décision du Conseil était manifestement déraisonnable.

Nous estimons que cette façon de procéder est la bonne et nous allons l'adopter, sauf en ce qui concerne la détermination des normes de contrôle applicables.

#### I. Les dispositions constitutionnelles, législatives et non législatives pertinentes

##### *Charte canadienne des droits et libertés*

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des

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be demonstrably justified in a free and democratic society.

**2.** Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

. . . .

- (d) freedom of association.

**15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

*Teaching Profession Act*, R.S.B.C. 1996, c. 449

**4** It is the object of the college to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage the professional interest of its members in those matters.

**21** Subject to this Act, the council must govern and administer the affairs of the college and, without limiting that duty, the council may do the following:

. . . .

- (b) appoint an employee of the college as an evaluator with authority to evaluate and decide whether persons applying for a certificate of qualification or for membership in the college have complied with this Act and the bylaws of the college;

- (c) delegate to a committee of the college the authority set out in paragraph (b), either in addition to or in substitution for one or more evaluators appointed under that paragraph;

. . . .

- (i) approve, for certification purposes, the program of any established faculty of teacher education or school of teacher education.

limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

**2.** Chacun a les libertés fondamentales suivantes :

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;

. . . .

- d) liberté d'association.

**15.** (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

*Teaching Profession Act*, R.S.B.C. 1996, ch. 449

[TRADUCTION]

**4** L'Ordre a pour objet d'établir, compte tenu de l'intérêt public, les normes de formation, de responsabilité professionnelle et de compétence de ses membres, des personnes qui détiennent un certificat de compétence et des candidats à l'adhésion et, conformément à cet objet, d'encourager l'intérêt professionnel de ses membres pour ces questions.

**21** Sous réserve de la présente loi, le conseil doit gérer et administrer les affaires de l'Ordre et, sans restreindre ce devoir, il peut :

. . . .

- b) nommer un employé de l'Ordre comme évaluateur habilité à examiner et à décider si des personnes qui présentent une demande de certificat de compétence ou d'adhésion à l'Ordre respectent la présente loi et les règlements de l'Ordre;

- c) déléguer à un comité de l'Ordre le pouvoir énoncé à l'alinéa b), en sus ou en remplacement d'un seul ou de plusieurs évaluateurs nommés en vertu de cet alinéa;

. . . .

- i) approuver, aux fins de délivrance des brevets d'enseignement, le programme de toute faculté ou école reconnue de formation des enseignants.

**23(1)** The council may make bylaws consistent with this Act and the *School Act* as follows:

(d) respecting the training and qualifications of teachers and establishing standards, policies and procedures with respect to the training and qualifications including, but not limited to, professional, academic and specialist standards, policies and procedures;

(e) respecting the issue of certificates of qualification . . .

(f) respecting the standards of fitness for the admission of persons as members of the college;

(l) giving effect to and implementing the powers of the council set out in this Act;

**24(1)** The registrar of the college must file with the minister a copy of each bylaw made by the council, certified under the seal of the college, within 10 days after it is made.

(2) The Lieutenant Governor in Council may disallow a bylaw respecting the training, qualification or certification of teachers within 60 days after the filing of it under subsection (1).

**40** A member may appeal to the Supreme Court any decision, determination or order of the qualifications committee, discipline committee or council that affects the member and, from a decision, determination or order of the Supreme Court, may appeal to the Court of Appeal with leave of a justice of that court.

*School Act*, R.S.B.C. 1996, c. 412

**171(1)** The minister must appoint an education advisory council to advise the minister on policy matters respecting education.

**174(1)** The Lieutenant Governor in Council may appoint one or more boards of examiners consisting of 2 or more members, and a board of

**23(1)** Le conseil peut adopter des règlements compatibles avec la présente loi et la *School Act* :

d) concernant la formation et les conditions d'admissibilité des enseignants et établissant des normes, politiques et procédures relatives à la formation et aux conditions d'admissibilité y compris, notamment, des normes, politiques et procédures concernant la profession, le régime scolaire et la spécialisation;

e) concernant la délivrance des certificats de compétence . . .

f) concernant les normes d'admission de personnes comme membres de l'Ordre;

l) mettant à exécution les pouvoirs du conseil énoncés dans la présente loi;

**24(1)** Le registraire de l'Ordre doit déposer auprès du Ministre un exemplaire de tous les règlements adoptés par le conseil, certifiés sous le sceau de l'Ordre, dans les 10 jours suivant leur adoption.

(2) Le lieutenant-gouverneur en conseil peut rejeter un règlement concernant la formation ou la compétence des enseignants, ou encore la délivrance des brevets d'enseignement, dans les 60 jours suivant son dépôt en vertu du paragraphe (1).

**40** Le membre touché par une décision ou ordonnance du comité des conditions d'admissibilité, du comité de discipline ou du conseil peut interjeter appel devant la Cour suprême contre cette décision ou ordonnance, et devant la Cour d'appel, avec l'autorisation d'un juge de cette cour, contre une décision ou ordonnance de la Cour suprême.

*School Act*, R.S.B.C. 1996, ch. 412

[TRADUCTION]

**171(1)** Le Ministre doit constituer un conseil consultatif en matière d'éducation qui sera chargé de le conseiller sur les questions de politique générale touchant l'éducation.

**174(1)** Le lieutenant-gouverneur en conseil peut constituer un seul ou plusieurs comités d'examen composés d'au moins deux membres, et le

examiners so appointed must include at least one representative of the Ministry of Education, Skills and Training and one person appointed to represent the universities named in the *University Act* and the *Trinity Western University Act*.

comité d'examen ainsi constitué doit comporter au moins un représentant du ministère de l'Éducation, compétences et formation, et une personne nommée pour représenter les universités désignées dans la *University Act* et la *Trinity Western University Act*.

*School Regulation*, B.C. Reg. 265/89

**11** The Education Advisory Council may advise the minister on overall policies of the education system including, without limitation, the following areas:

- (a) curriculum and assessment;
- (b) the teaching profession;
- (c) system governance;
- (d) finance.

*School Regulation*, B.C. Reg. 265/89

[TRADUCTION]

**11** Le conseil consultatif en matière d'éducation peut conseiller le Ministre sur l'ensemble des politiques du système d'éducation, notamment en ce qui concerne :

- a) le programme d'études et l'évaluation;
- b) la profession d'enseignant;
- c) la gestion du système;
- d) les finances.

*Bylaws of the British Columbia College of Teachers, Bylaw 5 — Teacher Education Program Committee*

*Bylaws of the British Columbia College of Teachers, règlement 5 — Comité des programmes de formation des enseignants*

[TRADUCTION]

5.C. *Approval of Teacher Education Programs*

5.C. *Approbation des programmes de formation des enseignants*

5.C.01 Pursuant to the *Teaching Profession Act*, the Council of the College may approve for certification purposes the teacher education programs or revision to the programs of the Faculties of Education at universities recognized by statute in British Columbia as degree granting institutions.

5.C.01 Conformément à la *Teaching Profession Act*, le conseil de l'Ordre peut approuver, aux fins de délivrance des brevets d'enseignement, les programmes de formation des enseignants ou la révision des programmes des facultés d'éducation des universités reconnues par la loi en Colombie-Britannique comme étant des établissements qui accordent des diplômes universitaires.

5.C.02 The Council shall establish criteria for the approval for certification purposes of teacher education programs.

5.C.02 Le conseil établit les critères d'approbation, aux fins de délivrance des brevets d'enseignement, des programmes de formation des enseignants.

5.C.03 For existing teacher education programs that meet or are working towards meeting the criteria for approval established under Bylaw 5.C.02, approval may be granted on a continuing basis on the recommendation of the Teacher Education Programs Committee.

5.C.03 En ce qui concerne les programmes de formation des enseignants existants qui satisfont ou cherchent à satisfaire aux critères d'approbation établis par le règlement 5.C.02, l'approbation peut être accordée de façon permanente sur recommandation du comité des programmes de formation des enseignants.

5.C.04 The Council may from time to time review the teacher education programs of Faculties of Education approved under Bylaw 5.C.03.

5.C.04 Le conseil peut, à l'occasion, examiner les programmes de formation des enseignants des facultés d'éducation, approuvés en vertu du règlement 5.C.03.

5.C.05 For new teacher education programs offered by institutions recognized by statute in British Columbia as degree granting institutions, approval may be granted on an interim basis for a maximum of five years and will be based on:

- (a) the criteria for approval established under Bylaw 5.C.02;
- (b) the recommendation of the Teacher Education Programs Committee following a review process.

*Policies of the British Columbia College of Teachers*

P5.C Approval of Teacher Education Programs

P5.C.01 Criteria for the Approval for Certification Purposes of Teacher Education Programs

(b) Programs must meet the following criteria:

1.0 Context

1.1 Have an appropriate institutional setting in terms of depth and breadth of personnel, research and other scholarly activity and commitment to teacher education.

2.0 Selection

2.0 Have defined selection and admission policy that recognizes the importance of academic standing, interest in working with young people and suitability for entrance into the profession of teaching.

3.0 Content

3.2 Have content which provides for a minimum of 36 credit/semester hours of professional education and pedagogical course work. This must include a minimum of 12 weeks of supervised student teaching, the major part of which normally must be undertaken in public schools. The

5.C.05 En ce qui concerne les nouveaux programmes de formation des enseignants offerts par des établissements reconnus par la loi en Colombie-Britannique comme étant des établissements qui accordent des diplômes universitaires, l'approbation peut être accordée temporairement pour une période maximale de cinq ans :

- a) conformément aux critères d'approbation établis en vertu du règlement 5.C.02;
- b) sur recommandation du comité des programmes de formation des enseignants à la suite d'un examen.

*Policies of the British Columbia College of Teachers*

[TRADUCTION]

P5.C Approbation des programmes de formation des enseignants

P5.C.01 Critères d'approbation, aux fins de délivrance des brevets d'enseignement, des programmes de formation des enseignants

b) Les programmes doivent satisfaire aux critères suivants :

1.0 Contexte

1.1 Avoir un cadre institutionnel approprié en ce qui concerne le niveau et l'étendue des connaissances du personnel, les activités de recherche et d'érudition et l'engagement à former des enseignants.

2.0 Sélection

2.0 Avoir une politique précise de sélection et d'admission qui reconnaît l'importance du niveau d'instruction, de l'intérêt à travailler avec des jeunes et de l'aptitude à devenir enseignant.

3.0 Contenu

3.2 Avoir un contenu qui assure au moins 36 crédits par heure-semester de cours d'enseignement professionnel et de pédagogie. Cela doit comprendre au moins 12 semaines de stage pédagogique dirigé devant normalement se dérouler, en majeure partie, dans des écoles publiques.

<p>program should recognize the advantages of an extended practicum in one school.</p> <p>3.3 Have content which provides a base of pedagogical knowledge informed by current research.</p> <p>3.4 Have content which provides a base of pedagogical skills that is informed by principles of effective practice and current research.</p> <p>3.5 Have content which recognizes the diverse nature of our society and which addresses throughout the program philosophical, ethical, and societal concerns with specific attention to the following areas:</p> <p style="padding-left: 20px;">3.5.1 English as a Second Language (ESL)</p> <p style="padding-left: 20px;">3.5.2 First Nations Issues</p> <p style="padding-left: 20px;">3.5.3 Gender Equity</p> <p style="padding-left: 20px;">3.5.4 Multiculturalism and Racism</p> <p style="padding-left: 20px;">3.5.5 Students with Special Needs</p> <p style="padding-left: 40px;">. . .</p> <p>4.0 Integration of Theory and Practice</p> <p style="padding-left: 40px;">. . .</p> <p>4.3 Recognizes that the integration of theory and practice is enhanced by:</p> <p style="padding-left: 40px;">. . .</p> <p style="padding-left: 60px;">4.3.2 Ensuring that those who teach pedagogical skills and supervise practica have recent experience or significant involvement in school classrooms.</p> <p style="padding-left: 40px;">. . .</p> <p>P5.C.03 <u>Process for the Approval for Certification Purposes of New Teacher Education Programs</u></p> <p>1. The Teacher Education Programs Committee shall oversee the process of program approval.</p> <p>2. A Program Approval Sub-Committee consisting of three members of the Teacher Education Programs Committee shall meet</p>	<p>Le programme devrait reconnaître les avantages d'un stage prolongé dans une seule école.</p> <p>3.3 Avoir un contenu qui confère une base de connaissances pédagogiques fondées sur la recherche actuelle.</p> <p>3.4 Avoir un contenu qui confère une base de techniques pédagogiques fondées sur les principes de la pratique efficace et la recherche actuelle.</p> <p>3.5 Avoir un contenu qui reconnaît la diversité de notre société et qui aborde, pendant la durée du programme, des questions philosophiques, déontologiques et sociales, en accordant une attention particulière aux domaines suivants :</p> <p style="padding-left: 20px;">3.5.1 Anglais, langue seconde</p> <p style="padding-left: 20px;">3.5.2 Questions relatives aux Premières nations</p> <p style="padding-left: 20px;">3.5.3 Égalité des sexes</p> <p style="padding-left: 20px;">3.5.4 Multiculturalisme et racisme</p> <p style="padding-left: 20px;">3.5.5 Étudiants ayant des besoins spéciaux</p> <p style="padding-left: 40px;">. . .</p> <p>4.0 Intégration de la théorie à la pratique</p> <p style="padding-left: 40px;">. . .</p> <p>4.3 Reconnaître que l'intégration de la théorie et à la pratique est favorisée par :</p> <p style="padding-left: 40px;">. . .</p> <p style="padding-left: 60px;">4.3.2 L'assurance que ceux qui enseignent des techniques pédagogiques et qui dirigent des stages aient une expérience récente ou une implication importante dans des salles de classe.</p> <p style="padding-left: 40px;">. . .</p> <p>P5.C.03 <u>Processus d'approbation, aux fins de la délivrance des brevets d'enseignement, des nouveaux programmes de formation des enseignants</u></p> <p>1. Le comité des programmes de formation des enseignants supervise le processus d'approbation des programmes.</p> <p>2. Un sous-comité d'approbation des programmes composé de trois membres du comité des programmes de formation des</p>
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as needed to prepare recommendations concerning program approval.

3. Approval of New Programs:

- a. Each proposal will be reviewed by the Program Approval Sub-Committee and the Teacher Education Programs Committee. Following a satisfactory initial review, a separate Program Approval Team will be established to consider the proposal. Each Program Approval Team shall be appointed by Council upon recommendation of the Teacher Education Programs Committee.
- b. Each Program Approval Team shall consist of three members including:
  - i. A member of the Teacher Education Programs Committee.
  - ii. A teacher educator, who is not an employee or part of the governing structure of the institution making the application, appointed in consultation with the Deans of the Faculties of Education with approved programs and the institution making the application.
  - iii. A member of the College of Teachers named in consultation with the British Columbia Teachers' Federation.

A staff person or consultant will be assigned to assist the team.

- c. The Program Approval Team will make a recommendation for approval or denial of approval to the Teacher Education Programs Committee. If approval is recommended, the Program Approval Team will also recommend a term for interim approval as defined in Bylaw 5.C.05 and may recommend conditions that must be met prior to consideration of continuing program approval.

enseignants se réunit au besoin pour formuler des recommandations relatives à l'approbation des programmes.

3. Approbation de nouveaux programmes :

- a. Chaque proposition sera examinée par le sous-comité d'approbation des programmes et le comité des programmes de formation des enseignants. À la suite d'un premier examen favorable, une équipe distincte chargée d'approuver les programmes sera constituée pour étudier la proposition. Le conseil constitue chaque équipe chargée d'approuver les programmes sur recommandation du comité des programmes de formation des enseignants.
- b. Chaque équipe chargée d'approuver les programmes est composée de trois membres, dont :
  - i. Un membre du comité des programmes de formation des enseignants.
  - ii. Un formateur d'enseignants, qui n'est ni un employé ni un gestionnaire de l'établissement qui présente la demande, nommé à la suite de consultations avec les doyens des facultés d'éducation offrant des programmes approuvés et l'établissement qui présente la demande.
  - iii. Un membre de l'Ordre des enseignants nommé à la suite de consultations avec la British Columbia Teachers' Federation.

Un membre du personnel ou un consultant sera nommé pour aider l'équipe.

- c. L'équipe chargée d'approuver les programmes recommandera l'approbation ou le rejet au comité des programmes de formation des enseignants. Si l'approbation est recommandée, l'équipe chargée d'approuver les programmes recommandera que l'approbation soit accordée temporairement pour une certaine période, conformément au règlement 5.C.05, et pourra recommander des conditions à remplir avant d'envisager l'approbation permanente du programme.

- d. In the final year of interim approval, the College shall establish a Program Approval Team to make recommendations regarding further interim approval or approval on a continuing basis.

- d. Au cours de la dernière année de l'approbation temporaire, l'Ordre constituera une équipe chargée d'approuver les programmes qui devra faire des recommandations concernant une autre approbation temporaire ou une approbation permanente.

## II. Relevant Provisions in TWU Documents

### 10 *Responsibilities of Membership in the Community of Trinity Western University* (Student version; Otherwise Referred to as Community Standards)

#### PREAMBLE

Trinity Western is a Christian university distinguished by a clear mission:

The mission of Trinity Western University, as an arm of the church, is to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Jesus Christ who glorify God through fulfilling The Great Commission, serving God and people in the various marketplaces of life.

. . . .

Membership in the Trinity Western community is obtained through application and invitation. Those who accept an invitation to join the community agree to uphold its standards of conduct. . . .

. . . .

Individuals who are invited to become members of this community but cannot with integrity pledge to uphold the application of these standards are advised not to accept the invitation and to seek instead a living-learning situation more acceptable to them.

#### CORE VALUES AND COMMUNITY STANDARDS

. . . .

Because the Community Standards are intended to reflect a preferred lifestyle for those who belong to this

## II. Les dispositions pertinentes des documents de l'UTW

### *Responsabilités des membres de la communauté de l'université Trinity Western* (version destinée aux étudiants; également désignée sous le nom de normes communautaires)

[TRADUCTION]

#### PRÉAMBULE

Trinity Western est une université chrétienne qui se distingue par une mission claire :

La mission de l'université Trinity Western, en tant que ramification de l'église, est de former des chefs de file chrétiens pieux : des diplômés universitaires qui soient positifs et qui aient des objectifs à atteindre dans un esprit entièrement chrétien; des disciples de plus en plus fervents de Jésus-Christ qui rendent gloire à Dieu en remplissant la grande mission, servir Dieu et leur prochain dans les différents aspects de leur vie.

. . . .

L'appartenance à la communauté de Trinity Western tient à une demande et à une invitation. Ceux qui acceptent une invitation à se joindre à la communauté acceptent d'en respecter les normes de conduite . . .

. . . .

Les personnes qui sont invitées à devenir membres de notre communauté, mais qui ne peuvent pas complètement s'engager à en respecter les normes sont avisées de ne pas accepter l'invitation et de rechercher plutôt une situation d'apprentissage de la vie qui leur convient mieux.

#### VALEURS FONDAMENTALES ET NORMES COMMUNAUTAIRES

. . . .

Parce que les normes communautaires visent à refléter le mode de vie préféré pour les membres de notre com-

community rather than “campus rules”, they apply both on and off campus. All members of the community are responsible to:

- CONDUCT THEMSELVES AS RESPONSIBLE CITIZENS.
- ENGAGE IN AN HONEST PURSUIT OF BIBLICAL HOLINESS.
- MAKE THE UNIVERSITY’S MISSION THEIR OWN MISSION.
- LIMIT THE EXERCISE OF THEIR CHRISTIAN LIBERTY IN ACCORDANCE WITH THE UNIVERSITY’S MISSION AND THE BEST INTEREST OF OTHER MEMBERS OF THE COMMUNITY.

APPLICATION OF THE COMMUNITY STANDARDS  
TO STUDENTS

It is recognized that not every student will have personal convictions wholly in accord with the following application of these standards. However, all students are responsible to:

- OBEY JESUS’ COMMANDMENT TO HIS DISCIPLES . . . ECHOED BY THE APOSTLE PAUL . . . TO LOVE ONE ANOTHER. In general this involves showing respect for all people regardless of race or gender and regard for human life at all stages. It includes making a habit of edifying others, showing compassion, demonstrating unselfishness, and displaying patience.
- REFRAIN FROM PRACTICES THAT ARE BIBLICALLY CONDEMNED. These include but are not limited to drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). Furthermore married members of the community agree to maintain the sanctity of marriage

munauté plutôt que des « règles de campus », elles s’appliquent à la fois sur le campus et en dehors du campus. Tous les membres de la communauté doivent :

- SE COMPORTER COMME DES CITOYENS RESPONSABLES.
- CHERCHER SINCÈREMENT À ATTEINDRE LA SAINTETÉ SELON LA BIBLE.
- FAIRE DE LA MISSION DE L’UNIVERSITÉ LEUR PROPRE MISSION.
- LIMITER L’EXERCICE DE LEUR LIBERTÉ CHRÉTIENNE CONFORMÉMENT À LA MISSION DE L’UNIVERSITÉ ET À L’INTÉRÊT SUPÉRIEUR DES AUTRES MEMBRES DE LA COMMUNAUTÉ.

APPLICATION DES NORMES COMMUNAUTAIRES  
AUX ÉTUDIANTS

Il est reconnu que les étudiants n’auront pas tous des convictions personnelles totalement en accord avec l’application suivante de ces normes. Cependant, tous les étudiants doivent :

- RESPECTER LE COMMANDEMENT DONNÉ PAR JÉSUS À SES DISCIPLES [. . .] RÉPÉTÉ PAR L’APÔTRE PAUL [. . .] DE S’AIMER LES UNS LES AUTRES. En général, cela exige d’avoir du respect pour son prochain sans égard à la race ou au sexe et pour la vie humaine à tous les stades, et également de prendre l’habitude d’édifier autrui et de faire preuve de compassion, de générosité et de patience.
- S’ABSTENIR DE SE LIVRER À DES PRATIQUES QUE LA BIBLE CONDAMNE. Sont notamment visés l’ivresse (Éph. 5:18), les jurons ou les blasphèmes (Éph. 4:29, 5:4; Jacq. 3:1-12), le harcèlement (Jean 13:34-35; Rom. 12:9-21; Éph. 4:31), toute forme de malhonnêteté, dont la tricherie et le vol (Prov. 12:22; Col. 3:9; Éph. 4:28), l’avortement (Ex. 20:13; Ps. 139:13-16), toute activité liée à l’occultisme (Act. 19:19; Gal. 5:19) et les péchés sexuels, y compris les relations sexuelles avant le mariage, l’adultère, le comportement homosexuel et le visionnement de matériel pornographique (I Cor. 6:12-20; Éph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). En outre,

and to take every positive step possible to avoid divorce.

les membres mariés de la communauté acceptent de préserver le caractère sacré du mariage et de prendre toutes les mesures concrètes possibles pour éviter le divorce.

. . . .

. . . .

This application of the Community Standards is not offered as a legalistic definition of right and wrong. Rather, it provides concrete examples of a commitment to the mission of Trinity Western University and a commitment to fellow members of this academic community. Certain expectations may not be commanded by Scripture, but nonetheless, they are desirable and essential if all members of the community are to achieve their personal goals. Consequently, all students are required to commit themselves to follow this application of the Community Standards and maintain the integrity of that commitment.

Cette application des normes communautaires n'est pas présentée comme une définition formaliste du bien et du mal. Elle offre plutôt des exemples concrets d'un engagement envers la mission de l'université Trinity Western, d'une part, et envers les confrères et consœurs de notre communauté universitaire, d'autre part. Bien qu'il se puisse qu'elles ne soient pas commandées par les Saintes Écritures, certaines attentes sont néanmoins souhaitables et essentielles pour que tous les membres de la communauté puissent réaliser leurs objectifs personnels. Par conséquent, tous les étudiants sont tenus de s'engager à suivre la présente application des normes communautaires et de respecter à la lettre cet engagement.

*Responsibilities of Membership in the Community of Trinity Western University* (Faculty and staff version; Otherwise Referred to as Community Standards)

*Responsabilités des membres de la communauté de l'université Trinity Western* (version destinée aux membres du corps professoral et du personnel; également désignée sous le nom de normes communautaires)

The Community Standards are essentially the same as those for students, however the Application provision differs as follows:

Les normes communautaires sont essentiellement les mêmes que pour les étudiants, mais la disposition relative à leur application présente les différences suivantes :

[TRADUCTION]

APPLICATION OF THE COMMUNITY STANDARDS TO  
FACULTY, STAFF AND ADMINISTRATION

APPLICATION DES NORMES COMMUNAUTAIRES AU CORPS  
PROFESSORAL, AU PERSONNEL ET À L'ADMINISTRATION

The University asserts from the outset that the existence of separate application statements is not for the purpose of creating different standards for different community groups. Thus, the same core values and biblical principles underlie both statements. This portion of the Community Standards statement applies these common values and principles in an appropriate manner to the situations which present themselves to employees which may differ from those of students. Employees will at all times affirm and support the application statement for students.

L'université affirme au départ que l'existence de déclarations d'application distinctes n'a pas pour but de créer des normes différentes pour des groupes communautaires différents. Par conséquent, les mêmes valeurs fondamentales et principes bibliques sous-tendent les deux déclarations. Cette partie de la déclaration des normes communautaires applique à juste titre ces valeurs et principes communs aux situations auxquelles ont à faire face les employés et qui peuvent être différentes de celles auxquelles ont à faire face les étudiants. Les employés confirmeront et défendront en tout temps la déclaration d'application aux étudiants.

Consistent with the Preamble and Core Values of this document, employees are expected to:

En conformité avec le préambule et les valeurs fondamentales du présent document, les employés sont censés :

– OBEY JESUS' COMMANDMENT TO HIS DISCIPLES... ECHOED BY THE APOSTLE PAUL... TO LOVE, CHERISH, AND SERVE THE NEEDS OF ONE ANOTHER. This command requires total respect for all people regardless of race, gender, location, status, or stage of life and of course, precludes harming another person physically or maligning another's character through gossip, slander, or careless talk. It also includes making a habit of edifying others, showing compassion, demonstrating unselfishness, and displaying patience.

– RESPECTER LE COMMANDEMENT DONNÉ PAR JÉSUS À SES DISCIPLES [...] RÉPÉTÉ PAR L'APÔTRE PAUL [...] DE S'AIMER, DE SE CHÉRIR ET DE S'ENTRAIDER LES UNS LES AUTRES. Ce commandement exige d'avoir le plus grand respect pour son prochain sans égard à la race, au sexe, à l'endroit, à la situation ou à l'âge, et interdit évidemment de causer des lésions corporelles à autrui ou de nuire à la réputation d'autrui par des commérages, des calomnies ou des indiscretions. Il exige également de prendre l'habitude d'édifier autrui et de faire preuve de compassion, de générosité et de patience.

– REFRAIN FROM PRACTICES WHICH ARE BIBLICALLY CONDEMNED. These would include such matters as drunkenness (Eph. 5:18) and other forms of substance abuse, use of profane or unedifying language (Eph. 4:29, 5:4; Jas 3:1-12), all forms of harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating, stealing and misrepresentation (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), gluttony, involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including immodesty, the viewing of pornography, premarital and extramarital sex, common law relationships, and homosexual behaviour (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). Furthermore, married members of the community agree to maintain the sanctity of marriage and to take every positive step possible to avoid divorce.

– S'ABSTENIR DE SE LIVRER À DES PRATIQUES QUE LA BIBLE CONDAMNE. Seraient notamment visés l'ivresse (Éph. 5:18), et d'autres formes de consommation abusive de substances psychoactives, les blasphèmes et le langage peu édifiant (Éph. 4:29, 5:4; Jacq. 3:1-12), toute forme de harcèlement (Jean 13:34-35; Rom. 12:9-21; Éph. 4:31), toute forme de malhonnêteté, dont la tricherie, le vol et les affirmations mensongères (Prov. 12:22; Col. 3:9; Éph. 4:28), l'avortement (Ex. 20:13; Ps. 139:13-16), la gourmandise, toute activité liée à l'occultisme (Act. 19:19; Gal. 5:19) et les péchés sexuels, y compris l'indécence, le visionnement de matériel pornographique, les relations sexuelles avant le mariage et l'adultère, le concubinage et le comportement homosexuel (I Cor. 6:12-20; Éph. 4:17-24; 1 Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). En outre, les membres mariés de la communauté acceptent de préserver le caractère sacré du mariage et de prendre toutes les mesures concrètes possibles pour éviter le divorce.

– TREAT WITH UTMOST SERIOUSNESS THE POSITION OF TRUST AND INFLUENCE WHICH AN EMPLOYEE HOLDS IN HIS/HER RELATIONSHIPS WITH STUDENTS, AND TO MODEL AT ALL TIMES WISE, DISCREET AND RESPECTFUL BEHAVIOUR. This is especially important for faculty whose direct relationship of authority with students must be exercised with an attitude of integrity and service. Employees agree as well to affirm the application of the University's Community Standards to students.

– PRENDRE TRÈS AU SÉRIEUX LA POSITION DE CONFIANCE ET D'INFLUENCE QU'UN EMPLOYÉ OCCUPE DANS SES RAPPORTS AVEC LES ÉTUDIANTS, ET TOUJOURS AFFICHER UN COMPORTEMENT PRUDENT, DISCRET ET RESPECTUEUX. Cela est particulièrement important pour le corps professoral dont le rapport d'autorité direct avec les étudiants doit être caractérisé par l'intégrité et le dévouement. Les employés acceptent également de confirmer l'application des normes communautaires de l'université aux étudiants.

*Explanation of Community Standards Code Provided to Students*

When you decided to attend TWU you signed on to live by different standards than the rest of the world does. The “rules”, or Community Standards, are not meant to be the bane of your existence, but to create an atmosphere that is consistent with our profession of faith.

You might not absolutely agree with the Standards. They might not be consistent with what you believe. However, when you decided to come to TWU, you agreed to accept these responsibilities. If you cannot support and abide by them, then perhaps you should look into UIG [University of Instant Gratification] or AGU [Anything Goes University].

*Statement of Faith (for Faculty)*

As a Christian university, Trinity Western openly espouses a unifying philosophical framework to which all faculty and staff are committed without reservation. The University identifies with and is committed to historic orthodox Christianity as expressed by the official Statement of Faith. . . .

I agree without reservation with the above Statement of Faith and agree to support that position at all times before the students and friends of Trinity Western University.

I agree with reservation with the above Statement of Faith. (Specify all reservations on separate sheet.)

Date \_\_\_\_\_ Signed \_\_\_\_\_

I feel I cannot sign the above Statement of Faith for the reasons specified. (Specify all reasons on separate sheet.)

*TWU Statement of Academic Freedom*

Accordingly, Trinity Western University maintains that arbitrary indoctrination and simplistic, prefabricated answers to all questions are incompatible with a Christian respect for truth, a Christian understanding of human dignity and freedom, and quality Christian educational techniques and objectives.

*Explication du Code des normes communautaires fournie aux étudiants*

[TRADUCTION] Quand vous avez décidé de fréquenter l’UTW, vous vous êtes engagé(e) à observer des normes différentes de celles du reste du monde. Les « règles », ou normes communautaires, visent non pas à vous empoisonner l’existence, mais à établir un climat compatible avec notre profession de foi.

Il se pourrait que vous ne soyez pas totalement d’accord avec ces normes. Il se pourrait qu’elles ne soient pas compatibles avec vos croyances. Toutefois, quand vous avez décidé de fréquenter l’UTW, vous avez accepté d’assumer ces responsabilités. Si vous ne pouvez pas les tolérer ou les respecter, vous devriez peut-être alors songer à fréquenter une université de la satisfaction instantanée ou une université où tout est permis.

*Profession de foi (du corps professoral)*

[TRADUCTION] En sa qualité d’université chrétienne, Trinity Western adopte ouvertement un régime philosophique unificateur auquel tous les membres du corps professoral et du personnel sont soumis sans réserve. L’université s’identifie au christianisme orthodoxe historique et s’engage à le promouvoir conformément à la profession de foi officielle . . .

Je souscris sans réserve à la profession de foi susmentionnée et j’accepte de toujours défendre ce point de vue auprès des étudiants et des amis de l’université Trinity Western.

Je souscris sous réserve à la profession de foi susmentionnée. (Préciser toutes les réserves sur une feuille distincte.)

Date \_\_\_\_\_ Signature \_\_\_\_\_

Je me sens incapable de signer la profession de foi susmentionnée pour les raisons précisées. (Préciser toutes les raisons sur une feuille distincte.)

*Déclaration de liberté d’enseignement de l’UTW*

[TRADUCTION] Par conséquent, l’université Trinity Western soutient que l’endoctrinement arbitraire et les réponses simplistes et toutes faites à toutes les questions sont incompatibles avec le respect chrétien de la vérité, l’interprétation chrétienne de la dignité et des libertés de la personne, et les techniques et objectifs d’enseignement chrétien de qualité.

On the other hand, Trinity Western University rejects as incompatible with human nature and revelational theism a definition of academic freedom which arbitrarily and exclusively requires pluralism without commitment, denies the existence of any fixed points of reference, maximizes the quest for truth to the extent of assuming it is never knowable, and implies an absolute freedom from moral and religious responsibility to its community.

Rather, for itself, Trinity Western University is committed to academic freedom in teaching and investigation from a stated perspective, i.e., within parameters consistent with the confessional basis of the constituency to which the University is responsible, but practised in an environment of free inquiry and discussion and of encouragement to integrity in research. Students also have freedom to inquire, right of access to the broad spectrum of representative information in each discipline, and assurance of a reasonable attempt at a fair and balanced presentation and evaluation of all material by their instructors. Truth does not fear honest investigation.

### III. Analysis

#### (1) *Is Consideration of Discriminatory Practices within the Jurisdiction of the BCCT?*

The BCCT is empowered under s. 4 of the *Teaching Profession Act* (the “Act”) to “establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and . . . to encourage the professional interest of its members”. It is this reference to the public interest that is invoked by the BCCT as justification for considering the TWU admissions policy in deciding on the certification of its teacher education program. The BCCT argues that teaching programs must be offered in an environment that reflects human rights values and that those values can be used as a guide in the assessment of the impact of discriminatory practices on pedagogy. Although the BCCT did not take into account the existence of special institutions such as TWU in designing its bylaws and policies, it claims that all institutions who wish to train teachers for entry into the public education system must satisfy the

En revanche, l’université Trinity Western rejette, pour le motif qu’elle est incompatible avec la nature humaine et le théisme fondé sur des révélations, une définition de la liberté d’enseignement qui prescrit arbitrairement et exclusivement le pluralisme sans engagement, nie l’existence de points de référence fixes, maximise la recherche de la vérité au point de supposer qu’elle ne peut jamais être découverte et comporte une exonération absolue de toute responsabilité morale et religieuse envers la communauté dans laquelle on vit.

L’université Trinity Western s’engage plutôt, quant à elle, à assurer la liberté dans l’enseignement et la recherche d’une manière explicite, c’est-à-dire dans des limites conformes au fondement confessionnel du groupe dont elle est responsable, mais dans un environnement où les gens sont libres de poser des questions et de discuter et où la recherche honnête est encouragée. Les étudiants sont libres de s’informer, ont accès à la vaste gamme de renseignements représentatifs de chaque discipline et sont assurés que leurs enseignants s’efforcent raisonnablement de présenter et d’évaluer de manière équitable et pondérée toutes les matières. La vérité ne craint pas la recherche honnête.

### III. Analyse

#### (1) *Le BCCT a-t-il compétence pour prendre en considération des pratiques discriminatoires?*

L’article 4 de la *Teaching Profession Act* (la « Loi ») habilite le BCCT à [TRADUCTION] « établir, compte tenu de l’intérêt public, les normes de formation, de responsabilité professionnelle et de compétence de ses membres, des personnes qui détiennent un certificat de compétence et des candidats à l’adhésion et [ . . . ] [à] encourager l’intérêt professionnel de ses membres ». C’est cette mention de l’intérêt public qui, selon le BCCT, justifie qu’il prenne en considération la politique d’admission de l’UTW pour décider s’il y a lieu d’agréer le programme de formation des enseignants de cet établissement. Le BCCT soutient que les programmes d’enseignement doivent être offerts dans un milieu qui reflète les valeurs relatives aux droits de la personne et que ces valeurs peuvent servir à évaluer l’incidence de pratiques discriminatoires sur la pédagogie. Bien que le BCCT n’ait pas tenu compte de l’existence d’établissements particuliers comme l’UTW pour concevoir ses règlements et ses politiques, il prétend que tous les établisse-

BCCT that they will provide an institutional setting that appropriately prepares future teachers for the public school environment, and in particular for the diversity of public school students.

ments qui souhaitent former des enseignants qui occuperont un poste dans le système d'éducation public doivent convaincre le BCCT qu'ils fourniront un cadre institutionnel qui préparera convenablement les futurs enseignants au milieu scolaire public et, en particulier, à la diversité des élèves des écoles publiques.

12 TWU argues that the BCCT was not created to render judgment on the acceptability of religious beliefs nor to enforce human rights legislation in an attempt to eradicate potential discrimination in the school system. It is of the view that a contextual interpretation of the words "public interest" in s. 4 indicates that the powers of the BCCT are limited to establishing standards ensuring that teachers are properly trained, competent and of good character. According to TWU, the BCCT is not authorized to decide whether the religious beliefs of TWU students and staff may give rise to a risk of discrimination or to a perception within the public that those students will discriminate when employed within the public education system.

L'UTW fait valoir que le BCCT n'a pas été créé pour décider si des croyances religieuses sont acceptables ou pour faire respecter la législation sur les droits de la personne de manière à éliminer tout risque de discrimination dans le système scolaire. Elle estime que, selon une interprétation contextuelle de l'expression « intérêt public » à l'art. 4, le BCCT n'est habilité qu'à établir des normes destinées à garantir que les enseignants recevront une formation adéquate, qu'ils seront compétents et qu'ils auront une bonne moralité. Selon l'UTW, le BCCT n'est pas autorisé à décider si les croyances religieuses des étudiants et du personnel de l'UTW peuvent engendrer un risque de discrimination ou la perception chez le public que ces étudiants feront preuve de discrimination quand ils travailleront au sein du système d'éducation public.

13 Our Court accepted in *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, that teachers are a medium for the transmission of values. It is obvious that the pluralistic nature of society and the extent of diversity in Canada are important elements that must be understood by future teachers because they are the fabric of the society within which teachers operate and the reason why there is a need to respect and promote minority rights. The suitability for entrance into the profession of teaching must therefore take into account all features of the education program at TWU. We agree with Rowles J.A. that "[i]t is clear from the terms 'professional responsibility and competence of its members' that the College can consider the effect of public school teacher education programs on the competence and professional responsibility of their graduates" (para. 197). The power to establish standards provided for in s. 4 of the Act must be interpreted in light of the general purpose of the statute and in particular, the need to

Dans l'arrêt *Ross c. Conseil scolaire du district n° 15 du Nouveau-Brunswick*, [1996] 1 R.C.S. 825, notre Cour a reconnu que les enseignants servent d'intermédiaires pour transmettre des valeurs. Il est évident que le caractère pluraliste de la société et l'ampleur de la diversité au Canada sont des éléments importants dont les futurs enseignants doivent prendre conscience parce qu'ils caractérisent la société dans laquelle ils seront appelés à travailler et expliquent pourquoi il est nécessaire pour eux de respecter et de promouvoir les droits des minorités. Pour déterminer l'aptitude à devenir enseignant, il faut donc tenir compte de toutes les caractéristiques du programme de formation de l'UTW. Nous partageons l'opinion de madame le juge Rowles selon laquelle [TRADUCTION] « [i]l ressort clairement des expressions "responsabilité professionnelle et [...] compétence de ses membres" que l'Ordre peut prendre en considération l'incidence que les programmes de formation des enseignants des écoles publiques ont sur la

ensure that “the fulfilment of public functions is undertaken in a manner that does not undermine public trust and confidence” (*Ross, supra*, at para. 84). Schools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance. It would not be correct, in this context, to limit the scope of s. 4 to a determination of skills and knowledge.

We are therefore of the view that the BCCT had jurisdiction to consider discriminatory practices in dealing with the TWU application. All parties accepted that the standard of correctness applied to this decision because it was determinative of jurisdiction and beyond the expertise of the members of the Council.

(2) *Was the Decision of the BCCT Council Justified?*

(a) The Standard of Review

Before this question can be answered, we must decide what is the appropriate standard of review in these circumstances. As mentioned earlier, the appellant is of the view that the standard of patent unreasonableness applies. There is no substantive argument made in the appellant’s factum on this issue, but its position is basically the same as that of the intervener, the Ontario Secondary School Teachers’ Federation. In essence, the view of these parties is that the BCCT is a specialized tribunal with considerable expertise in the field of education. It is expressly granted wide discretion in deciding what factors to take into account when approving education programs. Determining criteria as to whether a program is appropriate for the public school system is a polycentric policy decision involving balancing multiple factors and competing interests. The Legislature contemplated that such decisions should be left to the Council. The

compétence et la responsabilité professionnelle des gens qui obtiennent leur diplôme après les avoir suivis » (par. 197). Le pouvoir d’établir des normes, prévu à l’art. 4 de la Loi, doit être interprété en fonction de l’objectif général de la Loi et, en particulier, du besoin de veiller à ce que « les fonctions publiques soient exercées de manière à ne pas saper la confiance du public » (*Ross*, précité, par. 84). Les écoles sont censées développer le civisme, former des citoyens responsables et offrir un enseignement dans un milieu où les préjugés, le parti pris et l’intolérance n’existent pas. Il ne conviendrait donc pas, dans ce contexte, de limiter la portée de l’art. 4 à la détermination des compétences et des connaissances.

Nous estimons donc que le BCCT avait compétence pour prendre en considération des pratiques discriminatoires en traitant la demande de l’UTW. Toutes les parties ont reconnu que la norme de la décision correcte s’appliquait à la décision rendue en l’espèce parce qu’elle était déterminante sur le plan de la compétence et excédait l’expertise des membres du Conseil.

(2) *La décision du Conseil du BCCT était-elle justifiée?*

a) La norme de contrôle

Pour répondre à cette question, il nous faut déterminer quelle est la norme de contrôle appropriée dans les circonstances. Comme nous l’avons vu, l’appelant estime que la norme de la décision manifestement déraisonnable s’applique. Dans son mémoire, l’appelant n’avance aucun argument substantiel à ce sujet, mais son point de vue est pratiquement le même que celui de l’intervenante, la Fédération des enseignantes-enseignants des écoles secondaires de l’Ontario. Ces parties considèrent essentiellement que le BCCT est un tribunal spécialisé qui possède une grande expertise dans le domaine de l’éducation. Il est expressément investi d’un large pouvoir discrétionnaire de déterminer quels facteurs doivent être pris en considération lorsqu’il s’agit d’approuver des programmes de formation. L’établissement des critères applicables pour déterminer si un programme est approprié pour le système scolaire public est une décision de

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respondent TWU argues that a correctness standard applies because the purpose of the decision is the protection of minorities and promotion of human rights. The expertise of the Council does not extend to human rights issues; the Council is predominantly comprised of school teachers with no experience in balancing competing interests in society. Furthermore, there is no privative clause applicable and s. 40 of the Act provides for a right of appeal. The Act also allows the Lieutenant Governor in Council to disallow a bylaw passed by the BCCT.

politique générale polycentrique qui exige de sou-peser des facteurs multiples et des intérêts opposés. Le législateur a prévu que ces décisions devraient être prises par le Conseil. L'UTW intimée soutient que la norme de la décision correcte s'applique parce que la décision en cause a pour but de protéger les minorités et de promouvoir les droits de la personne. L'expertise du Conseil ne s'étend pas aux questions de droits de la personne; le Conseil est surtout composé d'enseignants qui ne possèdent aucune expérience en matière d'évaluation d'intérêts opposés dans la société. De plus, aucune clause privative ne s'applique et l'art. 40 de la Loi prévoit un droit d'appel. La Loi permet également au lieutenant-gouverneur en conseil de rejeter un règlement adopté par le BCCT.

16 In the Court of Appeal, Goldie J.A. considered the pragmatic and functional approach first adopted in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, and held that the lack of a privative clause, the lack of expertise in human rights issues of the BCCT and the purpose of the legislation indicated a standard of correctness. He nevertheless found that the misconception of TWU's world view and the error in finding intolerant behaviour were errors of fact and patently unreasonable. Rowles J.A., in her dissent, divided the question of jurisdiction and the existence of discriminatory practices generally, which were questions of law, and the effects of discriminatory practices, or whether the certification was in fact contrary to the public interest, which were questions of fact, applying different standards in each case. She applied the correctness standard to the first division and the reasonableness *simpliciter* standard to the second.

En Cour d'appel, le juge Goldie a examiné la méthode pragmatique et fonctionnelle adoptée pour la première fois dans l'arrêt *U.E.S., Local 298 c. Bibeault*, [1988] 2 R.C.S. 1048, et a conclu que l'absence de clause privative, le manque d'expertise du BCCT relativement aux questions touchant les droits de la personne et l'objet de la mesure législative militaient en faveur de l'application de la norme de la décision correcte. Il a toutefois jugé que la conception erronée de la vision que l'UTW a du monde et l'erreur commise en concluant à l'existence de comportement intolérant étaient des erreurs de fait et étaient manifestement déraisonnables. Dans ses motifs de dissidence, madame le juge Rowles a examiné séparément, d'une part, la question de la compétence et celle de l'existence de pratiques discriminatoires en général, qui étaient des questions de droit, et d'autre part, la question de l'incidence des pratiques discriminatoires ou celle de savoir si l'agrément du programme était en réalité contraire à l'intérêt public, qui étaient des questions de fait, et a appliqué des normes différentes dans chaque cas. Elle a appliqué la norme de la décision correcte aux questions de droit et la norme de la décision raisonnable *simpliciter* aux questions de fait.

17 In *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, Bastarache J. summarized the recent jurisprudence of the Court on the standards of review to provide

Dans l'arrêt *Pushpanathan c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [1998] 1 R.C.S. 982, le juge Bastarache a résumé la jurisprudence récente de la Cour en matière de normes

a framework for easy reference by judges and lawyers. Bastarache J. insisted on the fact that, under the pragmatic and functional approach, the focus of the inquiry is still on the particular provision being interpreted by the tribunal and that some provisions will require more deference than others, although they are found in the same Act. *Pushpanathan* did not modify *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, and *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748. It proposes the use of the same four basic factors. Dealing for instance with the expertise factor, it is worth noting that *Pezim* was concerned with the discretion of a securities commission to determine what was in the public interest; in that case, the Court found that, where the tribunal plays an important policy development role, a higher degree of judicial deference is warranted. In the present instance, we are also dealing with the discretion of an administrative body to determine the public interest. The present context is, however, very different. We have already mentioned that s. 171(1) of the *School Act* states that the Minister of Education must appoint an education advisory council to “advise the minister on policy matters respecting education”. Section 11 of the *School Regulation* expands upon the role of the education advisory council and provides that it may advise the minister on “overall policies of the education system including, without limitation, the following areas: . . . (b) the teaching profession”. Even if bylaws on discriminatory practices were adopted by the BCCT by virtue of the s. 4 public interest provision, pursuant to s. 24 of the *Teaching Profession Act*, these bylaws would have to be filed with the minister within 10 days and would be subject to disavowal. Therefore, the BCCT is not the only government actor entrusted with policy development. Furthermore, its expertise does not qualify it to interpret the scope of human rights nor to reconcile competing rights. It cannot be seriously argued that the determination of good character, which is an individual matter, is sufficient to expand the jurisdiction of the BCCT to the evaluation of religious belief, freedom of association and the right to equality generally. As mentioned in *Pushpanathan*, the expertise of the tribunal must

de contrôle afin de fournir aux juges et aux avocats un cadre de référence facile à consulter. Il a souligné que, selon la méthode pragmatique et fonctionnelle, l’accent est toujours mis sur la disposition qui est interprétée par le tribunal administratif et que certaines dispositions doivent faire l’objet de plus de retenue que d’autres, même si elles se trouvent dans la même loi. L’arrêt *Pushpanathan* n’a pas modifié les arrêts *Pezim c. Colombie-Britannique (Superintendent of Brokers)*, [1994] 2 R.C.S. 557, et *Canada (Directeur des enquêtes et recherches) c. Southam Inc.*, [1997] 1 R.C.S. 748. Il propose le recours aux quatre mêmes facteurs de base. En ce qui concerne, par exemple, le facteur de l’expertise, il vaut la peine de noter que *Pezim* portait sur le pouvoir discrétionnaire d’une commission des valeurs mobilières de déterminer ce qui était dans l’intérêt public; dans cette affaire, la Cour a conclu que, dans le cas où un tribunal administratif participe de façon importante à l’établissement de politiques, il faut faire preuve d’une plus grande retenue. En l’espèce, nous devons également nous prononcer sur le pouvoir discrétionnaire d’un organisme administratif de déterminer ce qui est dans l’intérêt public. Toutefois, le présent contexte est très différent. Nous avons déjà mentionné que le par. 171(1) de la *School Act* prévoit que le ministre de l’Éducation doit constituer un conseil consultatif en matière d’éducation [TRADUCTION] « qui sera chargé de le conseiller sur les questions de politique générale touchant l’éducation ». L’article 11 de la *School Regulation* explique le rôle du conseil consultatif en matière d’éducation et prévoit qu’il peut conseiller le Ministre sur [TRADUCTION] « l’ensemble des politiques du système d’éducation, notamment en ce qui concerne: [. . .] b) la profession d’enseignant ». Même si le BCCT adoptait des règlements sur les pratiques discriminatoires en vertu de la disposition de l’art. 4 relative à l’intérêt public, ces règlements devraient être déposés auprès du Ministre dans les 10 jours et pourraient être rejetés, conformément à l’art. 24 de la *Teaching Profession Act*. En conséquence, le BCCT n’est pas le seul intervenant officiel qui soit chargé d’établir des politiques. Il ne possède pas non plus l’expertise nécessaire pour interpréter la portée des droits de la personne ou pour concilier des droits opposés.

be evaluated in relation to the issue and the relative expertise of the court itself. The BCCT asked for a legal opinion before its last denial of the TWU application; it relied on someone else's expertise with regard to the issue before us. It has set standards for teachers, but this has never included the interpretation of human rights codes. The absence of a privative clause, the expertise of the BCCT, the nature of the decision and the statutory context all favour a correctness standard.

On ne saurait prétendre sérieusement que la détermination de la bonne moralité, qui est une question personnelle, est suffisante pour étendre la compétence du BCCT à l'évaluation de la croyance religieuse, de la liberté d'association et du droit à l'égalité en général. Comme on l'a mentionné dans l'arrêt *Pushpanathan*, l'expertise du tribunal doit être évaluée en fonction de la question litigieuse et de l'expertise relative du tribunal administratif lui-même. Le BCCT a sollicité un avis juridique avant de rejeter pour la dernière fois la demande de l'UTW; il s'en est remis à l'expertise de quelqu'un d'autre en ce qui concerne la question dont nous sommes saisis. Il a établi des normes pour les enseignants, mais cela n'a jamais compris l'interprétation des codes des droits de la personne. L'absence de clause privative, l'expertise du BCCT, la nature de la décision et le contexte législatif militent tous en faveur de l'application la norme de la décision correcte.

18 We mentioned earlier that a lower standard had been applied by the Court of Appeal on the findings of the BCCT with regard to the existence of discriminatory practices and, if they are present, whether they have created a perception that the BCCT condones this discriminatory conduct. The lower standard was also applied to the BCCT finding that the school system has or has not created a risk that graduates of TWU will not provide a discrimination-free environment for all students. We do not believe that different standards should apply in these circumstances. The existence of discriminatory practices is based on the interpretation of the TWU documents and human rights values and principles. This is a question of law that is concerned with human rights and not essentially educational matters.

Nous avons déjà souligné que la Cour d'appel avait appliqué une norme moins stricte aux conclusions que le BCCT a tirées relativement à l'existence de pratiques discriminatoires et quant à savoir, à supposer que de telles pratiques existent, si elles ont engendré la perception qu'il tolère cette conduite discriminatoire. La norme moins stricte a également été appliquée à la conclusion du BCCT que le système scolaire a ou n'a pas créé un risque que les diplômés de l'UTW n'offrent pas à tous les étudiants un milieu libre de toute discrimination. Nous ne croyons pas que des normes différentes devraient s'appliquer dans les présentes circonstances. L'existence de pratiques discriminatoires est fondée sur l'interprétation des documents de l'UTW et des valeurs et principes en matière de droits de la personne. Il s'agit d'une question de droit qui touche le domaine des droits de la personne et non pas essentiellement celui de l'enseignement.

19 The perception of the public regarding the religious beliefs of TWU graduates and the inference that those beliefs will produce an unhealthy school environment have, in our view, very little to do, if anything, with the particular expertise of the members of the BCCT. We believe it is particu-

La perception que le public a des croyances religieuses des diplômés de l'UTW et la déduction que ces croyances engendreront un milieu scolaire malsain ont, à notre avis, très peu à voir, s'il en est, avec l'expertise particulière des membres du BCCT. Nous croyons qu'il est particulièrement

larly important to note here that we are not in a situation where the Council is dealing with discriminatory conduct by a teacher, as in *Ross*. The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU. By contrast, in *Ross* the actual conduct of the teacher had, on the evidence, poisoned the atmosphere of the school (*Ross, supra*, at paras. 38-40 and 101). More importantly, the Council is not particularly well equipped to determine the scope of freedom of religion and conscience and to weigh these rights against the right to equality in the context of a pluralistic society. The public dimension of religious freedom and the right to determine one's moral conduct have been recognized long before the advent of the *Charter* (see *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299, at p. 329) and have been considered to be legal issues. The accommodation of beliefs is a legal question discussed in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, and *Ross*. Perceptions were a concern in *Ross*, but they were founded on conduct, not simply beliefs. The respondent in this case argued that the refusal of accreditation would create the perception that the BCCT does not value freedom of religion and conscience and endorses stereotypical attributes with regard to TWU graduates. All this to say that even if it was open to the BCCT to base its decision on perception rather than evidence of actual discrimination or of a real risk of discrimination, there is no reason to give any deference to that decision.

(b) The Evidence of Discrimination

There are in reality two elements to be considered under this heading: Are the internal documents of TWU illustrative of discriminatory practices? If so, are these discriminatory practices sufficient to establish a risk of discrimination suffi-

important de souligner ici que nous ne sommes pas dans une situation où le Conseil traite de la conduite discriminatoire d'un enseignant, comme c'était le cas dans l'affaire *Ross*. En l'espèce, la preuve est hypothétique et exige de prendre en considération la conduite et les croyances futures potentielles des diplômés d'un programme de formation des enseignants offert exclusivement par l'UTW. Par contre, dans l'affaire *Ross*, la preuve démontrait que la conduite de l'enseignant avait empoisonné l'atmosphère de l'école (*Ross, précité*, par. 38-40 et 101). Qui plus est, le Conseil n'est pas particulièrement en mesure de déterminer la portée de la liberté de religion et de conscience, et de soupeser ces droits en fonction du droit à l'égalité dans le cadre d'une société pluraliste. La dimension publique de la liberté religieuse et le droit de décider de sa propre conduite morale étaient reconnus bien avant l'adoption de la *Charte* (voir *Saumur c. City of Quebec*, [1953] 2 R.C.S. 299, p. 329) et sont considérés comme des questions de droit. La question de l'adaptation aux croyances est une question de droit qui a été examinée dans les arrêts *R. c. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295, et *Ross*. Les perceptions étaient une préoccupation dans *Ross*, mais elles étaient fondées sur une conduite, et non simplement sur des croyances. L'intimée en l'espèce a soutenu que refuser l'agrément du programme engendrerait la perception que le BCCT n'accorde aucune importance à la liberté de religion et de conscience et qu'il approuve des caractéristiques stéréotypées relativement aux diplômés de l'UTW. Tout cela pour dire que, même s'il était loisible au BCCT de fonder sa décision sur une perception plutôt que sur une preuve de discrimination réelle ou d'un risque réel de discrimination, il n'y a aucune raison de faire preuve de retenue envers cette décision.

b) La preuve de discrimination

Il y a en réalité deux éléments à prendre en considération sous cette rubrique: Les documents internes de l'UTW révèlent-ils l'existence de pratiques discriminatoires? Dans l'affirmative, ces pratiques discriminatoires suffisent-elles à établir

cient to justify that graduates of TWU should not be admitted to teach in the public schools?

l'existence d'un risque de discrimination suffisant pour empêcher les diplômés de l'UTW d'enseigner dans les écoles publiques?

21 The BCCT relied on the internal documents of TWU as evidence of discrimination against homosexuals. It concluded that the inclusion of homosexual behaviour in the list of biblically condemned practices demonstrates intolerance and that this cannot be overridden by the adoption of other values. Both the program and the practices of TWU, the declarations required of students and faculty in particular, were condemned because they reflected the beliefs of the signatories. According to the BCCT, discrimination against homosexuals had been institutionalized; see majority decision of Goldie J.A., at para. 58.

Le BCCT s'est servi des documents internes de l'UTW pour établir l'existence de discrimination envers les homosexuels. Il a conclu que l'inclusion du comportement homosexuel dans la liste des pratiques condamnées par la Bible est un signe d'intolérance qui ne peut pas être écarté par l'adoption d'autres valeurs. Le programme et les pratiques de l'UTW et, en particulier, les déclarations exigées des étudiants et des membres du corps professoral ont été condamnés parce qu'ils reflétaient les croyances des signataires. Selon le BCCT, la discrimination envers les homosexuels était institutionnalisée; voir la décision majoritaire du juge Goldie, par. 58.

22 The majority of the Court of Appeal was of the view that the BCCT misapprehended the evidence at the first stage by defining the world view of the TWU too narrowly. It pointed out that the TWU documents make no reference to homosexuals or to sexual orientation, but only to practices that the particular student is asked to give up himself, or herself, while at TWU. These practices include drunkenness, profanity, harassment, dishonesty, abortion, the occult and sexual sins of a heterosexual and homosexual nature. There is no evidence before this Court that anyone has been denied admission because of refusal to sign the document or was expelled because of non-adherence to it. On the other hand, there is evidence that not all students admitted to TWU adhere to the Christian world view.

La Cour d'appel, à la majorité, était d'avis que le BCCT avait mal compris la preuve à la première étape en définissant de manière trop stricte la vision que l'UTW avait du monde. Elle a souligné que les documents de l'UTW ne mentionnent ni les homosexuels ni l'orientation sexuelle, mais font seulement état des pratiques auxquelles on demande à l'étudiant de renoncer de son propre gré pendant qu'il fréquente l'UTW. Ces pratiques comprennent l'ivresse, les blasphèmes, le harcèlement, la malhonnêteté, l'avortement, l'occultisme et les péchés sexuels de nature hétérosexuelle ou homosexuelle. Notre Cour ne dispose d'aucune preuve que quelqu'un a été refusé parce qu'il ne voulait pas signer le document ou que quelqu'un a été renvoyé pour ne pas s'y être conformé. Par contre, il est prouvé que les étudiants admis à l'UTW ne partagent pas tous la vision chrétienne du monde.

23 The appellant argues that there is no distinction between homosexual persons and homosexual behaviour, and that reference to sinners is a condemnation of anyone who engages in homosexual practices; practices and identity are related. The BCCT points out that stealing and cheating are a behavioural choice, while sexual orientation is not. The question therefore is not whether students have been denied admission to TWU on the basis of their sexual orientation, but whether a homosex-

L'appelant soutient qu'il n'y a aucune distinction entre les personnes homosexuelles et le comportement homosexuel, et que la mention des pécheurs est une condamnation de quiconque se livre à des pratiques homosexuelles; pratiques et identité sont connexes. Le BCCT fait remarquer que le vol et la tricherie sont des choix de comportement, alors que l'orientation sexuelle ne l'est pas. La question n'est donc pas de savoir si des étudiants ont été refusés à l'UTW en raison de leur

ual student could in good faith sign the declaration and consider that he or she is accepted by the TWU community on an equal basis.

The respondent says that the position of the BCCT is simply based on moral disapprobation of the religious beliefs of TWU students and faculty. It ignores the record of graduates and especially the fact that the TWU Community Standards require students and faculty to show respect to all people, to become aware of all different philosophical and social perspectives, and to teach tolerance as a first principle; see factum, at para. 79.

Although the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the *Charter* does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.

This is not to say that the BCCT erred in considering equality concerns pursuant to its public interest jurisdiction. As we have already stated, concerns about equality were appropriately considered by the BCCT under the public interest component of s. 4 of the *Teaching Profession Act*. The impor-

orientation sexuelle, mais de savoir si un étudiant homosexuel pourrait en toute bonne foi signer la déclaration et considérer qu'il est accepté sur un pied d'égalité par la communauté de l'UTW.

L'intimée affirme que le point de vue du BCCT est simplement fondé sur la désapprobation morale des croyances religieuses des étudiants et des membres du corps professoral de l'UTW. Il ne tient pas compte des antécédents des diplômés et particulièrement du fait que les normes communautaires de l'UTW exigent que les étudiants et les membres du corps professoral témoignent du respect envers leur prochain, prennent conscience de tous les différents points de vue philosophiques et sociaux, et prêchent la tolérance comme principe de base; voir le mémoire, par. 79.

Bien que les normes communautaires soient énoncées sous la forme d'un code de conduite plutôt que sous celle d'un article de foi, nous concluons qu'un étudiant homosexuel ne serait pas tenté de présenter une demande d'admission et qu'il ne pourrait signer le prétendu contrat d'étudiant qu'à un prix très élevé sur le plan personnel. L'UTW ne s'adresse pas à tout le monde; elle est destinée à combler les besoins des gens qui ont en commun un certain nombre de convictions religieuses. Cela dit, la politique d'admission de l'UTW n'est pas suffisante en soi pour établir l'existence de discrimination au sens de notre jurisprudence relative à l'art. 15. Il importe de souligner qu'il s'agit d'un établissement privé qui échappe en partie à l'application de la législation de la Colombie-Britannique relative aux droits de la personne et auquel la *Charte* ne s'applique pas. Affirmer que l'adhésion volontaire d'une personne à un code de conduite fondé sur ses croyances religieuses, dans un établissement privé, est suffisante pour déclencher l'application de l'art. 15 serait incompatible avec la liberté de conscience et de religion qui coexiste avec le droit à l'égalité.

Cela ne revient pas à dire que le BCCT a eu tort de prendre en considération des préoccupations d'égalité conformément à sa compétence en matière d'intérêt public. Comme nous l'avons déjà affirmé, le BCCT a eu raison de prendre en considération des préoccupations relatives à l'égalité en

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tance of equality in Canadian society was discussed by Cory J. for the majority of this Court in *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at para. 67:

The rights enshrined in s. 15(1) of the *Charter* are fundamental to Canada. They reflect the fondest dreams, the highest hopes and finest aspirations of Canadian society. When universal suffrage was granted it recognized to some extent the importance of the individual. Canada by the broad scope and fundamental fairness of the provisions of s. 15(1) has taken a further step in the recognition of the fundamental importance and the innate dignity of the individual. That it has done so is not only praiseworthy but essential to achieving the magnificent goal of equal dignity for all. It is the means of giving Canadians a sense of pride. In order to achieve equality the intrinsic worthiness and importance of every individual must be recognized regardless of the age, sex, colour, origins, or other characteristics of the person. This in turn should lead to a sense of dignity and worthiness for every Canadian and the greatest possible pride and appreciation in being a part of a great nation.

vertu de la disposition concernant l'intérêt public figurant à l'art. 4 de la *Teaching Profession Act*. Dans l'arrêt *Vriend c. Alberta*, [1998] 1 R.C.S. 493, par. 67, le juge Cory a, au nom de notre Cour à la majorité, analysé l'importance de l'égalité dans la société canadienne :

Les droits garantis par le par. 15(1) de la *Charte* sont fondamentaux pour le Canada. Ils reflètent les rêves les plus chers, les espérances les plus élevées et les aspirations les plus nobles de la société canadienne. L'adoption du suffrage universel a eu pour effet de reconnaître, jusqu'à un certain point, l'importance de l'individu. En adoptant le par. 15(1), dont les dispositions ont une large portée et se caractérisent par un grand souci de justice fondamentale, le Canada a franchi une autre étape dans la reconnaissance de l'importance fondamentale et de la dignité inhérente de chacun. Cette démarche est non seulement louable, mais essentielle à la réalisation d'un objectif admirable : le droit de chacun à la dignité. C'est le moyen d'inspirer aux Canadiens un sentiment de fierté. Pour qu'il y ait égalité, la valeur et l'importance intrinsèques de chaque individu doivent être reconnues sans égard à l'âge, au sexe, à la couleur, aux origines ou à d'autres caractéristiques de la personne. Cette reconnaissance devrait alors susciter chez tous les Canadiens un sentiment de dignité et de valorisation tout en leur inspirant la plus grande fierté et la satisfaction d'appartenir à une grande nation.

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The equality guarantees in the *Charter* and in B.C.'s human rights legislation include protection against discrimination based on sexual orientation. In *Egan v. Canada*, [1995] 2 S.C.R. 513, this Court unanimously affirmed that sexual orientation is an analogous ground to those enumerated in s. 15(1) of the *Charter*. In addition, a majority of this Court explicitly recognized that gays and lesbians, "whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage" (para. 175, *per* Cory J.; see also para. 89, *per* L'Heureux-Dubé J.). This statement was recently affirmed by a majority of this Court in *M. v. H.*, [1999] 2 S.C.R. 3, at para. 64. See also *Vriend, supra*, and *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, 2000 SCC 69. While the BCCT was not directly applying either the *Charter* or the province's human rights legislation when making its decision, it was entitled to look to these

La garantie d'égalité qui figure dans la *Charte* et dans la législation de la Colombie-Britannique relative aux droits de la personne inclut la protection contre la discrimination fondée sur l'orientation sexuelle. Dans l'arrêt *Egan c. Canada*, [1995] 2 R.C.S. 513, notre Cour a confirmé à l'unanimité que l'orientation sexuelle est un motif analogue à ceux énumérés au par. 15(1) de la *Charte*. De plus, les juges majoritaires ont expressément reconnu que les gais et les lesbiennes, « à titre individuel ou comme couples, forment une minorité identifiable, victime encore aujourd'hui de désavantages sociaux, politiques et économiques graves » (par. 175, le juge Cory; voir également le par. 89, le juge L'Heureux-Dubé). Cette affirmation a récemment été confirmée par notre Cour à la majorité dans l'arrêt *M. c. H.*, [1999] 2 R.C.S. 3, par. 64. Voir également les arrêts *Vriend*, précité, et *Little Sisters Book and Art Emporium c. Canada (Ministre de la Justice)*, [2000] 2 R.C.S. 1120, 2000 CSC 69. Bien que sa décision n'ait pas été

instruments to determine whether it would be in the public interest to allow public school teachers to be trained at TWU.

At the same time, however, the BCCT is also required to consider issues of religious freedom. Section 15 of the *Charter* protects equally against “discrimination based on . . . religion”. Similarly, s. 2(a) of the *Charter* guarantees that “[e]veryone has the following fundamental freedoms: . . . freedom of conscience and religion”. British Columbia’s human rights legislation accommodates religious freedoms by allowing religious institutions to discriminate in their admissions policies on the basis of religion. The importance of freedom of religion in Canadian society was elegantly stated by Dickson J., as he then was, writing for the majority in *Big M Drug Mart*, *supra*, at pp. 336-37:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the *Charter*. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion

fondée directement sur la *Charte* ou sur la législation de la province relative aux droits de la personne, le BCCT avait le droit de consulter ces instruments pour décider s’il serait dans l’intérêt public de permettre la formation d’enseignants d’école publique à l’UTW.

Cependant, le BCCT est, du même coup, tenu de prendre en considération des questions de liberté religieuse. L’article 15 de la *Charte* protège aussi contre la « discriminatio[n] fondé[e] sur [. . .] la religion ». De même, l’al. 2a) de la *Charte* prévoit que « [c]hacun a les libertés fondamentales suivantes : [. . .] liberté de conscience et de religion ». La législation de la Colombie-Britannique relative aux droits de la personne respecte les libertés religieuses en permettant aux établissements confessionnels de faire preuve de discrimination fondée sur la religion dans leur politique d’admission. Dans l’arrêt *Big M Drug Mart*, précité, p. 336-337, le juge Dickson (plus tard Juge en chef) a expliqué de façon élégante, au nom des juges majoritaires, l’importance de la liberté de religion dans la société canadienne :

Une société vraiment libre peut accepter une grande diversité de croyances, de goûts, de visées, de coutumes et de normes de conduite. Une société libre vise à assurer à tous l’égalité quant à la jouissance des libertés fondamentales et j’affirme cela sans m’appuyer sur l’art. 15 de la *Charte*. La liberté doit sûrement reposer sur le respect de la dignité et des droits inviolables de l’être humain. Le concept de la liberté de religion se définit essentiellement comme le droit de croire ce que l’on veut en matière religieuse, le droit de professer ouvertement des croyances religieuses sans crainte d’empêchement ou de représailles et le droit de manifester ses croyances religieuses par leur mise en pratique et par le culte ou par leur enseignement et leur propagation. Toutefois, ce concept signifie beaucoup plus que cela.

La liberté peut se caractériser essentiellement par l’absence de coercition ou de contrainte. Si une personne est astreinte par l’État ou par la volonté d’autrui à une conduite que, sans cela, elle n’aurait pas choisi d’adopter, cette personne n’agit pas de son propre gré et on ne peut pas dire qu’elle est vraiment libre. L’un des objectifs importants de la *Charte* est de protéger, dans des limites raisonnables, contre la coercition et la contrainte. La coercition comprend non seulement la contrainte flagrante exercée, par exemple, sous forme d’or-

includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of “the tyranny of the majority”.

It is interesting to note that this passage presages the very situation which has arisen in this appeal, namely, one where the religious freedom of one individual is claimed to interfere with the fundamental rights and freedoms of another. The issue at the heart of this appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.’s public school system, concerns that may be shared with their parents and society generally.

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In our opinion, this is a case where any potential conflict should be resolved through the proper delineation of the rights and values involved. In essence, properly defining the scope of the rights avoids a conflict in this case. Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. As L’Heureux-Dubé J. stated in *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141, at p. 182, writing for the majority on this point:

As the Court has reiterated many times, freedom of religion, like any freedom, is not absolute. It is inherently limited by the rights and freedoms of others. Whereas parents are free to choose and practise the religion of their choice, such activities can and must be restricted when they are against the child’s best inter-

ests direct d’agir ou de s’abstenir d’agir sous peine de sanction, mais également les formes indirectes de contrôle qui permettent de déterminer ou de restreindre les possibilités d’action d’autrui. La liberté au sens large comporte l’absence de coercition et de contrainte et le droit de manifester ses croyances et pratiques. La liberté signifie que, sous réserve des restrictions qui sont nécessaires pour préserver la sécurité, l’ordre, la santé ou les mœurs publics ou les libertés et droits fondamentaux d’autrui, nul ne peut être forcé d’agir contrairement à ses croyances ou à sa conscience.

Une majorité religieuse, ou l’État à sa demande, ne peut, pour des motifs religieux, imposer sa propre conception de ce qui est bon et vrai aux citoyens qui ne partagent pas le même point de vue. La *Charte* protège les minorités religieuses contre la menace de «tyrannie de la majorité».

Il est intéressant de noter que cet extrait laisse présager la situation même qui s’est matérialisée en l’espèce, à savoir celle dans laquelle on prétend que la liberté de religion d’une personne porte atteinte aux droits et libertés fondamentaux d’une autre personne. La question qui est au cœur du présent pourvoi est de savoir comment concilier les libertés religieuses d’individus qui souhaitent fréquenter l’UTW avec les préoccupations d’égalité des élèves du système scolaire public de la Colombie-Britannique, préoccupations qui peuvent être partagées par les parents de ces élèves et par la société en général.

À notre avis, nous sommes en présence d’une situation dans laquelle il y a lieu de régler tout conflit éventuel en délimitant correctement les droits et valeurs en cause. Essentiellement, une bonne délimitation de la portée des droits permet d’éviter un conflit en l’espèce. Ni la liberté de religion ni la protection contre la discrimination fondée sur l’orientation sexuelle ne sont absolues. Comme le juge L’Heureux-Dubé l’a affirmé à ce propos, au nom des juges majoritaires, dans l’arrêt *P. (D.) c. S. (C.)*, [1993] 4 R.C.S. 141, p. 182 :

Comme la Cour l’a réitéré à maintes occasions, la liberté de religion, comme toute liberté, n’est pas absolue. Elle est limitée de façon inhérente par les droits et libertés des autres. Alors que les parents sont libres de choisir et de pratiquer la religion de leur choix, ces activités peuvent et doivent être restreintes lorsqu’elles contrevien-

ests, without thereby infringing the parents' freedom of religion. [Emphasis added.]

Similarly, Iacobucci and Major JJ. concluded in *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para. 226, that:

Just as there are limits to the ambit of freedom of expression (e.g. s. 2(b) does not protect violent acts: *R. v. Zundel*, [1992] 2 S.C.R. 731, at pp. 753 and 801; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 732 and 830), so are there limits to the scope of s. 2(a), especially so when this provision is called upon to protect activity that threatens the physical or psychological well-being of others. In other words, although the freedom of belief may be broad, the freedom to act upon those beliefs is considerably narrower, and it is the latter freedom at issue in this case. [Emphasis added.]

In addition, the *Charter* must be read as a whole, so that one right is not privileged at the expense of another. As Lamer C.J. stated for the majority of this Court in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, at p. 877:

A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law. When the protected rights of two individuals come into conflict . . . *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.

Therefore, although the BCCT was right to evaluate the impact of TWU's admission policy on the public school environment, it should have considered more. The *Human Rights Code*, R.S.B.C. 1996, c. 210, specifically provides for exceptions in the case of religious institutions, and the legislature gave recognition to TWU as an institution affiliated to a particular Church whose views were well known to it. While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning

ment au meilleur intérêt de l'enfant, sans pour autant violer la liberté de religion des parents. [Nous soulignons.]

De même, les juges Iacobucci et Major ont tiré la conclusion suivante dans l'arrêt *B. (R.) c. Children's Aid Society of Metropolitan Toronto*, [1995] 1 R.C.S. 315, par. 226 :

Tout comme il existe des limites à la liberté d'expression (p. ex., l'al. 2b) ne protège pas les actes violents: *R. c. Zundel*, [1992] 2 R.C.S. 731, aux pp. 753 et 801; *R. c. Keegstra*, [1990] 3 R.C.S. 697, aux pp. 732 et 830), il y a également des limites à la portée de l'al. 2a), particulièrement lorsqu'on a recours à cette disposition pour préserver une activité qui menace le bien-être physique et psychologique d'autrui. En d'autres termes, bien que la liberté de croyance puisse être vaste, la liberté d'agir suivant ces croyances est beaucoup plus restreinte, et c'est cette liberté qui est en cause en l'espèce. [Nous soulignons.]

En outre, la *Charte* doit s'interpréter comme un tout, de manière à éviter de privilégier un droit au détriment d'un autre. Comme le juge en chef Lamer l'a affirmé, au nom de notre Cour à la majorité, dans l'arrêt *Dagenais c. Société Radio-Canada*, [1994] 3 R.C.S. 835, p. 877 :

Il faut se garder d'adopter une conception hiérarchique qui donne préséance à certains droits au détriment d'autres droits, tant dans l'interprétation de la *Charte* que dans l'élaboration de la common law. Lorsque les droits de deux individus sont en conflit, [. . .] les principes de la *Charte* commandent un équilibre qui respecte pleinement l'importance des deux catégories de droits.

Par conséquent, bien que le BCCT ait eu raison d'évaluer l'incidence de la politique d'admission de l'UTW sur le milieu des écoles publiques, il n'aurait pas dû s'en tenir à cela. Le *Human Rights Code*, R.S.B.C. 1996, ch. 210, établit expressément des exceptions dans le cas d'établissements confessionnels, et le législateur a reconnu que l'UTW était un établissement affilié à une église particulière dont il connaissait bien les opinions. Alors que le BCCT affirme qu'il ne refuse ni aux étudiants ni aux membres du corps professoral de l'UTW le droit d'avoir des opinions religieuses particulières, il a déduit, sans aucune preuve tangible à l'appui, que de telles opinions limiteront la

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

prise en compte de questions sociales par les diplômés de l'UTW et auront un effet préjudiciable sur le milieu d'apprentissage dans les écoles publiques. Il est indéniable que la décision du BCCT impose un fardeau aux membres d'un groupe religieux particulier et les empêche, en fait, d'exprimer librement leurs croyances religieuses et de s'associer pour les mettre en pratique. Si l'UTW n'abandonne pas ses normes communautaires, elle renoncera à l'agrément et au plein contrôle d'un programme de formation des enseignants donnant accès au système scolaire public. Les étudiants sont aussi touchés parce que, en affirmant leurs convictions religieuses et en fréquentant l'UTW, ils ne pourront obtenir leur brevet d'enseignement dans une école publique que s'ils fréquentent l'université publique pendant au moins un an. Ce sont là des facteurs importants. Le BCCT devait déterminer si les droits en cause étaient vraiment en conflit.

33 TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools. Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. The BCCT did not weigh the various rights involved in its assessment of the alleged discriminatory practices of TWU by not taking into account the impact of its decision on the right to freedom of religion of the members of TWU. Accordingly, this Court must.

Les normes communautaires de l'UTW, qui ne font que dicter la conduite des gens qui fréquentent l'UTW ou qui y travaillent, ne sont pas suffisantes pour étayer la conclusion que le BCCT doit s'attendre à un comportement intolérant dans les écoles publiques. En fait, si les normes communautaires de l'UTW pouvaient être suffisantes en soi pour justifier le rejet de la demande d'agrément, on voit mal comment le même raisonnement ne pourrait pas servir à refuser de délivrer un brevet d'enseignement aux membres d'une confession particulière. La diversité de la société canadienne se reflète en partie dans les multiples organisations religieuses qui caractérisent le paysage social et il y a lieu de respecter cette diversité d'opinions. En ne tenant pas compte de l'incidence de sa décision sur le droit à la liberté de religion des membres de l'UTW, le BCCT n'a pas soupesé les différents droits en jeu dans son évaluation des prétendues pratiques discriminatoires de l'UTW. En conséquence, notre Cour doit le faire.

34 Consideration of human rights values in these circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values. Freedom of religion, conscience and association coex-

La prise en considération des valeurs relatives aux droits de la personne dans ces circonstances comprend celle de la place des établissements privés dans notre société et la conciliation de droits et valeurs opposés. La liberté de religion, de cons-

ist with the right to be free of discrimination based on sexual orientation. Even though the requirement that students and faculty adopt the Community Standards creates unfavourable differential treatment since it would probably prevent homosexual students and faculty from applying, one must consider the true nature of the undertaking and the context in which this occurs. Many Canadian universities, including St. Francis Xavier University, Queen's University, McGill University and Concordia University College of Alberta, have traditions of religious affiliations. Furthermore, s. 93 of the *Constitution Act, 1867* enshrined religious public education rights into our Constitution, as part of the historic compromise which made Confederation possible. Section 17 of the *Alberta Act, R.S.C. 1985, App. II, No. 20*, and *Saskatchewan Act, R.S.C. 1985, App. II, No. 21*, s. 22 of the *Manitoba Act, 1870, R.S.C. 1985, App. II, No. 8*, and Term 17 of the Terms of Union of Newfoundland with Canada as confirmed by the *Newfoundland Act, R.S.C. 1985, App. II, No. 32*, were to the same effect. Although the constitutional protections were altered by constitutional amendment in Newfoundland in 1998 and eliminated in Quebec in 1997, they remain in effect in Ontario, Alberta, Saskatchewan and Manitoba.

Another part of that context is the *Human Rights Act, S.B.C. 1984, c. 22*, referred to by the Court of Appeal and the respondents (now the *Human Rights Code*), which provides, in s. 19 (now s. 41), that a religious institution is not considered to breach the Act where it prefers adherents of its religious constituency. It cannot be reasonably concluded that private institutions are protected but that their graduates are *de facto* considered unworthy of fully participating in public activities. In *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason

science et d'association coexiste avec le droit d'être exempt de toute discrimination fondée sur l'orientation sexuelle. Même si l'exigence que les étudiants et les membres du corps professoral adoptent les normes communautaires engendre un traitement différentiel défavorable du fait qu'elle dissuaderait probablement les étudiants et les enseignants homosexuels de tenter de joindre les rangs de l'université, il faut prendre en considération la vraie nature de l'engagement en cause et le contexte dans lequel il est pris. Bien des universités canadiennes, dont l'université St. Francis Xavier, l'université Queen's, l'université McGill et le Concordia University College of Alberta, ont été par tradition affiliées à une religion. En outre, l'art. 93 de la *Loi constitutionnelle de 1867* consacre le droit à l'enseignement confessionnel public dans notre Constitution, dans le cadre du compromis historique qui a rendu possible la Confédération. L'article 17 de la *Loi sur l'Alberta, L.R.C. 1985, app. II, n° 20*, et de la *Loi sur la Saskatchewan, L.R.C. 1985, app. II, n° 21*, l'art. 22 de la *Loi de 1870 sur le Manitoba, L.R.C. 1985, app. II, n° 8*, et la clause 17 des Conditions de l'union de Terre-Neuve au Canada ratifiées par la *Loi sur Terre-Neuve, L.R.C. 1985, app. II, n° 32*, allaient dans le même sens. Bien que les garanties constitutionnelles aient fait l'objet d'une modification constitutionnelle à Terre-Neuve en 1998 et qu'elles aient été supprimées au Québec en 1997, elles demeurent en vigueur en Ontario, en Alberta, en Saskatchewan et au Manitoba.

Un autre aspect de ce contexte est la *Human Rights Act, S.B.C. 1984, ch. 22*, mentionnée par la Cour d'appel et les intimées (désormais le *Human Rights Code*), qui prévoit, à l'art. 19 (désormais l'art. 41), qu'on ne considère pas qu'un établissement confessionnel enfreint la Loi quand il donne la préférence aux membres de sa confession. On ne saurait raisonnablement conclure que les établissements privés sont protégés, mais que leurs diplômés sont de fait jugés indignes de participer pleinement à des activités publiques. Dans l'arrêt *Commission ontarienne des droits de la personne c. Simpsons-Sears Ltd.*, [1985] 2 R.C.S. 536, p. 554, le juge McIntyre a fait remarquer qu'une « conséquence naturelle de la reconnaissance d'un

to protect it". In this particular case, it can reasonably be inferred that the B.C. legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. Although this evidence is not conclusive, given that no students have yet graduated from a teacher education program taught exclusively at TWU, it is instructive. Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system.

droit doit être l'acceptation sociale de l'obligation générale de le respecter et de prendre des mesures raisonnables afin de le protéger ». En l'espèce, on peut raisonnablement déduire que la législature de la Colombie-Britannique n'a pas considéré que la formation selon une philosophie chrétienne était contraire en soi à l'intérêt public, étant donné qu'elle a adopté cinq projets de loi en faveur de l'UTW entre 1969 et 1985. Quoique les homosexuels puissent être dissuadés de fréquenter l'UTW, un établissement privé qui préconise des croyances religieuses particulières, cela ne les empêchera pas de devenir enseignants. De plus, rien dans les normes communautaires de l'UTW n'indique que les diplômés de l'UTW ne traiteront pas les personnes homosexuelles d'une manière équitable et respectueuse. En effet, la preuve révèle que les diplômés du programme de formation des enseignants, offert conjointement par l'UTW et l'USF, sont devenus jusqu'à maintenant des enseignants compétents dans des écoles publiques, et notre Cour ne dispose d'aucune preuve de comportement discriminatoire de la part de l'un de ces diplômés. Bien qu'elle ne soit pas concluante étant donné qu'aucun étudiant n'a encore été diplômé après avoir suivi un programme de formation des enseignants offert exclusivement par l'UTW, cette preuve est intéressante. Les étudiants qui fréquentent l'UTW sont libres d'adopter des règles de conduite personnelles basées sur leurs croyances religieuses, pourvu qu'ils ne portent pas atteinte aux droits d'autrui. Leur liberté de religion n'est pas respectée si son exercice entraîne le déni du droit à une participation pleine et entière dans la société. Manifestement, la restriction de la liberté de religion doit être justifiée par la preuve que l'exercice de cette liberté aura, dans les circonstances de la présente affaire, une incidence préjudiciable sur le système scolaire.

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Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be

Au contraire, dans des cas comme celui dont nous sommes saisi, il convient généralement de tracer la ligne entre la croyance et le comportement. La liberté de croyance est plus large que la liberté d'agir sur la foi d'une croyance. En l'absence de preuve tangible que la formation d'enseignants à l'UTW favorise la discrimination dans les écoles publiques de la Colombie-Britannique, il y a

respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

Acting on those beliefs, however, is a very different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT. Discriminatory conduct by a public school teacher when on duty should always be subject to disciplinary proceedings. This Court has held, however, that greater tolerance must be shown with respect to off-duty conduct. Yet disciplinary measures can still be taken when discriminatory off-duty conduct poisons the school environment. As *La Forest J.* stated for a unanimous Court in *Ross, supra*, at para. 45:

It is on the basis of the position of trust and influence that we hold the teacher to high standards both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system. I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a “poisoned” environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant.

In this way, the scope of the freedom of religion and equality rights that have come into conflict in this appeal can be circumscribed and thereby conciled.

lieu de respecter la liberté des individus d’avoir certaines croyances religieuses pendant qu’ils fréquentent l’UTW. Le BCCT a raison de ne pas exiger que les universités publiques qui offrent un programme de formation des enseignants excluent les candidats ayant des croyances sexistes, racistes ou homophobes. Force est de constater que la tolérance de croyances divergentes est la marque d’une société démocratique.

Cependant, il en va tout autrement si quelqu’un agit sur la foi de ces croyances. L’enseignant du système scolaire public qui a un comportement discriminatoire peut faire l’objet de procédures disciplinaires devant le BCCT. Le comportement discriminatoire qu’un enseignant d’une école publique adopte dans l’exercice de ses fonctions devrait toujours faire l’objet de procédures disciplinaires. Notre Cour a cependant statué qu’il convenait de faire montre d’une plus grande tolérance à l’égard du comportement qu’un enseignant adopte en dehors de ses heures de travail. Des mesures disciplinaires peuvent néanmoins être prises lorsque le comportement discriminatoire adopté en dehors des heures de travail empoisonne le milieu scolaire. Comme le juge *La Forest* l’a affirmé, au nom de la Cour à l’unanimité, dans l’arrêt *Ross*, précité, par. 45 :

C’est en raison de cette position de confiance et d’influence que nous exigeons de l’enseignant qu’il se conforme à des normes élevées au travail comme à l’extérieur du travail, et c’est l’érosion de ces normes qui est susceptible d’entraîner, dans la collectivité, une perte de confiance dans le système scolaire public. Loin de moi l’idée de vouloir ainsi soumettre la vie entière des enseignants à un contrôle démesuré dicté par des normes morales plus strictes. Cela risquerait d’entraîner une violation importante des droits à la protection de la vie privée et des libertés fondamentales des enseignants. Toutefois, lorsque l’«empoisonnement» d’un milieu scolaire est imputable au comportement d’un enseignant après ses heures de travail, et qu’il est susceptible d’entraîner une perte correspondante de confiance dans l’enseignant et dans l’ensemble du système, ce comportement après le travail devient alors pertinent.

Ainsi, il est possible de concilier la liberté de religion et les droits à l’égalité qui sont en conflit dans le présent pourvoi, en en circonscrivant la portée.

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For the BCCT to have properly denied accreditation to TWU, it should have based its concerns on specific evidence. It could have asked for reports on student teachers, or opinions of school principals and superintendents. It could have examined discipline files involving TWU graduates and other teachers affiliated with a Christian school of that nature. Any concerns should go to risk, not general perceptions. The appellant suggested in argument that it may be that no problem was incurred because of the participation of Simon Fraser University during the fifth year. This is rather difficult to accept. After finding that TWU students hold fundamental biases, based on their religious beliefs, how could the BCCT ever have believed that the last year's program being under the aegis of Simon Fraser University would ever correct the situation? Simon Fraser University is supervising eight credit hours taken off the TWU campus. There is no evidence that this instruction is in any way related to the problem of apprehended intolerance or that there has been a change in the mandate of Simon Fraser since the last year of the program was given to it to supervise in 1985. On the evidence, it is clear that the participation of Simon Fraser University never had anything to do with the apprehended intolerance from its inception to the present. The organization of the program in 1985 required assistance because of the need to provide a professional development component for certification of future teachers (see A.R., at pp. 45, 47, 48, 62, 64, 90, 95 and 133). The cooperation was intended to support a small faculty in its start-up stage (A.R., at pp. 128, 132 and 298). There is no basis for the inference that the fifth year corrected any attitudes.

(3) *The Argument that Other Criteria Were not Satisfied by TWU*

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The appellant has argued that there were other matters outstanding relating to the readiness of the TWU program and that this alone should have prevented the issuance of a mandamus. We disagree. In the minutes of the initial Council meeting of May 16, 1996, there is extensive discussion of the

Pour que le rejet de la demande d'agrément de l'UTW soit légitime, il aurait fallu que les craintes du BCCT reposent sur une preuve particulière. Le BCCT aurait pu solliciter des rapports sur les élèves-enseignants ou encore des avis de directeurs d'école. Il aurait pu examiner les dossiers disciplinaires mettant en cause des diplômés de l'UTW et d'autres enseignants affiliés à une école chrétienne du genre. Toute crainte devrait concerner un risque et non des perceptions générales. L'appelant a laissé entendre, dans son argumentation, que l'absence de problème peut s'expliquer par la participation de l'université Simon Fraser pendant la cinquième année. Cela est plutôt difficile à accepter. Après avoir conclu que les étudiants de l'UTW ont des préjugés fondamentaux en raison de leurs croyances religieuses, comment le BCCT aurait-il pu croire que placer la dernière année du programme sous l'égide de l'université Simon Fraser corrigerait la situation? L'université Simon Fraser supervise huit heures-crédits suivies à l'extérieur du campus de l'UTW. Rien ne prouve que cette formation-là a un lien quelconque avec le problème d'intolérance appréhendé, ni que le mandat de l'université Simon Fraser a été modifié depuis qu'elle a été chargée de superviser la dernière année du programme en 1985. Compte tenu de la preuve, il est évident que la participation de l'université Simon Fraser n'a jamais rien eu à voir avec l'intolérance appréhendée depuis le début jusqu'à aujourd'hui. L'organisation du programme en 1985 nécessitait une aide en raison du besoin de présenter un élément de formation professionnelle pour la délivrance d'un brevet à de futurs enseignants (voir d.a., p. 45, 47, 48, 62, 64, 90, 95 et 133). La collaboration avait pour but d'épauler une petite faculté qui en était à ses tout débuts (d.a., p. 128, 132 et 298). Rien ne permet de déduire que la cinquième année corrigeait des attitudes.

(3) *L'argument selon lequel l'UTW ne satisfaisait pas à d'autres critères*

L'appelant a fait valoir qu'il existait d'autres questions non résolues quant à l'état de préparation du programme de l'UTW et que ce fait aurait dû à lui seul empêcher la délivrance d'un mandamus. Nous ne sommes pas de cet avis. Dans le procès-verbal de la première réunion du Conseil tenue le

wording of the conditions and wording of the ultimate denial of accreditation. Concerns expressed refer to the discrimination issue. There is no discussion of any stated criteria not having been met. At the reconsideration stage, the criteria addressed earlier are not mentioned, discussed or included in the final decision. This is supported by the affidavit of Dr. Harro Van Brummelen wherein he states that the only issue addressed by Council was that of discriminatory practices. The Report to Members is to the same effect. In any event, the conditions imposed by the TEPC and attached to the order in the nature of mandamus granted by the trial judge adequately address all of these outstanding concerns.

(4) *Is the Mandamus Order Justified?*

The exercise of the discretion of the trial judge in granting the order of mandamus must be quashed if he did not act judicially. In practical terms, the order of mandamus will be invalidated if the trial judge made an error in principle, significantly misapprehended the evidence, acted on irrelevant considerations or ignored relevant ones, lacked foundation for the exercise of his discretion, or otherwise made an error in law (see *Khalil v. Canada (Secretary of State)*, [1999] 4 F.C. 661 (C.A.)). The BCCT has argued that there was no foundation for the exercise of the discretion in the present case. We disagree.

The appellant relies on *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742, affirmed by this Court at [1994] 3 S.C.R. 1100, to support the argument that mandamus is only available where a specific duty must be performed by operation of law, without discretion. In fact, *Apotex* clearly acknowledges that bodies having a discretionary decision-making power may still be faced with a court order for mandamus in certain circumstances. The appellant also argues that, in the present circumstances, even if the discriminatory

16 mai 1996, on trouve une analyse approfondie du libellé des conditions et du rejet final de la demande d'agrément. Les craintes exprimées ont trait à la question de la discrimination. On n'y parle pas de critères explicites auxquels il n'a pas été satisfait. À l'étape du nouvel examen, les critères abordés précédemment ne sont pas mentionnés, analysés ou inclus dans la décision finale. Cela est étayé par l'affidavit dans lequel M. Harro Van Brummelen affirme que la seule question abordée par le Conseil était celle des pratiques discriminatoires. Le rapport destiné aux membres va dans le même sens. Quoi qu'il en soit, les conditions imposées par le comité des programmes de formation des enseignants et rattachées à l'ordonnance de type mandamus délivrée par le juge de première instance répondent suffisamment à toutes ces questions.

(4) *L'ordonnance de mandamus est-elle justifiée?*

L'ordonnance de mandamus que le juge de première instance a rendue dans l'exercice de son pouvoir discrétionnaire doit être annulée s'il n'a pas agi de manière judiciaire. En pratique, l'ordonnance de mandamus est invalidée si le juge de première instance a commis une erreur de principe, s'il a très mal compris la preuve, s'il s'est fondé sur des considérations non pertinentes ou n'a pas tenu compte de considérations pertinentes, s'il n'était pas fondé à exercer son pouvoir discrétionnaire ou s'il a par ailleurs commis une erreur de droit (voir *Khalil c. Canada (Secrétaire d'État)*, [1999] 4 C.F. 661 (C.A.)). Le BCCT a soutenu que l'exercice du pouvoir discrétionnaire n'était pas fondé en l'espèce. Nous ne sommes pas de cet avis.

L'appelant s'appuie sur l'arrêt *Apotex Inc. c. Canada (Procureur général)*, [1994] 1 C.F. 742, que notre Cour a confirmé à [1994] 3 R.C.S. 1100, pour soutenir que le recours au mandamus n'est possible que dans le cas où la loi ordonne d'accomplir un devoir précis, écartant toute discrétion en la matière. En fait, *Apotex* reconnaît clairement que les organismes qui ont un pouvoir décisionnel discrétionnaire peuvent tout de même faire face à une ordonnance judiciaire de mandamus dans certains cas. L'appelant soutient également que, en

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practices as a basis for refusal are set aside, the BCCT still had to determine whether other criteria had been met. Having rejected the report of its committee, Council must therefore now be allowed to determine if TWU has met all relevant criteria. It must, it is argued, considering “TWU’s sectarian nature”, determine whether the degree of monitoring and evaluation recommended by the TEPC is appropriate, and whether library and faculty preparation concerns have been met.

42 We have already dealt with the satisfaction of criteria other than discrimination. We would add that the continuing focus of the BCCT on the sectarian nature of TWU is disturbing. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system. The actual impact of the sectarian nature of TWU on the educational environment is what was examined in these reasons. The conditions attached to the five-year approval by the TEPC remain in place and provide for monitoring of the program to ensure that a proper teaching environment, in particular one that is free of discrimination, is provided by TWU graduates. The BCCT has the responsibility of assuring that programs in place in all private and public teacher training institutions continue to serve the public interest and it has all of the powers required to fulfil its obligations in that regard.

43 The order of mandamus was justified because the exercise of discretion by the BCCT was fet-

l’espèce, même si on considère que les pratiques discriminatoires ne justifient pas le rejet de la demande d’agrément, le BCCT devait quand même déterminer si les autres critères avaient été respectés. Étant donné qu’il a rejeté le rapport de son comité, le Conseil doit donc maintenant pouvoir décider si l’UTW a satisfait à tous les critères pertinents. On fait valoir qu’il doit, compte tenu de la [TRADUCTION] « nature confessionnelle de l’UTW », déterminer si le degré de contrôle et d’évaluation recommandé par le comité des programmes de formation des enseignants est approprié et si les problèmes de préparation de la bibliothèque et du corps professoral ont été résolus.

Nous avons déjà traité du respect des critères autres que la discrimination. Nous ajouterions que l’accent que le BCCT met encore sur la nature confessionnelle de l’UTW est troublant. Il devrait être clair que l’accent mis sur la nature confessionnelle de l’UTW est le même que celui qui a d’abord été mis sur les allégations de pratiques discriminatoires. Le BCCT ne peut pas tenir compte de la nature confessionnelle de l’UTW pour déterminer si les diplômés de cet établissement fourniront un milieu d’apprentissage approprié aux élèves des écoles publiques, dans la mesure où il n’y a aucune preuve que les particularités de l’UTW présentent un risque réel pour le système d’enseignement public. L’incidence réelle de la nature confessionnelle de l’UTW sur le milieu de l’enseignement est ce qui a été examiné dans les présents motifs. Les conditions qui se rattachent à l’approbation de cinq ans donnée par le comité des programmes de formation des enseignants continuent de s’appliquer et prévoient la surveillance du programme afin d’assurer que les diplômés de l’UTW fournissent un milieu d’enseignement approprié, libre de toute discrimination notamment. Le BCCT a la responsabilité de garantir que les programmes en vigueur dans tous les établissements privés et publics de formation des enseignants continuent de servir l’intérêt public et il possède tous les pouvoirs nécessaires pour qu’il puisse s’acquitter de ses obligations à cet égard.

L’ordonnance de mandamus était justifiée parce que l’art. 4 de la Loi entravait l’exercice du pou-

tered by s. 4 of the Act and because the only reason for denial of certification was the consideration of discriminatory practices. In considering the religious precepts of TWU instead of the actual impact of these beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly. There is no reason to return the matter of accreditation to the BCCT in the present circumstances. We would like to add that, although it is difficult to establish a relationship between the requirement of a fifth year of study under the aegis of Simon Fraser University and the assertion, at para. 58 of the reply factum of the appellant, that “all students wishing to teach in the public schools are required to do a professional year through a public university”, we want to stress that the above affirmation is simply wrong. The BCCT is, by this affirmation, stating that it will deny a full program to all private institutions regardless of circumstances. This is contrary to its mandate.

In light of all of these considerations, we see no merit in returning the matter to the BCCT and thereby interfering with the exercise of discretion of the trial judge. There is no interference with the discretion of the BCCT where all of its concerns have been met or dealt with according to law.

Given our conclusions on the main issue, it will not be necessary for us to deal with the question of the breach of the individual *Charter* rights of the respondent Donna Gail Lindquist.

The appeal is dismissed with costs to the respondents.

The following are the reasons delivered by

L'HEUREUX-DUBÉ J. (dissenting) — At its core, this case is about providing the best possible educational environment for public school students in British Columbia. As our Court stated in *Ross v.*

voir discrétionnaire du BCCT et parce que le rejet de la demande d'agrément reposait uniquement sur la prise en considération de pratiques discriminatoires. En tenant compte des préceptes religieux de l'UTW au lieu de l'incidence réelle de ces croyances sur le milieu scolaire, le BCCT s'est fondé sur des considérations non pertinentes. Il a donc agi inéquitablement. Il n'y a aucune raison de renvoyer la question de l'agrément au BCCT dans les circonstances. Nous tenons à ajouter que, bien qu'il soit difficile d'établir un lien entre l'exigence d'une cinquième année d'études sous l'égide de l'université Simon Fraser et l'affirmation, au par. 58 de la réplique déposée par l'appelant, que [TRADUCTION] « les étudiants qui souhaitent enseigner dans des écoles publiques doivent tous passer une année de formation professionnelle dans une université publique », nous estimons que l'affirmation susmentionnée est tout simplement erronée. Le BCCT précise, dans cette affirmation, qu'il refusera un programme complet à tous les établissements privés quelles que soient les circonstances. Cela est contraire à sa mission.

Compte tenu de tous ces facteurs, nous ne croyons pas qu'il soit justifié de renvoyer l'affaire au BCCT et de s'ingérer ainsi dans l'exercice du pouvoir discrétionnaire du juge de première instance. Il n'y a pas d'ingérence dans le pouvoir discrétionnaire du BCCT quand toutes ses craintes ont été dissipées ou écartées conformément à la loi.

En raison des conclusions que nous tirons relativement à la question principale, nous n'avons pas à aborder la question de l'atteinte aux droits individuels que la *Charte* garantit à l'intimée Donna Gail Lindquist.

Le pourvoi est rejeté avec dépens en faveur des intimés.

Version française des motifs rendus par

LE JUGE L'HEUREUX-DUBÉ (dissidente) — Le présent pourvoi porte essentiellement sur l'établissement du meilleur milieu d'enseignement possible pour les étudiants des écoles publiques de la

*New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, at para. 42:

A school is a communication centre for a whole range of values and aspirations of society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. [Emphasis added.]

La Forest J. also remarked in *R. v. Jones*, [1986] 2 S.C.R. 284, at p. 299, that: “No proof is required to show the importance of education in our society or its significance to government. The legitimate, indeed compelling, interest of the state in the education of the young is known and understood by all informed citizens.” In short, there is a vital public interest in maintaining and improving supportive environments in the classrooms of our country, which are the intellectual incubators of Canada’s most vulnerable and impressionable citizens. The educational process “awakens children to the values a society hopes to foster and to nurture”: *Ross*, *supra*, at para. 82.

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The present controversy stems from a 1996 decision by the Council of the British Columbia College of Teachers (“BCCT”), which refused to approve an application for teacher training accreditation submitted by Trinity Western University (“TWU”). On May 17, 1996, the Council adopted a motion stating

[t]hat the application for a new teacher education program by Trinity Western University be denied because it does not fully meet the criteria and because it is contrary to the public interest to approve a teacher education program offered by a private institution which appears to follow discriminatory practices that public institutions are, by law, not allowed to follow.

On May 22, 1996, the BCCT’s Registrar wrote an assistant dean at TWU explaining that “Council

Colombie-Britannique. Comme notre Cour l’a affirmé dans l’arrêt *Ross c. Conseil scolaire du district n° 15 du Nouveau-Brunswick*, [1996] 1 R.C.S. 825, par. 42 :

Une école est un centre de communication de toute une gamme de valeurs et d’aspirations sociales. Par l’entremise de l’éducation, elle définit, dans une large mesure, les valeurs qui transcendent la société. Lieu d’échange d’idées, l’école doit reposer sur des principes de tolérance et d’impartialité de sorte que toutes les personnes qui se trouvent en milieu scolaire se sentent également libres de participer. [Je souligne.]

Le juge La Forest a également fait remarquer, dans l’arrêt *R. c. Jones*, [1986] 2 R.C.S. 284, p. 299, qu’« [a]ucune preuve n’est nécessaire pour démontrer l’importance de l’éducation dans notre société ou son importance pour le gouvernement. Tous les citoyens informés savent et comprennent que l’État a un intérêt légitime, voire impérieux, à l’égard de l’éducation de la jeunesse. » Bref, il est d’intérêt public vital de créer et de maintenir un climat favorable dans les salles de classe de notre pays, qui constituent les incubateurs intellectuels des citoyens canadiens les plus vulnérables et les plus impressionnables. L’enseignement « éveille les enfants aux valeurs que la société espère promouvoir et développer » : *Ross*, précité, par. 82.

La présente controverse découle d’une décision rendue en 1996 par le conseil du British Columbia College of Teachers (« BCCT »), qui a refusé d’approuver la demande d’agrément d’un programme de formation des enseignants soumise par l’université Trinity Western (« UTW »). Le 17 mai 1996, le Conseil a adopté la résolution suivante :

[TRADUCTION] Que la demande de nouveau programme de formation des enseignants soumise par l’université Trinity Western soit rejetée parce qu’elle ne satisfait pas complètement aux critères et parce qu’il est contraire à l’intérêt public d’approuver un programme de formation des enseignants offert par un établissement privé qui paraît se livrer à des pratiques discriminatoires que la loi interdit dans les établissements publics.

Le 22 mai 1996, le registraire du BCCT a écrit à un vice-doyen de l’UTW pour lui expliquer que [TRADUCTION] « les membres du Conseil ont pris en considération l’ensemble ou une partie des

members considered all or some of these issues when voting on the recommendation”:

- Discriminatory practices at Trinity Western University, specifically the requirement for students to sign a contract of “Responsibilities of Membership in the Trinity Western University Community.”

. . . .

- The suitability and preparedness of graduates to teach in the diverse and complex social environments found in the public school system.

. . . .

- The ability of the faculty to provide a program of sufficient breadth and depth. . . .

TWU appealed the BCCT’s decision and a hearing was held on June 14, 1996. On June 29, 1996, the BCCT upheld its denial of accreditation, passing a motion stating “[t]hat Trinity Western University’s appeal in regard to the [BCCT’s] denial of its application for approval of a Teacher Education Program be denied because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest and public policy which the [BCCT] must consider under its mandate as expressed in the *Teaching Profession Act*”.

TWU petitioned for judicial review of the BCCT’s decision. Davies J. of the Supreme Court of British Columbia ((1997), 41 B.C.L.R. (3d) 158) ordered it quashed and directed the Council to approve TWU’s program with stipulated conditions. He found that it was beyond the BCCT’s jurisdiction to consider discriminatory practices. Davies J. added that there was no reasonable foundation for the BCCT’s decision. A majority of the Court of Appeal (Goldie and Braidwood J.J.A.) affirmed the trial judgment, with Rowles J.A. dissenting: (1998), 59 B.C.L.R. (3d) 241. Like Davies J., the majority considered the BCCT to have exceeded its jurisdiction. In the alternative, “the decisions of Council embodied in the resolutions

questions suivantes lorsqu’ils ont voté au sujet de la recommandation » :

[TRADUCTION]

- Les pratiques discriminatoires ayant cours à l’université Trinity Western, en particulier l’exigence que les étudiants signent un contrat de « Responsabilités des membres de la communauté de l’université Trinity Western ».

. . . .

- L’aptitude des diplômés à enseigner dans les divers milieux sociaux complexes du système scolaire public, et leur niveau de préparation à cet égard.

. . . .

- La capacité du corps professoral d’offrir un programme de portée suffisamment large et détaillé . . .

L’UTW a interjeté appel contre la décision du BCCT et une audience a été tenue le 14 juin 1996. Le 29 juin 1996, le BCCT a confirmé qu’il rejetait la demande d’agrément en adoptant une résolution ainsi libellée : [TRADUCTION] « Que l’appel que l’université Trinity Western a interjeté contre le rejet par [le BCCT] de sa demande d’approbation d’un programme de formation des enseignants soit rejeté parce que le Conseil est toujours d’avis que le programme proposé suit des pratiques discriminatoires qui sont contraires à l’intérêt et à l’ordre publics dont [le BCCT] doit tenir compte en vertu du mandat qui lui est confié par la *Teaching Profession Act* ».

L’UTW a présenté une requête en contrôle judiciaire de la décision du BCCT. Le juge Davies de la Cour suprême de la Colombie-Britannique ((1997), 41 B.C.L.R. (3d) 158) a annulé cette décision et a ordonné au Conseil d’approuver le programme de l’UTW sous réserve de certaines conditions explicites. Il a conclu que le BCCT n’avait pas compétence pour prendre en considération les pratiques discriminatoires. Il a ajouté que la décision du BCCT n’avait aucun fondement raisonnable. La Cour d’appel à la majorité (les juges Goldie et Braidwood) a confirmé la décision de première instance, madame le juge Rowles étant dissidente : (1998), 59 B.C.L.R. (3d) 241. À l’instar du juge Davies, les juges majoritaires ont considéré que le

under review reflect an error in law and are factually patently unreasonable. They are not entitled to deference” (para. 115).

### I. BCCT’s Jurisdiction

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This appeal raises two administrative law issues: a threshold question of jurisdiction and a subsequent determination of the appropriate standard of review of the BCCT’s decision. On the question of jurisdiction, I agree with my colleagues that s. 4 of the *Teaching Profession Act*, R.S.B.C. 1996, c. 449, confers jurisdiction on the BCCT to consider discriminatory practices as part of its evaluation of TWU’s application. In the words of Madam Justice Rowles, at para. 200:

The statutory mandate of the [BCCT] under the Act gives the College a broad discretion to approve teacher education programs and to set standards for the programs themselves, as well as their graduates. Those standards must relate ultimately to the ‘education, professional responsibility and competence’ of future public school teachers, but within that jurisdiction is a fairly broad discretion to consider what factors are relevant to those standards. The presence of discrimination is certainly relevant to any of those areas within the [BCCT’s] jurisdiction.

### II. Standard of Review

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As to the appropriate standard of review for the BCCT’s decision, my colleagues and I differ, however. An application of *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, supports a standard of patent unreasonableness. The Court’s decision in that case sets out four categories of factors to consider when determining the standard of review. I note at the outset that *Pushpanathan* indicates that the “absence of a privative clause does not imply a high standard of scrutiny, where other factors bespeak a low standard” (para. 30). The first factor of privative clauses does not apply to this case, in which the other three factors, namely expertise;

BCCT avait outrepassé sa compétence. Subsidiairement, [TRADUCTION] « les décisions du Conseil qui sont consacrées dans les résolutions examinées reflètent une erreur de droit et sont manifestement déraisonnables sur le plan des faits. Elles n’ont pas à faire l’objet de retenue judiciaire » (par. 115).

### I. La compétence du BCCT

Le présent pourvoi soulève deux questions relevant du droit administratif : une question préliminaire de compétence et une détermination subséquente de la norme de contrôle applicable à la décision du BCCT. En ce qui a trait à la compétence, je suis d’accord avec mes collègues que l’art. 4 de la *Teaching Profession Act*, R.S.B.C. 1996, ch. 449, habilitait le BCCT à prendre en considération des pratiques discriminatoires en évaluant la demande de l’UTW. Pour reprendre les termes de madame le juge Rowles, au par. 200 :

[TRADUCTION] D’après le mandat qui lui est confié par la Loi, [le BCCT] a un large pouvoir discrétionnaire d’approuver des programmes de formation des enseignants et d’établir les normes applicables autant aux programmes mêmes qu’aux diplômés. Même si ces normes doivent être reliées, en dernier ressort, à “[la] formation, [à la] responsabilité professionnelle et [à la] compétence” des futurs enseignants des écoles publiques, cette compétence comporte un pouvoir discrétionnaire suffisamment large pour décider quels sont les facteurs pertinents dans l’établissement de ces normes. L’existence de discrimination est sûrement pertinente quant à l’un ou l’autre de ces domaines de compétence [du BCCT].

### II. La norme de contrôle

En ce qui concerne la norme de contrôle applicable à la décision du BCCT, je ne partage toutefois pas l’avis de mes collègues. L’arrêt *Pushpanathan c. Canada (Ministre de la Citoyenneté et de l’Immigration)*, [1998] 1 R.C.S. 982, appuie la norme du caractère manifestement déraisonnable. Dans cet arrêt, notre Cour a établi quatre catégories de facteurs à prendre en considération pour déterminer quelle norme de contrôle s’applique. Je souligne, au départ, que l’arrêt *Pushpanathan* indique que « [l’]absence de clause privative n’implique pas une norme élevée de contrôle, si d’autres facteurs commandent une norme peu exigeante » (par. 30). Le premier facteur, celui

what the purpose of the act as a whole and the provision in particular are; and whether the question at issue is one of law or fact, all weigh in favour of patent unreasonableness.

*Pushpanathan* emphasized the primary importance of assessing the tribunal's specialized expertise, at para. 33:

Making an evaluation of relative expertise has three dimensions: the court must characterize the expertise of the tribunal in question; it must consider its own expertise relative to that of the tribunal; and it must identify the nature of the specific issue before the administrative decision-maker relative to this expertise.

All these factors point to a high degree of curial deference in this case. As the Supreme Court of British Columbia has recognized, the BCCT has "relative expertise in the area of setting standards for admission into the teaching profession": *Casson v. British Columbia College of Teachers*, [2000] B.C.J. No. 1038 (QL), at para. 29 and at paras. 22-25. The BCCT, a majority of which is composed of teachers, also represents a self-governing profession. In *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, this Court emphasized at p. 890 the deference that should be accorded to self-governing professions: "a large part of effective self-governance depends upon the concept of peer review" (emphasis added). In the context of the legal profession, the Court stated at p. 888 that "the Manitoba Legislature has spoken, and spoken clearly. The *Law Society Act* manifestly intends to leave the governance of the legal profession to lawyers and, unless judicial intervention is clearly warranted, this expression of the legislative will ought to be respected." The *Teaching Profession Act* is also a clear statement of legislative intent and the BCCT is a similar self-governing body. As stated by the majority of the Court of Appeal, "[t]he scheme of the *Teaching Profession Act* suggests [that] the legislature considered [that] teachers needed little

des clauses privatives, ne s'applique pas en l'espèce, alors que les trois autres facteurs, à savoir l'expertise, l'objet de la loi dans son ensemble et de la disposition en cause et le point de savoir si la question qui se pose est une question de droit ou de fait, militent tous en faveur de l'adoption de la norme du caractère manifestement déraisonnable.

L'arrêt *Pushpanathan* souligne l'importance primordiale d'évaluer l'expertise du tribunal (au par. 33) :

L'évaluation de l'expertise relative comporte trois dimensions: la cour doit qualifier l'expertise du tribunal en question; elle doit examiner sa propre expertise par rapport à celle du tribunal; et elle doit identifier la nature de la question précise dont était saisi le tribunal administratif par rapport à cette expertise.

En l'espèce, tous ces facteurs militent en faveur d'un degré élevé de retenue judiciaire. Comme l'a reconnu la Cour suprême de la Colombie-Britannique, le BCCT possède [TRADUCTION] « une expertise relative dans le domaine de l'établissement des normes d'admission à la profession d'enseignant » : *Casson c. British Columbia College of Teachers*, [2000] B.C.J. No. 1038 (QL), par. 29 et 22-25. Le BCCT, qui est composé en majorité d'enseignants, représente en outre une profession autonome. Dans l'arrêt *Pearlman c. Comité judiciaire de la Société du Barreau du Manitoba*, [1991] 2 R.C.S. 869, p. 890, notre Cour a insisté sur la retenue dont il y a lieu de faire preuve à l'égard des professions autonomes : « l'efficacité de l'autonomie administrative repose en grande partie sur le concept de l'examen effectué par des pairs » (je souligne). Dans le contexte de la profession juridique, la Cour a affirmé, à la p. 888, que « l'assemblée législative du Manitoba s'est exprimée, et elle l'a fait clairement. La *Loi sur la Société du Barreau* vise manifestement à laisser aux avocats l'administration de la profession juridique et, à moins qu'une intervention des tribunaux ne soit manifestement justifiée, cette expression de la volonté du législateur devrait être respectée. » La *Teaching Profession Act* représente, elle aussi, une expression claire de la volonté du législateur, et le BCCT est un organisme autonome similaire. Comme l'ont précisé les juges majoritaires de la Cour d'appel, [TRADUC-

guidance in determining the standards applicable to the training of prospective teachers” (para. 97).

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On the question of the purpose of the Act as a whole, the third *Pushpanathan* factor, that case states at para. 36:

In *Southam*, the Court found (at para. 48) that the “aims of the Act are more ‘economic’ than they are strictly ‘legal’” because the broad goals of the Act “are matters that business women and men and economists are better able to understand than is a typical judge”. This conclusion was reinforced by the creation in the statute of a tribunal with members having a special expertise in those domains. Also of significance is . . . the fact that an administrative commission plays a “protective role” vis-à-vis the investing public, and that it plays a role in policy development; *Pezim, supra*, at p. 596.

Each of these aspects is present here. The BCCT’s decision concerning TWU’s teacher education program goes to the heart of the *Teaching Profession Act*’s *raison d’être* and should only be disturbed by judges, who lack the specialized expertise of teachers, if it is patently unreasonable. As La Forest J. noted in *Jones, supra*, at p. 304: “The province cannot, in my view, be faulted for adopting the philosophy frequently applied in the courts of the United States, namely, that ‘The courtroom is simply not the best arena for the debate of issues of educational policy and the measurement of educational quality’”. Moreover, vulnerable schoolchildren are in need of much greater protection by the BCCT than was the investing public in *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557. Further, individual decisions under the purview of the BCCT, such as the one at issue concerning teacher training program accreditation, are central to the development of educational policy. There is a division of policy-making labour whereby the BCCT complements other

TION] « [I]’économie de la *Teaching Profession Act* porte à croire [que] le législateur a jugé [que] les enseignants avaient besoin de peu de directives pour établir les normes applicables à la formation des futurs enseignants » (par. 97).

Au sujet de l’objet de la Loi dans son ensemble, qui est le troisième facteur énuméré dans l’arrêt *Pushpanathan*, on peut lire au par. 36 de cet arrêt :

Dans l’arrêt *Southam*, la Cour a conclu, au par. 48, que les «objectifs visés par la Loi sont davantage “économiques” que strictement “juridiques”», parce que les objectifs généraux de la Loi «sont des questions que les gens d’affaires et les économistes sont plus à même de comprendre que les juges en général». Elle a appuyé cette conclusion sur le fait que la loi avait créé un tribunal dont les membres avaient une connaissance spécialisée dans ces domaines. Présent[e] aussi une importance [. . .] le fait [que le tribunal administratif] joue un «rôle protecteur» vis-à-vis du public investisseur et qu’il joue aussi un rôle en matière d’établissement des politiques; arrêt *Pezim*, précité, à la p. 596.

Chacun de ces aspects est ici présent. La décision du BCCT relative au programme de formation des enseignants de l’UTW touche au cœur même de la *raison d’être* de la *Teaching Profession Act* et les juges, qui n’ont pas l’expertise des enseignants, ne devraient la modifier que si elle est manifestement déraisonnable. Comme le juge La Forest l’a fait remarquer dans l’arrêt *Jones*, précité, p. 304, « [à] mon avis, on ne peut reprocher à la province d’adopter la philosophie qui est souvent appliquée dans les tribunaux des États-Unis, savoir que [TRANSDUCTION] “Le tribunal n’est tout simplement pas le meilleur endroit pour débattre les questions de politique en matière d’éducation et pour mesurer la qualité de l’enseignement” ». En outre, les écoliers vulnérables requièrent de la part du BCCT une protection beaucoup plus grande que le public investisseur dans l’arrêt *Pezim c. Colombie-Britannique (Superintendent of Brokers)*, [1994] 2 R.C.S. 557. Du reste, chaque décision qui relève de la compétence du BCCT, comme celle relative, en l’espèce, à l’agrément d’un programme de formation des enseignants, est essentielle à l’établissement d’une politique d’enseignement. Dans le domaine de l’établissement des politiques, il existe une répartition des tâches qui fait en sorte que le

policy-making bodies. As observed by Madam Justice Rowles, at para. 173:

This policy-making mandate is reflected in the words of s. 4 of the Act. The statutory provision requires the [BCCT] to have 'regard to the public interest' in the setting of standards.

*Pushpanathan, supra*, indicates that the purpose of the particular provision of the statute at issue is relevant to the determination of the standard of review. The BCCT's decision was made pursuant to s. 21(i) of the Act, permitting it to "approve, for certification purposes, the program of any established faculty of teacher education or school of teacher education". This provision involves the application of "vague, open-textured" principles, requiring curial deference under *Pushpanathan* (para. 36). The BCCT has wide discretion to review teacher training programs under the Act. Its decision was, moreover, a polycentric one taking into account the educational interests of teachers, students, parents, and the public. *Pushpanathan* noted that "some problems require the consideration of numerous interests simultaneously, and the promulgation of solutions which concurrently balance benefits and costs for many different parties. Where an administrative structure more closely resembles this model, courts will exercise restraint" (para. 36).

The BCCT's decision is also fact-based, concerning an issue the nature of which implicates the tribunal's expertise. This feature addresses the fourth *Pushpanathan* factor, which asks whether the question addressed by the tribunal is legal or factual. Determining how TWU's program may affect its graduates' preparedness to teach in the public schools is a factual inquiry requiring the specialized expertise of the BCCT's members, the majority of whom have classroom experience. I agree with Madam Justice Rowles, who wrote that: "With respect to the factual question of the effect of the practices, I am of the view that the Council's decision is entitled to deference. The question as to

BCCT est le complément d'autres organismes en la matière. Comme l'a fait observer madame le juge Rowles (au par. 173) :

[TRADUCTION] Ce mandat relatif à l'établissement des politiques se reflète dans le libellé de l'art. 4 de la Loi. Cette disposition législative exige que [le BCCT] tienne « compte de l'intérêt public » en établissant des normes.

L'arrêt *Pushpanathan*, précité, indique que l'objet de la disposition particulière de la loi en cause est pertinent pour déterminer la norme de contrôle. La décision du BCCT a été rendue conformément à l'al. 21i) de la Loi, qui lui permet [TRADUCTION] « [d']approuver, aux fins de délivrance des brevets d'enseignement, le programme de toute faculté ou école reconnue de formation des enseignants ». Cette disposition fait intervenir des principes « vagues, non limitatifs », ce qui commande la retenue judiciaire selon l'arrêt *Pushpanathan* (par. 36). Le BCCT possède, en vertu de la Loi, un large pouvoir discrétionnaire d'examiner les programmes de formation des enseignants. De plus, il a rendu une décision polycentrique qui tient compte des intérêts pédagogiques des enseignants, des étudiants, des parents et du public. L'arrêt *Pushpanathan* souligne que « certains problèmes exigent la prise en compte de nombreux intérêts simultanément et l'adoption de solutions de nature à assurer en même temps un équilibre entre les coûts et les bénéfices pour de nombreuses parties distinctes. Quand un régime administratif ressemble davantage à ce modèle, les cours de justice feront preuve de retenue » (par. 36).

La décision du BCCT porte également sur une question de fait dont la nature fait appel à l'expertise de ce tribunal administratif. Cette caractéristique se rapporte au quatrième facteur de l'arrêt *Pushpanathan*, qui consiste à déterminer si le tribunal est saisi d'une question de droit ou de fait. La question de savoir de quelle façon le programme de l'UTW peut influencer sur le niveau de préparation de ses diplômés à l'enseignement dans les écoles publiques est une question de fait à laquelle seule l'expertise des membres du BCCT qui, en majorité, ont l'expérience des salles de classe permet de répondre. Je suis d'accord avec madame le juge Rowles, lorsqu'elle écrit : [TRA-

whether the discriminatory practices were contrary to the public interest in terms of the education, professional responsibility and competence of public school teachers appears to me to come clearly within the expertise and jurisdiction of the [BCCT]” (para. 150).

DUCTION] « En ce qui a trait à la question factuelle de l’incidence des pratiques, je suis d’avis que la décision du Conseil doit faire l’objet de retenue judiciaire. La question de savoir si les pratiques discriminatoires étaient contraires à l’intérêt public sur les plans de la formation, de la responsabilité professionnelle et de la compétence des enseignants des écoles publiques m’apparaît relever clairement de l’expertise et de la compétence [du BCCT] » (par. 150).

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The BCCT’s public interest jurisdiction was carefully described by Madam Justice Rowles (at para. 173): “The ‘public interest’ is not to be defined nebulously but in relation to the particular policy interest that the [BCCT] has jurisdiction over, that is, establishing in the public interest standards for the education, professional responsibility and competence of its members who teach in public schools” (emphasis added). Her wording paraphrases s. 4 of the *Teaching Profession Act*. Other sections of this legislation similarly support a contextual approach to understanding the meaning of “public interest”. The BCCT fulfills the role of gatekeeper to the profession of public school teaching and is responsible for ensuring that its members meet the expertly determined requisites for qualifying to teach in the classrooms of the province. Thus, ss. 23(1)(d) and 23(1)(f) of the Act state that the BCCT may adopt bylaws:

(d) respecting the training and qualifications of teachers and establishing standards, policies and procedures with respect to the training and qualifications including, but not limited to, professional, academic and specialist standards, policies and procedures;

(f) respecting the standards of fitness for the admission of persons as members of the [BCCT]; [Emphasis added.]

Madame le juge Rowles décrit avec soin la compétence du BCCT en matière d’intérêt public (au par. 173) : [TRADUCTION] « L’“intérêt public” doit être défini non pas au hasard mais en fonction du champ de compétence particulier du [BCCT], c’est-à-dire l’établissement, dans l’intérêt public, des normes de formation, de responsabilité professionnelle et de compétence de ses membres qui enseignent dans les écoles publiques » (je souligne). Ce faisant, elle paraphrase l’art. 4 de la *Teaching Profession Act*. D’autres dispositions de cette loi militent également en faveur d’un mode d’interprétation contextuel de l’« intérêt public ». Le BCCT joue le rôle de gardien de la profession d’enseignant dans une école publique et il est chargé de garantir que ses membres ont les qualifications requises, établies par des experts, pour enseigner dans les classes de la province. Les alinéas 23(1)d) et 23(1)f) de la Loi prévoient que le BCCT peut adopter des règlements :

[TRADUCTION]

d) concernant la formation et les conditions d’admissibilité des enseignants et établissant des normes, politiques et procédures relatives à la formation et aux conditions d’admissibilité y compris, notamment, des normes, politiques et procédures concernant la profession, le régime scolaire et la spécialisation;

f) concernant les normes d’admission de personnes comme membres [du BCCT]; [Je souligne.]

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Statutory interpretation of the BCCT’s “public interest” responsibilities should be purposive, not nebulous. As the Manitoba Court of Appeal stated in *Lindsay v. Manitoba (Motor Transport)* (1989),

L’interprétation législative des responsabilités du BCCT eu égard à l’« intérêt public » doit se faire en fonction de l’objet visé et non pas de façon nébuleuse. Comme la Cour d’appel du Manitoba

62 D.L.R. (4th) 615, at p. 626: “The meaning of those words, neither precise nor unambiguous in themselves, must be construed in the context of the statute in which they are found”. Philp J.A. went on to observe that: “I think there can be no doubt that the determination of what constitutes the public interest is not ‘a matter of policy’ entirely within the jurisdiction of the Board, nor is it a finding of fact. It is the formulation of an opinion and, when acting within its jurisdiction, it is a determination within the exclusive administrative jurisdiction of the Board” (p. 628 (emphasis added)).

The BCCT is obligated by the *Teaching Profession Act* to assess any component of a teacher training program that may affect “the education, professional responsibility and competence of its members”. It is irrelevant that private religious institutions are protected under British Columbia’s *Human Rights Code*, R.S.B.C. 1996, c. 210. The BCCT must review all teacher training programs in the same light, using its own expertly determined standards. It never found or considered TWU graduates to be “unworthy of fully participating in public activities”, as my colleagues imply (para. 35). To the contrary, the BCCT provided a route for these students to attain the requisites for teaching in public schools. These actions are fully consistent with the College’s contextualized mandate to establish and implement standards for its members “having regard to the public interest”.

It is a misconception to characterize the BCCT’s decision as being a balancing or interpretation of human rights values, an exercise that is beyond the tribunal’s expertise. The BCCT’s decision employed one relevant and undisputed *Charter* or human rights value, that of equality, in the narrow context of appraising the impact on the classroom environment of TWU’s proposal. Equality is a cen-

l’a affirmé dans l’arrêt *Lindsay c. Manitoba (Motor Transport)* (1989), 62 D.L.R. (4th) 615, p. 626 : [TRADUCTION] « Ces mots, qui ne sont ni précis ni clairs en soi, doivent s’interpréter en fonction du contexte dans lequel ils sont utilisés ». Le juge Philp ajoute ensuite : [TRADUCTION] « Il n’y a pas de doute, selon moi, que la définition de l’intérêt public n’est pas une “question de politique générale” qui relève entièrement de la Commission; il ne s’agit pas non plus d’une conclusion de fait. C’est une formulation d’opinion et, lorsque la Commission agit dans les limites de sa compétence, la définition qu’elle donne relève de sa compétence administrative exclusive » (p. 628 (je souligne)).

La *Teaching Profession Act* oblige le BCCT à évaluer tout élément d’un programme de formation d’enseignants qui peut toucher [TRADUCTION] « [la] formation, [la] responsabilité professionnelle et [la] compétence de ses membres ». Il importe peu que les établissements confessionnels privés jouissent de la protection du *Human Rights Code* de la Colombie-Britannique, R.S.B.C. 1996, ch. 210. Le BCCT doit examiner tous les programmes de formation d’enseignants en fonction des mêmes éléments, c’est-à-dire en fonction des normes qu’il a lui-même fixées grâce à son expertise. Il n’a jamais jugé ni considéré que les diplômés de l’UTW sont « indignes de participer pleinement à des activités publiques », comme l’insinuent mes collègues (par. 35). Au contraire, le BCCT a indiqué à ces étudiants le chemin pour atteindre les conditions requises pour enseigner dans les écoles publiques. Ces mesures sont parfaitement compatibles avec le mandat contextualisé du BCCT d’établir et d’appliquer des normes pour ses membres, [TRADUCTION] « compte tenu de l’intérêt public ».

Il est erroné de caractériser la décision du BCCT comme une évaluation ou une interprétation de valeurs relatives aux droits de la personne, qui va au-delà de l’expertise de ce tribunal. La décision du BCCT a fait appel à une valeur pertinente et incontestée véhiculée par la *Charte* ou relative aux droits de la personne, celle de l’égalité, dans le contexte limité de l’évaluation de l’incidence que

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tral component of the public interest that the BCCT is charged with protecting in the classrooms of the province. As Cory J. wrote in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 92, the *Canadian Charter of Rights and Freedoms* is “a restatement of the fundamental values which guide and shape our democratic society” (emphasis added). The BCCT was entitled, indeed required, to consider the value of equality in its assessment of the effect TWU’s program will have on the classroom environment. In *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5, the Court held at pp. 13-14 that “the Constitution, as the supreme law, must be respected by an administrative tribunal called upon to interpret law”. I agree with Madam Justice Rowles, who asked at para. 171: “When that is so, why would an administrative tribunal not also be expected to consider *Charter* values?”

la proposition de l’UTW aurait dans les salles de classe. L’égalité est une composante centrale de l’intérêt public que le BCCT est chargé de protéger dans les salles de classe de la province. Comme l’écrit le juge Cory dans l’arrêt *Hill c. Église de scientologie de Toronto*, [1995] 2 R.C.S. 1130, par. 92, la *Charte canadienne des droits et libertés* est « une réaffirmation des valeurs fondamentales qui guident et façonnent notre société démocratique » (je souligne). Le BCCT pouvait et, en fait, devait tenir compte de la valeur de l’égalité en évaluant l’incidence que le programme de l’UTW aurait sur le climat des salles de classe. Dans l’arrêt *Cuddy Chicks Ltd. c. Ontario (Commission des relations de travail)*, [1991] 2 R.C.S. 5, p. 13-14, la Cour a statué que « la Constitution, en sa qualité de loi suprême, doit être respectée par les tribunaux administratifs appelés à interpréter la loi ». Je partage le point de vue de madame le juge Rowles, qui a posé la question suivante (au par. 171) : [TRADUCTION] « S’il en est ainsi, pourquoi ne s’attendrait-on pas également à ce qu’un tribunal administratif prenne en considération les valeurs véhiculées par la *Charte*? »

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The BCCT was not acting as a human rights tribunal and was not required to consider other *Charter* or human rights values such as freedom of religion, which are not germane to the public interest in ensuring that teachers have the requisites to foster supportive classroom environments in public schools. Thus, it is not relevant to the standard of review that “the Council is not particularly well equipped to determine the scope of freedom of religion and conscience and to weigh these rights against the right to equality in the context of a pluralistic society” (Iacobucci and Bastarache JJ., at para. 19). The BCCT’s equality based approach, focussed on supportive atmospheres in public school classrooms, merits a standard of review of patent unreasonableness because it directly engages the specialization of the tribunal.

Le BCCT n’agissait pas à titre de tribunal des droits de la personne et n’était pas tenu de prendre en considération d’autres valeurs véhiculées par la *Charte* ou relatives aux droits de la personne, qui n’ont rien à voir avec l’intérêt public veillant à garantir que les enseignants aient les qualifications requises pour favoriser le maintien d’un climat favorable dans les salles de classe des écoles publiques. Par conséquent, il n’est pas pertinent en ce qui concerne la norme de contrôle applicable que « le Conseil [ne soit] pas particulièrement en mesure de déterminer la portée de la liberté de religion et de conscience, et de soupeser ces droits en fonction du droit à l’égalité dans le cadre d’une société pluraliste » (les juges Iacobucci et Bastarache, par. 19). L’approche du BCCT, fondée sur l’égalité et axée sur le maintien d’un climat favorable dans les salles de classe des écoles publiques, justifie l’application de la norme du caractère manifestement déraisonnable parce qu’elle met directement en cause la spécialisation du tribunal.

If the BCCT were to have applied a value that is clearly not an accepted *Charter* or human rights value, or one irrelevant to the decision at hand, or if it failed to apply a clearly relevant value, then its decision would be patently unreasonable. None of these scenarios occurred here. Iacobucci and Bastarache JJ. write that “The BCCT has the responsibility of assuring that programs in place in all private and public teacher training institutions continue to serve the public interest. . . .” (para. 42). The BCCT has the expertise to determine the relevant criteria for this supervisory exercise and its assessment of these factors deserves significant deference. See generally *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 65: “Deference as respect requires not submission but a respectful attention to the reasons offered or which could be offered in support of a decision. . . . (D. Dyzenhaus, ‘The Politics of Deference: Judicial Review and Democracy’, in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.)”

The circumstances of this case are analogous to those of *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141, in which a freedom of religion claim was opposed to a child’s best interests in the context of parental access rights. In my reasons, I noted at p. 181 that “in ruling on a child’s best interests, a court is not putting religion on trial nor its exercise by a parent for himself or herself, but is merely examining the way in which the exercise of a given religion by a parent through his or her right to access affects the child’s best interests”. See also *B. (R.) v. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para. 228, *per* Iacobucci and Major JJ.:

. . . in *P. (D.) v. S. (C.)*, *supra*, L’Heureux-Dubé J. (writing for the majority on this point) held at p. 182 that:

Si le BCCT avait dû appliquer une valeur non clairement reconnue par la *Charte* ou non reliée aux droits de la personne, ou une valeur non pertinente quant à la décision en l’espèce, ou encore s’il n’avait pas appliqué une valeur clairement pertinente, sa décision serait alors manifestement déraisonnable. Aucun de ces scénarios ne s’est produit en l’espèce. Les juges Iacobucci et Bastarache écrivent que « [l]e BCCT a la responsabilité de garantir que les programmes en vigueur dans tous les établissements privés et publics de formation des enseignants continuent de servir l’intérêt public. . . » (par. 42). Le BCCT a l’expertise nécessaire pour déterminer les critères utiles à cette fonction de surveillance et son évaluation de ces éléments doit faire l’objet d’une grande retenue. Voir, de manière générale, l’arrêt *Baker c. Canada (Ministre de la Citoyenneté et de l’Immigration)*, [1999] 2 R.C.S. 817, par. 65 : [TRADUCTION] « La retenue au sens de respect ne demande pas la soumission, mais une attention respectueuse aux motifs donnés ou qui pourraient être donnés à l’appui d’une décision. . . (D. Dyzenhaus, “The Politics of Deference: Judicial Review and Democracy”, dans M. Taggart, dir., *The Province of Administrative Law* (1997), 279, p. 286.) »

Les circonstances de la présente affaire sont analogues à celles de l’arrêt *P. (D.) c. S. (C.)*, [1993] 4 R.C.S. 141, dans lequel il y avait conflit entre la liberté de religion invoquée et le meilleur intérêt d’un enfant dans le contexte des droits de visite et de sortie des parents. Dans mes motifs, j’ai souligné, à la p. 181, qu’« en statuant sur le meilleur intérêt de l’enfant, le tribunal ne fait le procès ni d’une religion ni de l’exercice qu’un parent peut en faire pour lui ou pour elle-même, mais examine uniquement la manière dont l’exercice par un parent, d’une religion donnée à l’occasion des droits de visite et de sortie, influe sur le meilleur intérêt de l’enfant ». Voir également *B. (R.) c. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 R.C.S. 315, par. 228, les juges Iacobucci et Major :

. . . dans l’arrêt [. . .] *P. (D.) c. S. (C.)*, précité, le juge L’Heureux-Dubé (s’exprimant au nom de la majorité sur ce point) conclut, à la p. 182, que:

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As the Court has reiterated many times, freedom of religion, like any freedom, is not absolute. It is inherently limited by the rights and freedoms of others. Whereas parents are free to choose and practise the religion of their choice, such activities can and must be restricted when they are against the child's best interests, without thereby infringing the parents' freedom of religion. [Emphasis added by Iacobucci and Major JJ.]

There is a similar intersection between the asserted private religious beliefs and the public interest in the present appeal. Actions in the private sphere can have effects in the public realm. Everyone must assume the legal consequences of his or her private beliefs, so long as these consequences do not violate fundamental rights. The BCCT's expert attention to the classroom environment means that public school students' best interests, like those of children in custody and access disputes, are the focal point. In neither situation should a religiously based risk fall on children.

Comme la Cour l'a réitéré à maintes occasions, la liberté de religion, comme toute liberté, n'est pas absolue. Elle est limitée de façon inhérente par les droits et libertés des autres. Alors que les parents sont libres de choisir et de pratiquer la religion de leur choix, ces activités peuvent et doivent être restreintes lorsqu'elles contreviennent au meilleur intérêt de l'enfant, sans pour autant violer la liberté de religion des parents. [Souligné par les juges Iacobucci et Major.]

Dans le présent pourvoi, les croyances religieuses personnelles alléguées et l'intérêt public se croisent de façon similaire. Les actes accomplis dans la vie privée peuvent avoir une incidence dans le domaine des activités publiques. Chacun doit assumer les conséquences juridiques de ses croyances personnelles, dans la mesure où ces conséquences ne portent pas atteinte à des droits fondamentaux. L'attention spécialisée que le BCCT prête au climat des salles de classe signifie que l'accent est mis sur le meilleur intérêt des étudiants des écoles publiques, tout comme il est mis sur le meilleur intérêt des enfants dans le cas des conflits relatifs aux droits de garde et de visite. Dans aucune de ces situations, les enfants ne devraient-ils être exposés à un risque fondé sur la religion.

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The BCCT's inquiry was reasonably limited to its area of educational expertise. Nothing in the impugned decision suggests that the respondents' religious faith influenced the result. The BCCT's statutory mandate is to act in the public interest by accrediting only teachers who are adequately prepared for the rigours of the public school classroom. The religion of a teacher or group of teachers is never at issue before the BCCT since religion cannot be a criterion for its certification decisions. Whatever the religion of the institution or individual concerned, all candidates must satisfy the BCCT that they possess the requisites for public school teaching. Indeed, if the BCCT had considered the respondents' religion in making its decision, this would have been not only discriminatory, but also a jurisdictional error of law. The BCCT's concern was with the impact on public school classrooms of a discriminatory practice; whether or not this practice is based on religion was immaterial to their decision. The mandate of the BCCT to have regard for the public interest in

Le BCCT a confiné raisonnablement son examen à son champ d'expertise pédagogique. Rien dans la décision contestée n'indique que la foi religieuse des intimées a influé sur le résultat. La Loi confie au BCCT le mandat d'agir dans l'intérêt public en ne délivrant un brevet d'enseignement qu'aux enseignants qui sont bien préparés à affronter les rigueurs des salles de classe des écoles publiques. La religion d'un enseignant ou d'un groupe d'enseignants n'est jamais en cause devant le BCCT étant donné qu'elle ne peut pas entrer en ligne de compte dans ses décisions en matière d'agrément de programmes ou de délivrance de brevets d'enseignement. Quelle que soit la confession de l'établissement ou de l'individu concerné, tous les candidats doivent convaincre le BCCT qu'ils ont les qualifications requises pour enseigner dans une école publique. En réalité, si le BCCT avait pris en considération la religion des intimées en rendant sa décision, il aurait non seulement fait preuve de discrimination, mais encore il aurait commis une erreur de droit relative à sa compé-

its accreditation of teachers requires such scrutiny of any discriminatory practice.

The freedom of religion of the prospective teacher is thus not implicated in this case at the administrative law stage. I will examine TWU's and Donna Lindquist's *Charter* claims near the end of these reasons. At the time this litigation commenced, Ms. Lindquist was a student at TWU who intended to apply for admission to the teacher training program in September 1998, if the program were approved. She voluntarily signed the Community Standards contract, discussed below, on September 4, 1996.

I disagree with my colleagues, who believe that it was incumbent on the BCCT to "reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in B.C.'s public school system" (para. 28). Their reasoning amounts to changing the statutory mandate and function of the BCCT into those of a human rights body. It supposes that the BCCT should have resolved what my colleagues have retrospectively identified as a conflict of rights. I find no such conflict in this case. Donna Lindquist was not a party to the BCCT's decision and in any event her freedom of religion did not need to be considered. Nor were B.C. public school students' equality interests considered for the sake of protecting their *Charter* rights. Rather, the *Charter* or human rights value of equality was applied only as it pertains to the classroom environment. I find it problematic to force an appraisal by an administrative tribunal of the allegedly dueling *Charter* rights or values of TWU students like Donna Lindquist and unnamed B.C. public school students. It is more appropriate, in my view, to respect the *Pushpanathan* test and to consider third-party *Charter* claims in a proper *Charter* analysis that is

tence. Le BCCT s'intéressait à l'incidence d'une pratique discriminatoire sur les salles de classe des écoles publiques; il était sans importance pour sa décision que cette pratique soit fondée ou non sur la religion. Le BCCT doit nécessairement procéder à un tel examen de toute pratique discriminatoire dans le cadre de son mandat de tenir compte de l'intérêt public en délivrant des brevets d'enseignement.

En l'espèce, la liberté de religion de l'enseignant éventuel n'est donc pas en cause à l'étape du droit administratif. J'examinerai, vers la fin des présents motifs, les arguments fondés sur la *Charte* que l'UTW et Donna Lindquist ont invoqués. Au moment où le présent litige a pris naissance, M<sup>me</sup> Lindquist étudiait à l'UTW et comptait s'inscrire, en septembre 1998, au programme de formation des enseignants s'il était approuvé. Le 4 septembre 1996, elle a signé de son propre gré le contrat des normes communautaires analysé plus loin dans les présents motifs.

Je ne partage pas l'avis de mes collègues qu'il incombait au BCCT de « concilier les libertés religieuses d'individus qui souhaitent fréquenter l'UTW avec les préoccupations d'égalité des élèves du système scolaire public de la Colombie-Britannique » (par. 28). Cette façon de raisonner revient à transformer le mandat et le rôle que le BCCT tient de la Loi en mandat et rôle d'un organisme des droits de la personne. Cela suppose que le BCCT aurait dû régler ce que mes collègues ont qualifié rétrospectivement de conflit d'intérêts. Il n'y a, selon moi, aucun conflit de cette nature en l'espèce. Donna Lindquist n'a pas participé à la décision du BCCT et, de toute façon, sa liberté de religion n'avait pas à être prise en considération. Les intérêts en matière d'égalité que partagent les élèves des écoles publiques de la Colombie-Britannique n'ont pas non plus été pris en considération dans le but de protéger les droits que leur garantit la *Charte*. La valeur d'égalité véhiculée par la *Charte* ou relative aux droits de la personne n'a plutôt été appliquée que dans la mesure où elle a trait au climat des salles de classe. J'estime qu'il est difficile de forcer un tribunal administratif à apprécier les droits ou valeurs, inconciliables

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subsequent to, rather than conflated with, judicial review of an administrative law decision.

prétend-on, que des étudiants de l'UTW, comme Donna Lindquist, et des élèves anonymes des écoles publiques de la Colombie-Britannique tiennent de la *Charte*. À mon sens, il convient davantage de respecter le critère de l'arrêt *Pushpanathan* et d'examiner les arguments de tierces parties fondés sur la *Charte* dans le cadre d'une analyse appropriée effectuée en vertu de la *Charte* non pas conjointement avec un contrôle judiciaire d'une décision de droit administratif, mais plutôt à la suite d'un tel contrôle.

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*Ross* emphasized precisely this point at para. 32. La Forest J. wrote that “the administrative law standard and the *Charter* standard are not conflated into one. When the issues involved are untouched by the *Charter*, the appropriate administrative law standard is properly applied as a standard of review. . . . As Dickson C.J. noted [in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038], the more sophisticated and structured analysis of s. 1 is the proper framework within which to review *Charter* values.” Thus, in these reasons, I employ a two-stage approach of, first, considering administrative law, a sphere in which the *Pushpanathan* factors indicate that deference is due to BCCT, and, then, assessing the *Charter* claims advanced by TWU and third parties affected by the BCCT's decision.

C'est précisément ce que l'arrêt *Ross* souligne au par. 32. Le juge La Forest écrit que « la norme de droit administratif et celle dictée par la *Charte* ne sont pas fondues en une seule norme. Lorsque les questions en litige ne sont pas touchées par la *Charte*, la norme de contrôle appropriée est celle du droit administratif. [ . . . ] Comme l'a fait remarquer le juge en chef Dickson [dans l'arrêt *Slaight Communications Inc. c. Davidson*, [1989] 1 R.C.S. 1038], l'analyse mieux structurée et plus subtile qui est fondée sur l'article premier constitue le cadre approprié pour l'examen des valeurs protégées par la *Charte*. » J'adopte donc, dans les présents motifs, une méthode en deux étapes qui consiste d'abord à examiner le droit administratif, où il convient de faire preuve de retenue à l'égard du BCCT selon les facteurs de l'arrêt *Pushpanathan*, et ensuite à apprécier les arguments fondés sur la *Charte* qu'invoquent l'UTW et les tierces parties touchées par la décision du BCCT.

### III. Application of Patent Unreasonableness to this Case

### III. Application de la norme du caractère manifestement déraisonnable à la présente affaire

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I turn now to the application of the patent unreasonableness standard to the BCCT's decision. As Cory J. observed in *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941, at pp. 963-64, “if the decision the Board reached, acting within its jurisdiction, is not clearly irrational, that is to say evidently not in accordance with reason, then it cannot be said that there was a loss of jurisdiction. This is clearly a very strict test”. Earlier, Dickson J. (later Chief Justice) in *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227, at p. 237, put the question in these

J'aborde maintenant l'application de la norme du caractère manifestement déraisonnable à la décision du BCCT. Comme le juge Cory l'a fait observer dans l'arrêt *Canada (Procureur général) c. Alliance de la Fonction publique du Canada*, [1993] 1 R.C.S. 941, p. 963-964, « si la décision qu'a rendue la Commission, agissant dans le cadre de sa compétence, n'est pas clairement irrationnelle, c'est-à-dire, de toute évidence non conforme à la raison, on ne saurait prétendre qu'il y a eu perte de compétence. Visiblement, il s'agit là d'un critère très strict ». Auparavant, dans l'arrêt *Syndicat canadien de la Fonction publique, section*

terms: was the tribunal's "interpretation so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the court upon review?"

The BCCT's finding of discriminatory practices is related to the Council's consideration of the "suitability and preparedness of graduates to teach in the diverse and complex social environments found in the public school system" (see para. 48 of these reasons). These two elements, amounting to cause and effect, will be discussed in turn. First, the BCCT expressed a concern that the TWU Community Standards contract, mandatory for students, faculty, and staff to sign, embodied discrimination against homosexuals. All students, faculty, and staff must

REFRAIN FROM PRACTICES THAT ARE BIBLICALLY CONDEMNED. These include but are not limited to drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). [Emphasis added. This wording is taken from the student version of the Code, which is almost identical to that provided to employees.]

I note in passing that "homosexual behaviour" is undefined and could be interpreted to include a wide range of activity falling short of sexual intercourse. The preamble to the Community Standards Code states that "[i]ndividuals who are invited to become members of this community but cannot with integrity pledge to uphold the application of these standards are advised not to accept the invitation and to seek instead a living-learning [or

*locale 963 c. Société des alcools du Nouveau-Brunswick*, [1979] 2 R.C.S. 227, p. 237, le juge Dickson (plus tard Juge en chef) avait formulé la question en ces termes : « l'interprétation de la Commission est-elle déraisonnable au point de ne pouvoir rationnellement s'appuyer sur la législation pertinente et d'exiger une intervention judiciaire? »

La conclusion du BCCT à l'existence de pratiques discriminatoires est liée à la prise en considération par le Conseil de « [l]'aptitude des diplômés à enseigner dans les divers milieux sociaux complexes du système scolaire public, et [de] leur niveau de préparation à cet égard » (voir par. 48 des présents motifs). Ces deux éléments de cause et effet seront analysés l'un après l'autre. Premièrement, le BCCT a exprimé la crainte que le contrat des normes communautaires de l'UTW, que les étudiants et les membres du corps professoral et du personnel sont tenus de signer, soit discriminatoire envers les homosexuels. Tous les étudiants et les membres du corps professoral et du personnel doivent

[TRADUCTION] S'ABSTENIR DE SE LIVRER À DES PRATIQUES QUE LA BIBLE CONDAMNE. Sont notamment visés l'ivresse (Éph. 5:18), les jurons ou les blasphèmes (Éph. 4:29, 5:4; Jacq. 3:1-12), le harcèlement (Jean 13:34-35; Rom. 12:9-21; Éph. 4:31), toute forme de malhonnêteté, dont la tricherie et le vol (Prov. 12:22; Col. 3:9; Éph. 4:28), l'avortement (Ex. 20:13; Ps. 139:13-16), toute activité liée à l'occultisme (Act. 19:19; Gal. 5:19) et les péchés sexuels, y compris les relations sexuelles avant le mariage, l'adultère, le comportement homosexuel et le visionnement de matériel pornographique (I Cor. 6:12-20; Éph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). [Je souligne. Ce texte provient de la version du code destinée aux étudiants qui est presque identique à celle fournie aux employés.]

Je fais remarquer, en passant, que l'expression « comportement homosexuel » n'est pas définie et pourrait s'entendre d'une vaste gamme d'activités qui ne vont pas jusqu'aux rapports sexuels. Le préambule des codes des normes communautaires précise que [TRADUCTION] « [l]es personnes qui sont invitées à devenir membres de notre communauté, mais qui ne peuvent pas complètement s'engager à en respecter les normes sont avisées de ne

employment] situation more acceptable to them” (emphasis added).

pas accepter l’invitation et de rechercher plutôt une situation d’apprentissage de la vie [ou de travail] qui leur convient mieux » (je souligne).

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I am dismayed that at various points in the history of this case the argument has been made that one can separate condemnation of the “sexual sin” of “homosexual behaviour” from intolerance of those with homosexual or bisexual orientations. This position alleges that one can love the sinner, but condemn the sin. But, in the words of the intervenor EGALÉ, “[r]equiring someone not to act in accordance with their identity is harmful and cruel. It destroys the human spirit. Pressure to change their behaviour and deny their sexual identity has proved tremendously damaging to young persons seeking to come to terms with their sexual orientation” (factum, at para. 34). The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as *per* Madam Justice Rowles: “Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person” (para. 228). She added that “the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people” (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood.

Je constate avec regret qu’à diverses reprises, dans le cours de cette affaire, on a avancé l’argument qu’il est possible de séparer la condamnation du « péché sexuel » que représente le « comportement homosexuel » et l’intolérance à l’égard des gens qui ont une orientation homosexuelle ou bisexuelle. Selon ce point de vue, on peut aimer le pécheur tout en condamnant le péché. Cependant, pour reprendre les propos de l’intervenante EGALÉ, [TRADUCTION] « [F]orcer quelqu’un à déroger à son identité est néfaste et cruel. Cela a un effet destructeur sur le plan psychologique. Les pressions exercées pour que des jeunes qui tentaient d’accepter leur orientation sexuelle modifient leur comportement et nient leur identité sexuelle se sont révélées extrêmement dommageables dans leur cas » (mémoire, par. 34). La distinction statut/conduite ou identité/pratique établie pour les homosexuels et les bisexuels devrait être complètement rejetée, comme l’affirme madame le juge Rowles : [TRADUCTION] « La législation en matière de droits de la personne prévoit que certaines pratiques sont inséparables de l’identité, de sorte que condamner la pratique revient à condamner la personne » (par. 228). Elle ajoute que « le genre de tolérance requis [par l’égalité] n’est pas étioilé au point de comprendre l’acceptation générale de toutes les personnes, mais la condamnation des caractéristiques de certaines personnes » (par. 230). Cela revient non pas à laisser entendre que la personne qui adopte un comportement homosexuel est automatiquement une personne homosexuelle ou bisexuelle, mais à contester l’idée qu’il est possible de condamner une pratique si essentielle à l’identité d’une minorité vulnérable et protégée sans pour autant faire preuve de discrimination à l’égard de ses membres ni porter atteinte à leur dignité humaine et à leur personnalité.

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As another preliminary matter, I would emphasize the relevance of the United States Supreme Court’s decision in *Bob Jones University v. United States*, 461 U.S. 574 (1983). In that case, the court

À titre préliminaire également, je tiens à souligner la pertinence de l’arrêt de la Cour suprême des États-Unis *Bob Jones University c. United States*, 461 U.S. 574 (1983). Dans cet arrêt, la cour

denied tax-exempt status to a religious institution that at the time prohibited interracial dating and marriage based on apparently sincerely held religious beliefs. Burger C.J. for the court wrote that “there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice” (p. 592). He added that “Bob Jones University . . . contends that it is not racially discriminatory. It emphasizes that it now allows all races to enroll, subject only to its restrictions on the conduct of all students, including its prohibitions of association between men and women of different races, and of interracial marriage” (p. 605). This American case provides an example, namely a ban on interracial dating and marriage, that is difficult to distinguish in a principled way from the ban on homosexual behaviour at issue here. In my view, to paraphrase Burger C.J., there can no longer be any doubt that sexual orientation discrimination in education violates deeply and widely accepted views of elementary justice.

It was not Bob Jones University faculty or students’ religious beliefs that led to the American Supreme Court decision, but rather a disciplinary rule of conduct prohibiting interracial dating and marriage. Similarly, in this case, where the salient difference is the ground of discrimination, namely sexual orientation, it is the Code of Community Standards that is at issue. See B. MacDougall, “Silence in the Classroom: Limits on Homosexual Expression and Visibility in Education and the Privileging of Homophobic Religious Ideology” (1998), 61 *Sask. L. Rev.* 41, at p. 78: “Once the religious characterization is removed from an issue of racial or gender discrimination, the issue becomes much more straightforward. So it should be with homosexuality.” I thus find it alarmist for my colleagues to suggest that “if TWU’s Community Standards could be suffi-

a refusé d’accorder une exonération fiscale à un établissement confessionnel qui, à l’époque, interdisait les fréquentations et les mariages interraciaux sur la foi de croyances religieuses apparemment sincères. Le juge en chef Burger a affirmé, au nom de la cour, [TRADUCTION] « [qu’il ne saurait plus y avoir aucun doute que la discrimination raciale dans l’enseignement contrevient aux conceptions profondes et généralement acceptées de justice élémentaire » (p. 592). Il a ajouté que « [l’]université Bob Jones [. . .] prétend qu’elle ne fait pas preuve de discrimination raciale. Elle souligne qu’elle permet désormais aux personnes de toutes les races de s’inscrire, sous réserve seulement des restrictions en matière de conduite qu’elle impose à tous les étudiants, notamment son interdiction des associations d’hommes et de femmes de races différentes et des mariages interraciaux » (p. 605). L’exemple que cet arrêt américain fournit, soit l’interdiction des fréquentations et des mariages interraciaux, est difficile à distinguer, sur le plan des principes, de l’interdiction du comportement homosexuel ici en question. Pour paraphraser le juge en chef Burger, j’estime qu’il ne saurait plus y avoir aucun doute que la discrimination, fondée sur l’orientation sexuelle, dans l’enseignement contrevient aux conceptions profondes et généralement acceptées de justice élémentaire.

Ce ne sont pas les croyances religieuses des étudiants ou des membres du corps professoral de l’université Bob Jones qui ont motivé la décision de la Cour suprême des États-Unis, mais plutôt une règle de conduite disciplinaire qui interdisait les fréquentations et les mariages interraciaux. De même, dans la présente affaire où la différence marquante est le motif de discrimination, soit l’orientation sexuelle, c’est le Code des normes communautaires qui est en cause. Voir B. MacDougall, « Silence in the Classroom: Limits on Homosexual Expression and Visibility in Education and the Privileging of Homophobic Religious Ideology » (1998), 61 *Sask. L. Rev.* 41, p. 78 : [TRADUCTION] « Lorsqu’on supprime la caractérisation religieuse d’une question de discrimination fondée sur la race ou sur le sexe, la question devient beaucoup plus simple. Il devrait égale-

cient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church” (para. 33).

ment en être ainsi de l’homosexualité. » J’estime donc qu’il est alarmiste, de la part de mes collègues, d’affirmer que « si les normes communautaires de l’UTW pouvaient être suffisantes en soi pour justifier le rejet de la demande d’agrément, on voit mal comment le même raisonnement ne pourrait pas servir à refuser de délivrer un brevet d’enseignement aux membres d’une confession particulière » (par. 33).

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It is far from patently unreasonable for the BCCT to have concluded that TWU’s Code of Community Standards embodies discriminatory practices. The Code is not a proxy for belief; TWU students’ beliefs are not the issue here. Indeed, it is impossible to know what individual students believe since, as recognized in the Code, ultimately convictions are a personal matter. Signing the Community Standards contract, by contrast, makes the student or employee complicit in an overt, but not illegal, act of discrimination against homosexuals and bisexuals. With respect, I do not see why my colleagues classify this signature as part of the freedom of belief as opposed to the narrower freedom to act on those beliefs (para. 36). In *Ross, supra*, the Board of Inquiry noted that human rights legislation “does not prohibit a person from thinking or holding prejudicial views. The *Act*, however, may affect the right of that person to be a teacher when those views are publicly expressed in a manner that impacts on the school community or if those views influence the treatment of students in the classroom by the teacher” (para. 39 (emphasis added)). Whether or not TWU students’ signatures on the Community Standards contract reflect their true beliefs, it is not patently unreasonable for the BCCT to treat their public expressions of discrimination as potentially affecting the public school communities in which TWU graduates wish to teach.

La conclusion du BCCT que le Code des normes communautaires de l’UTW comporte des pratiques discriminatoires est loin d’être manifestement déraisonnable. Le Code n’est pas une représentation des croyances; les croyances des étudiants de l’UTW ne sont pas en cause dans la présente affaire. En fait, il est impossible de savoir quelles sont les croyances de chaque étudiant car, comme on le reconnaît dans le Code, les croyances relèvent, en définitive, d’un choix personnel. Par contre, la signature du contrat des normes communautaires par l’étudiant ou l’employé le rend complice d’un acte de discrimination manifeste, mais non illégal, contre les homosexuels et les bisexuels. En toute déférence, je m’explique mal pourquoi mes collègues considèrent que cette signature s’inscrit dans le cadre de la liberté de croyance plutôt que dans celui de la liberté plus restreinte d’agir sur la foi d’une croyance (par. 36). Dans l’affaire *Ross*, précitée, la commission d’enquête a souligné que la législation en matière de droits de la personne « n’interdit pas à une personne d’avoir des pensées ou des idées discriminatoires. Toutefois, elle peut limiter le droit de cette personne d’être un enseignant lorsque ces idées sont exprimées publiquement d’une manière qui a des répercussions sur le milieu scolaire ou si ces idées influencent la façon dont l’enseignant traite ses élèves en classe » (par. 39 (je souligne)). Peu importe que la signature que les étudiants de l’UTW apposent au contrat des normes communautaires reflète ou non leurs véritables croyances, il n’est pas manifestement déraisonnable que le BCCT considère que leurs manifestations publiques de discrimination peuvent influencer sur les milieux scolaires publics dans lesquels les diplômés de l’UTW souhaitent enseigner.

There are manifold repercussions to this requirement that TWU students and employees affirm a policy that discriminates against those who practice the “sexual sin” of “homosexual behaviour.” As my colleagues acknowledge at para. 25, “a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost”. To this it should be added that homosexual or bisexual faculty and staff would also in practice be excluded from the campus. This is an important supplementary fact because “faculty must actually endorse those standards as correct and agree to teach in accordance with the principles of the school” (Madam Justice Rowles, at para. 265). The negative impact on campus diversity and pluralism is patently reasonable to assume. This is especially true considering the BCCT Program Approval Team’s recommendation that TWU faculty associates be seconded from the public school system to “ensure a broad worldview”, since they “significantly influence the development of the student teacher” (A.R., at pp. 250 and 249). I agree with Madam Justice Rowles that “the ‘message’ sent by TWU’s Community Standards Contract not only to gays and lesbians but also to every member of the TWU Community is discriminatory in a way that may be viewed as contrary to the public interest” (para. 226).

I acknowledge that tolerance is also a fundamental value in the Community Standards, which include an admonition for students to show “respect for all people regardless of race or gender”. This and like statements, such as those contained in the slightly different faculty and staff document, may well implicitly encompass tolerance for those of homosexual and bisexual orientations and lead to discrimination-free interactions. I share the view of Madam Justice Rowles, however, that “the public interest in the public school

L’exigence que les étudiants et les employés de l’UTW endossent une politique discriminatoire envers ceux qui s’adonnent au « péché sexuel » du « comportement homosexuel » a de nombreuses répercussions. Comme mes collègues le reconnaissent, au par. 25, « un étudiant homosexuel ne serait pas tenté de présenter une demande d’admission et [...] il ne pourrait signer le prétendu contrat d’étudiant qu’à un prix très élevé sur le plan personnel ». Il y a lieu d’ajouter à cela qu’en pratique les membres homosexuels ou bisexuels du corps professoral et du personnel seraient eux aussi exclus du campus. Il s’agit d’un autre fait important car [TRADUCTION] « les membres du corps professoral doivent vraiment adopter ces normes et accepter d’enseigner conformément aux principes de l’école » (madame le juge Rowles, par. 265). Il est manifestement raisonnable de présumer l’existence d’une incidence négative sur la diversité et le pluralisme du campus. Cela est particulièrement vrai à la lumière de la recommandation de l’équipe du BCCT chargée d’approuver les programmes que les membres agrégés du corps professoral de l’UTW soient des enseignants en détachement du système scolaire public afin [TRADUCTION] « [d’]assurer une vision élargie du monde », étant donné qu’ils [TRADUCTION] « influencent considérablement le développement de l’élève-enseignant » (d.a., pp. 250 et 249). Je suis d’accord avec madame le juge Rowles que [TRADUCTION] « le “message” qu’envoie le contrat des normes communautaires de l’UTW, non seulement aux gais et aux lesbiennes mais également à chacun des membres de la communauté de l’UTW, est discriminatoire d’une façon qui peut être jugée contraire à l’intérêt public » (par. 226).

Je reconnais que la tolérance est également une valeur fondamentale des normes communautaires, qui exhortent notamment les étudiants à témoigner du [TRADUCTION] « respect pour son prochain, sans égard à la race ou au sexe ». Cette déclaration et d’autres déclarations similaires, comme celles qu’on trouve dans le document légèrement différent destiné aux membres du corps professoral et du personnel, peuvent bien englober implicitement la tolérance envers les gens qui ont une orientation homosexuelle ou bisexuelle et donner lieu à des

system may also require something more than mere tolerance. As was stated in [*Ross*], *supra*, public school teachers and those who administer and regulate the public school system may have a positive duty to ensure nondiscrimination in our public schools” (para. 230). See *Ross*, *supra*, at para. 50: “it is not sufficient for a school board to take a passive role. A school board has a duty to maintain a positive school environment for all persons served by it and it must be ever vigilant of anything that might interfere with this duty.”

interactions exemptes de discrimination. Cependant, je partage le point de vue de madame le juge Rowles que [TRADUCTION] « l’intérêt public dans le système scolaire public peut également commander davantage que la simple tolérance. Comme on l’a affirmé dans l’arrêt [*Ross*], précité, les enseignants des écoles publiques et les personnes qui administrent et régissent le système scolaire public peuvent être formellement tenus de garantir l’absence de discrimination dans nos écoles publiques » (par. 230). Voir *Ross*, précité, par. 50 « il ne suffit pas pour le conseil scolaire d’assumer un rôle passif. Il a l’obligation de maintenir un milieu scolaire positif pour toutes les personnes qu’il sert et il doit toujours veiller à écarter tout ce qui pourrait nuire à cette obligation. »

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The BCCT’s decision answers a more complex question than that of whether TWU graduates would be intolerant and engage in overt discrimination in public schools. The BCCT’s accreditation ruling was based, in part, on consideration of whether the discriminatory practices of TWU have the potential to cause deleterious effects on the classroom environment because of graduates’ lack of preparedness. As stated in the BCCT’s Fall 1996 Report to Members, the BCCT was concerned about “the integrity and the values of the public school system and the institutions and programs which will prepare graduates to teach in the public system”. The Report added that

La décision du BCCT répond à une question plus complexe que celle de savoir si les diplômés de l’UTW seraient intolérants et feraient manifestement preuve de discrimination dans les écoles publiques. Pour rendre sa décision relative à la demande d’agrément, le BCCT s’était notamment demandé si, en raison du manque de préparation des diplômés, les pratiques discriminatoires de l’UTW étaient susceptibles d’avoir des effets préjudiciables sur le climat des salles de classe. Comme en fait foi le rapport qu’il a présenté à ses membres à l’automne 1996, le BCCT était préoccupé par [TRADUCTION] « l’intégrité et les valeurs du système scolaire public et par les établissements et programmes qui prépareront les diplômés à enseigner dans le système public ». On y ajoutait ceci :

[t]he motion made by Council reflects the majority belief that Trinity Western University’s Community Standards contract discriminates on the basis of sexual orientation.

[TRADUCTION] La motion adoptée par le Conseil reflète la conviction de la majorité que le contrat des normes communautaires de l’université Trinity Western fait preuve de discrimination fondée sur l’orientation sexuelle.

. . .

. . .

Labelling homosexual behaviour as sinful has the effect of excluding persons whose sexual orientation is gay or lesbian.

Qualifier un comportement homosexuel de péché a pour effet d’exclure les personnes ayant une orientation homosexuelle.

. . .

. . .

Councillors also expressed concern that the particular world view held by Trinity Western University with ref-

Les membres du Conseil ont également exprimé la crainte que la vision particulière du monde que l’univer-

erence to homosexual behaviour may have a detrimental effect in the learning environment of public schools. A teacher's ability to support all children regardless of race, colour, religion or sexual orientation within a respectful and nonjudgmental relationship is considered by the [BCCT] to be essential to the practice of the profession.

Thus, the only institutional expression of discriminatory practices by TWU concerning homosexual behaviour, namely the Community Standards contract, was thought by the BCCT to have the potential to affect the classroom environment negatively.

All TWU graduates to this point have been asked to complete their fifth year Professional Development Program under the auspices of Simon Fraser University ("SFU"). There is, therefore, no track record to assess with respect to the way in which TWU graduates would behave without this fifth year. Aside from this methodological problem, I do not believe that incidents of overt discriminatory behaviour are the evidentiary basis on which to test the BCCT's decision. The BCCT's concern is about the classroom environment and it is patently reasonable for it to have concluded that there could be ulterior consequences for the classroom environment if TWU students were allowed to do all five years of their training within their university's program. It is within the realm of reasonableness for the BCCT to be apprehensive about whether TWU graduates may be less than fully prepared to teach in diverse public school classrooms.

My colleagues ask: "After finding that TWU students hold fundamental biases, based on their religious beliefs, how could the BCCT ever have believed that the last year's program being under the aegis of Simon Fraser University would ever correct the situation?" (para. 38). With respect, I cannot agree that the BCCT made any such finding of "fundamental biases, based on . . . religious beliefs". Nor were "[b]oth the program and the practices of TWU, the declarations required of students and faculty in particular . . . condemned because they reflected the beliefs of the signato-

sité Trinity Western a en ce qui concerne le comportement homosexuel ait un effet préjudiciable sur le milieu d'apprentissage des écoles publiques. Selon le [BCCT], il est essentiel à l'exercice de la profession que l'enseignant soit en mesure de soutenir tous les enfants indépendamment de leur race, de leur couleur, de leur religion ou de leur orientation sexuelle, et ce, avec respect et sans porter de jugement à leur égard.

Le BCCT estimait donc que la seule manifestation par l'UTW de pratiques discriminatoires concernant le comportement homosexuel, soit le contrat des normes communautaires, pourrait avoir un effet négatif sur le climat des salles de classe.

Jusqu'à maintenant, tous les diplômés de l'UTW ont été requis de compléter leur cinquième année du programme de développement professionnel sous l'égide de l'université Simon Fraser (« USF »). Il n'y a donc aucun antécédent permettant d'évaluer la manière dont se comporteraient les diplômés de l'UTW en l'absence de cette cinquième année. Abstraction faite de ce problème méthodologique, je ne crois pas que des épisodes de comportement manifestement discriminatoire constituent des éléments de preuve au regard desquels la décision du BCCT doit être testée. Le BCCT se préoccupe du climat des salles de classe et il est manifestement raisonnable qu'il ait conclu à des conséquences possibles sur ce climat si les étudiants étaient autorisés à compléter leurs cinq années de formation dans le cadre du programme offert par leur université. Il est raisonnable pour le BCCT de craindre que les diplômés de l'UTW ne soient pas tout à fait préparés à enseigner dans le milieu diversifié des salles de classe des écoles publiques.

Mes collègues posent la question suivante : « Après avoir conclu que les étudiants de l'UTW ont des préjugés fondamentaux en raison de leurs croyances religieuses, comment le BCCT aurait-il pu croire que placer la dernière année du programme sous l'égide de l'université Simon Fraser corrigerait la situation? » (par. 38). En toute déférence, je ne suis pas d'accord que le BCCT ait tiré une telle conclusion qu'il existait des « préjugés fondamentaux en raison de [. . .] croyances religieuses ». De même, « [l]e programme et les pratiques de l'UTW et, en particulier, les déclarations

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ries” (para. 21). I reiterate that consideration of TWU students’ beliefs did not enter into the decision at issue (see paras. 63 and 72 of these reasons). The BCCT simply found discriminatory practices based on the signing of the Community Standards contract. I also object to the idea that the fifth year is somehow ineffective in “correct[ing] the situation”. That is a matter for educators, not judges, to determine. Beliefs do not have to be “corrected”, in Orwellian fashion, but it is reasonable to conclude that teachers must be equipped to deal with diverse classroom environments.

exigées des étudiants et des membres du corps professoral [n’]ont [pas] été condamnés parce qu’ils reflétaient les croyances des signataires » (par. 21). Je répète que les croyances des étudiants de l’UTW n’ont pas été prises en considération dans la décision en cause (voir par. 63 et 72 des présents motifs). Le BCCT a simplement conclu à l’existence de pratiques discriminatoires en raison de la signature du contrat des normes communautaires. Je ne souscris pas non plus à l’idée que la cinquième année ne permet pas, d’une manière ou d’un autre, de « corrige[r] la situation ». C’est une question qu’il appartient aux éducateurs, et non pas aux juges, de trancher. Les croyances n’ont pas à être « corrigées » à la façon orwellienne, mais il est raisonnable de conclure que les enseignants doivent être en mesure de faire face à différents climats de salle de classe.

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Without taking a position on the efficacy of the fifth year requirement, I would for the record like to enumerate potential reasons that the BCCT could have for mandating it. This is not a matter of policy debate, but rather an exercise to show that the requirement itself is not irrational and does not render the BCCT’s decision patently unreasonable. Withdrawing the Simon Fraser University-supervised fifth year requirement would mean that SFU would no longer be the institution recommending students for certification, but rather TWU, an institution that mandates a discriminatory practice, would. TWU students would be exempted from engaging in reflection on why, as under the present program, they cannot complete their training at their own university before entering the public school system. The SFU year could be seen to be symbolically important as a catalyst for this introspection. More significantly, the BCCT could reasonably find that without the fifth year there would be an unacceptable pedagogical cost in terms of reduced exposure of TWU students to diversity and its values. At present, SFU students attend courses at TWU run under their own university’s aegis. The SFU year involves both SFU faculty and students coming to the TWU campus (and TWU students going to the SFU campus). It exposes TWU students to a diversity of people and values that they might not encounter at TWU. The

Sans me prononcer sur l’efficacité de l’exigence de la cinquième année, j’aimerais, pour les fins du dossier, énoncer les raisons qui pourraient inciter le BCCT à l’imposer. Il s’agit non pas d’un débat de fond, mais plutôt d’un exercice visant à montrer que l’exigence n’est pas irrationnelle en soi et qu’elle ne rend pas manifestement déraisonnable la décision du BCCT. La suppression de l’exigence d’une cinquième année supervisée par l’université Simon Fraser signifierait que ce serait désormais non plus cette dernière, mais plutôt l’UTW, un établissement qui prescrit une pratique discriminatoire, qui recommanderait la délivrance de brevets d’enseignement à des étudiants. Les étudiants de l’UTW n’auraient pas à réfléchir, comme c’est le cas dans le cadre du présent programme, sur les raisons pour lesquelles ils ne peuvent compléter leur formation à leur propre université avant de faire leur entrée dans le système scolaire public. L’année passée à l’USF pourrait être perçue comme ayant une importance symbolique à titre de catalyseur de cette introspection. Qui plus est, le BCCT pourrait raisonnablement conclure que la suppression de cette cinquième année engendrerait un coût pédagogique inacceptable en ce sens que les étudiants de l’UTW seraient moins exposés à la diversité et aux valeurs qui s’y rattachent. À l’heure actuelle, les étudiants de l’USF suivent à l’UTW des cours donnés sous l’égide de leur pro-

fifth year also ensures supervision by SFU associates for the teaching practicum.

In the fifth year, TWU students now spend seven weeks at TWU, six weeks at SFU, and 19 weeks practice teaching, all under the supervision of SFU personnel. The BCCT could rationally find that this promotes interaction between TWU students and the purportedly more diverse faculty, staff and student body of SFU. We should not question what appears to be the expert opinion of the BCCT: that this time is valuable for inculcating teachers with the skills needed to promote and enhance diverse classroom environments. Beliefs do not have to change, but it is not patently unreasonable to hope that awareness and attitudes will become broader. This is a vital concern, for “[t]eacher attitudes can provide the validation for a gay student’s self-acceptance or self-rejection”: J. H. Fontaine, “The Sound of Silence: Public School Response to the Needs of Gay and Lesbian Youth”, in M. B. Harris, ed., *School Experiences of Gay and Lesbian Youth: The Invisible Minority* (1997), 101, at p. 105.

Instead of immersing themselves in the scholastic context, those who urge us to dismiss this appeal give short shrift to the pressing need for teachers in public schools to be sensitive to the concerns of homosexual and bisexual students. It is reasonable to insist that graduates of accredited teacher training programs be equipped to provide a welcoming classroom environment, one that is as sensitive as possible to the needs of a diverse student body. The modern role of the teacher has developed into a multi-faceted one, including

pre université. Au cours de l’année passée à l’USF, tant les membres du corps professoral que les étudiants de l’USF se rendent sur le campus de l’UTW (les étudiants de l’UTW se rendant, quant à eux, sur le campus de l’USF). Les étudiants de l’UTW sont ainsi exposés à une diversité de personnes et de valeurs qu’ils ne connaîtraient peut-être pas à l’UTW. La cinquième année permet également à des professeurs agrégés de l’USF de superviser le stage pédagogique.

Pendant la cinquième année, les étudiants de l’UTW passent sept semaines à l’UTW, six semaines à l’USF et 19 semaines en stage pédagogique, tout cela sous la supervision du personnel de l’USF. Le BCCT pouvait rationnellement juger que cela encourage l’interaction entre les étudiants de l’UTW et le corps professoral, le personnel et la population étudiante apparemment plus diversifiés de l’USF. Nous ne devrions pas mettre en question ce qui paraît être l’opinion d’expert du BCCT, soit que cette période est précieuse pour inculquer aux enseignants les compétences requises pour promouvoir et favoriser différents climats dans les salles de classe. Les croyances n’ont pas à changer, mais il n’est pas manifestement déraisonnable d’espérer qu’une personne fasse montre d’une plus grande ouverture d’esprit ou modifie ses attitudes. Il s’agit d’une question vitale, car [TRADUCTION] « [l]es attitudes des enseignants peuvent décider de l’acceptation ou du rejet de soi par les étudiants homosexuels » : J. H. Fontaine, « The Sound of Silence: Public School Response to the Needs of Gay and Lesbian Youth », dans M. B. Harris, dir., *School Experiences of Gay and Lesbian Youth: The Invisible Minority* (1997), 101, p. 105.

Au lieu de se plonger dans le contexte scolaire, ceux qui nous pressent de rejeter le présent pourvoi ne tiennent aucun compte du besoin pressant pour les enseignants des écoles publiques d’être attentifs aux préoccupations des étudiants homosexuels et bisexuels. Il est raisonnable d’insister pour que les diplômés des programmes agréés de formation des enseignants soient en mesure de faire en sorte qu’il règne, dans les salles de classe, un climat accueillant qui tienne compte le plus possible des besoins d’une population étudiante variée. Le rôle moderne

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counselling as well as educative functions. The Court noted in *Ross, supra*, that “[t]eachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions” (para. 43).

de l’enseignant s’est diversifié et comporte autant un volet de conseiller qu’un volet d’éducateur. La Cour a souligné, dans l’arrêt *Ross*, précité, qu’« [e]n raison de la position de confiance qu’ils occupent, [les enseignants] exercent une influence considérable sur leurs élèves » (par. 43).

81 As the intervener EGALÉ pointed out, it is vital to remember in the context of the case at bar that “[b]ecause lesbian, gay, and bisexual youth are almost always ‘minorities’ in their own families, they do not enter the school environment with the same level of family support and understanding that other members of minority groups do. Thus schools are an important second line of support for students dealing with issues of sexuality, and can counter the effect of a hostile family environment” (factum, at para. 14). See also MacDougall, *supra*, at p. 44: “Many families make it clear that discovering that their child is gay or lesbian is the worst possible news they could have, and this can lead to exclusion from the family group”, and K. A. Lahey, *Are We “Persons” Yet? Law and Sexuality in Canada* (1999), at p. 197: “[Queer] [y]ouths who are ostracized from their families receive inadequate emotional and social support, and completely lose their families as ‘social safety nets.’ This leaves them to the streets, vulnerable to involvement in the sex trades, use of drugs, and unhealthy relationship patterns.”

Comme l’a fait remarquer l’intervenante EGALÉ, il est très important de se rappeler, dans le contexte du présent pourvoi, que [TRADUCTION] « [p]arce que les jeunes homosexuels ou bisexuels sont presque toujours en minorité dans leur propre famille, ils ne bénéficient pas, lorsqu’ils commencent l’école, du soutien et de la compréhension dont les membres d’autres groupes minoritaires jouissent de la part de leur famille. Les écoles constituent donc une importante source secondaire de soutien pour les étudiants qui sont aux prises avec des problèmes de sexualité, et elles peuvent neutraliser l’effet d’un milieu familial hostile » (mémoire, par. 14). Voir également MacDougall, *loc. cit.*, p. 44 : [TRADUCTION] « Nombreuses sont les familles qui affirment clairement que la découverte que leur enfant est homosexuel est la pire nouvelle qui puisse leur être annoncée, et que cela peut mener à l’exclusion du groupe familial »; K. A. Lahey, *Are We “Persons” Yet? Law and Sexuality in Canada* (1999), p. 197 : [TRADUCTION] « Les jeunes [homosexuels] qui sont exclus de leur famille bénéficient d’un soutien émotif et social insuffisant et perdent totalement le “filet de sécurité sociale” que représente leur famille. Cela les mène à la rue et peut les conduire au commerce du sexe ou à la consommation de drogues ou encore les jeter dans un engrenage de relations malsaines. »

82 Evidence shows that there is an acute need for improvement in the experiences of homosexual and bisexual students in Canadian classrooms. Health Canada, in a review of literature on *The Experiences of Young Gay Men in the Age of HIV* (1996), noted at p. 19 that:

La preuve montre qu’il existe un besoin pressant d’améliorer la situation des étudiants homosexuels et bisexuels dans les salles de classe au Canada. Dans son analyse bibliographique, intitulée *Les expériences des jeunes gais à l’ère du VIH* (1996), Santé Canada a fait remarquer ceci, aux p. 21-22 :

Implicit and explicit discrimination runs throughout the education system. Schools often fail in their responsibility to lesbian, bisexual and gay youth. Whether it is the invisibility of gay role models in the curricula or

La discrimination implicite et explicite règne dans tout le système scolaire. Les écoles assument rarement leurs responsabilités à l’égard des jeunes lesbiennes, des bisexuels et des gais. Que ce soit en raison du manque

derogatory epithets in school hallways, many gay youth see school as a frightening and hostile place.

A self-identified gay youth, or one uncertain of his sexual identity, is bombarded by obvious and subtle messages that homosexuality is not valued. The heterosexual bias in educational materials and the lack of information regarding homosexuality leaves many gay youth with little support for many of their special interests and needs.

This leads many youth to deny their gay identity and stay closeted at school. . . .

Most teachers and counsellors have a low comfort level with homosexuality and lack the skills necessary to help an adolescent who approaches with questions about homosexuality. A lack of expertise among school staff creates missed opportunities to help lesbian, bisexual and gay youth before a crisis develops.

See also I. T. Kroll and L. B. Warneke, “The Dynamics of Sexual Orientation & Adolescent Suicide” (1995), at p. 40: “Because of the added burdens of anomie, rejection, and violence, school drop-out among homosexually oriented youth remains a big problem.”

In an April 3, 2000 article, the Chief Commissioner of the British Columbia Human Rights Commission, Mary-Woo Sims, wrote that “[g]ay, lesbian, bisexual and transgender students face isolation, harassment, intimidation and violence at school. . . . [They] need to know they have other students and teachers they can turn to for support and understanding”: see “Gay/Straight Alliance Clubs — Understanding Our Differences”. She discussed the results of a study, *Being Out: Lesbian, Gay, Bisexual & Transgender Youth in B.C.: an Adolescent Health Survey* (1999). Importantly, this British Columbia survey found that 39 percent of participants “told a teacher or school counsellor that they are gay or lesbian” (p. 6). Such a result demonstrates the imperative nature of assuring that homosexual and bisexual students do not perceive a barrier to approaching their teachers for counselling. The BCCT was not patently unreasonable in

de visibilité des modèles de comportement de gais dans le programme ou d'épithètes méprisantes dans les couloirs d'écoles, bien des jeunes gais voient l'école comme un endroit effrayant et hostile.

Un jeune gai qui a trouvé son identité, ou un autre qui n'en est pas certain, se voit bombarder de messages clairs ou subtils à l'effet que l'homosexualité n'est pas de mise. Les préjugés hétérosexuels dans les manuels scolaires et le manque d'information au sujet de l'homosexualité ne soutiennent guère les nombreux intérêts et besoins spéciaux des jeunes gais.

Cela conduit bien des jeunes à nier leur identité gaie et à rester dans l'anonymat à l'école. . . .

Bien des enseignants et des conseillers ne se sentent guère à l'aise avec l'homosexualité et n'ont pas les compétences nécessaires pour aider un adolescent ou une adolescente qui les aborde avec des questions sur l'homosexualité. Étant donné que le corps enseignant manque de savoir-faire à cet égard, il rate des occasions d'aider les jeunes lesbiennes, bisexuels et gais avant qu'une crise ne survienne.

Voir également I. T. Kroll et L. B. Warneke, « The Dynamics of Sexual Orientation & Adolescent Suicide » (1995), p. 40 : [TRADUCTION] « En raison des fardeaux additionnels de l'anomie, du rejet et de la violence, le décrochage chez les jeunes qui ont une orientation homosexuelle demeure un grave problème. »

Dans un article daté du 3 avril 2000, la présidente de la Commission des droits de la personne de la Colombie-Britannique, Mary-Woo Sims, écrit que [TRADUCTION] « [l]es étudiants homosexuels, bisexuels et transsexuels subissent l'isolement, le harcèlement, l'intimidation et la violence à l'école. [ . . . ] [Ils] ont besoin de savoir qu'il y a d'autres étudiants et enseignants vers lesquels ils peuvent se tourner pour obtenir du soutien et de la compréhension » : voir « Gay/Straight Alliance Clubs — Understanding Our Differences ». Elle a analysé les résultats d'une étude intitulée *Being Out: Lesbian, Gay, Bisexual & Transgender Youth in B.C.: an Adolescent Health Survey* (1999). Fait important, ce sondage effectué en Colombie-Britannique a permis de constater que 39 pour 100 des répondants [TRADUCTION] « ont révélé à un enseignant ou à un conseiller scolaire qu'ils étaient gais ou lesbiennes » (p. 6). Un tel résultat

concluding that, without spending a year under the auspices of SFU, TWU graduates, due to their signature of the Community Standards pledge, could have a negative impact on the supportive environment required in classrooms. It is not patently unreasonable for the BCCT to believe that a component of the noble effort to eradicate public school homophobia, whether perceived or actual, is to require TWU students to take a fifth year of training outside the supervision of that institution.

démontre qu'il est impératif de s'assurer que les étudiants homosexuels et bisexuels se sentent libres de demander des conseils à leurs enseignants. Il n'était pas manifestement déraisonnable que le BCCT conclue que, s'ils ne passaient pas une année sous l'égide de l'USF, les diplômés de l'UTW pourraient avoir une incidence négative sur le climat favorable requis dans les salles de classe en raison de leur engagement à respecter les normes communautaires. Il n'est pas manifestement déraisonnable que le BCCT croie que la tentative louable d'éliminer l'homophobie, réelle ou perçue, dans les écoles publiques consiste notamment à exiger que les étudiants de l'UTW complètent une cinquième année de formation sous la supervision d'un autre établissement.

84 The B.C. report also showed that 37 percent of the gay and lesbian youth questioned feel like outsiders at school. None of the youth gave high ratings to the quality of his or her family relationships. Almost 40 percent have dramatically low self-esteem. Two-thirds often hear homophobic remarks made by other students at school. Nearly one in five had been physically assaulted at school in the past year.

Le rapport de la Colombie-Britannique révèle aussi que 37 pour 100 des jeunes gais et lesbiennes interrogés se sentent exclus à l'école. Aucun des jeunes n'a attribué une note élevée à la qualité de ses relations familiales. Presque 40 pour 100 de ceux-ci avaient une estime de soi particulièrement faible. Les deux tiers ont déclaré avoir souvent entendu d'autres étudiants faire des commentaires homophobes à l'école. Au cours de la dernière année, presque un étudiant sur cinq a été victime de violence physique à l'école.

85 The study found that 46 percent of the gay and lesbian youth had attempted suicide at least once. Their average age at the first suicide attempt was 13 years. See also *Egan v. Canada*, [1995] 2 S.C.R. 513, at para. 174, *per* Cory J.: "a study by the Quebec Human Rights Commission has indicated that the isolation, harassment and violence imposed by the public and the rejection by their families has caused young homosexuals to have a higher rate of attempted and successful suicide than heterosexual youths" and Kroll and Warneke, *supra*: "Canada has one of the highest youth suicide rates in the world. . . . Of all teens who commit suicide, about one third appear to be homosexual in orientation. Many such youth become depressed in the ongoing struggle with social fear and rejection. . . . Cognitive, emotional and social isolation, ongoing external and internalized homophobia and lack of support may lead

Cette étude a permis de constater que 46 pour 100 des jeunes gais et lesbiennes avaient fait au moins une tentative de suicide. L'âge moyen des jeunes qui avaient fait une première tentative de suicide était de 13 ans. Voir aussi l'arrêt *Egan c. Canada*, [1995] 2 R.C.S. 513, par. 174, le juge Cory : « une étude menée par la Commission des droits de la personne du Québec a indiqué que l'isolement, le harcèlement et la violence imposés par le public et le rejet par la famille se sont traduits chez les jeunes homosexuels par un taux de suicide et de tentatives de suicide supérieur à celui des adolescents hétérosexuels », et Kroll et Warneke, *loc. cit.* : [TRADUCTION] « Le Canada compte l'un des taux de suicide chez les jeunes les plus élevés au monde. [. . .] Le tiers des adolescents qui se suicident semblent avoir une orientation homosexuelle. Le fait d'être continuellement aux prises avec la crainte et le rejet de la société décourage un

homosexually oriented adolescents to perceive suicide as their only means of escape. . . . 'Closeted' adolescents who are aware of their same-sex attraction but who have not yet established a positive homosexual identity, are at particular risk for suicide" (see introduction and pp. 1 and 4).

With these statistics and observations in the foreground, the assertion that "[h]omophobia . . . is one lesson students (both gay and straight) learn in the informal curriculum" is eminently plausible: see S. L. Nichols, "Gay, Lesbian, and Bisexual Youth: Understanding Diversity and Promoting Tolerance in Schools" (1999), 99 *Elementary School Journal* 505, at p. 514. See also MacDougall, *supra*, at p. 41: "The most important factor in the perpetuation of homophobia and the marginalization of homosexuals, including self-hatred in homosexuals, is the intense indoctrination in heterosexism that children experience. A great deal of this indoctrination occurs in educational institutions". In this context, the BCCT's decision to refuse to accredit TWU unconditionally is a reasonable proactive measure designed to prevent any potential problems of student, parent, colleague, or staff perception of teachers who have not completed a year of training under the supervision of SFU, but have signed the Community Standards contract. As the intervener the Ontario Secondary School Teachers' Federation stated in oral argument:

To suggest that we must await harm is to suggest that we will experiment upon children when, in fact, within our power is the power to expose the students at TWU before they enter into the public school system to that range of values that they are expected to extricate and

bon nombre de ces jeunes. [...] L'isolement cognitif, émotif et social, l'homophobie constante manifestée et intériorisée, de même que l'absence de soutien peuvent amener les adolescents qui ont une orientation homosexuelle à percevoir le suicide comme leur seule porte de sortie. [...] Les adolescents qui restent dans l'anonymat et qui sont conscients de l'attirance qu'ils ressentent pour les personnes du même sexe, mais qui n'ont pas encore affirmé leur identité homosexuelle, risquent davantage de se suicider » (voir introduction et p. 1 et 4).

Compte tenu de ces statistiques et de ces observations, l'affirmation que [TRADUCTION] « [l]'homophobie [...] est une leçon que les étudiants (tant homosexuels qu'hétérosexuels) apprennent dans le cadre du programme d'études informel » est fort plausible : voir S. L. Nichols, « Gay, Lesbian, and Bisexual Youth: Understanding Diversity and Promoting Tolerance in Schools » (1999), 99 *Elementary School Journal* 505, p. 514. Voir également MacDougall, *loc. cit.*, p. 41 : [TRADUCTION] « Le facteur le plus important qui contribue à perpétuer l'homophobie et la marginalisation des homosexuels, y compris la haine de soi que ressentent les homosexuels, est l'endoctrinement hétérosexiste intense que les enfants subissent. Cet endoctrinement se fait en grande partie dans les établissements d'enseignement. » Dans ce contexte, la décision du BCCT de refuser d'agréer l'UTW de façon inconditionnelle se veut une mesure proactive raisonnable destinée à prévenir tout problème de perception que pourraient avoir les étudiants, les parents, les collègues ou les membres du personnel à l'égard des enseignants qui n'ont pas complété une année de formation sous la supervision de l'USF, mais qui ont signé le contrat des normes communautaires. Comme l'intervenante la Fédération des enseignantes-enseignants des écoles secondaires de l'Ontario l'a noté dans sa plaidoirie :

[TRADUCTION] Affirmer qu'il faut attendre que le mal soit fait revient à affirmer que les enfants serviront de cobayes, alors que nous avons en fait le pouvoir de familiariser les étudiants de l'UTW, avant leur entrée dans le système scolaire public, avec la gamme des

live by while working within that public education system.

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I agree with Madam Justice Rowles that “it is open to the Council to concern itself with whether graduates from an applicant program will be perceived as upholding discriminat[ion]-free values in the public classroom” (para. 197 (emphasis added)). See also *Ross, supra*, at para. 44:

By their conduct, teachers as “medium” must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message and because of the community position they occupy, they are not able to “choose which hat they will wear on what occasion” (see *Re Cromer and British Columbia Teachers’ Federation* (1986), 29 D.L.R. (4th) 641 (B.C.A.), at p. 660); teachers do not necessarily check their teaching hats at the school yard gate and may be perceived to be wearing their teaching hats even off duty. [Allison] Reyes affirms this point in her article, [“Freedom of Expression and Public School Teachers” (1995), 4 *Dal. J. Leg. Stud.* 35], at p. 37:

The integrity of the education system also depends to a great extent upon the perceived integrity of teachers. It is to this extent that expression outside the classroom becomes relevant. While the activities of teachers outside the classroom do not seem to impact *directly* on their ability to teach, they may conflict with the values which the education system perpetuates. [Emphasis added by Reyes.]

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It is not patently unreasonable for the BCCT to have denied accreditation when the audience perceiving public school teachers includes homosexual and bisexual students, parents, colleagues, and staff, students with homosexual and bisexual relatives and friends, and also adolescents exploring their sexual identities. As this Court stated in *Ross*, at para. 82, “[t]he importance of ensuring an equal and discrimination free educational environment,

valeurs qu’ils sont censés répandre et respecter pendant qu’ils travaillent dans le système d’enseignement public.

Je suis d’accord avec madame le juge Rowles [TRADUCTION] « [qu’]il est loisible au Conseil de se préoccuper de savoir si les diplômés du programme visé par la demande d’agrément seront perçus comme défendant des valeurs non discriminatoires dans les salles de classe des écoles publiques » (par. 197 (je souligne)). Voir également l’arrêt *Ross*, précité, par. 44 :

Le comportement de l’intermédiaire qu’est l’enseignant doit traduire son adhésion à ces valeurs, croyances et connaissances que le système scolaire cherche à communiquer. Son comportement est évalué en fonction de la position même qu’il occupe, et non en fonction de la question de savoir si le comportement en cause a été adopté en classe ou ailleurs. L’enseignant est perçu dans la collectivité comme l’intermédiaire par lequel passe le message éducatif, et en raison de la position qu’il y occupe, il n’est pas en mesure de [TRADUCTION] « choisir le chapeau qu’il portera et dans quelle occasion » (voir *Re Cromer and British Columbia Teachers’ Federation* (1986), 29 D.L.R. (4th) 641 (C.A.C.-B.), à la p. 660); ce chapeau d’enseignant, il ne l’enlève donc pas nécessairement à la sortie de l’école et, pour certains, il continue à le porter même après les heures de travail. C’est ce que [Allison] Reyes affirme, [«Freedom of Expression and Public School Teachers» (1995), 4 *Dal. J. Leg. Stud.* 35], à la p. 37:

[TRADUCTION] L’intégrité du système d’éducation dépend aussi en grande mesure de la perception de l’intégrité des enseignants. C’est dans cette mesure que l’expression à l’extérieur de la classe devient pertinente. Bien que les activités des enseignants à l’extérieur de la classe ne semblent pas influencer *directement* sur leur capacité d’enseigner, elles peuvent entrer en conflit avec les valeurs perpétuées par le système d’éducation. [Les italiques sont de M<sup>me</sup> Reyes.]

Il n’est pas manifestement déraisonnable que le BCCT ait rejeté la demande d’agrément dans les cas où la collectivité qui perçoit les enseignants des écoles publiques comprend des étudiants, parents, collègues et membres du personnel qui sont homosexuels ou bisexuels, des étudiants qui ont des proches et des amis homosexuels et bisexuels, ainsi que des adolescents à la recherche de leur propre identité sexuelle. Comme notre

and the perception of fairness and tolerance in the classroom are paramount in the education of young children. This helps foster self-respect and acceptance by others” (emphasis added). At para. 43 of that case, La Forest J. also found that:

Teachers are inextricably linked to the integrity of the school system. . . . The conduct of a teacher bears directly upon the community’s perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community’s confidence in the public school system as a whole. [Emphasis added.]

The conduct at issue in this case is simply the signing of the Community Standards contract by TWU students and its potential impact on the learning environment in public schools.

Considering the importance of perceptions for the healthy functioning of the classroom, I find my colleagues’ emphasis on the need for positive proof of discriminatory conduct sadly ironic. *Ross* took a broader view than this of the school environment (at para. 100): “In order to ensure a discrimination-free educational environment, the school environment must be one where all are treated equally and all are encouraged to fully participate” (emphasis added). Moreover, the principal metaphor for the homosexual and bisexual experience of discrimination has been that of the closet, an isolated refuge of invisibility often enveloped in fear. Indeed, the history of struggles against sexual orientation discrimination has been described as a battle against “the apartheid of the closet”, W. N. Eskridge Jr., *Gaylaw: Challenging the Apartheid of the Closet* (1999). See generally *M. v. H.*, [1999] 2 S.C.R. 3, at para. 64, per Cory J.: “In *Egan* . . . a majority of this Court explicitly recognized that gays, lesbians and bisexuals, ‘whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disad-

Cour l’a précisé dans l’arrêt *Ross*, par. 82, « [I]a création d’un milieu d’enseignement non discriminatoire où règne l’égalité et l’instauration d’un climat d’équité et de tolérance dans la classe revêtent une importance prépondérante dans l’éducation des jeunes enfants. Cela aide à promouvoir le respect de soi et l’acceptation par autrui » (je souligne). Au paragraphe 43 de cet arrêt, le juge La Forest conclut également :

Les enseignants sont inextricablement liés à l’intégrité du système scolaire. [. . .] Le comportement d’un enseignant influe directement sur la perception qu’a la collectivité de sa capacité d’occuper une telle position de confiance et d’influence, ainsi que sur la confiance des citoyens dans le système scolaire public en général. [Je souligne.]

Le comportement visé en l’espèce est simplement la signature, par les étudiants de l’UTW, du contrat des normes communautaires et son incidence potentielle sur le milieu d’apprentissage des écoles publiques.

Compte tenu de l’importance prépondérante des perceptions dans une salle de classe, je juge tristement ironique l’accent que mes collègues mettent sur la nécessité d’une preuve incontestable de l’existence d’un comportement discriminatoire. L’arrêt *Ross* prône une conception plus large du milieu scolaire (au par. 100) : « Pour éviter la discrimination, le milieu scolaire doit être un milieu où tous sont traités sur un pied d’égalité et encouragés à participer pleinement » (je souligne). De plus, la principale métaphore pour décrire la discrimination dont sont victimes les homosexuels et les bisexuels est celle du placard (« *closet* »), c’est-à-dire l’anonymat, souvent marqué par la peur, dans lequel ils se réfugient afin de passer inaperçus. En fait, les luttes livrées dans le passé contre la discrimination fondée sur l’orientation sexuelle ont été qualifiées de combat contre [TRADUCTION] « l’apartheid du placard » : W. N. Eskridge Jr., *Gaylaw: Challenging the Apartheid of the Closet* (1999). Voir, de manière générale, l’arrêt *M. c. H.*, [1999] 2 R.C.S. 3, par. 64, le juge Cory : « Dans l’arrêt *Egan* [. . .] notre Cour, à la majorité, a explicitement reconnu que les gais, les lesbiennes et les bisexuels, “à titre individuel ou comme couples, forment une minorité identifiable, victime encore

vantage' (para. 175, *per* Cory J.; see also para. 89, *per* L'Heureux-Dubé J.)."

aujourd'hui de désavantages sociaux, politiques et économiques graves" (par. 175, le juge Cory; voir également, par. 89, le juge L'Heureux-Dubé). »

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As one commentator has written, "[g]ay and lesbian students at all ages and stages of schooling share an identity that has been bumped, bruised, or completely ignored. That this personal identity crosses all ethnic, cultural, economic, geographic, and gender boundaries makes gay and lesbian students universally present, yet easily invisible": C. Mathison, "The Invisible Minority: Preparing Teachers to Meet the Needs of Gay and Lesbian Youth" (1998), 49 *Journal of Teacher Education* 151, at p. 154. I believe that the students' perspective must be the paramount concern and that, even if there are no overt acts of discrimination by TWU graduates, this vantage point provides ample justification for the BCCT's decision.

Comme l'a écrit un commentateur, [TRADUCTION] « [I]es étudiants homosexuels de tous âges et de tous niveaux de scolarité ont ceci en commun que leur identité a été vilipendée, dénigrée ou complètement ignorée. Le fait que cette identité personnelle transcende toutes les frontières ethniques, culturelles, économiques et géographiques ou l'appartenance à un sexe rend les étudiants homosexuels universellement présents, quoique facilement invisibles » : C. Mathison, « The Invisible Minority: Preparing Teachers to Meet the Needs of Gay and Lesbian Youth » (1998), 49 *Journal of Teacher Education* 151, p. 154. Je crois que c'est le point de vue des étudiants qui importe avant tout et que, même si les diplômés de l'UTW n'accomplissent ouvertement aucun acte discriminatoire, ce point de vue justifie amplement la décision du BCCT.

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Without the existence of supportive classroom environments, homosexual and bisexual students will be forced to remain invisible and reluctant to approach their teachers. They will be victims of identity erasure, forced to endure what Professor Kathleen Lahey has called "a 'spiral of silence' in which lesbians and gays modify their behaviour to avoid the impact of prejudice": see *Brillinger v. Brockie* (2000), 37 C.H.R.R. D/15, at para. 34. The BCCT's decision that TWU graduates are more likely to foster a welcoming classroom environment after participating in SFU's program for one year is not patently unreasonable. Most of the relevant evidence in this case is the reality of hostile school environments faced by homosexual and bisexual students. The courts, by trespassing into the field of pedagogy, deal a setback to the efforts of the BCCT to ensure the sensitivity and empathy of its members to all students' backgrounds and characteristics.

En l'absence d'un climat favorable dans les salles de classes, les étudiants homosexuels et bisexuels seront forcés de rester dans l'ombre et hésiteront à se confier à leurs enseignants. Ils seront victimes d'un effacement identitaire et forcés d'endurer ce que le professeur Kathleen Lahey a qualifié de [TRADUCTION] « "spirale du silence" dans laquelle les lesbiennes et les gais modifient leur comportement afin d'éviter les effets des préjugés » : voir *Brillinger c. Brockie* (2000), 37 C.H.R.R. D/15, par. 34. La décision du BCCT, selon laquelle les diplômés de l'UTW seront plus susceptibles de faire régner un climat accueillant dans les salles de classe après avoir participé au programme de l'USF pendant un an, n'est pas manifestement déraisonnable. La plupart des éléments de preuve pertinents en l'espèce ont trait à la réalité de milieux scolaires hostiles à laquelle font face les étudiants homosexuels et bisexuels. En empiétant sur le domaine de la pédagogie, les tribunaux infligent un revers aux tentatives du BCCT d'assurer la réceptivité et l'empathie de ses membres à l'égard des antécédents et des caractéristiques de tous les étudiants.

IV. *Charter* Claims

Having concluded my analysis of administrative law, which found that the BCCT's decision was not patently unreasonable, I turn now to the *Charter* claims advanced by the respondents. They presented arguments concerning alleged s. 2(b), (d), (a), and 15 violations.

I agree with Madam Justice Rowles, the only member of the Court of Appeal who considered *Charter* claims, that: "Signing TWU's Community Standards Contract may well be an expressive activity protected by s. 2(b), but it does not follow that the consequences of the exercise of that expression are immune from consideration by the certifying body" (para. 270). *Ross* stated that courts assessing alleged s. 2(b) violations must determine "whether the purpose or effect of the impugned government action is to restrict the individual's freedom of expression" (para. 64). The purpose in this case, by way of contrast to *Ross*, is not to restrict expression. Rather, the purpose of the BCCT's decision is to ensure the existence of supportive classroom environments. The effect of the decision is to restrict Ms. Lindquist's expression, however, since TWU students who sign the Community Standards contract lose the opportunity to be certified automatically as public school teachers. Having found an individual rights violation, I will assume without deciding that TWU's expression is also fettered. I find these violations to be saved under s. 1.

My colleagues write that "this is a case where any potential conflict should be resolved through the proper delineation of the rights and values involved. In essence, properly defining the scope of the rights avoids a conflict in this case" (para. 29). I believe that a s. 1 analysis is more appropriate considering the facts before us; the Court in *Ross*, *supra*, encouraged and itself undertook the s. 1 inquiry in similar circumstances (see para. 66

IV. Arguments fondés sur la *Charte*

Ayant conclu au terme de mon analyse du droit administratif que la décision du BCCT n'était pas manifestement déraisonnable, je vais maintenant aborder les arguments fondés sur la *Charte* que les intimées ont avancés. Leur argumentation concerne des allégations de violation des al. 2b), d) et a), ainsi que de l'art. 15.

Je partage l'avis de madame le juge Rowles, la seule à avoir examiné les arguments fondés sur la *Charte* en Cour d'appel, que [TRADUCTION] « [l]a signature du contrat des normes communautaires de l'UTW peut bien être une activité expressive protégée par l'al. 2b), mais il ne s'ensuit pas que les conséquences de cette activité échappent à tout examen par l'organisme responsable de la délivrance des brevets d'enseignement » (par. 270). L'arrêt *Ross* précise que les tribunaux saisis d'allégations de violation de l'al. 2b) doivent déterminer « si l'action gouvernementale attaquée a pour objet ou pour effet de restreindre la liberté d'expression d'un particulier » (par. 64). Contrairement à la situation dans l'arrêt *Ross*, le but visé ici n'est pas de restreindre la liberté d'expression. La décision du BCCT vise plutôt le maintien d'un climat favorable dans les salles de classe. Il en résulte cependant une restriction de la liberté d'expression de M<sup>me</sup> Lindquist en ce sens que les étudiants de l'UTW qui signent le contrat des normes communautaires perdent la chance d'obtenir automatiquement un brevet d'enseignement les autorisant à enseigner dans des écoles publiques. Ayant conclu à l'existence d'une violation des droits individuels, je vais présumer, sans toutefois le décider, qu'il y a également entrave à la liberté d'expression de l'UTW. À mon avis, ces violations sont justifiées au regard de l'article premier.

Mes collègues écrivent que « nous sommes en présence d'une situation dans laquelle il y a lieu de régler tout conflit éventuel en délimitant correctement les droits et valeurs en cause. Essentiellement, une bonne délimitation de la portée des droits permet d'éviter un conflit en l'espèce » (par. 29). J'estime que, compte tenu des faits dont nous sommes saisis, il est plus approprié de procéder à une analyse fondée sur l'article premier; dans

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of these reasons). See also *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 153, *per* L'Heureux-Dubé, Gonthier and Bastarache JJ.: "Where courts are asked to consider whether a violation is justified under s. 1, they must be sensitive to the competing rights and values that exist in our democracy."; *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, *supra*, at para. 118, *per* La Forest J.: "I am happy to see that my colleagues concede that the balancing of the competing rights could be integrated in a s. 1 analysis, since apart from specific provisions such as 'fundamental justice', that is the only balancing mechanism provided under the *Charter*. The *Charter* makes no provision for directly balancing constitutional rights against one another. It is aimed rather at governmental and legislative intrusion against the protected rights; see s. 32 of the *Charter*." Section 1's contextual approach protects all the interests involved and ensures careful consideration of all the implications of the impugned state action: see Madam Justice Wilson's opinion in *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at pp. 1355-56 ("The contextual approach attempts to bring into sharp relief the aspect of the right or freedom which is truly at stake in the case as well as the relevant aspects of any values in competition with it. It seems to be more sensitive to the reality of the dilemma posed by the particular facts and therefore more conducive to finding a fair and just compromise between the two competing values under s. 1."). My following analysis of the s. 2(b) violation stays true to this imperative and meaningful attention to context.

l'arrêt *Ross*, précité, la Cour a, dans des circonstances similaires, encouragé et effectué elle-même l'analyse fondée sur l'article premier (voir par. 66 des présents motifs). Voir également l'arrêt *R. c. Sharpe*, [2001] 1 R.C.S. 45, 2001 CSC 2, par. 153, les juges L'Heureux-Dubé, Gonthier et Bastarache : « Lorsqu'ils sont appelés à déterminer si une atteinte est justifiée au sens de l'article premier, les tribunaux doivent tenir compte des droits et des valeurs opposés qui existent dans notre démocratie »; *B. (R.) c. Children's Aid Society of Metropolitan Toronto*, précité, par. 118, le juge La Forest : « Je suis heureux de constater que mes collègues conviennent que l'évaluation des droits opposés pourrait être intégrée dans une analyse fondée sur l'article premier puisque, à l'exception de dispositions spécifiques comme la "justice fondamentale", cette analyse représente le seul instrument d'évaluation prévu sous le régime de la *Charte*. Cette dernière ne prévoit aucune évaluation directe de droits constitutionnels l'un par rapport à l'autre. Elle vise plutôt l'ingérence gouvernementale et législative dans les droits garantis; voir l'art. 32 de la *Charte*. » L'approche contextuelle de l'article premier assure une protection à tous les intérêts en cause et permet d'examiner soigneusement toutes les répercussions de la mesure étatique contestée voir l'opinion de madame le juge Wilson, dans *Edmonton Journal c. Alberta (Procureur général)*, [1989] 2 R.C.S. 1326, p. 1355-1356 (« La méthode contextuelle tente de mettre clairement en évidence l'aspect du droit ou de la liberté qui est véritablement en cause dans l'instance ainsi que les aspects pertinents des valeurs qui entrent en conflit avec ce droit ou cette liberté. Elle semble mieux saisir la réalité du litige soulevé par les faits particuliers et être donc plus propice à la recherche d'un compromis juste et équitable entre les deux valeurs en conflit en vertu de l'article premier. »). L'analyse suivante de la violation de l'al. 2b) accorde au contexte cette attention impérative et utile.

95 This case presents a context that calls for deference to the impugned decision based on the public educational setting and the vulnerability of the group that is being protected: see *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998]

Le contexte, en l'espèce, commande de faire preuve de retenue à l'égard de la décision contestée en raison du milieu d'enseignement public et de la vulnérabilité du groupe qu'on cherche à protéger : voir *Thomson Newspapers Co. c. Canada*

1 S.C.R. 877, at para. 87, “context is the indispensable handmaiden to the proper characterization of the objective of the impugned provision, to determining whether that objective is justified, and to weighing whether the means used are sufficiently closely related to the valid objective so as to justify an infringement of a *Charter* right”. As the Court stated in *Ross, supra*, at para. 82: “There can be no doubt that the attempt to foster equality, respect and tolerance in the Canadian educational system is a laudable goal. But the additional driving factor in this case is the nature of the educational services in question: we are dealing here with the education of young children.” See also *Sharpe, supra*, at para. 169, *per L'Heureux-Dubé, Gonthier and Bastarache JJ.*: “Because of their physical, mental, and emotional immaturity, children are one of the most vulnerable groups in society”; and *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519, 2000 SCC 48, at para. 73: “children are vulnerable and depend on their parents or other caregivers for the necessities of life, as well as for their physical, emotional and intellectual development and well-being. Thus, protecting children from harm has become a universally accepted goal: see the *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, now ratified by 191 states, including Canada.”

My review in the administrative law section of the objective behind the BCCT’s decision, namely to protect the classroom environment in public schools by ensuring that teachers meet the BCCT’s requisite standards, shows that it is pressing and substantial, as required by *R. v. Oakes*, [1986] 1 S.C.R. 103. I find that the BCCT’s decision also satisfies the proportionality test of *Oakes*. The burden placed on expression is rationally connected to the BCCT’s goal of ensuring a welcoming and supportive atmosphere in classrooms. The expression at issue, namely the signing of the Community Standards contract, is itself the source of the BCCT’s concern about the educational implications of teachers completing TWU’s training without the SFU year. Therefore a burden on this

(*Procureur général*), [1998] 1 R.C.S. 877, par. 87 : « le contexte est l’indispensable support qui permet de bien qualifier l’objectif de la disposition attaquée, de décider si cet objectif est justifié et d’apprécier si les moyens utilisés ont un lien suffisant avec l’objectif valide pour justifier une atteinte à un droit garanti par la *Charte* ». Comme notre Cour l’a affirmé dans l’arrêt *Ross*, précité, par. 82 : « Il ne fait aucun doute que tenter de promouvoir l’égalité, le respect et la tolérance dans le système d’enseignement canadien est un objectif louable. Toutefois, l’autre facteur déterminant en l’espèce est la nature des services éducatifs en question: il s’agit ici de l’éducation de jeunes enfants. » Voir également *Sharpe*, précité, par. 169, les juges L’Heureux-Dubé, Gonthier et Bastarache : « En raison de leur immaturité physique, mentale et émotive, les enfants forment un des groupes les plus vulnérables de la société »; *Office des services à l’enfant et à la famille de Winnipeg c. K.L.W.*, [2000] 2 R.C.S. 519, 2000 CSC 48, par. 73 : « les enfants sont vulnérables et [...] dépendent de leurs parents ou d’autres personnes responsables des soins pour les nécessités de la vie de même que pour leur développement et leur bien-être physique, affectif et intellectuel. La protection des enfants est en conséquence devenue un objectif universellement reconnu: voir la *Convention relative aux droits de l’enfant*, R.T. Can. 1992 n° 3, maintenant ratifiée par 191 États, dont le Canada. »

Dans la section portant sur le droit administratif, mon examen de l’objectif sous-jacent de la décision du BCCT, qui est de protéger le climat des salles de classe dans les écoles publiques en garantissant que les enseignants satisfont aux normes requises du BCCT, montre qu’il s’agit là d’un objectif urgent et réel, comme l’exige l’arrêt *R. c. Oakes*, [1986] 1 R.C.S. 103. Je suis d’avis que la décision du BCCT satisfait également au critère de proportionnalité énoncé dans l’arrêt *Oakes*. La restriction de la liberté d’expression comporte un lien rationnel avec l’objectif du BCCT de maintenir un climat favorable et accueillant dans les salles de classe. L’activité expressive en cause, soit la signature du contrat des normes communautaires, est elle-même à l’origine de la préoccupation du

expression is a rational response to the BCCT's mandate to protect the public interest. As indicated in my administrative law analysis, the BCCT had a reasonable apprehension of harm to the classroom environment; there is no need for scientific proof of cause and effect between the objective and the means: see *Ross, supra*, at para. 101.

BCCT concernant les répercussions qu'aurait sur l'enseignement la suppression de l'année à l'USF du programme de formation des enseignants de l'UTW. La restriction de cette activité expressive a donc un lien rationnel avec le mandat du BCCT de protéger l'intérêt public. Comme je l'ai indiqué dans mon analyse du droit administratif, le BCCT craignait raisonnablement une détérioration du climat des salles de classe; il n'est pas nécessaire de faire une preuve scientifique de cause à effet entre l'objectif visé et le moyen choisi pour l'atteindre : voir l'arrêt *Ross*, précité, par. 101.

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Further, I agree with Madam Justice Rowles that "[i]t would be inappropriate for this Court to suggest or endorse a particular set of conditions to meet the Council's compelling objective in the public school system" (para. 291). As Madam Justice McLachlin (now Chief Justice) wrote for the majority in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 160, "[i]f the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement". See also *Adler v. Ontario*, [1996] 3 S.C.R. 609, at para. 220, *per* McLachlin J.:

De plus, je partage l'opinion de madame le juge Rowles [TRADUCTION] « [qu'il] serait inapproprié pour notre Cour de proposer ou d'adopter un ensemble précis de conditions à remplir pour satisfaire à l'objectif impérieux que le Conseil poursuit dans le système scolaire public » (par. 291). Comme madame le juge McLachlin (maintenant Juge en chef) l'a écrit, au nom des juges majoritaires, dans l'arrêt *RJR-MacDonald Inc. c. Canada (Procureur général)*, [1995] 3 R.C.S. 199, par. 160, « [s]i la loi se situe à l'intérieur d'une gamme de mesures raisonnables, les tribunaux ne concluront pas qu'elle a une portée trop générale simplement parce qu'ils peuvent envisager une solution de rechange qui pourrait être mieux adaptée à l'objectif et à la violation ». Voir aussi l'arrêt *Adler c. Ontario*, [1996] 3 R.C.S. 609, par. 220, le juge McLachlin :

Where social issues are at stake, courts approach the legislature's decision as to what infringement is required to achieve the desired end with considerable deference. It is not difficult to conjure up hypothetical solutions which might infringe the right in question less than the solution chosen by the legislature. This alone is insufficient to allow the courts to declare that the legislature's solution violates the *Charter*. As long as the measure falls within a range of acceptable solutions to the problem, it will pass the minimal impairment test: *Edwards Books, supra, Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927; *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123; *R. v. Chaulk*, [1990] 3 S.C.R. 1303.

Lorsque des questions sociales sont en jeu, les tribunaux abordent avec énormément de retenue la décision du législateur pour ce qui est de déterminer l'atteinte requise pour réaliser la fin souhaitée. Il n'est pas difficile d'évoquer des solutions hypothétiques qui pourraient porter moins atteinte au droit en question que la solution retenue par le législateur. Cela n'est pas suffisant en soi pour permettre aux tribunaux de déclarer que la solution du législateur viole la *Charte*. Pourvu que la mesure se situe à l'intérieur d'une gamme de solutions acceptables au problème, elle satisfait au critère de l'atteinte minimale: *Edwards Books*, précité, *Irwin Toy Ltd. c. Québec (Procureur général)*, [1989] 1 R.C.S. 927, *Renvoi relatif à l'art. 193 et à l'al. 195.1(1)c) du Code criminel (Man.)*, [1990] 1 R.C.S. 1123, *R. c. Chaulk*, [1990] 3 R.C.S. 1303.

By falling within the acceptable range of solutions, the BCCT's decision satisfies the minimal impair-

Du fait qu'elle se situe dans la gamme de solutions acceptables, la décision du BCCT satisfait au volet

ment prong of the *Oakes* test. Finally, the extent of the deleterious effects on TWU and its students like Ms. Lindquist is more than offset by the salutary gains that will plausibly accrue in classrooms. I find, therefore, that the violation of s. 2(b) caused by the BCCT's decision is justified under s. 1.

Because in these reasons I find no unjustified individual rights violation, Ms. Lindquist's s. 2(d) claim also fails since TWU students are not unconstitutionally restrained from exercising their individual rights collectively: see *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367, at p. 403, *per* Sopinka J. My comments in that case are also apposite here, but only with respect to the Community Standards contract: "Though the pursuit of them may be lawful, the objects of some associations may be either sexist or racist or in some other fashion contemptible. To my mind it is difficult to suggest that the freedom envisaged by s. 2(d) was ever meant to embrace these objects" (p. 393).

In addition, the respondents claim violations of their freedom of religion. TWU's claim must confront the obstacle that this Court has not yet decided whether a religiously based corporation may initiate a s. 2(a) claim or whether in challenging the BCCT's decision TWU qualifies for standing as of right: see *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157. I will assume without deciding that TWU can advance a s. 2(a) claim. I find it without merit, however. I agree with Madam Justice Wilson's analogous analysis of religious school certification in *Jones*, *supra*, at p. 312. Here, as there, the impugned state action "does not offend religious freedom; it accommodates it. It . . . permits the existence of schools such as the [respondent TWU's] which have a religious orientation. It is a flexible piece of

de l'atteinte minimale du critère de l'arrêt *Oakes*. Enfin, l'ampleur des effets préjudiciables sur l'UTW et ses étudiants comme M<sup>me</sup> Lindquist est plus que compensée par les gains salutaires qui en résulteront vraisemblablement dans les salles de classe. Je suis donc d'avis que la violation de l'al. 2b) entraînée par la décision du BCCT est justifiée au regard de l'article premier.

Vu que je conclus, dans les présents motifs, à l'absence de violation injustifiée de droits individuels, l'argument de M<sup>me</sup> Lindquist fondé sur l'al. 2d) échoue également puisque les étudiants de l'UTW ne sont pas inconstitutionnellement empêchés d'exercer collectivement leurs droits individuels : voir *Institut professionnel de la Fonction publique du Canada c. Territoires du Nord-Ouest (Commissaire)*, [1990] 2 R.C.S. 367, p. 403, le juge Sopinka. Les commentaires que j'ai faits dans cet arrêt sont tout aussi pertinents en l'espèce, mais uniquement en ce qui concerne le contrat des normes communautaires : « Bien que leur poursuite puisse être légitime, les objectifs de certaines associations peuvent être soit sexistes soit racistes ou encore de quelque autre manière méprisables. Je considère qu'il est difficile d'affirmer que la liberté visée à l'al. 2d) a été conçue pour englober ces objectifs » (p. 393).

En outre, les intimées soutiennent qu'il a été porté atteinte à leur liberté de religion. L'argument de l'UTW se heurte au fait que notre Cour n'a pas encore décidé si une entité morale confessionnelle peut invoquer l'al. 2a) ou si, en contestant la décision du BCCT, l'UTW a qualité pour agir de plein droit : voir l'arrêt *Office canadien de commercialisation des œufs c. Richardson*, [1998] 3 R.C.S. 157. Je vais présumer, sans toutefois le décider, que l'UTW peut invoquer l'al. 2a). J'estime cependant que cet argument n'est pas fondé. Je souscris à l'analyse analogue que madame le juge Wilson fait de la délivrance d'un certificat par une école confessionnelle dans l'arrêt *Jones*, précité, p. 312. Comme c'était le cas dans cette affaire, la mesure étatique contestée en l'espèce « ne porte pas atteinte à la liberté religieuse; elle compose avec elle. Elle [. . .] autorise des écoles, comme celle de [l'intimée l'UTW], qui ont une orientation reli-

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legislation which seeks to ensure one thing—that all children receive an adequate education.”

100 With respect to Ms. Lindquist’s individual s. 2(a) claim, I adhere to the analysis of s. 2(a) expressed in my dissenting reasons in *Adler, supra*, at para. 72:

While s. 2(a) of the *Charter* is primarily concerned with the necessary limits to be placed on the state in its potentially coercive interference with the original, objectively perceived religious “choice” that individuals make, s. 15 ensures that consequences in behaviour and belief, which flow from this initial choice and are not perceived by the rights claimant as optional, not be impacted upon by state action in such a way as to attack the inherent dignity and consideration which are due all human persons. The protections afforded in s. 15 may thus be of greater scope than those in s. 2(a), as our concern moves from the coercive aspect of the state action to its impact on the individuals’ and groups’ sense of dignity and worth in the socio-economic context of the day.

I will therefore confine my appraisal of Donna Lindquist’s religious *Charter* rights to her s. 15 claim. There is no impairment of her s. 2(a) rights.

101 Madam Justice Rowles found that in this case “the burden on students for attending the religious school of their choice would be the exclusion from the automatic certification process for teaching in the public schools. This constitutes an adverse impact and is related to the students’ religious conviction” (para. 276). She thus found a violation of s. 15. This decision preceded our Court’s judgment in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497. Based on the guidelines assembled and applied in that case and in subsequent jurisprudence, I find that no s. 15 violation has been established by Ms. Lindquist.

gieuse. C’est une législation souple qui n’a qu’un seul but — que tous les enfants reçoivent un enseignement adéquat. »

Quant à l’argument fondé sur l’al. 2a) que M<sup>me</sup> Lindquist a avancé à titre individuel, je m’en tiens à l’analyse de l’al. 2a) qui figure dans les motifs dissidents que j’ai rédigés dans *Adler*, précité, par. 72 :

Si l’alinéa 2a) de la *Charte* s’intéresse avant tout aux restrictions qu’il faut apporter à une possibilité d’ingérence coercitive de l’État dans le « choix » initial objectif qu’une personne fait de sa religion, l’art. 15, lui, garantit que les conséquences sur le plan du comportement et de la foi — liées à ce choix initial et non considérées comme facultatives par celui qui invoque ces droits — ne seront pas touchées par des mesures prises par l’État d’une façon qui porte atteinte à la dignité et à la considération inhérentes dont il faut faire preuve envers tout être humain. En conséquence, les mécanismes de protection prévus à l’art. 15 pourraient être d’une plus grande étendue que ceux visés à l’al. 2a) du fait que notre préoccupation passe alors de l’aspect coercitif de la mesure prise par l’État à son incidence sur la valeur et la dignité de la personne et du groupe dans le contexte socio-économique du jour.

Je vais donc confiner mon évaluation des droits religieux que la *Charte* garantit à Donna Lindquist à l’argument fondé sur l’art. 15 qu’elle avance. Il n’y a eu aucune violation des droits que lui garantit l’al. 2a).

Madame le juge Rowles a conclu que, dans la présente affaire, [TRADUCTION] « en fréquentant l’école confessionnelle de leur choix, les étudiants étaient exclus du processus de délivrance automatique d’un brevet d’enseignement les autorisant à enseigner dans des écoles publiques. Cela constitue un effet préjudiciable lié aux convictions religieuses des étudiants » (par. 276). Elle a donc décidé qu’il y avait violation de l’art. 15. Cette décision a précédé l’arrêt de notre Cour *Law c. Canada (Ministre de l’Emploi et de l’Immigration)*, [1999] 1 R.C.S. 497. Compte tenu des lignes directrices réunies et appliquées dans cet arrêt et dans la jurisprudence subséquente, j’estime que M<sup>me</sup> Lindquist n’a pas démontré l’existence d’une violation de l’art. 15.

The *Law* guidelines ask whether the challenged state action draws a formal distinction between the claimant and others on the basis of one or more personal characteristics. They further inquire whether the claimant is subject to differential treatment based on one or more enumerated and analogous grounds. The distinction and differential treatment resulting from the BCCT's decision are not based on Ms. Lindquist's religion, but on the act of signing the Community Standards contract performed by TWU students. There is every indication that the BCCT would be as concerned if a private secular institution were to require a discriminatory practice (assuming for the sake of argument that this hypothetical secular equivalent to TWU were also shielded from human rights legislation). The impugned decision is neutral with regard to the claimant's religion. I understand this case to be an example of a type of s. 15 challenge predicted by the Court in *Law*. There, Iacobucci J. described "adverse effects discrimination . . . cases where a law which applies identically to all fails to take into account the claimant's different traits or circumstances, yet does not infringe the claimant's human dignity in so doing. In such cases, there could be said to be substantively differential treatment between the claimant and others, because the law has a meaningfully different effect upon the claimant, without there being discrimination for the purpose of s. 15(1)" (para. 86 (emphasis added)).

*Law*, *supra*, at para. 53, described the inquiry into human dignity as follows:

Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recog-

D'après les lignes directrices de l'arrêt *Law*, il faut se demander si la mesure étatique contestée établit entre le demandeur et d'autres personnes une distinction formelle fondée sur une seule ou plusieurs caractéristiques personnelles. Il faut également se demander si le demandeur fait l'objet d'une différence de traitement fondée sur un seul ou plusieurs des motifs énumérés ou des motifs analogues. La distinction et la différence de traitement qui résultent de la décision du BCCT sont fondées non pas sur la religion de M<sup>me</sup> Lindquist, mais sur la signature même du contrat des normes communautaires par les étudiants de l'UTW. Il y a tout lieu de croire que le BCCT serait tout aussi préoccupé si un établissement laïque privé imposait une pratique discriminatoire (en supposant, pour les fins de la discussion, que cet équivalent laïque hypothétique de l'UTW échapperait également à l'application de la législation relative aux droits de la personne). La décision contestée est tout à fait neutre quant à la religion de la demanderesse. J'estime que le présent pourvoi illustre le genre de contestation fondée sur l'art. 15 que la Cour a prédit dans l'arrêt *Law*. Dans cet arrêt, le juge Iacobucci parle de cas de « discrimination par suite d'effets préjudiciables [. . .] où une loi s'appliquant indistinctement à tous omet de tenir compte des caractéristiques ou de la situation personnelles du demandeur sans toutefois porter atteinte à sa dignité. Dans de tels cas, on pourrait dire que, la loi ayant un effet vraiment différent sur le demandeur, il y a une différence de traitement réelle entre le demandeur et les autres personnes, sans qu'il y ait pour autant discrimination au sens du par. 15(1) » (par. 86 (je souligne)).

L'arrêt *Law*, précité, par. 53, décrit ce que signifie la dignité humaine :

La dignité humaine signifie qu'une personne ou un groupe ressent du respect et de l'estime de soi. Elle relève de l'intégrité physique et psychologique et de la prise en main personnelle. La dignité humaine est bafouée par le traitement injuste fondé sur des caractéristiques ou la situation personnelles qui n'ont rien à voir avec les besoins, les capacités ou les mérites de la personne. Elle est rehaussée par des lois qui sont sensibles aux besoins, aux capacités et aux mérites de différentes personnes et qui tiennent compte du contexte sous-jacent à leurs différences. La dignité humaine est

nize the full place of all individuals and groups within Canadian society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society *per se*, but rather concerns the manner in which a person legitimately feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law? [Emphasis added.]

Importantly, as my reasons stated in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, “I would emphasize that the ‘reasonable person’ considered by the subjective-objective perspective [on human dignity] understands and recognizes not only the circumstances of those like him or her, but also appreciates the situation of others. Therefore, when legislation impacts on various groups, particularly if those groups are disadvantaged, the subjective-objective perspective will take into account the particular experiences and needs of all of those groups” (para. 65 (last emphasis added)). In my view, the disadvantaged group in this case is that composed of homosexual and bisexual public school students, who have generally experienced “pre-existing disadvantage, vulnerability, stereotyping, or prejudice” (*Law, supra*, at para. 63). It is their human dignity that is truly at stake.

bafouée lorsque des personnes et des groupes sont marginalisés, mis de côté et dévalorisés, et elle est rehaussée lorsque les lois reconnaissent le rôle à part entière joué par tous dans la société canadienne. Au sens de la garantie d’égalité, la dignité humaine n’a rien à voir avec le statut ou la position d’une personne dans la société en soi, mais elle a plutôt trait à la façon dont il est raisonnable qu’une personne se sente face à une loi donnée. La loi traite-t-elle la personne injustement, si on tient compte de l’ensemble des circonstances concernant les personnes touchées et exclues par la loi? [Je souligne.]

Ce qui importe, pour reprendre mes motifs dans l’arrêt *Corbiere c. Canada (Ministre des Affaires indiennes et du Nord canadien)*, [1999] 2 R.C.S. 203, « [j]e tiens à souligner que la “personne raisonnable” prise en considération dans cette analyse subjective-objective [de la dignité humaine] comprend et admet non seulement la situation des personnes qui sont comme elle, mais elle est également sensible à la situation d’autrui. Par conséquent, dans les cas où une mesure législative produit des effets sur divers groupes, spécialement si ces groupes sont défavorisés, cette analyse subjective-objective tiendra compte des expériences et besoins particuliers de chacun de ces groupes » (par. 65 (dernier soulignement ajouté)). À mon avis, le groupe défavorisé en l’espèce est celui composé des élèves homosexuels et bisexuels des écoles publiques, qui sont généralement aux prises avec la « préexistence d’un désavantage, de vulnérabilité, de stéréotypes ou de préjugés » (*Law, précité*, par. 63). C’est leur dignité humaine qui est véritablement en jeu.

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*Law* enumerated three other contextual factors to guide the inquiry into whether state action has violated human dignity. Before delving into these, I would like to state that I recognize that Ms. Lindquist may herself feel singled out on the basis of religious belief. Nevertheless, I believe that a subjective-objective examination of *Law*’s contextual factors reveals that her human dignity is not demeaned by the BCCT’s decision to attach consequences to TWU students’ signature of the Community Standards contract. A reasonable person with similar characteristics to the claimant, who is fully informed of the circumstances and context and rationally takes them into account, as posited by *Law*, at para. 61, would not feel less capable, or

L’arrêt *Law* énumère trois autres facteurs contextuels utiles pour déterminer si une mesure étatique a porté atteinte à la dignité humaine. Avant d’examiner ces facteurs, j’aimerais préciser que je reconnais que M<sup>me</sup> Lindquist a pu elle-même se sentir traitée différemment en raison de ses croyances religieuses. J’estime néanmoins qu’une analyse à la fois subjective et objective des facteurs contextuels de l’arrêt *Law* révèle que la décision du BCCT d’attacher des conséquences à la signature du contrat des normes communautaires par les étudiants de l’UTW ne porte pas atteinte à la dignité humaine de M<sup>me</sup> Lindquist. Une personne raisonnable qui aurait des caractéristiques similaires à celles de la demanderesse, qui serait

less worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration: see *Law, supra*, at para. 49, quoting *Egan, supra*, at para. 39, *per* L'Heureux-Dubé J.

She would take note of the fact that a public institution could not require students to engage in the discriminatory practice of TWU. This mandatory discrimination insulates the BCCT's focus on TWU students' complicity with it from attack as a stereotype. According to *Law, supra*, at para. 64, "[a] stereotype may be described as a misconception whereby a person or, more often, a group is unfairly portrayed as possessing undesirable traits, or traits which the group, or at least some of its members, do not possess." In this case, the undeniable fact is that TWU students sign their names to a discriminatory document.

Our reasonable person would further observe that while the religious exemption from human rights legislation allows for religious teacher training institutions in British Columbia to self-regulate without state interference, once graduates ask to be accredited for public school teaching, the public interest comes to the fore and reasonable secular requirements can be imposed without infringing the freedom of religion: see *Jones, supra*. If the religious exemption were allowed to shield TWU graduates from complete scrutiny of their abilities to work and to be perceived to work effectively in diverse classrooms, then an advantage would be conferred on these students as compared with public institution graduates, suggested as the appropriate comparator group by the respondents.

bien informée des circonstances et du contexte et qui les prendrait en considération de façon rationnelle, pour citer l'arrêt *Law*, par. 61, n'aurait pas l'impression d'être moins capable ou de moins mériter d'être reconnue ou valorisée en tant qu'être humain ou en tant que membre de la société canadienne qui mérite le même intérêt, le même respect et la même considération voir l'arrêt *Law*, précité, par. 49, où on cite *Egan*, précité, par. 39, le juge L'Heureux-Dubé.

Elle tiendrait compte du fait qu'un établissement public ne pourrait pas obliger ses étudiants à se livrer à la pratique discriminatoire de l'UTW. Cette discrimination obligatoire fait en sorte que l'accent mis par le BCCT sur la complicité des étudiants de l'UTW à cet égard ne peut pas être qualifié de stéréotype. Selon l'arrêt *Law*, précité, par. 64, « [u]n stéréotype peut se définir comme une conception erronée à partir de laquelle une personne ou, la plupart du temps un groupe, est injustement dépeint comme possédant des caractéristiques indésirables, ou des caractéristiques que le groupe, ou au moins certains de ses membres, ne possède pas. » En l'espèce, il est indéniable que les étudiants de l'UTW apposent leur signature à un document discriminatoire.

Notre personne raisonnable ferait également observer que, bien que l'exemption religieuse de l'application de la législation relative aux droits de la personne permette aux établissements confessionnels de formation des enseignants de s'autogérer sans l'intervention de l'État en Colombie-Britannique, dès que les diplômés demandent un brevet d'enseignement les autorisant à enseigner dans des écoles publiques, l'intérêt public revêt alors une importance prépondérante et des exigences laïques raisonnables peuvent être imposées sans porter atteinte à la liberté de religion : voir l'arrêt *Jones*, précité. Si l'exemption religieuse pouvait permettre aux diplômés de l'UTW d'échapper à un examen complet de leurs aptitudes à travailler et d'être perçus comme étant efficaces dans diverses salles de classe, ces étudiants seraient alors avantagés par rapport aux diplômés des établissements publics, que les intimées proposent comme groupe de comparaison approprié.

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Depriving TWU students of such an advantage is not an affront to their human dignity.

Priver les étudiants de l'UTW d'un tel avantage ne porte pas atteinte à leur dignité humaine.

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The four contextual factors identified in *Law* all militate against finding a violation of Ms. Lindquist's human dignity. I have already discussed the fact that the historically disadvantaged group in this case is that composed of homosexual and bisexual public school students. The second relevant *Law* factor examines whether the state action takes into account a claimant's actual situation. The BCCT's decision was tailored to the fact that students like Ms. Lindquist signed the Community Standards contract. Yet due to the irrelevance of the enumerated ground, namely religion, to the decision, and to the absence of Ms. Lindquist from the proceedings, the BCCT did not take her religious circumstances into consideration. I do not find this to be an affront to Ms. Lindquist's human dignity, however, since her *Charter* rights could not have been properly considered in the BCCT's deliberations.

Les quatre facteurs contextuels décrits dans l'arrêt *Law* indiquent tous qu'il n'y a pas lieu de conclure qu'il y a eu atteinte à la dignité humaine de M<sup>me</sup> Lindquist. J'ai déjà mentionné que le groupe historiquement défavorisé en l'espèce est composé des étudiants homosexuels et bisexuels des écoles publiques. Le deuxième facteur pertinent auquel renvoie l'arrêt *Law* consiste à déterminer si la mesure étatique tient compte de la situation véritable du demandeur. La décision du BCCT tenait compte du fait que des étudiants comme M<sup>me</sup> Lindquist avaient signé le contrat des normes communautaires. Pourtant, le BCCT n'a pas tenu compte de la situation de M<sup>me</sup> Lindquist sur le plan religieux parce que celle-ci n'a pas pris part aux procédures et parce que le motif énuméré qu'est la religion n'était pas pertinent pour les fins de la décision. J'estime cependant que cela ne porte pas atteinte à la dignité humaine de M<sup>me</sup> Lindquist, étant donné que les droits que lui garantit la *Charte* n'auraient pas pu être dûment considérés lors des délibérations du BCCT.

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The third *Law* factor looks for ameliorative purpose or effects: "An ameliorative purpose or effect which accords with the purpose of s. 15(1) of the *Charter* will likely not violate the human dignity of more advantaged individuals where the exclusion of these more advantaged individuals largely corresponds to the greater need or the different circumstances experienced by the disadvantaged group being targeted by the legislation" (para. 72). See also *Lovelace v. Ontario*, [2000] 1 S.C.R. 950, 2000 SCC 37, at para. 95, discussing the interpretive assistance provided for s. 15(1) by the language of s. 15(2) and quoting with approval Madam Justice Wilson's statement in *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, at pp. 474-75: "By its terms s. 15(2) informs us that measures aimed at ameliorating the conditions of those who are disadvantaged . . . (those in other words who have been the victims of discrimination) are constitutionally permissible. In this way subsection (2) strengthens the notion adopted by this Court in *Andrews v. Law Society of British*

Le troisième facteur relevé dans l'arrêt *Law* est l'objet ou l'effet d'amélioration : « Un objet ou un effet apportant une amélioration qui est compatible avec l'objet du par. 15(1) de la *Charte* ne violera vraisemblablement pas la dignité humaine de personnes plus favorisées si l'exclusion de ces personnes concorde largement avec les besoins plus grands ou la situation différente du groupe défavorisé visé par les dispositions législatives » (par. 72). Voir également l'arrêt *Lovelace c. Ontario*, [2000] 1 R.C.S. 950, 2000 CSC 37, par. 95, où on analyse la manière dont le texte du par. 15(2) sert d'outil d'interprétation du par. 15(1) et où on cite, en les approuvant, les propos que madame le juge Wilson a tenus dans l'arrêt *Harrison c. Université de la Colombie-Britannique*, [1990] 3 R.C.S. 451, p. 474-475 : « Par ses termes mêmes, le par. 15(2) nous assure de la constitutionnalité des mesures destinées à améliorer la situation de ceux qui sont défavorisés [. . .] (en d'autres termes, ceux qui ont été victimes de la discrimination). De cette façon, le par. (2) renforce la

*Columbia*, [1989] 1 S.C.R. 143, that what lies at the heart of the equality guarantee is protection from discrimination”. In these reasons, I have discussed why homosexual and bisexual students have an acute need for welcoming and supportive classroom environments. The BCCT’s decision attempts to alleviate the effects on this disadvantaged group of a discriminatory practice engaged in by the group represented by the s. 15 claimant. This is clearly an ameliorative purpose, one which does not violate Ms. Lindquist’s human dignity.

The fourth *Law* factor examines the nature of the interest affected and also indicates to me that there is no cognizable affront to Ms. Lindquist’s human dignity. *Law* quoted with approval the pertinent section of my reasons in *Egan, supra*. There I wrote that “a group’s interests will be more adversely affected in cases involving complete exclusion or non-recognition than in cases where the legislative distinction does recognize or accommodate the group, but does so in a manner that is simply more restrictive than some would like” (para. 64 (emphasis in original)). See also *Lovelace, supra*, at para. 88. I do not consider the impact of the BCCT’s decision on Ms. Lindquist to be severe enough to conclude that its effect on her interest in not studying at all under the auspices of SFU violates her human dignity. She remains free to apply to the BCCT for individual certification and the requirement to spend one year at SFU is not overly onerous for her or for the future of TWU’s educational community. The BCCT’s decision merely maintains the *status quo ante* for TWU students. What was affected by it was only Ms. Lindquist’s interest in automatic certification for TWU students, since there is no right for TWU to receive such accreditation from the BCCT. The BCCT seeks not to penalize future teachers from TWU, but to ensure that they pos-

notion adoptée par cette Cour dans l’arrêt *Andrews c. Law Society of British Columbia*, [1989] 1 R.C.S. 143, selon laquelle la garantie d’égalité vise essentiellement à protéger contre la discrimination. » Dans les présents motifs, j’ai expliqué pourquoi les étudiants homosexuels et bisexuels ont un besoin pressant de disposer d’un climat accueillant et favorable dans les salles de classe. La décision du BCCT tente d’atténuer l’effet sur ce groupe défavorisé d’une pratique discriminatoire à laquelle se livre le groupe représenté par l’auteur de la demande fondée sur l’art. 15. Cela représente nettement une mesure destinée à améliorer la situation, mesure qui ne porte pas atteinte à la dignité humaine de M<sup>me</sup> Lindquist.

Le quatrième facteur de l’arrêt *Law* a trait à la nature du droit touché et m’indique également qu’il n’y a eu aucune atteinte perceptible à la dignité humaine de M<sup>me</sup> Lindquist. Dans l’arrêt *Law*, on a cité, en l’approuvant, la partie pertinente de mes motifs dans l’arrêt *Egan*, précité. Dans ce dernier arrêt, j’avais écrit que « les droits du groupe qui est complètement exclu ou ignoré seront touchés plus gravement que si la distinction législative reconnaît ou accommode effectivement le groupe, de façon cependant plus limitée que certains le souhaiteraient » (par. 64 (souligné dans l’original)). Voir également l’arrêt *Lovelace*, précité, par. 88. Selon moi, la décision du BCCT n’a pas une incidence assez grave sur M<sup>me</sup> Lindquist pour que nous puissions conclure que son droit de ne pas étudier sous l’égide de l’USF est touché à tel point qu’il y a atteinte à sa dignité humaine. Il lui est toujours loisible de demander au BCCT de lui délivrer un brevet d’enseignement à titre individuel, et l’exigence de passer une année à l’USF n’est pas trop onéreuse en ce qui la concerne ou en ce qui a trait à l’avenir du milieu d’enseignement de l’UTW. La décision du BCCT ne fait que maintenir le *status quo ante* des étudiants de l’UTW. Elle ne touche que le droit de M<sup>me</sup> Lindquist à la délivrance automatique d’un brevet d’enseignement dont bénéficient les étudiants de l’UTW, puisque l’UTW ne possède aucun droit à la délivrance d’un tel brevet par le BCCT. Le BCCT cherche non pas à pénaliser les futurs enseignants provenant de l’UTW, mais à garantir qu’ils ont les

sess the requisites to teach in British Columbia's public schools.

110 I therefore close my *Charter* analysis by holding that no violation of Ms. Lindquist's s. 15 equality rights has been demonstrated.

#### V. Conclusion

111 I have found that the BCCT had jurisdiction to consider TWU's discriminatory practices. Using a standard of review of patent unreasonableness, I then demonstrated why the BCCT's decision not to accredit a free-standing TWU teacher training program should be upheld. Lastly, I rejected *Charter*-based challenges to the decision. For these reasons, I would allow the appeal and set aside the orders of the trial judge.

*Appeal dismissed with costs, L'HEUREUX-DUBÉ J. dissenting.*

*Solicitors for the appellant: Nelson & Vanderkruyk, Vancouver.*

*Solicitors for the respondents: Kuhn & Company, Abbotsford, British Columbia.*

*Solicitors for the intervener the Evangelical Fellowship of Canada: Stikeman, Elliott, Toronto.*

*Solicitors for the intervener the Ontario Secondary School Teachers' Federation: Green & Chercover, Toronto.*

*Solicitors for the intervener the Canadian Conference of Catholic Bishops: Barnes, Sammon, Ottawa.*

*Solicitors for the intervener the British Columbia Civil Liberties Association: Lindsay Kenney, Vancouver.*

*Solicitors for the intervener EGALE Canada Inc.: Elliott & Kim, Toronto.*

qualifications requises pour enseigner dans les écoles publiques de la Colombie-Britannique.

Je termine donc mon analyse fondée sur la *Charte* en concluant que l'on n'a pas démontré l'existence d'une atteinte aux droits à l'égalité que l'art. 15 garantit à M<sup>me</sup> Lindquist.

#### V. Conclusion

J'ai conclu que le BCCT avait compétence pour prendre en considération les pratiques discriminatoires de l'UTW. Appliquant la norme de contrôle du caractère manifestement déraisonnable, j'ai ensuite démontré pourquoi il y a lieu de confirmer la décision du BCCT de ne pas agréer un programme autonome de formation des enseignants offert par l'UTW. Enfin, j'ai rejeté les contestations de la décision fondées sur la *Charte*. Pour ces motifs, j'accueillerais le pourvoi et j'annulerais les ordonnances du juge de première instance.

*Pourvoi rejeté avec dépens, le juge L'HEUREUX-DUBÉ est dissidente.*

*Procureurs de l'appelant: Nelson & Vanderkruyk, Vancouver.*

*Procureurs des intimées: Kuhn & Company, Abbotsford (Colombie-Britannique).*

*Procureurs de l'intervenante l'Alliance évangélique du Canada: Stikeman, Elliott, Toronto.*

*Procureurs de l'intervenante la Fédération des enseignantes-enseignants des écoles secondaires de l'Ontario: Green & Chercover, Toronto.*

*Procureurs de l'intervenante la Conférence des évêques catholiques du Canada: Barnes, Sammon, Ottawa.*

*Procureurs de l'intervenante la British Columbia Civil Liberties Association: Lindsay Kenney, Vancouver.*

*Procureurs de l'intervenante EGALE Canada Inc.: Elliott & Kim, Toronto.*

*Solicitors for the interveners the Christian Legal Fellowship and the Seventh-Day Adventist Church in Canada: Fraser Milner Casgrain, Calgary.*

*Solicitors for the intervener the Canadian Civil Liberties Association: Gowling, Strathy & Henderson, Toronto.*

*Procureurs des intervenantes la Christian Legal Fellowship et l'Église adventiste du septième jour au Canada : Fraser Milner Casgrain, Calgary.*

*Procureurs de l'intervenante l'Association canadienne des libertés civiles : Gowling, Strathy & Henderson, Toronto.*

# Appendix B

MEMORANDUM

**PRIVILEGED AND CONFIDENTIAL**

**To**                   Gérald R. Tremblay, C.M., O.Q., Q.C.,      **Date**                   March 21, 2013  
                          Ad. E.  
                          President  
                          Federation of Law Societies of Canada

                          Jonathan G. Herman  
                          Chief Executive Officer  
                          Federation of Law Societies of Canada

**From**               John B. Laskin

**Re**                   Trinity Western University School of Law Proposal –  
                          Applicability of Supreme Court decision in *Trinity Western University v. British  
                          Columbia College of Teachers*

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**Overview**

You have asked for my advice on the extent to which the decision of the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*,<sup>1</sup> rendered in 2001, applies to consideration of the Trinity Western University School of Law proposal, which TWU has submitted to the Canadian Common Law Program Approval Committee.

Before setting out my advice on this question I will first review in some detail the Supreme **Court's decision**. Next, I will discuss the stage of the approval process at which the *BCCT* case could come into play. I will then proceed to my conclusion: that if approval of the TWU proposal were refused on the basis of concerns about its discriminatory practices, and that decision were challenged, the *BCCT* decision would govern the result. As discussed below, I base that conclusion on the parallels between the circumstances in *BCCT* and those posited here, the currency of the approach taken in *BCCT* to the balancing the *Charter* values of equality and religious freedom, and the likelihood of an absence of evidence of the type of harm that would justify upholding the decision. I conclude by considering a number of the arguments that have been put forward in support of the view that *BCCT* would not apply.

**The Supreme Court decision in *BCCT***

***Factual background***

The *BCCT* case arose from an application by TWU to the College of Teachers for approval of its program of teacher education for the purpose of certifying its graduates as eligible to teach in the province's public schools. The *BCCT* was authorized by statute to carry out this approval

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<sup>1</sup> 2001 SCC 31 ("*BCCT*" or "the *BCCT* case")

**function. Its statutory objects included “to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership.” Its policies for approval of teacher education programs for certification purposes set three criteria for approval: context (including depth and breadth of personnel, research and other scholarly activity), selection (including an admission policy that recognized the importance of academic standing, interest in working with young people and suitability for entrance into the teaching profession) and content of the program.**

Though there was no evidence that the TWU program would not meet these criteria, the BCCT **rejected the request for approval. It did so on the basis that TWU’s proposed program followed discriminatory practices, which were contrary to the public interest and public policy.** The focus of the BCCT’s **concern was the requirement for students at TWU to sign a “Community Standards” document. This document included an agreement to “refrain from practices that are biblically condemned.” Among the practices specified were “sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography.” Faculty and staff were to sign a similar document.** The requirement, in the view of the BCCT, had the effect of excluding persons from TWU on the basis of their sexual orientation.

**TWU sought judicial review of the BCCT’s decision. It challenged the BCCT’s jurisdiction to consider the TWU practices that it regarded as discriminatory, and asserted that even if the BCCT had jurisdiction, there was no evidence of discriminatory consequences resulting from these practices.**

### ***Jurisdiction to consider alleged discriminatory practices***

The Supreme Court first **held that it was within the jurisdiction of the BCCT to consider TWU’s discriminatory practices.** Since teachers were a medium for the transmission of values, it was important that future teachers understand the diversity of Canadian society. In determining suitability for entrance into the teaching profession, the BCCT was therefore entitled to take into **account “all features of the education program at TWU,” and it would not be correct “to limit the scope of [the BCCT’s statutory objects] to a determination of skills and knowledge.”** The BCCT’s public interest jurisdiction made it appropriate for it to consider concerns about equality. Though it was not directly applying either the *Charter* or human rights legislation, it was entitled to consider them in determining whether it would be in the public interest to allow public school teachers to be trained at TWU.<sup>2</sup>

The Court determined, based on the prevailing standard of review jurisprudence and **consideration of the nature of the BCCT’s expertise, that the BCCT’s decision should be reviewed on the standard of correctness.**<sup>3</sup> It went on to consider two questions: first, whether the **requirement of adherence to the “Community Standards” document, and the program and practices of TWU, showed that TWU was engaging in discriminatory practices;** and second, whether, if so, these discriminatory practices established a risk of discrimination sufficient to conclude that TWU graduates should not be admitted to teach in the public schools.

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<sup>2</sup> *Id.* at paras. 13, 26-27

<sup>3</sup> *Id.* at paras. 15-19

### ***Existence of discriminatory practices***

In considering the first question, the Court found that a homosexual student would not be likely to apply to TWU. It observed, however, that TWU was “not for everybody” – rather, it was designed to address the needs of people who share certain religious convictions. Its admissions policy, the Court found, was not sufficient to establish discrimination within the meaning of the *Charter*. It went on: “To state that the voluntary adoption of a code of conduct based on a person’s own religious beliefs, in a private institution, is sufficient to engage s. 15 [of the *Charter*] would be inconsistent with freedom of conscience and religion, which co-exist [sic] with the right to equality.”<sup>4</sup> While the BCCT was entitled to consider concerns about equality, it was also required to consider issues of religious freedom.

The Court noted in this connection that **British Columbia’s human rights legislation** accommodates religious freedom by providing that a religious institution does not breach the legislation when it prefers adherents of its religion, and that the B.C. legislature must not have considered that university education with a Christian philosophy was contrary to the public interest, since it had passed legislation in favour of TWU.<sup>5</sup> It also referred to the contribution made by religious institutions to the diversity of Canadian society, and the tradition in Canada of religion-based institutions of higher learning.<sup>6</sup> While homosexuals might be discouraged from attending TWU, that would not prevent them from becoming teachers. On the other hand, the Court stated, the freedom of religion of students at TWU would not be accommodated if they were denied that opportunity.<sup>7</sup>

### ***Sufficient risk of discrimination***

The central issue in the case, therefore, was how to reconcile the religious freedom of individuals wishing to attend TWU with the equality concerns of public school students, their parents, and society generally. The Court held that the potential conflict between the two sets of rights and values should be resolved through their proper delineation.<sup>8</sup>

The proper place to draw the line, the Court held, was between belief and conduct. It followed that “[a]bsent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.”<sup>9</sup> There was no evidence that graduates of TWU would not treat homosexuals fairly and respectfully, and no evidence of discriminatory conduct by any graduate of the teaching program that TWU had been offering jointly with Simon Fraser University. Absent evidence that training teachers at TWU would “pose a real risk to the public educational system,” the BCCT had been wrong to refuse approval. “In considering the religious precepts of TWU instead of the actual impact of those beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations.”<sup>10</sup> If there were evidence that particular teachers in the public school system actually engaged in discriminatory conduct, discipline proceedings before

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<sup>4</sup> *Id.* at para. 25

<sup>5</sup> *Id.* at paras. 28, 35

<sup>6</sup> *Id.* at paras. 33-34

<sup>7</sup> *Id.* at para. 35

<sup>8</sup> *Id.* at para. 28

<sup>9</sup> *Id.* at para. 36

<sup>10</sup> *Id.* at paras. 35, 42-43

the BCCT could be taken.<sup>11</sup> But there was no basis in the evidence for concluding that graduates of TWU would engage in conduct of this kind.

### **Stage of the approval process at which *BCCT* could apply**

It is not likely in my view that the *BCCT* decision would be applicable to a decision made by the Approval Committee within the scope of its current mandate. On my understanding of the current mandate of the Approval Committee, it is limited to considering the dimension of the public interest reflected in the national requirement. It may therefore consider the practices of **TWU that are alleged to be discriminatory only to the extent of considering whether TWU's** mission and perspective would constrain in any respect the teaching of the competencies set out in the national requirement. If the Approval Committee were to conclude that the teaching of the required competencies would be constrained so as to render the TWU School of Law unable to meet the national requirement, that decision would likely not engage the concerns about *Charter* values that underlay the decision in *BCCT*. It would be based not on generalized concerns about discriminatory practices grounded in religious beliefs, but on the conclusion that the TWU program would fail to teach a set of competencies that are required irrespective of religion.<sup>12</sup>

The *BCCT* decision could however come into play if the mandate of the Approval Committee were expanded to include other dimensions of the public interest, and it then decided to refuse approval of the TWU program based on concerns about discriminatory practices. It could also come into play if, despite the conclusion of the Approval Committee that the TWU program should be approved, one or more of the law societies decided, based on concerns about discriminatory practices and its view of the public interest, to refuse to accept completion of the TWU program as meeting the academic requirements for admission to the profession. Like the BCCT, law societies have been given a public interest mandate.

A variety of threshold issues could arise depending on precisely how and when in the approval process a challenge based on the *BCCT* decision was brought. These include issues of appropriate procedure and the manner in which *Charter* values may be invoked in relation to a decision of a committee of the Federation. I would be pleased to consider these matters further if you would like me to do so. In this discussion, I will focus on the substantive question whether, if a decision to refuse approval of TWU's program were made based on the practices that are alleged to be discriminatory, *BCCT* would govern the result.

### **Applicability of *BCCT***

In my view the answer to that question is that it would. I come to this view for three main reasons.

First, if a decision to refuse approval of TWU's program were made based on the practices that are alleged to be discriminatory, there would be a great many parallels between the circumstances that would then prevail and those in *BCCT*. These parallels would include the following.

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<sup>11</sup> *Id.* at para. 37

<sup>12</sup> In making this point I do not intend to suggest that the Approval Committee would or should come to this conclusion.

- As in *BCCT*, the decision under review would be a decision whether completion of a program offered by TWU would meet the academic requirements for entry into a profession.
- As in *BCCT*, the decision would have been made by a body having a mandate to act in the public interest.
- As in *BCCT*, the concerns on which the decision was based would focus on the requirement that students at TWU sign a document in which they agree to abstain from, among other things, homosexual sexual activity while attending TWU. (The current document, entitled “**Community Covenant Agreement**,” is cast in somewhat less pointed terms than the document considered in *BCCT*. It no longer speaks of homosexual behavior as a “sexual sin” that is “biblically condemned.” Instead it calls on members of the TWU community, “[i]n keeping with biblical and TWU ideals,” to voluntarily abstain from, among other things, “sexual intimacy that violates the sacredness of marriage between a man and a woman.”)
- As in *BCCT*, TWU remains a private, faith-based university, founded by the Evangelical Free Churches of Canada and America, established as a university by British Columbia statute, and exempted, in part, from the B.C. *Human Rights Code*.

Second, the Supreme Court of Canada continues to apply the balancing approach that it took in *BCCT* where more than one set of *Charter* rights or values – in that case the values associated with equality and freedom of religion – are engaged.

The Supreme Court has consistently rejected a hierarchical approach to rights and values, which places some over others.<sup>13</sup> It did so yet again in its very recent decision in *Saskatchewan (Human Rights Commission) v. Whatcott*.<sup>14</sup> In that case the Court engaged in a balancing of the same two sets of values (along with freedom of expression) that it considered in *BCCT*, in a manner very analogous to that in *BCCT*. In so doing it reiterated the statement the Court first made in *Big M Drug Mart*, the seminal *Charter* freedom of religion case, that the right to manifest religious belief by teaching is part of “[t]he essence of the concept of freedom of religion.”<sup>15</sup>

In *Whatcott*, the Court addressed the constitutional validity of the prohibition of hate speech in Saskatchewan human rights legislation. It was alleged that certain flyers distributed by Whatcott infringed the prohibition by promoting hatred on the basis of sexual orientation; Whatcott maintained that the flyers constituted the exercise of his freedom of expression and freedom of religion. The Court saw the case as requiring it

to balance the fundamental values underlying freedom of expression (and, later, freedom of religion) in the context in which they are invoked, with competing *Charter* rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings.<sup>16</sup>

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<sup>13</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 877

<sup>14</sup> 2013 SCC 11

<sup>15</sup> *Id.* at para. 159

<sup>16</sup> *Id.* at para. 66

In striking this balance, which resulted in its severing certain portions of the prohibition but upholding the remainder, and finding the conclusion that there was a contravention of the legislation unreasonable for two of the four flyers in issue and reasonable for the other two, the **Court stated that** “the protection provided under s. 2(a) [the freedom of religion guarantee] should extend broadly,” and that “[w]hen reconciling *Charter* rights and values, freedom of religion and the right to equality accorded all residents of Saskatchewan must co-exist.”<sup>17</sup> It also **referred to the** “mistaken propensity to focus on the nature of the ideas expressed, rather than on the likely effects of the expression.”

Just as in *BCCT*, the Supreme Court in *Whatcott* found the proper balance point between equality and freedom of religion values to be the point at which conduct linked to the exercise of freedom of religion resulted in actual harm. Absent evidence of actual harm, it held in both cases, freedom of religion values must be given effect.

This leads to the third reason for concluding that *BCCT* would govern the result in the circumstances posited here: the likely absence of evidence of actual harm. I recognize of course that lawyers in Canada are subject to ethical duties to treat others with respect and avoid discrimination.<sup>18</sup> But in *BCCT*, the Supreme Court was acutely sensitive to the role of teachers as a “medium for the transmission of values.” The Court considered it “obvious that the pluralistic nature of society and the extent of diversity in Canada are important elements that must be understood by future teachers.”<sup>19</sup> The Court nonetheless had no difficulty concluding that graduates of TWU would “treat homosexuals fairly and respectfully.”<sup>20</sup>

If the TWU teachers program could be relied upon to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same. It seems very unlikely that evidence could be mounted that lawyers educated at TWU would actually engage in harmful conduct. Just as the Court observed in *BCCT*, disciplinary processes would be available to deal with individual cases of discriminatory behaviour, whether by TWU or by graduates of other common law programs.

### **Arguments against the applicability of *BCCT***

Though I conclude for the three reasons just set out that the *BCCT* decision would be dispositive of a challenge to a decision refusing to approve the TWU school of law program based on TWU’s alleged discriminatory practices, I will nonetheless consider further the arguments that have been made to the contrary. A number of these arguments are set out in a paper by Professor Elaine Craig entitled “The Case for the Federation of Law Societies Rejecting Trinity Western University’s Proposed Law Degree Program.”<sup>21</sup> In her paper Professor Craig argues that the legal

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<sup>17</sup> *Id.* at paras. 154, 161

<sup>18</sup> See, for example, rule 5.04 (1) of the Law Society of Upper Canada *Rules of Professional Conduct*, which provides that

[a] lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario *Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

<sup>19</sup> Note 1 above at para. 13

<sup>20</sup> *Id.* at para. 35

<sup>21</sup> *Canadian Journal of Women and the Law*, Vol. 25, No. 1, 2013

context has changed in two respects since *BCCT* was decided, and that the basis for refusing approval to the TWU school of law would be different from the basis on which the BCCT sought to refuse approval of TWU's teaching program. **She argues that the courts' treatment of a decision to refuse approval of the TWU school of law proposal would therefore be different from that reflected in the Supreme Court's decision in *BCCT*.**<sup>22</sup>

The first change in legal context, according to Professor Craig, is the change in the standard of review that the courts would apply to the approval (or non-approval) decision.<sup>23</sup> As indicated **above, the Supreme Court applied the correctness standard in considering whether the BCCT's decision was justified.**

It is possible that Professor Craig is right in asserting that a court reviewing today a decision like that made by the BCCT would apply the reasonableness standard. In its 2012 decision in *Doré v. Barreau du Québec*,<sup>24</sup> the Supreme Court held that in reviewing discretionary decisions of administrative decision-makers that are required to consider *Charter* values, it is appropriate to apply the approach to standard of review generally applied in judicial review proceedings, under which the standard of review is ordinarily reasonableness rather than correctness where the decision-maker has specialized expertise and discretionary power.<sup>25</sup> **The Court stated that "if, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable."**<sup>26</sup> Even before *Doré*, the Court had held in a series of decisions that an administrative body interpreting and applying its home statute (as a law society might be regarded as having done in this case if it decided against approval) should normally be accorded deference, through application of the reasonableness standard, on judicial review.<sup>27</sup> In its very recent decision in *Whatcott*,<sup>28</sup> discussed above, the Supreme Court applied the reasonableness standard in reviewing a decision of a human rights tribunal rendered in a context in which equality values, as well as those associated with freedom of expression and freedom of religion, were engaged.

Despite *Doré* and its antecedents, there also remains in my view a realistic possibility that a reviewing court would apply the **correctness standard. The Supreme Court's standard of review** case law contemplates that the correctness standard will apply to the determination of at least some constitutional issues, including those in which competing constitutional provisions must be accommodated.<sup>29</sup> In *Doré* itself, the Supreme Court implicitly recognized that the correctness standard may be appropriate in this context when it referred to its decision in *BCCT* as an **example of the application of "an administrative law/judicial review analysis in assessing whether the decision-maker took sufficient account of *Charter* values."**<sup>30</sup> Unlike *Doré* and *Whatcott*, this is not merely a case in which *Charter* values would have to be balanced with

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<sup>22</sup> *Id.* at 22-26

<sup>23</sup> *Id.* at 22

<sup>24</sup> 2012 SCC 12

<sup>25</sup> *Id.* at paras. 23, 52-56

<sup>26</sup> *Id.* at para. 58

<sup>27</sup> *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 54; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7 at para. 26; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 39

<sup>28</sup> Note 16 above at para. 168

<sup>29</sup> *Dunsmuir v. New Brunswick*, note 28 above at paras. 58, 61

<sup>30</sup> Note 25 above at para 32

statutory objectives, but one in which competing *Charter* values must themselves be balanced.<sup>31</sup> The Supreme Court has laid down a legal rule as to how that balance is to be struck.

Even if a reasonableness standard applied, it does not follow that the decision would be upheld on judicial review. The key factor in the decision in *BCCT* was that there was no evidence of any harm to the public education system arising from the training of teachers at TWU. A finding based on no evidence is not just incorrect; it is unreasonable.<sup>32</sup> In *Whatcott*, the Supreme Court **set aside two of the human rights tribunal’s four determinations on the basis that, having regard to the evidence, the tribunal could not reasonably have reached the result it did by applying the proper legal test.**<sup>33</sup> Absent evidence of actual harm, a decision in this case not to approve based on concerns about discriminatory practices would likely be regarded as unreasonable.

The second change in legal context, according to Professor Craig, is that social values have **evolved, and that “[t]oday’s decision-makers are expected to be much more protective of gay and lesbian equality than were the decision-makers of ten, fifteen or twenty years ago.”**<sup>34</sup>

Assuming that this is the case, it is doubtful, in my view, that this evolution of social values would lead to a different outcome today from that in *BCCT*. As discussed above, *BCCT* was not simply an equality case. The core **of the Supreme Court’s decision in *BCCT*** was the appropriate balancing of two sets of *Charter* values, those associated with equality and with freedom of religion.<sup>35</sup>

The values associated with freedom of religion are at least as deeply embedded today as they were in 2001. **I have already discussed the Supreme Court’s very recent decision in *Whatcott***, in which the Court spoke of the right to manifest religious belief by teaching, and stated that the protection of freedom of religion “should extend broadly.” The **Supreme Court’s approach to the balancing of values in *Whatcott*** in 2013 appears little different from that in *BCCT* in 2001. It is in my view not correct to conclude that changes in social values since the *BCCT* case was decided would lead to a different outcome today.

As already mentioned, Professor Craig also relies, in arguing that the outcome of a challenge to a **decision to refuse approval of TWU’s law program would be different from that in *BCCT***, on the proposition that the basis for refusing approval to the TWU school of law would be different **from the basis on which the *BCCT* sought to refuse approval of TWU’s teaching program.**<sup>36</sup> She asserts that a decision not to approve the school of law could, and presumably would, be **justified on two grounds. The first is that “it is reasonable to conclude that principles of equality, non-discrimination, and the duty not to discriminate ... cannot competently be taught in a learning environment with discriminatory policies.” The second is that “it is reasonable to conclude that the skill of critical thinking about ethical issues cannot adequately be taught by an institution that violates academic freedom and requires that all teaching be done from the**

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<sup>31</sup> *Whatcott* did entail a balancing of constitutional values, but at the first stage of determining the constitutionality of the provision of the human rights legislation was in issue, not at the subsequent stage of reviewing the decision of the human rights tribunal and applying the statute as the Supreme Court had interpreted it. It was only at the second stage that the Court applied the reasonableness standard of review. At the first stage, the standard applied was correctness.

<sup>32</sup> *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487 at para. 44

<sup>33</sup> Note 16 above at para. 201

<sup>34</sup> Note 23 above at 25

<sup>35</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 877

<sup>36</sup> Note 23 above at 26

perspective that the Bible is the sole, ultimate, and authoritative source of truth for all ethical **decision making.**"

In my view, both of these asserted grounds for refusing approval would be highly questionable. As for the first, as also already mentioned the Supreme Court concluded that graduates of TWU would **"treat homosexuals fairly and respectfully."**<sup>37</sup> It was implicit in its decision that their **education at TWU did not detract from their ability to comply with** "principles of equality, non-discrimination, and the duty **not to discriminate.**" **Professor Craig provides no evidence to support the contention that the position would somehow be otherwise for law students.**

As for the second, it proceeds from a view of academic freedom that is by no means universally shared.<sup>38</sup> Following its logic would lead to the conclusion that no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. This conclusion cannot be tenable. The second argument, like the first one, also fails to give any recognition to the positive value of religious diversity that the Supreme Court embraced in *BCCT*.

\* \* \* \* \*

I hope that this memorandum provides the advice that you require on this aspect of the matter. Please let me know if you have any questions arising from it.

JBL/as

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<sup>37</sup> At para. 35

<sup>38</sup> The TWU policies on academic freedom (available online at <http://www.twu.ca/academics/calendar/2012-2013/academic-information/academic-policies/>) include these statements:

Trinity Western University is committed to academic freedom in teaching and investigation from a stated perspective, i.e., within parameters consistent with the confessional basis of the constituency to which the University is responsible, but practiced in an environment of free inquiry and discussion and of encouragement to integrity in research. Students also have freedom to inquire, right of access to the broad spectrum of representative information in each discipline, and assurance of a reasonable attempt at a fair and balanced presentation and evaluation of all material by their instructors. Truth does not fear honest investigation.

# Appendix C

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# SPECIAL ADVISORY COMMITTEE ON TRINITY WESTERN'S PROPOSED SCHOOL OF LAW

## FINAL REPORT

December 2013

## Introduction

1. In 2010, Canada's law societies approved a uniform national requirement that graduates of Canadian common law programs must meet to enter law society admission programs. Developed by the Federation of Law Societies of Canada (the "Federation")<sup>1</sup> Task Force on the Canadian Common Law Degree, the national requirement specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. The national requirement will apply to graduates of existing and prospective Canadian law schools effective 2015.
2. The Federation's Canadian Common Law Program Approval Committee (the "Approval Committee"), is mandated to review existing and proposed law school programs to determine whether they comply with the national requirement. In the case of new law school programs, a positive determination by the Approval Committee is but one step in the process. New law school programs must also be approved by the relevant provincial government authority.
3. In June 2012, Trinity Western University ("TWU"), a Christian faith-based university in British Columbia, submitted a proposal for a law school program to the Approval Committee. Founded in 1962, TWU has been recognized as a university by the government of British Columbia since 1985. It currently offers 42 undergraduate and graduate degree programs and has a student enrollment of approximately 4,000.
4. The TWU proposal, which identified as one of its objectives the integration of a Christian worldview into the law school curriculum, provoked a strong response from many in the legal community. Many written submissions from groups and individuals were made to the Federation and the Approval Committee. Copies of those submissions are available at <http://www.flsc.ca/en/twu-submissions/>. Many of those writing alleged that TWU would discriminate against lesbian, gay, bisexual and transgendered ("LGBT") individuals and called on the Approval Committee to reject the TWU proposal. Others wrote in favour of the proposed law school citing the right of religious freedom, the value of diversity in law school education and TWU's reputation as an educational institution.
5. At the heart of the debate is TWU's Community Covenant, a statement of commitment to the Christian faith that includes an undertaking to refrain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."<sup>2</sup> All students, faculty and staff are required to abide by the Community Covenant. The proposal to integrate a Christian worldview into the curriculum of the law school has also raised concerns amongst those who made submissions to the Federation.

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<sup>1</sup> The Federation of Law Societies of Canada is the umbrella organization of Canada's 14 provincial and territorial law societies.

<sup>2</sup> Trinity Western University (TWU), *Community Covenant Agreement*, <http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html>.

6. The Approval Committee is responsible for assessing whether the law school program proposed by TWU would meet the national requirement. That assessment process is currently underway. There are, however, a number of issues raised in the various submissions made to the Federation about the TWU proposal that are outside of the mandate of the Approval Committee. Recognizing the importance of addressing these issues, the Federation established the Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee"). In establishing the Special Advisory Committee, the Council of the Federation approved the following mandate:

1. *The specific mandate of the Special Advisory Committee is to provide advice to the Council of the Federation on the following question:*

*What additional considerations, if any, should be taken into account in determining whether future graduates of TWU's proposed school of law should be eligible to enroll in the admission program of any of Canada's law societies, given the requirement that all students and faculty of TWU must agree to abide by TWU's Community Covenant Agreement as a condition of admission and employment, respectively?*

2. *In its consideration of the question, the Special Advisory Committee shall take into account:*

(a) *all representations received by the Federation to date including any responses to those representations by TWU;*

(b) *applicable law, including the Canadian Charter of Rights and Freedoms, human rights legislation, and the Supreme Court of Canada decision in Trinity Western University v. British Columbia College of Teachers (2001 SCC 31); and*

(c) *any other information that the Special Advisory Committee determines is relevant to the question.*

7. John J.L. Hunter, Q.C., Past-President of the Federation and the Law Society of British Columbia was appointed to chair the Special Advisory Committee. The other members of the committee are:

- Mona T. Duckett, Q.C., former Council member representing the Law Society of Alberta and Past-President of the Law Society of Alberta
- Derry Millar, former Treasurer of the Law Society of Upper Canada
- Madame la Bâtonnière Madeleine Lemieux, Ad. E., former Council member representing the Barreau du Québec and former Bâtonnière of the Barreau
- Morgan C. Cooper, Past-President of the Law Society of Newfoundland and Labrador

Support to the Special Advisory Committee is provided by Frederica Wilson, Federation Senior Director, Regulatory and Public Affairs and Daphne Keevil Harrold, Federation Policy Counsel.

8. In considering the question put to it, the Special Advisory Committee reviewed all of the submissions made to the Federation, together with responses to those submissions received from TWU. A number of email submissions from individuals sent directly to members of the committee were also considered. In addition, the Special Advisory Committee reviewed relevant law, and considered legal advice obtained by the Federation on the applicability of the Supreme Court of Canada's decision in *Trinity Western University v. British Columbia College of Teachers*<sup>3</sup> ("BCCT"). The committee's review of the issues and its conclusions are set out below.

### **Role of Federation and Law Societies**

9. In correspondence to the Federation dated April 24, 2013 and May 17, 2013 (copies attached as Appendices "A" and "B" respectively) TWU questioned whether consideration of broader public interest issues in relation to its application for approval of its proposed law school program is within the jurisdiction of the Federation. TWU also suggested that in establishing the Special Advisory Committee the Federation is "interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread," and have not asked the Federation to enquire into.
10. The Special Advisory Committee believes that the Federation can and should consider whether there are any broader public interest issues outside of compliance with the national requirement raised by TWU's proposed school of law.
11. Canada's law societies are mandated by statute to regulate the legal profession in the public interest, and as the umbrella organization of the law societies the Federation shares a public interest focus. Examples from some of the relevant provincial statutes serve to illustrate the point.

Section 4.2 of Ontario *Law Society Act* provides in part:

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

.....

3. The Society has a duty to protect the public interest.

The Saskatchewan *Legal Profession Act* contains a similar provision:

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<sup>3</sup> 2001 SCC 31 (CanLII), <http://canlii.ca/t/dmd>.

3.1 In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:

(a) to act in the public interest;

...

The *British Columbia Legal Profession Act* includes an obligation to preserve and protect the rights and freedoms of all persons within its statutory duty to uphold and protect the public interest. Section 3 of that Act reads in part:

3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

(a) preserving and protecting the rights and freedoms of all persons,

(b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

...

12. The Federation's public interest focus is evident from its mission statement, which opens with the words "[a]cting in the public interest."

13. In its decision in *BCCT* the Supreme Court of Canada held that the public interest jurisdiction of the teachers college permitted it to consider broad public interest issues such as those related to equality. The court held that the power of the teachers college to establish standards for entrance into the profession must be interpreted in light of the general purpose of its constating statute and in particular its public interest mandate.<sup>4</sup> In reaching this conclusion, the Court rejected the argument put forward by TWU that the powers of the teachers college were limited to establishing standards to ensure that teachers were properly trained, competent, and of good character.<sup>5</sup>

14. The Special Advisory Committee can see no reason for coming to a different conclusion in the case of TWU's application for approval of its proposed law school. Like the teachers college in the *BCCT* case, Canada's law societies are required to exercise their overall mandate in the public interest. Setting appropriate standards for admission to the legal profession is an essential component of the public interest mandate shared by Canada's law societies. The national requirement approved by each of the law societies was developed as part of this public interest mandate. It reflects the law societies' collective view of the competencies new members of the profession must possess to be able to practise. Assessing whether an applicant meets the national requirement is, however, only one aspect of the admissions process. Law societies must, for example, determine what

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<sup>4</sup> *Ibid*, at paragraph 26.

<sup>5</sup> *Ibid*, at paragraphs 12-13.

additional training or exams applicants must undertake and must assess whether applicants are fit to practise and are of good character. In each case, the ultimate decision on admissibility rests with the individual law societies.

15. The consideration of public interest issues is one aspect of the overall responsibility of law societies for determining whether an applicant should be admitted to the legal profession. Assisting the law societies with the exercise of this responsibility is entirely consistent with the mandate of the Federation. The decision to establish the Special Advisory Committee was made by the Council of the Federation, a body comprised of representatives from every law society in Canada. The advice to be provided by the Special Advisory Committee is intended to assist the law societies, the bodies ultimately charged with determining whether graduates from the proposed TWU school of law should be admitted to the profession.
16. It is important to distinguish the task assigned to the Special Advisory Committee from the role of the Approval Committee. As noted above, the mandate of the Approval Committee is to determine whether TWU's proposed law school program, if implemented in a manner consistent with its proposal, would meet the national requirement. That matter is currently under consideration by the Approval Committee. The mandate of the Special Advisory Committee is quite different. The committee has no power to decide whether TWU's application should be approved. It has been asked only to provide advice on whether the application raises any additional public interest considerations.

## **The Law**

17. As is more fully described below, many of the individuals and groups who made submissions to the Federation on the subject of TWU's proposed law school raised concerns about the Community Covenant that students, faculty, and staff are required to abide by. More particularly, many of the submissions argued that given what they see as the inherently discriminatory nature of the Community Covenant, approving a law school at TWU would be contrary to the public interest. Others, writing in support of TWU, cited the right of freedom of religion and argued that withholding approval of TWU's proposed school of law would violate the rights of those wishing to study law at a faith-based school.
18. In considering these issues and answering the question put to it by its terms of reference, the Special Advisory Committee has taken into account relevant case law, statutes, and the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). The committee has also considered a legal opinion on the applicability of the Supreme Court of Canada's decision in *BCCT* prepared for the Council of the Federation by John B. Laskin, (see Appendix "C") a copy of which was provided to the Special Advisory Committee.
19. TWU is a private institution to which the *Charter* does not apply and which is exempt, in part, from the provisions of the British Columbia *Human Rights Code* (the "*Human Rights Code*"). Section 41(1) of that statute states:

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

20. In the *BCCT* case the Supreme Court held that although the *Charter* does not apply to TWU (as it is a private institution) and the university is exempt from certain provisions of the *Human Rights Code*, the rights and values articulated in the *Charter* and human rights legislation are relevant in considering broader issues of public interest.<sup>6</sup>

21. The *BCCT* case involved an application by TWU to the British Columbia College of Teachers for approval of its teacher education program. The college rejected the application, basing its decision on the fact that students, faculty and staff were required to abide by a Community Standards agreement (the forerunner to the current Community Covenant) that forbid “biblically condemned” practices including “homosexual behaviour.” In finding that the teachers college erred in rejecting the TWU application, the Court noted that the *Charter* both protects against discrimination on the basis of sexual orientation and guarantees freedom of religion. The Court held that equality rights and freedom of religion must be balanced, and that neither right is to be preferred over the other.<sup>7</sup>

22. In reaching this finding, the Supreme Court confirmed the approach to reconciling different rights and values under the *Charter* articulated in its decision in *Dagenais v. Canadian Broadcasting Corp*:

A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law. When the protected rights of two individuals come into conflict . . . *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.<sup>8</sup>

23. The majority held that “the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence.”<sup>9</sup> The Court held:

It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the *Charter* does not apply. To state that the voluntary adoption of a code of conduct based on a person’s own religious

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<sup>6</sup> *Ibid*, at paragraph 27.

<sup>7</sup> *Ibid*, paragraphs 27-30.

<sup>8</sup> 1994 CanLII 39 (SCC), <http://canlii.ca/t/1frng>, as cited in *BCCT* supra, note 3 at paragraph 31.

<sup>9</sup> *Ibid*, at paragraph 25.

beliefs, in a private institution, is sufficient to engage s.15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.<sup>10</sup>

24. The Court found that section 41 of the *Human Rights Code* protects a religious institution from a finding that it is in breach of the *Human Rights Code* "where it prefers adherents of its religious constituency."<sup>11</sup> The Court also held that this statutory exemption accommodates religious freedom.

25. In reaching these findings the Supreme Court distinguished between belief and conduct stating:

. . . the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>12</sup>

26. Some of those making submissions to the Federation about TWU's proposed school of law have suggested that the Court would take a different approach today to reconciling competing *Charter* rights. It has also been suggested that the Court might not require evidence of actual harm as it did in *BCCT*.

27. The Special Advisory Committee notes that since the *BCCT* case the Supreme Court has confirmed its approach to reconciling competing rights, most recently in its decision in *Saskatchewan (Human Rights Commission) v. Whatcott*, released in February 2013.<sup>13</sup> In its decision in *Whatcott*, a case involving the prohibition of hate speech contained in Saskatchewan human rights legislation, the Court described its task as requiring it:

to balance the fundamental values underlying freedom of expression (and, later, freedom of religion) in the context in which they are invoked, with competing *Charter* rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings.<sup>14</sup>

28. It is the view of the Special Advisory Committee that the approach of the Supreme Court in *BCCT* to reconciling competing rights under the *Charter* and the requirement of evidence of

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, at paragraph 35.

<sup>12</sup> *Ibid.*, at paragraph 36.

<sup>13</sup> 2013 SCC 11 (CanLII), <http://canlii.ca/t/1frng>, at paragraphs 6, 66, and 145. See also *Reference re Same-Sex Marriage*, 2004 SCC 79 (CanLII) (SCC), <http://canlii.ca/t/1jdhv>, at paragraph 50.

<sup>14</sup> *Ibid.*, at paragraph 66.

actual harm continue to be the law in Canada. Although the Special Advisory Committee cannot know what evidence might be presented in the event of a court challenge to TWU's proposed school of law, the committee has not received evidence that would, in its opinion, lead to a different outcome than occurred in the *BCCT* case.

### **Issues raised in submissions**

29. The Federation has received representations from a number of individuals, organizations and groups of individuals (including TWU). These submissions, and a number of the emails sent directly to members of the committee, raise important issues that the Special Advisory Committee has considered in its deliberations. The committee has also considered the arguments made by Professor Elaine Craig in her paper *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program*.<sup>15</sup>
30. Many writing in opposition to TWU's proposed law school argue that the policies of TWU, particularly its Community Covenant agreement, discriminate against LGBT individuals and are contrary to societal values of equality and non-discrimination. Approval of the proposed law school program, they argue, would thus not be in the public interest.
31. Some express concern that approval of TWU's proposed law school would result in LGBT students having fewer choices and opportunities than other students. Others question the ability of TWU to provide a balanced, high quality legal education and suggest that its stated intention to teach law from a Christian worldview would make TWU incapable of teaching legal ethics, constitutional and human rights law. A related argument suggests that students would not be taught important critical thinking skills. Concerns were also expressed about TWU's respect for academic freedom and the impact this would have on the legal education students would receive.
32. One submission points to the United States experience and suggests that the American Bar Association ("ABA") has adopted a new standard that prohibits law schools from discriminating on the basis *inter alia* of sexual orientation.
33. It must be noted, however, that not all individuals and organizations who wrote to the Federation oppose the TWU application. A number of the submissions argue in favour of approval of the proposed law school citing TWU's record as a high quality educational institution and suggesting, for example, that as a faith-based institution it would be well placed to impart an ethical view to its students. Others argue that secular schools should not have a monopoly on legal education in Canada and that the legal profession benefits from a diversity of views amongst its members. Many challenge the suggestion that a TWU law school would not properly teach Canadian law and legal values. They argue that in the absence of evidence that TWU would fail to do so, there is no reason to deny approval of its proposed law school program.

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<sup>15</sup> Canadian Journal of Women and the Law, Vol. 25, No. 1, 2013.

34. The Special Advisory Committee's consideration of these issues follows.

***Whether approving TWU's proposed law school would be contrary to the public interest***

35. The Special Advisory Committee has concluded that consideration of the public interest is clearly relevant in determining whether it would be appropriate to permit future graduates of TWU's proposed school of law to enroll in law society admission programs. As noted above, in the *BCCT* case the Supreme Court held that consideration of human rights principles and the values enunciated in the *Charter* are relevant to this consideration notwithstanding that TWU is a private institution that is exempt from certain provisions of British Columbia human rights legislation and is not bound by the *Charter*.
36. Recent submissions to the Federation have argued that TWU bans LGBT individuals from attending the school. They argue that approving a law school at an institution that bans students on the basis of sexual orientation would be contrary to the public interest. To the knowledge of the Special Advisory Committee, however, the suggestion that TWU bans LGBT individuals is inaccurate. The Special Advisory Committee recognizes that the Community Covenant may result in differential treatment of LGBT individuals. Faced with a requirement to commit to a code of behaviour that prohibits sexual activity outside of marriage between a man and a woman, LGBT students would legitimately feel unwelcome at a TWU law school. The Supreme Court has made it clear, however, that the religious freedom rights of those who might wish to attend such a faith-based institution must also be considered and it is clear from the submissions received by the Federation that there are many such students.
37. The Court also made it clear in *BCCT* that the assessment of the public interest cannot be based solely on the religious precepts of the school, or in this case, the proposed school and that the admissions policy requiring students to adhere to the Community Covenant is not sufficient to establish unlawful discrimination. Absent evidence for example, that graduates of the proposed law school would engage in discriminatory conduct or would fail to uphold the law, freedom of religion must be accommodated. No such evidence has been brought to the attention of the Special Advisory Committee; nor is it aware of any.
38. It has been suggested by some, that while TWU's policies may be lawful in British Columbia by virtue of the specific provisions of the *BC Human Rights Code*, the university's policies would be contrary to human rights legislation in other jurisdictions. In light of the Supreme Court of Canada's findings on the requirement to balance equality rights and freedom of religion, it is not evident to the Special Advisory Committee that this would be the case. In any event, the Special Advisory Committee has concluded that this suggestion misconstrues the nature of the analysis required in determining whether approval of the proposed TWU law school and admission of future graduates of the program to law society admission programs would be consistent with the public interest.

39. TWU has been recognized by the government of British Columbia as a degree granting institution. The issue is not whether TWU could operate in the same manner in another jurisdiction, but whether it is operating lawfully in the jurisdiction in which it is located and whether its policies are consistent with the values expressed in the *Charter* and human rights legislation. The Supreme Court of Canada concluded in the *BCCT* case that the Community Standards document, a forerunner to the Community Covenant that was more explicit in its prohibition of homosexual behaviour than the current Community Covenant, was not contrary to human rights values given the need to balance equality rights and freedom of religion. The Special Advisory Committee is not persuaded to reach a different conclusion in relation to TWU's proposed law school program.
40. The Special Advisory Committee believes that it is important to note that if TWU's proposed school receives preliminary approval from the Approval Committee and if evidence of actual harm emerges following such approval it would be appropriate to address it at that time.

***Whether TWU's Christian worldview and intention to teach from this perspective makes it incapable of effectively teaching legal ethics, constitutional and human rights law***

41. Some opponents of TWU's proposed law school argue that it will not provide a balanced, quality legal education. They suggest that TWU's policies and intention to teach from a Christian worldview would prevent free, open dialogue and that students in such a program would, as a consequence, fail to develop necessary critical thinking skills. It has also been suggested that TWU's intention to teach law from a Christian worldview would interfere with effective teaching of legal ethics, constitutional and human rights law. The inability to effectively teach legal ethics, particularly to teach students to think critically about ethics, is also one of the central arguments advanced by Professor Elaine Craig in her article, *The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program*.<sup>16</sup>
42. Others take the opposite view, arguing that as a faith-based institution TWU would be well placed to impart ethics to its students and that teaching from a Christian worldview might actually stimulate discussion and debate. It has also been suggested that "[t]he legal profession and the classrooms of Canada's law schools would benefit greatly from the expansion of legal education in institutions that hold non-mainstream views."<sup>17</sup>
43. TWU has made strong representations in response to the suggestion that it cannot and will not teach legal ethics, constitutional and human rights law appropriately and that students in its proposed program will not develop critical thinking skills. The May 17, 2013 letter from TWU to the Federation includes a clear commitment to "fully and appropriately" teaching legal ethics and professionalism and a recognition of its duty to teach equality and non-

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<sup>16</sup> Note 15, supra.

<sup>17</sup> March 19, 2013 letter from UBC law students – Group 2, Submissions to the Special Advisory Committee, <http://www.flsc.ca/en/twu-submissions/>

discrimination in both its legal ethics and substantive law courses.<sup>18</sup> The letter highlights the fact that course outlines contained in its proposal indicate that TWU intends to rely on standard texts for teaching in the areas of legal ethics, constitutional and human rights law. TWU has also unambiguously acknowledged “its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism.” In its May 17<sup>th</sup> letter, TWU also states that “TWU agrees with Egale Canada that “the dignity and value of all individuals irrespective of their sexual orientation . . . now form part of the fabric of professional ethics and the rule of law.””

44. In the view of the Special Advisory Committee the argument that TWU’s Christian worldview will have a negative impact on the quality of legal education at the proposed law school and that students will fail to acquire necessary critical thinking skills is without merit. Such a finding cannot be based on TWU’s stated religious perspective or its Community Covenant; as the Supreme Court made clear in *BCCT* it could be based only on concrete evidence.<sup>19</sup> Not only has no such evidence been brought to the attention of the Special Advisory Committee, the evidence that we do have demonstrates an understanding by TWU of its obligation to appropriately teach legal ethics and other substantive law subjects. We see no basis to conclude, as some have suggested, that individuals holding particular religious views are incapable of critical thinking and of understanding their ethical obligations, or that the quality of the legal education provided by a law school at TWU would not meet expected standards. There can be no doubt that TWU’s Christian worldview is shared by many current members of the profession and the judiciary. There is no evidence that such individuals are any less capable of critical thinking or any less likely to conduct themselves ethically than any other members of the bar or the bench. Graduates of the proposed law school admitted to the profession would be subject to the supervision of the law societies and would be obliged to follow the ethical rules governing all members of the profession. Individuals breaching those ethical rules would be subject to disciplinary sanctions.
45. It is also worth noting that the proposed law school would not be the only professional faculty at TWU. The university operates both nursing and teacher education programs and has done so for many years. Graduates of those programs licensed to practise their respective professions must meet codes of professional conduct.<sup>20</sup> To the knowledge of the Special Advisory Committee, there is no evidence that graduates of the nursing and teaching programs at TWU are any less able to fulfill their ethical obligations than are graduates from programs at other schools.

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<sup>18</sup> See Appendix “B”.

<sup>19</sup> *BCCT*, paragraphs 32-33.

<sup>20</sup> See, for example, *Standards for the Education, Competence, and Professional Conduct of Educators in British Columbia*, [http://www.bcteacherregulation.ca/documents/AboutUs/Standards/edu\\_stds.pdf](http://www.bcteacherregulation.ca/documents/AboutUs/Standards/edu_stds.pdf) and the *Profession Standards* of the College of Registered Nurses of British Columbia, <https://www.crnbc.ca/Standards/ProfessionalStandards/Pages/Default.aspx>. Similar professional codes apply to teachers and nurses licensed in other Canadian jurisdictions.

## **Whether TWU respects academic freedom**

46. Some of the submissions to the Federation have argued that TWU fails to respect academic freedom. Support for this argument is drawn from an October 2009 report published by the Canadian Association of University Teachers (the “CAUT”) that concluded that TWU’s policy on academic freedom allowed for “unwarranted and unacceptable constraints on academic freedom.”<sup>21</sup> The CAUT report followed an investigation by an *ad hoc* committee charged with determining whether TWU employed a “faith test” in employment and whether “all academic staff at TWU have a full measure of academic freedom.”<sup>22</sup>

47. The *ad hoc* committee concluded that although TWU’s policy on academic freedom “appears to affirm a commitment to open critical thought in teaching and research” that commitment is qualified by a requirement that the teaching and investigation occur “from a stated perspective” and as such violates academic freedom.<sup>23</sup> In reaching its finding the *ad hoc* committee also relied on the CAUT Academic Freedom Policy<sup>24</sup> which states, in part:

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service to the institution and the community; freedom to express one’s opinion about the institution, its administration, and the system in which one works; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship.

48. The Special Advisory Committee agrees that a commitment to academic freedom is important in a law school program. We note, however, that there is no single definition of academic freedom. In October 2011, the Association Universities and Colleges of Canada (the “AUCC”), the national organization of Canadian universities and colleges,<sup>25</sup> adopted a Statement on Academic Freedom<sup>26</sup> that includes a more limited definition. The AUCC statement provides for the possibility that academic freedom may be limited by the “academic mission” of the educational institution. Key provisions of the statement include the following:

Unlike the broader concept of freedom of speech, academic freedom must be based on institutional integrity, rigorous standards for enquiry and institutional autonomy, which allows universities to set their research and educational priorities.

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<sup>21</sup> *Report of an Inquiry Regarding Trinity Western University*, p. 10, <http://www.caut.ca/docs/reports/report-of-caut-ad-hoc-investigatory-committee-on-twu.pdf?sfvrsn=0>.

<sup>22</sup> *Ibid*, at p. 1.

<sup>23</sup> *Ibid*, at p. 4.

<sup>24</sup> <http://www.caut.ca/about-us/caut-policy/lists/general-caut-policies/policy-statement-on-academic-freedom/>.

<sup>25</sup> The AUCC is a member-based organization representing 97 universities and colleges.

<sup>26</sup> <http://www.aucc.ca/media-room/news-and-commentary/canadas-universities-adopt-new-statement-on-academic-freedom/>.

. . .

Academic freedom is constrained by the professional standards of the relevant discipline and the responsibility of the institution to organize its academic mission. The insistence on professional standards speaks to the rigor of the enquiry and not to its outcome.

49. The criteria for membership in the AUCC include a requirement to respect the spirit of the AUCC Statement on Academic Freedom.<sup>27</sup>

50. The academic freedom policy of TWU, a member of the AUCC, recognizes that it “is an essential ingredient in an effective university program.”<sup>28</sup> The full policy reads as follows:

Trinity Western University recognizes that academic freedom, though varyingly defined, is an essential ingredient in an effective university program. Jesus Christ taught the importance of a high regard for integrity, truth, and freedom. Indeed, He saw His role as in part setting people free from bondage to ignorance, fear, evil, and material things while providing the ultimate definition of truth.

Accordingly, Trinity Western University maintains that arbitrary indoctrination and simplistic, prefabricated answers to questions are incompatible with a Christian respect for truth, a Christian understanding of human dignity and freedom, and quality Christian educational techniques and objectives.

On the other hand, Trinity Western University rejects as incompatible with human nature and revelational theism a definition of academic freedom which arbitrarily and exclusively requires pluralism without commitment, denies the existence of any fixed points of reference, maximizes the quest for truth to the extent of assuming it is never knowable, and implies an absolute freedom from moral and religious responsibility to its community.

Rather, for itself, Trinity Western University is committed to academic freedom in teaching and investigation from a stated perspective, i.e., within parameters consistent with the confessional basis of the constituency to which the University is responsible, but practiced in an environment of free inquiry and discussion and of encouragement to integrity in research. Students also have freedom to inquire, right of access to the broad spectrum of representative information in each discipline, and assurance of a reasonable attempt at a fair and balanced presentation and evaluation of all material by their instructors. Truth does not fear honest investigation.

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<sup>27</sup> Association of Universities and Colleges of Canada, *Criteria to Become a Member*, <http://www.aucc.ca/about-us/member-universities/membership-eligibility/criteria-to-become-a-member/>.

<sup>28</sup> <https://twu.ca/academics/calendar/2012-2013/academic-information/academic-policies/>.

51. In the view of the Special Advisory Committee, the qualification in the TWU policy that academic freedom be exercised from “a stated perspective” is consistent with the provision in the AUCC statement recognizing the right of an institution to constrain academic freedom to accord with its academic mission. In these circumstances, it is not open to the Special Advisory Committee to conclude that academic freedom will not be respected at the proposed law school.

***Whether approving TWU’s proposed law school would result in LGBT students having fewer opportunities and choices than others***

52. If approved, a law school at TWU will bring to 20<sup>29</sup> the number of law schools in Canada offering common law programs and will result in an increase of the overall number of available law school places. Some have argued that even with this increase, approval of the TWU proposal would result in fewer choices for LGBT individuals wishing to attend law school than would exist for other students as TWU would not be a choice for LGBT students.

53. As a starting point, we are not aware of any evidence that TWU limits or bans the admission to the university of LGBT individuals. A number of those who made submissions to the Federation noted that there are LGBT students at TWU. It is reasonable to conclude that the requirement to adhere to the Community Covenant would make TWU an unwelcoming place for LGBT individuals and would likely discourage most from applying to a law school at the university, but it may also be that a faith-based law school would be an attractive option for some prospective law students, whatever their sexual orientation. It is also clear that approval of the TWU law school would not result in any fewer choices for LGBT students than they have currently. Indeed, an overall increase in law school places in Canada seems certain to expand the choices for all students.

***The ABA standards on discrimination on the basis of sexual orientation***

54. In their joint submission<sup>30</sup> urging the Federation to consider the public interest issues related to TWU’s proposed law school, the Canadian Bar Association’s Sexual Orientation and Gender Identity Conference (“SOGIC”) and its Equality Committee referred to the experience in the United States. The submission cites the American Bar Association’s (“ABA”) *Standards and Rules of Procedure for Approval of Law Schools* and in particular Standard 211 as a potential source of “inspiration” as to how to balance freedom of religion and equality.

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<sup>29</sup> This number includes existing law schools and law schools that have received preliminary approval from the Approval Committee.

<sup>30</sup> March 18, 2013 letter to Gérald R. Tremblay, Submissions to the Special Advisory Committee, <http://www.flsc.ca/en/twu-submissions/>

55. ABA Standard 211 prohibits discrimination in law school admission and hiring practices. Since 1981, when Standard 211 was amended in settlement of a lawsuit brought by Oral Roberts University, law schools with religious affiliations have been permitted to have admission or employment policies that relate to the institution's religious affiliation. The relevant section of Standard 211 reads:

(c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

56. Pursuant to the current version of the standard, law schools are precluded from discriminating against applicants or students on the basis, *inter alia*, of sexual orientation. According to Interpretation 211-2 (which forms part of the official standard), however, "the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs." The ABA has confirmed that the standard distinguishes between discrimination on the basis of a person's status, and rules or codes that prohibit certain conduct. The former is prohibited, the latter permitted.

57. In considering the American treatment of religiously affiliated law schools, the Special Advisory Committee also considered the bylaws of the Association of American Law Schools ("AALS"), a voluntary member-based organization dedicated to "the improvement of the legal profession through legal education."<sup>31</sup> Membership is open to law schools that have been operating for at least five years and have graduated their third class. Members are also required to adhere to a comprehensive list of requirements set out in the association's bylaws similar to those contained in the ABA standards.<sup>32</sup> The list of members of the AALS includes a number of religiously-affiliated schools. Several other religiously-affiliated schools are in a category of "non-member, fee paid schools", which receive many of the benefits of full membership, including access to AALS publications and resources, but are not required to conform to all of the membership requirements.

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<sup>31</sup> AALS Bylaws, Article 1, Section 1-2, [http://www.aals.org/about\\_handbook\\_bylaws.php](http://www.aals.org/about_handbook_bylaws.php).

<sup>32</sup> AALS Bylaws, Article 6.

58. Section 6-3(a) of the bylaws of the AALS prohibits discrimination on the basis, *inter alia*, of sexual orientation. Guidance on the application of this section of the bylaws to religiously-affiliated law schools is provided by the AALS Executive Committee Regulations. Like ABA Standard 211, AALS Executive Committee Regulation 6-3.1 permits religiously-affiliated schools to have admissions and employment policies based on their religious affiliation provided such policies do not directly discriminate on the basis of sexual orientation and are consistent with the association's regulations on academic freedom. Notice of such policies must be provided in advance of a student, faculty or staff member becoming affiliated with the school.

59. Further guidance on the application of the non-discrimination bylaw to religiously affiliated law schools is provided in the AALS Statements of Good Practices. *Interpretive Principles to Guide Religiously Affiliated Member Schools as They Implement Bylaw Section 6-3(a) and Executive Committee Regulation 6-3.1*<sup>33</sup> opens with the following paragraph:

These principles are intended to guide religiously affiliated member schools as they implement Bylaw Section 6-3(a) and revised ECR 6-3.1. They seek to strike a fair and sensitive balance between the values of religious liberty and nondiscrimination based upon sexual orientation. These principles are based on the premise that Bylaw 6-3(a) protects against discrimination on the basis of sexual orientation. When applied to religiously affiliated schools, that absolute protection of the status of sexual orientation continues, but in the unique context of religious liberty, Bylaw 6-3(a) and ECR 6-3.1 should be interpreted to permit the regulation of conduct when that conduct is directly incompatible with the essential religious tenets and values of a member school. These principles will guide the Accreditation Committee in reviewing whether a member school is in compliance with the Association's Bylaws and Executive Committee Regulations.

60. There are currently more than 50 religiously affiliated law schools in the United States, the majority of them ABA approved schools. Many religiously affiliated law schools are also members of the AALS. Religiously-affiliated law schools in the United States span a broad spectrum of religious beliefs. In some, there is little overt focus on the religious orientation of the institution, but in others the religious affiliation is reflected in the course content and the perspective from which the law is taught. At least some law schools approved by the ABA require students, faculty and staff to abide by codes of conduct or policies that include prohibitions on same-sex sexual conduct. Examples of such law schools include Baylor University, a Baptist institution, that bans "sexual misconduct" defined as "sexual abuse, sexual harassment, sexual assault, incest, adultery, fornication and homosexual acts;"<sup>34</sup> J. Reuben Clark Law School at Brigham Young University (affiliated with the Mormon Church), which requires students to abide by an Honour Code that expressly prohibits homosexual

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<sup>33</sup> [http://www.aals.org/about\\_handbook\\_sgp\\_rel.php](http://www.aals.org/about_handbook_sgp_rel.php).

<sup>34</sup> Baylor University, Sexual Misconduct Policy, <http://www.baylor.edu/content/services/document.php?id=39247>.

conduct;<sup>35</sup> and Liberty Law School, a self-described Christian institution, whose non-discrimination policy states expressly that while not discriminating on the basis of sexual orientation the school does “discriminate on the basis of sexual misconduct including . . . any form of sexual behaviour that would undermine the Christian identity or faith mission of the University.”<sup>36</sup>

61. Approval by the ABA and membership in the AALS of religiously-affiliated schools that restrict same-sex sexual conduct is consistent with the distinction that the policies of both organizations draw between discrimination on the basis of status and restrictions on specified conduct. Although both the ABA and the AALS require as a condition of approval or membership that law schools not “preclude admission of applicants or retention of students on the basis of . . . sexual orientation . . .” neither the ABA standard nor the bylaws of the AALS prevent religiously-affiliated law schools from imposing restrictions on sexual conduct similar to those imposed by the TWU Community Covenant.
62. The Special Advisory Committee sees merit in the non-discrimination provisions of the ABA and the AALS discussed above and recommends that the Federation consider whether it would be desirable to add a similar provision to the national requirement. We note, however, that if the national requirement included a standard similar to that of the ABA and the AALS it would not be a bar to approval of the TWU proposal. Although those standards prohibit discrimination on the basis of sexual orientation, both permit the prohibition of certain conduct deemed incompatible with the religious values of the institutions.

## **Conclusion**

63. The Special Advisory Committee was asked to consider whether the requirement that students and faculty at TWU must agree to abide by the Community Covenant raises additional considerations that should be taken into account in determining whether graduates of the proposed law school program should be permitted to enter law society admission programs.
64. Although the Approval Committee is charged with reviewing TWU’s proposal to determine whether it would, if implemented as described, meet the national requirement, it is the individual law societies that must decide on the eligibility of each individual applicant to their bar admission programs. The public interest issues considered by the Special Advisory Committee are expected to be relevant to those decisions.
65. In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that

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<sup>35</sup> Brigham Young University, Honor Code, [http://www.law2.byu.edu/page/categories/admissions/pdf\\_documents/part3\\_byu\\_law\\_application.pdf](http://www.law2.byu.edu/page/categories/admissions/pdf_documents/part3_byu_law_application.pdf).

<sup>36</sup> Liberty University, Notice of Nondiscrimination, <http://www.liberty.edu/law/index.cfm?PID=8533>.

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

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



BY E-MAIL  
(Original By Mail)

April 24, 2013

Canadian Common Law Program Approval Committee  
Federation of Law Societies of Canada  
World Exchange Plaza  
45 O'Connor Street, Suite 1810  
Ottawa, ON  
K1P 1A4

Attention: Gérald R. Tremblay, President

Dear Mr. Tremblay:

**RE: CREATION OF A SPECIAL ADVISORY COMMITTEE**

Thank you for your phone call last week and subsequent letter dated April 22, 2013. We also very much appreciate the time and work that the Federation of Law Societies of Canada (the "Federation") is putting into the review of Trinity Western University's (TWU) School of Law proposal.

Your letter raised two significant concerns. The first is with respect to the mandate of the Special Advisory Committee and the Federation itself. Your letter of December 4, 2012 to Dean Flanagan, along with your letter of April 22, 2013, indicates that consideration of TWU's Community Covenant is outside of the mandate of the Approvals Committee. It is clearly stated in the Terms of Reference that "*certain issues have been raised regarding the proposal that are outside of the mandate of the Approval Committee.*" If these issues are





outside of the mandate of the Approval Committee, why would they be within the mandate of the Special Advisory Committee?

Our understanding of the correct mandate of the Federation and the Approval Committee is exactly as set out in the Terms of Reference; which is to determine whether graduates of a School of Law at TWU would meet the national requirements. Consideration of other issues, whether by the Approval Committee or the Special Advisory Committee, would be extraneous to that mandate. Consideration of other issues would also be amending the requirements for approval part way through the approval process which is contrary to principles of procedural fairness.

Should the Federation elect to proceed with the Special Advisory Committee notwithstanding the above noted concern, a second concern would then be with respect to the record and representations available for consideration by the Special Advisory Council. The terms of reference indicate that the Special Advisory Committee *would take into account all representations received by the Federation to date including any representations by TWU*. This creates procedural unfairness. TWU is aware that the Federation has received letters from various people and groups. However, in reliance on the advice in your December 4, 2012 letter to Dean Flanagan (copied to us) that such matters are not relevant to the Approval Committee's consideration of TWU's proposal, the University did not deem it necessary to fully respond to each of those letters.

There is considerable support for the School of Law across the country. Again, in reliance on your letter we have intentionally not requested supporters of the School of Law to write to the Federation. There has clearly been an organized campaign by opponents of TWU's proposal that has largely gone unanswered by TWU. We have not attempted to "balance the ledger" or make substantive submissions as we had no notice or any indication whatsoever that such was necessary. In fact, the converse was communicated to TWU. If the record on which this matter is now to be reviewed is "representations received by the Federation to date," the University is placed at a significant disadvantage which, in our view, would constitute procedural unfairness.





We trust the Federation will reconsider the creation of a Special Advisory Committee and proceed with a review by the Approval Committee of TWU's proposal pursuant to its stated mandate.

Yours truly,

TRINITY WESTERN UNIVERSITY

A handwritten signature in cursive script that reads 'Jonathan S. Raymond'.

Jonathan S. Raymond, Ph.D.  
President

JSR/hkp





APPENDIX "B"

BY E-MAIL  
(Original By Mail)

May 17, 2013

Federation of Law Societies of Canada  
World Exchange Plaza  
45 O'Connor Street, Suite 1810  
Ottawa, ON K1P 1A4

**Attention: John J. L. Hunter, QC**  
**Chair of the Special Advisory Committee on Trinity Western University's**  
**Proposed School of Law (the "Special Advisory Committee")**

Dear Sirs/Mesdames:

**Re: Response to Special Advisory Committee**

We write in relation to your letter of May 3, 2013 to Dr. Jonathan Raymond and the mandate given to the Special Advisory Committee by the Federation of Law Societies of Canada (the "Federation"). We thank you for your letter, but TWU continues to have serious concerns with the creation of the Special Advisory Committee.

Canada's law societies are charged with regulating the legal profession in the public interest. They have each approved a national requirement that reflects their collective view as to what is necessary to ensure that potential new members graduating from a law degree program in Canada are competent to practice and understand their professional and ethical obligations. With the express approval of each law society in Canada, the Federation established the Canada Common Law Program Approval Committee (the "Approval Committee"), which applies the national requirement to each proposed new law degree program. As you have noted, TWU's Proposal for a School of Law (the "Proposal") is in the process of being reviewed by the Approval Committee.

As has been clearly and correctly articulated by the Federation, the Approval Committee has no mandate or authority to consider TWU's Community Covenant (the "Covenant") outside of the national requirement. The authority of the Federation arises only from the express approval



given by each of the 14 Canadian law societies to the national requirement and the Approval Committee. The Federation has no mandate with respect to matters outside of the national requirement. You have attempted to address this lack of mandate by indicating that the Special Advisory Committee will only provide advice to the Federation. While this may be true, it does not address the fact that the Federation itself has no jurisdiction from the law societies to consider or make recommendations with respect to the Covenant.

On its website, the Federation attempts to justify the existence and role of the Special Advisory Committee on the basis that issues raised about the Covenant by certain advocates opposing TWU's Proposal "were not anticipated when the national requirement was developed".<sup>1</sup> With respect, this is not a justification for reaching outside of the Federation's mandate. In accordance with administrative law principles, the Federation must remain within that mandate.

TWU accepts that it must, and will, provide an institutional setting that appropriately prepares lawyers for public practice and for the diversity that its graduates will encounter. In *Trinity Western University v. B.C. College of Teachers*<sup>2</sup> ("*TWU v. BCCT*"), the Supreme Court of Canada found that such was the case with respect to TWU's education program and further held that denial of approval was unlawful since there was no "specific evidence"<sup>3</sup> that graduates would not uphold the basic values of non-discrimination. If such were not also the case with respect to TWU's School of Law Proposal, presumably the Approval Committee would address that in considering whether graduates would meet the "Ethics and Professionalism" component of the "Competency Requirements" of the national requirement. In the context of the national requirement and the role of the Approval Committee, it is not relevant that the Covenant was not specifically anticipated. Either TWU's Proposal meets the national requirement or it does not (and we obviously believe strongly that it does).

The only purpose for the proposed work of the Special Advisory Committee is to provide advice to the Federation, and presumably through the Federation to its member law societies, pertaining to the religious foundations of TWU. It does not appear that the law societies have solicited this advice. The Federation is interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread. For these reasons, TWU objects to the establishment and mandate of the Special Advisory Committee. We urge the Special Advisory Committee to recommend to the Federation that this matter is, as has been maintained by the Federation in the past, outside of the Federation's mandate. To the extent that matters are external to the national requirement and the work of the Approval Committee, they are of a political nature and, if relevant at all, best left to the Ministry of Advanced Education in British Columbia.

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1 <http://www.flsc.ca/documents/TWUQuestionsandAnswers.pdf>

2 [2001] 1 S.C.R. 772

3 *TWU v. BCCT* at para.38 . See also paras. 12-13.

It is clear that there has been an organized political campaign to oppose TWU's Proposal, which commenced with the letter from the Council of Canadian Law Deans. You should be aware that in preparing the Proposal, TWU specifically consulted with a number of law deans, including all of the law deans in British Columbia. None of them raised any issues or concerns about the Covenant or TWU's religious nature.

All of that having been said, there are responses to all of the significant objections raised in the various submissions that you provided TWU with your letter of May 3, 2013. Below you will find TWU's responses, but these are provided with an express reservation of all of TWU's rights to seek legal redress against the Federation and any individual law society arising from the work of the Special Advisory Committee, including with respect to jurisdictional challenges, should that be necessary in the future.

## **RESPONSES TO OBJECTIONS RAISED BY OPPONENTS OF TWU'S PROPOSED SCHOOL OF LAW**

It would be very difficult to respond to each and every discrete point raised in the unsolicited letters and submissions sent to the Federation, particularly given the short period of time you allowed. The letters in opposition to the Covenant and TWU's Proposal raise a number of similar arguments and we will address these in a summary format. We will provide examples of statements of opposition as appropriate to demonstrate the flaws in the reasoning of TWU's opponents. As part of the legal team that represented TWU in *TWU v. BCCT*, the writer can say that most of these arguments were also made in that case and were rejected by the Supreme Court of Canada.

### ***(a) Compatibility of the Covenant with Training in Ethics and Professionalism***

A number of opponents have suggested that the Covenant is incompatible "with the ethical and legal training appropriately required of those seeking entry into the legal profession"<sup>4</sup>. West Coast LEAF has gone so far as to argue that, because of the Covenant, TWU "cannot impart on prospective lawyers a sufficient understanding of the ethical duty not to discriminate and to honour the obligations enumerated in human rights laws"<sup>5</sup>. Others suggest that TWU is "not up to the challenge of having an open, honest, meaningful discussion about its policies and practices"<sup>6</sup> and that TWU "cannot be trusted to promote [a] constitutionally mandated understanding" of equality<sup>7</sup>.

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4 Egale Canada letter, January 25, 2013

5 See West Coast LEAF letter, February 25, 2013, page 3.

6 Letter from students of Schulich School of Law, undated

7 National Association of Women and the Law, March 8, 2013

These arguments are wrong at law, intellectually flawed, discriminatory in themselves and, at a minimum, deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

It should be beyond question that TWU acknowledges that human rights laws and section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation. The courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life. We trust that you have access to TWU's full proposal, including the course outlines contained therein. You will note that standard texts are proposed for such topics, which reference the historical inequality suffered by homosexuals. No course covering section 15 of the *Charter* or educating students on provincial human rights protections would be complete without fully addressing cases such as *Vriend v. Alberta*<sup>8</sup>, *Egan v. Canada*<sup>9</sup>, and *Reference re Same-Sex Marriage*.<sup>10</sup> We are certain that the Approval Committee will be reviewing these course outlines as part of its work in assessing the academic program to be offered at TWU.

You will also note that TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course on Ethics and Professionalism (LAW 602). A summary description of this mandatory course in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. ***It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.***<sup>11</sup> [Emphasis added]

TWU is committed to fully and appropriately addressing ethics and professionalism and the opponents of the Proposal cannot credibly argue otherwise. We are certain that the Approval Committee will find more than sufficient coverage of these topics.

The opponents of our Proposal must therefore be suggesting that ***the very fact of the Covenant and the religious beliefs inherent therein, undermine the otherwise appropriate education to be provided at TWU on ethics and professionalism.*** This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be "equipped to deal with students" and be unable to "offer comfort and support to

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8 [1998] 1 S.C.R. 493

9 [1995] 2 S.C.R. 513

10 [2004] 3 S.C.R. 698

11 TWU Proposal, page 22. See also full description of course at page 93.

the students”<sup>12</sup>. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU’s Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>13</sup>

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism. TWU agrees with Egale Canada that “the dignity and value of all individuals irrespective of their sexual orientation ... now form part of the fabric of professional ethics and the rule of law”.<sup>14</sup> Each graduate of a TWU School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Covenant. In this regard, we note that there are many TWU graduates who have gone on to Canadian law schools and are now successfully practicing law across Canada.

As evident from the submissions received by the Federation, there are students currently at public law schools that hold these same religious beliefs<sup>15</sup>. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one suggests that they will not do so.

The oaths that graduating law students will take before being admitted to practice law require them to uphold the laws and rights and freedoms of all persons. For example, the oaths used in Ontario and British Columbia contain the following statements, respectively:

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12 B.C. College of Teachers Factum in *TWU v. BCCT*, para. 121. Note that when intervening in *TWU v. BCCT*, Egale Canada made similar arguments.

13 *TWU v. BCCT*, paras. 32-33

14 See letter from Egale Canada, dated January 25, 2013

15 See letter from “Christian law students across Canada” dated March 10, 2013 indicating that the students “hold [the Biblical principles on which TWU’s Covenant is based] trust regardless of the law school [they] attend”. See also letter from current UBC law students dated March 19, 2013 where they make this same point: “Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law.”

I shall champion the rule of law and safeguard the rights and freedoms of all persons<sup>16</sup>.

...uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia.<sup>17</sup>

If the opponents' line of reasoning prevails, it equates to denying accreditation to individuals on the basis of religious belief. The Supreme Court of Canada specifically addressed this concern in *TWU v. BCCT*:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church.<sup>18</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>19</sup>

It would clearly be abhorrent to suggest that the many lawyers across Canada holding similar religious views to those addressed in the Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs<sup>20</sup>. While the opponents of TWU's Proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Covenant are a basis upon which TWU's application should be delayed or denied. As found by the Supreme Court of Canada, they are not a basis upon which the Federation should anticipate that graduates will fail to meet their professional and ethical obligations.

***(b) TWU Graduates will require "Additional Study"***

In a related argument, a number of opponents say that TWU should not have a School of Law as its students should "undertake additional study ... similar to the process for foreign trained lawyers"<sup>21</sup> or that TWU graduates should not "become licensed to practice law without

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16 Oath to practice law in Ontario as a barrister and solicitor (Bylaw 4(21):

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805>

17 Barristers' and Solicitors' Oath: <http://www.lawsociety.bc.ca/docs/publications/mm/oath.pdf>

18 *TWU v. BCCT*, para. 33.

19 *TWU v. BCCT*, para. 36

20 See *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

21 West Coast LEAF letter, February 5, 2013.

further study and entrance requirements”<sup>22</sup>. This is presumably because such opponents believe that the Covenant will “impair the development of critical thought and legal analytical skill”<sup>23</sup> or the TWU students will not “remain independent and appropriately value-oriented”<sup>24</sup>.

We have already noted how deeply offensive this reasoning is to lawyers and law students holding religious beliefs similar to those embodied in the Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience in order that they be competent to practice law.

There is a serious logical flaw in the argument. It is clear from the submissions sent to the Federation that existing law schools have: (1) students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. The current law schools have apparently not undermined these students’ and lawyers’ religious beliefs; and neither should they try to do so. Lawyers are not required to all believe the same way concerning issues of sexual morality. It is only required that their conduct be ethical and professional.

Again, we note that this same point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to “complete their fifth year of professional teacher education through an approved program at a public university”<sup>25</sup>. The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. ***Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.***<sup>26</sup>  
[Emphasis added]

These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. As stated by a number of Christian law students across the country in their submission to the Federation: “If commitment to Biblical principles results in the denial of a private institution as capable of

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<sup>22</sup> National Association of Women and the Law letter, March 8, 2013.

<sup>23</sup> Letter from UBC law students, March 14, 2013.

<sup>24</sup> Letters from students at a number of law schools. See for example, letter from UVic law students dated March 12, 2013.

<sup>25</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118.

<sup>26</sup> *TWU v. BCCT*, para. 32

teaching law, this implicates our competence as future lawyers also. ... [A]dhering to religious beliefs does not equate to future discriminatory conduct".<sup>27</sup> The Supreme Court of Canada agrees with these Christian students:

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.<sup>28</sup>

...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>29</sup>

...

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>30</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.<sup>31</sup>

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be conclusive in your deliberations as well.

***(c) TWU v. BCCT is Binding Law***

The opponents of TWU argue that *TWU v. BCCT* is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that acknowledging TWU's freedom of religion and association rights to maintain the Covenant would involve a "race to the bottom"<sup>32</sup> since not all human rights legislation across the country contain the same provisions.

Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is "limited to BC law" and is simply a finding that TWU is in "compliance with B.C. legislation"<sup>33</sup>. It has been argued that human rights provisions recognizing religious associational rights are not applicable (despite the Supreme Court of Canada's

27 Letter from "Christian law students across Canada" dated March 10, 2013.

28 *TWU v. BCCT*, para. 19

29 *TWU v. BCCT*, para. 33

30 *TWU v. BCCT*, para. 35

31 *TWU v. BCCT*, para. 36

32 Letter from Ruby Shiller Chan Hassan dated February 28, 2013

33 For example, see SOGIC letter, dated March 18, 2013, pages 2 and 4.

ruling in *TWU v. BCCT*) and that refusing TWU's application because of the Covenant would not violate freedom of religion or freedom of association. In particular, SOGIC draws on American jurisprudence, where there is no constitutional equality guarantee such as s.15 of the *Charter*, to argue that it is acceptable to allow TWU to exist, but also deny it approval of its programs. This is a surprisingly impoverished view of Canadian equality rights.

As already noted, many of the arguments advanced by the opponents of TWU's Proposal were also made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. It should be clear that the decision in *TWU v. BCCT* was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. We will address a number of the specific legal arguments made by opponents in their attempt to distinguish *TWU v. BCCT*.

(i) *Section 41 of the B.C. Human Rights Code (and similar provisions)*

In *TWU v. BCCT*, the Court made reference to section 41 of the *Human Rights Code* in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution<sup>34</sup>. These were passing references, but the Court's analysis was much broader, based on preserving human rights and *Charter* values in acknowledging TWU's right to a teacher education program. This is conveniently summarized by the following quotes:

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

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>35</sup>

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*<sup>36</sup>, the Supreme Court of Canada wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion"<sup>37</sup>. In *Brossard (Town) v. Quebec (Commission des droits de la*

34 *TWU v. BCCT*, paras.32 and 35.

35 *TWU v. BCCT*, paras. 34-35

36 [1984] 2 S.C.R. 603

37 At 626 (S.C.R.)

*personne*)<sup>38</sup> Beetz J. held that a similar provision promotes “the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits”<sup>39</sup>. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.<sup>40</sup>

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada, not just in B.C..<sup>41</sup> It is trite to point out that all such legislation must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU is permitted to exist as a religious educational community only in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

We would also note that SOGIC has been inclusive in listing protections granted to religious groups such as TWU in human rights legislation. For example, no reference is made to sections 4 and 6 of the *Saskatchewan Human Rights Code*, which state:

Right to freedom of conscience

4 Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free association

6 Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

SOGIC also argues that s.41 and similar provisions do not protect TWU as, they say, TWU does not promote the interests of individuals as members of an identifiable group nor “exclude individuals who do not share its religious beliefs”<sup>42</sup>. This misinterprets and misapplies the *Human Rights Code*. Specifically, it ignores the decision in *Vancouver Rape Relief Society v. Nixon*<sup>43</sup> where the Court of Appeal held that an organization is *not* required

38 [1988] 2 S.C.R. 279

39 At 324 (S.C.R.). See also *St. James Community Service Society v. Johnson*, 2004 B.C.S.C. 1807 and *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 B.C.H.R.T. 269

40 *Gillis v. United Nations Native Society*, [2005] BCHRT 301 at para. 21, *Sahota, supra.* at para. 37

41 See, for example, *Ontario (Human Rights Commission) v. Brockie*, 43 C.H.R.R. D/90 (Ont. Div. Ct.); *Smith v. Knights of Columbus*, 2005 BCHRT 544; *Garrod v. Rhema Christian School* (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); *Kearley v. Pentecostal Assemblies Board of Education*, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

42 SOGIC letter, March 18, 2013, page 5.

43 2005 B.C.C.A. 601 (leave application denied, February 1, 2007, S.C.C. No.31633)

to demonstrate that it exclusively provides services to a group enumerated under s. 41 in order to be protected by that section<sup>44</sup>.

(ii) *Civil Marriage Act*

While it is without question that there have been some important societal changes since *TWU v. BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*<sup>45</sup> are worth noting:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

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

...

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

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

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

Opponents have argued that denying approval of TWU’s School of Law Proposal because of the Covenant will not impair the constitutional rights of TWU and the individuals comprising its community<sup>46</sup>. They promote a penurious view of these *Charter* rights.

Citing *Saskatchewan (Human Rights Commission) v. Whatcott*<sup>47</sup>, SOGIC argues that denying TWU’s application for a School of Law would not infringe s.2(a) of the *Charter* as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of

44 *Nixon, supra.*, para. 58.

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

46 SOGIC letter, March 18, 2013, pages 5-6

47 2013 SCC 11

Canada in *Whatcott* also relied on the oft-cited words of Dickson J. in *R. v. Big M Drug Mart*<sup>48</sup> that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and **without fear of hindrance** or reprisal...”<sup>49</sup> (emphasis added).

In *Alberta v. Hutterian Brethren of Wilson Colony*<sup>50</sup>, it was accepted that Alberta’s mandatory photo requirement for driver’s licensing breached the s.2(a) rights of the Hutterian Brethren because of their religious objection to having their photos taken. Applying the logic of TWU’s opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver’s licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice. This is precisely how the Supreme Court of Canada analyzed the matter in *TWU v. BCCT*:

Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system.<sup>51</sup>

SOGIC draws on American jurisprudence to suggest that only the **existence** of TWU as a religious community ought to be tolerated, but that its programs need not receive “official imprimatur” or be granted “equal access”<sup>52</sup>. In *TWU v. BCCT*, the College of Teachers made the same argument, relying on similar cases (including *Bob Jones University*), that it was right to withhold the imprimatur that approval of TWU’s program would bring.<sup>53</sup> These arguments were clearly rejected by the Supreme Court of Canada.

Further, and surprisingly, SOGIC fails to recognize the importance of the equality right in the Canadian context. Section 15 of the *Charter* prohibits the imposition of burdens or withholding of benefits on account of personal characteristics, including based on religion. The leading definition of discrimination is still as articulated by McIntyre J. in *Andrews v. Law Society of British Columbia*<sup>54</sup>:

... discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which **has the effect of imposing burdens, obligations, or disadvantages** on such individual or group not imposed upon others, **or which withholds or limits access to opportunities, benefits, and advantages** available to other members of society.

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48 [1985] 1 S.C.R. 295

49 At p.336

50 [2009] SCC 37

51 *TWU v. BCCT*, para. 35

52 SOGIC letter, March 18, 2013, page 7.

53 B.C. College of Teachers Factum in *TWU v. BCCT*, paras. 57, 79, 111, 116

54 [1989] 1 S.C.R. 143

Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.<sup>55</sup> [Emphasis added]

The denial of approval of TWU's School of Law application because of the Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community. As evidenced by many of submissions received by the Federation, opponents of TWU's proposal presume that Christians at TWU have "hostility to gay and lesbian people"<sup>56</sup> and hide "homophobia in Christian values"<sup>57</sup>. There is absolutely no evidence for these statements about TWU or the members of its community. These opponents are guilty of the same type of prejudice and stereotyping about which they say the Federation should be concerned.

All of the opponents of TWU's proposal focus solely on the Covenant. This is, in fact, a focus by them on TWU's sectarian nature<sup>58</sup>. The Federation's creation of the Special Advisory Committee continues this disturbing focus and we strongly encourage both the Special Advisory Committee and the Federation to carefully consider the following words of the majority in *TWU v. BCCT*:

We would add that *the continuing focus of the BCCT on the sectarian nature of TWU is disturbing*. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.<sup>59</sup> [Emphasis added]

If there are pedagogical or other problems with the education to be provided at TWU's proposed School of Law, they will presumably be detected by the Approval Committee, the Ministry of Advanced Education, or both. As a matter of constitutional and human rights, it is not open for the Federation to focus solely on the sectarian nature of TWU, as communicated by the Covenant, to undermine the normal approval processes. The Federation and its law society members are not permitted to express moral disapprobation of the Christian beliefs on which TWU is founded. Again, we urge that the Special Advisory Committee advise the Federation to discontinue any further consideration of the Covenant and TWU's religious nature as separate from the Approval Committee.

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55 At pp.174-175. This definition recently reiterated by the S.C.C. in *Withler v. Canada*, [2011] 1 S.C.R. 396 at para. 29 and *Hutterian Brethren, supra.* at para. 108

56 Letter from Ruby Shiller Chan Hassan dated February 28, 2013

57 Letter from UBC law students, dated March 14, 2013

58 Which is derided by the lawyers at Ruby Shiller Chan Hassan as a "fundamentalist and narrow interpretation of Christianity"

59 *TWU v. BCCT*, para. 42

***(d) Diversity in the Legal Profession and Academic Freedom***

Some opponents suggest that approval of TWU's program will "diminish diversity in the legal profession"<sup>60</sup>. It is peculiar, to say the least, that these advocates seek to silence a perspective different from their own within the Canadian legal community in name of diversity. While they express a concern that TWU's School of Law will have a "limited tolerance of diversity", their opposition exhibits exactly that trait.

There is nothing inimical to Canadian society contained in the Covenant. Its contents are to be expected in the context of an evangelical Christian university. As noted by a number of others, including uOttawa OUTLaw, the Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice". As we are sure you will agree, the legal profession encourages lawyers to be inculcated in these values. All opponents focus on only one aspect of the Covenant, ignoring the balance of its contents, which are not only unobjectionable but universally laudable.

As stated by Dickson J. in *Big M Drug Mart*, "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct"<sup>61</sup>. As then noted in *TWU v. BCCT*, "the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected"<sup>62</sup>. The TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

TWU's proposed School of Law should be assessed on its merits, based on the national requirement. As the only privately funded law school in Canada, it may provide a slightly different perspective, but this should be welcomed. As the Supreme Court of Canada suggested, Canada is enriched by having a diversity of institutions. There is no principled reason that secular, public institutions should have a monopoly on legal education in Canada<sup>63</sup>.

A few opponents have questioned academic freedom at TWU. While we expect that this issue is outside of what will be considered by the Special Advisory Committee, we would note for your benefit that TWU maintains a strong policy on academic freedom that was

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60 Letter from UBC law students, dated March 14, 2013

61 At p.336.

62 *TWU v. BCCT*, para. 33.

63 Law students from UBC have written in their letter of March 19, 2013 that, in their experience, their religious beliefs are "often openly derided" in the context of the explicitly secular emphasis at that institution. Not all secular law schools should be judged by this experience, but it does provide context for the opposition made by students at a number of law schools in Canada.

affirmed by British Columbia's Degree Quality Assessment Board in 2004. TWU is a member of the Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. There will be a full range of academic inquiry and debate within TWU's School of Law.

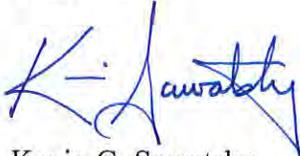
## Conclusion

The arguments of opponents to TWU's proposed School of Law relate to the Covenant and TWU's religious character. As set out above, most of these arguments have already had a thorough hearing before, and been rejected by, the Supreme Court of Canada. One opponent, Egale Canada, raised some of the exactly same arguments as an intervenor in *TWU v. BCCT* as it now references in its letter to the Federation. The Supreme Court of Canada decision in that case should be considered determinative for the reasons set out above.

There is no "specific evidence" that TWU graduates will fail to uphold the basic values of non-discrimination<sup>64</sup>. This does not leave a legitimate role for the Special Advisory Committee. We submit that the appropriate course is for the Special Advisory Committee to advise the Federation and its members that there are no relevant additional considerations to be taken into account in determining whether graduates of a TWU School of Law should be eligible to enroll in the admissions program of any Canadian law society.

We believe that we have answered the important points raised by TWU's opponents. If there are other issues on which you would like to receive TWU's position or views, or if there are additional documents that you would like to review that we may be able to provide, please do not hesitate to contact the writer.

Yours truly,



Kevin G. Sawatsky  
Vice-Provost (Business) and University Legal Counsel

cc: Gerald R. Tremblay, President  
Kuhn LLP

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<sup>64</sup> *TWU v. BCCT* at para.38 . See also paras. 12-13.

MEMORANDUM

**PRIVILEGED AND CONFIDENTIAL**

**To**                   Gérald R. Tremblay, C.M., O.Q., Q.C.,                   **Date**                   March 21, 2013  
                           Ad. E.  
                           President  
                           Federation of Law Societies of Canada

                          Jonathan G. Herman  
                           Chief Executive Officer  
                           Federation of Law Societies of Canada

**From**               John B. Laskin

**Re**                   Trinity Western University School of Law Proposal –  
                           Applicability of Supreme Court decision in *Trinity Western University v. British  
                           Columbia College of Teachers*

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**Overview**

You have asked for my advice on the extent to which the decision of the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*,<sup>1</sup> rendered in 2001, applies to consideration of the Trinity Western University School of Law proposal, which TWU has submitted to the Canadian Common Law Program Approval Committee.

Before setting out my advice on this question I will first review in some detail the Supreme **Court's decision**. Next, I will discuss the stage of the approval process at which the *BCCT* case could come into play. I will then proceed to my conclusion: that if approval of the TWU proposal were refused on the basis of concerns about its discriminatory practices, and that decision were challenged, the *BCCT* decision would govern the result. As discussed below, I base that conclusion on the parallels between the circumstances in *BCCT* and those posited here, the currency of the approach taken in *BCCT* to the balancing the *Charter* values of equality and religious freedom, and the likelihood of an absence of evidence of the type of harm that would justify upholding the decision. I conclude by considering a number of the arguments that have been put forward in support of the view that *BCCT* would not apply.

**The Supreme Court decision in *BCCT***

***Factual background***

The *BCCT* case arose from an application by TWU to the College of Teachers for approval of its program of teacher education for the purpose of certifying its graduates as eligible to teach in the province's public schools. The *BCCT* was authorized by statute to carry out this approval

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<sup>1</sup> 2001 SCC 31 ("*BCCT*" or "the *BCCT* case")

**function. Its statutory objects included “to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership.” Its policies for approval of teacher education programs for certification purposes set three criteria for approval: context (including depth and breadth of personnel, research and other scholarly activity), selection (including an admission policy that recognized the importance of academic standing, interest in working with young people and suitability for entrance into the teaching profession) and content of the program.**

Though there was no evidence that the TWU program would not meet these criteria, the BCCT **rejected the request for approval. It did so on the basis that TWU’s proposed program followed discriminatory practices, which were contrary to the public interest and public policy.** The focus of the BCCT’s concern was the requirement for students at TWU to sign a “Community Standards” document. This document included an agreement to “refrain from practices that are biblically condemned.” Among the practices specified were “sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography.” Faculty and staff were to sign a similar document. The requirement, in the view of the BCCT, had the effect of excluding persons from TWU on the basis of their sexual orientation.

**TWU sought judicial review of the BCCT’s decision. It challenged the BCCT’s jurisdiction to consider the TWU practices that it regarded as discriminatory, and asserted that even if the BCCT had jurisdiction, there was no evidence of discriminatory consequences resulting from these practices.**

### ***Jurisdiction to consider alleged discriminatory practices***

The Supreme Court first **held that it was within the jurisdiction of the BCCT to consider TWU’s discriminatory practices.** Since teachers were a medium for the transmission of values, it was important that future teachers understand the diversity of Canadian society. In determining suitability for entrance into the teaching profession, the BCCT was therefore entitled to take into account “all features of the education program at TWU,” and it would not be correct “to limit the scope of [the BCCT’s statutory objects] to a determination of skills and knowledge.” The BCCT’s public interest jurisdiction made it appropriate for it to consider concerns about equality. Though it was not directly applying either the *Charter* or human rights legislation, it was entitled to consider them in determining whether it would be in the public interest to allow public school teachers to be trained at TWU.<sup>2</sup>

The Court determined, based on the prevailing standard of review jurisprudence and **consideration of the nature of the BCCT’s expertise, that the BCCT’s decision should be reviewed on the standard of correctness.**<sup>3</sup> It went on to consider two questions: first, whether the **requirement of adherence to the “Community Standards” document, and the program and practices of TWU, showed that TWU was engaging in discriminatory practices;** and second, whether, if so, these discriminatory practices established a risk of discrimination sufficient to conclude that TWU graduates should not be admitted to teach in the public schools.

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<sup>2</sup> *Id.* at paras. 13, 26-27

<sup>3</sup> *Id.* at paras. 15-19

### ***Existence of discriminatory practices***

In considering the first question, the Court found that a homosexual student would not be likely to apply to TWU. It observed, however, that TWU was “not for everybody” – rather, it was designed to address the needs of people who share certain religious convictions. Its admissions policy, the Court found, was not sufficient to establish discrimination within the meaning of the *Charter*. It went on: “To state that the voluntary adoption of a code of conduct based on a person’s own religious beliefs, in a private institution, is sufficient to engage s. 15 [of the *Charter*] would be inconsistent with freedom of conscience and religion, which co-exist [sic] with the right to equality.”<sup>4</sup> While the BCCT was entitled to consider concerns about equality, it was also required to consider issues of religious freedom.

The Court noted in this connection that **British Columbia’s human rights legislation** accommodates religious freedom by providing that a religious institution does not breach the legislation when it prefers adherents of its religion, and that the B.C. legislature must not have considered that university education with a Christian philosophy was contrary to the public interest, since it had passed legislation in favour of TWU.<sup>5</sup> It also referred to the contribution made by religious institutions to the diversity of Canadian society, and the tradition in Canada of religion-based institutions of higher learning.<sup>6</sup> While homosexuals might be discouraged from attending TWU, that would not prevent them from becoming teachers. On the other hand, the Court stated, the freedom of religion of students at TWU would not be accommodated if they were denied that opportunity.<sup>7</sup>

### ***Sufficient risk of discrimination***

The central issue in the case, therefore, was how to reconcile the religious freedom of individuals wishing to attend TWU with the equality concerns of public school students, their parents, and society generally. The Court held that the potential conflict between the two sets of rights and values should be resolved through their proper delineation.<sup>8</sup>

The proper place to draw the line, the Court held, was between belief and conduct. It followed that “[a]bsent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.”<sup>9</sup> There was no evidence that graduates of TWU would not treat homosexuals fairly and respectfully, and no evidence of discriminatory conduct by any graduate of the teaching program that TWU had been offering jointly with Simon Fraser University. Absent evidence that training teachers at TWU would “pose a real risk to the public educational system,” the BCCT had been wrong to refuse approval. “In considering the religious precepts of TWU instead of the actual impact of those beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations.”<sup>10</sup> If there were evidence that particular teachers in the public school system actually engaged in discriminatory conduct, discipline proceedings before

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<sup>4</sup> *Id.* at para. 25

<sup>5</sup> *Id.* at paras. 28, 35

<sup>6</sup> *Id.* at paras. 33-34

<sup>7</sup> *Id.* at para. 35

<sup>8</sup> *Id.* at para. 28

<sup>9</sup> *Id.* at para. 36

<sup>10</sup> *Id.* at paras. 35, 42-43

the BCCT could be taken.<sup>11</sup> But there was no basis in the evidence for concluding that graduates of TWU would engage in conduct of this kind.

### **Stage of the approval process at which *BCCT* could apply**

It is not likely in my view that the *BCCT* decision would be applicable to a decision made by the Approval Committee within the scope of its current mandate. On my understanding of the current mandate of the Approval Committee, it is limited to considering the dimension of the public interest reflected in the national requirement. It may therefore consider the practices of **TWU that are alleged to be discriminatory only to the extent of considering whether TWU's mission and perspective would constrain in any respect the teaching of the competencies set out in the national requirement.** If the Approval Committee were to conclude that the teaching of the required competencies would be constrained so as to render the TWU School of Law unable to meet the national requirement, that decision would likely not engage the concerns about *Charter* values that underlay the decision in *BCCT*. It would be based not on generalized concerns about discriminatory practices grounded in religious beliefs, but on the conclusion that the TWU program would fail to teach a set of competencies that are required irrespective of religion.<sup>12</sup>

The *BCCT* decision could however come into play if the mandate of the Approval Committee were expanded to include other dimensions of the public interest, and it then decided to refuse approval of the TWU program based on concerns about discriminatory practices. It could also come into play if, despite the conclusion of the Approval Committee that the TWU program should be approved, one or more of the law societies decided, based on concerns about discriminatory practices and its view of the public interest, to refuse to accept completion of the TWU program as meeting the academic requirements for admission to the profession. Like the BCCT, law societies have been given a public interest mandate.

A variety of threshold issues could arise depending on precisely how and when in the approval process a challenge based on the *BCCT* decision was brought. These include issues of appropriate procedure and the manner in which *Charter* values may be invoked in relation to a decision of a committee of the Federation. I would be pleased to consider these matters further if you would like me to do so. In this discussion, I will focus on the substantive question whether, if a decision to refuse approval of TWU's program were made based on the practices that are alleged to be discriminatory, *BCCT* would govern the result.

### **Applicability of *BCCT***

In my view the answer to that question is that it would. I come to this view for three main reasons.

First, if a decision to refuse approval of TWU's program were made based on the practices that are alleged to be discriminatory, there would be a great many parallels between the circumstances that would then prevail and those in *BCCT*. These parallels would include the following.

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<sup>11</sup> *Id.* at para. 37

<sup>12</sup> In making this point I do not intend to suggest that the Approval Committee would or should come to this conclusion.

- As in *BCCT*, the decision under review would be a decision whether completion of a program offered by TWU would meet the academic requirements for entry into a profession.
- As in *BCCT*, the decision would have been made by a body having a mandate to act in the public interest.
- As in *BCCT*, the concerns on which the decision was based would focus on the requirement that students at TWU sign a document in which they agree to abstain from, among other things, homosexual sexual activity while attending TWU. (The current document, entitled “**Community Covenant Agreement**,” is cast in somewhat less pointed terms than the document considered in *BCCT*. It no longer speaks of homosexual behavior as a “**sexual sin**” that is “**biblically condemned**.” Instead it calls on members of the TWU community, “[i]n keeping with biblical and TWU ideals,” to voluntarily abstain from, among other things, “**sexual intimacy that violates the sacredness of marriage between a man and a woman**.”)
- As in *BCCT*, TWU remains a private, faith-based university, founded by the Evangelical Free Churches of Canada and America, established as a university by British Columbia statute, and exempted, in part, from the B.C. *Human Rights Code*.

Second, the Supreme Court of Canada continues to apply the balancing approach that it took in *BCCT* where more than one set of *Charter* rights or values – in that case the values associated with equality and freedom of religion – are engaged.

The Supreme Court has consistently rejected a hierarchical approach to rights and values, which places some over others.<sup>13</sup> It did so yet again in its very recent decision in *Saskatchewan (Human Rights Commission) v. Whatcott*.<sup>14</sup> In that case the Court engaged in a balancing of the same two sets of values (along with freedom of expression) that it considered in *BCCT*, in a manner very analogous to that in *BCCT*. In so doing it reiterated the statement the Court first made in *Big M Drug Mart*, the seminal *Charter* freedom of religion case, that the right to manifest religious belief by teaching is part of “[t]he essence of the concept of freedom of religion.”<sup>15</sup>

In *Whatcott*, the Court addressed the constitutional validity of the prohibition of hate speech in Saskatchewan human rights legislation. It was alleged that certain flyers distributed by Whatcott infringed the prohibition by promoting hatred on the basis of sexual orientation; Whatcott maintained that the flyers constituted the exercise of his freedom of expression and freedom of religion. The Court saw the case as requiring it

to balance the fundamental values underlying freedom of expression (and, later, freedom of religion) in the context in which they are invoked, with competing *Charter* rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings.<sup>16</sup>

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<sup>13</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 877

<sup>14</sup> 2013 SCC 11

<sup>15</sup> *Id.* at para. 159

<sup>16</sup> *Id.* at para. 66

In striking this balance, which resulted in its severing certain portions of the prohibition but upholding the remainder, and finding the conclusion that there was a contravention of the legislation unreasonable for two of the four flyers in issue and reasonable for the other two, the **Court stated that** “the protection provided under s. 2(a) [the freedom of religion guarantee] should extend broadly,” and that “[w]hen reconciling *Charter* rights and values, freedom of religion and the right to equality accorded all residents of Saskatchewan must co-exist.”<sup>17</sup> It also **referred to the** “mistaken propensity to focus on the nature of the ideas expressed, rather than on the likely effects of the expression.”

Just as in *BCCT*, the Supreme Court in *Whatcott* found the proper balance point between equality and freedom of religion values to be the point at which conduct linked to the exercise of freedom of religion resulted in actual harm. Absent evidence of actual harm, it held in both cases, freedom of religion values must be given effect.

This leads to the third reason for concluding that *BCCT* would govern the result in the circumstances posited here: the likely absence of evidence of actual harm. I recognize of course that lawyers in Canada are subject to ethical duties to treat others with respect and avoid discrimination.<sup>18</sup> But in *BCCT*, the Supreme Court was acutely sensitive to the role of teachers as a “medium for the transmission of values.” The Court considered it “obvious that the pluralistic nature of society and the extent of diversity in Canada are important elements that must be understood by future teachers.”<sup>19</sup> The Court nonetheless had no difficulty concluding that graduates of TWU would “treat homosexuals fairly and respectfully.”<sup>20</sup>

If the TWU teachers program could be relied upon to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same. It seems very unlikely that evidence could be mounted that lawyers educated at TWU would actually engage in harmful conduct. Just as the Court observed in *BCCT*, disciplinary processes would be available to deal with individual cases of discriminatory behaviour, whether by TWU or by graduates of other common law programs.

### **Arguments against the applicability of *BCCT***

Though I conclude for the three reasons just set out that the *BCCT* decision would be dispositive of a challenge to a decision refusing to approve the TWU school of law program based on TWU’s alleged discriminatory practices, I will nonetheless consider further the arguments that have been made to the contrary. A number of these arguments are set out in a paper by Professor Elaine Craig entitled “The Case for the Federation of Law Societies Rejecting Trinity Western University’s Proposed Law Degree Program.”<sup>21</sup> In her paper Professor Craig argues that the legal

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<sup>17</sup> *Id.* at paras. 154, 161

<sup>18</sup> See, for example, rule 5.04 (1) of the Law Society of Upper Canada *Rules of Professional Conduct*, which provides that

[a] lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario *Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

<sup>19</sup> Note 1 above at para. 13

<sup>20</sup> *Id.* at para. 35

<sup>21</sup> *Canadian Journal of Women and the Law*, Vol. 25, No. 1, 2013

context has changed in two respects since *BCCT* was decided, and that the basis for refusing approval to the TWU school of law would be different from the basis on which the BCCT sought to refuse approval of TWU's teaching program. **She argues that the courts' treatment of a decision to refuse approval of the TWU school of law proposal would therefore be different from that reflected in the Supreme Court's decision in *BCCT*.**<sup>22</sup>

The first change in legal context, according to Professor Craig, is the change in the standard of review that the courts would apply to the approval (or non-approval) decision.<sup>23</sup> As indicated **above, the Supreme Court applied the correctness standard in considering whether the BCCT's decision was justified.**

It is possible that Professor Craig is right in asserting that a court reviewing today a decision like that made by the BCCT would apply the reasonableness standard. In its 2012 decision in *Doré v. Barreau du Québec*,<sup>24</sup> the Supreme Court held that in reviewing discretionary decisions of administrative decision-makers that are required to consider *Charter* values, it is appropriate to apply the approach to standard of review generally applied in judicial review proceedings, under which the standard of review is ordinarily reasonableness rather than correctness where the decision-maker has specialized expertise and discretionary power.<sup>25</sup> **The Court stated that "if, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable."**<sup>26</sup> Even before *Doré*, the Court had held in a series of decisions that an administrative body interpreting and applying its home statute (as a law society might be regarded as having done in this case if it decided against approval) should normally be accorded deference, through application of the reasonableness standard, on judicial review.<sup>27</sup> In its very recent decision in *Whatcott*,<sup>28</sup> discussed above, the Supreme Court applied the reasonableness standard in reviewing a decision of a human rights tribunal rendered in a context in which equality values, as well as those associated with freedom of expression and freedom of religion, were engaged.

Despite *Doré* and its antecedents, there also remains in my view a realistic possibility that a reviewing court would apply the **correctness standard. The Supreme Court's standard of review** case law contemplates that the correctness standard will apply to the determination of at least some constitutional issues, including those in which competing constitutional provisions must be accommodated.<sup>29</sup> In *Doré* itself, the Supreme Court implicitly recognized that the correctness standard may be appropriate in this context when it referred to its decision in *BCCT* as an **example of the application of "an administrative law/judicial review analysis in assessing whether the decision-maker took sufficient account of *Charter* values."**<sup>30</sup> Unlike *Doré* and *Whatcott*, this is not merely a case in which *Charter* values would have to be balanced with

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<sup>22</sup> *Id.* at 22-26

<sup>23</sup> *Id.* at 22

<sup>24</sup> 2012 SCC 12

<sup>25</sup> *Id.* at paras. 23, 52-56

<sup>26</sup> *Id.* at para. 58

<sup>27</sup> *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 54; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7 at para. 26; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 39

<sup>28</sup> Note 16 above at para. 168

<sup>29</sup> *Dunsmuir v. New Brunswick*, note 28 above at paras. 58, 61

<sup>30</sup> Note 25 above at para 32

statutory objectives, but one in which competing *Charter* values must themselves be balanced.<sup>31</sup> The Supreme Court has laid down a legal rule as to how that balance is to be struck.

Even if a reasonableness standard applied, it does not follow that the decision would be upheld on judicial review. The key factor in the decision in *BCCT* was that there was no evidence of any harm to the public education system arising from the training of teachers at TWU. A finding based on no evidence is not just incorrect; it is unreasonable.<sup>32</sup> In *Whatcott*, the Supreme Court **set aside two of the human rights tribunal's four determinations on the basis that, having regard to the evidence, the tribunal could not reasonably have reached the result it did by applying the proper legal test.**<sup>33</sup> Absent evidence of actual harm, a decision in this case not to approve based on concerns about discriminatory practices would likely be regarded as unreasonable.

The second change in legal context, according to Professor Craig, is that social values have **evolved, and that “[t]oday’s decision-makers are expected to be much more protective of gay and lesbian equality than were the decision-makers of ten, fifteen or twenty years ago.”**<sup>34</sup>

Assuming that this is the case, it is doubtful, in my view, that this evolution of social values would lead to a different outcome today from that in *BCCT*. As discussed above, *BCCT* was not simply an equality case. The core **of the Supreme Court’s decision in *BCCT*** was the appropriate balancing of two sets of *Charter* values, those associated with equality and with freedom of religion.<sup>35</sup>

The values associated with freedom of religion are at least as deeply embedded today as they were in 2001. **I have already discussed the Supreme Court’s very recent decision in *Whatcott***, in which the Court spoke of the right to manifest religious belief by teaching, and stated that the protection of freedom of religion “should extend broadly.” The **Supreme Court’s approach to the balancing of values in *Whatcott*** in 2013 appears little different from that in *BCCT* in 2001. It is in my view not correct to conclude that changes in social values since the *BCCT* case was decided would lead to a different outcome today.

As already mentioned, Professor Craig also relies, in arguing that the outcome of a challenge to a **decision to refuse approval of TWU’s law program would be different from that in *BCCT***, on the proposition that the basis for refusing approval to the TWU school of law would be different **from the basis on which the *BCCT* sought to refuse approval of TWU’s teaching program.**<sup>36</sup> She asserts that a decision not to approve the school of law could, and presumably would, be **justified on two grounds. The first is that “it is reasonable to conclude that principles of equality, non-discrimination, and the duty not to discriminate ... cannot competently be taught in a learning environment with discriminatory policies.” The second is that “it is reasonable to conclude that the skill of critical thinking about ethical issues cannot adequately be taught by an institution that violates academic freedom and requires that all teaching be done from the**

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<sup>31</sup> *Whatcott* did entail a balancing of constitutional values, but at the first stage of determining the constitutionality of the provision of the human rights legislation was in issue, not at the subsequent stage of reviewing the decision of the human rights tribunal and applying the statute as the Supreme Court had interpreted it. It was only at the second stage that the Court applied the reasonableness standard of review. At the first stage, the standard applied was correctness.

<sup>32</sup> *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487 at para. 44

<sup>33</sup> Note 16 above at para. 201

<sup>34</sup> Note 23 above at 25

<sup>35</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 877

<sup>36</sup> Note 23 above at 26

perspective that the Bible is the sole, ultimate, and authoritative source of truth for all ethical **decision making.**”

In my view, both of these asserted grounds for refusing approval would be highly questionable. As for the first, as also already mentioned the Supreme Court concluded that graduates of TWU would **“treat homosexuals fairly and respectfully.”**<sup>37</sup> It was implicit in its decision that their **education at TWU did not detract from their ability to comply with** “principles of equality, non-discrimination, and the duty **not to discriminate.”** **Professor Craig provides no evidence to** support the contention that the position would somehow be otherwise for law students.

As for the second, it proceeds from a view of academic freedom that is by no means universally shared.<sup>38</sup> Following its logic would lead to the conclusion that no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. This conclusion cannot be tenable. The second argument, like the first one, also fails to give any recognition to the positive value of religious diversity that the Supreme Court embraced in *BCCT*.

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I hope that this memorandum provides the advice that you require on this aspect of the matter. Please let me know if you have any questions arising from it.

JBL/as

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<sup>37</sup> At para. 35

<sup>38</sup> The TWU policies on academic freedom (available online at <http://www.twu.ca/academics/calendar/2012-2013/academic-information/academic-policies/>) include these statements:

Trinity Western University is committed to academic freedom in teaching and investigation from a stated perspective, i.e., within parameters consistent with the confessional basis of the constituency to which the University is responsible, but practiced in an environment of free inquiry and discussion and of encouragement to integrity in research. Students also have freedom to inquire, right of access to the broad spectrum of representative information in each discipline, and assurance of a reasonable attempt at a fair and balanced presentation and evaluation of all material by their instructors. Truth does not fear honest investigation.

# Appendix D

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE

## REPORT ON TRINITY WESTERN UNIVERSITY'S PROPOSED SCHOOL OF LAW PROGRAM

December 2013

## Introduction

1. The Canadian Common Law Program Approval Committee (the “Approval Committee”) is responsible for determining whether existing and proposed common law programs meet the national requirement that establishes the knowledge and skills that all applicants for entry to the admission programs of the law societies in the Canadian common law jurisdictions must possess.
2. The Approval Committee has reviewed the application by Trinity Western University (“TWU”) for approval of its proposed law school program and has determined that, subject to the concerns and comment described below, if implemented as proposed, the program will meet the national requirement. The Approval Committee’s detailed analysis is set out in the chart attached as Appendix “A”.
3. The Approval Committee’s decision is only one step in the process. Pursuant to the British Columbia *Degree Authorization Act* the proposed program also must be approved by the British Columbia Minister of Advanced Education.
4. The Approval Committee’s report must also be considered by the law societies. Although, in the interests of consistency, the law societies mandated the Approval Committee to determine whether law degree programs meet the national requirement, the law societies continue to have the statutory authority to set policies for admission to the legal profession in their respective jurisdictions.

## Background

5. Canada’s law societies are mandated by provincial and territorial statute to regulate the legal profession in the public interest. A core aspect of this mandate is to determine the criteria for admission to the profession, including the academic requirements for entry into law society bar admission or licensing programs.
6. Each law society in the common law provinces and territories requires applicants to its bar admission or licensing program to hold a Canadian common law degree or its equivalent. Notwithstanding this common requirement, until a few years ago, there was no national standard for the Canadian common law degree. Recognizing the desirability of a common standard, in 2007 the Federation of Law Societies of Canada (the “Federation”) established the Task Force on the Canadian Common Law Degree (the “Task Force”) to recommend national academic requirements for Canadian common law degrees.
7. The Task Force report, released in October 2009 (available at [www.flsc.ca](http://www.flsc.ca)), recommended the adoption of a national requirement outlining the knowledge and skills that all applicants for entry to the bar admission programs of the law societies in the Canadian common law jurisdictions must possess, and the law school academic program and learning resources law schools must have in place. The national

requirement was approved by Canada's law societies in 2010 and will come into force for law school graduates in 2015. It is attached as Appendix "B" to this report.

8. Following approval of the national requirement, the Federation established the Common Law Degree Implementation Committee (the "Implementation Committee") to make recommendations on how to measure compliance with the national requirement.
9. The Implementation Committee report, released in August 2011, recommended that the Federation establish the Approval Committee and that the committee be mandated to determine whether existing and proposed law school programs meet the national requirement. The Implementation Committee prescribed in some detail how the Approval Committee should assess compliance and also made recommendations on the composition of the Approval Committee. The full report of the Implementation Committee is available at [www.flsc.ca](http://www.flsc.ca).

### **Canadian Common Law Program Approval Committee – Composition and Mandate**

10. The recommendations of the Implementation Committee were approved by each of the law societies, and the Approval Committee was established in January 2012.
11. The Approval Committee comprises seven members, each of whom possesses specific qualifications relevant to the role. The membership of the Approval Committee must include three current or former law deans or law school administrators, one law society CEO or designate, and three lawyers with experience in law society regulation. All members of the Approval Committee are appointed by the Council of the Federation.
12. The current members of the Approval Committee are Laurie H. Pawlitzka, (Chair), former Treasurer of the Law Society of Upper Canada and Federation Council member for Ontario; Catherine S. Walker, Q.C., former President, Nova Scotia Barristers' Society and Federation Council member for Nova Scotia; Stephen G. Raby<sup>1</sup>, Q.C., former President, Law Society of Alberta and Federation Council member for Alberta; Alan Treleaven, Director of Education and Practice, Law Society of British Columbia; Dean Lorne Sossin, Osgoode Hall Law School; Dean Mary Anne Bobinski, Faculty of Law, University of British Columbia; and Dean Daniel Jutras, Faculty of Law, McGill University.<sup>2</sup>
13. The core function of the Approval Committee is to determine whether law school programs, existing or proposed, comply with the national requirement. The committee's complete mandate is attached as Appendix "C".

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<sup>1</sup> Stephen Raby, Q.C. joined the Approval Committee in October 2013, filling a vacancy on the committee created by the resignation in October 2013 of Babak Barin, former Council member for the Barreau du Québec.

<sup>2</sup> As discussed below, Deans Sossin, Babinski and Jutras did not participate in the review of TWU's proposed law school program.

14. The Approval Committee has begun the process of assessing the existing common law programs to ensure that their graduates will meet the requirements for entry into law society admission programs when the national requirement comes into effect in 2015. Since 2012, existing programs have been required to submit an annual law school report form for the Approval Committee's review indicating how their programs meet the national requirement or how non-compliant aspects will be brought into compliance by 2015.
15. The process is an iterative one that may involve many exchanges between the Approval Committee and the institution. The process continues until the Approval Committee is satisfied that it has all of the information needed to properly assess the program.
16. If the Approval Committee has questions about a program's compliance with the national requirement, the committee may seek additional information from the institution. Pursuant to the recommendations of the Implementation Committee, compliance issues are categorized as a *deficiency*, a *comment*, or a *concern*. The identification of a *deficiency* indicates non-compliance with one or more elements of the national requirement. In such cases the Approval Committee will engage in discussions with the institution until the deficiency has been resolved or the committee determines that a resolution is not possible. Where an element of the national requirement is currently met, but compliance is at a minimum level that could deteriorate to a deficiency, the Approval Committee may raise the matter as a *concern*. A school may choose to address the concern, but no action is required for approval of the program. A *comment* relates to a matter that does not affect compliance, but that the Approval Committee wishes to bring to the attention of the institution.
17. Prior to the development and adoption of the national requirement, there had been no new law schools in Canada for 30 years. Before the Approval Committee was established, new law school programs at three universities – Lakehead University, Thompson Rivers University, and the Université de Montréal – were approved by an ad hoc committee established by the Federation. The ad hoc committee determined that each of the programs, would, if implemented as proposed, meet the national requirement. Each was given preliminary approval and is now subject to annual review by the Approval Committee.
18. Since its establishment in 2012, the Approval Committee has been responsible for the assessment of proposed new law school programs. The process for assessing proposed new programs is essentially the same as the process for approving existing programs. The Approval Committee reviews the written proposal and implementation plan submitted by the institution to determine whether, if implemented as proposed, the program would meet the national requirement. As with existing programs, the process is iterative and may involve a number of exchanges of information. Until a program is operating and has produced its first graduating class, assessment of whether it meets the national requirement is prospective only. To reflect this, a proposed program that would meet the national requirement will be given *preliminary approval*. Once a new

program has received *preliminary approval* it is subject to the annual review process in the same manner as existing law school programs.

### **Trinity Western University Proposal for a School of Law**

19. In June 2012, TWU submitted a proposal to the Approval Committee for the establishment of a new law school program. A copy of the proposal is attached as Appendix “D”.
20. Located in Langley, British Columbia, TWU was established in 1962 and was recognized by the government of British Columbia as a degree-granting institution in 1979. It has a student body of approximately 4,000 students. TWU currently offers more than 40 undergraduate and 16 graduate programs, including professional programs in nursing (B,SC.N., M. Sc.N.), education (BA – Education), and business (M.B.A., B.B.A., B.A. – Leadership).
21. TWU is an evangelical Christian university that requires all students, faculty and staff to abide by a Community Covenant that sets out behavioural expectations. In addition to detailing expected behaviour, the Community Covenant contains a list of prohibited behaviour, the most controversial of which has been the requirement to abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman.” The Community Covenant distinguishes between faculty and staff on the one hand and students on the other in terms of the precise commitment required. For faculty and staff “[s]incerely embracing every part of the covenant is a requirement for employment.” While students are required to abide by the expectations contained in the Community Covenant, it is recognized that “not all affirm” the university’s theological views. A copy of the Community Covenant is attached as Appendix “E”.
22. TWU’s proposal describes a comprehensive law school program that “will focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas.”<sup>3</sup> The proposal contemplates a first year class of 60 students, with the student body growing to 170 by the third year of operation. The focus of the proposed curriculum is on the development of the core competencies required for the practise of law. To that end the program has a strong emphasis on the development of practical skills. Two of the mandatory courses – Introduction to Practice Skills and the Practice of Law, and Practice Management – focus on the development of practical skills and knowledge, and assignments in upper year courses will address issues or problems encountered in the practice of law. In addition, students will be required to complete three practica during the program to “integrate the real-world practice of law with the theoretical study of law.”<sup>4</sup>

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<sup>3</sup> Trinity Western University School of Law Proposal, Appendix “D”, page 5.

<sup>4</sup> *Ibid.*, page 17.

23. All students will be required to take the following 19 mandatory courses:

- Introduction to Law
- Contract Law
- Tort Law
- Constitutional Law
- Property Law
- Criminal Law
- Fundamentals of Canadian Law: Common Law and Statutory Instruments
- Introduction to Practice Skills and the Practice of Law
- Ethics and Professionalism
- Practicum (two courses)
- Administrative Law
- Business Organizations
- Civil Procedure
- Evidence
- Jurisprudence
- Practice Management
- Real Estate Law
- Wills and Trusts

24. TWU's proposal met with strong reaction. The Approval Committee reviewed the many letters and emails sent to the Federation from individuals and organizations both opposed to and supportive of approval of the proposed law school.<sup>5</sup> The views of both the opponents and the supporters were clearly heartfelt and strongly held.

25. TWU's requirement that all students, faculty and staff abide by its Community Covenant is the source of much of the opposition to approval of its proposed law school program. Many contacting the Federation argued that the Community Covenant discriminates against lesbian, gay, bisexual and transgendered ("LGBT") individuals. Some suggested that TWU effectively bans LGBT students and such students would thus have access to fewer law school places than other students if the TWU proposal is approved.

26. TWU's intention to teach law from a Christian worldview caused some to question the university's ability to ensure that graduates of the proposed law school would acquire the required understanding of professionalism and legal ethics, and the substantive knowledge competencies related to the *Canadian Charter of Rights and Freedoms* and human rights law. Concerns were also raised about academic freedom at the university and the potential impact on the critical thinking skills of those who would attend the proposed school.

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<sup>5</sup> The letters received by the Federation and TWU's responses are available on Federation web site.

27. Others wrote in support of the proposed program, noting, for example, that TWU has an excellent academic reputation. Some responded directly to arguments made by those opposed to the school, challenging the suggestion that a TWU law school would not properly teach constitutional law or legal ethics and professionalism. Proponents suggested that as a faith-based institution TWU would be in a good position to ensure that its students develop an understanding of their ethical obligations.
28. Supporters also cited freedom of religion and some argued that there would be benefits to having a law school that holds views outside of the mainstream.
29. With one exception - the requirement for a dedicated course on professional responsibility - the national requirement does not address *how* the required competencies should be taught.<sup>6</sup> In adopting an “outcomes” based approach (the acquisition of specified competencies) for all other aspects of the national requirement, the 2009 final report of the Task Force recommended that law schools be left to determine how their graduates would acquire the competencies. As the Task Force noted in its final report (at page 31), this approach “allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives....”
30. In its final report the Task Force took a similar approach to other aspects of the national requirement, including law school admissions policies. Other than specifying a prerequisite for entry to law school of successful completion of two years of postsecondary education at a recognized university or CEGEP, the national requirement does not establish specific admissions criteria or practices.
31. As noted above, the mandate of the Approval Committee is to determine whether existing and proposed law school programs satisfy the national requirement. Except to the extent of considering whether TWU’s mission and commitment to teach law from a Christian worldview would constrain the teaching of the required competencies, inquiring into TWU’s teaching methods or philosophies, or its admission criteria would go beyond consideration of whether a program meets the national requirement. These questions are thus outside of the mandate of the Approval Committee.
32. To ensure that the issues falling outside of the mandate of the Approval Committee were given full consideration, the Federation established the Special Advisory Committee on Trinity Western University’s Proposed School of Law (the “Special Advisory Committee”). The Special Advisory Committee was tasked with considering whether there are additional public interest issues that should be taken into consideration in determining the eligibility of future graduates of TWU’s proposed law school program to enrol in law society admissions programs. The report of the Special Advisory Committee is available at [www.flsc.ca](http://www.flsc.ca).

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<sup>6</sup> Other than requiring a stand-alone course, the national requirement does not dictate *how* legal ethics and professionalism are to be taught.

## Review of TWU Proposal – Process

33. In determining whether TWU's proposed law school would, if implemented as proposed, satisfy the national requirement, the Approval Committee had before it the following documents:
- TWU's June 2012 Proposal for a School of Law (Appendix "D")
  - May 17, 2013 letter from TWU to the Chair of the Special Advisory Committee (Appendix "F")
  - August 13, 2013 letter from TWU to the Approval Committee responding to request for additional information (Appendix "G")
  - November 1, 2013 letter from TWU to the Approval Committee responding to second request for additional information (Appendix "H")
34. The Approval Committee began its review of TWU's proposal during a teleconference in September 2012. Consideration of the proposal continued during six days of in-person meetings and five conference calls between January and December 2013.
35. Early in the process an issue arose concerning participation in the review of TWU's proposal by the law deans who are members of the Approval Committee. Public statements in opposition to approval of TWU's proposal made by the president of the Council of Canadian Law Deans (the "CCLD") raised questions about the deans' impartiality.
36. In November 2012 Bill Flanagan, President of the CCLD, the organization of the deans of Canada's law schools, wrote to the Federation on behalf of the CCLD expressing concern about TWU's Community Covenant. The letter urged the Federation "to consider this covenant and its intentionally discriminatory impact on gay, lesbian and bisexual students when evaluating TWU's application to establish an approved common law program."
37. In subsequent public statements Dean Flanagan, speaking on behalf of the members of the CCLD, expressed strong opposition to approval of the proposed program on the grounds that TWU discriminates against gay, lesbian and bisexual students.
38. Dean Flanagan's representation that in speaking out against approval of TWU's proposed law school he was speaking on behalf of the members of the CCLD – all law deans in Canada – led some to question whether the involvement of the deans, who are also members of the CCLD, in the review of TWU's proposal could lead to a reasonable apprehension of bias.
39. The Federation raised this concern with Deans Bobinski, Jutras and Sossin in April 2013. While making it clear that the position of the CCLD would not influence their assessment, Deans Bobinski, Jutras and Sossin offered to withdraw from participation in the review of TWU's application. Although the Federation had complete confidence in the good faith of the three deans, to ensure that the review process was both fair and seen to be so, the Federation accepted their offer to withdraw.

40. With the recusal of Deans Bobinski, Jutras and Sossin a majority of the members of the Approval Committee remained and they continued their review of TWU's proposal. In October 2013, Babak Barin, then former member of Council for the Barreau du Québec, resigned from the Approval Committee. Stephen G. Raby, Counsel member for the Law Society of Alberta, was appointed to replace M. Barin, ensuring that the TWU proposal was reviewed by a majority of the seven members of the committee,
41. The committee was assisted in its work by Professor Bruce P. Elman of the University of Windsor's Faculty of Law. Following the withdrawal of the deans from the committee's review of the TWU proposal, the remaining members felt that additional technical assistance would be useful. Professor Elman's experience as a law professor and former law school dean (Windsor 2000-2011) enabled him to provide valuable insights into issues relating to the administration of a law school and the teaching of law. As Professor Elman has not been a member of the CCLD since his tenure as dean ended, concerns about possible apprehension of bias did not arise. It should be noted that Professor Elman was limited to providing technical advice; he did not participate in either the Approval Committee's analysis or decision.
42. The Approval Committee began its assessment by reviewing TWU's June 2012 proposal, a comprehensive document detailing the proposed law school program, including objectives, admission and graduation requirements, course descriptions, library plans, plans for housing the school, faculty and staff plans, and finances. The Committee also reviewed a May 17, 2013 letter from TWU to the Special Advisory Committee (see Appendix "F"), a copy of which was provided to the members of the Approval Committee. Although the letter primarily addresses matters outside the mandate of the Approval Committee, it also discusses the teaching of professionalism and legal ethics, and the substantive law competencies relating to *Charter* and human rights principles, matters squarely within the mandate of the Approval Committee.
43. Following the Approval Committee's initial review of the proposal, it sought additional information from TWU on matters related to budget, contingency plans, facilities, library, and student services. The Approval Committee did not request any additional information on the teaching of professionalism and legal ethics, or the substantive knowledge competencies related to the *Charter* and human rights principles, but it did indicate that the committee was relying on certain statements from TWU's May 17<sup>th</sup> letter in assessing whether its proposed program would ensure graduates would obtain the required competencies in the areas of ethics and professionalism and the *Charter* and human rights principles. The Approval Committee's letter of June 28, 2013 and TWU's August 13, 2013 response are attached as Appendix "G".
44. In October 2013, the Approval Committee requested additional information from TWU relating to its criminal law courses and the legal research competency. The Approval Committee's October 30, 2013 letter and TWU's November 1, 2013 response are attached as Appendix "H".

45. Having reviewed TWU's proposal and the additional information provided, the Approval Committee has concluded that, subject to three concerns and one comment set out below, the program would, if implemented as proposed, meet the national requirement and should be given *preliminary approval*.

## Analysis

46. To assess whether TWU's proposed school of law would meet the national requirement, the Approval Committee analyzed the proposal against each individual element of the national requirement. That analysis is reflected in the chart attached as Appendix "A" identifying in detail how each competency will be met.
47. For the most part this was a straightforward task. The proposal is comprehensive and is designed to ensure that students acquire each competency included in the national requirement. The Approval Committee concluded that the program would, if implemented as set out in the proposal and subsequent correspondence from TWU, meet most elements of the national requirement.
48. The members of the Approval Committee did, however, identify three *concerns* about the proposal and one matter on which it wished to make a *comment*. The three *concerns* relate to i. the teaching of Ethics and Professionalism; ii. the teaching of the elements of the Public Law competency relating to the *Canadian Charter of Rights and Freedoms* and human rights law principles; and iii. the budget for the proposed school. The *comment* relates to the library acquisitions budget.
49. In the course of its analysis the Approval Committee considered TWU's ability to ensure that its students obtain the required competencies in both Ethics and Professionalism, and Public Law. It was suggested by some that as a private, faith-based institution that requires students, faculty and staff to abide by a Community Covenant that includes what many consider to be provisions that discriminate against LGBT individuals, TWU would not be able to teach these subjects in a manner that would ensure that students could acquire the competencies.
50. Although the course outlines for TWU's proposed Ethics and Professionalism and Constitutional Law courses are consistent with what one would expect for such courses, the members of the Approval Committee see a tension between the proposed teaching of these required competencies and elements of the Community Covenant. In particular, the Approval Committee is concerned that some of the underlying beliefs reflected in the Community Covenant, which members of faculty are required to embrace as a condition of employment, may constrain the appropriate teaching and thus the required understanding of equality rights and the ethical obligation not to discriminate against any person. This tension appears to be reflected in the description of the mandatory Ethics and Professionalism course (LAW 602), which states that the course "challenges students to reconcile their personal and professional beliefs within a framework of

service to clients and community while respecting and performing professional obligations and responsibilities.”<sup>7</sup>

51. The question of TWU’s ability to ensure that students acquire these competencies was addressed in the university’s May 17, 2013 letter to the Special Advisory Committee (see Appendix “F”). In that correspondence TWU stated that it is committed to “fully and appropriately addressing ethics and professionalism” and further recognized “its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism.”<sup>8</sup> TWU also stated that “it should be beyond question that TWU acknowledges that human rights laws and Section 15 of the *Canadian Charter of Rights and Freedoms* protect against and prohibit discrimination on the basis of sexual orientation and that “the courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.”<sup>9</sup>
52. Based on the proposed course outlines and TWU’s commitments and undertakings noted above, the Approval Committee concluded that the issue of whether students will acquire the necessary competencies in both Ethics and Professionalism, and Public Law is, at this stage, a *concern*, rather than a *deficiency*. As is indicated in the chart at Appendix “A” setting out the committee’s detailed analysis, to address these two *concerns* TWU will be required to provide additional materials in future annual reports, including more detailed course outlines demonstrating exactly how the competencies will be met.
53. With regards to the budget for the proposed school, the Approval Committee was concerned about the lack of detail contained in the information provided by TWU. To address this concern, TWU has been asked to provide more details in future annual reports.
54. The Approval Committee’s one *comment* on the TWU proposal relates to its proposed library acquisitions budget. The committee notes that although the initial budget is generous, the budget for annual acquisitions appears low. TWU has indicated that once it has hired a librarian it will engage a consultant to assist with refining plans for the library, which may lead to changes to the budget. The Approval Committee will review this matter based on the information provided in subsequent annual reports.

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<sup>7</sup> Trinity Western University School of Law Proposal, Appendix “D”, page 93.

<sup>8</sup> Appendix “F” pages 4 and 5.

<sup>9</sup> *Ibid.*

55. In keeping with the process for review of law school programs outlined by the Implementation Committee, TWU was given an opportunity to respond to the Approval Committee's three concerns and one comment. By letter dated December 6, 2013 (attached as Appendix "I") TWU indicated its willingness to provide more detailed course syllabi for its proposed Ethics and Professionalism and Public Law courses as they are developed. TWU also confirmed that it will provide detailed budget information as required by the Approval Committee. Finally, TWU advised that it is willing to reconsider its annual library acquisitions budget if, based on an acquisitions plan to be developed by the Director of the Law Library (to be hired approximately 18 months prior to the opening of the school) it proves inadequate.

## Conclusion

56. The Implementation Committee identified only two possible outcomes when considering a proposal for a new law school program: *preliminary approval*, for a program that will meet the national requirement if implemented as proposed, and *not approved*, for a program that will not comply with the national requirement.<sup>10</sup> The Approval Committee has concluded that, subject to the concerns expressed above, TWU's proposed school of law will meet the national requirement if implemented as proposed. The proposed program is given *preliminary approval*.

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<sup>10</sup> Implementation Committee Final Report, Table E, [www.flsc.ca](http://www.flsc.ca)

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## Canadian Common Law Program Approval Committee

### Trinity Western University Proposal

### Evaluation Chart

December 2013

**Applicant Submissions and their Alignment with the  
National Requirements – Summary  
Trinity Western University**

**December 3, 2013**

(Unless otherwise indicated References are to the Appendices in this Report)

The chart below reflects a summary of the Canadian Common Law Program Approval Committee's analysis of Trinity Western University's proposal for a law program. This analysis is based on the proposal submissions. The Approval Committee has determined that the proposal and implementation plan for a law program, if followed, will comply with the national requirement and preliminary approval is given, subject to the implementation of the program as proposed, and subject to the concerns and comment expressed.

The Approval Committee's analysis is based on the 19 mandatory courses included in TWU's proposal, which include three practica. A list of the mandatory courses follows the table. The course outlines for all courses including these mandatory courses are included in Appendix D to this report (Appendix 8 of the TWU proposal). Where additional information was provided to clarify how a competency is to be met, such additional information is noted in the submission column in the table below.

In its analysis, while the Approval Committee may have identified multiple proposed courses to satisfy each competency, the analysis in this table will only identify **one example per competency or sub-competency**. All examples are from mandatory courses.

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
<b>A. COMPETENCY REQUIREMENTS</b>			
<b>1. Skills Competencies</b> <i>The applicant must have demonstrated the following competencies:</i>			
<b>1.1 Problem Solving</b> <i>In solving legal problems, the applicant must have demonstrated the ability to,</i> <b>a. identify relevant facts;</b> <b>b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;</b> <b>c. analyze the results of research;</b> <b>d. apply the law to the facts; and</b> <b>e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.</b>	<p>This standard will be assessed within five mandatory first year courses: LAW 502 (Contract Law), LAW 503 (Tort Law), LAW 504 (Constitutional Law), LAW 505 (Property Law), and LAW 506 (Criminal Law). Learning will be reinforced in upper year substantive courses.</p> <p>Appendix H November 1, 2013, letter and appendices from TWU</p>	<p>Each mandatory first year course includes a problem solving component that, collectively, will meet this requirement if implemented as proposed.</p> <p><b>a. identify relevant facts</b>  In LAW 503 (Tort Law), students will be introduced to techniques for identifying elements of intentional torts and negligence.</p> <p><b>b. identify legal, practical, and policy issues and conduct the necessary</b></p>	

<sup>1</sup> **Deficiency** - indicates non-compliance with one or more requirements. If a “deficiency” has been identified and the school and the Approval Committee cannot agree on how to address it, the Approval Committee issues its final report.

**Concern** - indicates that although one or more requirements is currently met, it is at a minimum level that could deteriorate to become a deficiency. A school may note the “concern” without acting upon it, but it may be advisable for the school to resolve the concern, since it would be noted in the Approval Committee’s final report. The iterative process described under “deficiency” could be used to resolve the “concern” if the parties agree.

**Comment** - this addresses a missing detail, a question, or a suggestion for more information. A school may take note of a “comment” without taking action upon it, but if it wishes to clarify or respond the Approval Committee can then re-issue its report reflecting this.

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		<p><b><i>research arising from those issues</i></b>            In LAW 504 (Constitutional Law), students will be taught to identify constitutional issues and arguments to support differing positions. They will also be required to conduct the necessary research in the course of preparing for the mandatory moot in LAW 508 (Introduction to Practice Skills and the Practice of Law).</p> <p><b><i>c. analyze the results of research</i></b>            In LAW 506 (Criminal Law), students will be required to analyze a notice of violation.</p> <p><b><i>d. apply the law to the facts</i></b>            In LAW 507 (Fundamentals of Canadian Law), students will be taught to develop the skill of applying principles from past legal cases to a new case.</p> <p><b><i>e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute</i></b></p>	

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		<p>In LAW 708 (Real Estate), students will be taught the range of potential remedies available to parties in contracts for sale of land.</p> <p>The competencies a. to e. above, are supplemented by upper year courses such as LAW 602 (Ethics and Professionalism).</p>	
<p><b>1.2 Legal Research</b></p> <p><i>The applicant must have demonstrated the ability to,</i></p> <p><b>a. identify legal issues;</b></p> <p><b>b. select sources and methods and conduct legal research relevant to Canadian law;</b></p> <p><b>c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;</b></p> <p><b>d. identify, interpret and apply results of research; and</b></p> <p><b>e. effectively communicate the results of research.</b></p>	<p>Legal research skills are a significant component of LAW 507 (Fundamentals of Canadian Law) and LAW 508 (Introduction to Practice Skills and the Practice of Law), mandatory first year courses, among other mandatory and optional courses. Learning will be reinforced in upper year courses.</p> <p>Appendix H November 1, 2013, letter and appendices from TWU</p>	<p>Several mandatory courses include the development of the legal research competency which, collectively, will meet this requirement if implemented as proposed.</p> <p><b>a. identify legal issues</b> In LAW 506 (Criminal Law), the students will be taught how to identify legal issues in a problem.</p> <p><b>b. select sources and methods and conduct legal research relevant to Canadian law</b> In LAW 507 (Fundamentals of Canadian Law), students will</p>	

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		<p>be taught how to conduct legal research, select sources of law and write a research paper.</p> <p><b><i>c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues</i></b>            In LAW 507 (Fundamentals of Canadian Law), students will be taught how to undertake a case by case analysis, understand the legislative process and principles of statutory interpretation.</p> <p><b><i>d. identify, interpret and apply results of research;</i></b>            In LAW 506 (Criminal Law), students will be required to prepare a memorandum of law.</p> <p><b><i>e. effectively communicate the results of research</i></b>            In LAW 505 (Property Law), students will be required to prepare an opinion letter or academic paper.</p> <p>The competencies a. to e.</p>	

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		above, are supplemented by upper year courses such as LAW 704 (Civil Procedure).	
<p><b><u>1.3 Oral and Written Legal Communication</u></b></p> <p><i>The applicant must have demonstrated the ability to,</i></p> <p><b><i>a. communicate clearly in the English or French language;</i></b></p> <p><b><i>b. identify the purpose of the proposed communication;</i></b></p> <p><b><i>c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and</i></b></p> <p><b><i>d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.</i></b></p>	<p>Oral and written legal communication skills are taught in LAW 508 (Introduction to Practice Skills and the Practice of Law), a first year course and reinforced in all law courses.</p>	<p>Several mandatory courses include developing the oral and written legal communications skills competency that, collectively, will meet this requirement if implemented as proposed.</p> <p><b><i>a) communicate clearly in the English or French language</i></b></p> <p>The program will be taught in English. The communications aspect of the competency can be found throughout the program and in particular, in Law 508 (Introduction to Practice Skills and the Practice of Law), which includes interviewing, negotiating, a required first year moot and a factum.</p> <p><b><i>b) identifying the purpose of the proposed communications</i></b></p> <p>In Law 505 (Property Law),</p>	

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		<p>students will be required to communicate the results of legal research in class.</p> <p><b><i>c) using correct grammar, spelling, and language suitable to the purpose of the communications and for its intended audience</i></b>            We assume that TWU's program, as with all law programs in Canada, will have an appropriate standard for grammar and spelling. The development of language skills suitable to the purpose of the communications and its intended audience will be achieved through LAW 502 (Tort Law), where students will be required to draft an opinion letter.</p> <p><b><i>d) effectively formulating and presenting well-reasoned and accurate legal argument, analysis, advice or submissions</i></b>            In LAW 506 (Criminal Law), students will be required to draft a memorandum of law.</p> <p>The competencies a. to d.</p>	

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		above, are supplemented by courses such as LAW 709 (Wills and Trusts).	
<b>2. Ethics and Professionalism</b>			
<p><b><u>2. Ethics and Professionalism</u></b></p> <p><b><i>The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,</i></b></p> <p><b><i>a. the duty to communicate with civility;</i></b></p> <p><b><i>b. the ability to identify and address ethical dilemmas in a legal context;</i></b></p> <p><b><i>c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,</i></b></p> <p><b><i>i. circumstances that give rise to ethical problems;</i></b></p> <p><b><i>ii. the fiduciary nature of the lawyer's relationship with the client;</i></b></p> <p><b><i>iii. conflicts of interest;</i></b></p>	<p>LAW 508 (Practice Skills and the Practice of Law) and LAW 602 (Ethics and Professionalism) will fulfill the ethics and professionalism requirement. Also, faculty members will be encouraged to include ethics and professionalism content in each course.</p>	<p>Subject to the concern articulated by the Approval Committee, if this competency is implemented as proposed, it will be fulfilled through two courses: LAW 508 (Practice Skills and the Practice of Law), and LAW 602 (Ethics and Professionalism). LAW 602 is designated as three student hours, which will meet the national requirement for credits.</p> <p><b><i>a. the duty to communicate with civility</i></b></p> <p>In LAW 508 (Introduction to Practice Skills), the students will learn how to appropriately engage with the client and other counsel. In addition, the prescribed text, Alice Wooley's <i>Lawyer's Ethics and</i></p>	<p>Concern: Notwithstanding the Approval Committee's analysis as more fully described in the Approval Committee's report, the Approval Committee has a concern: it sees a tension between certain aspects of TWU's Community Covenant, in particular the requirement that faculty "sincerely embrac[e] every part of this covenant [as] a requirement for employment<sup>2</sup>", and the teaching of ethics and professionalism.</p> <p>To satisfy the competency students must have demonstrated "an understanding of the ethical dimensions of the practice of law in Canada and an ability</p>

<sup>2</sup> Trinity Western University's Community Covenant, Appendix E

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
<p><i>iv. duties to the administration of justice;</i>  <i>v. duties relating to confidentiality and disclosure;</i>  <i>vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and</i>  <i>vii. the importance and value of serving and promoting the public interest in the administration of justice.</i></p>		<p><i>Professional Regulation</i>, covers civility in detail.</p> <p><b><i>b. the ability to identify and address ethical dilemmas in a legal context</i></b>  In LAW 508 (Introduction to Practice Skills), the students will be required to identify and address ethical issues. Further, in LAW 602 (Ethics and Professionalism), the students will be required to identify ethical issues in fact scenarios and from past cases where professional bodies have imposed discipline on lawyers for failure to meet ethical obligations.</p> <p><b><i>c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada</i></b></p> <p><b><i>i. circumstances that give rise to ethical problems</i></b>  In LAW 602 (Ethics and Professionalism), the students will be familiarized with the ethical issues arising from the</p>	<p>to . . . address ethical dilemmas in a legal context.” This includes the obligation not to discriminate against any person.</p> <p>The tension between the beliefs underlying the Community Covenant and the teaching of legal ethics is reflected in TWU’s description of the mandatory Ethics and Professionalism course (LAW 602) which states that the course “challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing professional obligations and responsibilities.”</p> <p>TWU has committed to appropriately teaching ethics and professionalism both in its course description and its May 17, 2013 letter to the Special Advisory Committee.</p> <p>As plans for the proposed course are more fully developed, the Approval</p>

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		<p>practice of law.</p> <p><b><i>ii. the fiduciary nature of the lawyer's relationship with the client</i></b>            In LAW 602 (Ethics and Professionalism), the students will be introduced to the lawyer-client relationship.</p> <p><b><i>iii. conflicts of interest</i></b>            In LAW 602 (Ethics and Professionalism), the students will learn about the duty of loyalty and conflicts of interest</p> <p><b><i>iv. duties to the administration of justice</i></b>            In LAW 602 (Ethics and Professionalism), the students will be introduced to <i>Code of Professional Conduct for British Columbia (the BC Code)</i>.</p> <p><b><i>v. duties relating to confidentiality and disclosure</i></b>            In LAW 602 (Ethics and Professionalism), the students will learn about confidentiality.</p> <p><b><i>vi. an awareness of the</i></b></p>	<p>Committee will require TWU to provide additional materials, including a more detailed course outline, to demonstrate precisely how the competency will be met.</p>

National Requirement	Submission	Approval Committee Analysis	Concerns and Comments <sup>1</sup>
		<p><b><i>importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public</i></b>            In LAW 508 (Introduction to Practice Skills), the students will learn about the role of the lawyer as professional.</p> <p><b><i>vii. the importance and value of serving and promoting the public interest in the administration of justice</i></b>            In LAW 508 (Introduction to Practice Skills), the students will learn about the role of the lawyer as advocate and understand the role of the lawyer as an agent of social change.</p> <p>In addition, prescribed readings include Alice Wooley's <i>Lawyer's Ethics and Professional Regulation</i>.</p>	

### 3. Substantive Legal Knowledge

***The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:***

#### 3.1 Foundations of Law

***The applicant must have an understanding of the foundations of law, including,***  
***a. principles of common law and equity;***  
***b. the process of statutory construction and analysis; and***  
***c. the administration of the law in Canada.***

Students will be required to take LAW 501 (Introduction to Law), a concentrated one week course designed to understand the Canadian legal system and how to read case law.

First year students will also be required to take LAW 507 (Fundamentals of Canadian Law: Common Law and Statutory Instruments) which will cover all three of the identified foundations of law.

Appendix H November 1, 2013, letter and appendices from TWU

Several mandatory courses include the foundations of law and will meet this requirement if implemented as proposed.

***a. principles of common law and equity***

In LAW 507 (Fundamentals of Canadian Law), the students will be required to understand the origins of common law, including principles of common law and equity, precedents and *stare decisis*, and the relationship between legislation and common law.

***b. the process of statutory construction and analysis***

In LAW 507 (Foundations of Canadian Law), the students will be required to understand the legislative process and principles of statutory interpretation.

		<p><b>c. the administration of the law in Canada</b>  In LAW 501 (Introduction to Law), students will be required to understand the basic structure of the Canadian legal system and the structure of Canadian courts.</p>	
<p><b>3.2 Public Law of Canada</b>  <i>The applicant must have an understanding of the core principles of public law in Canada, including,</i>  <b>a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;</b>  <b>b. Canadian criminal law; and</b>  <b>c. the principles of Canadian administrative law.</b></p>	<p>Public law of Canada will be taught through three mandatory first year courses and three mandatory upper year courses.</p> <p>The first year courses are: LAW 504 (Constitutional Law), LAW 506 (Criminal Law), and LAW 507 (Fundamentals of Canadian Law).</p> <p>The upper level courses are: LAW 702 (Administrative Law), LAW 706 (Jurisprudence) and LAW 708 (Real Estate).</p> <p>Appendix H November 1, 2013, letter and appendices from TWU</p>	<p>Subject to the concern articulated by the Approval Committee, if implemented as proposed, this requirement will be fulfilled through several mandatory courses, including LAW 504 (Constitutional Law).</p> <p><b>a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada</b>  In LAW 504 (Constitutional Law), the students will be required to complete an analysis of the Constitution Act, federal and provincial</p>	<p>Concern: Notwithstanding TWU's acknowledgements and the Approval Committee's analysis, the Approval Committee has a concern about this competency.</p> <p>In its May 17, 2013, letter<sup>3</sup> to the Federation, TWU acknowledged that it has a "duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching". TWU also asserted that "it should be beyond question that TWU acknowledges that human rights laws and Section 15 of the <i>Canadian Charter of Rights and Freedoms</i> protect against and prohibit</p>

<sup>3</sup> Trinity Western University letter to the Federation dated May 17, 2013, appendix F

		<p>powers, the application of the Charter, fundamental rights and freedoms (including equality rights, heritage and aboriginal rights) and reasonable limits thereon.</p> <p><b>b. Canadian criminal law</b> LAW 506 (Criminal Law) will be a comprehensive first year criminal law course.</p> <p><b>c. the principles of Canadian administrative law</b> LAW 702 (Administrative Law) will be a comprehensive upper year administrative law course.</p>	<p>discrimination on the basis of sexual orientation”, and also that “TWU’s School of Law courses will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life”.</p> <p>The Approval Committee sees a tension between certain aspects of TWU’s Community Covenant, in particular the requirement that faculty “sincerely embrac[e] every part of this covenant [as] a requirement for employment<sup>4</sup>”, and the teaching of the core principles of public law in Canada including the <i>Canadian Charter of Rights and Freedoms</i> and human rights principles.</p> <p>As plans for the proposed courses are more fully developed, the Approval Committee will expect TWU to provide additional materials, for example, more detailed course outlines, to demonstrate precisely how the competency will be met.</p>
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<sup>4</sup> Trinity Western University’s Community Covenant, Appendix E

<p><b>3.3 <u>Private Law Principles</u></b></p> <p><b><i>The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,</i></b></p> <p><b><i>a. contracts, torts and property law; and</i></b></p> <p><b><i>b. legal and fiduciary concepts in commercial relationships.</i></b></p>	<p>Private law principles are taught through three mandatory first year courses and two mandatory upper year courses.</p> <p>The three first year courses are: LAW 502 (Contract Law), LAW 503 (Tort Law) and LAW 505 (Property Law).</p> <p>The two upper year courses are: LAW 703 (Business Organizations) and LAW 708 (Real Estate Law).</p>	<p>Several mandatory courses include private law principles and will meet this requirement if implemented as proposed.</p> <p><b><i>a. contracts, torts and property law</i></b>  In LAW 502 (Contract Law), LAW 503 (Tort Law) and LAW 505 (Property Law), and in LAW 708( Real Estate Law), students will gain an understanding of the foundational legal principles in the respective subject areas.</p> <p><b><i>b. legal and fiduciary concepts in commercial relationships</i></b>  In LAW 703 (Business Organizations), students will gain an understanding of legal and fiduciary relationships in various business structures.</p>	
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<b>B. APPROVED CANADIAN LAW DEGREE</b>			
<b><i>The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:</i></b>			
<b>1. Academic Program</b>			
<b>1.1 <i>The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.</i></b>	The J.D. is a three year 90 semester hour program.  Appendix D, page 13.	The law program length and credit requirement will be met if implemented as proposed.	
<b>1.2 <i>The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.</i></b>	The program will be mainly delivered in class, supplemented by mentoring and practica.  Appendix D, page 30.	The program mode of study will meet the national requirement if implemented as proposed.	
<b>1.3 <i> Holders of the degree have met the competency requirements.</i></b>	The graduation requirements have been set to meet the national requirement. Any transfer students must satisfy requirements designed to meet the national requirement.  Appendix D, page 16.	The review of students for graduation, including the law school's rules on transfer students, will meet this requirement if implemented as proposed.	
<b>1.5 <i> Subject to special, circumstances, the admission requirements for the law school include, at a minimum, successful</i></b>	Applicants to TWU must have completed three years (90 semester hours) of study toward a degree. Five of the 60 seats will be reserved for	The national requirement addresses only the pre-law educational admission requirements. TWU's educational admission	

<p><b>completion of two years of postsecondary education at a recognized university or CEGEP.</b></p>	<p>exceptional applicants who may not meet the education requirements but who have demonstrated strength through related endeavours.</p> <p>Appendix D, pages 15-16.</p>	<p>requirement will meet the national requirement of two years of postsecondary education if implemented as proposed.</p>	
<p><b>2. Learning Resources:</b></p>			
<p><b>2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.</b></p>	<p>Plans have been developed to ensure that appropriate human and physical resources are in place to develop and sustain the proposed J.D. degree program.</p> <p>Appendix D, pages 35-38, 151-161.</p> <p>Appendix G.</p>	<p>Subject to the concern articulated by the Approval Committee, while the budget provided to the Approval Committee was not detailed, it was sufficient for an initial application.</p>	<p>Concern: The Approval Committee is concerned with the lack of detail in the preliminary budget provided. More detail must be provided to the Approval Committee in future annual reports.</p>
<p><b>2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.</b></p>	<p>TWU will house its law school in a new building designed to meet the needs of the School of Law.</p> <p>Appendix D, pages 31-33, 139-146 and 161-162.</p> <p>Appendix G.</p>	<p>The proposed building appears to provide adequate physical resources if implemented as proposed. A funding plan is in place, as is a contingency plan in case the building is not completed in time for the first law class.</p>	
<p><b>2.3 The law school has adequate information and communication technology to support its academic program.</b></p>	<p>The report states that the new School of Law will be at the forefront of technology. IT support will be provided from central university services.</p>	<p>The designs for the new School of Law appear to include appropriate information and communication technologies to support the students'</p>	

	Appendix D, page 162.	needs if implemented as proposed.	
<b>2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.</b>	<p>Plans for the development of the library have been prepared in accordance with the national requirement and the Canadian Academic Law Library Standards. TWU's initial library acquisition budget is \$2M dollars with annual acquisition allocations of \$200k thereafter. TWU plans to hire four library staff with the Director of the Law Library hired 12 to 15 months prior to the opening of the School of Law.</p> <p>Appendix D, pages 33-36, 155-156 and 162.</p> <p>Appendix G.</p>	<p>Subject to the comment articulated by the Approval Committee, the proposed library appears to provide adequate services and collections sufficient to meet the requirement if implemented as proposed.</p>	<p>Comment: The Approval Committee comments that while the initial acquisition budget is generous, the annual acquisition budget appears low. We expect that these estimates will be refined as plans for the library continue to develop</p>

List of Mandatory Courses (all courses referenced in the table are mandatory):

LAW 501 Introduction to Law	LAW 602 Ethics and Professionalism
LAW 502 Contract Law	LAW 701 Practicum
LAW 503 Tort Law	LAW 702 Administrative Law
LAW 504 Constitutional Law	LAW 703 Business Organizations
LAW 505 Property Law	LAW 704 Civil Procedure
LAW 506 Criminal Law	LAW 705 Evidence
LAW 507 Fundamentals of Canadian Law: Common Law and Statutory Instruments	LAW 706 Jurisprudence
LAW 508 Introduction to Practice Skills and the Practice of Law	LAW 707 Practice Management
LAW 601 Practicum	LAW 708 Real Estate Law
	LAW 709 Wills and Trusts

*Federation of Law Societies  
of Canada*



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de juristes du Canada*

## National Requirement

### A. Statement of Standard

#### 1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

#### 2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

### B. Competency Requirements

#### 1. Skills Competencies

The applicant must have demonstrated the following competencies:

##### 1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

- a. identify relevant facts;
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- c. analyze the results of research;

## National Requirement

- d. apply the law to the facts; and
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

### 1.2 Legal Research

The applicant must have demonstrated the ability to,

- a. identify legal issues;
- b. select sources and methods and conduct legal research relevant to Canadian law;
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- d. identify, interpret and apply results of research; and
- e. effectively communicate the results of research.

### 1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- a. communicate clearly in the English or French language;
- b. identify the purpose of the proposed communication;
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.

## 2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;
- b. the ability to identify and address ethical dilemmas in a legal context;
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,
  - i. circumstances that give rise to ethical problems;
  - ii. the fiduciary nature of the lawyer's relationship with the client;
  - iii. conflicts of interest;
  - iv. duties to the administration of justice;



## National Requirement

- v. duties relating to confidentiality and disclosure;
- vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and
- vii. the importance and value of serving and promoting the public interest in the administration of justice.

### 3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

#### 3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;
- b. the process of statutory construction and analysis; and
- c. the administration of the law in Canada.

#### 3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- b. Canadian criminal law; and
- c. the principles of Canadian administrative law.

#### 3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and
- b. legal and fiduciary concepts in commercial relationships.



## National Requirement

### **C. Approved Canadian Law Degree**

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. Academic Program:
  - 1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.
  - 1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
  - 1.3 Holders of the degree have met the competency requirements.
  - 1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.
  - 1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of post-secondary education at a recognized university or CEGEP.
2. Learning Resources:
  - 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.
  - 2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.
  - 2.3 The law school has adequate information and communication technology to support its academic program.
  - 2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.



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## CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE MANDATE

- To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.
- To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report. [Implementation Committee Report dated August 2011]
- To make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.
- To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.
- To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.
- To ensure appropriate training for its members.
- To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.

# **Trinity Western University**

## **School of Law Proposal**

**June 15, 2012**



June 15, 2012

Canadian Common Law Program Approval Committee  
Federation of Law Societies of Canada  
World Exchange Plaza  
45 O'Connor Street, Suite 1810  
Ottawa, Ontario K1P 1A4

Dear Committee members:

**Re: Trinity Western University School of Law Proposal**

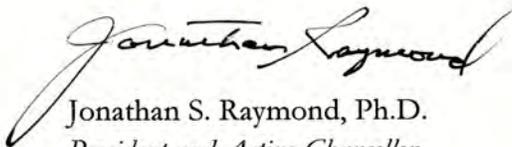
I am pleased to submit the attached proposal for the establishment of a new School of Law at Trinity Western University ("TWU"). The proposal has been developed over the last several years with broad consultation with the profession. TWU is the largest privately-funded Christian university in Canada. It has grown over the past decade to now offer 42 undergraduate majors and 16 graduate programs. Many of our 4,000 students are enrolled in professional programs. Trinity Western University is proposing to move forward with its plan to develop a law school with a focus on excellence, strong ethics, public service and professionalism.

We are cognizant that the creation of a law school will be a formidable task. However, we believe that TWU's commitment to academic quality would provide a good foundation for the creation of a small law school with a program that would prepare lawyers with excellence for the practice of law.

The attached proposal has been developed with the FLSC Common Law Degree Implementation Committee *Final Report* requirements in mind and we are confident that our proposal fully complies with these standards.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Jonathan S. Raymond, Ph.D.  
*President and Acting Chancellor*

*proposal for* A SCHOOL OF LAW  
*at* TRINITY WESTERN UNIVERSITY



Submission for accreditation by  
the Federation of Law Societies of Canada

JUNE 2012

TRINITY WESTERN UNIVERSITY



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## I. Executive Summary

This proposal is for the creation of a School of Law at Trinity Western University in Langley, B.C. The proposal is for the School of Law to open in September, 2015 in a new building on campus. The first year class would be 60 students with the total student body reaching 170 students by 2017. TWU seeks FLSC approval under the Program Approval Model.

Since 1992, Trinity Western University has had the development of a law school in its strategic plan. The university strives to develop excellence in its students and has a strong focus on developing leadership for the marketplaces of life. Within the last few years, several indicia have pointed to the need for new law schools in Canada: (1) the number of Canadian students attending law schools in other countries and then seeking to have those degrees recognized in Canada; (2) the need for new lawyers to practice in small firms and in smaller urban centres; and (3) the need for students to be trained in the law and in ethics.

Trinity Western University is proposing to move forward with its plan to develop a law school with a focus on excellence, strong ethics, public service and professionalism.

The School of Law will focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas. The School of Law will offer a J.D. degree based on an integrated curriculum that includes the development of core competencies needed for the practice of law. In keeping with the nature of Trinity Western University, specializations will be offered in charities and social justice law and in small business and entrepreneurial law.

The background, impetus and rationale for establishing a law school at Trinity Western University are provided below. Particulars of the proposed admissions policy, curriculum, library plan, and faculty/staff requirements are also provided. Operational details including the facilities plan are set out in the proposal as well.

This proposal is based on many years of work by a development committee at Trinity Western University and on the recommendation of the following:

- Dr. Jonathan Raymond, TWU President
- The TWU Board of Governors

- Dr. Robert Wood, TWU Provost
- TWU Senate
- TWU Graduate Academic Council
- TWU School of Law Task Force (2008) (see Appendix One)
- Curriculum Development Working Group (2009) (see Appendix Two)
- Law School Advisory Council (see Appendix Three)
- Numerous Stakeholders and Supporters (see Appendix Seven)

This proposal was reviewed by two well qualified external reviewers, Albert H. Oosterhoff, LL.B., B.A., LL.M., Professor Emeritus (University of Western Ontario) and Lyman R. Robinson, Q.C., B.A., LL.B., LL.M., Professor Emeritus (University of Victoria). Their external reviews are included in Appendices Four and Five.

## II. Trinity Western University

### A. HISTORY

The university was founded in 1962 as a junior college. In 1969, TWU was created by the B.C. Legislature as Trinity Junior College.<sup>1</sup> In 1979 TWU was given the privilege to grant degrees<sup>2</sup> and in 1984, was accepted as a member of the Association of Universities and Colleges of Canada. In 1985, the B.C. Legislature changed the name of the college to Trinity Western University and granted the university the authority under its amended charter to offer graduate degrees.<sup>3</sup> The university celebrated its 50th anniversary in 2012.

TWU is now the largest privately-funded Christian university in Canada. It offers over 40 undergraduate majors and 16 graduate programs. It has a current student body of approximately 3,600 students with over 22,000 alumni. Many of the 3,600 students are enrolled in TWU's professional programs including Business (M.B.A., B.B.A., B.A. – Business), Leadership (M.A. – Leadership), Nursing (M.Sc.N., B.Sc.N.) and Education (B.A. – Education). TWU's sports teams have excelled in Canadian Interuniversity Sport athletics, winning national championships in soccer and volleyball. TWU has a renowned choir which performs regularly with the Vancouver Symphony Orchestra.

TWU was successful in a key case before the Supreme Court of Canada in 2001.<sup>4</sup> The Court

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<sup>1</sup> *Trinity Junior College Act*, S.B.C. 1969, c. 44.

<sup>2</sup> *Trinity Western College Amendment Act, 1979*, S.B.C. 1979, c. 37.

<sup>3</sup> *Trinity Western College Amendment Act, 1985*, S.B.C. 1985, c. 63.

<sup>4</sup> *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772.

issued an order of mandamus requiring the British Columbia College of Teachers to accredit TWU's Teacher Education program. In the 8 to 1 decision in favour of TWU, the Supreme Court of Canada made the following statements about a professional program at a faith based university:

The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected. (para. 33)

In this particular case, it can reasonably be inferred that the B.C. legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. (para. 35)

Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. (para. 35)

TWU has been a member of the Association of Colleges and Universities and Colleges of Canada (AUCC) since 1984.

## **B. ACADEMIC EXCELLENCE**

Professors at TWU are committed to high-quality teaching. Due to small class size, students regularly interact with their professors. TWU is a community-oriented campus and professors regularly interact with students outside the classroom. TWU has built a reputation for academic quality, earning an A+ for Quality of Education in the Globe and Mail University Report Card for five years running. In 2011, the Globe and Mail survey led to the university being rated an A+ in “enriching educational experience.”

## **C. RESEARCH**

The university provides a stimulating environment for research. It has an Office of Research which assists faculty research and coordinates grant applications. Faculty members are funded through the Tri-Council Agencies, as well as through a wide variety of foundations and grants. This office holds regular professional development workshops to assist faculty in obtaining grants, publishing their research results and engaging in collaborative research. TWU has three Canada Research Council Chairs and is currently developing a fourth. TWU joined the Royal Society of Canada in 2009.

## **D. ACADEMIC INSTITUTES AND CENTRES OF EXCELLENCE**

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

## **E. CAMPUS AND FACILITIES**

Trinity Western University is a 157-acre campus located outside Langley, BC, Canada. Its location is 45 minutes from downtown Vancouver and an hour from the North Shore mountains. Housing undergraduate and graduate programs, the campus includes residences, food services, health services, fitness centres, mail resources, sports facilities, a bookstore, a library, and an ecosystem study area. The university has a strong student life and student leadership program as well as a career centre and a wellness centre. The Equity of Access Officer ensures that students with disabilities are accommodated both with respect to facilities and academically. The university also has extension campuses in Bellingham, Washington and Ottawa, Ontario. A further extension campus is currently being developed in Richmond, B.C.

## **F. COMMUNITY ENGAGEMENT**

TWU has a strong focus on students engaging with the community, be it locally in British Columbia or internationally in Zambia or Guatemala. Faculty and staff members organize a variety of service opportunities from working with the homeless in Vancouver’s Downtown Eastside to summer programs to serve in hospitals in the developing world. TWU also facilitates students engaging in community work individually by connecting students with organizations. A significant focus of the university is that our graduates “serve the world’s deepest needs.” This starts while they are students.

# **III. Rationale and Demand for a School of Law at TWU**

## **A. RATIONALE FOR A SCHOOL OF LAW**

### **1. Advancement of the Mission of Trinity Western University**

Over the last 15 years, Trinity Western University has developed several professional schools, including Nursing, Education and Business. With the development of student leadership and

excellence in these fields, a law school is a natural next step in the development of the university. It is in keeping with the mission and purpose of the university.

Trinity Western University has a mission focused on the development of leadership. TWU's recent strategic plan entitled *Envision the Century* described the vision of the university as follows:

The vision for Trinity Western University's future builds on its identity and essence as a Christian university of the liberal arts, sciences and professional studies, and on its historical mission to develop people of high competence and exemplary character who distinguish themselves as exceptional leaders in "the marketplaces of life."<sup>5</sup>

A law school that focuses on the development of highly competent, professional and ethical graduates who will no doubt distinguish themselves in the legal community and beyond is a natural and appropriate advancement of the TWU mission.

As well, Trinity Western University is a unique faith-based educational community where its members are "called to care about the well-being of others; and committed to knowledge and understanding that addresses the world's deepest needs..."<sup>6</sup> A law school that has strategic partnerships with agencies that serve the poor and the oppressed will give students unique opportunities to provide needed legal services to the less privileged and represents again a natural and appropriate advancement of the TWU mission.

## **2. Expanded Access to the Legal Profession Without the Need for Public Funding**

In 2009, the Law Society of British Columbia held a public forum on access to justice. "Access to legal services is becoming more and more difficult for many individuals in our communities," said John Hunter, QC, then-President of the Law Society. "The increasing number of self-represented litigants and growing reliance on self-help guides is well known to us all."<sup>7</sup> One of the barriers to training more lawyers has been the need for public funding. A law school at Trinity Western University has the great advantage of providing increased access to the legal profession without the need for public funding.

## **3. Training for the Profession - An Integrated Curriculum**

A primary objective of the School of Law at TWU will be training students for the profession and ethical demands of the practice of law. The overarching curricular goal will be the

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<sup>5</sup> Trinity Western University, *Envision the Century*, 2008.

<sup>6</sup> Ibid.

<sup>7</sup> Law Society of British Columbia press release <http://www.lawsociety.bc.ca/page.cfm?cid=448&t=Chief-Justice-of-Canada-to-speak-at-Law-Society-public-forum>

development of core competencies that are the bedrock of the profession.

The 2008 Federation of Law Societies of Canada, Consultation Paper on the Canadian Common Law Degree<sup>8</sup> (the “FLCS Consultation Paper”) emphasized the importance of embedding “framework” competencies in law school curricula. The paper indicated that legal educators in Canada proposed curriculum requirements where “academic instruction is more closely integrated with the development of practice skills so that upon a call to the bar lawyers are better prepared to advise clients and protect their interests.” These recommendations were substantially approved in the Federation of Law Societies Common Law Degree Implementation Committee *Final Report*.<sup>9</sup>

The proposed TWU School of Law will integrate into its curriculum the formation of professionalism including the nature of the profession of law, ethics and client relations. In upper years, the law school curriculum will also include courses that develop skills used in the practice of law such as drafting documents, negotiation and advocacy. Each course at the proposed TWU School of Law will focus on practice elements and skills.

#### **4. Benefit to Sole Practitioner and Small Firm Practice**

The January 2007 Report of the Small Firm Task Force for the Benchers of the Law Society of B.C.<sup>10</sup> indicated that 35% of the B.C. bar practises as sole practitioners and a further 20% in firms of two to four lawyers. These lawyers provide the “vast majority of legal services outside of the urban centres.” The Report indicates the following concern for the future of legal services in the province:

Younger lawyers do not enter sole and small firm practice with the same frequency as they enter practice in larger firms. Outside of the urban areas, where there are fewer medium size and larger firms, the absence of younger lawyers is more prevalent. These numbers raise concerns about whether the sole and small firm bar is renewing itself, particularly in less populated parts of the province...

The proposed TWU School of Law hopes to be able to serve the province of B.C. by attracting and training students interested in practising law in small firms, particularly outside of the major B.C. urban areas. The proposed law school will also work with small firms across the province to create

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<sup>8</sup> Federation of Law Societies of Canada Task Force on the Canadian Common Law Degree. *Consultation Paper*, 2008.

<sup>9</sup> Federation of Law Societies Common Law Degree Implementation Committee. *Final Report*. 2011.

<sup>10</sup> British Columbia. Law Society of B.C. Small Firm Task Force. *Report of the Small Firm Task Force*. 2007.

articling positions for its graduates. TWU believes that the integrated approach<sup>11</sup> indicated above is especially important for the development of needed competencies of those who will practice in small firms and has designed its curriculum accordingly. This integrated curricular approach will benefit B.C. and other provinces by providing graduates prepared for small firm practice.

## 5. Specialization in Charities and Social Justice Law

Charitable and Not-For-Profit organizations play a significant role in Canadian society. The 2003, National Survey of Non-Profit and Voluntary Organizations indicated the following:

- In 2003 there were approximately 161,000 non-profit or voluntary organizations in Canada with approximately 13% (20,000) in B.C.
- These organizations had a total revenue of \$112 billion with B.C. non-profits reporting revenues of \$11 billion.
- In B.C. these organizations provided employment for 147,000 people.
- Non-profits and voluntary organizations provided employment for almost 20% of the entire workforce across Canada

These organizations often have unique legal requirements in the areas of governance, human rights, employment, taxation etc. However, no law school in Canada provides a specialization in charities law, and many do not even offer a course related to this area. A key focus of the TWU School of Law will be in the area of charities and not-for-profit law. Trinity Western University already has considerable expertise and reputation in serving this area through its Non-Profit and Charitable Organization Management MBA program. By conducting scholarly legal research in this area and by giving students the option to have particular training in charities law, a law school at TWU would further contribute in a significant way to this important sector of Canadian society.

While charities and not-for-profit organizations have long been engaged in working for the public good, many are increasingly engaged in social innovation, working with social entrepreneurs to devise innovative solutions to society's problems. Students interested in pursuing social innovation through a specialization in charities and not-for-profit organizations will be encouraged to fulfill their practical requirements in placements related to social innovation. Many charities and not-for-profit organizations have a focus on social justice; for example,

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<sup>11</sup> Further research on the need for an integrated approach can be found in Stuckey, Roy, ed. *Best Practices for Legal Education* (South Carolina: Clinical Legal Education Society, 2007) and William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

shelters for the homeless, international development agencies and food banks. Students pursuing this specialization will engage with theoretical issues, such as the meaning of “justice,” as well as practical issues such as advocacy for those who are marginalized.

## **6. Specialization in Small Business and Entrepreneurial Law**

The Fraser Valley is a rapidly expanding business corridor. In the City of Surrey alone, approximately 18,600 business licenses were issued in 2011. The majority of these enterprises are small, growing, entrepreneurial businesses. Not surprisingly given its location, much of the TWU community is also from, or connected to, entrepreneurial, growing enterprises. TWU desires to serve this constituency through a specialization in small business and entrepreneurial law. Graduates from this specialization will be equipped to meet the legal needs of entrepreneurial, growing enterprises.

## **B. MARKET DEMAND FOR A SCHOOL OF LAW AT TWU**

There is growing recognition across Canada that access to the legal profession must be expanded. Until 2010, no new law school had been approved in Canada for 30 years. For example, the population of B.C. has grown by 72% since the Faculty of Law at the University of Victoria was opened in 1976,<sup>12</sup> without there being any significant increase in access to the legal profession in B.C. until the opening of the new law faculty at Thompson Rivers University. Canada has the lowest number of law schools per capita of any Commonwealth country.<sup>13</sup>

Competition to get into existing law schools is now fierce, with many arguably qualified candidates unable to access a legal education. According to the LSAC Official Guide to Canadian Law Schools, the University of British Columbia, Faculty of Law had 2,188 applicants in 2010 with 182 being enrolled (2,006 applications being rejected). The University of Victoria, Faculty of Law had 1,346 applicants in 2010 with 113 being enrolled (1,233 applications being rejected). Many qualified candidates have been forced to look for international options for a legal education. (see Appendix Sixteen for a list of universities accepting Canadian students abroad) The province of Ontario reported having 272 international candidates registered for articles in that province in the 2010/11 licensing year.<sup>14</sup>

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<sup>12</sup> According to Statistics Canada the population of B.C. on January 1, 1976 was 2,520,425. On January 1, 2008 the population of B.C. was 4,346,201.

<sup>13</sup> Lunau, Kate. “Where’s a Lawyer When You Need One?” *MacLeans*, 9 Feb. 2009: 46 -47.

<sup>14</sup> Law Society of Upper Canada Articling Task Force, *Consultation Report*. 2011:10.

The university engaged a market research firm, Concerto Marketing, to conduct surveys to determine the level of interest in the proposed School of Law. The results indicate that there is a sustainable level of interest to meet enrollment targets at our proposed tuition.

### **C. ADDRESSING THE ARTICLING GAP**

A common challenge faced by graduating law students is a shortage of articling placements. A recent report by the Law Society of Upper Canada Articling Task Force noted a 12.1% shortage in articling placements for the 2010/11 licensing group.<sup>15</sup> The report also notes that the number of articling placements has remained static while the number of students seeking articles has increased. All Canadian law societies require completion of articles for licensing. This has similarly been a problem in British Columbia.<sup>16</sup>

The proposed TWU School of Law curriculum has been designed to ensure that graduates will have the basic “turnkey” skills and knowledge to be immediately useful in the regular transactions that occur in small and medium sized firms. With mentorship that will have occurred in the practica that students are required to participate in, these skills and abilities will already have been brought into a workplace setting and will be readily adaptable to any new workplace situation.

Small and medium sized firms will see TWU School of Law graduates as already having many practical skills necessary to be valuable to the firm because of the practical opportunities gained through practice-oriented courses and required practica. They may be more inclined to offer articling positions.

The TWU School of Law will have an Articling Coordinator who will assist students to find articling placements and seek out new articling placements for graduates.

## **IV. The School of Law Juris Doctor (J.D.) Program**

The three year J.D. curriculum, 90 semester hours, has been developed in accordance with the requirements set out in the Federation of Law Societies of Canada Common Law Degree Implementation Committee *Final Report* (August 2011). See Appendix Fifteen for a table detailing how the National Standards established in the *Final Report* are achieved in the curriculum.

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<sup>15</sup> Ibid., iii.

<sup>16</sup> Canadian Bar Association British Columbia Branch, <http://www.cba.org/BC/initiatives/articles/> (accessed January 3, 2012).

## **A. OBJECTIVES**

The innovative J.D. curriculum is designed to build skills within the context of law as public service. The J.D. program will:

- 1) focus on professionalism, practice competence, and high ethical standards;
- 2) integrate practical assignments;
- 3) emphasize leadership and character development; and
- 4) integrate a Christian worldview.

## **B. HOW THE OBJECTIVES ARE ACHIEVED IN THE CURRICULUM DESIGN**

1. Each course will have a focus on professionalism, practice competence, and high ethical standards. This focus will begin during Orientation Week. A required first year course, LAW 508, Introduction to Practice Skills and the Practice of Law, introduces students to professionalism and ethics. There will also be a required second year course, LAW 602, Ethics and Professionalism, that examines and applies these concepts more fully. In third year, students will be required to take the capstone LAW 706, Jurisprudence course and LAW 707, Practice Management.
2. School of Law faculty will be encouraged to integrate practical assignments into all courses. For example, students must draft contracts in LAW 502, Contract Law. They will be required to walk through all the steps to incorporate a company in LAW 703, Business Organizations. While understanding the theoretical principles is important for all law students, students also should experience what lawyers do when they practice law. Students will, therefore, be required to complete three practica over the course of the program with the expectation that this will integrate the real-world practice of law with the theoretical study of law.
3. TWU has a strong focus on leadership and character development. This focus is particularly relevant to the J.D. program in that lawyers are leaders in their communities and through their profession. Leadership development is infused throughout the university, among faculty, and through the entire student life program, and will be integrated into the J.D. curriculum. Leadership will be emphasized in the first year mentoring relationships. As well, leadership will be addressed in LAW 602, Ethics and Professionalism, where students will be encouraged to understand the practice of law as public service and their role as professionals as leaders with their clients and in the community.

4. TWU was chartered by the Province of British Columbia to provide to students of diverse backgrounds a university education “with an underlying philosophy and viewpoint that is Christian” (*Trinity Junior College Act*, SBC 1969, c 44, s 3(2)). The program faculty will respect all students’ views and beliefs while integrating a Christian worldview into all courses. They will encourage all students to see the profession of law as a high calling in a life of service to God and to the community.

## C. ADMISSION AND GRADUATION REQUIREMENTS

### 1. Admission

Entrance to the J.D. program will be determined by an Admissions Committee consisting of the Dean of the School of Law, three faculty members, and a student representative elected by the student body.

Applicants must have a degree from a recognized university or at a minimum have completed three years (90 semester hours) of study towards that degree having achieved a minimum GPA of 3.0 (or equivalent).

All applicants must complete an application form that lists work, leadership experience and community involvement, a personal statement, two academic references, transcripts and their LSAT score before a final decision will be made with respect to admission.

Grade Point Average (GPA) and the Law School Admissions Test (LSAT) will be two key factors in selecting students for admission. Other factors such as the personal statement, work experience, community involvement, public service, and leadership experience will also be considered. An interview with the Admissions Committee may be required.

If an applicant has written multiple LSAT exams the average score will be used. No LSAT score taken five years or more before the date of a candidate’s application will be considered by the Admissions Committee.

A rolling admissions process will be used with first offers being made in November. The application deadline will be February 1 for admission to that year’s incoming September cohort.

Up to five of the 60 places available will be reserved for exceptional applicants who may have a somewhat lower GPA and LSAT but elect to qualify for admission through the Special Access category. Special Access is designed for students who have had their academic careers impacted

by factors beyond their control and who are able to demonstrate strength in related endeavors. Applicants in the Special Access category will still be evaluated by GPA and LSAT but a greater weight will be placed on other factors such as leadership ability, work experience, community involvement and public service. In all cases applicants being considered in the Special Access category will be interviewed by the Admissions Committee either in person or by telephone.

Students are annually required to read, understand and pledge to the terms of the Community Covenant Agreement prior to registering for classes.

## **2. Transfer**

A limited number of students will be accepted from other law schools. Transfer students must meet the requirements for admission noted above and have a minimum GPA of 2.75 in the course of studies at law school. The law courses completed must be compatible with the TWU School of Law curriculum. In the Application for Transfer, students must submit all materials necessary for Application as well as a statement on why they wish to transfer. Transfer students must complete two years of study at TWU School of Law to be eligible for graduation from Trinity Western University.

## **3. Graduation**

To graduate from the J.D. program, graduates must successfully complete a minimum of 90 semester hours with an overall GPA of at least 2.75/4.3. The 90 semester hours will include required and elective courses and internships as set out in the Program Requirements section. It is expected that students will complete the program in six terms of study.

## **D. PROGRAM REQUIREMENTS**

The J.D. curriculum is designed to build skills within the context of law as public service. Each course will have a focus on professionalism, practice competence and high ethical standards. This focus will begin during Orientation Week. A required first year course, LAW 508, Introduction to Practice Skills and the Practice of Law, introduces students to professionalism and ethics. There will also be a required second-year course LAW 602, Ethics and Professionalism. In third year, students will be required to take the capstone LAW 706, Jurisprudence course and LAW 707, Practice Management.

As with most law schools across Canada, TWU's first-year program will have a strong focus on learning to read and analyze case law. The first-year program will focus on understanding the legal system, recognizing authoritative legal sources, reading and analyzing cases, and becoming aware of the ethical calling of the practice of law.

During Orientation Week, students will take LAW 501, Introduction to Law, a concentrated course in understanding the legal system and how to read a law case. Throughout the first semester, students will also take LAW 507, Fundamentals of Canadian Law, to gain an understanding of how the Canadian legal system functions.

First-year students will be matched with a practitioner mentor for the first year. Mentors will be asked to invite students to their law firm to help them see first-hand how a law practice works and the ethical and professional framework at work in law offices. It will be up to the mentors and students if they wish to continue the mentoring relationship throughout law school.

As with most first-year law school programs across the country, all courses will be compulsory.

Note that the size of all first-year classes will intentionally be kept to approximately 30 students or less (so that there will be two sections of each class) in order to ensure a high degree of classroom interaction. LAW 507, Fundamentals of Canadian Law, includes the legal research component and writing lab while LAW 508, Introduction to Practice Skills and the Practice of Law includes the moot court.

Each student in first year will be required to complete a practicum, not for credit, either during the academic year or during the summer between first and second year. There will be an approved list of such practica, including: junioring an upper-year clinic student, participating in a familiarization tour and writing a report (visiting a prison as part of criminal law, for example) or completing a research report for a non-governmental organization.

The upper-year courses will each integrate a practice approach. Professors will be encouraged to ensure that each course includes assignments that include real-world issues or problems. The upper year courses will centre on practice-related courses, such as those required for sole or small firm practice. Students are required to take 20 courses in their combined second and third years of the J.D. program. With the exception of LAW 602, Ethics and Professionalism, which must be taken in second year and LAW 706, Jurisprudence, intended to be a capstone course for the J.D. program, which must be taken in third year, the remaining eight compulsory courses can be taken in any of the four terms of second and third year.

While understanding the theoretical principles is important for all law students, we believe that students should also experience what lawyers do when they practice law. Students will, therefore, be required to complete three practica over the course of their years in the J.D. program with the expectation that this will integrate the real- world practice of law with the theoretical study of law.

## Juris Doctor Program Requirements

### A. Required Courses – 60 Semester Hours

COURSE NUMBER	COURSE NAME	S.H.	NOTES
LAW 501	Introduction to Law	0	Orientation
LAW 502	Contract Law	5	New course (full year)
LAW 503	Tort Law	5	New course (full year)
LAW 504	Constitutional Law	5	New course (full year)
LAW 505	Property Law	5	New course (full year)
LAW 506	Criminal Law	5	New course (full year)
LAW 507	Fundamentals of Canadian Law: Common Law and Statutory Instruments	2.5	New course (one semester)
LAW 508	Introduction to Practice Skills and the Practice of Law	2.5	Includes first-year practicum and moot court. New course (one semester).
LAW 601	Practicum	0	New course
LAW 602	Ethics and Professionalism	3	New course
LAW 701	Practicum	3	New course
LAW 702	Administrative Law	3	New course
LAW 703	Business Organizations	3	New course
LAW 704	Civil Procedures	3	New course
LAW 705	Evidence	3	New course
LAW 706	Jurisprudence	3	Capstone course. New course.
LAW 707	Practice Management	3	New course
LAW 708	Real Estate Law	3	New course
LAW 709	Wills and Trusts	3	New course
		<b>60</b>	

### B. Electives – 30 Semester Hours

To complete their second and third-year course requirements, students may complete 10 courses from the following list. Students may choose to complete a specialization as part of their elective requirements (C.).

COURSE NUMBER	COURSE NAME	S.H.	NOTES
LAW 611	Aboriginal Law	3	New course
LAW 612	Advanced Advocacy	3	New course
LAW 613	Alternative Dispute Resolution	3	New course
LAW 614	Bankruptcy and Insolvency Law	3	New course
LAW 615	Charities and Not-for-Profits Law	3	New course
LAW 616	Client Relations and Interviewing Skills	3	New course

LAW 617	Commercial Law	3	New course
LAW 618	Conflict of Laws	3	New course
LAW 619	Consumer Law	3	New course
LAW 620	Debtor and Creditor Law	3	New course
LAW 621	Employment and Labour Law	3	New course
LAW 622	Environmental Law	3	New course
LAW 623	Family Law	3	New course
LAW 624	Financial Institutions	3	New course
LAW 625	Health and Elder Law	3	New course
LAW 626	Human Rights Discrimination Law	3	New course
LAW 627	Immigration and Refugees Law	3	New course
LAW 628	Insurance Law	3	New course
LAW 629	Intellectual Property Law	3	New course
LAW 630	International Law	3	New course
LAW 631	Landlord and Tenant Law	3	New course
LAW 632	Municipal Law	3	New course
LAW 633	Natural Resource Law	3	New course
LAW 634	Advanced Negotiation	3	New course
LAW 635	Remedies	3	New course
LAW 636	Religion and the Law	3	New course
LAW 637	Securities Law	3	New course
LAW 638	Tax Law	3	New course
LAW 639	Advanced Tax Law	3	New course
LAW 640	Special Topics in Law	3	New course
LAW 641	Individual Directed Research	3	New course
LAW 642	External Moots	3	New course
LAW 701	Practicum	3-6	New course

**30**

### C. Optional Specializations – 9 Semester Hours

To receive a specialization, students must complete the required courses and three of the six elective courses. In addition, students must complete one of their three practica requirements in the area of their specialization.

COURSE NUMBER	COURSE NAME	S.H.	NOTES
<b>1. Small Business and Entrepreneurial Law</b>			
LAW 614	Bankruptcy and Insolvency Law	3	
LAW 617	Commercial Law	3	Required
LAW 619	Consumer Law	3	
LAW 620	Debtor and Creditor Law	3	
LAW 621	Employment and Labour Law	3	Required

LAW 624	Financial Institutions	3	
LAW 628	Insurance Law	3	
LAW 639	Advanced Tax Law	3	
LAW 701	Practicum	3-6	
<b>2. Charities and Social Justice</b>			
LAW 613	Alternative Dispute Resolution	3	
LAW 615	Charities and Not-for-Profits Law	3	Required
LAW 616	Client Relations and Interviewing Skills	3	Required
LAW 621	Employment and Labour Law	3	
LAW 625	Health and Elder Law	3	
LAW 627	Immigration and Refugees Law	3	
LAW 628	Insurance Law	3	
LAW 639	Advanced Tax Law	3	
LAW 701	Practicum	3-6	
		<b>9/30</b>	

## E. COURSE DESCRIPTIONS

### 1. Required Courses

#### **LAW 501 Introduction to Law (0 semester hours)**

This course introduces students to law, the legal system and the legal profession. It will teach students the basic skill of how to read and analyze a case. By the end of Orientation Week, students should be able to write a basic case brief.

#### **LAW 502 Contract Law (5)**

This course sets out the rules for the formation of legally binding contractual relationships. The course will cover the formation and interpretation of contracts. Further, it will cover the enforcement of contracts including the remedies available in the event of a breach of contract. This is a full year course.

#### **LAW 503 Tort Law (5)**

Tort law is a foundational component of the common law system beginning as a system covering legal wrongs between private individuals. Today tort law has evolved into a complex body of law encompassing interactions between public and private entities. This course will cover the common law claims and defences for intentional torts such as assault, battery, false imprisonment, trespass and nuisance. Further, it examines the area of negligence. Other topics which will be examined include strict liability, defences, the assessment of damages and modern alternatives to tort law such as statutory compensation. Students will look critically at legal

actions involving carelessness and recklessness. Students will critically examine the role of torts in society and explore new developments in Canadian tort theory. This is a full year course.

#### **LAW 504 Constitutional Law (5)**

Canada is governed by a variety of documents collectively called “the Constitution.” The first half of this course covers the “division of powers”; that is, the law that governs the relationship between different levels of government in Canada. The intended clear division between federal and provincial powers by the founding fathers of Confederation has been made more complex by new inventions, developments and circumstances such as aeronautics, telecommunications and commercial realities of the twenty-first century. The second half of the course will focus on the *Canadian Charter of Rights and Freedoms* and examine its application and interpretation. This will include an examination of the principles of human rights and Charter values. This is a full year course.

#### **LAW 505 Property Law (5)**

Canadian society, indeed Western society, places a high value on the ownership of property, including both land and things. This first part of the course examines the rules governing possession and ownership of real property (land). The second part of the course examines the rules governing possession and ownership of personal property (things). It will also examine the social context for use and ownership of property. This is a full year course.

#### **LAW 506 Criminal Law (5)**

This course examines the general principles of liability in Canadian criminal law as applied in the criminal trial process. Students will learn the legal elements of a crime and will use the *Criminal Code* to consider the elements of specific offences. Students will be provided with an introduction to common law and statutory defences as well as an overview of the process by which these various elements are proved in court. This course also canvasses basic concepts, principles and institutions of criminal procedure, as well as focuses on the review of the most important rules governing the criminal process from the investigative phase through the laying of charges until conviction, sentencing and beyond. The student who successfully completes the course will have a good understanding of the norms of procedure set out in the *Criminal Code* and related statutes, as well as the procedural rights guaranteed by the *Charter of Rights and Freedoms*. This is a full year course.

#### **LAW 507 Fundamentals of Canadian Law: Common Law and Statutory Instruments (2.5)**

In this course, students will become familiar with the principles of the common law system, including the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada. It further examines how laws are made and the principles of legislative interpretation and statutory analysis. It will also

examine how regulations are made under legislation and the relationship between legislation and regulations. Legal research will be a component of this course.

### **LAW 508 Introduction to Practice Skills and the Practice of Law (2.5)**

Beyond understanding legal principles, the lawyer must master a variety of skills to use in private practice, many of which are more relational and creative (right-brained) than cognitive and linear (left-brained). This course introduces students to professionalism, engaging with clients, the art of negotiation and advocacy (both written and oral) in the context of representing clients. It will include the first year practicum and a moot court.

### **LAW 601 Practicum (0)**

Upper year students must complete two practica. Law 601 will not be for credit but can include a broad range of possible placements.

### **LAW 602 Ethics and Professionalism (3)**

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.

### **LAW 701 Practicum (3)**

Upper year students must complete two practica. Law 701 will be a supervised practicum for academic credit.

### **LAW 702 Administrative Law (3)**

Administrative law broadly covers the exercise of government power excepting that of criminal law powers. It regulates how governments exercise their authority, including both political and administrative authority. Administrative law addresses both direct exercise of government decision-making and the host of tribunals governments establish. This course will cover the rules governing how governments make decisions and carry them out as well as the procedures to challenge those decisions, including judicial review. Students will have the opportunity to visit a tribunal hearing.

### **LAW 703 Business Organizations (3)**

This course will cover all aspects of business organizations from sole proprietorships to partnerships to corporations. The first question posed will be, “what type of business organization

is best?” Students will be required to complete all phases of incorporating and dissolving a corporation. They will also cover the legal effect of incorporation, responsibilities of directors, control and management of corporations and minority shareholder rights.

### **LAW 704 Civil Procedures (3)**

An inquiry into the functions of a modern procedural system with specific consideration of the extent to which the litigation process aids in the achievement of just, speedy and economic resolutions of justiciable conflicts. Students will be introduced to the basic structure of a civil action and major items for consideration throughout the development of civil litigation. In the result, such matters as the expenses of litigation, jurisdiction, initial process, pleadings, amendment, joinder, discovery, disposition without trial and alternatives to adjudication will be discussed.

### **LAW 705 Evidence (3)**

This course surveys the history of rules of evidence in Canadian law. The course introduces students to principles of admissibility, relevance, types of witnesses, written versus oral evidence and the use of demonstrative evidence in court and tribunal proceedings in Canada. It also examines concepts and rules relating to burdens of proof, presumptions, exclusionary rules, ethical issues in the law of evidence and the effects of the *Canadian Charter of Rights and Freedoms* on the law of evidence.

### **LAW 706 Jurisprudence (3)**

Canadian law took shape from its British and French origins, both of which were heavily indebted to a Judeo/Christian understanding of law. This course explores the philosophical, social, historical, political, and religious underpinnings of the law and legal systems. Key questions include, “what is law?” and “do we have an obligation to obey the law?” Recurrent themes include the relationship between law and morals, legal reasoning and logic, and the relationship between law and liberty. The course will challenge students to understand, first through an historic lens, the development of notions of justice, fundamental rights of persons, and the use of force and punishment in society. Then the course will examine modern and postmodern legal theories as they affect current legal and ethical problems in Canadian and international discourse.

### **LAW 707 Practice Management (3)**

The private practice of law is both a profession (calling) and a business; lawyers live and manage this tension on a daily basis. This course will introduce students to the business and administrative aspects of a law practice while keeping in view the duties owed by a lawyer to clients and the state. The class sessions will be highly interactive with many “hands on” experiences in the use of practice management tools and processes.

### **LAW 708 Real Estate Law (3)**

This fundamental course will familiarize students with the mechanics and legalities of a real property transaction from its inception to post completion. The course examines the legal structure, the legal problems and the legal remedies associated with commercial transactions involving the sale, mortgaging and leasing of real estate. We will examine the agreement of purchase and sale that is the foundation of every real estate transaction, what should be included in it, how it should be drafted, how it is completed and what remedies are available for its breach. Other issues that will be examined include the two systems of land registration, real estate agents duties, mortgages and other security, development-related issues, leases, easements, title insurance, fraud and solicitor's opinions.

### **LAW 709 Wills and Trusts (3)**

Students will understand the rationale and principles for preparing wills and have an opportunity to draft one. They will also understand the consequences of not having a will. The rules governing the administration of estates, particularly, the terminal tax return, rules governing matrimonial property, the care of dependants and distribution of assets. So-called "living wills" and issues around incapacity and substitute decision-makers will also be covered. Students will become familiarized with the law of trusts and their formation, benefits, regulation and taxation. The role and responsibilities of trustees will also be addressed.

## **2. Elective Courses**

### **LAW 611 Aboriginal Law (3)**

Aboriginal peoples in Canada belong to more than 50 nations. This course will examine the historical development of treaty rights and aboriginal title. It will consider the complex issue of self-government and aboriginal justice. Students will examine the *Indian Act* along with federal government proposals for amendment. As well, students will examine the legal cases involving aboriginal rights.

### **LAW 612 Advanced Advocacy (3)**

The lawyer is an advocate. Students will learn to write effective legal arguments and how to express themselves persuasively. Students will be required to prepare written submissions, including a factum, and argue a moot court.

### **LAW 613 Alternative Dispute Resolution (3)**

While most of the emphasis and popular attention in the arena of dispute resolution has focussed on litigation and the drama of the courtroom, increasingly, in practice, disputes are managed and resolved outside of trial. Lawyers who are assisting clients with disputes have an array of options

available to them including negotiation, mediation, arbitration and litigation, each of which is useful and appropriate in different circumstances. This course will focus on the “alternative” dispute resolution options with a balance of theory and practice.

### **LAW 614 Bankruptcy and Insolvency Law (3)**

Bankruptcy and insolvency law assumes an important economic and social role in contemporary credit economies. The course will consider liquidation and reorganization as the two basic approaches to bankruptcy and focus on three legislative arenas: the *Bankruptcy and Insolvency Act* (BIA), the *Companies’ Creditors Arrangement Act* (CCAA ) and relevant provincial legislation. Students will become familiar with the fundamentals of the business and personal bankruptcy process including the various actors in the system. This course will familiarize students with monetary obligations, the rights and obligations of creditors and debtors, priorities among creditors, and certain restrictions on the discharge in bankruptcy of categories of debt. Students will apply the relevant statutory framework and case law to fact patterns in each stage of the bankruptcy process. The course will consider the broader public policy and institutional interests at play.

### **LAW 615 Charities and Not-for-Profits Law (3)**

This course examines the special legal principles which apply to charities and not-for-profit corporations, with particular emphasis on the new federal and provincial not-for-profit legislation. It will cover incorporation, fundraising, taxation, and governance issues.

### **LAW 616 Client Relations and Interviewing Skills (3)**

The practice of law is driven by the needs of clients. This course gives students practical skills for interviewing and advising clients, using a client-centred approach. It will help students understand the needs of clients during transactions and during challenges such as litigation. Students will discuss issues such as professionalism and ethical issues. Over half of the course time will be in practice scenarios.

### **LAW 617 Commercial Law (3)**

Commercial law is that branch of private law concerned primarily with starting a business, financing a business, and the supply of goods or services by merchants and other businesses for profit. Commercial law includes such topics as sale of goods, bailment and carriage of goods, documents of title and negotiable instruments, banking, the various forms of secured credit and an introduction to the law of insolvency and bankruptcy. This course therefore provides the student with a basic understanding of the law affecting the operation of any business doing commercial transactions.

### **LAW 618 Conflict of Laws (3)**

This practical course considers the increasingly prevalent issue of conflict of laws. The course will consider which court has jurisdiction to decide a case, what law should apply to the dispute, and whether the judgment will be recognized and enforced. Students will be introduced to common scenarios faced by lawyers in the context of globalization. The course will engage students in applying the Canadian rules of conflict of laws to problem-solving exercises drawn from all private law areas, including torts, contracts, property, succession and family law. This course will analyze Canadian rules of conflict of laws and equip students to assess legal situations that engage multiple jurisdictions, particularly the US and Asia.

### **LAW 619 Consumer Law (3)**

This course focuses on the consumer law relating to the sale of goods and services, including an examination of the *Sale of Goods Act* and the *Business Practices and Consumer Protection Act*. Students will have an opportunity to develop practical problem-solving skills by applying relevant authority to contemporary scenarios. Students will also be introduced to the Vienna Convention on the International Sale of Goods.

### **LAW 620 Debtor and Creditor Law (3)**

This course provides an examination of the methods by which unsecured creditors may enforce money judgments. There will be an overview of the general principles and forms of relief offered by provincial and federal legislation. A review will also be made of exemptions from enforcement that are available to debtors as well as other legal rights accorded to debtors after judgment. The course will be a combination of lecture, case analysis, and discussion of practice problems.

### **LAW 621 Employment and Labour Law (3)**

All aspects of the employment relationship will be covered in this course including the employment relationship, the contract, implied rights and obligations and terminating the employment relationship. As it is termination of employment that is most frequently litigated, it will be examined in detail including constructive dismissal, reasonable notice, dismissal for cause and damages. Human rights legislation, as it applies to employment, will also be a significant topic. This course also addresses the relationship between management and labour when there is a union. It will include the historical development of unions in Canada. It will also cover all aspects of unionization including certification, bargaining in good faith, the collective agreement and industrial conflict.

### **LAW 622 Environmental Law (3)**

This course examines the regulatory framework for environmental law, including federal and provincial jurisdictions. As well, it addresses the wide variety of environmental issues, including pollution, biodiversity and climate change.

**LAW 623 Family Law (3)**

The family is said to be the basic building block of society. This course will examine the state's regulation of the family and critically assess whether state regulation has changed the family or responded to social changes. It will also include an assessment of the current challenges in family law, especially the backlog in the courts, and alternative dispute resolution and mediation as alternatives.

**LAW 624 Financial Institutions (3)**

This course examines the law relating to banks and other deposit-taking institutions, such as credit unions. Particular emphasis will be on the regulatory framework, the bank and customer relationship and clearing systems such as ACSS, LVTS, Interac, credit cards and third party payment providers.

**LAW 625 Health and Elder Law (3)**

This course introduces students to the law relating to the Canadian health care system with a particular focus on care for the elderly. The first half of the course will cover the regulation of the health care system including health care professionals, informed consent to medical treatment, malpractice, confidentiality and disclosure of health information. The second half of the course will address specific issues related to our aging population, including mental disability, substitute decision-making and end-of-life decision-making.

**LAW 626 Human Rights and Discrimination (3)**

This course examines the historical roots for human rights legislation in Canada. Students will examine the structure of the human rights codes in terms of prohibited grounds and specific discriminatory practices. It will include critically examining human rights procedure, including the transition of provinces like British Columbia and Ontario to new systems that change the role of the Human Rights Commissions.

**LAW 627 Immigration and Refugees Law (3)**

Canada is largely a country of immigrants. This course will cover the regulatory framework for immigration to Canada. It will also critically assess the issues raised by Canadian immigration policy. As well, students will be introduced to the international and national rules governing refugees.

**LAW 628 Insurance Law (3)**

This course will examine the theory and elements of the practice of insurance law, with reference to the most common forms of both first party and third party insurance: property, life and motor vehicle insurance. It will cover the basic theory of insurance as a loss spreading mechanism; the

nature of insurance contracts; the insurance industry; principles of indemnity insurance; the duty of good faith and obligation of full disclosure; and the claims process. It will also cover selected issues on interpreting insurance policies.

### **LAW 629 Intellectual Property Law (3)**

Intellectual property laws protect ideas, creativity and designs. These are protected by patents, trademarks, copyright and industrial design. This course will examine the rules governing each of these, the protection they offer and enforcement of each of these protections. Other rules and remedies, such as passing off, will also be covered.

### **LAW 630 International Law (3)**

This course will cover the sources, development and institutions of international law. It will address the relationship between international law in its customary and conventional forms and the domestic laws of Canada. Trade, investment, peace and security and international human rights will be canvassed. Students will have the opportunity to assess bilateral and multi-lateral international agreements including the NAFTA, WTO and UN Agency-generated treaties.

### **LAW 631 Landlord and Tenant Law (3)**

This course considers the essential landlord-tenant relationship in both residential and commercial contexts. It introduces students to the critical legal elements of the relations, including the requirements for the formation of a valid agreement, the rights and duties of the parties under the agreement, and remedies for breach. Students will become familiar with the statutory regimes governing landlord-tenant relationships. The course will provide opportunities for students to critically assess commercial and residential tenancy agreements for compliance with the relevant statutory provisions. Students will also engage in problem-solving exercises in order to advise clients on the best course for pursuing remedial action.

### **LAW 632 Municipal Law (3)**

Issues of development and planning have become increasingly controversial. This course is an introduction to the basic structure, functions and powers of municipal or local governments. It will start with where municipal governments get their powers and how they make by-laws. It will include municipal taxation. A significant part of the course will focus on municipal planning and land use.

### **LAW 633 Natural Resource Law (3)**

The course begins with an overview of the development of Canadian natural resource law, including some underlying philosophies, principles and ethics. This foundation will lead to an examination of the natural resource law framework in Canada from federal, provincial, municipal and Aboriginal perspectives. The course will also explore the legislation and common

law principles that govern natural resource protection, compliance, enforcement and liability for natural resource harm, natural resource rights, public participation and environmental assessment. Emphasis will be placed on the specific example of forestry, but will also include mining, oil and gas and fisheries.

**LAW 634 Advanced Negotiation (3)**

This skills-based course will develop negotiating theory and skills through practical assignments and readings on negotiation theory. Each week, students will have opportunity to participate in a practice scenario and to analyze the results. Coaching and peer input will be provided.

**LAW 635 Remedies (3)**

This course introduces students to legal and equitable remedies in the area of private law, predominantly torts, property and contract law. The class will emphasize principles governing remedial selection. Students will become familiar with the range of remedial options available in law, and will practice developing creative strategies to best meet clients' needs. The course will provide opportunities for students to apply their learning by analyzing problems, drafting opinion letters, and offering client advice in a client counselling session.

**LAW 636 Religion and the Law (3)**

This course examines the relationship between religion and the state in a wide variety of contexts. Chief Justice McLachlin noted that “both law and religion are comprehensive doctrines,” that is, they place total claims on lives of citizens and adherents. This will inevitably lead to conflicts. Specific focus will be on Canada and will include human rights, regulation of religious institutions and accommodation of religious difference.

**LAW 637 Securities Law (3)**

This course covers securities regulation, predominantly through the raising of funds for corporate development through selling securities to the public. The course will focus specifically on the B.C. *Securities Act*. The course will include registration requirements for persons trading in securities, prospectus requirements to trade in securities, exemptions from the prospectus requirement, restrictions on the resale of securities, remedies for failure to comply with securities legislation, continuous disclosure requirements and take-over bid legislation.

**LAW 638 Tax Law (3)**

This course covers the fundamental principles, concepts, and application of Canadian federal income tax legislation. Topics include the concepts of income and liability for tax; income from employment, business, and property; shareholder benefits; deductions; capital gains and losses; computation of taxable income and tax planning for individuals. The course emphasizes

understanding of the conceptual structure of the *Income Tax Act* and the application of its rules to practical cases.

**LAW 639 Advanced Tax Law (3)**

This advanced course covers the principles of taxation that apply to entities other than individuals. It surveys tax implications that apply to corporate reorganizations, tax planning, and the application of tax principles and concepts to complex tax situations like trusts, partnerships, and corporations. Topics include shareholder benefits; transfer of property to corporations; anti-avoidance and other rules; purchase or sale of a business; partnerships; death; trusts; and intra-family property transfers.

**LAW 640 Special Topics in Law (3)**

To be established where faculty expertise exists.

**LAW 641 Individual Directed Research (3)**

To be established where student interest exists.

**LAW 642 External Moots (3)**

To be established when student teams participate in external moots.

For new course outlines, see Appendix Eight.

## **F. PROGRAM DELIVERY**

The program will be delivered mainly through the classroom, supplemented by mentoring and practica. The size of all first year classes will intentionally be kept to approximately 30 students or less (so that there will be two sections of each class) in order to ensure a high degree of classroom interaction. The majority of first year courses will be taught as full year courses with upper year courses as one semester courses.

The program emphasizes practical experience. Supervised practica may include the legal aid clinic, competitive moot, or a pro bono placement with an NGO such as the Red Cross, International Justice Mission, Amnesty International, Christian Legal Fellowship or Christian Prison Fellowship. Non-credit placement, which can be paid, may include a summer job with law firm, a summer placement with government, a courthouse or tribunal placement, correctional services, legal research for an NGO, or a political office. TWU has a small campus in Ottawa, the Laurentian Leadership Centre (LLC), which will offer practicum opportunities for students in the summer months with federal government, political offices and NGOs.

Students in the J.D. program will be able to accrue practicum experience through the pro-bono legal clinic TWU plans to establish with the partnership of a charitable organization serving the less fortunate in Vancouver and the Fraser Valley. Many clients of this type of organization have legal issues and often do not have the resources to get the assistance of a lawyer. Students working in the clinic will work one day a week under the supervision of a staff lawyer.

## **G. LEGAL CLINIC**

TWU proposes to establish a pro bono legal clinic with the partnership of a charitable organization serving the less fortunate in Metro Vancouver and the Fraser Valley. Many clients of this type of organization have legal issues and often do not have the resources to get the assistance of a lawyer.

Students working in the clinic will work one day a week under the supervision of a staff lawyer. The legal clinic will be developed once approval for the TWU School of Law is granted. An expression of interest from Union Gospel Mission in the downtown east side is included with the Letters in Support in Appendix Seven.

## **V. The Facilities Plan**

### **A. DEVELOPMENT PROCESS**

The proposed School of Law will be housed in a new state of the art building (the “School of Law Building”). The School of Law Building will be a spacious and inviting building (see Appendix Ten for a cost estimate). It will have a prominent presence on the campus and will become a “signature” building for Trinity Western University. The proposed building is a “live-learn centre,” meaning that there are dormitory facilities included in the building. While not all students will be able to take advantage of on-site dormitory facilities, those who do will have an enhanced community experience.

Appendix Eleven includes preliminary concept drawings. These drawings are based on research conducted on existing law school buildings in Canada and the U.S. The preliminary concept drawings have been drafted to ensure there are adequate classrooms and other facilities to properly offer the number and type of courses in the proposed J.D. program. TWU has been advised that, including the six months for architectural drawings, the School of Law Building could likely be completed in 18 months to two years from the date that approvals are provided.

## **B. THE SCHOOL OF LAW BUILDING**

In particular the School of Law Building will include the following:

### **Spacious Lobby/Student Commons**

People arriving at the School of Law Building will enter into a spacious lobby area. This lobby area or student commons will include a number of seating areas. It will be designed to create a welcoming and warm atmosphere for students and visitors.

### **Student Collegium**

The School of Law Building will include a student collegium (lounge) modelled after the successful Graduate Collegium at TWU. The collegium will include comfortable seating, a partial kitchen area, coffee machine, computer stations with printers etc.

### **Law Library**

The Law Library will be housed on two floors in approximately 14,250 square feet of space. The Law Library is more fully described in the Library Plan (Section VII below).

### **State of the Art Moot Court Room/ Lecture Theatre**

This 2,200 square foot, 200 seat, high quality, lecture theatre will be designed to simulate a large courtroom. It will provide a fully equipped mootng facility but also will be useable for overall School of Law events, special lectures, law conferences and larger classes.

### **Large Classroom**

This more general classroom will seat up to 75 students.

### **Skills Training Facility (Client Meetings, Witness Interviews, Negotiation and Mediation)**

This multi-purpose room will be designed to assist students to develop some of the practical skills needed in the practice of law. This room will be used to teach interviewing, negotiation and mediation skills. It will include an observation area.

### **Two Medium (45 Seat) Classrooms**

The School of Law Building will include two medium-sized classrooms designed for classes with up to 45 students.

### **Six Breakout/Meeting/Small Classrooms**

Six breakout, meeting or small classrooms will be strategically located throughout the School of Law Building.

### **Executive Meeting Room**

This 30 seat executive meeting room will be designed in boardroom style. It will be used for staff and faculty meetings and other School of Law business.

### **Faculty and Staff Offices**

The School of Law Building office area will include 20 offices for full-time and adjunct faculty and staff. One office will be larger and executive-style to be used by visiting judges, lawyers or other visiting scholars. The office area will also include adequate space for School of Law staff.

### **Dean's Office**

The Dean's Office will incorporate a professional meeting area for six to eight people.

### **Faculty Lounge**

A faculty lounge will be included in the office area. This will be designed to encourage a collegial atmosphere between faculty members. It will include a comfortable seating and a partial kitchen.

### **Articling and Career Centre**

An Articling and Career Centre will be maintained to provide students with information and advice on a range of career goals and opportunities, with a particular focus on articling placements. In particular, the Articling and Career Centre will run a variety of programs to prepare students for summer, articling, and clerking positions. It will also have an outreach function in working with small law firms to develop new articling positions.

### **Law Student Association Office**

It is anticipated that the TWU School of Law will include a Law Student Association. While formation of such an association will be at the discretion of law students, space has been allocated for this purpose.

## **VI. The Law Library Plan**

### **A. OVERALL LIBRARY OBJECTIVES**

The library plan will be developed in accordance with the Canadian Academic Law Library Standards, which is included in Appendix Twelve.

The School of Law will maintain a law library that is an active and responsive force in the educational life of the law school. The law library's effective support of the School of Law's teaching, scholarship, research and service programs will require a direct, continuing and informed relationship with the faculty, students and administration of the School of Law.

The law library shall have sufficient financial resources to support the School of Law's teaching, scholarship, research, and service programs. These resources shall be supplied on a consistent basis. The School of Law will keep the law library abreast of contemporary technology and adopt it when appropriate. The law library will have its own librarian and staff, sufficient to meet the needs of faculty and students.

## **B. THE LAW LIBRARY FACILITY**

The law library will be housed in approximately 14,250 square feet within the new School of Law Building. It is recognized that this space allocation is lower than other Canadian law school libraries. However, given the vast availability of legal resources in an electronic format, and the availability of interlibrary loans, this will provide faculty and students more than adequate access to legal resources.

The law library will include 75 computer stations and study carrels. Law students will be given priority for the use of these computer stations/study carrels.

## **C. LAW LIBRARY POLICIES AND COLLECTIONS POLICY**

Approximately 12 to 15 months prior to the opening of the School of Law the Director of the Law Library (see position description at Appendix Thirteen) will be hired. The Director will be tasked to develop within three months the administration and staffing structure, overall library policy and collection policy for the law library. The collection policy will be based on research of collection policies at other Canadian law schools and on the Canadian Academic Law Library Standards (see Appendix Twelve). In particular the collections policy will include the following:

- An Overall Law Library Mission Statement
- Funding Policies and Requirements
- Law Library Coverage Levels and Priorities
- Resources Evaluation Criteria

## **D. ACQUISITION OF RESOURCES**

In accordance with the collections policy, the Director will begin the acquisition of electronic, media and print resources approximately one year prior to the opening of the School of Law. An initial budget of \$2 million has been established for the creation of the Law Library with \$1,750,000 allocated for monographs and \$250,000 for electronic databases. (It is recognized that electronic resources will require annual funding for licence renewals with a component allocated for rate increases). The university currently has subscriptions for several electronic

databases that will be used by law students, including Quicklaw, JSTOR and EBSCOhost. TWU is cognizant that this budget is an estimate only and may need to be adjusted as the acquisition phase proceeds.

## **E. RESOURCE SHARING AGREEMENTS**

The Norma Alloway Library at TWU is a full participant in the InterLibrary Loan system. The law library will also provide access to resources beyond TWU through resource sharing agreements with other academic law libraries in Canada and the United States.

# **VII. Faculty and Staff**

## **A. FACULTY AND STAFF REQUIREMENTS**

The School of Law will strive to appoint only the most highly qualified professors to teach in the School. It is recognized that an LL.M. (or equivalent) is considered sufficient for appointment as a faculty member at Canadian law schools. The School of Law will strive to have some faculty members with doctoral degrees in law. As well, given the focus on practice skills, the School of Law will prefer candidates with solid experience in the practice of law.

Appendix Fourteen outlines the teaching requirements in the School of Law. These teaching requirements, along with the leadership and administrative needs of the School of Law and law library will necessitate over a three-year period the hiring of:

- a Dean of the School of Law
- an Assistant to the Dean
- a Faculty Secretary
- a Director of the Law Library
- an Associate Law Librarian
- two Law Library Support Staff
- a Marketing and Communications Director
- an Articling and Career Centre Coordinator
- 12 full-time faculty
- approximately 14 adjunct faculty

## **B. POSITION DESCRIPTIONS**

Position descriptions for the Dean of the School of Law, the Director of the Law Library and a faculty member are included in Appendix Thirteen.

## C. RECRUITMENT AND HIRING TIMELINE

Recruitment for the Dean of the School of Law will begin approximately two years prior to the opening of the School of Law. The objective will be that the Dean begin her/his position approximately 18 months prior to the opening of the School.

The Dean, in conjunction with the Provost, will seek to recruit and hire the Director of the Law Library approximately 12 to 15 months prior to the opening of the School of Law.

The Dean, in conjunction with the Provost, will begin recruitment of faculty 18 months prior to the opening of the School. Some potential faculty have already been contacted by TWU and have expressed interest in a position in the School of Law. However, the Dean will have primary responsibility for building the faculty team. As TWU currently does not have any law-related programs or courses, new faculty members will be hired.

As indicated in Appendix Fourteen the hiring of faculty will be a graduated process. Six full-time faculty will be needed for the opening of the School of Law. Four additional full-time faculty will be hired for the commencement of second year. Two further faculty members will be added for the commencement of the third year, bringing the full-time faculty to 12 members.

The objective will be for the Associate Law Librarian, the Marketing and Communications Director, and the Articling and Career Centre Coordinator to be recruited and commence their positions four to six months in advance of the School of Law opening. This will allow adequate time for the development of their offices and related policies.

The proposal developers, Janet Epp Buckingham and Kevin Sawatsky, both of whom are current faculty members of Trinity Western University, are potential faculty members for the School of Law. They have specializations in constitutional law, human rights, corporate and commercial law, charities and contracts. As well, during the consultation process, the Professors Buckingham and Sawatsky have had discussions with numerous potential faculty members. In particular, serious discussions have been held with potential faculty members qualified in the following areas: aboriginal law, administrative law, constitutional law, criminal law, employment law, human rights, labour law, international law, jurisprudence and torts. Numerous lawyers within easy driving distance from the University have indicated an interest in teaching courses as adjunct professors. We are confident we can obtain sufficient qualified faculty members.

## VIII. Articling and Career Centre and Student Support Services

The School of Law will include an Articling and Career Centre to provide advice and information to law students on their career goals. The Articling and Career Centre will operate a variety of programs and services to ensure law students are prepared for, and are able to obtain, summer, articling and clerk positions. The Articling and Career Centre will provide personalized career counselling and assistance in resume and interview preparation. The Articling and Career Centre will be responsible for bringing guest speakers on career options to the School of Law. The Articling and Career Centre will also host career fairs for law firms and other organizations interested in School of Law students and graduates. The Articling and Career Centre will also be responsible for assisting students in locating mentors and good practicum opportunities. It will also have an outreach function in working with small law firms to develop new articling positions.

The Articling and Career Centre will be staffed by an Articling and Career Centre Coordinator along with administrative support staff.

## IX. Financial Plan

TWU has developed a financial plan (the “Financial Plan”) for the School of Law that has been reviewed by the Board of Governors. This Financial Plan is based on the following principles:

- The School of Law will be a distinct business unit under the direction of the Dean of the School of Law.
- The School of Law must be adequately funded to ensure there is consistent excellence in the provision of academic programs.
- The School of Law will be operating in a highly competitive environment with respect to the ability to recruit and retain high quality faculty. The School of Law salary budget will need to be structured to recognize this competitive environment.
- The law library must have sufficient financial resources to support the School of Law’s teaching, scholarship, research, and service programs
- The School of Law must be self-sustaining by its third year of operation.

- The School of Law cannot have a detrimental impact on the overall finances of the University nor negatively impact other areas of campus.

Highlights of the Financial Plan include the following:

- The Financial Plan is based on a first year cohort of 60 students with the total student body increasing to 170 students by year three. Market research has been conducted by Concerto Research Inc. which indicates that “...*demand for the Trinity Western Law School projects to safely meet enrollment targets.*”
- The School of Law will not be publically funded and will therefore be dependent on tuition. Tuition will be just slightly higher than undergraduate tuition rates at TWU, commencing at \$25,500 in 2015. Again market research by Concerto Research Inc. confirms there is adequate demand at that tuition price.
- By year three the School of Law will have a salary budget of \$2,225,000 for faculty and support staff.
- By year three the School of Law will have a direct operating expense budget of approximately \$600,000. (This is direct operating expenses only and excludes salaries, capital expenditures and facility overhead costs.)
- Following required approvals, TWU will immediately commence a capital campaign to fund building costs, pre-commencement development costs, library acquisitions, scholarships and endowment. It is anticipated that the capital campaign will be in the 18 to 20 million dollar range.

## **X. Accountability**

### **A. STRUCTURE**

The J.D. program will be administered by the Dean of the School of Law, who will report to the Provost.

### **B. EVALUATION AND ASSESSMENT**

The J.D. program will be subject to the normal academic review procedures of the Academic Division at TWU. It will be assessed regularly to ensure it meets its goals, objectives and expected learning outcomes. In particular the program will be assessed by regular student evaluations,

surveys of School of Law graduates, credentials and research of faculty and an overall program review every five years.

The School of Law is also committed to working closely with the Federation of Law Societies of Canada and the Law Society of B.C. and fully complying with any program evaluation and assessment requirements they establish.

## **XI. Implementation Timeline**

### **A. TARGET LAUNCH DATE**

The target launch date for the J.D. program is September 2015.

### **B. ENTERPRISE IMPLEMENTATION TIMELINE**

If all needed approvals are completed by early 2013, there will be sufficient time to construct the School of Law building, purchase library resources, hire required faculty and staff, and to recruit the first class.

# *Appendices*



*proposal for* A SCHOOL OF LAW  
at TRINITY WESTERN UNIVERSITY

## APPENDIX ONE

### Members of the TWU School of Law Task Force (2008)

1. Jonathan S. Raymond, Ph.D., President – TWU, Langley, B.C.
2. Dr. Donald Buckingham, Law Professor, Lawyer – Federal Department of Justice, Ottawa, ON
3. Dr. Janet Epp Buckingham, Director of Laurentian Leadership Centre of Trinity Western University, Ottawa, ON
4. Geoffrey Cowper Q.C., Partner – Fasken Martineau LLP, Vancouver, B.C.
5. Dr. Dennis Jameson, Provost – TWU, Langley, B.C.
6. Robert G. Kuhn, Partner – Kuhn and Company, Abbotsford, B.C.
7. Dr. Eugene Meehan Q.C., Partner – Supreme Advocacy LLP, Ottawa, ON
8. Kevin G. Sawatsky, Lawyer, Professor of Law – TWU, Langley, B.C.
9. Elizabeth, Davis, Facilitator, London, ON

Note: additional members of this task force asked that their involvement be kept confidential.

## APPENDIX TWO

### Members of the Curriculum Development Working Group (2009)

1. Dr. Donald Buckingham, Law Professor, Lawyer – Federal Department of Justice, Ottawa, ON
2. Dr. Janet Epp Buckingham, Director of Laurentian Leadership Centre of Trinity Western University, Ottawa, ON
3. Dr. Eugene Meehan Q.C., Partner – Supreme Advocacy LLP, Ottawa, ON
4. Prof. Kevin Sawatsky, Professor of Law – Trinity Western University School of Business, Langley, B.C.

Note: Two additional members of this working group, who are faculty in other law programs in Canada, asked that their involvement be kept confidential.

## APPENDIX THREE

### Law School Advisory Council (2011- )

1. Kevin Boonstra, Partner, Kuhn LLP, Abbotsford, B.C.
2. Dr. Donald Buckingham, Chairperson, Canada Agricultural Review Tribunal, Ottawa, ON
3. Lorne Jacobson, Partner, Triwest, Calgary, AB
4. Dr. Eugene Meehan Q.C., Partner – Supreme Advocacy LLP, Ottawa, ON
5. Peter Mogan, Partner, Access Law, Vancouver, B.C.
6. Amber Pashuk, Public Prosecution Service of Canada, Toronto, ON
7. Earl Phillips, Partner, McCarthy Tétrault LLP, Vancouver, B.C.

Note: additional members of this advisory council asked that their involvement be kept confidential.

**APPENDIX FOUR**

**External Review: ALBERT H. OOSTERHOFF**

**REPORT**

**on the Academic Soundness  
of the Proposal for a**

**JURIS DOCTOR PROGRAM**

**at**

**TRINITY WESTERN UNIVERSITY**

by

**Albert H. Oosterhoff**  
Professor Emeritus  
Faculty of Law  
The University of Western Ontario

January 24, 2012

## REVIEWER'S QUALIFICATIONS

### Education

- The University of Western Ontario, J.D., 1964
- The Law Society of Upper Canada, Barrister & Solicitor, 1966
- The University of Western Ontario, B.A., 1968
- University of Toronto, LL.M., 1970

### Work Experience

- Practiced law in London, Ont., 1966-68
- University of Windsor, Faculty of Law
  - Assistant Professor, 1969-70
  - Associate Professor, with tenure, 1970-72
- The University of Western Ontario
  - Associate Professor, 1972-80
  - Professor, 1980-2005
  - Associate Dean (Student Affairs), 1982-85
  - Associate Dean (Administration), 1989-92
  - Acting Dean, January 1999 – June 2000
  - Associate Dean (Academic), 2001-03
  - Retired June 30, 2005, with title of Professor Emeritus
  - Member of the University Senate for three terms and served on numerous University and Faculty Committees
  - Co-Director of the Joint LL.B./MBA Program, 1982-85 and 2001-03
- University of Toronto
  - Adjunct Professor, 2005-10 (teaching Trusts)

### Academic Specialization

Property, Trusts and Wills

### Publications

Numerous publications in the form of peer reviewed articles, comments, monographs, reviews, reports, and studies, and continuing legal education materials. Frequently cited in all levels of courts.

### Other Activities and Memberships

Associate Editor for many years of the *Dominion Law Reports*, *Canadian Criminal Cases*, and *Ontario Reports*.

Editor-in-Chief, *Estates and Trusts Journal*, 1987-89.

Consultants on a number of occasions to the Ontario Law Reform Commission, and the Uniform Law Conference of Canada, Consultant to law firms.

Member of the Law Society of Upper Canada, and the Canadian Bar Association.

## **1. GENERAL COMMENTS**

The proposed Juris Doctor program is a very thorough and carefully considered proposal. It is very meritorious on many levels:

- The program is compatible with and builds on the University's mission.
- It satisfies the requirements of the Federation of Law Societies of Canada. There is demonstrated student demand for sound legal education in Canada and the demand greatly exceeds available spaces.
- The unique position of the University as a faith-based educational institution permits it to offer a program that emphasizes professionalism, high ethical standards, leadership, and character development, while integrating a Christian worldview.
- The proposed curriculum includes all the courses essential to a sound legal education and requires all students to take a core list of courses, but also leaves plenty of room for student choice.
- The proposed program permits a certain degree of specialization in charities and social justice law, and small business and entrepreneurial law. The emphasis on placing graduates in smaller communities which are underserved is a desirable goal.

In my opinion, therefore, the proposal is a sound one and highly relevant in the current Canadian market.

## **2. SPECIFIC COMMENTS**

### **2.1 Program Aspects**

The Program Aspects have been developed carefully and, in my opinion, are more than adequate.

#### **2.1.1 Objectives**

The objectives are, in some respects, unique, for a common law Canadian law school. While a renewed emphasis on professionalism and ethics has become a feature in most Canadian law schools in the last decade, and while practical assignments have been part of Canadian legal education for many years, the program takes these desirable objectives to a new level by also emphasizing leadership and character development and integrating a Christian worldview into the program.

#### **2.1.2 Curriculum Design**

The Curriculum has been designed carefully to achieve the program's objectives.

#### **2.1.3 Admission and Graduation Requirements**

These requirements are fairly standard for a Canadian law school and are unexceptional.

### **2.1.4 Program Requirements**

The program requirements elaborate on the design of the Curriculum. While the first year and upper year curricula are typical of the average Canadian law school, the emphasis on professionalism, practical competence, and high ethical standards sets this program apart, especially since these come into play from the outset and are built into all courses, including particularly three capstone courses.

The emphasis on a built-in practice approach is to be applauded, since it appears likely that law societies will get out of the business of operating bar admission courses.

The small-group approach in first-year is also to be applauded. This is common in many Canadian schools and is highly desirable from a pedagogical viewpoint.

### **2.1.5 Course Descriptions**

Subject to a couple of suggestions in Section 2.3, the course descriptions are adequate and unexceptional.

### **2.1.6 Overall Program Design**

The design of the program is adequate and unexceptional.

### **2.1.7 Program Delivery**

As is to be expected, the program will be delivered mainly through classroom instruction. However, the program goes further than many Canadian schools by the features of mentoring and practica, important features that will set the program apart. The wide range of practicum placements sounds particularly exciting.

## **2.2 Strengths**

In my opinion, the strengths of the program are the emphases on: (a) professionalism and high ethical standards; (b) practical competence; (c) social service; (d) a core curriculum; and the opportunity to specialize to some extent in underserved areas of law.

## **2.3. Suggestions for Improvement**

I have three suggestions that I believe may improve the program. I list them in no particular order:

A number of schools teach an Ethics course in the First Year. The program proposal states that the focus on professionalism, practical competence, and high ethical standards begins during Orientation Week, but there is no indication that professionalism and ethics will be taught further in the First Year. I realize that the First Year curriculum is already quite full, but I wonder if it

would not be possible to have a stronger focus on these matters throughout the First Year, perhaps by incorporating these matters in First Year courses, or during a break-out week at the start of the second term.

The second suggestion betrays my own interests, but I am concerned that there is only a joint course for Wills and Trusts, worth three semester hours. I doubt that one can do justice to both topics in such a short time frame and would prefer to see them divided into two separate courses. Lawyers practicing in smaller communities especially will be faced with wills and trusts issues on a regular basis and they will need more than an introductory course to prepare them for such a practice.

The list of required courses in the upper years has, I suspect, been considered carefully, so I am somewhat hesitant in questioning the choices. However, I am of the view that both might have made the list: Tax Law (the basic course), and Trusts. My reasons are: both Tax Law and Trusts are so pervasive in our legal system and a basic knowledge of the two subjects is essential in many areas of practice. I realize that they cannot simply be added to the list, since that would overload the required course list and have deleterious consequences for student choice. But to delete courses from the list may not be attractive to the developers of the program either. However, if it were my choice, I would delete Family Law and Real Estate Law. Neither course has the same pervasiveness as Tax and Trusts.

## **2.4 Resources**

### **2.4.1 Facilities**

I believe that the facilities in the form of the proposed state-of-the-art School of Law building will be adequate for delivery of the program. I assume that the building will be appropriately wired for state-of-the-art audio-visual presentations and for internet access, especially throughout the library, the classrooms, and student common areas. In my experience, seminar rooms are always in great demand and you may wish to increase their number from four to six.

### **2.4.2 Library**

Since the library plan will be developed in accordance with the Canadian Academic Law Library Standards, I believe that the library will adequately serve the needs of the program. It is an exciting time to be planning a new law library when so many resources are now online, and, there, fewer hard copies will likely be needed. However, based on my experience, it will still be important to maintain an adequate monograph collection, both historical and current.

### **2.4.3 Personnel**

The proposals for hiring a dean, a director of the library, and other staff and faculty have been developed with careful thought. I believe that the staffing of the Law School will be adequate for the delivery of the new program. Further, the proposed hiring of the faculty and staff over a three-year period once the program is approved and comes on stream is appropriate.

## **2.5 Timeline**

It is a bit difficult for me to judge whether the timeline is realistic. Based on the information provided in the Proposal, it seems clear that internal approval should not present a problem and ministerial approval should not present a difficulty either. However, as the proposal indicates, the approval process of the Federation of Law Societies of Canada is new and the members of the new Canadian Common Law Program Approval Committee will be “learning on the job” so this part of the process may take a bit longer. I do not know how long it will take the Law Society of British Columbia to give its approval. Assuming that the approval time of both of these bodies is not more than a year in total, the working timeline for a launch of the J.D. Program in September 2015 is indeed realistic.

## **2.6 Other Observations**

I believe that the proposal has demonstrated a need for a new Canadian common law school. The statistics clearly show that many qualified applicants cannot gain admission to the limited number of places. Further, from a marketing viewpoint, the special focus of the program, with its emphasis on professionalism, practical competence, high ethical standards, social service, a core curriculum, and its focus on placing graduates in smaller communities will be attractive to many applicants. So will the fact that the University provides an integrated Christian worldview for its students.

## **3. SUMMARY**

In conclusion, it is my considered opinion that the Proposal is academically sound, will have adequate resources attached to it, satisfies regulatory requirements, and proposes a realistic timeline. In addition, the proposed program builds on the strength of the University’s mission and existing programs.

Further, there is a demonstrated need for the program. And finally, the program will be attractive to many applicants because of its emphasis on social justice, high ethical standards, professionalism, and practical competence, as well as a core curriculum and the integration of a Christian worldview into the legal studies.

Respectfully submitted.

Albert H. Oosterhoff  
Professor Emeritus  
Faculty of Law  
The University of Western Ontario

## APPENDIX FIVE

External Review: **LYMAN R. ROBINSON, Q.C.**

**Lyman R. Robinson, Q.C., B.A., LL.B., LL.M.**

**January 30, 2012**

**Dr. Elsie Froment,  
Dean of Research, Trinity Western University,  
7600 Glover Road, Langley, B.C., V2Y 1Y1**

**Dear Dr. Froment:**

**RE: EXTERNAL REVIEW of PROPOSED Juris Doctor PROGRAM at TRINITY WESTERN UNIVERSITY**

I understand that it is customary for an External Program Reviewer to provide a summary of his qualifications to provide an External Review.

My academic qualifications include substantial experience in both professorial and administrative positions at two Canadian law schools, namely Queen's University and the University of Victoria (hereinafter referred to as "UVic"). At UVic, I was one of the founding members of the Faculty of Law where I participated extensively in the design and development of its curriculum. I subsequently became the second Dean of the Faculty (1980-85). I also served as Associate Vice-President, Legal Affairs at UVic (1996-2000).

In the early 1990s, I was a member of the Board of Trustees of the Law School Admissions Council (LSAC), a not-for-profit U.S. corporation that designs and administers the LSAT test. I served as the Chair of the Budget and Legal Affairs Committee of the LSAC for several years. During that period I became quite familiar with the accreditation standards and processes for the accreditation of law schools in the United States. The LSAC does not accredit proposed law schools; however, the LSAC was named as a defendant, along with the American Bar Association (ABA) and the American Association of Law Schools (AALS), in litigation involving the accreditation of law schools.

My understanding of the competency requirements that are needed by a practicing lawyer began in 1963 when I articulated with and subsequently practiced with the law firm of Crease & Company in Victoria, B.C. Throughout my academic career, I have been periodically engaged as a consultant in legal matters and I have appeared as counsel at both the trial and appellate level. During the period from 1986 to 1996, I served as a chair of adjudicative tribunals on two federal tribunals. I have also served as chair of several public inquiries and I have been the

member of a number of arbitration panels.

## **1. EVALUATION OF ACADEMIC SOUNDNESS**

Prior to writing my Review, I carefully read Draft 6 of the proposed Juris Doctor Program at Trinity Western University dated January 10, 2012 (hereinafter called “J.D. Program, Draft 6”) and the Final Report of the Common Law Degree Implementation Committee of the Federation of Law Societies of Canada dated August 2011 (hereinafter called the “Federation Committee’s Final Report on Accreditation Requirements”). I also read the draft Proposal for a School of Law at Trinity Western University, (hereinafter called the “Proposal for a Law School”).

My evaluation of the academic soundness of the proposed J.D. Program of Trinity Western University (hereinafter referred to as “TWU”) included an examination of several factors including:

- (1) The Objectives of the Program;
- (2) The structure and course content of the curriculum;
- (3) The teaching methodologies proposed to be used in the courses;
- (4) The adequacy of the resources that TWU proposes to allocate to the Program; and
- (5) The likelihood of accreditation by the legal profession’s governing bodies.

After considering these factors in relation to my knowledge of the J.D. Programs of other Canadian law schools and my understanding of the substantive legal knowledge and practical skills that are required to practice law as a profession, I have concluded that the proposed J.D. Program is academically sound. My reasons for this conclusion are described in the following paragraphs.

**OBJECTIVES OF THE PROGRAM:** The objectives of the proposed J.D. Program are described in the J.D. Program, Draft 6, at pages 1 and 4 . These objectives include a focus on professionalism, practice competence and ethical standards. These objectives are based, in part, on two reports regarding the relationship between academic legal education and the practice of law as a profession. The Federation of Law Societies of Canada Consultation Paper on the Canadian Common Law Degree dated September 2008, at page 15, paragraph 23, commented favourably upon the development of academic programs where “...academic instruction is more closely integrated with the development of practice skills”. The Federation Committee’s Final Report on Accreditation identified the competency requirements of law graduates who seek to enroll in provincial bar admission programs. This Report also emphasized the need to integrate the teaching of ethics and professionalism into law school curricula. The 2007 Report of the Small Firm Task Force prepared for the Law Society of British Columbia, at page 6, identified a need to educate law students who will be capable of practicing as sole practitioners or in small firms in less populated areas of the province. This followed an observation that when older lawyers, who are practicing in these areas retire, they are not being replaced by young lawyers. The objectives of the proposed J.D. Program respond to

needs that were identified in the above mentioned reports.

**STRUCTURE AND CONTENT OF THE CURRICULUM:** The structure of the curriculum of the proposed J.D. Program is similar to the structure of J.D. programs of other Canadian law schools whose degrees have been accredited by the provincial law societies, namely, 90 semester hours of course work over six terms (3 years). As is the case with most J.D. programs, all courses in the 1<sup>st</sup> Year of the curriculum are required courses because they serve as the foundation for upper year courses. It is in the 2<sup>nd</sup> and 3<sup>rd</sup> years of the TWU J.D. Program that both the structure and the content of curriculum are different than most Canadian J.D. programs. In the proposed TWU J.D. Program, students must complete 10 required courses in subjects that are regarded as essential for a graduate who is preparing to enter the legal profession. This is a significant improvement compared to many J.D. programs because it will ensure that graduates have a broader understanding of the legal subjects that are the foundation of the Canadian legal system. In many J.D. programs, it is common to have only one or two required courses in the combined 2<sup>nd</sup> and 3<sup>rd</sup> Years of the program. The course content of the proposed TWU J.D. Program is distinctive in that there is a much greater emphasis on the development of practice skills and a focus on professionalism and ethical standards. For example, two of the required courses are LAW 225 ETHICS AND PROFESSIONALISM and LAW 330 PRACTICE MANAGEMENT. I have examined the Course Description of each of the proposed courses in the J.D. curriculum and, in each case, I am satisfied that the course is academically sound and will contribute to the satisfaction of the objectives of the proposed J.D. Program.

**TEACHING METHODOLOGIES:** The teaching methodologies, which are proposed to be used the various courses, are suitable for the respective courses. In many cases, these methodologies will contribute to the development of practice skills and they are a significant improvement compared to the typical lecture format that is often used in basic substantive law courses in other J.D. programs.

**RESOURCES:** The resources, which TWU proposes to allocate to the J.D. Program, including the appointment of faculty and staff, the establishment of a law library, and the construction of a law school building, are relatively comparable to those of other Canadian law schools when the size of the proposed student body is considered. These resources will enable the School of Law to deliver the proposed J.D. Program and provide the students with a proper learning environment.

**PROFESSIONAL ACCREDITATION:** The likelihood of professional accreditation by the governing bodies of the legal profession is an important consideration in the evaluation of an academic program when it is proposed that the degree will serve as the credential for professional qualification. The Law Society of British Columbia will make its own decision regarding the accreditation of the proposed J.D. Program for the purpose of enrollment in its Bar Admission Program. Similarly, the Canadian Common Law Program Approval Committee (“the Approval Committee”) established under the auspices of the Federation of Law Societies of Canada will

make its own decision regarding accreditation of the J.D. Program for the purpose of determining whether graduates of the proposed J.D. Program will be eligible for enrollment in bar admission programs of other provincial law societies. In developing the proposed J.D. Program, the developers have sought to develop the J.D. Program in accordance with the requirements set out in the Federation Committee's Final Report on Accreditation Requirements [See J.D. Program, page 4]. My analysis of the curriculum and course content of the proposed J.D. Program measured against the competency requirements described in the Federation Committee's Final Report on Accreditation Requirements provides me with encouragement that the proposed J.D. Program will be favourably received by the governing bodies of the legal profession when accreditation of the J.D. Program is considered by them. By way of a separate document, I have provided TWU with a copy of my analysis.

On the basis of my examination of the proposed J.D. Program I am completely satisfied that the proposed J.D. Program is academically sound and that the structure and content of the curriculum will satisfy the Program's objectives of producing law graduates who will have a comprehensive knowledge of the fundamental legal subjects of Canadian legal system and the practical skills to serve clients particularly in small law firms outside major metropolitan areas.

## **2. OVERALL SOUNDNESS and RELEVANCY OF THE PROPOSED J.D. PROGRAM**

### **Program Aspects**

#### FIRST YEAR

All of the 1<sup>st</sup> Year courses in the J.D. program are required courses. The courses are similar to those found in the 1<sup>st</sup> year program of many Canadian law schools. I have examined the structure of the 1<sup>st</sup> Year program, the course objectives, course outlines and suggested texts for each course. Subject to the two suggestions that I will make below under the heading "Suggestions for Improvements", I have concluded that the structure and content of the 1<sup>st</sup> Year of the J.D. program will provide students with the requisite knowledge of substantive law and an introduction to practice related skills that will serve as a proper foundation for upper year courses. Where texts are suggested for a course, the texts are appropriate for the course. An important feature of the 1<sup>st</sup> Year of the J.D. program is the proposal to divide the proposed enrollment of 60 students into two sections of 30 students or less [J.D. Program, Draft 6, pages 7 and 22]. In the 1<sup>st</sup> year of a law program, it is important to provide students with an opportunity to learn to "think like a lawyer". This involves regularly calling upon each student to articulate his or her understanding of the meaning and effect of a judicial decision or statutory provision, provide arguments in support of his or her understanding or interpretation, and respond to any contrary arguments. This teaching technique develops a student's analytical skills as well as the skill of making oral presentations. In my experience, this technique is most effective in classes with 30 or fewer students.

## 2<sup>nd</sup> & 3<sup>rd</sup> YEARS

The structure of the 2<sup>nd</sup> and 3<sup>rd</sup> Year of the J.D. Program requires each student to complete 10 required credit courses (one of which must be taken in 2<sup>nd</sup> Year) and two practicums (LAW 200 does not have any semester hour credit). After examining the structure of the proposed 2<sup>nd</sup> and 3<sup>rd</sup> program, the course outline for each course, and the proposed teaching methodology for each course, I have concluded that they are academically sound and consistent with objectives of the J.D. program. The proposed texts have been written and prepared by well-known and respected legal authors. The proposed teaching methodologies are suitable for the respective courses.

### Strengths of the Proposed Program

There are several strengths of the proposed J.D. Program that merit emphasis. They include:

(a) **DEVELOPMENT OF PRACTICE COMPETENCIES AND SKILLS:** The integration of practice competencies and skills into the J.D. curriculum is an objective of the J.D. Program. The proposed J.D. program accomplishes this objective in many courses, including:

LAW 111A and LAW 111B CONTRACT LAW [J.D. Program, Draft 6, pages 29 & 30]: In both of these courses, students will be introduced to the principles of drafting contracts and given practice in negotiating and drafting contracts.

LAW 117 INTRODUCTION to PRACTICE SKILLS and the PRACTICE OF LAW [Draft 6, page 40];

LAW 305 BANKRUPTCY AND INSOLVENCY LAW [J.D. Program, Draft 6, page 49]: Students will be given practice drafting bankruptcy documents (proposals, assignments, etc).

LAW 306 BUSINESS ORGANIZATIONS [J.D. Program, Draft 6, pages 4, 13 & 51]: Students will be required to complete or “walk through” all steps of incorporating and dissolving a corporation.

LAW 308 CIVIL PROCEDURE [J.D. Program, Draft 6, page 53]: One of the course objectives is to develop legal drafting skills including the drafting of civil pleadings.

LAW 309 CLIENT RELATIONS and INTERVIEWING [J.D. Program, Draft 6, page 54]: Over half of the course time will be devoted to practice scenarios.

LAW 329 NEGOTIATION (Advanced) [J.D. Program, Draft 6, page 78];

LAW 331 REAL ESTATE LAW [J.D. Program, Draft 6, page 80]: The course objectives include developing practical skills through problem solving exercises.

LAW 332 REMEDIES: The Course Description includes “drafting opinion letters”.

LAW 337 WILLS and TRUSTS: Students will be given practice in taking instructions for drafting a will [J.D. Program, Draft 6, page 87] and drafting a simple will [J.D. Program, Draft 6, page 20].

A secondary benefit, which flows from the development of practice skills, is that it demonstrates the importance of having a thorough understanding of the relevant substantive legal principles.

(b) **DESIGNATION OF REQUIRED COURSES:** The designation of 10 courses in the 2<sup>nd</sup> and 3<sup>rd</sup> years of the J.D. program [J.D. Program, Draft 6, Page 7 & 8] as required courses is an important strength of the J.D. program. Over the past 40 years, the trend in most Canadian law schools has been to make the 2<sup>nd</sup> and 3<sup>rd</sup> year curriculum largely optional subject to one

or two required courses. Consequently, a student who has chosen an esoteric selection of optional courses, may not have a broad knowledge of the fundamental legal subjects that are the foundation of the Canadian legal system and may not have developed the practical skills that a lawyer needs to engage in the general practice of law with a small firm or as a solo practitioner. The proposed J.D. program, by designating 10 courses as required courses, ensures that each graduate of the program will have thorough knowledge of the legal subjects that are fundamental to the Canadian legal system and the practice skills to engage in the practice of law.

(c) ETHICS AND PROFESSIONALISM: An objective of the proposed J.D. Program is to focus upon and integrate ethical standards and professionalism into the curriculum. The proposed J.D. program accomplishes this objective in many courses and it is an important strength of the program. LAW 225 ETHICS and PROFESSIONALISM [J.D. Program, Draft 6, pages 12 & 43] is a required second year course where these topics are the center of attention. Examples of specific aspects of ethics and professionalism, which are expressly incorporated into other courses, include: LAW 117 INTRODUCTION TO PRACTICE SKILLS and the PRACTICE OF LAW; LAW 303 ADVANCED ADVOCACY; LAW 309 CLIENT RELATIONS AND INTERVIEWING SKILLS; LAW 313, DEBTOR and CREDITOR LAW; LAW 316 EVIDENCE, a required course; LAW 330 PRACTICE MANAGEMENT a required course; LAW 334 SECURITIES LAW; LAW 335 TAX LAW; LAW 336 TAX LAW (Advanced); and LAW 337 WILLS and TRUSTS.

### **Suggestions for Improvement of the Proposed Program**

My comments in this section should not be interpreted as a criticism of the proposed J.D. Program but rather as observations that the developers of the Program may wish to consider as they proceed with the implementation of the Program.

#### **FIRST YEAR CURRICULUM:**

LAW 110 INTRODUCTION TO LAW [J.D. Program, Draft 6, page 28] is a required, not for credit, course that will be completed by first year students in the first week of the Fall Term. The objectives of this course include introducing students to the study of law, law as a profession and a calling, and teaching students how to read, analyze and brief a reported legal case. For most students, the study of law is an entirely new academic discipline with many components. While the stated course objectives are important, “case briefing” is a significant component of other first year courses (see, for example, LAW 112A and LAW 112B TORTS) . I think that is equally important that students in an introductory course of this nature be given a framework of how the various components of the legal system relate to one another. The framework should include the basic structure of the constitution (division of powers), the legislative system (federal and provincial), the role of the courts in the interpretation of the constitution, legislation, and the development of the common law, and the role of private law where parties structure their own legal relationships by means of contracts, wills, and other legal arrangements. Students, who have a framework of this

nature, will be in a better position to understand how the content of the remainder of the 1<sup>st</sup> Year courses relate to legal system as a whole.

#### LEGISLATION and the PRINCIPLES OF STATUTORY INTPRETATION:

The J.D. Program, Draft 6 at page 6, states:

“As with most law schools across Canada, TWU’s first year program will have a strong focus on learning to read and analyze case law.”

This statement is followed, in the next paragraph, by a reference to LAW 116, FUNDAMENTALS OF CANADIAN LAW, where students will “... gain an understanding of how the common law and the Canadian legal system function”. My concern is the balance in the 1<sup>st</sup> Year curriculum between the development of the common law and the importance of legislation and the principles of statutory interpretation in Canada’s legal system. LAW 111A and B CONTRACT LAW, LAW 112A and B TORT LAW, and LAW 114A and B PROPERTY LAW place heavy emphasis on the development of the common law on a “case-by-case” basis. There is a question in my mind whether LAW 116, FUNDAMENTALS OF CANADIAN LAW needs to devote much further time to the development of the common law. In my opinion, the typical 1<sup>st</sup> first year curriculum in most Canadian law schools does not give enough emphasis to statutes, regulations and municipal bylaws that are prominent components of the Canadian legal system. One of the core competencies identified in the Federation Committee’s Final Report on Accreditation Requirements, under the headings of both “Skills Competencies - Legal Research” and “Foundations of Law”, is statutory interpretation and analysis. The Course Description of LAW 116 FUNDAMENTALS OF CANADIAN LAW [J.D. Program, Draft 6, page 39] does include, among other topics, the principles of statutory interpretation, delegated legislative authority and regulations. However, for example, the UVic Law Program devotes an entire first year course to the legislative process and the principles of statutory interpretation. When I taught that course during its inception, I was often struck by how few students (other than those who had majored in political science) understood the legislative process in Canada. Lawyers have frequently told me that UVic law students (who may work in law firms as early as after 1<sup>st</sup> Year) had greater familiarity with legislation, regulations and the principles of statutory interpretation than their counterparts from other law schools. I submit that LAW 116 FUNDAMENTALS OF CANADIAN LAW could be strengthened by increasing the emphasis on the legislative process and the principles of statutory interpretation.

#### 2<sup>nd</sup> and 3<sup>rd</sup> YEAR COURSES:.

LIST OF REQUIRED COURSES: In a discussion about the designation of required courses, there is often a debate about the courses that should be included on the required list. The debate is often shaped by the debaters’ personal experience in practice. Notwithstanding that I practiced family law for several years, I don’t think that it is essential that every lawyer have knowledge of family law. Nevertheless, I recognize that one of the objectives of the J.D. program at TWU is to prepare students for practice in small law firms particularly outside the major B.C. urban areas. Most lawyers who practice in this context will, almost

inevitably, have some clients who will require the advice of a lawyer who has knowledge of family law . Therefore, I understand why LAW 317 FAMILY LAW has been designated as a required course. There is an old axiom that only two things in life are certain, namely death and taxes. On the basis of this axiom, it could be argued that LAW 337 WILLS AND TRUSTS and LAW 335 TAXATION are just as important as Family Law and should be designated as required courses.

LAW 317 FAMILY LAW [J.D. Program Draft 6, page 63]: An important function of a lawyer who practices family law is the negotiation and drafting of separation agreements. This topic is not specifically mentioned in the Course Outline. Students would benefit from the inclusion of this topic in this course.

LAW 328 NATURAL RESOURCES LAW [J.D. Program, Draft 6, page 76]: Natural resources are an important part of British Columbia's economy. The content of this course would benefit from a greater focus on specific natural resource issues that lawyers in small firms outside the large urban areas may encounter. For example, legal issues relating to forest industry could be one focus of the course.

LAW 331 REAL ESTATE LAW [J.D. Program, Draft 6, page 80]: The following 3 topics are not specifically mentioned in the course description:

- (a) The acquisition of an interest in or on land situated on Indian Reserve Land. Both commercial and residential developments on Reserve land are becoming more common.
- (b) Strata property transactions: Many commercial and residential property holdings are now governed by Strata Property legislation. This course does cover the purchase and sale of real estate and this may include strata lots. The course content does not appear to cover aspects of the ongoing relationship between a strata lot owner and the strata corporation.
- (c) Conflicts of Interest: Circumstances arise in many real estate transactions where there is a potential for a lawyer to become involved in a conflict of interest.

This course would benefit from the inclusion of these topics.

### **Adequacy of Resources**

FACULTY and STAFF: When it reaches full strength, the proposed faculty complement will consist of a Dean, a 12 full-time faculty, and approximately 14 adjunct faculty members [J.D. Program, Draft 6, page 23 and Appendix B, pages 89 & 90]. Given the range of proposed course offerings in the curriculum, this number should be sufficient to deliver the proposed curriculum.

Upon the enrollment of its initial first year class, TWU proposes to have 6 full-time faculty and one adjunct faculty member [J.D. Program, Draft 6, Appendix B, page 88]. The UVic Faculty of

Law had a similar number of full-time faculty in when it enrolled its initial 1<sup>st</sup> Year class. The commencement of a new law school including the development of new courses requires a great deal of time and energy by the founding faculty members. I don't think that an attempt should be made to begin the first year of operation with less than 6 full-time faculty members.

The planned number of support staff is suitable for the planned number of faculty and students.

**LIBRARY:** The law library will be developed in accordance with the Canadian Academic Law Library Standards [J.D. Program, Draft 6, page 22-23]. Many electronic legal data bases are now available. This dramatically reduces the need to acquire hard copies of many series of law reports and the shelf space that would be required to house them. Provision will need to be made to enable law students in the J.D. program to gain access to these data bases. A criticism of recent law graduates, which I occasionally hear from law firms, is that they tend to rely exclusively on electronic legal data bases when they are conducting research. Law students will still require instruction to develop their knowledge of and skill in using traditional printed material, including legal digests and monographs that are frequently relied upon as legal authorities.

**LAW SCHOOL BUILDING - CLASSROOMS and STUDENT FACILITIES:** I have visited almost 20 law schools in Canada and the United States. As the chair of the UVic law school building committee, I carefully examined, in the company of an architect, the design and the space configurations of 6 law schools in Canada and the U.S. On the basis of the projected enrollment at TWU, and bearing in mind that electronic data has reduced the space needs of a law library, I believe that the components of the proposed new school law building [J.D. Program, Draft 6, page 22] and the proposed square footage and room configurations [See: Proposal for a School of Law, pages 25-28] are relatively comparable to those of other law schools and the proposed facilities of will properly serve the needs of students, faculty and staff. For a reader of this Review who has not have participated in the overall learning process in a law school, it is important to recognize a significant amount of learning takes place in informal settings with a law school building where students debate legal principles and the merits of various legal cases and statutory provisions. I regard the Student Collegium as a critical component of the proposed law school building.

### **Timeline for Development of the Proposed Program – Is it Realistic?**

The timeline for recruiting a Dean, Law Librarian and faculty members [See: Proposal for a School of Law, pages 30-31] is comparable to the timeline followed by the UVic law school and it is realistic and achievable. The timeline for preparing architectural drawings and completing the construction the School of Law Building [J.D. Program, Draft 6, page 22 and 25; Proposal for a School of Law, page 25] by September, 2015 may be tight without much room for any unexpected delays.

### **Other Considerations**

MARKET VALUE OF THE PROGRAM: There is a need for a law school where the primary emphasis of the J.D. Program will be to provide students with a knowledge of the substantive legal subjects that are the foundation of the Canadian legal system and the practical skills that will enable them to engage in the general practice of law in areas outside major urban areas. I expect that there are many prospective law students, whose primary objective is to become a practicing lawyer, who will find the J.D. Program at TWU to be very attractive.

### **3. SUMMARY**

I have carefully reviewed the proposed J.D. Program and I have concluded that it is an academically sound program. Graduates from the Program will have a sound knowledge of the substantive legal subjects that are the foundation of the Canadian legal system. The Program's emphasis on ethical standards and professionalism and the development of the legal skills and competencies will likely result in the Program being favourably received by the governing bodies of the Canadian legal profession.

**Yours truly,**

**Lyman R. Robinson, Q.C**

## APPENDIX SIX

### Response to external reviews

The two external reviewers were very favourable in their assessments of the soundness and academic soundness of the program. Each made some suggestions for improvement of the proposed program, although they indicated that these were suggestions only.

#### Albert H. Oosterhoff

Suggestion 1: Professionalism and ethics should be incorporated into the First Year curriculum either by incorporating them in the courses or during a break-out week at the start of the second term.

*It is crucial to have a focus on ethics in first year to underscore its importance. It will be incorporated into each of the first year courses. Issues of professionalism will be incorporated into LAW 508, Introduction to Practice Skills and the Practice of Law.*

Suggestion 2: Divide the Wills and Trusts course, LAW 709.

*After consultation with lawyers in small firms, or sole practitioners, this suggestion has not been taken. The lawyers felt that the course as designed was adequate.*

Suggestion 3: Change the required upper year courses such that Family Law and Real Estate Law are not required but Tax and Trusts are.

*The Wills and Trusts course has been made mandatory, replacing Family Law. However, the small firm lawyers consulted recommended that Real Estate Law remain a required course over Tax Law.*

Suggestion 4: Increase the number of seminar rooms from four to six.

*This is a helpful suggestion and this information has been incorporated into the proposal.*

#### Lyman R. Robinson

Suggestion 1: In LAW 110 (renumbered LAW 501), include an introduction to the legal system.

*This is an excellent suggestion and the course description has been amended accordingly.*

*Several of the topics mentioned in this suggestion are included in the course on the Fundamentals of Canadian Law, a required course in the first semester.*

Suggestion 2: Increase the emphasis on legislation and principles of statutory interpretation in LAW 116 (renumbered LAW 507).

*This course was developed in accordance with the requirements of the Federation of Law Societies of Canada. The FLSC requires that graduates of law schools must have an understanding of the foundations of law, including,*

- *Principles of common law and equity;*

- *The process of statutory construction and analysis; and*
- *The administration of law in Canada.*

*We believe that all three components are important. They will be addressed in other first year, and upper year courses but this is where the foundation is laid. Prof. Robinson makes the point that several of the first year courses focus on common law. As this is the case, LAW 507 will have more of an emphasis on statutory instruments and interpretation.*

Suggestion 3: Change the required upper year courses such that Family Law is not required but Tax and Wills and Trusts are.

*This is similar to a suggestion made by Albert H. Oosterhoff. Wills and Trusts has been made a mandatory course and Family Law has been removed as a mandatory course.*

Suggestion 4: Add to LAW 317 (renumbered LAW 706) negotiation and drafting of separation agreements.

*This is an excellent suggestion and the course description has been amended accordingly.*

Suggestion 5: The Natural Resources Law course, LAW 328 (renumbered LAW 632) would benefit from a greater focus on specific natural resource issues that lawyers in small firms outside the large urban areas might encounter – forestry, for example.

*The course description and outline have been amended to include forestry.*

Suggestion 6: Real Estate Law, LAW 331 (renumbered LAW 709) should be amended to include the following three topics: (a) land on Indian Reserve Land; (b) Strata property transactions; and (c) conflicts of interest.

*The course outline has been amended accordingly.*

## **APPENDIX SEVEN**

### **Letters in Support**



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Reply to:  
Eugene Meehan, Q.C.  
emeehan@supremeadvocacy.ca

March 20, 2012

**MAIL**

Ms Elsie Froment, PhD  
Dean of Research  
Trinity Western University  
7600 Glover Road  
Langley, BC V2Y 1Y1

Dear Ms. Froment:

**Re: Trinity Western University Law School**

1. I am an irregular church goer, but more regular Law School attendee (four times) – so I probably know more about the latter than the former.
2. I do believe however in something greater than me.
3. But this new Law School is doing something special, and big in my view, that I acknowledge, respect, and support – it will be open to:
  - all faiths
  - Christian or non-Christian
  - those of no faith.
4. Though the Law School will be small (in terms of graduates being produced) they will serve a very necessary need for lawyers in:
  - small to medium sized firms
  - rural Canada (in this particular respect I attach the article “Nova Scotia Needs More Rural Lawyers”, Canadian Lawyer magazine, Feb 2012)
5. This Law School will produce lawyers with strong moral values together with a sense of local community – something most positive for the legal profession throughout Canada.
6. Because this Law School will focus on:
  - practical training
  - clinical programs
  - how-to programs as well as academic-type programs

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[www.supremeadvocacy.ca](http://www.supremeadvocacy.ca)

Ottawa

- cooperative programs  
their graduates will be much sought after.
7. My firm would be pleased to take anyone from the first graduating class as an articling student.
  8. And to speak personally and directly, I do put my money where my mouth is – I have personally contributed \$25,000 to this Law School initiative. I will contribute more.
  9. And last, the Law School I (first) attended was the University of Edinburgh – the University being founded in 1583 and the Law School 1707 – we do this now, we do this forever. In other words, creating something that wasn't there before, and doing so for the benefit of others, is something greater than us.

Yours very truly,

**Eugene Meehan, Q.C.**  
 LL.B. (Edinburgh, 1975)  
 LL.M. (McGill, 1977)  
 LL.B. (Ottawa, 1978)  
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February 27, 2012

**BY EMAIL AND POST**

Trinity Western University  
7600 Glover Road  
Langley, BC V2Y 1Y1

**Attention: Dr. Elsie Froment, Dean of Research**

Dear Sir/Mesdames:

I am pleased to express my support for the Juris Doctor proposal of Trinity Western University.

There are three features of the proposal that stand out as particularly important:

- better preparing law graduates for the practice of law,
- emphasizing ethics and professionalism, and
- promoting service to the community.

The traditional articling system is under strain and there is serious discussion of other ways to meet Law Society requirements for being qualified to practise law. It seems inevitable that some of the training burden will have to be assumed by law schools. There is also a need for more lawyers outside the major cities, but lawyers in the smaller centres must be convinced that law graduates have the training and practice skills that will make them worthy of hire.

Lawyers in Canada have the great privilege of being a self regulating profession. But that privilege can only be sustained by a constant emphasis on ethics and professionalism. Law schools have an important role to play, introducing and teaching law students about the ethical obligations of practising law, being officers of the court, and serving clients. Closely related is the need to emphasize what it means to be a professional; to act so as to truly profess the ideals of the rule of law, justice and equity.

Perhaps service to the community is part of professionalism, but it deserves special mention. This is a time of great legal complexity; it is also a time when access to justice is seriously strained. Lawyers must be prepared to offer their legal knowledge and skills in service to their communities and to those who lack real, practical access to justice. A law school curriculum and experience that is rich with encouragement and opportunity for community service will be of great benefit. It will bolster a key foundation of our society - the right of all people and organizations to have their rights honoured and their disputes resolved in a legal system that is available, accessible and fair.

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I have been practising law for almost 32 years. The firm I joined in downtown Vancouver has grown from about 25 lawyers to 100 or so, and has been part of a national firm of 600+ lawyers since 1989. The changes we have seen in our firm have been matched by changes in our profession and our society. But those changes have only served to highlight the importance of the fundamentals of practising law: knowledge and skills, ethics and professionalism, and service. It is from that perspective that I gladly endorse the TWU proposal.

Yours truly,



Earl Phillips

EP/asb

Attention: Dr. Elsie Froment, Dean of Research – February 27, 2012



**Carters Professional Corporation / Société professionnelle Carters**  
Barristers, Solicitors & Trade-mark Agents / Avocats et agents de marques de commerce

**Terrance S. Carter B.A., LL.B.,**  
TEP, Trade-Mark Agent

**Orangeville Office**  
Tel: (519) 942-0001 x222  
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March 9, 2012

SENT BY REGULAR MAIL

**Trinity Western University**  
7600 Glover Road  
Langley, BC V2Y 1Y1

**“PRIVATE & CONFIDENTIAL”**

ATTENTION: Jonathan S. Raymond, Ph.D., President

Dear Sir:

Re: Law School and Juris Doctor Degree Program at Trinity Western University

I am writing to express my support for the pending proposal for a Law School and a Juris Doctor degree program at Trinity Western University. I have read the proposals, and as a lawyer and an employer, I would strongly encourage and endorse this program. I understand the program proposal will soon be submitted to the BC Ministry of Advanced Education for approval. You have my permission to include this letter as part of an appendix to that submission.

I understand that the Law School will have a particular focus on charity and not-for-profit law. As the Managing Partner of Carters Professional Corporation, one of the leading firms in Canada in the area of charity and not-for-profit law, our firm has a particular interest in the development of a Law School program that puts forth a valuable curriculum with a charity and not-for-profit law focus. Two of our lawyers, Karen Cooper and Jane Burke-Robertson, have taught at the University Of Ottawa Faculty Of Common Law, teaching advanced seminars on charity and not-for-profit law. As well, I have given lectures as part of those courses over the last five years. Our firm also participates in an extensive number of seminars each year to assist churches, charities and not-for-profits in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability. A Law School at Trinity Western University would enhance the knowledge base of future lawyers in Charity and Not-for-Profit Law, and provide a Christian environment in which to learn.

I strongly recommend that this degree program be offered at Trinity Western University.

Yours truly,  
**Carters Professional Corporation**

Per:   
**Terrance S. Carter**

TSC:wmes

cc: Janet Epp Buckingham, Laurentian Leadership Centre, 252 Metcalfe St., Ottawa, ON K2P 1R3

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Dennis K. Boon  
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Christopher K. Wendell\*

March 26, 2012

Dr. Elsie Froment  
Dean of Research  
Trinity Western University  
7600 Glover Road  
Langley, BC, V2Y 1Y1

Dear Dr. Froment:

**RE: Trinity Western University's ("TWU") Juris Doctor Proposal Endorsement Request**

Thank you for your letter of March 6, 2012. I am delighted to be asked to give my opinion concerning the Juris Doctor degree program proposal. I have read the proposal with interest, including the appendices. The proposal is well written and engaging.

I heartily endorse this program for the following reasons:

1. The program's objectives set a new and high standard in Canadian legal education.

The integration of practical assignment with the study of case material will be much appreciated by the students. Although all courses may not lend themselves to this type of integration, those that do will add a "real life" element to the course. There were few of these available when I attended law school 20 years ago. The lack of practical experience was a constant complaint among students. I am pleased this proposal addresses that complaint.

The objective of integrating the study of law with a Christian worldview is intriguing, vital and distinctive. In fact, without this component, there really is no reason for TWU to have a School of Law, other than for general, educational purposes. However, in keeping with TWU's mission of approaching all of life with a Christian worldview in mind, this proposal is totally appropriate. The curriculum, as taught from a Christian perspective, will allow students and faculty alike to explore the dialectical relationship between love and justice. The late Reinhold Niebuhr's thought in this regard is instructive. "Justice is the embodiment of love in complex human relations. On the one hand, justice without love ceases to be justice. On the other hand, love without justice ceases to be love." To the best of my knowledge, there is no other Canadian law school that has as one of its objectives, to

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wed the best of Canadian legal scholarship with the best of Christian theological scholarship.

I believe that TWU's Law School graduates will add a healthy dimension to B.C.'s and Canada's pluralistic society.

2. A new state-of-the-art Law School building will provide students and faculty with a valuable resource for years to come.

I am of the opinion that a great law school program is built on a great law school library. The fact that TWU is going to build and equip a new library from the ground-up will allow it to take advantage of the newest in legal technological resources, as well as current hard copy resources. I am also of the opinion that the new library will not only be a valuable resource for those on campus, but will be a valuable resource for those who live throughout the Fraser Valley area of B.C.

3. There will be a unique curriculum design focused on leadership, character development and ethics.

Although alluded to above, under section 1, the focus on ethics and professional responsibility begins during Orientation Week and continues throughout the entire three year curriculum. The first year mentoring program is a wonderful idea. It is one which should be followed in all law schools. The second year course in Ethics and Professionalism is very positive, as are the third year courses in Practice Management and Jurisprudence.

However, most importantly, is the emphasis that law is a calling that has service to others, regardless of their economic status or social class, as its highest goal. I hope the Practice Management class will emphasize service to the poor and oppressed as being a virtue highly prized by Christ.

4. There will be an emphasis on the core subjects of legal education.

There may be some who will think that a law school that emphasizes a Christian worldview will be "soft" in terms of course content and methodology. This does not seem to be the case. The first year program will have a strong focus on learning to read and analyze case law. The five basic first year courses will be taught: Contracts, Torts, Property, Constitutional and Criminal Law. In addition, the first year students will take two half courses: Fundamentals of Canadian Law: Common Law & Statutory Instruments, and, Introduction to Practice Skills and the Practice of Law. Thirty-six credit hours in core subjects in first year law do not make for a "soft" legal program. Upper year courses also appear to be just as rigorous.

5. There are plenty of elective courses.

In many law schools there is the reoccurring complaint that there are too many mandatory courses and not enough electives. This does not appear to be the case as set out in the

proposal. Any student should be able to find courses that appeal to their tastes and interests and be useful in their legal practices after graduation.

6. There will be small class sizes.

It has been my experience, both as a student and a teacher, that small class sizes are more conducive to class participation than larger ones. Engaging in a give-and-take discussion or debate is more likely to happen in a smaller class setting than a larger one. I am pleased to see that first year classes will be kept to approximately 30 students or less per section.

7. There will be optional specializations.

A feature that I found particularly appealing is the option to specialize, either in Small Business and Entrepreneurial Law, or in Charities and Social Justice. I am unaware of this being offered in other law schools in Canada. This is particularly appealing for those students who have a firm view in mind of the area of the law they want to practice in.

8. The introduction of the requirement that each student must complete three practica over the course of their years in the J.D. program is an appealing feature of the program.

This requirement is in keeping with the objective that the TWU – J.D. program will have a practical, as well as a theoretical focus to it. I am certain that each student will greatly appreciate this emphasis. It will give each student the feel of what legal practice is all about, and hopefully a love for the law.

#### Overall Strengths and Weaknesses

Overall, I am greatly impressed by the proposal to offer a J.D. program at TWU. If I were to make several small criticisms, the first would be that there is no Legal History course being offered. Although this course seems to have fallen out of favour in many law schools, I do think there is some merit in knowing the lineage of the law. It may be that this focus will be picked up as part of another class. If so, I would be in favour of it.

My second criticism is actually more a suggestion than a criticism. It pertains to the Charities and Social Justice specialization. I would think that you may want to include course LAW 626 – Human Rights Discrimination Law and course LAW 622 – Environmental Law under the same heading, particularly since they represent a major focus of Social Justice.

My last criticism concerns the task of teaching with a focus on a Christian worldview. Although the law school is not a seminary, it would be helpful that there be an optional course in Christian apologetics or a survey course in biblical/theological studies. It may be easy to say that the students are going to be taught with a Christian worldview in mind, but if students have little or no theological background or training, this may be difficult to achieve. It may even be the case that some instructors have little or no theological training. This criticism may become moot if some of these issues are addressed in the Religion and Law course or the Jurisprudence course.

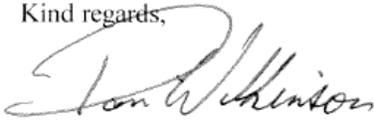
Some of the strengths of the proposed program I have already mentioned above. However, what I did not mention is the overall environment of this new law school. I suspect, given the nature and focus of TWU's mission, that the law school may have a more collegial or cooperative bent to the program than many law school programs in Canada. If such be the case, we may be seeing a new paradigm in legal education at TWU.

In conclusion, I am very much impressed by this proposal. As a partner of a mid-size law firm in Kelowna, B.C., I am sure that we would give serious consideration to any law school student from the School of Law at TWU looking for summer employment, articles or for permanent employment at a our firm, depending on our needs of course at that time. We would treat a TWU School Law graduate no differently than we would a graduate from any other law school in Canada. That is, we will assume they are well trained and ready to make a contribution to the practice of law.

This is a very exciting proposal and one I hope comes to full fruition. There is definitely a need for another law school in British Columbia.

Thank you once again for inviting me to give my thoughts on this proposal. Should you have any questions or require any clarification concerning what is written herein, please feel free to contact me at your convenience.

Kind regards,



**DONALD L WILKINSON**

cc. Dr. Janet Epp Buckingham



May 1, 2012

Trinity Western University  
7600 Glover Road,  
Langley, BC V2Y 1Y1

*Attention: Elsie Froment, PhD  
Dean of Research*

Dear Sirs/Mesdames:

**Re: Proposed Law School at Trinity Western University**

It is with deep sense of gratitude, as well as unhesitating endorsement, that I write in full support of the establishment of a law school at Trinity Western University.

I graduated from what was then Trinity Western College in 1972 with an Associate of Arts diploma. Having been born and raised in the interior British Columbia, it proved to be the perfect accelerant to ignite and fuel my educational aspirations. Even then, as only a two-year school, it gave me an extraordinary opportunity to experience a post-secondary education in an environment that actually cared about me. Its faculty and staff invested in me as a young man, providing ample opportunity and encouragement to excel academically, as well as develop as a well-rounded person with something to contribute to our province and country. Trinity invested in me in a way that I believe no other school would have. They taught me to reinvest, which I believe my firm and I have been able to do through contributions made to the charity and not-for-profit sector of this province.

I have remained involved with TWU ever since I was a student, both personally and professionally. I have watched TWU mature into a first class, leading institution of higher learning. It rightfully has taken its place among other prestigious universities in British Columbia through membership in a number of organizations, including the Association of Universities and Colleges of Canada.

There are relatively few private universities in Canada. I believe that TWU is the largest and, given the economic, enrollment and regulation requirements, this must be recognized as a significant accomplishment. In academics, sports, community, national and international involvement, as well as numerous other arenas of comparison, Trinity has become 'the little school that could', challenging, effectively competing with and overcoming numerically superior universities in Canada in many ways. TWU has had to contend with numerous challenges in a relatively short period of time in order to achieve its size and superlative reputation, all without

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receiving public funds. This is a testament to the outstanding quality of its leadership, faculty and students. Many of its graduates who have taken their places as professional, business and political leaders in Canada are proud to be TWU alumni, attributing to that institution much of what provided them with the opportunity, skills and vision to become who they are.

I understand that TWU is the only university in Canada to receive an A+ award for overall quality of education in the Globe and Mail University report card in each of 2006, 2007, 2008, 2009 and 2010. It also received an A+ for Quality of Teaching and Learning in the 2011 and 2012 editions of this report (it was the only university in Canada to receive this A+ rating in 2012). This reputation is not deemed because of a lucrative funding base, but rather these widely accepted public "report cards" reflect and constitute compelling evidence that Trinity's educational excellence and vibrant, caring student life are worthy of respect and recognition.

TWU has succeeded brilliantly in establishing other professional schools, including ones for education and nursing. It also has a wide variety of very successful graduate programs in a variety of fields, including counselling psychology and leadership. Of particular note is its Master of Business Administration program, as the TWU School of Business was selected by the Globe and Mail as the best business school in British Columbia.

Given its track record for development of important educational programming and professional development, a law school is a logical next step for TWU. It will bring its standard of excellence, highly successful student life environment, and ability to attract both highly qualified and yet caring faculty to legal education. As a graduate of TWU, and a lawyer who has practiced in Vancouver and the Lower Mainland for over 30 years, I know first-hand that the educational program at a law school developed and launched by Trinity would, as have its many other successes, leave the uninformed observer amazed. It is only those who carefully examine the educational environment created by TWU who will understand its amazing ability to transform its students by helping them to actualize their potential and realize their hopes and dreams, as it did for me.

A TWU law school would be the only one in the Fraser Valley. The Fraser Valley is probably the fastest growing geographic area of our Province, not just in a residential sense, but for business and institutional growth. Further, it is sustainable, and diverse and community-oriented growth. As a resident, and as founding partner of a medium-sized law firm with its head office in Abbotsford, I am fully convinced that a law school at Trinity would be well situated not only for present needs, but for the future of the Province.

A Trinity law school would educate lawyers that can serve in small to medium sized firms, like the one in which I am a partner. These firms serve the families and small to medium-size businesses that are the backbone of our economy. I fully expect that TWU's law school graduates would also be attracted to some of the rural areas of BC, which in my experience have been underserved by the legal profession. The practical legal education proposed at TWU would be very welcome and much-needed addition to our profession.

My firm has been committed to hiring and training articling students, and we typically take at least one articling student each year. We have trained a number of lawyers whose undergraduate degrees were from TWU. From my experience I can say that these Trinity-educated students now comprise some of our brightest and best legal talent. I know that my partners and I would welcome applications for articling position who would graduate from a TWU law school program.

In conclusion, I cannot be more enthusiastic in my support of the development of a law school at Trinity Western University. I say this with the benefit of an education first grounded there, which has stood me in good stead in a dynamic and demanding legal profession. I say this knowing what it takes to succeed in that profession, especially in the Fraser Valley. I say this knowing the invaluable, well-rounded, educational experience received by students who attend Trinity. I say this in full confidence that a Trinity Western University law school would soon become an exemplar, a model of what a law school can be.

Yours truly,

**KUHN LLP**



Robert G. Kuhn  
Law Corporation



Dr. Janet Epp Buckingham  
Director, Laurentian Leadership Centre  
Associate Professor, Trinity Western University  
252 Metcalfe Street, Ottawa ON K2P 1R3

February 24, 2012

Dear Janet,

Warm greetings from rainy Vancouver! I trust this finds you well.

It was good to meet you last month and to hear of Trinity Western's University's interest in establishing a law program.

As I shared at that time, at Union Gospel Mission we serve a wide diversity of clients, many of whom come from marginalized and difficult situations, who need legal advice regarding all sort of personal matters. Many sadly have histories of convictions and crime and need help dealing with pardons, advice or other legal counsel. We have over 100 recovery and long-term residents living in this facility, and serve hundreds more each day in both our Hastings facility and Cordova's Womens' Centre.

All this to say, the idea of having legal clinic staffed by Trinity Western legal interns is exciting to us, and we anticipate would be huge help to our programs and our people.

We are very interested in exploring this idea with Trinity, and hope the law program becomes a reality.

I would be happy to meet and dialogue about this further.

Warm regards,

Dan Russell, DMin  
Director of Programs

May 2, 2012

Dr. Elsie Froment  
Dean of Research  
Trinity Western University  
7600 Glover Road  
Langley, BC, V2Y 1Y1

Dear Dr. Froment:

**Re: School of Law and Juris Doctor Program at Trinity Western University**

I am writing to express my support of the proposal to establish a School of Law at Trinity Western University and offer a Juris Doctor Program. Trinity Western University has a strong academic reputation. The university also has an excellent track record for graduates of strong character, high ethical standards, and exemplary leadership qualities. The graduates of this university that I have met and worked with, including Members of Parliament, political staffers, and Manning Centre for Building Democracy staff contribute substantially to the public good of their communities and indeed to Canada. I recommend approval of a School of Law and a Juris Doctor program to be offered at Trinity Western University.

Yours sincerely,



Preston Manning, C.C.  
President and CEO

PM:jmc

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BARRISTERS & SOLICITORS

**ROBERT D. HOLMES**  
Law Corporation  
[rdholmes@mhklaw.com](mailto:rdholmes@mhklaw.com)

June 13, 2012

Janet Epp Buckingham, LL.B, LL.D.  
Director | Laurentian Leadership Centre  
252 Metcalfe St., Ottawa, ON K2P 1R3  
Associate Professor  
Trinity Western University

Dear Dr. Buckingham:

**Re: Trinity Western University School of Law Proposal**

Thank you for meeting with me to discuss the exciting project that you and others associated with Trinity Western University are putting together for the establishment of a law school.

Thus far, three of my children have attended Trinity Western University. Our eldest daughter went through the sciences program, is now completing a Masters in Science at the University of Western Ontario and has been accepted into the School of Medicine at the University of British Columbia. Our second daughter graduated with a B.A. majoring in political science and is carrying on her studies at the University of Leicester in the UK studying law. Our third daughter is currently pursuing a program in the Trinity Western arts faculty and is aiming at finishing the requirements for her B.A. degree in three years instead of the usual four. In each case, our children have appreciated the high standards, teaching and research abilities of the faculty, the collegiality of the students and the leadership provided by the university administration.

With regard to the proposal for a new law school in British Columbia, I have to say that I enthusiastically support it. I attended the University of British Columbia years ago for both my B.A. and LL.B. and then obtained an LL.M at Yale. The University of British Columbia, the University of Victoria and Thompson River University law schools are all largely funded by the provincial government and each provides, in their own way, a perspective on the law that is similar to that of other Canadian law schools.

In my view, it would be useful having another law school with another perspective offered. The mission statement and principles of Trinity Western University clearly would form a distinctive voice among Canadian law schools. Anyone truly committed to academic freedom and excellence and vigorous intellectual debate and discussion would have to concede that point.

I offered my views to you on how Trinity Western University would, of course, have to provide a solid grounding in core courses in law that are required in Canadian law schools and by Canadian law societies for admission to the bar. I have already noted my own family's

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experience with the high standards that Trinity Western University displays in relation to the programs of study and the courses it already offers. I added that Trinity Western could readily draw upon the talents of other faculty members, particularly relating to philosophy, history, government, political science and other disciplines, so as to offer courses involving legal philosophy, legal ethics, professional obligations and legal history not emphasized or offered elsewhere. I have in mind courses relating to the natural law tradition as but one example.

Trinity Western University makes a point of developing among its students not just academic excellence, but also an understanding of principles of leadership and service. Given that the legal community prizes all three of those that creates an opportunity and potential advantage for students graduating in law from Trinity Western University. Having what would perhaps amount to an even greater appreciation and understanding of the possibilities that a legal education and career in law affords would be very useful, in my view.

I am pleased to join in support of the proposal by Trinity Western University to open a law school.

Yours truly,  
**HOLMES & KING**

per:



Robert D. Holmes, Q.C.

## **APPENDIX EIGHT**

### **New Course Outlines**

## **LAW 501 Introduction to Law (0 s.h.)**

### **Description**

This course introduces students to law, the legal system and the legal profession. It will teach students the basic skill of how to read and analyze a case. By the end of Orientation Week, students should be able to write a basic case brief.

### **Course Objectives**

The objectives of this course are to:

- 1) address what is, and is not, “law”;
- 2) introduces students to the foundational principle of law as a profession and a calling;
- 3) enable students to understand the basic structure of the Canadian legal system;
- 4) teach students the basic skill of how to read and analyze a case;
- 5) enable students to write a basic case brief.

### **Course Outline**

1. What is law?
2. The nature of the legal profession.
3. The structure of Canadian courts.
4. A framework for understanding law and the legal system.
5. Reading and analyzing cases.
6. Writing a case brief.

### **Texts**

No Text

## LAW 502, Contract Law (Formation) (5 s.h.)<sup>1</sup>

### Description

This course sets out the rules for the formation of legally binding contractual relationships. The course will cover the formation and interpretation of contracts. Further, it will cover the enforcement of contracts including the remedies available in the event of a breach of contract.

### Course Objectives

This course is designed to:

- 1) describe and assess the role of contracts in the Canadian economy and society;
- 2) explain how a legally enforceable agreement is formed;
- 3) explain the requirements for the content and characteristics of a legally enforceable agreement;
- 5) give students an in-depth understanding of how the common law functions including legal interpretation, *stare decisis* and applying and distinguishing cases;
- 6) explain the role of standard form contracts and how courts control abusive use;
- 7) explain principles which may vitiate a contract at formation or performance;
- 8) introduce principles for remedies;
- 9) introduce students to ethical issues related to the formation, performance and breach of contracts;
- 10) practice negotiating and drafting contracts.

### Course Outline

1. What is a contract?
2. How a contract is formed:
  - a. Offer and acceptance
  - b. Capacity
  - c. Intention
  - d. Consideration
3. Standard form contracts
4. The content of contracts including standard form contracts:
  - a. Letter of intent vs. contract
  - b. Oral vs. written contracts
  - c. Form
  - d. Priority
  - e. Misrepresentation
  - f. Terms
5. Exclusion clauses
6. Principles which may vitiate a contract at formation:
  - a. Mistake
  - b. Duress
  - c. Undue Influence

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<sup>1</sup> This is a full year course.

- d. Economic duress
- 7. Principles which may vitiate a contract at performance:
  - a. Unconscionability
  - b. Illegality
  - c. Frustration
- 8. Remedies
- 9. Negotiating contracts
- 10. Drafting contracts
- 11. Ethical aspects of contract law

**Texts**

- S. Ben-ishai, C. Boyle, D. Percy D. Maccamus and R. Flanigan, *Contracts: Cases and Commentaries*, (8th edition), (Carswell, 2009).
- S.M. Waddams, *The Law of Contracts* (Canada Law Book, 2010)

## Law 503, Tort Law (5 s.h.)<sup>2</sup>

### Description

Tort law is a foundational component of the common law system beginning as a system covering legal wrongs between private individuals. Today tort law has evolved into a complex body of law encompassing interactions between public and private entities. This course will cover the common law claims and defences for intentional torts such as assault, battery, false imprisonment, trespass and nuisance. Further, it examines the area of negligence. Other topics which will be examined include strict liability, defences, the assessment of damages and modern alternatives to tort law such as statutory compensation. Students will look critically at legal actions involving carelessness and recklessness. Students will critically examine the role of torts in society and explore new developments in Canadian tort theory.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history of tort law and liability from its English origins to its modern day incarnations in Canada;
- 2) familiarize students with various theories of tort liability;
- 3) introduce students to the different types of intentional torts;
- 4) introduce students to techniques for identifying the elements of each of the intentional torts
- 5) introduce students to defences available to intentional torts;
- 6) enable students to read and analyze cases where an intentional tort is the cause of action, to identify the elements of an intentional tort raised in the cases, and the defences that were successfully (or unsuccessfully) raised in the case, and identify arguments that could have been used to support either side of the argument with respect to issues raised;
- 7) familiarize students with the theory and impact of negligence as a legal principle regulating the injurious conduct of persons in Canada;
- 8) familiarize students with the increasingly important role and scope of negligence law and responsibility in Canadian law;
- 9) assist students to identify the elements of a negligence action;
- 10) introduce students to expanding bases for negligence and related liability for wrongful or injurious conduct in Canada;
- 11) explain defences available to negligence claims;
- 12) equip students to read and analysis cases where negligence is the cause of action, to identify the elements of negligence raised in the cases, and the defences that were successfully (or unsuccessfully) raised in the case, and identify arguments that could have been used to support either side of the argument with respect to issues raised;
- 13) identify and discuss ethical issues in torts;
- 14) teach students to prepare short case briefs and prepare oral précis concerning cases covered to present in class.

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<sup>2</sup> This is a full year course.

## **Course Outline**

1. Development of tort liability and tort theory in Canada
2. Intentional torts
  - a) Trespass to the person
  - b) Intentional interference with the person
  - c) Trespass to property
  - d) Nuisance
  - e) Defences
3. Negligence
  - a). Duty of care
  - b) Standard of care
  - c) Causation
  - d) Remoteness
  - e) Defences and remedies
4. Tort liability of public authorities
5. Misrepresentation/pure economic loss
6. New developments in Canadian tort theory
7. Ethical issues related to intentional and unintentional torts

## **Texts**

- R. W. Solomon et al. *Cases and Materials on the Law of Torts* (8th student edition) (Thomson Carswell, 2011)
- Philip Osborne, *The Law of Torts*, (4th edition) (Irwin Law Books, 2011)

## Law 504, Constitutional Law (5 s.h.)<sup>3</sup>

### Description

Canada is governed by a variety of documents collectively called “the Constitution.” The first half of this course covers the “division of powers”; that is, the law that governs the relationship between different levels of government in Canada. The intended clear division between federal and provincial powers by the founding fathers of Confederation has been made more complex by new inventions, developments and circumstances such as aeronautics, telecommunications and commercial realities of the twenty-first century. The second half of the course will focus on the *Canadian Charter of Rights and Freedoms* and examine its application and interpretation. This will include an examination of the principles of human rights and Charter values.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the structure and substance of Canadian constitutional law, including both division of powers and the *Charter of Rights*;
- 2) familiarize students with techniques of Constitutional interpretation;
- 3) introduce students to the literature which expounds the Constitution, including case law and doctrine;
- 4) introduce students to methods of analysis which involve the Constitution in resolving legal problems;
- 5) teach students to identify constitutional issues, identify relevant facts, advise a client about what a court is likely to decide concerning the issue identified, and identify arguments that could be used to support either side of the argument with respect to issues and proposed legislation;
- 6) familiarize students with the specific rights and freedoms protected by the *Charter*, the structure of *Charter* arguments and assembling evidence to advance *Charter* claims and to create section 1 defences;
- 7) introduce students to the available remedies under the *Charter* including possible remedies that continue to be developed by the courts;
- 8) introduce students to written and oral advocacy skills in relation to the constitutionality of a proposed piece of legislation.

### Course Outline

1. Pre-Confederation constitutional documents
2. *Constitution Act, 1867*, additional constitutional documents and amendments
3. Federal powers
4. Provincial powers
5. Concurrent and shared powers
6. Quasi-constitutional powers accorded to other bodies
7. Application of the *Charter* and the “notwithstanding” clause: Sections 32 and 33
8. The fundamental freedoms:

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<sup>3</sup> This is a full year course.

- Section 2(a): freedom of conscience and religion
- Section 2(b): freedom of thought, belief, opinion and expression
- Section 2(c) and (d): freedoms of assembly and association
- 9. Democratic rights: sections 3 through 5
- 10. Mobility rights: Section 6
- 11. Legal rights:
  - Section 7: right to life, liberty and security of the person
  - Sections 8 through 14: search, seizure, arrest, and criminal proceedings
- 12. Equality rights: sections 15(1) and (2), 27 and 28
- 13. Official languages, heritage and aboriginal rights: section 16 through 22, 25 and 27
- 14. Minority language educational rights: sections 23 and 29
- 15. Reasonable limits on rights: section 1, including the use of legislative facts and other methods of proof.
- 16. Ethical issues in Constitutional litigation

### **Texts**

- Peter. W. Hogg, *Constitutional Law of Canada*, (2010 student edition) (Carswell, 2010)
- L.I. Rotman, B.P. Elman, G.L. Gall, *Constitutional Law: Cases, Commentary and Principles* (Carswell, 2008)

## LAW 505, Property Law (5 s.h.)<sup>4</sup>

### Description

Canadian society, indeed Western society, places a high value on the ownership of property, including both land and things. This first part of the course examines the rules governing possession and ownership of real property (land). The second part of the course examines the rules governing possession and ownership of personal property (things). It will also examine the social context for use and ownership of property.

### Course Objectives

This course is designed to enable students to:

- 1) understand the rules governing acquisition, possession and ownership of land;
- 2) understand and critique the social context for property law in comparative perspective (including aboriginal concepts of property and some community ownership such as the Hutterian Brethren);
- 3) understand the rules governing acquisition, possession and ownership of personal property (things);
- 4) understand and critique the social context for property law in comparative perspective;
- 5) identify and discuss ethical issues relating to property law;
- 6) analyze and critique cases related to property law;
- 7) conduct legal research and communicate the results.

### Course outline

1. What is private property? Classifications of property
2. Transfer of property
3. Tenure, life estates, leaseholds
4. Contingent vs. vested interests
5. Rule against perpetuities
6. Matrimonial property
7. Easements
8. Restrictive covenants
9. Security interests on real property – mortgages
10. Possession, finders law and ownership
11. Gifts
12. Security interests on personal property
13. Registration of interests
14. Ethical issues related to property law

### Texts

Bruce H. Ziff, Jeremy deBeer, Douglas Harris, and Margaret McCallum, *A Property Law Reader: Cases, Questions and Commentary* (Carswell, 2008)

Marjorie L. Benson, Marie-Ann Bowden and Dwight Newman, *Understanding Property: A Guide to Canada's Property Law* (2nd edition) (Carswell, 2008)

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<sup>4</sup> This is a full year course.

## LAW 506, Criminal Law (5 s.h.)<sup>5</sup>

### Description

This course examines the general principles of liability in Canadian criminal law as applied in the criminal trial process. Students will learn the legal elements of a crime and will use the *Criminal Code* to consider the elements of specific offences. Students will be provided with an introduction to common law and statutory defences as well as an overview of the process by which these various elements are proved in court. This course also canvasses basic concepts, principles and institutions of criminal procedure, as well as focuses on the review of the most important rules governing the criminal process from the investigative phase through the laying of charges until conviction, sentencing and beyond. The student who successfully completes the course will have a good understanding of the norms of procedure set out in the *Criminal Code* and related statutes, as well as the procedural rights guaranteed by the *Charter of Rights and Freedoms*.

### Course Objectives

Through this course, students will:

- 1) understand and critically assess (a) the role of police, prosecutors, defence counsel and judges in the administration of the criminal law process, (b) the principles of criminal responsibility and punishment, and (c) the effect of the *Canadian Charter of Rights and Freedoms* upon both criminal procedure and substantive criminal law;
- 2) understand and critically assess theories and perspectives on the purposes and functions of the criminal law and criminal justice system and on the competing interests that both serve;
- 3) demonstrate practical competence in identifying legal issues in a problem and to present, in an acceptable legal style, arguments in relation to such issues;
- 4) gain a working knowledge of Canadian criminal procedure;
- 5) gain practical tools necessary for the practice of law in the area;
- 6) develop the necessary skills to identify procedural errors in various fact scenarios;
- 7) understand the criminal procedure governing various offences;
- 8) develop basic trial advocacy skills through participation in a mock trial;
- 9) produce high-quality critical writing about themes and issues within the criminal law;
- 10) identify and discuss critically ethical issues related to criminal law.

### Course Outline

1. Introduction to criminal law
2. The structure of criminal proceedings
3. Burdens of proof
4. Elements of an offence
  - a. *Actus reus*
  - b. *Mens rea*
  - c. *Mens rea* and the *Charter*
5. Types of offences

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<sup>5</sup> This is a full year course.

6. Defences
7. Criminal procedure: what is it, what is its purpose and what are its sources?
8. The levels of the criminal courts in British Columbia
9. The criminal process and the roles of police, Crown and defence
10. Investigative powers of police
11. Charge approval and commencing proceedings
12. Compelling appearance and judicial interim release
13. Arraignment, pre-trial case management, elections, re-elections and preliminary hearings
14. Pre-trial and other applications
  - a. Disclosure and procedural applications
  - b. *Charter* applications
  - c. Trial management
15. Jury selection
16. Trials
17. Sentencing
18. Youth court
19. Mentally disordered offenders
20. Appeals
21. Ethical issues in criminal law

### **Texts**

Roach, Berger, Healy and Stribopoulos, *Criminal Law and Procedure* (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, *Tremear's Criminal Code* (Carswell, 2011)

Stephen Coughlan, *Criminal Procedure* (Irwin Law, 2008)

## LAW 507, Fundamentals of Canadian Law (2.5 s.h.)

### Description

In this course, students will become familiar with the principles of the common law system, including the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada. It further examines how laws are made and the principles of legislative interpretation and statutory analysis. It will also examine how regulations are made under legislation and the relationship between legislation and regulations. Legal research will be a component of this course.

### Course Objectives

Students in this course will:

- 1) learn the historical development of the common law system and its origins in Britain;
- 2) understand how common law works on an incremental, case-by-case basis, and develop skills in applying principles from past legal cases to a new case;
- 3) recognize that legislation supersedes common law but that legal principles are applied to interpret legislation and regulations;
- 4) understand the legislative process and the procedure to draft, pass and implement legislation, including the concept of delegated authority;
- 5) understand the administration of the law in Canada;
- 6) critically reflect on the interface between law and society.

### Course Outline

1. Origins of common law, including principles of law and equity
2. Precedents and *stare decisis*
3. Differences between common law and civil law
4. The legislative process -- how are laws made?
5. Principles of statutory interpretation
6. Delegated authority and process to make regulations
7. The relationship between legislation and common law
8. The administration of law, including the organization of the courts and tribunals in Canada
9. Appeal processes
10. Law as an instrument of social change

### Texts

J. Horner, *Canadian Law and the Legal System*, (Pearson Education Canada, 2006)

A. Hutchinson *Laughing at the Gods: Great Judges and How They Made the Common Law*, (Cambridge University Press, 2012)

Ruth Sullivan, *Statutory Interpretation*, (Toronto: Irwin Law, 2007).

J. A. Brauch, *A Higher Law: The Influence of Christian Thought in Anglo-American Law*, (2nd edition) (Fred B. Rothman, 2008)

## **LAW 508, Introduction to Practice Skills and the Practice of Law (2.5 s.h.)**

### **Description**

Beyond understanding legal principles, the lawyer must master a variety of skills to use in private practice, many of which are more relational and creative (right-brained) than cognitive and linear (left-brained). This course introduces students to professionalism, engaging with clients, the art of negotiation and advocacy (both written and oral) in the context of representing clients. It will include the first year practicum and a moot court.

### **Course Objectives**

This course, taught primarily by guest practitioners, will be weighted heavily towards learning by practice and application. Students will have opportunities to:

- 1) understand the role of the lawyer as professional, advocate, problem-solver and negotiator;
- 2) become familiar with and engage in several of the skills used by lawyers in regular practice including interviewing, researching, drafting, negotiating and advocating;
- 3) be equipped to identify and address ethical issues;
- 4) understand the role of the lawyer as an agent of social change.

### **Course Outline**

1. The role and activities of the practitioner: what is lawyering about and what are the activities that lawyers in private practice engage in?
2. The practice of law as a profession.
3. The lawyer as agent of social change.
4. Engaging with the client: an introduction to interviewing skills – what is the lawyer seeking to achieve in an interview and how is this accomplished? Practice interviews.
5. Engaging with the client and other counsel - communications skills: review of the tools by which the lawyer communicates with clients, opposing counsel and others and how these tools are most appropriately and effectively used.
6. Legal research: how lawyers use library and web-based tools to build and support their case and their opinions.
7. Legal drafting: an introduction to the language and strategies of legal drafting and to plain language concepts.
8. Negotiation: an introduction to the basic theories of negotiation including interest-based negotiation; an overview of negotiation styles and how they are used and practice.
9. Problem solving: many clients come to their lawyer presenting a problem, often one that is not easily categorized. A primary task of the practitioner is to listen, understand and develop a strategy. Through the use of case studies, students will consider real situations involving problem-solving skills.
10. Basic advocacy: a key role of the lawyer is to advocate for her client. In this course, students will be introduced to basic advocacy and will have opportunities to strategize and practice based on actual past cases.
11. Mooting: following the advocacy classes and practicums, each student will prepare for and participate in a moot trial, one of the highlights of the first year law school experience.
12. Ethics in practice.

**Texts**

Julian Webb, Caroline Maughan, Mike Maughan, Andy Boon, Marcus Keppel-Palmer, *Lawyers' Skills 2011-12* (Oxford University Press, 2011)

Joseph G. Allegretti, *The Lawyer's Calling* (Paulist Press, 1996)

Michael P. Shutt, *Redeeming Law* (Intervarsity Press, 2007)

## LAW 601, Practicum (0 s.h.)

### Description

Upper-year students must complete two practica. Law 601 will not be for credit but can include a broad range of possible placements. Non-credit placement can be paid and will include:

- Summer job with law firm
- Summer placement with government
- Courthouse or tribunal placement
- Correctional services
- Legal research for NGO
- Political office

### Course Objectives

Students will complete a variety of experience in their practica. The objectives are to give students exposure to the practical aspects of law. Students will set learning objectives and be required to write a summative detailing how they met their objectives.

### Course Outline

Students must get approval for their practicum. There will be required documentation and a summative. The first week of third year, students will meet in small groups to discuss their learning experience.

### Texts

No Text

## LAW 602, Ethics and Professionalism\* (3 s.h.)

### Description

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history of the legal profession in Canada;
- 2) familiarize students with various notions of the role of the legal profession in Canadian culture and business;
- 3) familiarize students with the ethical issues arising from the practice of law;
- 4) familiarize students with the duties owed to clients and the legal profession;
- 5) introduce students to the *Code of Professional Conduct* and *Professional Conduct Handbook*;
- 6) enable students to identify ethical issues in fact scenarios and from past cases where professional bodies have imposed discipline on lawyers for failure to meet ethical obligations;
- 7) enable students to identify relevant facts and arguments to respond to various scenarios where professional obligations are raised and reconcile those arguments with personal beliefs and obligations to serve the public and to pursue justice.

### Course Outline

1. The history and evolution of the legal profession in Canada
2. Lawyer-client relationship
3. Confidentiality and privilege
4. Duty of loyalty and conflicts of interest
5. Ethics and criminal law practice
6. Civil litigation and ethics in advocacy
7. Lawyers in organized settings

### Texts

Alice Wooley *et al.*, *Lawyers' Ethics and Professional Regulation* (LexisNexis Canada, 2008)

D. Buckingham, J. Bickenbach, D. Bronaugh & B. Wilson, *Legal Ethics in Canada* (Harcourt Brace, 1996)

Gordon Turriff, Q.C., *Annotated British Columbia Legal Profession Act* (Carswell: looseleaf)

## LAW 611, Aboriginal Law (3 s.h.)

### Description

Aboriginal peoples in Canada belong to more than 50 nations. This course will examine the historical development of treaty rights and aboriginal title. It will consider the complex issue of self-government and aboriginal justice. Students will examine the *Indian Act* along with federal government proposals for amendment. As well, students will examine the legal cases involving aboriginal rights.

### Course Objectives

Through this course, students will:

- 1) develop an understanding of the history of state-first nations relations;
- 2) understand the legal framework for state-first nations relations;
- 3) critically assess the legal position of various first nations in Canada;
- 4) analyze impact of the Charter on Aboriginal peoples in Canada.

### Course Outline

1. Aboriginal peoples in Canada: First Nations, Inuit, Metis
2. The *Indian Act*
3. Aboriginal land title
4. Residential schools
5. Criminal justice
6. Taxation
7. The *Bill of Rights* and the *Charter* and Aboriginal Peoples
8. Treaty rights and enforcement of Treaty rights
9. Governance and self-government
10. Aboriginal peoples and international law
11. Proposals for reform of the governance of Aboriginal peoples in Canada

### Texts

J. Burrows and L. Rotman, *Aboriginal Legal Issues* (LexisNexis Canada, 2007)

J. Y. Henderson, *First Nations Jurisprudence and Aboriginal Rights* (Native Law Centre, University of Saskatchewan)

## LAW 612, Advocacy (Advanced) (3 s.h.)

### Description

The lawyer is an advocate. Students will learn to write effective legal arguments and how to express themselves persuasively. Students will be required to prepare written submissions, including a factum, and argue a moot court.

### Course Objectives

Following on the basic level of instruction on advocacy in LAW 508, this course is designed to help students understand and practice the skills of advocacy so that they are prepared for advocacy in practice. It will:

- 1) provide students with a more advanced understanding of the theory of a case;
- 2) teach the steps involved in developing a case through discoveries, pre-trial motions, trial and appeal, the use of experts, interlocutory and summary applications and the evidentiary and ethical issues that counsel deal with in advocating for clients;
- 3) require students to practice advocacy skills, written and oral, including persuasive writing, pleadings and mooting.

### Course Outline

1. The theory and development of a case: an examination of how to approach and strategize about a case. Students will have a hands-on opportunity to analyze a new case and write a strategic approach.
2. The steps in an action: how does a practitioner advance a case to resolution?
3. Where do ADR opportunities arise and how can they be used?
4. Pleadings: students will draft and be critiqued on pleadings.
5. Motions and interlocutory applications: what options are available; when and how to use them.
6. Evidentiary issues: how to recognize them and approach them.
7. Experts: when and how to select and use them.
8. Discoveries: preparing for and conducting an examination for discovery.
9. Case management: how to move a case along and maintain momentum
10. Trial preparation: getting ready; anticipating the unexpected.
11. Oral advocacy: how to build a persuasive argument and present a case.

### Texts

- H. Selby, *Advocacy: Preparation and Performance* (Irwin Law, 2009)  
Lee Stuesser, *An Advocacy Primer* (3rd edition) (Carswell, 2005)

## LAW 613, Alternative Dispute Resolution (3 s.h.)

### Description

While most of the emphasis and popular attention in the arena of dispute resolution has focussed on litigation and the drama of the courtroom, increasingly, in practice, disputes are managed and resolved outside of trial. Lawyers who are assisting clients with disputes have an array of options available to them including negotiation, mediation, arbitration and litigation, each of which is useful and appropriate in different circumstances. This course will focus on the “alternative” dispute resolution options with a balance of theory and practice.

### Course Objectives

Students will leave this course with:

- 1) a solid understanding of conflict ;
- 2) the dispute resolution options and when to use them;
- 3) the underlying theoretical basis for each method of dispute resolution;
- 4) practical knowledge of how to access each methodology;
- 5) practical experience in mediation both as counsel and as mediator.

### Course Outline

1. Anatomy of a dispute – an examination of the nature and breadth of disputes that legal counsel encounter in practice.
2. Conflict theory
3. Interest-based negotiation
4. Negotiation practicum – students will have opportunities to role play negotiation scenarios where they will be encouraged to use interest-based methodologies.
5. Mediation – the underlying theory and methodology of mediation
6. Mediation practicum I - students will have opportunities to role play mediation scenarios taking turns as counsel, client and mediator
7. Challenges in mediation: power imbalances, the “third-party neutral”, managing gender, race and cultural issues.
8. Mediation practicum II
9. The practice of mediation: service providers, mediation agreements, settlement agreements, failed mediations
10. Arbitration – theory and practice
11. Putting it all together

### Texts

S.B. Goldberg, F.E.A. Sander, N.H. Rogers, S.R. Cole, *Dispute Resolution: Negotiation, Mediation and Other Processes* (Aspen Publishers, 2007)

R.A.B. Bush, J.P. Fogler, *The Promise of Mediation* (Jossey-Bass, 1994)

R. Fisher, W. Ury, *Getting to Yes* (Penguin Books, 1981)

## LAW 614, Bankruptcy and Insolvency Law (3 s.h.)

### Description

Bankruptcy and insolvency law assumes an important economic and social role in contemporary credit economies. The course will consider liquidation and reorganization as the two basic approaches to bankruptcy and focus on three legislative arenas: the *Bankruptcy and Insolvency Act* (BIA), the *Companies' Creditors Arrangement Act* (CCAA) and relevant provincial legislation. Students will become familiar with the fundamentals of the business and personal bankruptcy process including the various actors in the system. This course will familiarize students with monetary obligations, the rights and obligations of creditors and debtors, priorities among creditors, and certain restrictions on the discharge in bankruptcy of categories of debt. Students will apply the relevant statutory framework and case law to fact patterns in each stage of the bankruptcy process. The course will consider the broader public policy and institutional interests at play.

### Course Objectives

This course is intended to:

- 1) describe the role of bankruptcy and its socio-economic significance;
- 2) familiarize students with the procedural steps involved in the bankruptcy process in relation to commercial and consumer bankruptcies;
- 3) explain the reasons for bankruptcy process procedures;
- 4) introduce students to the administration of the bankruptcy, including creditors generally, the priority of claims, and the administration of the estate;
- 5) introduce students to corporate reorganizations;
- 6) equip students to walk a client through the procedure to file under both the *BIA* and the *CCAA*;
- 7) practice drafting simple bankruptcy documents (proposals, assignments, etc.).

### Course Outline

1. Purpose of bankruptcy/insolvency law
2. Introduction to bankruptcy legislation
3. Commencement of bankruptcy
4. Property of the bankrupt
5. Third party proprietary claims
6. Preservation of the bankrupt estate
7. Enhancement of the bankrupt estate
8. Administration of the bankrupt estate
9. Secured creditors and receivers
10. Creditors meetings
11. Property of debtor and claims to specific property, goods, or fund
12. Liquidation
13. Orderly payment of debts
14. Proof of claims
15. Discharge of bankrupt
16. Special commercial bankruptcy issues

17. Special consumer bankruptcy issues
18. Bankruptcy offences

**Texts**

Duggan, Ben-Ishai, Telfer, Wood & Ziegel, *Bankruptcy and Insolvency Law* (2nd edition) (Emond Montgomery, 2009)  
Roderick J. Wood, *Bankruptcy and Insolvency Law* (Irwin Law, 2009)  
*Federal and Ontario Insolvency Legislation* (Canada Law Book, 2011-2012)

## LAW 615, Charities and Not-For-Profits Law (3 s.h.)

### Description

This course examines the special legal principles which apply to charities and not-for-profit corporations, with particular emphasis on the new federal and provincial not-for-profit legislation. It will cover incorporation, fundraising, taxation, and governance issues.

### Course Objectives

This course is designed to:

- 1) describe and assess the role of charities and not-for-profits in Canada;
- 2) explain how not-for-profits may be organized, structured, governed and regulated
- 3) explain how lawyers interact and advise not-for-profits on an ongoing basis;
- 4) practice incorporating a not-for-profit organization;
- 5) enable students to understand how a Christian worldview impacts on charitable giving and volunteering and how rules governing charities can enhance or hinder the practice of religion.

### Course outline

1. Charities and not-for-profits in societal context
2. Constitutional jurisdiction
3. Definition of “charity” and “charitable purpose”
4. Legal structures
5. Governance issues – duties and liabilities of the board of directors, members and volunteers
6. Incorporating the charity or not-for-profit
7. Restrictions on charities – political activity and business activities.
8. Employment and volunteers
9. Human rights considerations
10. Fundraising – the rules of getting
11. Philanthropy – the rules of giving
12. The special tax rules – income tax, property tax, GST exemptions
13. Issues in social innovation

### Texts

Donald Bourgeois, *The Law of Charitable and Not-for-Profit Organizations* (3rd edition) (LexisNexis, 2002)

Knechtel, Kranendonk, Douma, *Charities Handbook: The Comprehensive Guide for Charities* (Canadian Guide for Christian Charities, 2006)

## LAW 616, Client Relations and Interviewing Skills (3 s.h.)

### Description

The practice of law is driven by the needs of clients. This course gives students practical skills for interviewing and advising clients, using a client-centred approach. It will help students understand the needs of clients during transactions and during challenges such as litigation. Students will discuss issues such as professionalism and ethical issues. Over half of the course time will be in practice scenarios.

### Course Outcomes

Students completing this course will:

- 1) have a solid grounding in the purposes, methodologies and challenges of oral and written communications with clients;
- 2) understand and apply client confidentiality and solicitor/client privilege;
- 3) confidently approach client relationships based on their many hours of practice interviews and written communications.

### Course Outline

1. The lawyer-client relationship: formation, engagement and ending the relationship
2. The lawyer as counsellor: listening, advising, responding
3. The interview: purposes, methods, challenges
4. The belligerent client
5. The reluctant client
6. Power imbalances: spouses, business partners
7. The organizational client: business, NGOs
8. Written communication: how to write, electronic vs. letter communications, goals and methodologies
9. Fees: managing the financial side of the relationship
10. Conflicts of interest: how to manage emerging conflicts in the client relationship and when to terminate the relationship
11. Confidentiality
12. Solicitor/client privilege

### Texts

D.A. Binder, P. Bergman, S.C. Price, *Lawyers as Counsellors* (2nd Edition) (West Group Publishing, 2004)

## LAW 617, Commercial Law (3 s.h.)

### Description

Commercial law is that branch of private law concerned primarily with starting a business, financing a business, and the supply of goods or services by merchants and other businesses for profit. Commercial law includes such topics as sale of goods, bailment and carriage of goods, documents of title and negotiable instruments, banking, the various forms of secured credit and an introduction to the law of insolvency and bankruptcy. This course therefore provides the student with a basic understanding of the law affecting the operation of any business doing commercial transactions.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history and development of commercial transaction and the law that governs such transactions in Canada;
- 2) familiarize students with the division of powers between the federal and provincial legislatures in the area of commercial law;
- 3) familiarize students with the steps needed to buy or sell a business;
- 4) familiarize students with the basics of a commercial transactions and the chain of purchase, carriage and insurance contracts that arise from such transactions;
- 5) familiarize students with an understanding of financing commercial transactions and the types of security that are available to lenders and sellers;
- 6) familiarize students with a basic understanding of the operation of Canadian law when commercial enterprises can no longer meet their financial and commercial obligations;
- 7) enable students to learn how commercial entities require legal services at various junctures of their operation;
- 8) enable students to analyze various business challenges facing commercial clients and develop an understanding of how to advise clients on the legal implications of sales and service contracts, financing and eventually, if necessary, insolvency and bankruptcy issues facing them.

### Course Outline

1. Division of powers over commercial transactions
2. Buying and selling a business
  - a. Sale of a business by assets
  - b. Sale of a business by shares
  - c. Stages of a transaction
  - d. Drafting an agreement
3. Financing the business – security in commercial transactions
  - a. *Bank Act* security
  - b. The PPSA
4. Sales law
5. Bills of Exchange and negotiable instruments
6. Introduction to insolvency and bankruptcy
7. The impact of technology on commercial law

## 8. Future directions for commercial law in Canada

### **Texts**

J.S. Ziegel, B. Geva, R.C.C. Cuming, *Commercial and Consumer Transactions: Cases, Text and Materials* (4th edition) (Emond Montgomery, 2002)

Ziegel, Cumming, Duggan, *Secured Transactions in Personal Property and Suretyships*, (4th edition) (Emond Montgomery, 2003)

Dorothy Duplessis et al, *Canadian Business and the Law* (Nelson Education, 2010)

## LAW 618, Conflict of Laws (3 s.h.)

### Description

This practical course considers the increasingly prevalent issue of conflict of laws. The course will consider which court has jurisdiction to decide a case, what law should apply to the dispute, and whether the judgment will be recognized and enforced. Students will be introduced to common scenarios faced by lawyers in the context of globalization. The course will engage students in applying the Canadian rules of conflict of laws to problem-solving exercises drawn from all private law areas, including torts, contracts, property, succession and family law. This course will analyze Canadian rules of conflict of laws and equip students to assess legal situations that engage multiple jurisdictions, particularly the US and Asia.

### Course Objective

The objectives of this course are to:

- 1) introduce students to the principles and concepts of private international law;
- 2) familiarize students with the issues of jurisdiction, choice of law theories, and recognition and enforcement of extra-territorial judgments;
- 3) develop practical skills by applying conflict of law rules to problems drawn from various areas of private practice;
- 4) acquaint students with the policy concerns, such as the impact of globalization and technology, underlying the development of private international law;
- 5) provide students an opportunity to make and defend submissions on jurisdiction in a mock court setting.

### Course Outline

1. Choice of law
2. Adjudicatory jurisdiction
3. Marriage
4. Contractual obligations
5. Extra-contractual obligations
6. Substance and procedure
7. Proof of foreign law
8. Jurisdiction
9. Recognition and enforcement of foreign judgments and awards

### Texts

Stephen G.A. Pitel and Nicholas Rafferty, *Conflict of Laws* (Irwin Law, 2010)  
*Dicey, Morris and Collins on the Conflicts of Laws* (Sweet and Maxwell, 2006)

## LAW 619, Consumer Law (3 s.h.)

### Description

This course focuses on the consumer law relating to the sale of goods and services, including an examination of the *Sale of Goods Act* and the *Business Practices and Consumer Protection Act*. Students will have an opportunity to develop practical problem-solving skills by applying relevant authority to contemporary scenarios. Students will also be introduced to the Vienna Convention on the International Sale of Goods.

### Course Objectives

Through this course, students will:

- 1) learn fundamental legal principles applying to sales transactions;
- 2) become familiar with the legal framework for consumer protection;
- 3) develop practical skills by analyzing fact scenarios according to relevant statute and case law.

### Course Outline

1. Historical development, context and overview of *Sale of Goods Act*
2. Sale of goods
  - a. Transfer of property
  - b. Transfer of title
  - c. Assumption of risk
  - d. Statutory contract
  - e. Delivery
  - f. Payment and acceptance
  - g. Seller's remedies
  - h. Buyer's remedies
3. Consumer protection legislation
4. Introduction to the Convention on International Sale of Goods

### Texts

Kevin P. McGuinness, *Sale & Supply of Goods* (2nd edition) (LexisNexis, 2010)  
G.H.L. Fridman, *Sale of Goods in Canada* (5th edition) (Thomson Carswell, 2004)

## LAW 620, Debtor and Creditor Law (3 s.h.)

### Description

This course provides an examination of the methods by which unsecured creditors may enforce money judgments. There will be an overview of the general principles and forms of relief offered by provincial and federal legislation. A review will also be made of exemptions from enforcement that are available to debtors as well as other legal rights accorded to debtors after judgment. The course will be a combination of lecture, case analysis, and discussion of practice problems.

### Course Objectives

The objects of this course are to:

- 1) explain debtor and creditor law and relations;
- 2) critically analyze debtor and creditor legal issues and policy considerations;
- 3) equip students with a basic understanding of the procedures and practical aspects of how to enforce money judgments;
- 4) enable students to understand professional responsibility matters especially important to lawyers acting for debtors and creditors.

### Course Outline

1. Overview of the law governing debtor and creditor relations
2. Credit– credit reporting, credit cards and lines of credit, interest rates
3. Debt collection practices
4. Initiating proceedings– limitations, choice of registry, initiating the action, service of process
5. Proceeding to judgment– default judgment, summary judgment and summary trial
6. Registration and actions on foreign judgments
7. Pre-judgment execution–the Mareva injunction, preservation orders, prejudgment garnishment
8. Post-judgment execution–examination in aid of execution, subpoena to debtor, Small Claims Court
9. Post-judgment garnishment
10. Execution against land
11. Execution against personal property– goods, chattels, effects, money and securities for money, shares
12. Equitable execution– equitable receivers, equitable charging order
13. Execution priorities
14. Exemptions and immunities– federal and provincial
15. Fraudulent transactions– fraudulent conveyances, fraudulent preferences
16. Bankruptcy and insolvency– property, income, claims against the estate, and discharge
17. Professional responsibility

### Texts

F. Bennett, *Bennett on Creditors' and Debtors' Rights and Remedies* (5th edition) (Carswell, 2006)

C.R.B. Dunlop, *Creditor-Debtor Law in Canada* (2nd edition) (Carswell, 1995)

L.R. Robinson, *British Columbia Debtor - Creditor Law and Precedents* (Student Edition) (Carswell, 2009)

## LAW 621, Employment and Labour Law (3 s.h.)

### Description

All aspects of the employment relationship will be covered in this course including the employment relationship, the contract, implied rights and obligations and terminating the employment relationship. As it is termination of employment that is most frequently litigated, it will be examined in detail including constructive dismissal, reasonable notice, dismissal for cause and damages. Human rights legislation, as it applies to employment, will also be a significant topic. This course also addresses the relationship between management and labour when there is a union. It will include the historical development of unions in Canada. It will also cover all aspects of unionization including certification, bargaining in good faith, the collective agreement and industrial conflict.

### Course Objectives

The objectives of this course are to:

- 1) give students a historical understanding of the development of employment law and trade unions and collective bargaining;
- 2) equip students with a basic knowledge of the nature of employment contracts, the rights and responsibilities of employers and employees specifically on termination of the employment relationship;
- 3) equip students with a basic knowledge of the role of trade unions, certification, negotiating collective agreements and strikes and lockouts;
- 4) assist students to understand the crucial role of the *Charter* and human rights law in the employment context.

### Course Outline

1. The employment relationship as distinct from other relationships
2. The employment contract
3. Statutory minimum standards
4. Rights and responsibilities of employees and employers
5. Terminating the employment relationship
6. Unions and certification
7. Collective bargaining and the collective agreement
8. Industrial conflicts -- strikes and lock-outs
9. The trade union and its members
10. The *Charter* and trade unions
11. Human rights in employment law

### Texts

The Labour Law Casebook Group, *Labour and Employment Law: Cases, Materials and Commentary* (8th edition) (Irwin Law, 2011)

David Harris, *Wrongful Dismissal* (Carswell, looseleaf)

Geoffrey England, Innis Christie, Peter Barnacle and Robert Wood, *Employment Law in Canada* (4th edition) (LexisNexis, 2005)

## LAW 622, Environmental Law (3 s.h.)

### Description

This course examines the regulatory framework for environmental law, including federal and provincial jurisdictions. As well, it addresses the wide variety of environmental issues, including pollution, biodiversity and climate change.

### Course Objectives

The course aims to instill in students:

- 1) an understanding of the economic, social and political context of environmental policy and law;
- 2) an appreciation of the limits of the common law and historical property law principles in approaching environmental issues;
- 3) a basic familiarity with environmental statutes and regulations and the federal and provincial levels;
- 4) an understanding of enforcement principles and regulatory powers;
- 5) an appreciation of specific topics in First Nations issues, the role of local governments and wilderness and wildlife protection;
- 6) practical considerations arising from land sales and other transactions, pollution abatement and responding to governmental enforcement will be emphasized throughout.

### Course Outline

1. The common law
  - a. Applying traditional tort law and understanding their limits;
  - b. Class action suits and environmental tort claims
2. Jurisdiction of the environment – division of powers
3. Environmental regulation – sectoral regulatory regimes
4. Compliance and enforcement
  - a. Using the courts and tribunals to protect the environment
  - b. Using administrative decision making
  - c. Corporations and harnessing market forces
5. Judicial review of environmental decision making, including public interest standing
6. Federal environmental assessment
7. Species protection

### Texts

Meinhard Doelle, Chris Tollefson, *Environmental Law: Cases and Materials* (Carswell, 2009)

Muldoon, Lucas, Gibson and Pickfield, *An Introduction to Environmental Law and Policy in Canada* (Edmond Montgomery, 2009)

David R. Boyd, *Unnatural Law, Rethinking Canadian Environmental Law and Policy* (UBC University Press, 2003)

E. L. Hughes, A. R. Lucas and W. A. Tillman (eds.), *Environmental Law and Policy* (3rd edition) (Edmond Montgomery, 2003)

## LAW 623, Family Law (3 s.h.)

### Description

The family is said to be the basic building block of society. This course will examine the state's regulation of the family and critically assess whether state regulation has changed the family or responded to social changes. It will also include an assessment of the current challenges in family law, especially the backlog in the courts, and alternative dispute resolution and mediation as alternatives.

### Course Objectives

This course aims to:

- 1) promote an interest in family law and the legal and social issues in familial relationships;
- 2) communicate basic principles that underlie and inform regulation of families through law;
- 3) explore relevant legislation and case law and identify current family law issues in order to make effective family arguments;
- 4) provide students with practical experience in drafting agreements related to family law;
- 5) provide an opportunity to examine and consider the law reform and theoretical debates that shape and inform family law in Canada.

### Course Outline

1. Histories and changing definitions: What is “family”?
2. The legal framework for family law
3. Creating the “family”: marriage and marriage-like relationships
4. Children: determining parentage and adoption
5. Legal regulation of family life: abuse, violence and child protection
6. Family breakdown and corollary issues, including alternative dispute resolution
7. Negotiating and drafting prenuptial and separation agreements (and practice drafting)
8. Economic consequences of family breakdown
9. Policy directions in family law
10. Ethical issues in family law

### Texts

Statutes are available online:

- Supreme Court Family Rules
- The *Family Law Act* (note: bill passed in the BC Legislature on November 23, 2011 and will replace the *Family Relations Act*)
- *Family Relations Act* and Regulations
- *Divorce Act*

Harold Niman (ed.), *Evidence in Family Law* (Canada Law Book, looseleaf)

Berend Hovius and Mary Jo Maur, *Family Law: Cases, Notes and Materials*, (7th edition) (Carswell, 2009)

## LAW 624, Financial Institutions (3 s.h.)

### Description

This course examines the law relating to banks and other deposit-taking institutions, such as credit unions. Particular emphasis will be on the regulatory framework, the bank and customer relationship and clearing systems such as ACSS, LVTS, Interac, credit cards and third party payment providers.

### Course Objectives

The objective of this course is that students learn to:

- 1) describe and explain the role of banks and other deposit-taking institutions in Canada;
- 2) describe and explain the institutional context within which Canadian banks operate;
- 3) explain how banks and other deposit-taking institutions are regulated and what they may do;
- 4) explain how the bank and customer relationship operates with respect to paper and electronic transactions, including the mutual duties owed by each party;
- 5) understand the international context for financial institutions and financial transactions.

### Course Outline

1. Banks and Credits Unions
2. Definition of “banking”
3. Regulation and prudential oversight of financial institutions, including federal/provincial jurisdiction
4. Financial institutions as businesses
5. Financial institutions and the customer
6. Bills of Exchange
7. Account operation
8. Loans
9. Electronic fund transfer
10. Electronic payments
11. Credit cards
12. Dispute resolution
13. Monitoring of financial transactions -- money laundering and terrorist financing
14. International banking (and the global financial crisis)

### Texts

M.H. Ogilvie, *Banking Law: Cases and Materials* (4th edition) (Captus Press, 2008)

Christopher C. Nicholls, *Financial Institutions. The Regulatory Framework* (LexisNexis, 2008)

## LAW 625, Health and Elder Law (3 s.h.)

### Description

This course introduces students to the law relating to the Canadian health care system with a particular focus on care for the elderly. The first half of the course will cover the regulation of the health care system including health care professionals, informed consent to medical treatment, malpractice, confidentiality and disclosure of health information. The second half of the course will address specific issues related to our aging population, including mental disability, substitute decision-making and end-of-life decision-making.

### Course Objectives

The course aims to instill students with a basic understanding of fundamental principles and issues in health law and policy, including:

- 1) legal foundations of health care law and health care funding;
- 2) regulation of health care professionals and institutions, both private and public;
- 3) negligence law and patient safety;
- 4) consent to treatment and mental capacity;
- 5) privacy and confidentiality in health care;
- 6) public health law, including laws relating to infectious disease control;
- 7) ethical and legal issues in end-of-life care.

### Course Outline

1. Regulation of health care professionals and complementary health care professionals
2. The Canadian health care system, including federal and provincial statutes
3. Private and public health care providers and statutes regulating the same
4. Applicable tort law, including medical malpractice
5. Informed consent
6. Minors and health care
7. Elderly and health care
  - a. Personal autonomy and capacity
  - b. Financial planning, powers of attorney and elder abuse
  - c. Private elder care and regulation
  - d. Family support and the elderly
8. Mental health law
9. Health information and privacy
10. Public health law
11. End of life
12. Decision-making at the end of life (including living wills)

### Texts

Jocelyn Downie, Timothy Caulfield & Colleen M. Flood, eds., *Canadian Health Law and Policy* (3rd edition) (LexisNexis, 2007)

Tracey M. Bailey, Timothy Caulfield and Nola M. Ries, eds., *Public Health Law and Policy* (2nd edition) (LexisNexis, 2008)

## LAW 626, Human Rights and Discrimination (3 s.h.)

### Description

This course examines the historical roots for human rights legislation in Canada. Students will examine the structure of the human rights codes in terms of prohibited grounds and specific discriminatory practices. It will include critically examining human rights procedure, including the transition of provinces like British Columbia and Ontario to new systems that change the role of the Human Rights Commissions.

### Course Objectives

The course aims to instill students with a basic understanding of fundamental principles and issues in human rights law and policy, including:

- 1) interaction between ideas of morality social justice and human rights and the purpose of protecting human rights;
- 2) development of human rights post-WW II;
- 3) competing conceptions of equality and discrimination;
- 4) the impact of human rights laws on private relationships and contracts;
- 5) preparing and assembling evidence for human rights complaints;
- 6) defending against human rights complaints.

### Course Outline

1. Historical development of human rights law – quasi-constitutional status of human rights statutes
2. Meaning of discrimination – substantive equality v. formal equality
3. Structure of human rights statutes – process
  - a. Human rights commissions
  - b. Human rights tribunals
  - c. Practice issues
4. Structure of human rights statutes – substantive protections
  - a. Areas of protection (employment, wages, employment advertisements, purchase of property, discriminatory/hateful speech, tenancy, services customarily available to the public, association/union membership, etc.)
  - b. Grounds on which discrimination is prohibited
5. BFOR/BFOQ defences
6. Special interest exemptions
7. *Charter* limitations on scope of human rights prohibitions
8. Judicial review, privative clauses and scope of deference to human rights commissions and tribunals.

### Texts

Stanley Corbett, *Canadian Human Rights Law and Commentary* (LexisNexis, 2007)

Russel W. Zinn, *The Law of Human Rights in Canada: Practice and Procedure* (Canada Law Book, looseleaf)

Anita Braha, *Annotated British Columbia Human Rights Code* (Canada Law Book, looseleaf)

## LAW 627, Immigration and Refugees Law (3 s.h.)

### Description

Canada is largely a country of immigrants. This course will cover the regulatory framework for immigration to Canada. It will also critically assess the issues raised by Canadian immigration policy. As well, students will be introduced to the international and national rules governing refugees.

### Course Objectives

The course aims to instill students with a basic understanding of fundamental principles and issues in immigration and refugees law in Canada including:

- 1) the constitutional and international basis for migration laws;
- 2) social, political and economic context and consequences of migration control;
- 3) practical skills for representing immigrants and refugee claimants;
- 4) obtaining protection as a refugee;
- 5) border protection;
- 6) process and principles for settling in Canada;
- 7) losing the ability to stay in Canada.

### Course Outline

1. Introduction to migration, borders and mobility
2. Canada's place in the world: the *Charter* and international legal instruments
3. Citizenship and permanent residency requirements
4. Introduction to asylum law
5. Security, human trafficking and smuggling
6. Definition of refugee in Canada, persecution and ability to return
  - a. Interdiction
  - b. Refoulement
  - c. Expulsion of refugees
7. Immigrating to Canada
  - a. Decision-making structure and process, including immigration and refugee board
  - b. Standard of review
  - c. Economic criteria and classes of immigrants
  - d. Family class immigration
  - e. Humanitarian and compassionate immigration
8. Exclusion, removals and deportation
  - a. Criminality
  - b. War crimes
  - c. Medical and health issues.

### Texts

Lorne Waldman, *Canadian Immigration & Refugee Law Practice 2011* (LexisNexis, 2011)  
*Annotated Immigration and Refugee Protection Act* (Carswell, 2012)  
Benjamin A. Kranc, *North American Relocation Law* (Canada Law Book, looseleaf)

## LAW 628, Insurance Law (3 s.h.)

### Description

This course will examine the theory and elements of the practice of insurance law, with reference to the most common forms of both first party and third party insurance: property, life and motor vehicle insurance. It will cover the basic theory of insurance as a loss spreading mechanism; the nature of insurance contracts; the insurance industry; principles of indemnity insurance; the duty of good faith and obligation of full disclosure; and the claims process. It will also cover selected issues on interpreting insurance policies.

### Course Objectives

This course will allow students to:

- 1) gain an appreciation of the principles of insurance law and the particular operation of contract law in the insurance context;
- 2) develop an ability to analyze insurance problems and apply legal doctrine and policy considerations to them;
- 3) develop skills in working with mixed jurisprudence based in part on statute and in part on common law;
- 4) acquire insight into the structure and substance of insurance policies;
- 5) evaluate the effectiveness of legislation and common law principles in controlling the insurance industry and protecting consumers of insurance products.

### Course Outline

1. Introduction to insurance
2. Nature of insurance
3. Insurable interest
4. Principle of indemnity
5. The insurance contract
6. Duty of good faith and obligation of full disclosure
7. Selected issues in interpreting insurance contracts
8. Public policy restrictions
9. The claims process
10. Valuation

### Texts

James A. Rendall and Won J. Kim, eds., *Canadian Cases on the Law of Insurance, 4th Series* (Thomson Carswell, 2011)

Barbara Billingsley, *General Principles of Canadian Insurance Law* (Student Edition) (LexisNexis, 2008)

## LAW 629, Intellectual Property Law (3 s.h.)

### Description

Intellectual property laws protect ideas, creativity and designs. These are protected by patents, trademarks, copyright and industrial design. This course will examine the rules governing each of these, the protection they offer and enforcement of each of these protections. Other rules and remedies, such as passing off, will also be covered.

### Course Objectives

In this course, students will be exposed to the legal protection for inventions and creativity. They will:

- 1) understand the various protections, and length of protection, for patents, industrial design, trademarks and copyright;
- 2) understand the issues for international protection for intellectual property, or lack of protection, as the case may be;
- 3) have a basic understanding of the procedures of the Canadian Intellectual Property Office (CIPO) to protect intellectual property;
- 4) know how to search CIPO databases;
- 5) be challenged to think about innovation and how that affects the protection of intellectual property.

### Course Outline

1. What is intellectual property and why protect it?
2. The global context for intellectual property protection
3. Patents
  - a. Novelty
  - b. Non-obvious
  - c. Utility
  - d. Claim construction
  - e. Infringement
  - f. Defences
  - g. Remedies
4. Industrial design
5. Trademarks
  - a. Registrable?
  - b. Official/non-official
  - c. Infringement
  - d. Defences
6. Passing off
  - a. Misrepresentation
  - b. Damages
7. Copyright
  - a. Works
  - b. Infringement
  - c. Moral rights

d. Defences

8. New issues with intellectual property coming out of new technologies

**Texts**

David Vaver, *Copyright Law* (Irwin Law, 2000)

David Vaver, *Intellectual Property Law* (Irwin Law, 2011)

Daniel Gervais & Elizabeth Judge, *Intellectual Property: The Law in Canada* (Thomson/Carswell, 2005)

## LAW 630, International Law (3 s.h.)

### Description

This course will cover the sources, development and institutions of international law. It will address the relationship between international law in its customary and conventional forms and the domestic laws of Canada. Trade, investment, peace and security and international human rights will be canvassed. Students will have the opportunity to assess bilateral and multi-lateral international agreements including the NAFTA, WTOA and UN Agency-generated treaties.

### Course Objectives

The objectives of this course are that students be able to:

- 1) explain the relationship between the historical origins and nature of international law and the current international legal system;
- 2) outline the key characteristics and fundamental principles of international law, particularly with respect to customary and conventional law;
- 3) identify the principal attributes of the main players in the international legal system;
- 4) describe how international law is generated, the theories advanced to explain its legal effects, and the manner in which it interacts with domestic (particularly Canadian) law;
- 5) articulate key substantive doctrines of international law, including rules relating to the sovereign equality of states, the prohibition of intervention in the domestic affairs of states, state succession, the principle of self-determination of peoples, the law of treaties, state jurisdiction, the law of the sea, air and space law, sovereign and diplomatic immunities, state responsibility, and the international protection of human rights and/or the use of force in international relations;
- 6) identify international legal issues in various fact scenarios and analyze such issues in light of the foregoing knowledge in order to provide well-reasoned, persuasive international legal advice;
- 7) engage in critical and informed debate concerning the nature, reality, content, strengths and shortcomings of current international law.

### Course Outline

1. Sources of international law
2. Customary international law
3. *Jus Cogens* norms and *Erga Omnes* obligations
4. Jurisdiction and immunities
5. The law of treaties
6. Trade law
7. Human rights

### Texts

J.H. Currie, C. Forcese & V. Oosterveld, *International Law: Doctrine, Practice and Theory* (Irwin Law, 2007)

Gib van Ert, *Using International Law in Canadian Courts* (2nd edition) (Irwin Law, 2008)

H. Kindred and M. Saunders, *International Law Chiefly as Interpreted and Applied in Canada* (7th edition) (Emond Montgomery, 2009)

## LAW 631, Landlord and Tenant Law (3 s.h.)

### Description

This course considers the essential landlord-tenant relationship in both residential and commercial contexts. It introduces students to the critical legal elements of the relations, including the requirements for the formation of a valid agreement, the rights and duties of the parties under the agreement, and remedies for breach. Students will become familiar with the statutory regimes governing landlord-tenant relationships. The course will provide opportunities for students to critically assess commercial and residential tenancy agreements for compliance with the relevant statutory provisions. Students will also engage in problem-solving exercises in order to advise clients on the best course for pursuing remedial action.

### Course Objectives

This course will:

- 1) introduce students to the nature of the landlord-tenant relationship;
- 2) familiarize students with the essential elements of a valid tenancy agreement and the distinctions between commercial and residential relationships;
- 3) equip students to identify flaws, inconsistencies and deficiencies in tenancy agreements;
- 4) develop skills to provide effective client advice on remedial options under tenancy agreements and applicable legislation.

### Course Outline

1. Creation of landlord-tenant relationship
2. Application of landlord and tenant statutes
3. Leases and tenancy agreements
4. Agreements for lease
5. Obligations of landlord
6. Obligations of tenant
7. Rent
8. Assignment and subletting
9. Renewals and options
10. Merger and surrender
11. Forfeiture and re-entry
12. Abandonment
13. Termination by Notice to Quit
14. Statutory remedies
15. Fixtures

### Texts

Donald H.D. Lamont, Q.C., *Residential Tenancies* (Carswell, 2000)

Harvey M. Haber, *Understanding the Commercial Lease: A Practical Guide* (3rd edition)  
(Canada Law Book, 1999)

## LAW 632, Municipal Law (3 s.h.)

### Description

Issues of development and planning have become increasingly controversial. This course is an introduction to the basic structure, functions and powers of municipal or local governments. It will start with where municipal governments get their powers and how they make by-laws. It will include municipal taxation. A significant part of the course will focus on municipal planning and land use.

### Course Objectives

This course will enable students to:

- 1) understand the unique role of municipalities in regulating planning and property taxation;
- 2) be equipped to make applications to the relevant municipal bodies for planning approvals, and understand the appeals processes;
- 3) understand and apply the relevant legislation for municipal regulation.

### Course Outline

1. Where do municipalities derive their authority?
2. Scope of municipal authority
3. Municipal taxation
4. The scope of the zoning power
5. Land use, non-conformity and variances
6. Subdivision
7. Municipal regulation of houses of worship
8. First Nations issues
9. Liability issues for municipalities
10. Liability issues for planners
11. Municipal services

### Texts

W. Buholzer, *British Columbia Planning Law and Practice* (LexisNexis, looseleaf)  
Stanley Makuch, Neil Craik and Signe B. Leisk, *Canadian Municipal and Planning Law* (2nd edition) (Carswell, 2004)

## LAW 633, Natural Resource Law (3 s.h.)

### Description

The course begins with an overview of the development of Canadian natural resource law, including some underlying philosophies, principles and ethics. This foundation leads to an examination of the natural resource law framework in Canada from federal, provincial, municipal and Aboriginal perspectives. The course also explores the legislation and common law principles that govern natural resource protection, compliance, enforcement and liability for natural resource harm, natural resource rights, public participation and environmental assessment. Emphasis will be placed on the specific example of forestry, but will also include mining, oil and gas and fisheries.

### Course Objectives

This course will enable students to:

- 1) gain an appreciation of the social, political and economic context of natural resource law and policy making and enforcement;
- 2) consider the challenges of natural resource law making and regulation within the Canadian federation, including First Nations issues and the role of local government;
- 3) understand the scope and limitations of common law actions and remedies in the natural resource context;
- 3) gain a basic familiarity with natural resource regulation and law making at the federal and provincial levels including standard-setting, the emerging debate with respect to “smart regulation” and related issues of public participation, enforcement, judicial review and standing;
- 4) evaluate the efficiency and effectiveness of these models within a broader socio-political context, and consider possibilities for reform;
- 5) consider the role of the criminal law in natural resource regulatory enforcement including private prosecution;
- 7) acquire an understanding of the natural resource assessment and species protection processes, with an emphasis on federal issues and emerging critiques;
- 8) consider the impact of climate change on selected areas of natural resource law and policy.

### Course Outline

1. Overview of Canadian natural resource law
2. Sources of jurisdiction and natural resource legislation
3. Using the courts for natural resource protection
4. Regulation of natural resources
5. The future of natural resource law
6. Practicing natural resource law

### Texts

Meinhard Doelle and Chris Tollefson, *Environmental Law: Cases and Materials* (Thomson Carswell, 2009)

David R. Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (UBC University Press, 2003)

Jamie Benidickson, *Environmental Law* (3rd edition) (Irwin Law, 2008)

## LAW 634, Negotiation (Advanced) (3 s.h.)

### Description

This skills-based course will develop negotiating theory and skills through practical assignments and readings from on negotiation theory. Each week, students will have the opportunity to participate in a practice scenario and to analyze the results. Coaching and peer input will be provided. Prerequisite(s): LAW 613 Alternative Dispute Resolution.

### Course Outcomes

Students will have:

- 1) a comprehensive understanding of how and why we negotiate;
- 2) the moral and practical benefits of principled (interest-based) negotiation;
- 3) skills to understand the client's interests;
- 4) the methods used to lead people to engage in principled negotiation ;
- 5) personal testing of their negotiation styles and many hours of negotiation practice and observation in a variety of scenarios;
- 6) honed skills and outcomes in all aspects of life: professional, family and community.

### Course Outline

1. Negotiation methodologies and styles. (Course participants will get a personal negotiation style assessment.)
2. Negotiation theory – building on the basic theoretical models discussed in Law 304, a comprehensive examination of how individuals, groups, organizations and nations engage in negotiations, how to measure results based on maximizing interests, and optimization
3. Distributive and integrative bargaining
4. Taking instructions from a client
5. Single issue vs. multiple issue negotiations: identifying and mapping interests
6. Negotiating in the business context
7. Negotiating in the family context
8. Negotiating between organizations
9. International negotiations
10. Documenting the course of negotiations and documenting the outcome
11. Challenges for negotiators: ethical issues, getting to the table, power imbalances, the “hard bargainer”, cultural and gender issues, managing personal emotions
12. Using negotiation software as an optimization tool

### Texts

W. Ury, *Getting Past No: Negotiating in Difficult Situations* (Bantam Books, 1993)

S. Diamond, *Getting More* (Crown Business, 2010)

## LAW 635, Remedies (3 s.h.)

### Description

This course introduces students to legal and equitable remedies in the area of private law, predominantly torts, property and contract law. The class will emphasize principles governing remedial selection. Students will become familiar with the range of remedial options available in law, and will practice developing creative strategies to best meet clients' needs. The course will provide opportunities for students to apply their learning by analyzing problems, drafting opinion letters, and offering client advice in a client counselling session.

### Course Objectives

The objects of this course are to:

- 1) introduce students to the method of remedial choice, and the factors that influence various choices;
- 2) familiarize students with principles governing the assessment of damages and the rationale;
- 3) develop practical skills by applying rules and authority to client scenarios in order to identify the benefits and drawbacks for clients in pursuing various remedial strategies;
- 4) consider public policy considerations that influence courts' choice of remedies, including social justice concerns.

### Course Outline

1. Basic principles of remedies
2. Damages
  - a. Expectation damages
  - b. Reliance damages
  - c. Restitutionary remedies
  - d. Aggravated and punitive damages
  - e. Damages for personal injury
  - f. Limiting principles
3. Equitable remedies
4. The social and policy implications of various remedies

### Texts

Jamie Cassels and Elizabeth Adjin-Tetty, *Remedies: The Law of Damages* (Irwin Law, 2008)

Jeffrey Berryman, *The Law of Equitable Remedies* (Irwin Law, 2000)

## LAW 636, Religion and the Law (3 s.h.)

### Description

This course examines the relationship between religion and the secular state in a wide variety of contexts. Chief Justice McLachlin noted that “both law and religion are comprehensive doctrines,” that is, they place total claims on lives of citizens and adherents. This will inevitably lead to conflicts. Specific focus will be on Canada and will include human rights, regulation of religious institutions and accommodation of religious difference.

### Course Objectives

This course will allow students to:

- 1) critically analyze the place of religion in Canada’s pluralistic, multicultural state;
- 2) understand the historical roots of many of Canada’s current religious conflicts;
- 3) understand and evaluate regulation of religious institutions;
- 4) understand the legal framework for religious freedom including the Charter and human rights codes.

### Course Outline

1. Understanding religion and religious diversity in Canada
2. The Constitutional background
3. Religion and education
4. Religion and family law
5. Accommodation of religious practices
6. Limits on religious expression
7. Regulation of religious institutions
8. The place of religious law
9. Competing and conflicting rights

### Texts

Janet Epp Buckingham, *Crosses, Kirpans and Conflict*, (McGill-Queen’s University Press, forthcoming)

M.H. Ogilvie, *Religious Institutions and the Law* (3rd edition) (Irwin Law, 2010)

## Law 637, Securities Law (3 s.h.)

### Description

This course covers securities regulation, predominantly through the raising of funds for corporate development through selling securities to the public. The course will focus specifically on the B.C. *Securities Act*. The course will include registration requirements for persons trading in securities, prospectus requirements to trade in securities, exemptions from the prospectus requirement, restrictions on the resale of securities, remedies for failure to comply with securities legislation, continuous disclosure requirements and take-over bid legislation.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the origins of regulation of securities transactions;
- 2) explain the concepts of public offerings, private placements, market disclosures, insider trading;
- 3) understand the law regulating offerings and trading of traditional domestic equity securities;
- 4) analyze court decisions, security commission rules, disclosure forms, regulatory explanations, and formulate ways in which they would assist clients raising funds through security offerings;
- 5) familiarize students with the effects of the *Canadian Charter of Rights and Freedoms* on securities law especially with regards to enforcement actions against individuals;
- 6) analyze ethical issues in advising clients in securities law matters generally and when representing clients before the securities commissions or before federal judicial bodies while still meeting the lawyer's professional responsibility obligations.

### Course Outline

1. The history and evolution of the regulation of raising money for industry
2. The registration process for newly issued securities
3. Civil liability for deficiencies and misrepresentations in the registration materials
4. Exemptions from registration
5. Definition of security
6. Regulation of securities trading markets
7. Liability for securities fraud (and insider trading)
8. Regulation of securities industry participants
9. Cross-border regulation of securities transactions
10. Ethical considerations in securities law

### Texts

M. Condon, A. Anand, J. Sarra, *Securities Law in Canada* (Emond Montgomery, 2005)

The (British Columbia) *Securities Act*, R.S.B.C. 1996, c. 418

The (Ontario) *Securities Act*, R.S.O. 1990, c. S.5

## LAW 638, Tax Law (3 s.h.)

### Description

This course covers the fundamental principles, concepts, and application of Canadian federal income tax legislation. Topics include the concepts of income and liability for tax; income from employment, business, and property; shareholder benefits; deductions; capital gains and losses; computation of taxable income and tax planning for individuals. The course emphasizes understanding of the conceptual structure of the *Income Tax Act* and the application of its rules to practical cases.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history and evolution of tax law in Canada;
- 2) explain the fundamental principles of Canadian federal income taxation;
- 3) explain how individuals calculate income tax payable under Canadian law for different types of income earned including employment, professional, business, rental and investment income;
- 4) explain the kinds of deductions available to individuals when calculating income tax payable;
- 5) understand the Canada Revenue Agency's tax administration, audit and enforcement under the *Income Tax Act*;
- 6) familiarize students with the effects of the *Canadian Charter of Rights and Freedoms* on the law of income tax especially with regards to enforcement actions against individuals;
- 7) enable students to read and interpret provisions effectively relating to individuals in the *Income Tax Act*;
- 8) analyze various ethical issues relating to advising clients in tax matters generally and when representing individuals before the Canada Revenue Agency or before federal judicial bodies while still meeting the lawyer's professional responsibility obligations.

### Course Outline

1. History, objectives and the legislative process that applies to taxation in Canada
2. Jurisdiction and liability to tax
3. Tax administration and enforcement
4. Types of taxable assets and income
5. Deductions and credits
6. Capital gains
7. Tax avoidance and tax evasion
8. Provincial and other taxes
9. Professional ethics in tax planning and tax litigation

### Texts

David M. Sherman, *Practitioner's Income Tax Act, 2011* (40th edition) (Carswell, 2011).  
Vern Krishna, *Fundamentals of Income Tax Law* (Carswell, 2009).

## LAW 639, Tax Law (Advanced) (3 s.h.)

### Description

This advanced course covers the principles of taxation that apply to entities other than individuals. It surveys tax implications that apply to corporate reorganizations, tax planning, and the application of tax principles and concepts to complex tax situations like trusts, partnerships, and corporations. Topics include shareholder benefits; transfer of property to corporations; anti-avoidance and other rules; purchase or sale of a business; partnerships; death; trusts; and intra-family property transfers. Prerequisite(s): LAW 638, Tax Law.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the fundamental principles of Canadian federal income taxation as it applies to entities other than individuals;
- 2) familiarize students with how entities calculate income tax payable under Canadian law for different types of income earned by corporations, partnerships, limited partnerships and trust;
- 3) explain the kinds of deductions available to corporations, partnerships and trusts when calculating income tax payable;
- 4) explain the implications and techniques of corporate reorganization to minimize tax under the *Income Tax Act*;
- 5) explain concepts under the *Income Tax Act* relating to purchase or sale of a business and intra-family property transfers;
- 6) explain concepts under the *Income Tax Act* relating to the death of an individual and the winding-up of a corporation;
- 7) enable students to read and interpret provisions effectively relating to partnerships, corporations and trust in the *Income Tax Act*;
- 8) analyze various ethical issues relating to advising corporate clients in tax matters generally and when representing corporate clients before the Canada Revenue Agency or before federal judicial bodies while still meeting the lawyer's professional responsibility obligations.

### Course Outline

1. Overview of differences in the taxation of income earned by various business organizations
2. Taxation of the corporation, its officers and its shareholders
3. Transfers of property into and out of a taxable Canadian corporation
4. Corporate reorganizations and its tax implications
5. Anti-avoidance rules
6. Purchase and sale of a business
7. Partnerships, limited partnerships and trusts
8. Transfers of property among family members or family-held corporations
9. Death of a taxpayer

### Texts

David M. Sherman, *Practitioner's Income Tax Act, 2011* (40th edition) (Carswell, 2011)  
Vern Krishna, *Fundamentals of Income Tax Law* (Carswell, 2009)

## LAW 701, Practicum\* (3-9 s.h.)

### Description

Upper year students must complete two practica. LAW 701 will be a supervised practicum for academic credit. The supervised practicum eligible for credit for LAW 701 will include:

- Legal aid clinic
- Competitive moot
- Private law firm, government legal services department
- *Pro bono* placement with a non-governmental organization
- Internship with a Member of Parliament or Senator, or provincial MLA (or equivalent)
- Tribunal or court

### Course Objectives

Students will gain a practical experience of law and/or advocacy through the 3rd year placement.

### Course Outline

Students must get approval for their practicum. There will be required documentation and a summative.

### Texts

No Text

## LAW 702, Administrative Law\* (3 s.h.)

### Description

Administrative law broadly covers the exercise of government power excepting that of criminal law powers. It regulates how governments exercise their authority, including both political and administrative authority. Administrative law addresses both direct exercise of government decision-making and the host of tribunals governments establish. This course will cover the rules governing how governments make decisions and carry them out as well as the procedures to challenge those decisions, including judicial review. Students will have the opportunity to visit a tribunal hearing.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the history and development executive-branch agencies and tribunals in Canada;
- 2) explain the differences between the judiciary and administrative tribunals and agencies;
- 3) familiarize students with an understanding of the operation of government decision-making and that of agencies and tribunals and the process that governs challenging their decisions;
- 4) critique the social, religious and political implications of challenging governmental authority;
- 5) enable students to identify issues arising from governmental decision-making action that would permit legal review of such decisions;
- 6) enable students to learn to analyze and critique the rapidly changing area of administrative law; and to formulate arguments to address the ambiguity of conflicting decisions by different courts and to communicate their results to colleagues and clients.

### Course Outline

1. History and development of administrative law in Canada
2. Constitutional basis for judicial review
3. Expertise and statutory purpose
4. Procedural fairness
5. Bias and lack of impartiality
6. Jurisdictional issues and discretionary decisions
7. Remedies

### Texts

Van Harten, Heckman & Mullen, *Administrative Law: Cases, Text and Materials* (6th edition) (Emond Montgomery, 2010)

Sara Blake, *Administrative Law in Canada* (5th edition) (LexisNexis, 2011)

Guy Régimbald, *Canadian Administrative Law* (LexisNexis, 2008)

## LAW 703, Business Organizations\* (3 s.h.)

### Description

This course will cover all aspects of business organizations from sole proprietorships to partnerships to corporations. The first question posed will be, “what type of business organization is best?” Students will be required to complete all phases of incorporating and dissolving a corporation. They will also cover the legal effect of incorporation, responsibilities of directors, control and management of corporations and minority shareholder rights.

### Course Objectives

Students in this course will:

- 1) understand and be able to identify benefits and liabilities of various business structures;
- 2) know the steps to incorporate a company;
- 3) understand the legal effects of incorporation;
- 4) understand fiduciary relationships in various business structures;
- 5) understand legal liabilities of corporations.

### Course Outline

1. Sole proprietorships
2. General partnerships and limited liability partnerships
3. Joint ventures
4. Corporations
  - a. benefits of incorporation
  - b. legal status of a corporation
  - c. incorporating a company – federal and provincial corporations
  - d. fiduciary relationships and the corporation
  - e. control and management of a corporation
  - f. closely held corporations
  - g. rights of shareholders
  - h. tort liability of corporations
  - i. contracting with a corporation
  - j. criminal liability of corporations
  - k. piercing the corporate veil
  - l. transferability of shares
5. Franchises

### Texts

Bruce Welling, Lionel Smith & Leonard I. Rotman, *Canadian Corporate Law: Cases, Notes & Materials* (4th edition) (LexisNexis, 2010)

Fasken Martineau DuMoulin LLP, *Annotated British Columbia Business Corporations Act* (Carswell, looseleaf)

## LAW 704, Civil Procedures\* (3 s.h.)

### Description

An inquiry into the functions of a modern procedural system with specific consideration of the extent to which the litigation process aids in the achievement of just, speedy and economic resolutions of justiciable conflicts. Students will be introduced to the basic structure of a civil action and major items for consideration throughout the development of civil litigation. In the result, such matters as the expenses of litigation, jurisdiction, initial process, pleadings, amendment, joinder, discovery, disposition without trial and alternatives to adjudication will be discussed.

### Course Objectives

This course will:

- 1) introduce the fundamentals of civil procedure and familiarize students with the structure of a civil action;
- 2) provide a theoretical framework for the rules of procedure and identify the values and policies on which the rules are based;
- 3) place these rules in a practical context to encourage future practitioners to wield the rules in a responsible, strategic, and cost-effective manner;
- 4) develop practical legal drafting skills including: drafting a Notice of Civil Claim, Response to Civil Claim, Notice of Application and affidavits.

### Course Outline

1. Theoretical perspectives on civil litigation
2. Commencement of proceedings
3. Pleadings and parties
4. Document discovery
5. Examinations for discovery, other discovery, applications, and examinations for discovery
6. Complex litigation
7. Interim relief and summary trials
8. Costs and access to justice
9. Trial procedure and experts' reports

### Texts

Janet Walker, et al., *The Civil Litigation Process: Cases and Materials* (7th edition) (Emond Montgomery, 2010)

Bouck, Dillon, and Turriff, *British Columbia Annual Practice 2010-2011* (Canada Law Book Inc.)

## LAW 705, Evidence\* (3 s.h.)

### Description

This course surveys the history of rules of evidence in Canadian law. The course introduces students to principles of admissibility, relevance, types of witnesses, written versus oral evidence and the use of demonstrative evidence in court and tribunal proceedings in Canada. It also examines concepts and rules relating to burdens of proof, presumptions, exclusionary rules, ethical issues in the law of evidence and the effects of the *Canadian Charter of Rights and Freedoms* on the law of evidence.

### Course Objectives

This course is designed to:

- 1) explain the history and development of the law of evidence in Canada;
- 2) identify and critically assess the basic principles and rules governing the burden of proof and admissibility in respect of the presentation and evaluation of evidence in adjudicative proceedings;
- 3) understand the types of witnesses and the types of evidence that are part of an adjudicative proceeding;
- 4) understand the ethical issues in the law of evidence and professional responsibilities as a lawyer;
- 5) familiarize students with the effects of the *Canadian Charter of Rights and Freedoms* on the law of evidence;
- 6) enable students to identify effectively admissibility issues with respect to evidence;
- 7) analyze various issues relating to admissibility issues and to advise clients on how such issues should be addressed before a court or tribunal so as to provide the client with the best representation possible while still meeting the lawyer's professional responsibility obligations.

### Course Outline

1. Why are rules of evidence important?
2. Burden of proof
3. Admissibility and relevance
4. Character evidence and exclusionary rules
5. Expert evidence
6. Ethical issues in the law of evidence
7. Effects of the *Canadian Charter of Rights and Freedoms* on the law of evidence

### Texts

Delisle, Stuart & Tanovich, *Evidence: Principles and Proof* (8th edition) (Thomson Carswell, 2007)

David Paciocco and Lee Stuesser, *The Law of Evidence* (6th edition) (Irwin Law, 2011)

## **LAW 706, Jurisprudence (capstone course)\* (3 s.h.)**

### **Description**

Canadian law took shape from its British and French origins, both of which were heavily indebted to a Judeo/Christian understanding of law. This course explores the philosophical, social, historical, political, and religious underpinnings of the law and legal systems. Key questions include, “what is law?” and “do we have an obligation to obey the law?” Recurrent themes include the relationship between law and morals, legal reasoning and logic, and the relationship between law and liberty. The course will challenge students to understand, first through an historic lens, the development of notions, of justice, fundamental rights of persons, and the use of force and punishment in society. Then the course will examine modern and postmodern legal theories as they impact on current legal and ethical problems in Canadian and international discourse.

### **Course Objectives**

In this course, students will:

- 1) analyze and critique the concepts of “law”, “legal systems” and “justice” in historical and modern day Canadian context;
- 2) explain the interaction and evolution of law, philosophy and religion from antiquity to the present;
- 3) explain the major schools of legal thought and the leading legal thinkers providing intellectual depth for more theoretical debates based on traditional modern theories like legal positivism and natural law and postmodern ones like feminist legal theory and critical race theory;
- 4) argue the competing positions on the justification and limits of legal rights;
- 5) critically analyze law in its social context, including how law shapes and is shaped by society
- 6) understand the philosophical basis of law;
- 7) articulate the issues in the foundations of law and assess the plausibility of alternative views;
- 8) analyze legal cases to determine the philosophical assumptions with which legal decisions are made.

### **Course Outline**

1. Introduction and survey of legal doctrine in the New Testament
2. Survey of legal doctrine in the Old Testament and in other religions
3. Legal thought in Greek and Neo- Greek thought
4. The Reformation, Luther and the law
5. Law and modernity – Natural Law, Positive Law and Legal Realism
6. Law in a postmodern world – Feminism, Critical Legal Studies and Race Theory
7. Human rights, war, terrorism and humanitarian intervention
8. Crime and punishment, reconciliation and forgiveness in the legal system
9. The just use of property and science, bioethics, and the environment
10. Christianity, justice, equity and the practice of law
11. The separation and convergence of Church, Synagogue, Mosque and State
12. Current challenges in Canadian jurisprudence relating to worldviews

**Texts**

Susan Dimock, *Classic Readings and Cases in the Philosophy of Law* (Pearson Longman, 2007)

Neil Simmonds, *Central Issues in Jurisprudence* (Sweet & Maxwell, 2008)

Peter W. Edge, *Religion and Law* (Ashgate Publishing, Ltd., 2006)

M. Kramer, *Critical Legal Theory and the Challenge of Feminism* (Rowman and Littlefield, 1995)

## LAW 707, Practice Management\* (3 s.h.)

### Description

The private practice of law is both a profession (calling) and a business; lawyers live and manage this tension on a daily basis. This course will introduce students to the business and administrative aspects of a law practice while keeping in view the duties owed by a lawyer to clients and the state. The class sessions will be highly interactive with many “hands on” experiences in the use of practice management tools and processes.

### Course Objectives

This course is designed to:

- 1) familiarize students with all aspects of the establishment and maintenance of a private practice of law and the requirements imposed by law and policy;
- 2) introduce strategies to maintain personal health and balance while in practice;
- 3) develop an understanding of what is required to enter practice;
- 4) have rich resources to turn to once they enter the profession.

### Course Outline

1. Structure of practice: sole practitioner, associations, partnership, LLP, the law corporation and the agreements governing these relationships
2. Getting started: staffing, leasing office space, equipping and fixturing, service contracts
3. Marketing: getting clients in the door
4. Staying on side: the requirements of Law Society Rules and Professional Conduct Handbook on practitioners
5. Managing work flow: time and case management systems, conflict management systems, using precedents
6. Managing time accounting: manual and automated systems
7. Managing accounting: a review legal accounting software
8. Managing space and the quest to go paperless: document management systems, archiving
9. Managing technology: computer hardware and software, document management systems, case management software, backup systems, cloud computing, virus protection, copiers/printers/scanners, phone systems
10. Managing risk: insurance, tickler systems
11. Law office economics
12. Managing self: maintaining physical, emotional, social and spiritual health

### Texts

Michael E. Gerber, Robert Armstrong, Sanford M. Fisch, *The E-Myth Attorney: Why Most Legal Practices Don't Work and What to Do About It* (Wiley, 2010)

Robert A. Hardie, *A Practical Guide to Successful Law Firm Management* (LexisNexis, 2006)

Milton W. Zwicker, *Developing and Managing a Successful Law Firm* (Carswell, 1995)

## LAW 708, Real Estate Law\* (3 s.h.)

### Description

This fundamental course will familiarize students with the mechanics and legalities of a real property transaction from its inception to post completion. The course examines the legal structure, the legal problems and the legal remedies associated with commercial transactions involving the sale, mortgaging and leasing of real estate. We will examine the agreement of purchase and sale that is the foundation of every real estate transaction, what should be included in it, how it should be drafted, how it is completed and what remedies are available for its breach. Other issues that will be examined include the two systems of land registration, real estate agents duties, mortgages and other security, development-related issues, leases, easements, title insurance, fraud and solicitor's opinions.

### Course Objectives

This course will enable students to:

- 1) understand the legal framework governing real estate transactions;
- 2) understand the basic legal duties of real estate licensees and the legal implications of the listing contract, and be aware of conflict of interest issues;
- 3) evaluate and analyze the legal significance of problems that occur between signing the contract for purchase and sale and registration of land transfer documents in the Land Title Office;
- 4) understand the range of potential remedies available to parties in contracts for sale of land;
- 5) develop practical skills through problem solving exercises in evaluating and strategizing about breaches of contract;
- 6) scrutinize a purchase and sale agreement for compliance with the relevant rules and authorities.

### Course Outline

1. Pre-contract
  - a. General - Brokers
  - b. Deposits
2. Contract formation – essential considerations
3. Special considerations for acquisition of an interest in or on land situated on Indian Reserve Land
4. Strata property transactions
5. Post-formation
  - a. Conditional contracts
  - b. The effect and implications of the contract
  - c. Misdescriptions of the contract subject-matter
  - d. Other defects of quality
  - e. Title
  - f. The *Planning Act*
  - g. The *Registry Act* and priorities
  - h. The *Land Titles Act* and priorities
6. Contract completion

- a. Time
  - b. Tender
  - c. Remedies
7. Post-contract completion
- a. Defects in quality and title
8. Conflicts of interest in real estate transactions

**Texts**

Paul Perell & Sidney Troister, *Real Property Law: Conquering the Complexities* (Irwin Law, 2003)

Barry D. Lipson, *The Art of the Real Estate Deal*, (3rd edition) (Carswell, 2011)

## Law 709, Wills and Trusts\* (3 s.h.)

### Description

Students will understand the rationale and principles for preparing wills and have an opportunity to draft one. They will also understand the consequences of not having a will. The rules governing the administration of estates, particularly, the terminal tax return, rules governing matrimonial property, the care of dependants and distribution of assets. So-called “living wills” and issues around incapacity and substitute decision-makers will also be covered. Students will become familiarized with the law of trusts and their formation, benefits, regulation and taxation. The role and responsibilities of trustees will also be addressed.

### Course Objectives

The objectives of this course are to:

- 1) explain the history of wills, estates and trusts as they developed from English law to their introduction and evolution in Canada;
- 2) explain all aspects of establishing and managing trusts;
- 3) familiarize students to the principles governing the creation, administration, variation and termination of express private trusts as well as statutory, resulting and constructive trusts;
- 4) understand the duties and powers of the trustees as well as their fiduciary responsibilities;
- 5) understand the rights and duties of trust settlors, trustees and beneficiaries under a trust and remedies for breach of trust;
- 6) familiarize students with the basic concepts of taxation of trusts;
- 7) practice interviewing a client and taking instructions for drafting a will for that person;
- 8) identify and analyze various ethical issues relating to advising clients in wills, estates and trust matters while still meeting the lawyer’s professional responsibility obligations.

### Course Outline

1. Introduction to the law of trusts
2. Creation of express trusts
3. Changing or ending a trust
4. Statutory trusts
5. Resulting trusts and constructive trusts
6. Appointment, retirement, and removal of trustees
7. Duties of trustees
8. Powers and rights of trustees
9. Breach of trust
10. “Living” wills and powers of attorney

### Texts

Chambers, McInnes, Oosterhoff & Smith, *Oosterhoff on Trusts: Text, Commentary and Cases* (7th edition) (Carswell, 2009)

E. Gillese and M. Milczynski, *Law of Trusts* (2nd edition) (Irwin Law, 2005)

James Kessler and Fiona Hunter, *Drafting Trusts and Will Trusts in Canada* (3rd edition) (LexisNexis 2011)

## APPENDIX NINE

### Summary of Faculty Qualifications

The program developers, Dr. Janet Epp Buckingham and Prof. Kevin G. Sawatsky, are currently faculty members at Trinity Western University in other departments. They may be faculty members in the proposed TWU School of Law.

#### **Janet Epp Buckingham**

Specialization: Human Rights, Constitutional Law, Religion and the Law

Education: B.A. History (Western Ontario), LL.B. (Dalhousie), LL.D. (Stellenbosch)

Professional Certifications: Member of the Law Society of Upper Canada

Professional Associations: Law Society of Upper Canada, Law and Religion Scholars Network, Fellow, Religion in Canada Institute, Study of Parliament Group.

Professional Experience: Director of Laurentian Leadership Centre and Associate Professor Trinity Western University (tenured), Director of Law and Public Policy and General Legal Counsel for the Evangelical Fellowship of Canada, Executive Director of the Christian Legal Fellowship, Researcher for Public Legal Education Association of Saskatchewan, UN representative for the World Evangelical Alliance, private practice lawyer, academic and professional presentations and publications.

#### **Kevin G. Sawatsky**

Specialization: Charities Law, Business Organizations, Employment Law, Human Rights

Education: B.Comm. (U.B.C.), M.B.A. (U.B.C.), J.D. (U.Vic.)

Professional Certifications: Member of the Law Society of British Columbia

Professional Associations: Law Society of British Columbia, Canadian Bar Association.

Professional Experience: Vice-Provost (Business), Trinity Western University Legal Counsel, TWU School of Business Professor of Law (tenured), Dean of the School of Business (2001-2008), private practice lawyer, academic and professional presentations and publications.

## APPENDIX TEN

### School of Law Building Cost Protection

<b>School of Law - Initial Facility Estimate</b>					
15-Apr-11					
<b>Room Types</b>		<b>No.</b>	<b>Size (sq.ft.)</b>	<b>Extension</b>	<b>Totals</b>
<b>Offices</b>	Dean	1	250	250	
	Reception	1	140	140	
	Faculty	15	144	2160	
	Staff and Students	4	120	480	
	Student Association Office	1	150	150	
	Articling and Career Centre	1	500	500	
	Copy & supply room	1	200	200	
	Hallways	2	175	350	
					<b>4230</b>
<b>Classrooms</b>	Lecture Theatre (200)	1	2400	2400	
	Moot Courtroom (60)	1	1100	1100	
	Large (75)	1	1200	1200	
	Medium (45)	2	900	1800	
	Breakout Rooms (15 - 20)	4	300	1200	
	Skills Training Facility	1	400	400	
	Entrance Foyer/Lobby	1	1000	1000	
	Hallways	2	450	900	
					<b>10000</b>
<b>Meeting rooms</b>	Boardroom (30)	1	500	500	
	Faculty Lounge	1	500	500	
	Collegium	1	1200	1200	
	Hallways	1	400	400	
					<b>2600</b>
<b>Law Library</b>	Office	2	120	240	
	Stacks	1	10000	10000	
	Sign-out Desk	1	300	300	
	Carrels/Cmpt. Stations	75	60	4500	
					<b>15040</b>
<b>Centre of Excellence</b>	Offices	2	120	240	
	Meeting room	1	160	160	
	Library	1	480	480	
					<b>880</b>

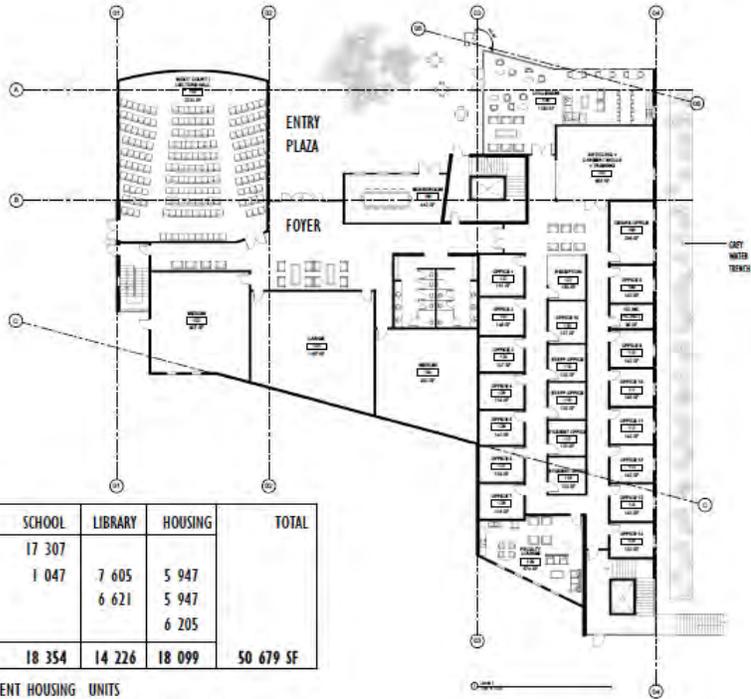
<b>Infrastructure</b>	Men's Washrooms	3	150	450	
	Women's Washrooms	3	230	690	
	Janitorial Closets	3	75	225	
	Communications	3	75	225	
	Mechanical Room	1	450	450	
	Electrical Room	1	100	100	
	Hallways	3	250	750	
					<b>2890</b>
					<b>35640</b>
<b>Initial Cost Estimate</b>					
	Cost Component		Sq.Ft.	\$/Sq.Ft.	Amount
	Construction		35640	\$250	\$8,910,000
	Professional Fees	15%			\$1,336,500
	Permits				\$220,000
	Furnishings				\$400,000
	Landscaping				\$60,000
	Telecom & Networking				\$200,000
	Contingency	20%			\$2,781,625
	GST	3.5%			\$486,784
					<b>\$14,394,909</b>

# APPENDIX ELEVEN

## Preliminary Concept Drawings



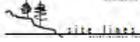
TWU - SCHOOL OF LAW



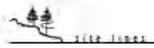
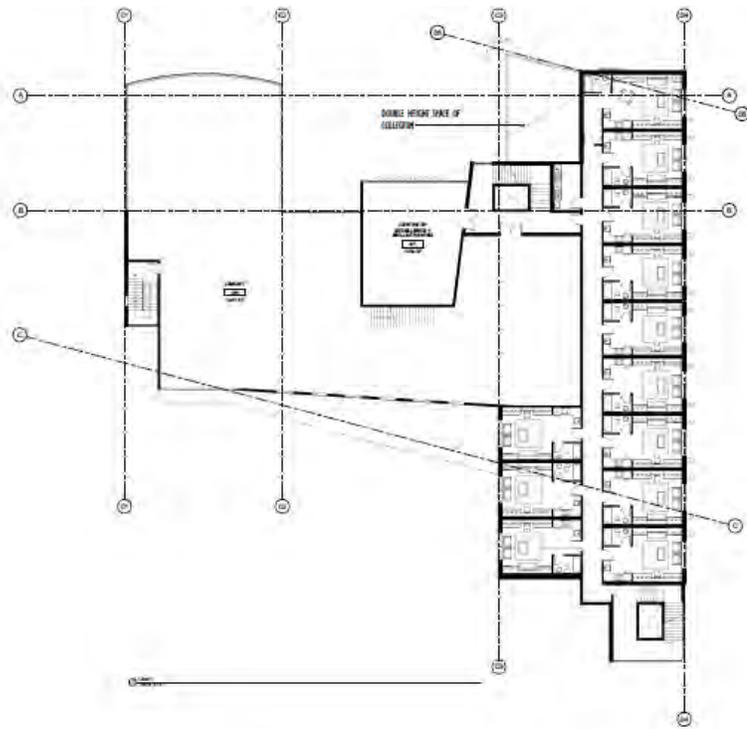
	SCHOOL	LIBRARY	HOUSING	TOTAL
LEVEL ONE :	17 307			
LEVEL TWO :	1 047	7 605	5 947	
LEVEL THREE :		6 621	5 947	
LEVEL FOUR :			6 205	
TOTALS :	18 354	14 226	18 099	50 679 SF

37 MATURE STUDENT HOUSING UNITS

STAIRWELLS INCLUDED IN LEVEL ONE AREA CALCULATIONS. NORTH STAIRWELL = 347 SF, SOUTH STAIRWELL = 346 SF

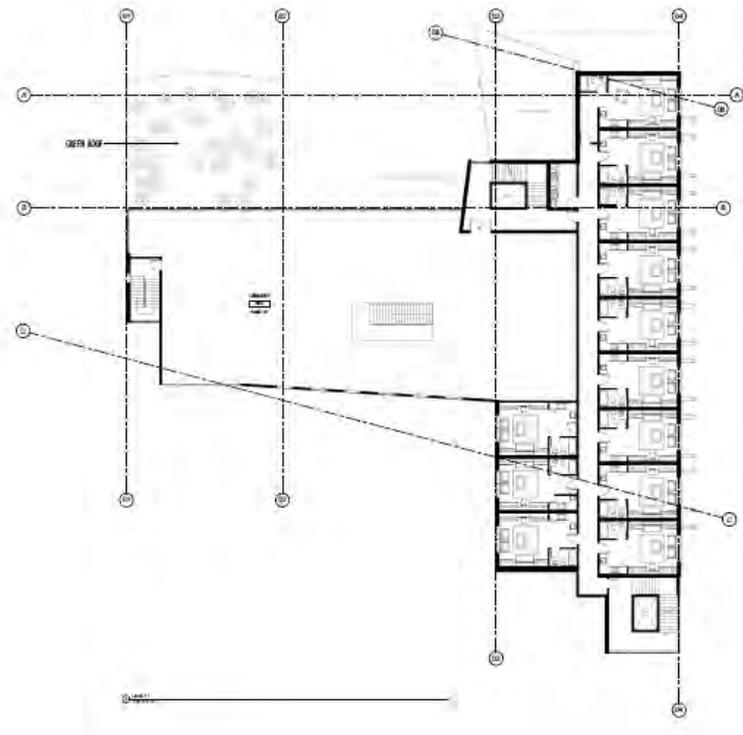


TWU - SCHOOL OF LAW



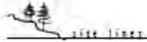
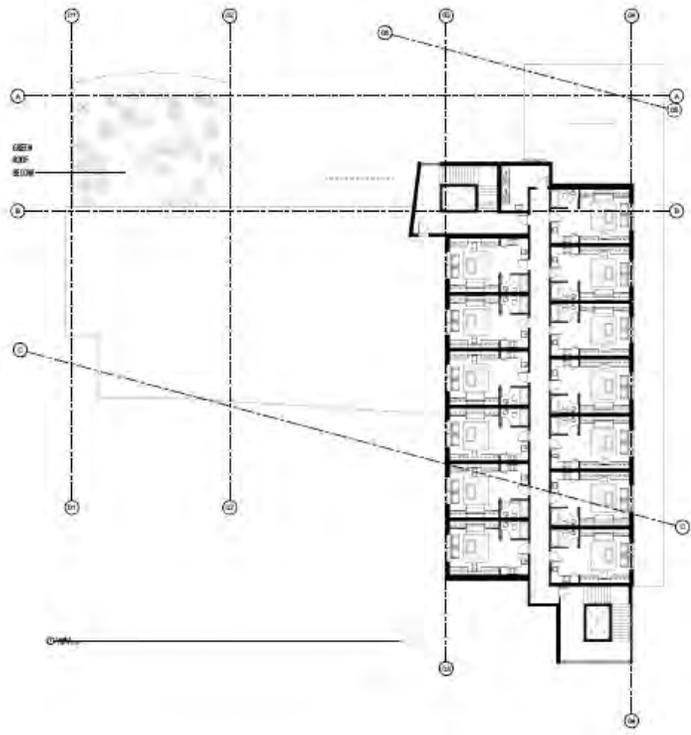
site plan

TWU - SCHOOL OF LAW



site lines

TWU - SCHOOL OF LAW



TWU - SCHOOL OF LAW

## APPENDIX TWELVE

### Canadian Academic Law Library Standards

Approved by the  
Canadian Academic Law Library Directors Association  
May 5, 2007

#### Preamble

CALLD Standards for Law Libraries aim at providing general provisions in the areas of administration, staffing, services, collections and facilities. These standards shall adhere to the provisions of the *Access to Information Act* (R.S.C., 1985, c. A-1) and shall be interpreted in a manner that respects and supports academic freedom.

#### General Provisions

- a) An academic law library shall be an active and responsive force in the educational life of the law school. A law library's effective support of the school's teaching, scholarship, research and service programs requires a direct, continuing and informed relationship with the faculty, students and administration on behalf of the law school.
- b) A law library shall have sufficient financial resources to support the law school's teaching, scholarship, research and service programs.
- c) A law library shall keep abreast of technology and adopt it when appropriate.

#### Administration

- a) An academic law library shall have sufficient administrative autonomy to direct its development of the law library and to control the use of its resources.
- b) The director of the law library, in consultation with the Faculty of Law and University Librarian, as appropriate, shall determine law library policy.
- c) The director of the law library is responsible for the selection and retention of personnel; the provision of law library services; and the collection development and maintenance.
- d) The budget of the law library may be determined as part of the law school budget or, according to institutional policy, allocated under the university library budget, but it should be administered by the law library director.

*Note. This standard requires that decisions that materially affect the law library be enlightened by the needs of the law school educational program. This envisions law library participation in University library decisions that may affect the law library. This standard shall not be interpreted to restrict continuing support, collaboration and co-operation with University library initiatives designed to enhance institution-wide access to information services and collections.*

## Director of the Law Library

- a) The law library shall be administered by a director whose principal responsibility is the management of the law library.

*Note: It is not a violation of this standard for the director of the law library also to have other administrative or teaching responsibilities, provided sufficient resources and staff support are available to ensure effective management of law library operations.*

- b) The director of the law library shall have a degree in Library or Information Science. A law degree and experience in academic library administration are desirable.
- c) The director of the law library shall be selected according to the institutional policies of the University, but opportunity must be provided for input by the dean and faculty of the law school.

## Personnel

The law library shall have a competent staff, sufficient in number to provide appropriate library and informational resource services.

*Note: Factors relevant to the number of librarians and informational resource staff needed to meet this standard include the following: the number of law faculty and law students; the variety and number of research and teaching programs (including civil and common law programs as well as graduate programs); the level of informational resource and instructional support provided to faculties and departments outside the law school; the level of access and services provided to non-academic users; the growth rate of the collection.*

## Services

- a) The law library shall provide the appropriate range and depth of reference, instructional, bibliographic and other services to meet the legal information needs of members of the University community. Appropriate services include reference services, instruction in legal research techniques and information literacy, access services (cataloging, indexing, research guides), interlibrary loan and document delivery, and producing library publications (including web sites).
- b) Where the law library serves users outside the University community, the library's mandate shall make clear the levels of informational and instructional service provided to its different user groups.

## Collection

- a) The law library shall provide access to a core collection of essential materials. The appropriate mixture of collection formats depends on the needs of the library and its clientele. The core collection of a Canadian academic law library shall consist of the following:
  - i. all reported Supreme Court of Canada and Federal Court decisions as well as the reported decisions of the appellate court of each province and territory;
  - ii. all federal, provincial and territorial statute revisions and annual volumes;

- iii. all federal, provincial and territorial regulations;
  - iv. all international treaties to which the government of Canada is a signatory; those federal and provincial administrative decisions appropriate to the teaching, scholarly and research needs of the University community;
  - v. those federal and provincial administrative decisions appropriate to the teaching, scholarly and research needs of the University community;
  - vi. the legislative materials (hansard, debates, bills) of the Parliament of Canada and of the province in which the law school is located;
  - vii. significant secondary works (journals, treatises, texts and monographs) necessary to support the programs of the law school and the University community; and
  - viii. those citators, periodicals indexes, bibliographies and encyclopedias necessary to identify primary and secondary legal information sources and to update primary legal information sources.
- b) In addition to the core collection of essential material, a law library shall also provide a collection that through ownership or reliable access:
- i. meets the research needs of the law school's students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
  - ii. contributes to the teaching, scholarship, research and service interests of the faculty;
  - iii. serves the law school's special teaching, scholarship, research and service objectives; and
  - iv. meets the University community's needs for interdisciplinary law-related materials.
- c) A law library shall formulate and periodically update a written plan for the development of the collection.
- d) All materials necessary to support the programs of a law school shall be complete and current and in sufficient quantity or with sufficient access to meet faculty and student needs. The law library shall ensure continuing access to all information necessary to the law school's programs.
- i. In order to support and encourage the instruction and research of students and faculty, the law library shall facilitate access to a wide array of materials including central collections, databases, jointly held special collections, interdisciplinary materials and other types of off-side auxiliary resources.
  - ii. Agreements for sharing information resources, except for the core collection, satisfy the Collection standard if:
    - a. the agreements are in writing; and

- b. the agreements provide faculty and students with the ease of access and availability necessary to support the programs of the law school.

## Facilities

- a) The physical facilities for the law library shall be sufficient in size, location and design in relation to the law school's programs and enrollment to accommodate law school students and faculty, and the law library's services, collections, staff, operations and equipment.

*Note: Off-site storage for non-essential library materials is acceptable so long as the material is organized and readily accessible in a timely manner.*

- b) The law library shall provide a variety of work spaces to accommodate quiet study, research, collaborative learning and access to technology.
- c) The law library must provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection. Such equipment may include:
  - i. microform reader(s)/printer(s);
  - ii. computer hardware and software (including infrastructure support and services) in sufficient quantity and of acceptable currency to support the teaching and research programs of law students and faculty; and,
  - iii. audio-visual equipment relevant to the formats in the collection.

## APPENDIX THIRTEEN

### Position Descriptions – Dean of School of Law, Director of the Law Library, Faculty Member

#### DEAN OF SCHOOL OF LAW Position Description

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The Dean of the School of Law will be a dynamic and proactive leader. His/her role includes initiating, shaping, implementing, supervising, and evaluating programs in the School of Law as well as managing its day-to-day operations. She/he will possess the commitment, personal characteristics, insights and abilities not only of a strong faculty member but also those of an effective administrative and organizational leader. The Dean oversees the work of program directors, faculty and staff, and reports to the Provost and/or his/her designate. The Dean will responsibly represent and implement the academic and administrative policies and decisions of the University. In this context, the successful candidate will:

- Serve as an effective spokesperson for the School of Law and University in legal, academic and community circles;
- Demonstrate a commitment to academic freedom in a faith affirming academic environment;
- Effectively represent the academic administration and institutional matters to the faculty and report on faculty matters to the academic administration;
- Provide a servanthood model of leadership in setting and implementing School of Law goals and managing to institutional and Board policies;
- Demonstrate a collegial style of leadership and governance with departments and faculty members under his/her jurisdiction;
- Promote strategic planning and assessment on behalf of the School of Law's programs and personnel annually and in accord with institutional planning initiatives;
- Provide and prepare annual professional development reviews/reports for each faculty member in accord with the Office of the Provost;
- Articulate and engage others in the focused vision of Trinity Western University's mission and the integration of Christian faith and learning in disciplines beyond his/her own;
- Unreservedly adhere to the University's Statements of Faith and Community Covenant; and
- Exemplify the characteristics and qualifications of a leader with a mature Christian faith;

## **JOB DESCRIPTION**

### **1. Academic Leadership**

The Dean will provide academic leadership to the School of Law including:

- a. Initiate and implement new programs and courses in the School of Law in conjunction with faculty, the Office of the Provost, and University Councils;
- b. Represent the School on the Graduate Academic Council, the Dean's Council, and on other committees, as appropriate;
- c. Represent School of Law's interests within the broader context of the University's priorities and the University's policies, goals, and priorities to the School of Law;
- d. Promote, monitor, evaluate, and provide support for the work of the faculty with respect to teaching, scholarship and research, and service to the University community;
- e. Promote mission fulfillment, the achievement of the University's core values, and the integration of faith and learning in all aspects of the School of Law's operations;
- f. Effectively articulate University standards and policies both orally and in writing;
- g. Monitor course syllabi and their implementation as well as how students are evaluated, and work with the faculty in developing new course syllabi;
- h. Direct School of Law reviews as determined by the Provost;
- i. Plan appropriate professional development sessions and stimulate academic activities such as faculty colloquia in cooperation with the Office of Research and Faculty Development;
- j. Demonstrate academic expertise in an area encompassed by the School of Law by teaching a prescribed number of courses per year as approved by the Provost or his/her designate.

### **2. Staffing and Personnel**

The Dean will enable all faculty and staff in the School of Law to exercise their duties effectively:

- a. Supervise and evaluate all teaching in the School of Law, assisting instructors to improve their teaching skills;
- b. Review and assess annual professional development agreements with all full-time faculty;
- c. Review and assess, for the appropriate committees, all faculty applying for tenure, promotion, sabbatical leaves, and research funding within the School of Law;
- d. Meet regularly with and provide supervision to program directors, and work with a faculty assistant in a spirit of warm interpersonal relations;
- e. Cooperate with the Provost's Office when recruiting and/or appointing all full and part-time faculty;
- f. Hire and supervise any Assistant/Associate Deans, teaching assistants and other School of Law support staff; and

- g. Lead the recruitment and selection of faculty members for the School of Law and provide advice to the Academic Unit of the University on offers of employment to the faculty of the School of Law.

### 3. **General Administration**

The Dean will provide effective and efficient administration of all matters pertaining to the operation of the academic departments in her/his School:

- a. Create and articulate a clear vision for the School of Law;
- b. Administer relevant academic, faculty and staff policies;
- c. Evaluate course viability (student demand and enrolment), student evaluations of courses, and grade distribution reports, and, when desirable, take corrective action;
- d. Prepare each semester's course schedule in conjunction with the faculty;
- e. Prepare and manage operating, capital, and salary budgets for the School of Law (envelope system), including the supervision and approval of purchases;
- f. Give general oversight to the usage and development of specialized departmental teaching facilities as needed;
- g. Handle final student appeals pertaining to grades, dropping courses, changes in final examination schedules, exemption forms for graduation requirements, student discipline regarding academic dishonesty, and student complaints about faculty as it relates to competence; and
- h. Recommend assignment of faculty and staff office space.

### 4. **External Relations**

The Dean will provide effective leadership and show willingness to work with external relations and the development of fundraising initiatives:

- a. Have networking experience with other law schools and faculties, agencies, and organizations and have knowledge of the funding structures in Canada
- b. Serve as the faculty lead for strategic planning, faculty recruitment, and fundraising.
- c. Connect with influential legal and business leaders such that the School of Law remains well grounded in marketplace realities and well positioned within the marketplace.

## **TERM OF REFERENCE**

### **Term of Office**

The Dean must be qualified to teach in one or more of the academic disciplines in the School of Law. Initial appointment is for a five-year term with renewals every three years following. The Dean will preferably have an earned doctorate in his or her discipline or a minimum of a LLM or other relevant Masters degree and significant academic and professional experience. Eight to ten years of senior leadership experience is preferred. Leading candidates will be interviewed by a

President's/Provost's Committee, a committee of faculty representatives, a committee of student representatives, and a committee of members of the Board of Governors.

### **Salary**

The salary scale will be based on the level achieved on the faculty salary scale plus an administrative stipend.

### **Campus Responsibilities**

The Dean will be on campus between August 15 and May 30 unless leave has been authorized by the Provost. He/she will take regular holidays between June 1 and August 14 but will periodically check in to her/his office to ensure that necessary administrative work is completed during the summer months. This will be particularly important when there are vacancies in full-time or part-time positions that may be filled before the semester begins.

## **DIRECTOR OF THE LAW LIBRARY**

### **Position Description**

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#### **Position Summary**

Reporting to the Dean of the School of Law and a member of the TWU faculty, the Director of the Law Library gives leadership in developing, implementing and monitoring the Law Library mission, budget and policies. The Director will in particular develop and manage the Law Library collections policy. The Director will also manage all aspects of the Law Library operations including personnel, technology, purchasing and facilities, and will support the overall School of Law's fundraising objectives.

#### **Duties and Responsibilities**

1. Establish policies, procedures and systems that produce an effective Law Library operation.
2. Acquire, organize, and process the library resources necessary to support the curriculum needs of the School of Law.
3. Plan, coordinate and implement budgets required to ensure an efficient Law Library operation.
4. Develop, coordinate, and implement long range plans related to future needs for Law Library services.
5. Hire, direct, and evaluate personnel required to carry out various Law Library related functions.
6. Prepare, write, and submit reports on progress in meeting Law Library goals.
7. Establish and implement programs for in-service development of Law Library personnel.
8. Promote, participate, and contribute to Law Library cooperation with other law schools and the legal community.
9. Investigate, evaluate, and implement new technologies which enhance Law Library services.
10. Promote, solicit, and facilitate communication with faculty colleagues about the various facets of Law Library operations.
11. Support, contribute to, and encourage the mission and goals of the University.
12. Provide leadership as a cooperating team member to ensure the performance of duties essential to an efficient Law Library operation.

#### **Supervision**

Given: Assistant librarians, staff

Received: Dean of School of Law, Provost

#### **Job Standards/Requirements**

Education: Law Degree, Master's Degree in Library and Information Science.

Experience: Substantial relevant experience including several years in a senior administrative role in a law library.

Personal: Warm-hearted, committed, dedicated, and mature Christian. Firm commitment to TWU's mission, covenant commitment, and statement of faith. Impeccable character and reputation. Positive and progressive outlook in a busy and challenging environment.

Salary

Remuneration will be commensurate with qualifications and experience.

## POSITION DESCRIPTION: FACULTY MEMBER, SCHOOL OF LAW

### Position Summary

A faculty member of the School of Law will be a dynamic and proactive leader. She/he will possess the commitment, personal characteristics, insights and abilities not only of a strong faculty member, including demonstrated ability to research and publish, and to teach students at the law school level.

### Duties & Responsibilities

1. Teach courses as assigned by the Dean of the School of Law;
2. Engage in scholarly activity such as research and writing, organizing conferences and symposia, and giving scholarly papers. Contribute generally to the scholarly life of the School of Law and Trinity Western University.
3. Serve on School of Law and Trinity Western University committees as assigned.
4. Advise students.

### Job Standards & Requirements

*Education:* LL.M. or equivalent, Doctorate preferred.

*Experience:* Some teaching experience at law school preferred.

*Skills:* Able to teach courses. Demonstrated ability to research and publish.

*Personal:* Warm-hearted, dedicated, committed and mature evangelical Christian with a keen desire to serve in family, church, work and community. A firm commitment to TWU's mission, Statement of Faith and Community Covenant. Impeccable character and reputation, a pleasant personality with a positive and friendly attitude in the midst of a very busy and challenging environment.

### Supervision

*Received:* This position reports to the Dean of the School of Law.

*Given:* None

### Campus Responsibilities

Faculty members are required to be on campus between August 15 and May 30 unless leave has been authorized by the Dean. He/she will take regular holidays between June 1 and August 14 but will periodically check in to her/his office to ensure that necessary administrative work is completed during the summer months.

## APPENDIX FOURTEEN

### Analysis of Teaching Requirements

YEAR 1					
FALL			SPRING		
Course No.	Course Name	Notes	Course No.	Course Name	Notes
LAW 501	Intro to Law	Team taught			
LAW 502	Contract Law	Section A	LAW 502	Contract Law	Section A
LAW 502	Contract Law	Section B	LAW 502	Contract Law	Section B
LAW 503	Tort Law	Section A	LAW 503	Tort Law	Section A
LAW 503	Tort Law	Section B	LAW 503	Tort Law	Section B
LAW 504	Constitutional Law	Section A	LAW 504	Constitutional Law	Section A
LAW 504	Constitutional Law	Section B	LAW 504	Constitutional Law	Section B
LAW 505	Property Law	Section A	LAW 505	Property Law	Section A
LAW 505	Property Law	Section B	LAW 505	Property Law	Section B
LAW 506	Criminal Law	Section A	LAW 506	Criminal Law	Section A
LAW 506	Criminal Law	Section B	LAW 506	Criminal Law	Section B
LAW 507	Funds of Canadian Law	Section A	LAW 508	Intro to Practice Skills	Section A
LAW 507	Funds of Canadian Law	Section B	LAW 508	Intro to Practice Skills	Section B

#### Year One Teaching Requirements:

- Six Full-Time Faculty
- One Adjunct Faculty (Fundamentals of Canadian Law)

Assumes in Year One that full-time faculty will develop courses. As well, with the exception of the Dean and adjunct faculty members, each full-time faculty member will teach four classes in Year One. The Dean and adjunct faculty members will teach two classes each in Year One.

YEAR 2					
FALL			SPRING		
Course No.	Course Name	Notes	Course No.	Course Name	Notes
LAW 501	Intro to Law	Team taught			
LAW 502	Contract Law	Section A	LAW 502	Contract Law	Section A
LAW 502	Contract Law	Section B	LAW 502	Contract Law	Section B
LAW 503	Tort Law	Section A	LAW 503	Tort Law	Section A
LAW 503	Tort Law	Section B	LAW 503	Tort Law	Section B
LAW 504	Constitutional Law	Section A	LAW 504	Constitutional Law	Section A
LAW 504	Constitutional Law	Section B	LAW 504	Constitutional Law	Section B
LAW 505	Property Law	Section A	LAW 505	Property Law	Section A
LAW 505	Property Law	Section B	LAW 505	Property Law	Section B
LAW 506	Criminal Law	Section A	LAW 506	Criminal Law	Section A
LAW 506	Criminal Law	Section B	LAW 506	Criminal Law	Section B

LAW 507	Funds of Canadian Law	Section A	LAW 508	Intro to Practice Skills	Section A
LAW 507	Funds of Canadian Law	Section B	LAW 508	Intro to Practice Skills	Section B
LAW 601	Ethics and Professionalism		LAW 601	Ethics and Professionalism	
LAW 702	Administrative Law		LAW 702	Administrative Law	
LAW 613	Alt Dispute Resolution		LAW 612	Advanced Advocacy	
LAW 703	Business Organizations		LAW 703	Business Organizations	
LAW 704	Civil Procedure		LAW 704	Civil Procedures	
LAW 618	Conflict of Laws		LAW 617	Commercial Law	
LAW 621	Employment and Labour Law		LAW 705	Evidence	
LAW 705	Evidence		LAW 626	Human Rights and Discrimination	
LAW 623	Family Law		LAW 628	Insurance Law	
LAW 629	Intellectual Property Law		LAW 630	International Law	
LAW 634	Advanced Negotiation		LAW 708	Real Estate	
LAW 708	Real Estate		LAW 635	Remedies	
LAW 709	Wills and Trusts		LAW 638	Tax Law	

Year Two Teaching Requirements:

- 10 Full-Time Faculty
- Six Adjunct Faculty (one course per instructor)

Assumes faculty teaching a first year course also teach one section of a second or third year course. Also assumes faculty teaching only second or third year students will teach four sections.

YEAR 3					
FALL			SPRING		
Course No.	Course Name	Notes	Course No.	Course Name	Notes
LAW 501	Intro to Law	Team taught			
LAW 502	Contract Law	Section A	LAW 502	Contract Law	Section A
LAW 502	Contract Law	Section B	LAW 502	Contract Law	Section B
LAW 503	Tort Law	Section A	LAW 503	Tort Law	Section A
LAW 503	Tort Law	Section B	LAW 503	Tort Law	Section B
LAW 504	Constitutional Law	Section A	LAW 504	Constitutional Law	Section A
LAW 504	Constitutional Law	Section B	LAW 504	Constitutional Law	Section B
LAW 505	Property Law	Section A	LAW 505	Property Law	Section A
LAW 505	Property Law	Section B	LAW 505	Property Law	Section B
LAW 506	Criminal Law	Section A	LAW 506	Criminal Law	Section A
LAW 506	Criminal Law	Section B	LAW 506	Criminal Law	Section B
LAW 507	Funds of Canadian Law	Section A	LAW 508	Intro to Practice Skills	Section A
LAW 507	Funds of Canadian Law	Section B	LAW 508	Intro to Practice Skills	Section B
LAW 602	Ethics and Professionalism		LAW 602	Ethics and Professionalism	
LAW 611	Aboriginal Law		LAW 702	Administrative Law	
LAW 702	Administrative Law		LAW 612	Advanced Advocacy	

LAW 703	Business Organizations		LAW 613	Alt Dispute Resolution	
LAW 615	Charities and Not-for-Profits Law		LAW 614	Bankruptcy and Insolvency Law	
LAW 704	Civil Procedures		LAW 703	Business Organizations	
LAW 616	Client Relations and Interviewing Skills		LAW 704	Civil Procedures	
LAW 617	Commercial Law		LAW 618	Conflict of Laws	
LAW 619	Consumer Law		LAW 622	Environmental Law	
LAW 620	Debtor and Creditor		LAW 705	Evidence	
LAW 621	Employment and Labour Law		LAW 623	Family Law	
LAW 622	Environmental Law		LAW 627	Immigration and Refugees Law	
LAW 705	Evidence		LAW 628	Insurance Law	
LAW 624	Financial Institutions		LAW 630	International Law	
LAW 625	Health and Elder Care		LAW 706	Jurisprudence	
LAW 629	Intellectual Property Law		LAW 632	Municipal Law	
LAW 706	Jurisprudence		LAW 633	Natural Resource Law	
LAW 631	Landlord and Tenant Law		LAW 707	Practice Management	
LAW 634	Advanced Negotiation		LAW 708	Real Estate	
LAW 708	Real Estate		LAW 637	Securities Law	
LAW 638	Tax Law		LAW 639	Advanced Tax Law	
LAW 709	Wills and Trusts				

### Year Three Teaching Requirements:

- 12 Full-time Faculty
- 14 Adjunct Faculty (one course per instructor)

## APPENDIX FIFTEEN

### Alignment with Federation of Law Societies Canada National Standards

#### Part 1: Proposed Learning Resources

*1.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

- This proposal is for a class size of 60 students per year over 3 years. We are planning for a full-time faculty complement of 12 plus approximately 14 adjunct faculty members. We also anticipate having a Dean with support staff, and two additional staff members, including an Articling and Career Centre Coordinator. We anticipate having a Director of the Law Library plus three additional staff.
- As this is a new program, we cannot give specifics of the faculty members. A draft position description for a Faculty Member is found in Appendix Thirteen. In general, the preference is for all faculty members, including adjunct faculty, to have at least an LL.M. or equivalent as well as significant practice experience.
- The proposal is for a class size of 60 full-time equivalent students in a J.D. program each of three years. We expect some attrition so when the program is in its third year, we anticipate a class of 170.
- The proposed School of Law will have an Articling and Career Centre to facilitate practicum placements and articling positions. The university has additional student support services, including a Wellness Centre, counselling services, financial aid, student life, food services and housing services. The library has access to interlibrary loans. There is a bookstore on campus. The campus is well equipped with sports facilities and fitness centres. IT support is also available to students and these services will be enhanced in anticipation of the opening of the School of Law.

*1.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.*

- The proposed School of Law will be located in a new building on campus. Concept drawings for this building are found at Appendix Eleven.
- The proposed building includes a large lecture theatre, a moot court room, a large classroom, two medium-sized classrooms, six breakout rooms, the library, an executive meeting room, a skills-training facility, student commons, a student collegium, an Articling and Career Centre, and space allocated for student associations. An outdoor lounge area is available on the third floor.

- The proposed building is on three floors, accessible by elevator. The front door is at ground level.

*1.3 The law school has adequate information and communication technology to support its academic program.*

- With the development of the School of Law as a new undertaking, it will be on the forefront of technology. Wireless internet is available across campus for all students and faculty. Most students bring their own laptop computers to university, including tablet computers. A section of the library will be equipped with computers for student use but it is anticipated that these will not be in high demand.
- TWU has shared IT services across all Schools and Faculties. Students and faculty have access to a “Helpdesk” function that gives fairly rapid service for IT difficulties. As noted above, it is anticipated that the IT department will enhance its support complement in anticipation of additional students and faculty on campus.

*1.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*

- A position description for a Director of the Law Library has been included at Appendix Fourteen. We anticipate hiring an Associate Law Librarian and two Law Library Support Staff.
- The first Director of the Law Library will have significant input in developing the collection and collections policies. The Director will adhere to the Canadian Academic Law Library Directors Association’s standards.
- An initial budget of \$2 million has been established for the creation of the Law Library with \$1,750,000 allocated for monographs and \$250,000 for electronic databases. (It is recognized that electronic resources will require annual funding for licence renewals with a component allocated for rate increases). The university currently has subscriptions for several electronic databases that will be used by law students, including Quicklaw, JSTOR and EBSCOhost. TWU is cognizant that this budget is an estimate only and may need to be adjusted as the acquisition phase proceeds.
- In addition to law library staff, the university library staff are also available to support faculty, students and other library users. The university has reciprocal COPPUL and inter-library loan agreements with most universities across Canada.

## **Part 2**

TWU is applying to have the program approved under the Program Approval Model.

## Competency Requirements

National Requirements	TWU School of Law proposal fulfillment
<b>1. Skills Competencies</b>	
1.1 Problem-Solving	Problem-solving is a standard skill taught in first year substantive courses, LAW 502, Contract Law, LAW 503, Tort Law, LAW 504, Constitutional Law, LAW 505, Property Law, LAW 506, Criminal Law. It is reinforced in upper year substantive courses.
1.2 Legal Research	Legal research skills are a significant component of LAW 507, Fundamentals of Canadian Law, which is taught in first year. These skills are reinforced in upper year courses.
1.3 Oral and Written Legal Communication	Oral and written legal communication are a significant component of LAW 508, Introduction to Practice Skills and the Practice of Law, which is taught in first year. These skills are reinforced all law school courses. Certain upper year electives particularly focus on these skills, including LAW 612, Advanced Advocacy, LAW 613, ADR, and LAW 642, External Moots.
<b>2. Ethics and Professionalism</b>	Fulfilled through LAW 508, Practice Skills and the Practice of Law and LAW 602, Ethics and Professionalism. All faculty members will be encouraged to include issues of ethics and professionalism in each course.
<b>3. Substantive Legal Knowledge</b>	
3.1 Foundations of Law	Fulfilled through LAW 507, Fundamentals of Canadian Law, a required first year course. Note that LAW 706, Jurisprudence, is a required capstone course that is intended to draw together substantive legal knowledge through a philosophical framework.
3.2 Public Law of Canada	<p>The Public Law of Canada is taught through a number of required courses:</p> <ul style="list-style-type: none"> <li>• LAW 504, Constitutional Law, is a first year course and teaches federalism and the distribution of legislative powers, the Charter of Rights and Freedoms and human rights principles. The rights of Aboriginal peoples of Canada is addressed in LAW 504, LAW 507, Fundamentals of Canadian Law (a required first year course) and LAW 708, Real Estate (a required upper year course).</li> </ul>

	<p>Students may also take LAW 611, Aboriginal Law, an upper year elective.</p> <ul style="list-style-type: none"> <li>• Canadian criminal law is taught in LAW 506, Criminal Law, a required first year course.</li> <li>• The principles of Canadian administrative law is taught in LAW 702, a required upper year course.</li> </ul>
<p>3.3 Private Law Principles</p>	<p>Private law principles are taught through a number of required courses:</p> <ul style="list-style-type: none"> <li>• LAW 502, Contract Law, a required first year course, teaches the principles of contract law.</li> <li>• LAW 503, Tort Law, a required first year course, teaches the principles of tort law.</li> <li>• LAW 505, Property Law, a required first year course, teaches the principles of property law. LAW 708, a required upper year course, teaches the principles of property transactions.</li> <li>• LAW 703, Business Organizations, a required upper year course, teaches the principles of legal and fiduciary concepts in commercial relationships. Students also have a number of upper year electives that also address these concepts: LAW 614, Bankruptcy and Insolvency Law; LAW 617, Commercial Law; LAW 620, Debtor and Creditor Law; LAW 637, Securities Law; LAW 638, Tax Law; and LAW 639, Advanced Tax Law.</li> </ul>

## APPENDIX SIXTEEN

### Universities Outside Canada Accepting Canadian Law Students

Country	University	Number of Cdn law students (if known)	Accepts Cdn law students (no number)
Australia	Bond University	150	
Australia	James Cook University		yes
Australia	Macquarie University		yes
Australia	Monash University		yes
Australia	University of Melbourne		yes
Australia	University of Newcastle		yes
Australia	University of Queensland		yes
Australia	University of Sydney		yes
England	City University of London		yes
England	Kingston University		yes
England	Middlesex University		yes
England	Newcastle University		yes
England	Oxford Brookes University		yes
England	Queen Mary University of London		yes
England	University of Birmingham		yes
England	University of Bristol		yes
England	University of East Anglia		yes
England	University of Essex	9	
England	University of Kent		yes
England	University of Leicester	216	
England	University of Lincoln		yes
England	University of Liverpool		yes
England	University of Southampton		yes
England	University of Sussex		
Scotland	University of Dundee	10	
Scotland	University of Stirling		yes

Wales	Aberystwyth University		yes
Wales	Cardiff University	40	
Wales	Swansea University		yes

# **Trinity Western University**

## **Community Covenant Agreement**

# TRINITY WESTERN UNIVERSITY

## Community Covenant Agreement

### Our Pledge to One Another

Trinity Western University (TWU) is a Christian university of the liberal arts, sciences and professional studies with a vision for developing people of high competence and exemplary character who distinguish themselves as leaders in the marketplaces of life.

#### *1. The TWU Community Covenant*

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

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

The community covenant is a solemn pledge in which members place themselves under obligations on the part of the institution to its members, the members to the institution, and the members to one another. In making this pledge, members enter into a contractual agreement and a relational bond. By doing so, members accept reciprocal benefits and mutual responsibilities, and strive to achieve respectful and purposeful unity that aims for the advancement of all, recognizing the diversity of viewpoints, life journeys, stages of maturity, and roles within the TWU community. It is vital that each person who accepts the invitation to become a member of the TWU community carefully considers and sincerely embraces this community covenant.

#### *2. Christian Community*

The University's acceptance of the Bible as the divinely inspired, authoritative guide for personal and community life<sup>1</sup> is foundational to its affirmation that people flourish and most fully reach their potential when they delight in seeking God's purposes, and when they renounce and resist the things that stand in the way of those purposes being fulfilled.<sup>2</sup> This ongoing God-enabled pursuit of a holy life is an inner transformation that actualizes a life of purpose and eternal significance.<sup>3</sup> Such a distinctly Christian way of living finds its fullest expression in Christian love, which was exemplified fully by Jesus

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The Biblical passages cited in this document serve as points of reference for discussion or reflection on particular topics. TWU recognizes the necessity of giving careful consideration to the complexities involved in interpreting and applying biblical passages to contemporary issues and situations.

<sup>1</sup> Deuteronomy 6:4-9; Psalm 19:7-11; 2 Timothy 3:16

<sup>2</sup> Matthew 6:31-33; Romans 8:1-17; 12:1-2; 13:11-14; 16:19; Jude 20-23; 1 Peter 2:11; 2 Corinthians 7:1.

<sup>3</sup> 2 Peter 1:3-8; 1 Peter 2:9-12; Matthew 5:16; Luke 1:74-75; Romans 6:11-14, 22-23; 1 Thessalonians 3:12-13, 4:3, 5:23-24; Galatians 5:22; Ephesians 4:22-24, 5:8.

Christ, and is characterized by humility, self-sacrifice, mercy and justice, and mutual submission for the good of others.<sup>4</sup>

This biblical foundation inspires TWU to be a distinctly Christian university in which members and others observe and experience truth, compassion, reconciliation, and hope.<sup>5</sup> TWU envisions itself to be a community where members demonstrate concern for the well-being of others, where rigorous intellectual learning occurs in the context of whole person development, where members give priority to spiritual formation, and where service-oriented citizenship is modeled.

### ***3. Community Life at TWU***

The TWU community covenant involves a commitment on the part of all members to embody attitudes and to practise actions identified in the Bible as virtues, and to avoid those portrayed as destructive. Members of the TWU community, therefore, commit themselves to:

- cultivate Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice<sup>6</sup>
- live exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity<sup>7</sup>
- communicate in ways that build others up, according to their needs, for the benefit of all<sup>8</sup>
- treat all persons with respect and dignity, and uphold their God-given worth from conception to death<sup>9</sup>
- be responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society<sup>10</sup>
- observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce<sup>11</sup>
- exercise careful judgment in all lifestyle choices, and take responsibility for personal choices and their impact on others<sup>12</sup>
- encourage and support other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another.<sup>13</sup>

In keeping with biblical and TWU ideals, community members voluntarily abstain from the following actions:

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<sup>4</sup> Matthew 22:37-40; 1 Peter 5:5; Romans 13:8-10; 1 John 4:7-10; Philippians 2:1-5; 1 Corinthians 12:31b-13:8a; Romans 12:1-3, 9-10; John 15:12-13, 17; 1 John 3:10-11, 14-16; Ephesians 5:1-2,21.

<sup>5</sup> From TWU's "Envision the Century" Strategic Directions Document, p 5 ("Ends").

<sup>6</sup> Galatians 5:22-24; Colossians 3:12-17; Isaiah 58:6-8; Micah 6:8.

<sup>7</sup> Proverbs 12:19; Colossians 3:9; Ephesians 4:25; Leviticus 19:11; Exodus 20:16; Matthew 5:33-37.

<sup>8</sup> Ephesians 4:29; Proverbs 25:11; 1 Thessalonians 5:11.

<sup>9</sup> Genesis 1:27-28; Psalm 139:13-16; Matthew 19:14; Proverbs 23:22.

<sup>10</sup> Romans 13:1-7; 1 Peter 2:13-17; Genesis 1:28; Psalm 8:5-8; 2 Thessalonians 3:6-9.

<sup>11</sup> Genesis 2:24; Exodus 20:14,17; 1 Corinthians 7:2-5; Hebrews 13:4; Proverbs 5:15-19; Matthew 19:4-6; Malachi 2:16; Matthew 5:32.

<sup>12</sup> Proverbs 4:20-27; Romans 14:13,19; 1 Corinthians 8:9,12-13, 10:23-24; Ephesians 5:15-16.

<sup>13</sup> James 5:16; Jude 20-23; Romans 12:14-21; 1 Corinthians 13:5; Colossians 3:13.

- communication that is destructive to TWU community life and inter-personal relationships, including gossip, slander, vulgar/obscene language, and prejudice<sup>14</sup>
- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others<sup>15</sup>
- sexual intimacy that violates the sacredness of marriage between a man and a woman<sup>16</sup>
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event.

#### ***4. Areas for Careful Discernment and Sensitivity***

A heightened level of discernment and sensitivity is appropriate within a Christian educational community such as TWU. In order to foster the kind of campus atmosphere most conducive to university ends, this covenant both identifies particular Christian standards and recognizes degrees of latitude for individual freedom. True freedom is not the freedom to do as one pleases, but rather empowerment to do what is best.<sup>17</sup> TWU rejects legalisms that mistakenly identify certain cultural practices as biblical imperatives, or that emphasize outward conduct as the measure of genuine Christian maturity apart from inward thoughts and motivations. In all respects, the TWU community expects its members to exercise wise decision-making according to biblical principles, carefully accounting for each individual's capabilities, vulnerabilities, and values, and considering the consequences of those choices to health and character, social relationships, and God's purposes in the world.

TWU is committed to assisting members who desire to face difficulties or overcome the consequences of poor personal choices by providing reasonable care, resources, and environments for safe and meaningful dialogue. TWU reserves the right to question, challenge or discipline any member in response to actions that impact personal or social welfare.

#### ***Wise and Sustainable Self-Care***

The University is committed to promoting and supporting habits of healthy self-care in all its members, recognizing that each individual's actions can have a cumulative impact on the entire community. TWU encourages its members to pursue and promote: sustainable patterns of sleep, eating, exercise, and preventative health; as well as sustainable rhythms of solitude and community, personal spiritual disciplines, chapel and local church participation,<sup>18</sup> work, study and recreation, service and rest.

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<sup>14</sup> Colossians 3:8; Ephesians 4:31.

<sup>15</sup> Exodus 20:15; Ephesians 4:28.

<sup>16</sup> Romans 1:26-27; Proverbs 6:23-35.

<sup>17</sup> Galatians 5:1,13; Romans 8:1-4; 1 Peter 2:16.

<sup>18</sup> Ephesians 5:19-20; Colossians 3:15-16; Hebrews 10:25.

## **Healthy Sexuality**

People face significant challenges in practicing biblical sexual health within a highly sexualized culture. A biblical view of sexuality holds that a person's decisions regarding his or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to one's (future) spouse, to others in the community, and to oneself.<sup>19</sup> Further, according to the Bible, sexual intimacy is reserved for marriage between one man and one woman, and within that marriage bond it is God's intention that it be enjoyed as a means for marital intimacy and procreation.<sup>20</sup> Honouring and upholding these principles, members of the TWU community strive for purity of thought and relationship,<sup>21</sup> respectful modesty,<sup>22</sup> personal responsibility for actions taken, and avoidance of contexts where temptation to compromise would be particularly strong.<sup>23</sup>

## **Drugs, Alcohol and Tobacco**

The use of illegal drugs is by definition illicit. The abuse of legal drugs has been shown to be physically and socially destructive, especially in its potential for forming life-destroying addictions. For these reasons, TWU members voluntarily abstain from the use of illegal drugs and the abuse of legal drugs at all times.

The decision whether or not to consume alcohol or use tobacco is more complex. The Bible allows for the enjoyment of alcohol in moderation,<sup>24</sup> but it also strongly warns against drunkenness and addiction, which overpowers wise and reasonable behaviour and hinders personal development.<sup>25</sup> The Bible commends leaders who abstained from, or were not addicted to, alcohol.<sup>26</sup> Alcohol abuse has many long-lasting negative physical, social and academic consequences. The Bible has no direct instructions regarding the use of tobacco, though many biblical principles regarding stewardship of the body offer guidance. Tobacco is clearly hazardous to the health of both users and bystanders. Many people avoid alcohol and/or tobacco as a matter of conscience, personal health, or in response to an addiction. With these concerns in mind, TWU members will exercise careful discretion, sensitivity to others' conscience/principles, moderation, compassion, and mutual responsibility. In addition, TWU strongly discourages participation in events where the primary purpose is the excessive consumption of alcohol.

## **Entertainment**

When considering the myriad of entertainment options available, including print media, television, film, music, video games, the internet, theatre, concerts, social dancing, clubs, sports, recreation, and gambling, TWU expects its members to make personal choices according to biblical priorities, and with careful consideration for the immediate and long-term impact on one's own well-being, the well-being of others, and the well-being

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<sup>19</sup> 1 Corinthians 6:18-19.

<sup>20</sup> Genesis 2:24; Exodus 20:14,17; 1 Corinthians 7:2-5; Hebrews 13:4; Proverbs 5:15-19; Matthew 19:4-6.

<sup>21</sup> Matthew 5:27-28; 1 Timothy 5:1-2; 1 Thessalonians 4:3-8; Job 31:1-4; Psalm 101:2-3.

<sup>22</sup> 1 Peter 3:3-4; 1 Timothy 2:9-10

<sup>23</sup> 1 Corinthians 6:18; 10:13; 2 Timothy 2:22; James 4:7.

<sup>24</sup> Deuteronomy 7:13, 11:14, Psalm 104:15; Proverbs 3:10; Isaiah 25:6; John 2:7-11; 1 Timothy 5:23.

<sup>25</sup> Genesis 9:20-21; Proverbs 20:1; 31:4; Isaiah 5:11; Habakkuk 2:4-5; Ephesians 5:18.

<sup>26</sup> Daniel 1:8, 10:3; Luke 1:15; 1 Timothy 3:3,8; Titus 2:3.

of the University. Entertainment choices should be guided by the pursuit of activities that are edifying, beneficial and constructive, and by a preference for those things that are “true, noble, right, pure, lovely, admirable, excellent, and praiseworthy,”<sup>27</sup> recognizing that truth and beauty appear in many differing forms, may be disguised, and may be seen in different ways by different people.

### ***5. Commitment and Accountability***

This covenant applies to all members of the TWU community, that is, administrators, faculty and staff employed by TWU and its affiliates, and students enrolled at TWU or any affiliate program. Unless specifically stated otherwise, expectations of this covenant apply to both on and off TWU’s campus and extension sites. Sincerely embracing every part of this covenant is a requirement for employment. Employees who sign this covenant also commit themselves to abide by TWU Employment Policies. TWU welcomes all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University’s Christian identity. Students sign this covenant with the commitment to abide by the expectations contained within the *Community Covenant*, and by campus policies published in the Academic Calendar and Student Handbook.

Ensuring that the integrity of the TWU community is upheld may at times involve taking steps to hold one another accountable to the mutual commitments outlined in this covenant. As a covenant community, all members share this responsibility. The University also provides formal accountability procedures to address actions by community members that represent a disregard for this covenant. These procedures and processes are outlined in TWU’s Student Handbook and Employment Policies and will be enacted by designated representatives of the University as deemed necessary.

#### **By my agreement below I affirm that:**

I have accepted the invitation to be a member of the TWU community with all the mutual benefits and responsibilities that are involved;

I understand that by becoming a member of the TWU community I have also become an ambassador of this community and the ideals it represents;

I have carefully read and considered TWU’s *Community Covenant* and will join in fulfilling its responsibilities while I am a member of the TWU community.

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<sup>27</sup> Philippians 4:8.

**Correspondence from  
Trinity Western University  
re: Mandate of Special Advisory  
Committee**



BY E-MAIL  
(Original By Mail)

May 17, 2013

Federation of Law Societies of Canada  
World Exchange Plaza  
45 O'Connor Street, Suite 1810  
Ottawa, ON K1P 1A4

**Attention: John J. L. Hunter, QC**  
**Chair of the Special Advisory Committee on Trinity Western University's**  
**Proposed School of Law (the "Special Advisory Committee")**

Dear Sirs/Mesdames:

**Re: Response to Special Advisory Committee**

We write in relation to your letter of May 3, 2013 to Dr. Jonathan Raymond and the mandate given to the Special Advisory Committee by the Federation of Law Societies of Canada (the "Federation"). We thank you for your letter, but TWU continues to have serious concerns with the creation of the Special Advisory Committee.

Canada's law societies are charged with regulating the legal profession in the public interest. They have each approved a national requirement that reflects their collective view as to what is necessary to ensure that potential new members graduating from a law degree program in Canada are competent to practice and understand their professional and ethical obligations. With the express approval of each law society in Canada, the Federation established the Canada Common Law Program Approval Committee (the "Approval Committee"), which applies the national requirement to each proposed new law degree program. As you have noted, TWU's Proposal for a School of Law (the "Proposal") is in the process of being reviewed by the Approval Committee.

As has been clearly and correctly articulated by the Federation, the Approval Committee has no mandate or authority to consider TWU's Community Covenant (the "Covenant") outside of the national requirement. The authority of the Federation arises only from the express approval



given by each of the 14 Canadian law societies to the national requirement and the Approval Committee. The Federation has no mandate with respect to matters outside of the national requirement. You have attempted to address this lack of mandate by indicating that the Special Advisory Committee will only provide advice to the Federation. While this may be true, it does not address the fact that the Federation itself has no jurisdiction from the law societies to consider or make recommendations with respect to the Covenant.

On its website, the Federation attempts to justify the existence and role of the Special Advisory Committee on the basis that issues raised about the Covenant by certain advocates opposing TWU's Proposal "were not anticipated when the national requirement was developed".<sup>1</sup> With respect, this is not a justification for reaching outside of the Federation's mandate. In accordance with administrative law principles, the Federation must remain within that mandate.

TWU accepts that it must, and will, provide an institutional setting that appropriately prepares lawyers for public practice and for the diversity that its graduates will encounter. In *Trinity Western University v. B.C. College of Teachers*<sup>2</sup> ("TWU v. BCCT"), the Supreme Court of Canada found that such was the case with respect to TWU's education program and further held that denial of approval was unlawful since there was no "specific evidence"<sup>3</sup> that graduates would not uphold the basic values of non-discrimination. If such were not also the case with respect to TWU's School of Law Proposal, presumably the Approval Committee would address that in considering whether graduates would meet the "Ethics and Professionalism" component of the "Competency Requirements" of the national requirement. In the context of the national requirement and the role of the Approval Committee, it is not relevant that the Covenant was not specifically anticipated. Either TWU's Proposal meets the national requirement or it does not (and we obviously believe strongly that it does).

The only purpose for the proposed work of the Special Advisory Committee is to provide advice to the Federation, and presumably through the Federation to its member law societies, pertaining to the religious foundations of TWU. It does not appear that the law societies have solicited this advice. The Federation is interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread. For these reasons, TWU objects to the establishment and mandate of the Special Advisory Committee. We urge the Special Advisory Committee to recommend to the Federation that this matter is, as has been maintained by the Federation in the past, outside of the Federation's mandate. To the extent that matters are external to the national requirement and the work of the Approval Committee, they are of a political nature and, if relevant at all, best left to the Ministry of Advanced Education in British Columbia.

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1 <http://www.flsc.ca/documents/TWUQuestionsandAnswers.pdf>

2 [2001] 1 S.C.R. 772

3 *TWU v. BCCT* at para.38 . See also paras. 12-13.

It is clear that there has been an organized political campaign to oppose TWU's Proposal, which commenced with the letter from the Council of Canadian Law Deans. You should be aware that in preparing the Proposal, TWU specifically consulted with a number of law deans, including all of the law deans in British Columbia. None of them raised any issues or concerns about the Covenant or TWU's religious nature.

All of that having been said, there are responses to all of the significant objections raised in the various submissions that you provided TWU with your letter of May 3, 2013. Below you will find TWU's responses, but these are provided with an express reservation of all of TWU's rights to seek legal redress against the Federation and any individual law society arising from the work of the Special Advisory Committee, including with respect to jurisdictional challenges, should that be necessary in the future.

## **RESPONSES TO OBJECTIONS RAISED BY OPPONENTS OF TWU'S PROPOSED SCHOOL OF LAW**

It would be very difficult to respond to each and every discrete point raised in the unsolicited letters and submissions sent to the Federation, particularly given the short period of time you allowed. The letters in opposition to the Covenant and TWU's Proposal raise a number of similar arguments and we will address these in a summary format. We will provide examples of statements of opposition as appropriate to demonstrate the flaws in the reasoning of TWU's opponents. As part of the legal team that represented TWU in *TWU v. BCCT*, the writer can say that most of these arguments were also made in that case and were rejected by the Supreme Court of Canada.

### ***(a) Compatibility of the Covenant with Training in Ethics and Professionalism***

A number of opponents have suggested that the Covenant is incompatible "with the ethical and legal training appropriately required of those seeking entry into the legal profession"<sup>4</sup>. West Coast LEAF has gone so far as to argue that, because of the Covenant, TWU "cannot impart on prospective lawyers a sufficient understanding of the ethical duty not to discriminate and to honour the obligations enumerated in human rights laws"<sup>5</sup>. Others suggest that TWU is "not up to the challenge of having an open, honest, meaningful discussion about its policies and practices"<sup>6</sup> and that TWU "cannot be trusted to promote [a] constitutionally mandated understanding" of equality<sup>7</sup>.

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4 Egale Canada letter, January 25, 2013

5 See West Coast LEAF letter, February 25, 2013, page 3.

6 Letter from students of Schulich School of Law, undated

7 National Association of Women and the Law, March 8, 2013

These arguments are wrong at law, intellectually flawed, discriminatory in themselves and, at a minimum, deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

It should be beyond question that TWU acknowledges that human rights laws and section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation. The courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life. We trust that you have access to TWU's full proposal, including the course outlines contained therein. You will note that standard texts are proposed for such topics, which reference the historical inequality suffered by homosexuals. No course covering section 15 of the *Charter* or educating students on provincial human rights protections would be complete without fully addressing cases such as *Vriend v. Alberta*<sup>8</sup>, *Egan v. Canada*<sup>9</sup>, and *Reference re Same-Sex Marriage*.<sup>10</sup> We are certain that the Approval Committee will be reviewing these course outlines as part of its work in assessing the academic program to be offered at TWU.

You will also note that TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course on Ethics and Professionalism (LAW 602). A summary description of this mandatory course in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. ***It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.***<sup>11</sup> [Emphasis added]

TWU is committed to fully and appropriately addressing ethics and professionalism and the opponents of the Proposal cannot credibly argue otherwise. We are certain that the Approval Committee will find more than sufficient coverage of these topics.

The opponents of our Proposal must therefore be suggesting that ***the very fact of*** the Covenant and the religious beliefs inherent therein, undermine the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be "equipped to deal with students" and be unable to "offer comfort and support to

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8 [1998] 1 S.C.R. 493

9 [1995] 2 S.C.R. 513

10 [2004] 3 S.C.R. 698

11 TWU Proposal, page 22. See also full description of course at page 93.

the students”<sup>12</sup>. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU’s Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>13</sup>

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism. TWU agrees with Egale Canada that “the dignity and value of all individuals irrespective of their sexual orientation ... now form part of the fabric of professional ethics and the rule of law”.<sup>14</sup> Each graduate of a TWU School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Covenant. In this regard, we note that there are many TWU graduates who have gone on to Canadian law schools and are now successfully practicing law across Canada.

As evident from the submissions received by the Federation, there are students currently at public law schools that hold these same religious beliefs<sup>15</sup>. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one suggests that they will not do so.

The oaths that graduating law students will take before being admitted to practice law require them to uphold the laws and rights and freedoms of all persons. For example, the oaths used in Ontario and British Columbia contain the following statements, respectively:

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12 B.C. College of Teachers Factum in *TWU v. BCCT*, para. 121. Note that when intervening in *TWU v. BCCT*, Egale Canada made similar arguments.

13 *TWU v. BCCT*, paras. 32-33

14 See letter from Egale Canada, dated January 25, 2013

15 See letter from “Christian law students across Canada” dated March 10, 2013 indicating that the students “hold [the Biblical principles on which TWU’s Covenant is based] trust regardless of the law school [they] attend”. See also letter from current UBC law students dated March 19, 2013 where they make this same point: “Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law.”

I shall champion the rule of law and safeguard the rights and freedoms of all persons<sup>16</sup>.

...uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia.<sup>17</sup>

If the opponents' line of reasoning prevails, it equates to denying accreditation to individuals on the basis of religious belief. The Supreme Court of Canada specifically addressed this concern in *TWU v. BCCT*:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church.<sup>18</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>19</sup>

It would clearly be abhorrent to suggest that the many lawyers across Canada holding similar religious views to those addressed in the Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs<sup>20</sup>. While the opponents of TWU's Proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Covenant are a basis upon which TWU's application should be delayed or denied. As found by the Supreme Court of Canada, they are not a basis upon which the Federation should anticipate that graduates will fail to meet their professional and ethical obligations.

***(b) TWU Graduates will require "Additional Study"***

In a related argument, a number of opponents say that TWU should not have a School of Law as its students should "undertake additional study ... similar to the process for foreign trained lawyers"<sup>21</sup> or that TWU graduates should not "become licensed to practice law without

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16 Oath to practice law in Ontario as a barrister and solicitor (Bylaw 4(21):

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805>

17 Barristers' and Solicitors' Oath: <http://www.lawsociety.bc.ca/docs/publications/mm/oath.pdf>

18 *TWU v. BCCT*, para. 33.

19 *TWU v. BCCT*, para. 36

20 See *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

21 West Coast LEAF letter, February 5, 2013.

further study and entrance requirements”<sup>22</sup>. This is presumably because such opponents believe that the Covenant will “impair the development of critical thought and legal analytical skill”<sup>23</sup> or the TWU students will not “remain independent and appropriately value-oriented”<sup>24</sup>.

We have already noted how deeply offensive this reasoning is to lawyers and law students holding religious beliefs similar to those embodied in the Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience in order that they be competent to practice law.

There is a serious logical flaw in the argument. It is clear from the submissions sent to the Federation that existing law schools have: (1) students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. The current law schools have apparently not undermined these students’ and lawyers’ religious beliefs; and neither should they try to do so. Lawyers are not required to all believe the same way concerning issues of sexual morality. It is only required that their conduct be ethical and professional.

Again, we note that this same point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to “complete their fifth year of professional teacher education through an approved program at a public university”<sup>25</sup>. The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. ***Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.***<sup>26</sup>  
[Emphasis added]

These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. As stated by a number of Christian law students across the country in their submission to the Federation: “If commitment to Biblical principles results in the denial of a private institution as capable of

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<sup>22</sup> National Association of Women and the Law letter, March 8, 2013.

<sup>23</sup> Letter from UBC law students, March 14, 2013.

<sup>24</sup> Letters from students at a number of law schools. See for example, letter from UVic law students dated March 12, 2013.

<sup>25</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118.

<sup>26</sup> *TWU v. BCCT*, para. 32

teaching law, this implicates our competence as future lawyers also. ... [A]dhering to religious beliefs does not equate to future discriminatory conduct".<sup>27</sup> The Supreme Court of Canada agrees with these Christian students:

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.<sup>28</sup>

...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>29</sup>

...

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>30</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.<sup>31</sup>

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be conclusive in your deliberations as well.

***(c) TWU v. BCCT is Binding Law***

The opponents of TWU argue that *TWU v. BCCT* is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that acknowledging TWU's freedom of religion and association rights to maintain the Covenant would involve a "race to the bottom"<sup>32</sup> since not all human rights legislation across the country contain the same provisions.

Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is "limited to BC law" and is simply a finding that TWU is in "compliance with B.C. legislation"<sup>33</sup>. It has been argued that human rights provisions recognizing religious associational rights are not applicable (despite the Supreme Court of Canada's

<sup>27</sup> Letter from "Christian law students across Canada" dated March 10, 2013.

<sup>28</sup> *TWU v. BCCT*, para. 19

<sup>29</sup> *TWU v. BCCT*, para. 33

<sup>30</sup> *TWU v. BCCT*, para. 35

<sup>31</sup> *TWU v. BCCT*, para. 36

<sup>32</sup> Letter from Ruby Shiller Chan Hassan dated February 28, 2013

<sup>33</sup> For example, see SOGIC letter, dated March 18, 2013, pages 2 and 4.

ruling in *TWU v. BCCT*) and that refusing TWU's application because of the Covenant would not violate freedom of religion or freedom of association. In particular, SOGIC draws on American jurisprudence, where there is no constitutional equality guarantee such as s.15 of the *Charter*, to argue that it is acceptable to allow TWU to exist, but also deny it approval of its programs. This is a surprisingly impoverished view of Canadian equality rights.

As already noted, many of the arguments advanced by the opponents of TWU's Proposal were also made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. It should be clear that the decision in *TWU v. BCCT* was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. We will address a number of the specific legal arguments made by opponents in their attempt to distinguish *TWU v. BCCT*.

(i) *Section 41 of the B.C. Human Rights Code (and similar provisions)*

In *TWU v. BCCT*, the Court made reference to section 41 of the *Human Rights Code* in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution<sup>34</sup>. These were passing references, but the Court's analysis was much broader, based on preserving human rights and *Charter* values in acknowledging TWU's right to a teacher education program. This is conveniently summarized by the following quotes:

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

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>35</sup>

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*<sup>36</sup>, the Supreme Court of Canada wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion"<sup>37</sup>. In *Brossard (Town) v. Quebec (Commission des droits de la*

34 *TWU v. BCCT*, paras.32 and 35.

35 *TWU v. BCCT*, paras. 34-35

36 [1984] 2 S.C.R. 603

37 At 626 (S.C.R.)

*personne*)<sup>38</sup> Beetz J. held that a similar provision promotes “the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits”<sup>39</sup>. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.<sup>40</sup>

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada, not just in B.C..<sup>41</sup> It is trite to point out that all such legislation must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU is permitted to exist as a religious educational community only in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

We would also note that SOGIC has been inclusive in listing protections granted to religious groups such as TWU in human rights legislation. For example, no reference is made to sections 4 and 6 of the *Saskatchewan Human Rights Code*, which state:

Right to freedom of conscience

4 Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free association

6 Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

SOGIC also argues that s.41 and similar provisions do not protect TWU as, they say, TWU does not promote the interests of individuals as members of an identifiable group nor “exclude individuals who do not share its religious beliefs”<sup>42</sup>. This misinterprets and misapplies the *Human Rights Code*. Specifically, it ignores the decision in *Vancouver Rape Relief Society v. Nixon*<sup>43</sup> where the Court of Appeal held that an organization is *not* required

38 [1988] 2 S.C.R. 279

39 At 324 (S.C.R.). See also *St. James Community Service Society v. Johnson*, 2004 B.C.S.C. 1807 and *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 B.C.H.R.T. 269

40 *Gillis v. United Nations Native Society*, [2005] BCHRT 301 at para. 21, *Sahota, supra.* at para. 37

41 See, for example, *Ontario (Human Rights Commission) v. Brockie*, 43 C.H.R.R. D/90 (Ont. Div. Ct.); *Smith v. Knights of Columbus*, 2005 BCHRT 544; *Garrod v. Rhema Christian School* (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); *Kearley v. Pentecostal Assemblies Board of Education*, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

42 SOGIC letter, March 18, 2013, page 5.

43 2005 B.C.C.A. 601 (leave application denied, February 1, 2007, S.C.C. No.31633)

to demonstrate that it exclusively provides services to a group enumerated under s. 41 in order to be protected by that section<sup>44</sup>.

(ii) *Civil Marriage Act*

While it is without question that there have been some important societal changes since *TWU v. BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*<sup>45</sup> are worth noting:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

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

...

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

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

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

Opponents have argued that denying approval of TWU’s School of Law Proposal because of the Covenant will not impair the constitutional rights of TWU and the individuals comprising its community<sup>46</sup>. They promote a penurious view of these *Charter* rights.

Citing *Saskatchewan (Human Rights Commission) v. Whatcott*<sup>47</sup>, SOGIC argues that denying TWU’s application for a School of Law would not infringe s.2(a) of the *Charter* as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of

44 *Nixon, supra.*, para. 58.

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

46 SOGIC letter, March 18, 2013, pages 5-6

47 2013 SCC 11

Canada in *Whatcott* also relied on the oft-cited words of Dickson J. in *R. v. Big M Drug Mart*<sup>48</sup> that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and **without fear of hindrance** or reprisal...”<sup>49</sup> (emphasis added).

In *Alberta v. Hutterian Brethren of Wilson Colony*<sup>50</sup>, it was accepted that Alberta’s mandatory photo requirement for driver’s licensing breached the s.2(a) rights of the Hutterian Brethren because of their religious objection to having their photos taken. Applying the logic of TWU’s opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver’s licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice. This is precisely how the Supreme Court of Canada analyzed the matter in *TWU v. BCCT*:

Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system.<sup>51</sup>

SOGIC draws on American jurisprudence to suggest that only the **existence** of TWU as a religious community ought to be tolerated, but that its programs need not receive “official imprimatur” or be granted “equal access”<sup>52</sup>. In *TWU v. BCCT*, the College of Teachers made the same argument, relying on similar cases (including *Bob Jones University*), that it was right to withhold the imprimatur that approval of TWU’s program would bring.<sup>53</sup> These arguments were clearly rejected by the Supreme Court of Canada.

Further, and surprisingly, SOGIC fails to recognize the importance of the equality right in the Canadian context. Section 15 of the *Charter* prohibits the imposition of burdens or withholding of benefits on account of personal characteristics, including based on religion. The leading definition of discrimination is still as articulated by McIntyre J. in *Andrews v. Law Society of British Columbia*<sup>54</sup>:

... discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which **has the effect of imposing burdens, obligations, or disadvantages** on such individual or group not imposed upon others, **or which withholds or limits access to opportunities, benefits, and advantages** available to other members of society.

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48 [1985] 1 S.C.R. 295

49 At p.336

50 [2009] SCC 37

51 *TWU v. BCCT*, para. 35

52 SOGIC letter, March 18, 2013, page 7.

53 B.C. College of Teachers Factum in *TWU v. BCCT*, paras. 57, 79, 111, 116

54 [1989] 1 S.C.R. 143

Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.<sup>55</sup> [Emphasis added]

The denial of approval of TWU's School of Law application because of the Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community. As evidenced by many of submissions received by the Federation, opponents of TWU's proposal presume that Christians at TWU have "hostility to gay and lesbian people"<sup>56</sup> and hide "homophobia in Christian values"<sup>57</sup>. There is absolutely no evidence for these statements about TWU or the members of its community. These opponents are guilty of the same type of prejudice and stereotyping about which they say the Federation should be concerned.

All of the opponents of TWU's proposal focus solely on the Covenant. This is, in fact, a focus by them on TWU's sectarian nature<sup>58</sup>. The Federation's creation of the Special Advisory Committee continues this disturbing focus and we strongly encourage both the Special Advisory Committee and the Federation to carefully consider the following words of the majority in *TWU v. BCCT*:

We would add that *the continuing focus of the BCCT on the sectarian nature of TWU is disturbing*. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.<sup>59</sup> [Emphasis added]

If there are pedagogical or other problems with the education to be provided at TWU's proposed School of Law, they will presumably be detected by the Approval Committee, the Ministry of Advanced Education, or both. As a matter of constitutional and human rights, it is not open for the Federation to focus solely on the sectarian nature of TWU, as communicated by the Covenant, to undermine the normal approval processes. The Federation and its law society members are not permitted to express moral disapprobation of the Christian beliefs on which TWU is founded. Again, we urge that the Special Advisory Committee advise the Federation to discontinue any further consideration of the Covenant and TWU's religious nature as separate from the Approval Committee.

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55 At pp.174-175. This definition recently reiterated by the S.C.C. in *Withler v. Canada*, [2011] 1 S.C.R. 396 at para. 29 and *Hutterian Brethren*, *supra*. at para. 108

56 Letter from Ruby Shiller Chan Hassan dated February 28, 2013

57 Letter from UBC law students, dated March 14, 2013

58 Which is derided by the lawyers at Ruby Shiller Chan Hassan as a "fundamentalist and narrow interpretation of Christianity"

59 *TWU v. BCCT*, para. 42

***(d) Diversity in the Legal Profession and Academic Freedom***

Some opponents suggest that approval of TWU's program will "diminish diversity in the legal profession"<sup>60</sup>. It is peculiar, to say the least, that these advocates seek to silence a perspective different from their own within the Canadian legal community in name of diversity. While they express a concern that TWU's School of Law will have a "limited tolerance of diversity", their opposition exhibits exactly that trait.

There is nothing inimical to Canadian society contained in the Covenant. Its contents are to be expected in the context of an evangelical Christian university. As noted by a number of others, including uOttawa OUTLaw, the Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice". As we are sure you will agree, the legal profession encourages lawyers to be inculcated in these values. All opponents focus on only one aspect of the Covenant, ignoring the balance of its contents, which are not only unobjectionable but universally laudable.

As stated by Dickson J. in *Big M Drug Mart*, "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct"<sup>61</sup>. As then noted in *TWU v. BCCT*, "the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected"<sup>62</sup>. The TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

TWU's proposed School of Law should be assessed on its merits, based on the national requirement. As the only privately funded law school in Canada, it may provide a slightly different perspective, but this should be welcomed. As the Supreme Court of Canada suggested, Canada is enriched by having a diversity of institutions. There is no principled reason that secular, public institutions should have a monopoly on legal education in Canada<sup>63</sup>.

A few opponents have questioned academic freedom at TWU. While we expect that this issue is outside of what will be considered by the Special Advisory Committee, we would note for your benefit that TWU maintains a strong policy on academic freedom that was

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60 Letter from UBC law students, dated March 14, 2013

61 At p.336.

62 *TWU v. BCCT*, para. 33.

63 Law students from UBC have written in their letter of March 19, 2013 that, in their experience, their religious beliefs are "often openly derided" in the context of the explicitly secular emphasis at that institution. Not all secular law schools should be judged by this experience, but it does provide context for the opposition made by students at a number of law schools in Canada.

affirmed by British Columbia's Degree Quality Assessment Board in 2004. TWU is a member of the Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. There will be a full range of academic inquiry and debate within TWU's School of Law.

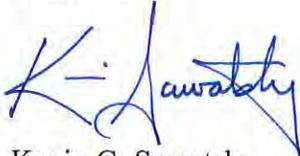
## Conclusion

The arguments of opponents to TWU's proposed School of Law relate to the Covenant and TWU's religious character. As set out above, most of these arguments have already had a thorough hearing before, and been rejected by, the Supreme Court of Canada. One opponent, Egale Canada, raised some of the exactly same arguments as an intervenor in *TWU v. BCCT* as it now references in its letter to the Federation. The Supreme Court of Canada decision in that case should be considered determinative for the reasons set out above.

There is no "specific evidence" that TWU graduates will fail to uphold the basic values of non-discrimination<sup>64</sup>. This does not leave a legitimate role for the Special Advisory Committee. We submit that the appropriate course is for the Special Advisory Committee to advise the Federation and its members that there are no relevant additional considerations to be taken into account in determining whether graduates of a TWU School of Law should be eligible to enroll in the admissions program of any Canadian law society.

We believe that we have answered the important points raised by TWU's opponents. If there are other issues on which you would like to receive TWU's position or views, or if there are additional documents that you would like to review that we may be able to provide, please do not hesitate to contact the writer.

Yours truly,



Kevin G. Sawatsky  
Vice-Provost (Business) and University Legal Counsel

cc: Gerald R. Tremblay, President  
Kuhn LLP

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<sup>64</sup> *TWU v. BCCT* at para.38 . See also paras. 12-13.

**Exchange of Correspondence  
between  
Trinity Western University  
and the  
Canadian Common Law Approval  
Committee**



August 13, 2013

Federation of Law Societies of Canada  
World Exchange Plaza  
1810 – 45 O'Connor Street  
Ottawa, ON K1P 1A4

Attention: Laurie H. Pawlitza, Chair, Canadian Common Law Program Approval Committee

Dear Ms. Pawlitza:

**Re: TWU School of Law Proposal – Response to Letter of June 28, 2013**

Thank you for your letter of June 28, 2013 asking for further information with respect to the proposal for a School of Law at Trinity Western University.

We first note that the B.C. Minister of Advanced Education appointed a Review Panel to make a site visit to the campus and issue a report advising on the program. In response to issues raised by the Review Panel, we propose to make minor amendments to the program of studies. LAW 708, Real Estate Law will not be compulsory, but will instead be highly recommended. LAW 506, 1<sup>st</sup> year Criminal Law will be split such that the first year course covers the principles of criminal law and a new upper year, elective course will be developed to address criminal procedure (See Appendix A for the new course descriptions). We do not believe that these changes will affect the requirements for a common law degree program established by the FLSC, but thought it appropriate to advise of these minor amendments.

We have addressed the questions you raise in your letter in the same outline order that you have posed them as follows:

**1. Budgeting:**

- a) Your letter requests further information with respect to the financial plan for the School of Law. We have attached as Appendix B a pro-forma budget for the proposed School of Law. In addition, the Review Panel appointed by the Minister of Advanced Education requested very similar information. We have attached as Appendix C the document provided to the Review Panel entitled *School of Law Financial Information*. We trust these documents will be of assistance in providing



further detail with respect to the financial aspects of the School of Law proposal. We would request that this financial information be kept confidential by the Approval Committee.

In addition to the documents attached as Appendices B and C, we have provided below a response on each of the areas requested in paragraph 1(a):

#### Anticipated Law School Revenue Over and Above Tuition

Trinity Western University is privately funded, largely through tuition fees. However, other revenues are generated through ancillary services such as student residences, food services, retail sales etc. With respect to the School of Law these additional revenues are not included in the pro-forma budget as these monies will be utilized to cover a portion of general University overhead. In addition, TWU is supported by donations from alumni and other friends to the University. It is anticipated that there will be on-going donation support for the School of Law. The exact amount of on-going donation income for the School of Law can't be projected with accuracy and we have not therefore included such in the pro-forma budget.

#### Salary Costs

As indicated in Appendix B, total faculty and staff salary cost by year five will be \$2,365,000. We would note that the actual salary cost is higher than this amount. Some positions will be added in other departments to support the School of Law and the cost of such will be absorbed outside of the direct School of Law budget (as part of University overhead). This includes additional staff in I.T., Admissions, Financial Aid and the Registrar's Office.

We would note that Appendix C provides a more detailed staffing/faculty Rollout Plan. It also provides a more detailed breakdown of "Teaching Requirements".

#### Initial Library Acquisitions Budget

The initial library acquisitions budget is \$2,000,000.



### Annual Library Budget

The annual library acquisitions budget is currently set at \$200,000. However, we are cognizant that this budget may need adjustment pending the development of a full library plan.

The staffing plan for the library includes the Director, an Associate Director, two full-time library support staff and other part-time staff as may be required. Library staffing costs are incorporated into the general School of Law budget.

### Costs for Physical Infrastructure

The \$18,700,000 capital campaign for commencement of the School of Law includes approximately \$15,000,000 for the School of Law building. This includes all needed infrastructure such as water, sewer, electrical, mechanical, telecomm as well as furnishings. Appendix 10 to the Proposal provided a detailed breakdown of building and infrastructure costs. (We are cognizant that the \$14.4 million projection set out in Appendix 10 was created for us in April of 2011 and costs have increased somewhat. However, based on information from our professionals, we believe that \$15 million is still a reasonable estimate for building and infrastructure costs.)

### Costs for Student Clinics

Leadership for student clinics will be included as part of the teaching load of a faculty member. The salary cost for such is included in the overall faculty budget. In addition, \$40,000 is included in the annual budget for the operation (non-salary) cost of the clinics. While this dollar amount may appear low, we believe it is feasible because the clinics will be operated in conjunction with other charitable organizations, utilizing their facilities.

### University Taxes and Overhead Charges

We are assuming the meaning of "taxes" in your letter is that the University requires a percentage of tuition to be paid back to the University in order to fund overhead costs. In the TWU context that would be correct. Given that TWU is privately funded, all academic programs must return a healthy percentage of revenue in order



to fund general University overhead (including scholarships and financial aid). By year five, it is projected that the School of Law will return approximately 40% of gross tuition revenue to the University.

#### Anticipated Changes to Student Numbers and Tuition Levels

We are not anticipating changes to projected enrollment numbers. Concerto Research Inc. (“Concerto”) conducted an extensive market research study on behalf of TWU in the Spring of 2012. Concerto determined that there was more than adequate demand to sustain enrollment of 60 students per year. See final page of Appendix C.

Tuition is projected to increase approximately 2.5% to 3.0% per year.

- b) The following are contingency plans in each of the areas requested in your letter:

#### Fundraising

Potential donors have demonstrated considerable interest in the School of Law. Significant monies have already been raised for this project. It is not anticipated that a “fundraising” contingency will be required. However, if the capital campaign took longer than anticipated, delaying the completion of the School of Law building, the University would explore situating the School of Law in the Richmond campus (see paragraph 2 below and Appendices D and E) for a short time.

#### Construction Timelines

Please see paragraph 2 below which outlines the contingency plan should construction timelines result in the School of Law building not being completed by September 2016.

#### Enrollment Targets

As indicated above, market research conducted on behalf of the University by Concerto Research Inc. concluded that there is more than adequate demand to sustain a first year enrollment of 60 students. As indicated on the pro-forma budget, there will be a significant surplus being returned to the University by year four. That surplus provides a healthy buffer (contingency) should enrollment targets not be met.



### Ability to Offer a Full Range of Classes

We are uncertain whether this request was with respect to there not being sufficient students to take a course or a concern with respect to securing instructors.

With respect to inadequate student enrollment for a particular course, the contingency would be to offer such as a directed study (to one or more students) in accordance with University policy.

With respect to the ability to hire high quality instructors, Trinity Western University offers a broad range of programs and has not had difficulty in attracting high calibre instructors in other professional areas. We have already had numerous inquiries from qualified potential full-time and sessional instructors for the proposed School of Law even though it is not yet approved and the University is not yet recruiting faculty.

- c) The School of Law will be financially self-supporting. As indicated above, financial aid and other University overheads are not included in the pro-forma budget. However, the University is comfortable that these overheads are more than covered by ancillary revenues and by the tuition surplus that is returned to the University.

We note that with respect to student financial aid, the School of Law expects to have its own financial aid system in place, although it will be administered, and budgeted for, through the University Financial Aid Office. Most of Admissions, Registration and Financial Aid are completed on-line. If a student wishes to attend these offices in person, they are housed together in a centrally located office on campus.

## **2. Facilities:**

As indicated above, given the length of the approvals process we believe it is prudent to move the anticipated commencement date to September 2016. This will allow adequate time to complete the School of Law building.

While this is not anticipated, should the School of Law building not be completed by September 2016, we would create a temporary home for the entire year of 2016–17. We believe it would be too disruptive to the first class to have to move part way through the



academic year. Should space be necessary to house the School for 2016-17, TWU would follow one of the following two options:

- Locate the School of Law for 2016-17 in the new Richmond campus. Please see Appendices D and E which describe the Richmond campus and provide the floor-plan as currently designed. As the Richmond campus will largely be utilized for Adult Degree Completion programs offered in the evenings, adequate classroom space would be available during the day for the School of Law. The classrooms on the second level could relatively easily be converted into a temporary space for the law library. Overall, close to 20,000 sq. feet of space would be available to the School of Law which would be adequate for the first year of operation.
- Lease adequate space close to the TWU campus for 2016-17.

### **3. Library:**

As stated in the proposal, the law library will be housed in approximately 14,250 square feet within the new School of Law Building. Library resources are an area of great change as substantial on-line resources become available. As we have met with deans and law librarians both in the U.S. and in Canada, the strong message we heard is that there is considerable transition. Law libraries are redesigning and culling hard copy resources. While a full library plan could possibly have been prepared for the Proposal, we felt that it was prudent to wait until the program was approved and the Law Librarian hired before finalizing a library plan. We plan to hire an expert consultant to assist with the development of the law library.

The TWU Library has experience in developing print and digital library collections to support new graduate and undergraduate programs. The TWU Law Library will consult with faculty members to ensure that library materials, both core and supplemental, are available for students in their courses. The TWU Law Library aims to establish a balanced collection of both print and online resources. Collaborative initiatives and partnerships will be pursued to develop a strong academic law library collection and services for the TWU School of Law. The TWU Law Library will meet the requirements established by the Canadian Academic Law Librarians Association. As this will be the second library on campus, we anticipate that there will be significant work needed to integrate the two libraries, and the Law Librarian and needed staff will be hired well in advance of the opening of School of Law.

Please see Appendix F for a preliminary list of Required Resources for the Law Library.



#### 4. Admissions and Student Services:

- a) Special Admissions Categories: The TWU School of Law proposal reserves up to five places for special admissions. There are several categories of persons who could qualify for these places:
- Aboriginal students: We will consider for admission First Nations students conditional on successful completion of the Program of Legal Studies for Native People offered at the University of Saskatchewan along with strong references. The University has support systems in place for student success for Aboriginal students.
  - Mature students: The University has an Adult Degree Completion program for adult learners who have not completed the required university degree. Completion of the B.A. Leadership with the recommendation of Adult Degree Completion faculty, along with significant work experience will be considered if the student has met the threshold LSAT score.
  - Students with disabilities: Some students will not meet the usual admissions requirements due to a recognized disability. Students who do not meet the threshold requirements for GPA or LSAT scores will be considered in the special admissions category if they have strong references and based on their personal statement and leadership experience.
- b) Centralized services:
- Admissions: The University has centralized Admissions services, although staff are assigned certain programs. We anticipate hiring a full time Admissions officer for the School of Law. As the admissions process is paperless, Admissions will ensure that the file is complete before it is transferred to the School of Law Admissions Committee for a decision on admissions. The University currently has several programs with particular admissions requirements. Admissions can customize procedures such that admissions files are categorized according to specified criteria; in the case of law students, for example, that they meet a threshold for LSAT scores. Once files are completed and categorized, they can be accessed by the Admissions Committee for a decision on an admissions offer.



- **Student Services:** The University has a Student Success Office that includes writing assistance, study skills development, and the Equity of Access Office. The latter provides accommodations for all students with disabilities across the campus. The writing skills and study skills development is intended to assist undergraduate students. The School of Law will have its own articling and career centre, which will also provide student assistance in terms of writing skills and study skills. Academic advisors also provide some assistance to students in these areas. Trinity Western University regularly receives an A+ in student-faculty interaction as our faculty genuinely care about student success. We have an early warning system in place to identify students at risk of failing classes.
- **Academic Advisory Services:** All students at the University are assigned an academic advisor. This is a professor in their department, faculty or school that will advise them on course selection and also be available as a primary contact for referral to academic support services. While the assignment of the academic advisor is done on a centralized basis by the Admissions Department at the University, the academic advisors will be in the School of Law for all law students.

Finally, we note the Approval Committee's references to Trinity Western University's approach to meeting the Ethics and Professionalism competency and the substantive legal knowledge competency, particularly with respect to constitutional law. It was unclear to us if the letter was simply noting a step taken by the Committee or whether a concern was being identified. We have attached the proposed course outlines for the courses that meet the specific competencies you raise (Appendix G) and are not aware of anything in these proposed courses that would raise concerns. The description of Trinity Western University's approach, outlined in the two numbered paragraphs at the top of the third page of your letter, is accurate. If the Approval Committee does have concern about specific matters in the proposed courses, we would be pleased to address those concerns. The University has successfully launched professional programs in business, education and nursing with great success. These programs have received accreditation from numerous professional bodies and associations. Our graduates are highly sought after, particularly because they have high ethical standards and exemplary professional competencies.



We trust this fully answers the questions posed.

Yours truly,

TRINITY WESTERN UNIVERSITY

A handwritten signature in cursive script that reads 'Bob Kuhn'.

Bob Kuhn, J.D.  
Interim President

BK/hkp

Appendices (A-G)

## APPENDIX A – Course Descriptions

### Criminal Law

#### Description

This course introduces students to substantive Canadian criminal law. This course teaches the basic principles underlying criminal culpability and focuses on the elements of specific substantive offences. Students will use the *Criminal Code* to identify the elements of various offences, in particular the various forms of *mens rea* as developed in law. Students will also explore the nature and application of various defences, such as self-defence, provocation, automatism and necessity, and mental disorder. Students will consider theories of punishment and the various purposes underlying sentencing. Students will also be introduced to the limits of provincial jurisdiction in creating offences and learn to distinguish between true crimes and regulatory offences.

#### Course Objectives

Through this course, students will:

1. understand and critically assess the principles of criminal responsibility and punishment;
2. understand and critically assess theories and perspectives on the purpose and function of the justice system, and the competing interests they serve;
3. develop practical skills by identifying the elements of various offences as set out in the *Criminal Code*;
4. apply substantive knowledge to fact scenarios by identifying the evidence that supports and negates various offences and corresponding defences;
5. identify whether an offence is properly characterized as a regulatory or a criminal offence;
6. produce high-quality, critical writing about themes and issues within the criminal law; and
7. identify and critically discuss ethical issues related to substantive criminal law.

#### Course Outline

1. Introduction to criminal law
2. Theories of criminal liability
3. Burdens of proof
4. Principles of criminal liability
5. Elements of an offence
  - *Actus reus*
  - *Mens rea*
  - *Mens rea* and the *Charter*
6. Types of offences
  - Regulatory
  - Summary
  - Indictable
  - Hybrid

7. Specific offences
8. Raising a defence
9. Specific defences
10. Not criminally responsible by reason of mental disorder
11. Theories of punishment and principles of sentencing
12. Aboriginal offenders
13. Gender and racial critiques of the criminal law

### **Texts**

Roach, Berger, Healy and Stribopoulos, *Criminal Law and Procedure* (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, *Tremear's Criminal Code* (Carswell, 2011)

Stephen Coughlan, *Criminal Procedure* (Irwin Law, 2008)

## **Criminal Procedure**

### **Description**

This course examines the principles of Canadian criminal procedure. It canvasses the various sources of criminal procedure; basic concepts, principles, and institutions; and the most significant rules governing the criminal process. This course focuses on the dynamic impact of the *Charter*, as developed through the common law, on safeguarding the accused's rights and circumscribing state power at each phase of the criminal process. Students will be introduced to the substance and application of these rules from the investigative phase through the laying of charges, to the trial, conviction, sentencing and beyond.

### **Course Objectives**

Through this course, students will:

1. understand and critically assess the competing interests and values animating rules of criminal procedure;
2. gain a working knowledge of criminal procedure;
3. demonstrate practical competence by identifying procedural errors in various fact scenarios, applying the proper legal framework and analyzing the effects of these errors;
4. understand the criminal procedure governing various offences;
5. apply their knowledge of criminal procedure participating in, observing and critiquing mock exercises, including a bail hearing, *Charter* application and sentencing;
6. develop basic advocacy skills through participation in a mock trial; and
7. identify and critically discuss ethical issues arising in the criminal law process.

### **Course Outline**

1. Introduction to criminal procedure
2. Sources of criminal procedure
3. Overview of the structure of criminal proceedings
4. Levels of courts in British Columbia
5. Roles of police, Crown and Defence
6. Investigative powers of police
7. Charge approval and commencing proceedings
8. Compelling appearance and judicial interim release
9. Arraignment, pre-trial case management, elections, re-elections and preliminary hearings
10. Pre-Trial and other applications
11. Disclosure and procedural applications
12. *Charter* applications and exclusion of evidence
13. Trial management
14. Jury selection
15. Trials

16. Sentencing
17. Youth court
18. Mentally disordered offenders
19. Appeals
20. Ethical issues in criminal law

**Texts**

Roach, Berger, Healy and Stribopoulos, *Criminal Law and Procedure* (10th edition) (Emond Montgomery, 2010)

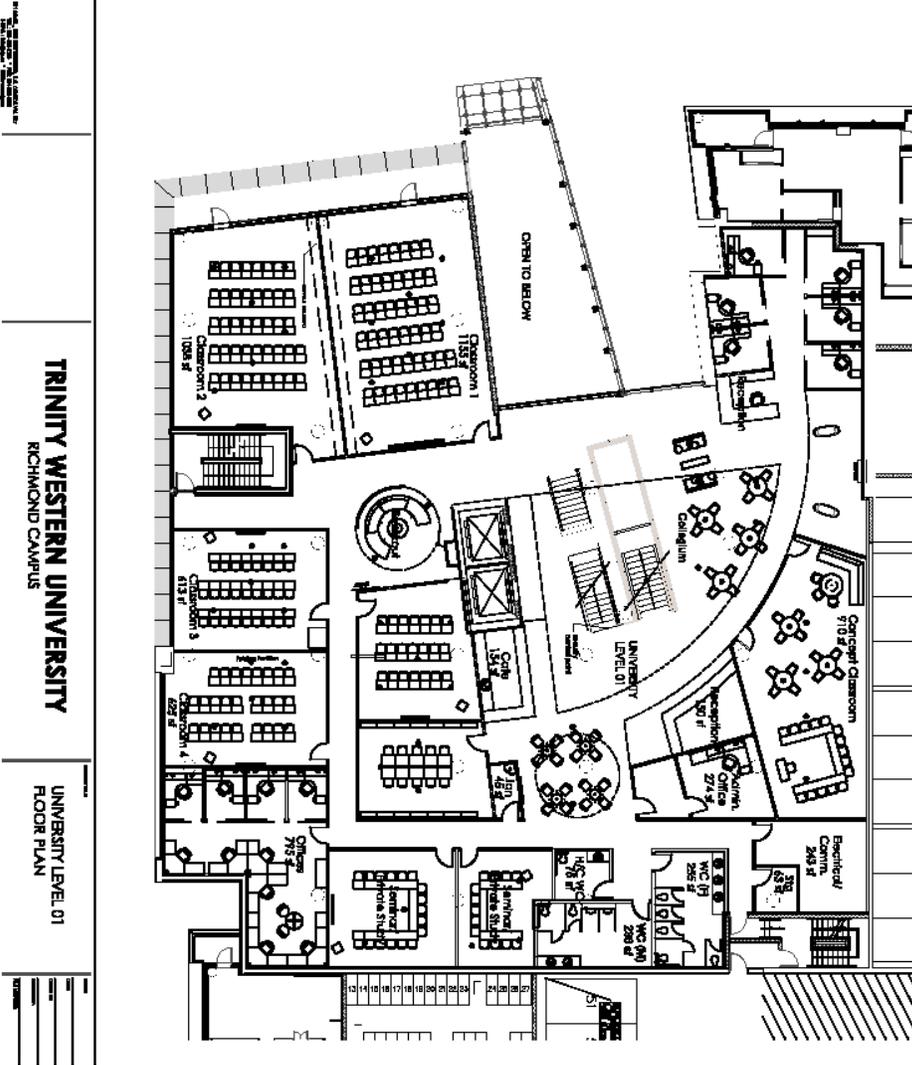
Watt and Fuerst, *Tremear's Criminal Code* (Carswell, 2011)

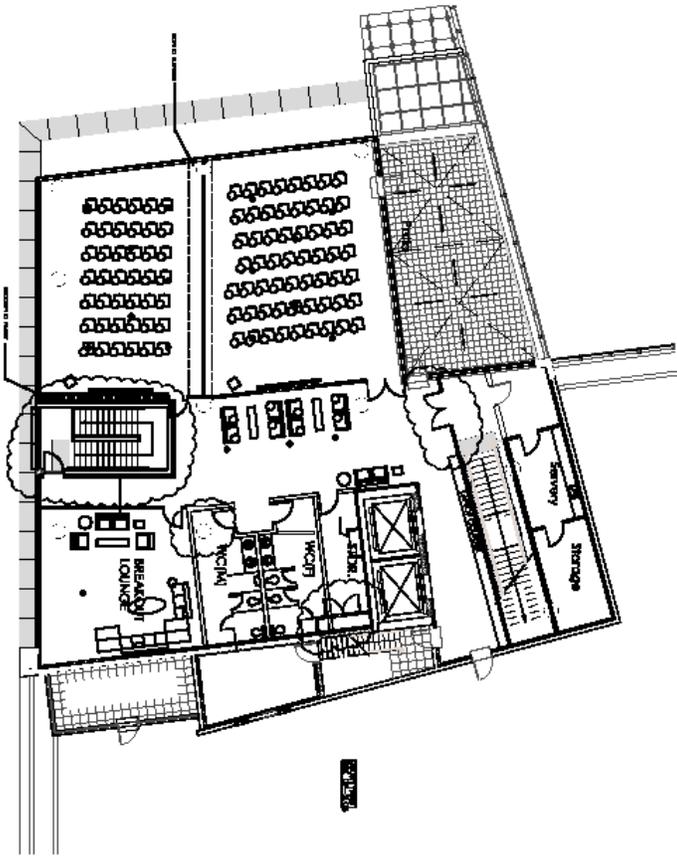
## APPENDIX B – Pro-Forma Budget

<b><u>TRINITY WESTERN UNIVERSITY PRO-FORMA SCHOOL OF LAW BUDGET</u></b>					
	<b>Year One</b>	<b>Year Two</b>	<b>Year Three</b>	<b>Year Four</b>	<b>Year Five</b>
<b>Revenue</b>					
Tuition	1,530,000	3,020,000	4,590,000	4,720,000	4,845,000
Total Revenue	1,530,000	3,020,000	4,590,000	4,720,000	4,845,000
<b>Expenditures</b>					
Salary and Benefits	1,045,000	1,835,000	2,225,000	2,275,000	2,365,000
Operations (non-salary)	441,000	495,000	502,000	512,000	522,000
Total Expenditures	1,486,000	2,330,000	2,727,000	2,787,000	2,887,000
<b>Contribution to Overhead</b>	44,000	690,000	1,863,000	1,933,000	1,958,000

**Note:** The costs for Financial Aid, IT Support, Admissions and Registrar’s Office, Student Life, Administration, Building Maintenance, etc. are all funded from University Overhead.

# APPENDIX D – Richmond Campus Floor Plans





**TRINITY WESTERN UNIVERSITY**  
RICHMOND CAMPUS

UNIVERSITY LEVEL 2  
FLOOR PLAN

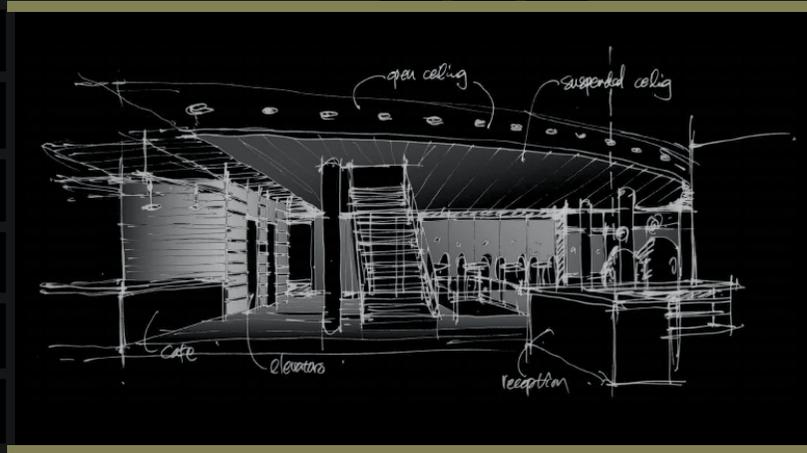
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1401/22

## **Appendix E – Richmond Brochure**

SEEING



BEYOND

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Trinity Western University Richmond

Education. Transformation. IMPACT.



TWU Richmond will be every student's connection to an outstanding university experience.

---

DISCOVER

GROW

ENGAGE

---





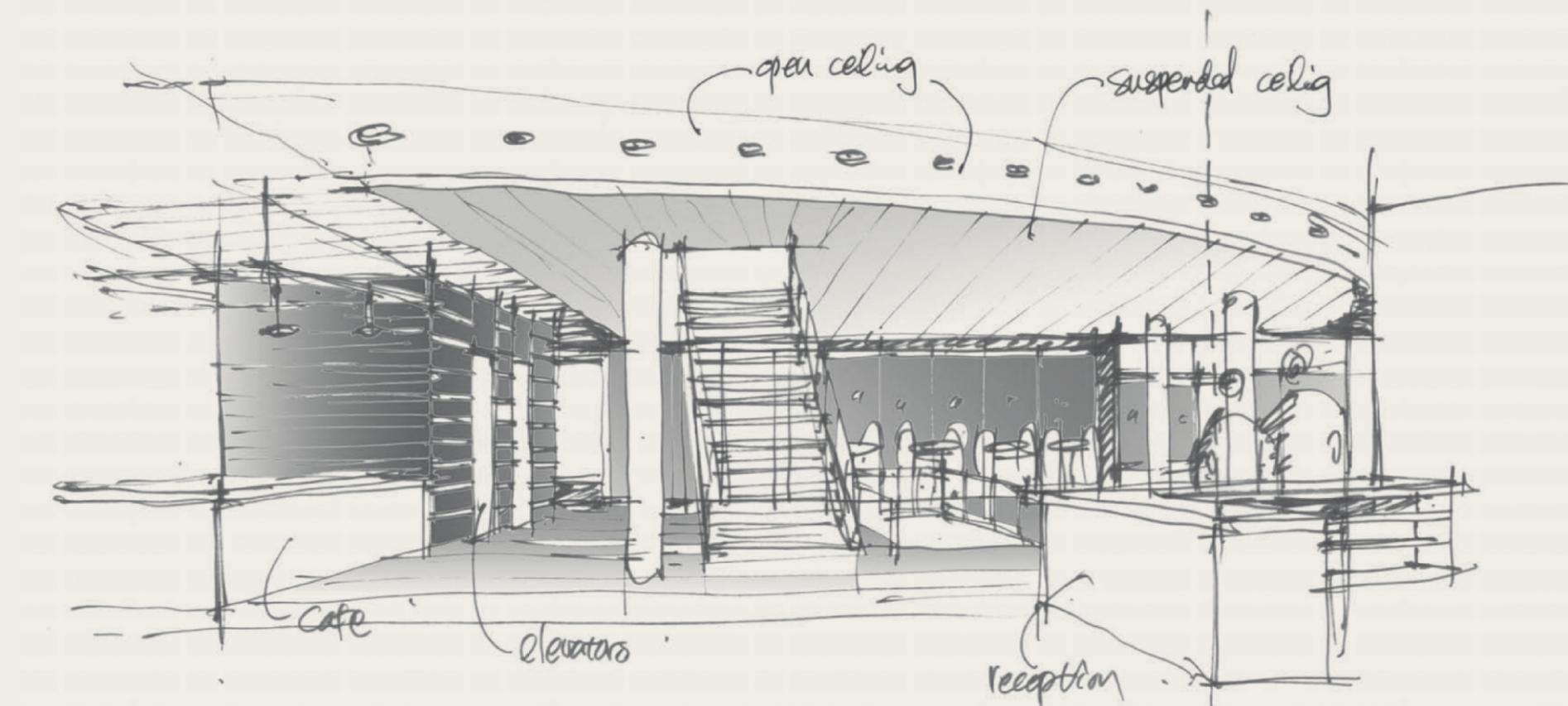
OUR VISION AT TWU RICHMOND – IS TO GIVE OUR STUDENTS  
NEW PERSPECTIVE. IT MEANS LEARNING, GROWING AND GAINING  
INSIGHT INTO A GLOBAL COMMUNITY. A UNIQUE PLACE THAT  
GIVES STUDENTS THE TOOLS TO REACH THEIR TRUE POTENTIAL.



FULL OF DISCOVERY AND ENGAGEMENT, OUR TWU RICHMOND  
CAMPUS WILL HELP THEM ACHIEVE AND REALIZE THIS VISION.



VISION



TWU Richmond will be a state-of-the-art campus complete with executive classrooms, faculty offices, seminar rooms, a learning resource centre, lounge areas, private study areas, and a coffee and food services kiosk.

PERSPECTIVE

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Creating a place of rigorous academic scholarship combined with people of a common vision – we are in a position to reach out and engage with students from Asia and all around the world.

---

As a comprehensive university, TWU offers a broad array of undergraduate and graduate degree programs across many disciplines.

Our faculty members are known for their extraordinary accessibility to students and strong record of published, globally-recognized research. The result of the outstanding instruction and strong Christian community at TWU is skilled and committed graduates, people who make a positive difference wherever they go.

We welcome people from all around the world to join our community. Since 1962, we have been training leaders of character, capable of addressing the challenges of our changing world. What can you do at TWU? I invite you to watch our impact videos and envision how you can be the difference.

**Jonathan S. Raymond, Ph.D.**



President (2006 – 2013) and Senior Fellow



“You don’t have to be big to be world class. We are bringing an intentionally designed program to meet the needs of Richmond.”

---

TWU Richmond is an integrated, collaborative environment that emphasizes global engagement. It will offer students expansive opportunities for education, transformation, and impact like no other university in Canada.

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# TWU - OUR IDENTITY

TWU Richmond, located at the hub of the downtown core, is tailored to the needs of its community guided by the same mission, vision and strategic direction of Trinity Western University. TWU develops leaders of character and competence who, by engaging in a transformational education experience, make a positive impact in the world.

## 1. Cosmopolitan

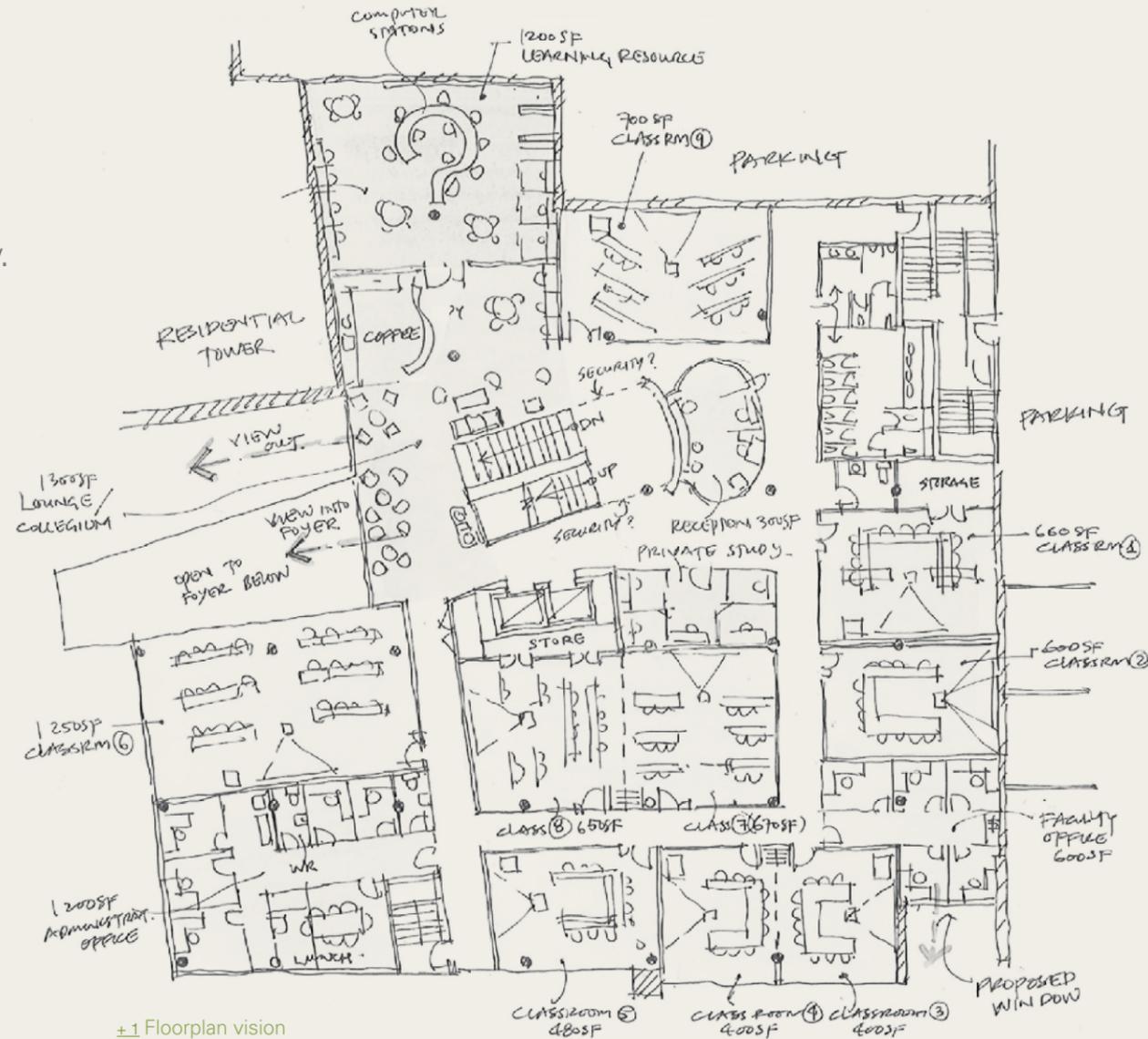
TWU Richmond will be a Christ-centered institution based on the multiversity concept, which embraces people of different backgrounds in a learning community centered on a Christian world view. The campus will be characterized by ethnic diversity and focused programs that meet the applied education needs of global learners.

TWU Richmond will be programmatically focused, yet diverse, offering an array of certificate and degree options. The Centre for Global Engagement, a signature space on the upper floor, will ensure that meeting the needs of global learners remains a driving goal across all the campus' programming. The Centre will also

further the development of bilateral Canadian-Asian business, cultural and social relationships.

## 2. Professional

TWU Richmond will provide a range of educational choices at executive levels of post-secondary education, including adult degree completion and professional graduate programs. TWU Richmond's curricular options will focus on: business, leadership, communication, globalization, and social services. Students will be able to choose from stand-alone learning options, classes that are part of degree programs, or graduate and certificate options.



±1 Floorplan vision

International degree completion courses will be available during the day, while adult degree completion courses will take place in the evening. In addition, four professional graduate programs will be offered to support the campus' emphases on executive education. These master's level programs will allow students to complete their graduate degree while working.

## 3. Urban



±1 Cultural Multiversity

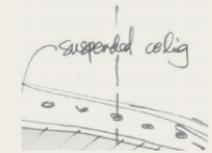


±2 Professional Graduate Programs

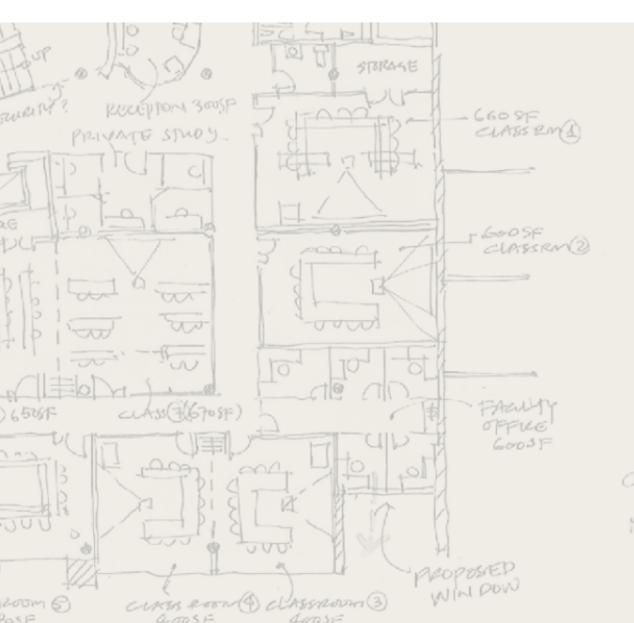


±3 Accessible Programming

Students will learn about issues and problems around the world and help develop innovative solutions.



Not only will students analyze problems, but also work towards solutions, making an impact from their very first class.



The Centre will be a gathering place for the business and cultural communities of Richmond, intentionally contributing to a broad range of activities that impact Richmond's quality of life, engaging global issues in Richmond, and taking Richmond to the world.

CONCEPT SKETCHED (B) NOV 23, 2010

TWU Richmond will provide many of the amenities of a larger campus through partnerships with local vendors. Food services, recreation services, shopping, bookstore services, technology sales, and library services will be provided through strategic relationships with urban partners near the campus or technological interface with the TWU main campus in Langley. In this way, TWU Richmond will be viewed as an educational and business partner in the City of Richmond. As TWU Richmond grows, it will work with the Richmond community to support mutual growth goals, and it will also provide business to local merchants through its strategic relationships.

**4. Efficient**

TWU Richmond will be recognized for environmental, programmatic, and operational efficiency, making it a strong local and global education partner. Consistent with the vision presented by Phileo development, environmental efficiencies will be achieved in building and construction, choice of finishing products, natural lighting, thoughtful use of technology, and learning management.

Programmatic efficiencies will be attained through:

- focused programming around high-yield educational options that meet both local and global demand;



± 4 Focused Programming

elevators

TWU Richmond will be a cosmopolitan, urban, efficient, and professionally-oriented campus catering to the broad spectrum of learners in the Richmond community. It will offer cohort-based learning programs, executive certificates, international degree programs, degree completion and master's degree programs.

Cohort learning prepares students for work in the professional world – through collaborative team projects, problem analysis, solution-based strategy development – and offers learners the opportunity to develop lifelong friendships.

- certificate to degree laddering structures, which provide students lifelong learning; and
  - year-round learning to keep TWU Richmond vibrant 12 months a year.
  - producing a high-yield and highly efficient campus operation through programmatic densification; and
  - strategic relationships with local urban partners to provide non-educational campus services, such as bookstore, food services, parking services, recreational services, and technology services, allowing TWU Richmond to focus on its core business —education.
- Operational efficiencies will be attained through:
- accommodating the largest number of students possible in the campus' 22,000 square feet of learning space by offering programs during the day, evening, and weekends;



"The Centre will be an international destination and venue for cultural dialogue."  
 – Jonathan Raymond, Ph.D. *President (2006 – 2013) and Senior Fellow*

# RICHMOND PROGRAMS AND IMPACT STATEMENTS



## Adult Degree Completion Format (evenings and online/mixed-mode)

The Adult Degree Completion format is for middle managers and emerging professionals who want to increase their value to an organization and advance their career. Although the number of students entering the traditional undergraduate market in Metro Vancouver is expected to decline over the next decade, non-traditional markets (adult, executive, professional, and online learners) are expected to grow significantly.

The TWU Richmond campus can leverage the strong TWU brand to promote value-added applied degrees that meet marketplace demand. With the foundation of a Christian worldview, TWU Richmond will help learners find their core strengths and identify their personal calling in life. Believing that all people were created to make a positive difference in their communities, the staff and faculty of TWU Richmond will cultivate the potential of adult learners through higher education. As at TWU's main campus, the educational experience at TWU Richmond will transform students' knowledge base, sense of self, and commitment to serve others such



±1 Classroom Engagement

±2 Interchange



±3 Socialization



Students will learn in cohorts – where they can develop lifelong friendships and, like in the professional world, work in collaborative teams solving real problems.



TWU will bring its focus on student and community enrichment into Richmond by providing students with real-world experience.

that, through their leadership and personal example, they will make a positive impact in their community and the world.

## International Degree Completion Format (full-time program during the day)

The International Degree Completion format is for international learners who have attained at least two years of qualifying education, a diploma, or a certificate from a recognized university in Canada or abroad.

The goal of this program is to equip the international learner to understand modern leadership in the tradition of Christian leadership taught throughout TWU's curriculum. Many international learners' normative experiences with leadership emphasize power and control. Students in the TWU program, however, will learn how to lead effectively through influence and relationship, how to understand people within organizations through assessment and analysis, and how to communicate effectively and resolve conflict.

International learners will be equipped to lead people with care, empathy, and emotional intelligence. Most learners in this program will come from international families of influence whose parents desire to see them equipped to take on key roles in their companies. Through this program, we demystify leadership and challenge leadership assumptions, preparing people to lead from a value reference point that builds positive outcomes for people and business.

## RICHMOND PROGRAMS AND IMPACT STATEMENTS

— — + Cafe

### MA in Leadership (full-time program during the day)

The Richmond campus will offer a new opportunity in 2015 for expanding the popular Leadership degree into Richmond and surrounding communities. The MA in Leadership program is based on principles of transformational servant leadership that see the leader as essential in helping employees reach their full potential. In focusing on the needs, attributes, and aspirations of employees, a transformational leader learns how to accomplish far more with and through others.

The MA in Leadership program has operated for the past 15 years at TWU Langley and offers specialized streams in non-profit, and business.

The Masters in Leadership degrees at TWU Richmond will be one-year, full-time programs

offering international and domestic learners a Master of Arts in Leadership. Students who complete this program will be valuable assets to organizations. They will be able to understand leadership at a deep level, enabling them to transform corporations and organizations to make a significant impact in the world.

### Supportive Programs

Two support programs will be offered learners to meet basic needs and provide progression opportunities into the existing array of programs (see above).

**a. UT Program** The University Transitions program is provided for international learners whose language level is not sufficient to commence full-time studies in their chosen degree program. The UT program provides students language support and assistance, while they complete lower-level university courses for credit. Attributes of the UT program are: for-credit coursework, bilingual support structure, learning coaches, and writing support in addition to the regular University support systems..



**b. Certificate Programs** The University-wide Market Research study conducted in 2012 found that many adult learners are interested in taking the next step in their career development through the completion of a University Certificate. As an urban, professionally-oriented campus, TWU Richmond is an ideal location to design and deliver certificates to the professional community. Learners often pursue certificates to take the next step in their career or achieve credentialing that validates their existing knowledge base. It is anticipated that certificates will provide a rich base of learners (1 or 2 semesters) who will become candidates for either the BA in Leadership or MA in Leadership program.

In addition, certificates will become applied skills that BA in Leadership students will be able to complete within their elective program credits.

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The list of certificates to be delivered at TWU Richmond is under development and may include:

01. Financial Planning Certificate (CFP)
  02. HR Professional Certificate
  03. Project Management Certificate
  04. Certificate in Leading Change
  05. Social Entrepreneurship
  06. Facility Management Certificate (Arts, Sports, and Social/Human Services)
  07. Mediation Certificate
  08. Teaching English as a Second Language Certificate
  09. Human Services Certificate
  10. Post Graduate Certificate for International Counselling
-



#### Richmond Facts

- » Richmond has a population of over 193,255 people
- » By 2021, a population of over 226,000 is projected
- » 57% of Richmond's population are immigrants, the highest percentage among Canada's municipalities
- » 1,354 People per square km (Vancouver has 5,000 and Hong Kong has 6,500.)

# 60%

60% percent of the Richmond population is of Asian decent



The top 3 places that immigrants have arrived from are: Hong Kong, China and Taiwan

# 83.4

Average life expectancy is 83.4 years – higher than Japan, who are at the top of the UN (WHO) ranking

## RICHMOND AT A GLANCE

# 134

Richmond is seven years older than Vancouver and was incorporated on November 10, 1879



Richmond is home to the Vancouver International Airport (YVR) which supports 16.8 million airport passengers annually



Richmond is home to an international seaport, including multimodal rail and truck transport

#### Richmond Overview

- » 26 international brand-name hotels / 4,500 rooms
- » Total combined square feet of meeting space: 145,000
- » Richmond is located at the mouth of the 1,375 km long mighty Fraser River
- » Steveston Fishing Port is the largest commercial fishing harbour in Canada
- » 20 minutes by freeway from the US/Canada border
- » 38% of Richmond's land is in the Agricultural Land Reserve
- » Richmond is home to the iconic Richmond Olympic Oval
- » Largest producer of cranberries in North America
- » 1.4 million birds migrate through Richmond on the Pacific Flyway



Richmond is British Columbia's fourth-largest city. It's located on 17 flat islands in the Fraser River, and boasts 80 km (50 miles) of bike routes and dyke trails. This multicultural 2010 Olympic Venue city lies just 20 minutes south of downtown Vancouver and is a perfect location for education, business and global engagement.



#### Richmond Economy

- » Richmond currently has over 100,000 jobs in a variety of sectors
- » Film and television production have grown significantly in Richmond.
- » The Agricultural Land Reserve preserves over 4,900 hectares of farmland which hosts 247 local farms
- » The dominant crops that are grown in Richmond are blueberries and cranberries but you can also find: strawberries, corn, pumpkins, potatoes and more
- » Opened in 2009, the Canada Line SkyTrain system has made Richmond more accessible from Vancouver International Airport and throughout the Lower Mainland



[TWU.CA/RICHMOND](http://TWU.CA/RICHMOND)

## Appendix F – Required Library Resources

### Core Collection Recommendations

The following are recommendations for a core Canadian legal academic collection. This list will consist of essential primary sources and secondary sources, and their respective finding tools. Where there are comparable electronic and print media we indicate such. The collection will be further developed based on the intended foci and faculty expertise. Except for basic print and online texts have not included textbooks in this list. Textbook acquisitions should be 50% of the collections budget.

The collection will support the teaching of the J.D. degree, university programs that would benefit from a law collection, and the wider research and legal community. The communities the collection will serve will inform the balance of online/print and the cost of the licenses for online access. There will be a conservative balance of electronic and print.

#### I. Free Online Tools

There has been substantial growth in free online legal information tools and resources. Law Societies and academic institutions have developed tools primarily for the use of practitioners and professionals. Most of their collections are voluntary submissions and are therefore not comprehensive. They often lack the depth of editing and annotation work done by the subscription services. They are increasingly adding additional tools such as citators that will increase value to these resources.

##### a. CanLII

The Canadian Legal Information Institute (CanLII) is a not-for-profit organization initiated by the Federation of Law Societies of Canada. CanLII seeks to gather and make accessible online legislative and judicial texts, as well as legal commentaries, from federal, provincial and territorial jurisdictions on a single Web site.

##### b. CommonLII

The Commonwealth Legal Information Institute service is comprised of 981 databases from 59 Commonwealth and common law countries and territories via the Free Access to Law Movement.

##### c. BAILII

British and Irish case law & legislation, European Union case law, Law Commission reports, and other law-related British and Irish material.

##### d. Cornell LII

*Cornell's* most-accessed website, the *LII* provides the full online hypertext of the U.S. Code and other U.S. laws and court decisions

## II. Complimentary Subscription Services

Currently all Canadian Law students (LLB, JD, LLM, JSD), full-time law faculty, and academic law librarians are provided free access and training to several practitioner services. These services provide access to digital versions of many of the primary and secondary materials collections below. These will be accessed through individual user accounts..

### a. LexisNexisQuicklaw (QL)

As a qualified law schools including students, academic staff, and law librarians, TWU will receive free access to this superior online legal content coupled with free, high-quality training and support.

(Note: we will consider a campus subscription to LexisNexis Academic Plus)

### b. WestlawCanada (WL)

With Westlaw Canada, law school faculty and staff are able to help students with tools and resources designed for classroom instruction, article creation, legal library needs, and more.

### c. Maritime Law Book (National Reporter System)

Any student is entitled to one free trial period of 15 days. However as a law school library that maintains multiple subscriptions we understand we will be able to make arrangements for free law student access for the entire school term.

Note: We will consider negotiating a campus subscription to MLB.

## III. Primary Sources and Finding Tools

### a. Canadian Legislation

Most legislation collections are available online through free and subscription services. However many of the online source are not official. We will provide a selective collection of legislative materials for most jurisdictions and comprehensive collection of B.C. legislative materials.

- i. Federal Annual Statutes and Regulations (Print)
- ii. All Provincial and Territorial Annual Statutes and Regulations (Print)
- iii. All Legislative materials for Federal and British Columbia – Hansards, Journals, and Committee reports (Print)
- iv. Legislation Citators for Federal and British Columbia (Print)

### b. Canadian Caselaw

We will provide on online sources for caselaw with the following exceptions for Federal and British Columbia. Topic reports can be collected based on teaching specializations.

- i. British Columbia Law Reports (Print)
- ii. Western Law Reports (Print)
- iii. Supreme Court Law Reports (Print)
- iv. Federal Court Reports (Print)

c. United Kingdom

A commonwealth collection is essential for understanding the development of Canadian law, and for locating precedent.

- i. [ICLR Online](#)

d. Finding Tools

- i. [Halsbury's Laws of Canada](#) (Print)
- ii. [Halsbury's Law of England](#) (Print)
- iii. [Canadian Abridgment](#) (Print)
- iv. [Canadian Encyclopedic Digest](#) (Print)
- v. [The Digest](#) UK (Print)

IV. Secondary Sources

a. Journal Indices and Full Text

- i. [Index to Canadian Legal Literature](#) (Print and WL/QL)

Index to Canadian Legal Literature (ICLL) is a bibliographic index providing thorough coverage of Canadian law journal literature. ICLL indexes journals, law reports, books, book reviews, theses, essay collections and Canadiana Forthcoming Books. ICLL records relate to articles, monographs, case comments, annotations, seminar proceedings, etc., as selected by ICLL's legal editors.

- ii. [LegalTrac Fulltext](#) (Online Gale)

Provides full-text coverage of major law reviews, legal newspapers, bar association journals and international legal journals offers law students, faculty and legal researchers the publications they need for their research and practicum. Each title included is selected on the basis of criteria provided the American Association of Law Libraries.

- iii. [Index to Legal Periodicals](#) Full Text and ILP Retrospective (Online EBSCO)

Indexes articles from 615+ legal periodicals published in the United States, Canada, Great Britain, New Zealand and Australia. The retrospective database indexes over 750 legal periodicals published in the United States, Canada, Great Britain, Ireland, Australia and New Zealand.

- iv. [Index to Foreign Legal Periodicals](#) (Online HeinOnline)

Produced by the American Association of Law Libraries, the Index to Foreign Legal Periodicals (IFLP) is the preeminent multilingual index to articles and book reviews appearing in 470 legal journals published worldwide. It provides in-depth coverage of public and private international law, comparative and foreign law, and the law of all jurisdictions other than the United States, the U.K., Canada, and Australia.

b. Full Text Online Collections – Journals and Books

- i. [HeinOnline](#)

HeinOnline is the world's largest image-based legal research database. HeinOnline is an especially useful collection of full-text legal periodicals but also contains a vast array of additional legal content. All content within HeinOnline is image-based in PDF format, from inception and fully searchable. Our subscriptions includes the following databases: Law Journal Library, English Reports - Full Reprint (1220-1865), American Association of Law Libraries (AALL), Association of American Law Schools (AALS), Code of Federal Regulations, European Center for Minority Issues, Federal Register Library, Legal Classics, Manual of Patent Examining Procedure, Philip C. Jessup Library, Treaties and Agreements Library, U.S. Attorney General Opinions, U.S. Federal Legislative History Library, U.S. Presidential Library, U.S. Statutes at Large and the U.S. Supreme Court Library.

- ii. [Irwin Law E-Library](#) Essentials of Canadian Law

Irwin Law's E-Library, using ebrary technology, will allow students to access authoritative Irwin Law titles anytime, anywhere, as well as to take advantage of powerful technology that increases productivity and efficiency.

- iii. [O'Brien's Encyclopedia of Forms](#) (Online)

Canada's most comprehensive collection of legal forms and precedents, covering the broadest range of legal topics.

iv. Canadian law journals (Print/Online)

We will consider where possible print as well as online access to Canadian law journals depending on research foci.

- The Advocates' Quarterly
- Alberta Law Review
- Annals of Air and Space Law
- Appeal: review of current law and law reform
- Asper Review of International Business and Trade Law
- Banking & Finance Law Review
- Les Cahiers de Droit
- The Canadian Bar Review
- Canadian Business Law Journal
- Canadian Criminal Law Review
- Canadian Family Law Quarterly
- Canadian Journal of Administrative Law and Practice
- Canadian Journal of Criminology and Criminal Justice
- Canadian Journal of Family Law
- Canadian Journal of Human Rights (2010-)
- Canadian Journal of Insurance Law
- The Canadian Journal of Law and Jurisprudence
- Canadian Journal of Law and Society
- Canadian Journal of Law and Technology (2002-)
- Canadian Journal of Women and the Law
- Canadian Labour & Employment Law Journal
- Canadian Law Library Review
- Canadian Tax Journal
- Canadian Yearbook of International Law
- Constitutional Forum
- The Criminal Law Quarterly
- Dalhousie Journal of Legal Studies
- Dalhousie Law Journal
- Education & Law Journal
- Estates, Trusts & Pensions Journal
- Health law in Canada
- Health Law Journal
- Health Law Review
- The Indigenous Law Journal (2002-)
- Intellectual Property Journal
- Journal of Environmental Law & Practice

- Journal of International Law and International Relations
- Journal of Law & Equality (2002-)
- Journal of Law and Social Policy
- Journal of Parliamentary and Political Law (2008-)
- Journal of Politics and Law (2008-)
- The Journal of Public Policy, Administration and Law (2009-)[online]
- Manitoba Law Journal
- McGill International Journal of Sustainable Development Law and Policy (2005-)
- McGill Journal of Law and Health (2007-)
- McGill Law Journal
- National Banking Law Review
- National Journal of Constitutional Law
- Ocean Yearbook
- Osgoode Hall Law Journal
- Ottawa Law Review
- Queen's Law Journal
- Review of Constitutional Studies
- Revue de droit de l'Université de Sherbrooke
- Revue de la common law en français
- Revue générale de droit
- Revue juridique des étudiants et étudiantes de l'Université Laval
- Revue juridique Thémis
- Revue québécoise de droit international
- Saskatchewan Law Review
- The Supreme Court Law Review
- University of British Columbia Law Review
- University of New Brunswick Law Journal
- University of Ottawa Law and Technology Journal (2003-)
- University of Toronto Faculty of Law Review
- University of Toronto Law Journal
- Windsor Review of Legal and Social Issues
- The Windsor Yearbook of Access to Justice

v. Textbooks

- [Black's Law Dictionary](#)
- [Canadian Law Dictionary](#)
- [Canadian Guide to Uniform Legal Citation](#)
- [The ultimate guide to Canadian legal research](#)
- [Legal writing and research manual](#)
- [The practical guide to Canadian legal research](#)
- [Legal Research and writing manual](#)

## **Appendix G – Proposed Course Outlines**

## **LAW 602, Ethics and Professionalism\* (3 s.h.)**

### **Description**

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.

### **Course Objectives**

The objectives of this course are to:

- 1) familiarize students with the history of the legal profession in Canada;
- 2) familiarize students with various notions of the role of the legal profession in Canadian culture and business;
- 3) familiarize students with the ethical issues arising from the practice of law;
- 4) familiarize students with the duties owed to clients and the legal profession;
- 5) introduce students to the *Code of Professional Conduct* and *Professional Conduct Handbook*;
- 6) enable students to identify ethical issues in fact scenarios and from past cases where professional bodies have imposed discipline on lawyers for failure to meet ethical obligations;
- 7) enable students to identify relevant facts and arguments to respond to various scenarios where professional obligations are raised and reconcile those arguments with personal beliefs and obligations to serve the public and to pursue justice.

### **Course Outline**

1. The history and evolution of the legal profession in Canada
2. Lawyer-client relationship
3. Confidentiality and privilege
4. Duty of loyalty and conflicts of interest
5. Ethics and criminal law practice
6. Civil litigation and ethics in advocacy
7. Lawyers in organized settings

### **Texts**

Alice Wooley *et al.*, *Lawyers' Ethics and Professional Regulation* (LexisNexis Canada, 2008)

D. Buckingham, J. Bickenbach, D. Bronaugh & B. Wilson, *Legal Ethics in Canada* (Harcourt Brace, 1996)

Gordon Turriff, Q.C., *Annotated British Columbia Legal Profession Act* (Carswell: looseleaf)

## Law 504, Constitutional Law (5 s.h.)<sup>1</sup>

### Description

Canada is governed by a variety of documents collectively called “the Constitution.” The first half of this course covers the “division of powers”; that is, the law that governs the relationship between different levels of government in Canada. The intended clear division between federal and provincial powers by the founding fathers of Confederation has been made more complex by new inventions, developments and circumstances such as aeronautics, telecommunications and commercial realities of the twenty-first century. The second half of the course will focus on the *Canadian Charter of Rights and Freedoms* and examine its application and interpretation. This will include an examination of the principles of human rights and Charter values.

### Course Objectives

The objectives of this course are to:

- 1) familiarize students with the structure and substance of Canadian constitutional law, including both division of powers and the *Charter of Rights*;
- 2) familiarize students with techniques of Constitutional interpretation;
- 3) introduce students to the literature which expounds the Constitution, including case law and doctrine;
- 4) introduce students to methods of analysis which involve the Constitution in resolving legal problems;
- 5) teach students to identify constitutional issues, identify relevant facts, advise a client about what a court is likely to decide concerning the issue identified, and identify arguments that could be used to support either side of the argument with respect to issues and proposed legislation;
- 6) familiarize students with the specific rights and freedoms protected by the *Charter*, the structure of *Charter* arguments and assembling evidence to advance *Charter* claims and to create section 1 defences;
- 7) introduce students to the available remedies under the *Charter* including possible remedies that continue to be developed by the courts;
- 8) introduce students to written and oral advocacy skills in relation to the constitutionality of a proposed piece of legislation.

### Course Outline

1. Pre-Confederation constitutional documents
2. *Constitution Act, 1867*, additional constitutional documents and amendments
3. Federal powers
4. Provincial powers
5. Concurrent and shared powers
6. Quasi-constitutional powers accorded to other bodies
7. Application of the *Charter* and the “notwithstanding” clause: Sections 32 and 33
8. The fundamental freedoms:
  - Section 2(a): freedom of conscience and religion
  - Section 2(b): freedom of thought, belief, opinion and expression

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<sup>1</sup> This is a full year course.

- Section 2(c) and (d): freedoms of assembly and association
9. Democratic rights: sections 3 through 5
  10. Mobility rights: Section 6
  11. Legal rights:
    - Section 7: right to life, liberty and security of the person
    - Sections 8 through 14: search, seizure, arrest, and criminal proceedings
  12. Equality rights: sections 15(1) and (2), 27 and 28
  13. Official languages, heritage and aboriginal rights: section 16 through 22, 25 and 27
  14. Minority language educational rights: sections 23 and 29
  15. Reasonable limits on rights: section 1, including the use of legislative facts and other methods of proof.
  16. Ethical issues in Constitutional litigation

### **Texts**

Peter. W. Hogg, *Constitutional Law of Canada*, (2010 student edition) (Carswell, 2010)  
L.I. Rotman, B.P. Elman, G.L. Gall, *Constitutional Law: Cases, Commentary and Principles* (Carswell, 2008)



**BY EMAIL**

June 28, 2013

Jonathan S. Raymond, Ph.D.  
President and Acting Chancellor  
Trinity Western University  
7600 Glover Road  
Langley, BC V2Y 1Y1

**Re : Trinity Western University School of Law Proposal**

Dear Dr. Raymond,

The Canadian Common Law Program Approval Committee (“Approval Committee”) is continuing its review of Trinity Western University’s new law degree proposal, and thanks you for the helpful documentation submitted by Trinity Western University.

The Approval Committee, in its review of law school degrees, both existing and proposed, focuses on whether the elements of the Federation’s national requirement will be met. While Trinity Western University’s proposal provides much of the information required to complete this evaluation, we do have some additional questions, primarily in the area of those elements of the national requirement that deal with law school resources. These questions are set out as follows.

1. Budgeting:

- a) Consistent with the reviews the Federation has carried out with respect to other proposed law degree programs in recent years, please provide a more detailed financial plan that includes anticipated law school revenue over and above tuition if any, salary costs, an initial library acquisition budget and an estimated annual library budget including acquisition costs, costs for physical infrastructure, costs for student clinics, university “taxes,” and any overhead charges. Please include any anticipated changes to the student numbers and tuition levels set out in your proposal;
- b) Please provide the contingency plans in place to deal with potential challenges to the law school start-up plans, including fundraising, construction timelines, enrollment targets, ability to offer the full range of classes noted in the report, and other possible challenges; and

- c) With respect to the statement at page 38 of your proposal that the law faculty will be financially self-supporting, please clarify the extent, identified in your proposal, to which the law faculty intends to draw upon central university personnel with respect to, for example, student financial aid and other resources.
2. Facilities: With the proposed law school start date for classes being in 2015, please indicate what plans are in place if the new dedicated law school building is not ready by that time. Please provide more information about space plans for any period prior to the occupancy of the new building.
3. Library: Please provide additional information about the proposed library collections, including the space that is expected to be allocated to paper and electronic materials.
4. Admissions and Student Services
- a) As part of our process of review of all law degrees, we are inquiring about admissions policies that result in the waiver of the national requirement minimum of two years of post-secondary education. Please provide a detailed description of any proposed special admissions categories; and
- b) Please provide details about how admissions services, student services and academic advisory services will be provided, for example, through hiring of additional staff such as admissions staff, a Registrar, Assistant Deans, or academic advisors, or through arrangements with the university.

Kevin Sawatzky's May 17, 2013 letter to John Hunter, in his capacity as Chair of the Federation's Special Advisory Committee on Trinity Western University's Proposed School of Law, has been forwarded to the Approval Committee.

The Approval Committee, as a part of its consideration of your application in the context of the national requirement, has addressed whether Trinity Western University would with respect to:

1. the Ethics and Professionalism competency, ensure that graduates possess the skills to identify and engage in critical thinking about ethical issues in legal practice, and
2. the substantive legal knowledge competency, ensure that graduates fully understand the effect of the *Canadian Charter of Rights and Freedoms* in its totality, and in particular section 15 of the *Charter* and human rights principles.

The Approval Committee, in its consideration of these two matters, has taken particular note of the following elements of Mr. Sawatzky's letter:

1. Trinity Western University acknowledges it has a duty to teach equality. In meeting its obligation to promulgate non-discriminatory principles in its teaching of substantive law, and ethics and professionalism, Trinity Western University agrees that the dignity and value of all individuals irrespective of their sexual orientation form part of the fabric of professional ethics and the rule of law; and
2. Trinity Western University acknowledges that human rights laws and section 15 of the *Canadian Charter of Rights and Freedoms* protect against and prohibit discrimination on the basis of sexual orientation, and that TWU's courses will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.

Finally, as a point of information only, the Approval Committee has noted, at page 12 of the Trinity Western University proposal, that the statistics regarding the number of applications accepted and rejected do not reflect the actual number of acceptances and rejections, given the application process that Trinity Western University plans to employ. The Approval Committee is not asking for a response to this point, but is identifying it only for your consideration.

We invite you to provide any additional comments with respect to these matters, and look forward to receiving your answers to our questions. Please direct your responses and any requests for additional information or clarification to Deborah Wolfe.

Sincerely,



Laurie H. Pawlitz  
Chair, Canadian Common Law Program Approval Committee

cc: Deborah Wolfe, P.Eng.  
Director, Law School Programs

**Exchange of Correspondence  
between  
Trinity Western University  
and the  
Canadian Common Law Approval  
Committee**



November 1, 2013

Laurie H. Pawlitzka  
Chair, Canadian Common Law Program Approval Committee  
Federation of Law Societies of Canada  
1810-45 rue O'Connor Street  
Ottawa, ON K1P 1A4

Dear Ms. Pawlitzka:

**Re: Trinity Western University School of Law Proposal**

Thank you for your letter of October 30, 2013 asking for clarification on two program issues with respect to the TWU School of Law proposal. I am pleased to provide the answers as follows:

1. Criminal Law Course. The credit value of the revised first year course will be 5 semester hours, the same as it was in the original proposal. The credit value of the new upper year Criminal Procedure course will be 3 semester hours, consistent with other upper year electives. Please see attached Appendix 1 for the revised course descriptions.
2. Legal Research. While legal research and writing is a key component of all first year law programs, there is a wide variety of methods and approaches to teaching this material. Some law schools have a specific course, others include it in one first year course, others include it across the first year curriculum and still others have it as a self-taught, on-line module. The approach at the proposed TWU School of Law will be to include the legal research module in LAW 507 but spread the writing and advocacy skills requirements across the first year curriculum. We also intend to have significant resources on-line to assist students with specific research issues. Please see the revised LAW 507 curriculum attached as Appendix 2. The proposed practical writing and advocacy skills to occur across the curriculum are attached as Appendix 3.

Thank you again for the consideration given to our proposal.

Yours truly,



Robert G. Kuhn, J.D.  
President

## Appendix 1 – Revised Criminal Law Course Descriptions

### LAW 506, Criminal Law (5 s.h.)

#### Description

This course introduces students to substantive Canadian criminal law. This course teaches the basic principles underlying criminal culpability and focuses on the elements of specific substantive offences. Students will use the *Criminal Code* to identify the elements of various offences, in particular the various forms of *mens rea* as developed in law. Students will also explore the nature and application of various defences, such as self-defence, provocation, automatism and necessity, and mental disorder. Students will consider theories of punishment and the various purposes underlying sentencing. Students will also be introduced to the limits of provincial jurisdiction in creating offences and learn to distinguish between true crimes and regulatory offences.

#### Course Objectives

Through this course, students will:

1. understand and critically assess the principles of criminal responsibility and punishment;
2. understand and critically assess theories and perspectives on the purpose and function of the justice system, and the competing interests they serve;
3. develop practical skills by identifying the elements of various offences as set out in the *Criminal Code*;
4. apply substantive knowledge to fact scenarios by identifying the evidence that supports and negates various offences and corresponding defences;
5. identify whether an offence is properly characterized as a regulatory or a criminal offence;
6. produce high-quality, critical writing about themes and issues within the criminal law; and
7. identify and critically discuss ethical issues related to substantive criminal law.

#### Course Outline

1. Introduction to criminal law
2. Theories of criminal liability
3. Burdens of proof
4. Principles of criminal liability
5. Elements of an offence
  - *Actus reus*
  - *Mens rea*
  - *Mens rea* and the *Charter*
6. Types of offences
  - Regulatory
  - Summary
  - Indictable
  - Hybrid

7. Specific offences
8. Raising a defence
9. Specific defences
10. Not criminally responsible by reason of mental disorder
11. Theories of punishment and principles of sentencing
12. Aboriginal offenders
13. Gender and racial critiques of the criminal law

**Texts**

Roach, Berger, Healy and Stribopoulos, *Criminal Law and Procedure* (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, *Tremear's Criminal Code* (Carswell, 2011)

Stephen Coughlan, *Criminal Procedure* (Irwin Law, 2008)

## **Criminal Procedure (course number still to be assigned) 3 s.h.**

### **Description**

This course examines the principles of Canadian criminal procedure. It canvasses the various sources of criminal procedure; basic concepts, principles, and institutions; and the most significant rules governing the criminal process. This course focuses on the dynamic impact of the *Charter*, as developed through the common law, on safeguarding the accused's rights and circumscribing state power at each phase of the criminal process. Students will be introduced to the substance and application of these rules from the investigative phase through the laying of charges, to the trial, conviction, sentencing and beyond.

### **Course Objectives**

Through this course, students will:

1. understand and critically assess the competing interests and values animating rules of criminal procedure;
2. gain a working knowledge of criminal procedure;
3. demonstrate practical competence by identifying procedural errors in various fact scenarios, applying the proper legal framework and analyzing the effects of these errors;
4. understand the criminal procedure governing various offences;
5. apply their knowledge of criminal procedure participating in, observing and critiquing mock exercises, including a bail hearing, *Charter* application and sentencing;
6. develop basic advocacy skills through participation in a mock trial; and
7. identify and critically discuss ethical issues arising in the criminal law process.

### **Course Outline**

1. Introduction to criminal procedure
2. Sources of criminal procedure
3. Overview of the structure of criminal proceedings
4. Levels of courts in British Columbia
5. Roles of police, Crown and Defence
6. Investigative powers of police
7. Charge approval and commencing proceedings
8. Compelling appearance and judicial interim release
9. Arraignment, pre-trial case management, elections, re-elections and preliminary hearings
10. Pre-Trial and other applications
11. Disclosure and procedural applications
12. *Charter* applications and exclusion of evidence
13. Trial management
14. Jury selection
15. Trials
16. Sentencing
17. Youth court
18. Mentally disordered offenders
19. Appeals
20. Ethical issues in criminal law

**Texts**

Roach, Berger, Healy and Stribopoulos, *Criminal Law and Procedure* (10th edition) (Emond Montgomery, 2010)

Watt and Fuerst, *Tremeear's Criminal Code* (Carswell, 2011)

## Appendix 2 – Revised LAW 507, Fundamentals of Canadian Law (2.5 s.h.)

### LAW 507, Fundamentals of Canadian Law (2.5 s.h.)

#### Description

In this course, students will become familiar with the principles of the common law system, including the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada. It further examines how laws are made and the principles of legislative interpretation and statutory analysis. It will also examine how regulations are made under legislation and the relationship between legislation and regulations. Legal research will be a component of this course.

#### Course Objectives

Students in this course will:

- 1) learn the historical development of the common law system and its origins in Britain;
- 2) understand how common law works on an incremental, case-by-case basis, and develop skills in applying principles from past legal cases to a new case;
- 3) recognize that legislation supersedes common law but that legal principles are applied to interpret legislation and regulations;
- 4) understand the legislative process and the procedure to draft, pass and implement legislation, including the concept of delegated authority;
- 5) understand the administration of the law in Canada;
- 6) learn how to conduct legal research, sources of law, secondary sources and write a research paper; and
- 7) critically reflect on the interface between law and society.

#### Course Outline

1. Origins of common law, including principles of law and equity
2. Precedents and *stare decisis*
3. Differences between common law and civil law
4. The legislative process -- how are laws made?
5. Researching the law – using the library and on-line research tools, primary and secondary sources of law
6. Principles of statutory interpretation
7. Delegated authority and process to make regulations
8. The relationship between legislation and common law
9. The administration of law, including the organization of the courts and tribunals in Canada
10. Appeal processes
11. Law as an instrument of social change

#### Texts

- J. Horner, *Canadian Law and the Legal System*, (Pearson Education Canada, 2006)
- A. Hutchinson *Laughing at the Gods: Great Judges and How They Made the Common Law*, (Cambridge University Press, 2012)
- Ruth Sullivan, *Statutory Interpretation*, (Toronto: Irwin Law, 2007).
- J. A. Brauch, *A Higher Law: The Influence of Christian Thought in Anglo-American Law*, (2nd edition) (Fred B. Rothman, 2008)

### **Appendix 3 – Practical Assignments for First Year**

While TWU anticipates that the founding Dean and faculty members will ultimately decide the details of the practical assignments in the First Year curriculum, the University will commit to the following practical assignments as the minimum required for First Year:

1. Contract Law (LAW 502)
  - a. One short, simple contract
  - b. One more complex contract
2. Tort Law (LAW 503)
  - a. One memorandum of law on Intentional Torts
  - b. One opinion letter on a Negligence issue
3. Constitutional Law (LAW 504)
  - a. One case comment on a division of powers issue
  - b. One factum on a Charter issue
  - c. Moot
4. Property Law (LAW 505)
  - a. At least one written assignment that could include a memorandum of law, an opinion letter or an academic paper
5. Criminal Law (LAW 506)
  - a. One analysis of some type of notice of violation (could be anything from a parking ticket to a criminal violation)
  - b. One memorandum of law
6. Fundamentals of Canadian Law (LAW 507)
  - a. One research paper
7. Introduction to Practice Skills and the Practice of Law (LAW 508)
  - a. Mock negotiation



**BY EMAIL**

October 30, 2013

Bob Kuhn, J.D.  
Acting President  
Trinity Western University  
7600 Glover Road  
Langley, BC V2Y 1Y1

**Re : Trinity Western University School of Law Proposal**

Dear Mr. Kuhn,

The Canadian Common Law Program Approval Committee ("Approval Committee") is continuing its review of Trinity Western University's new law degree proposal, and would like to thank you for your response to our June 28, 2013, letter.

As the Approval Committee continues its analysis of your proposal we have two more questions:

1. Criminal Law Course. Given the changes to the first year Criminal Law course, please provide the credit value for both the revised first year course and the new upper year Criminal Procedure course.
2. Legal Research: We ask for some clarification with regard to the manner in which the legal research competency is met as outlined in your proposal (page 162). The proposal states that LAW 507, Fundamentals of Canadian Law, contains a "significant component" of legal research. However, the course particulars for LAW 507, while indicating that 'legal research will be a component' in the description, does not reference legal research in either the course objectives or outline. Please provide further particulars as to where in the program the students will build their legal research competencies, including in the legal research sub-competencies.

We invite you to provide the response to these questions directly to Deborah Wolfe.

Sincerely,

Laurie H. Pawlitz  
Chair, Canadian Common Law Program Approval Committee

cc: Deborah Wolfe, P.Eng.  
Director, Law School Programs

**Correspondence  
from  
Trinity Western University  
re: Draft Report**

**December 2013**



December 6, 2013

Federation of Law Societies of Canada  
World Exchange Plaza  
1810 – 45 O'Connor Street  
Ottawa, ON K1P 1A4

Attention: Deborah Wolfe, Managing Director, National Committee on Accreditation and Director, Law School Programs

Dear Ms. Wolfe:

Thank you for your communication of December 2, 2013 attaching the draft report. We very much appreciate the work of the Approval Committee and are happy to provide a brief response to the three concerns and one comment expressed.

### **Ethics and Professionalism**

As indicated in the Proposal and in our letter of May 17, 2013 Trinity Western University is committed to fully and appropriately teaching ethics and professionalism. We do believe that the faculty who originally teach LAW 508 and LAW 602 should have the freedom to more fully develop the syllabus and curriculum for those classes. However, the University is more than willing to provide more detailed outlines and syllabi for those courses as they are developed.

### **Constitutional Law**

TWU is committed to comprehensively teaching all aspects of public law in Canada, including a full and complete examination of the Charter of Rights and Freedoms and human rights principles. Once the faculty initially teaching the relevant courses have more fully developed syllabi and course materials we would be happy to provide such.

### **Budget**

When providing future annual reports TWU will certainly provide budget information at the level of detail requested by the Approval Committee.

## **Library Budget**

In accordance with the Staffing Rollout Plan a Director of the Law Library will be hired approximately one and half years prior to the opening of the School of Law. The Director will be charged with the development of an initial and on-going acquisitions plan. If the annual acquisitions budget as indicated currently is not adequate, TWU will be happy to re-examine such as part of that plan.

Again, our thanks for the work of the Approval Committee.

Yours truly,

TRINITY WESTERN UNIVERSITY

A handwritten signature in cursive script that reads "Bob Kuhn".

Bob Kuhn, J.D.  
President

# Appendix E



December 16, 2013

Canada's Law Societies

**Re: Trinity Western University's Proposed Law School Program**

Dear Colleagues,

I wish to inform you that the Canadian Common Law Program Approval Committee (the "Approval Committee") of the Federation of Law Societies of Canada has granted preliminary approval to a proposed law school program at Trinity Western University ("TWU"). After a thorough review, the Approval Committee has determined that, if implemented as proposed, the program will satisfy the National Requirement adopted by the law societies.

While granting the program preliminary approval, the Approval Committee identified three concerns and made one comment on aspects of the program that it will monitor in the regular reviews to which all law school programs are subject. The concerns relate to the teaching of legal ethics and public law, as well as the budget for the proposed school. A copy of the full report is available on the Federation's website at <http://www.flsc.ca/en/twu-common-law-program/>.

Approval of the academic program is only one phase in the development of a new law school in Canada. Provincial government authorities decide whether universities can offer specific degree programs. In this case, the British Columbia Ministry of Advanced Education would have to consent to TWU offering a new law degree program.

As you know, the Federation established a special advisory committee of respected leaders of the legal profession to provide advice on a number of issues raised in response to TWU's application that were not within the mandate of the Approval Committee. The Special Advisory Committee on Trinity Western University's Proposed School of Law (the "Special Advisory Committee") has concluded that there is no public interest reason to exclude future graduates of TWU's program from law society bar admission programs if the program meets the National Requirement. The report of the Special Advisory Committee is also available on the Federation's website at <http://www.flsc.ca/en/twu-common-law-program/>

The reports are the culmination of a rigorous process that took place in a unique environment. The question of whether a proposed law school program meets the law school training requirements for entrance into law society bar admission programs evolved into something more. The Federation was drawn into a larger societal debate about equality rights and religious freedom, about university community standards and the distinction between public and private institutions, about the dividing line between identity and conduct in matters relating to sexual orientation, and about whether a religiously-affiliated school can provide an appropriate legal education. With TWU's

proposal to establish a law school, a debate that has challenged American legal educators and regulators for decades, found its way into Canada for the first time.

Consideration of TWU's application took place in the midst of a very public discussion that brought out strong and often emotional views. The Federation received many letters and emails raising deep concerns about the impact of TWU's Community Covenant Agreement on lesbian, gay, bisexual and transgendered individuals. The Federation respects these concerns. We also recognize the obligation to balance equality rights and freedom of religion.

Members of the legal profession are required to meet high ethical standards. They are also bound to uphold the Rule of Law and the fundamental values set out in the Constitution of Canada, including the *Charter of Rights and Freedoms* and human rights legislation. Adherence by lawyers to principles of non-discrimination in the exercise of their professional duties is an essential part of what defines a member of the profession.

The Special Advisory Committee has recommended that consideration be given to adding a non-discrimination provision to the National Requirement similar to that required of American law schools. The Council agrees that this suggestion should be explored.

From the outset, the Federation has been committed to ensuring that the review of TWU's application was thorough and fair. We are satisfied that the Approval Committee met the highest standards of fairness in fulfilling its task.

To ensure consistency across the country, the law societies approved the establishment of the Approval Committee with the intent that it render binding decisions. The law societies, however, have the statutory authority to set policies for admission to the legal profession in their jurisdictions.

As the reports make clear, the Federation's role does not extend to determining if TWU is entitled or authorized to open a law school or issue law degrees. Those are decisions for the Legislative Assembly and Government of British Columbia under the *Degree Authorization Act*, SBC 2002, c.24.

TWU's Community Covenant Agreement that was the focus of much of the debate over its proposed law school program applies not only to the proposed law school but to all existing TWU students and faculty, and as such, is a broader issue that only the BC government can address. The Federation considers that the debate about the form or content of a university code of conduct, such as the Community Covenant Agreement prescribed by TWU, is one that is more appropriately had with the relevant government

authorities in the context of legislation and regulations that direct their oversight of educational institutions.

Should you require more information about the Federation's law school program approval process, please consult the Federation's website at [www.flsc.ca](http://www.flsc.ca).

Yours truly,



Marie-Claude Bélanger-Richard, Q.C.  
President

# Appendix F

# NATHANSON, SCHACHTER & THOMPSON LLP

BARRISTERS AND SOLICITORS

IRWIN G. NATHANSON, Q.C.\*  
STEPHEN R. SCHACHTER, Q.C.\*  
MURRAY A. CLEMENS, Q.C., FCIARB\*  
ARDELLA A. THOMPSON  
GEOFFREY B. GOMERY, Q.C.  
KEVIN D. LOO  
JULIA E. LAWN  
JAMES C. MACINNIS  
PETER R. SENKPIEL

750 - 900 HOWE STREET  
VANCOUVER, B.C. V6Z 2M4  
www.nst.bc.ca

File: 10009-37  
Reply to: Geoffrey B. Gomery, Q.C.  
Email: [ggomery@nst.bc.ca](mailto:ggomery@nst.bc.ca)

25 February 2014

## BY EMAIL

## PRIVILEGED & CONFIDENTIAL

The Law Society of British Columbia  
845 Cambie Street  
Vancouver, B.C.  
V6B 4Z9

**Attention: Deborah Armour, Chief  
Legal Officer**

Dear Sirs/Mesdames:

**Re: Trinity Western University: application of the  
*Charter***

At its meeting on 29 January 2014, the Executive Committee requested an opinion from me to supplement that portion of my opinion letter of 8 May 2013 at pages 5 to 11 where I discuss the application of the *Charter* and the decision in *Trinity Western University v BC College of Teachers* 2001 SCC 31 ('*BCCT*'). As I understand the request, it is to comment upon the differing application of the *Charter* to the Law Society and TWU and the significance of that difference. My opinion follows.

### **Application of the *Charter***

By s 32, the *Charter* applies to legislatures and governments in Canada but not, it has been held, to private actors; Peter Hogg, *The Constitutional Law of Canada*, 5th ed supplemented, (Toronto: Thomson/Carswell, 2013 Rel 1), p 37-29, *McKinney v University of Guelph* [1990] 3 SCR 229 at [23]-[24]. This distinction in application between 'government' and 'private' actors has given rise to an extensive and occasionally difficult jurisprudence.

It is established that professional regulatory bodies exercising statutory authority are to be considered as 'government' for this purpose, at least in respect of regulatory decisions having a public dimension; *Histed v Law Society of Manitoba* 2007 MBCA 150 at [43]; *Pridgen v University of Calgary* 2012 ABCA 139 at [88]-[93]. In my opinion, it is clear that the Law Society is governed by the *Charter* in the exercise of its statutory authority to determine who may practice law in British Columbia.

Page 2

In *BCCT* at [25], Iacobucci and Basterache JJ described TWU as ‘a private institution ... to which the *Charter* does not apply’. This is consistent with past and subsequent jurisprudence describing universities as private actors, even where they are publicly funded; *McKinney, supra*; *Harrison v UBC* [1990] 3 SCR 451 at [17]; *Lobo v Carlton University* 2010 ONSC 254. Exceptionally, where a university or other private actor is responsible for the implementation of a specific governmental program or policy, it may be considered as government and subject to the application of the *Charter* for that purpose; *Eldridge v British Columbia (Attorney General)* [1997] 3 SCR 229 at [42]-[44]. It seems doubtful that the delivery of an accredited law degree program could qualify as implementation of a specific governmental program or policy, any more than the delivery of an accredited educational degree program qualified in *BCCT*. While the law in this area continues to evolve (as discussed in *Pridgen v University of Calgary, supra*), I think it likely that TWU will continue to be viewed as a private actor not subject to the *Charter*.

To summarize, the Law Society is subject to the *Charter* while TWU is not.

### **Significance of the difference**

The differing applicability of the *Charter* to the Law Society and TWU complicates legal analysis. Section 15 of the *Charter* prohibits discrimination. It does not apply to TWU, so the question is not: does TWU discriminate? The focus is on the Law Society and the question becomes: is the Law Society discriminating if it accepts or refuses to accept TWU graduates as qualified?

This helps to explain the approach taken by the Supreme Court of Canada in *BCCT*. Like the Law Society, the College of Teachers was subject to the *Charter*. It was required to consider the rights of gays and lesbians not to suffer discrimination in determining whether it would be in the public interest to permit public school teachers to be trained at TWU (at [27]). It was also required to consider issues of religious freedom and the right of persons attending TWU not to suffer discrimination based on religion (at [28]). The Supreme Court viewed this as a case of competing rights that had to be balanced by the College, based on the expected conduct of TWU graduates following graduation (at [36]). It held that the College’s duty under the *Charter* was to conduct that balancing exercise having regard to specific evidence of risk, not general perceptions (at [38]). As there was no evidence that training teachers at TWU fostered discrimination, the College was ordered to approve TWU’s teacher education program.

In my opinion, the same analytical framework governs the decision now confronted by the Benchers. The Law Society is governed by the *Charter* and the Benchers must therefore consider and balance the equality rights of sexual and religious minorities in their evaluation of whether approving TWU’s proposed law degree is in the public interest pursuant to s 3 of the *Legal Profession Act*. Focusing on the expected conduct of prospective lawyers following graduation, they should consider whether there is evidence, as opposed to assumptions or general perceptions, bearing on whether graduates of TWU will be inadequately qualified. As discussed at pages 10 to 11 of my earlier opinion, having regard to the breadth of the Law Society’s statutory mandate, they may also consider whether legal education, as opposed to teacher education, raises distinct issues as to the manner in which students are taught.

**NATHANSON, SCHACHTER & THOMPSON LLP**  
BARRISTERS AND SOLICITORS

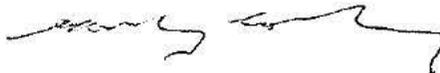
Page 3

I hope that this is of assistance.

Yours truly,

Nathanson, Schachter & Thompson LLP

Per:

A handwritten signature in black ink, appearing to be a stylized name, possibly "Nathan", written over a horizontal line.

GBG:

# Appendix G



Lindsay M. Lyster  
President  
president@bccla.org

March 2, 2014

By email to [submissions@lsbc.org](mailto:submissions@lsbc.org)

**Page 1/11**

The Law Society of BC  
845 Cambie Street,  
Vancouver, BC, V6B 4Z9  
Attention: Tim McGee, Executive Director

Dear Mr. McGee:

**Re: Trinity Western University School of Law Proposal**

I write in my capacity as President of the British Columbia Civil Liberties Association (the “BCCLA”), in response to the January 24, 2014 news posting on the Law Society of British Columbia website inviting submissions to be presented before March 3, 2014 for consideration by the Benchers at their April 2014 meeting in relation to the application of Trinity Western University (“TWU”) for approval as a faculty of law for the purpose of meeting the academic qualification requirement of the Law Society’s admission process.

The BC Civil Liberties Association (“BCCLA”) was established in 1962, and is Canada’s oldest and most active civil liberties organization. Our mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. We are an independent, non-partisan charity.

In making this submission to the Benchers, the BCCLA takes the position that TWU’s status as a private, faith-based institution, and more specifically, the Community Covenant which members of the

TWU community agree to abide by, ought not to stand in the way of TWU's accreditation nor the right of its graduates to become members of the Law Society of BC.

**Page 2/11**

The Federation of Canadian Law Societies (the "Federation") has already approved TWU's application and the British Columbia Ministry of Advanced Education has granted TWU the right to grant law degrees, and in doing so have approved the academic standards and curriculum of TWU's proposed law school. The only apparent basis upon which the Law Society could now deny TWU accreditation would be that their voluntary adherence to the Community Covenant while attending TWU somehow renders its graduates unfit to practice law. The BCCLA submits that, as a matter of binding legal precedent and fundamental constitutional principle, the Law Society of BC must not adopt any resolution that would deny TWU accreditation and its graduates entry into the profession of law on such a discriminatory basis.

To adopt such a resolution would be to discriminate against TWU, its faculty and students, on the basis of their conscientiously held religious beliefs, and to deny them their freedom to associate, on the terms they choose to associate, in accordance with their freedom of religion.

TWU is a private religious educational institution that has proposed to open a new law school and is seeking formal accreditation from the Law Society. As stated in the Law Society's news release:

In December 2013, the Federation of Law Societies of Canada announced the Canadian Common Law Program Approval Committee had completed its work and decided to grant TWU preliminary approval of its proposed law school program. Shortly thereafter, the BC Ministry of Advanced Education authorized TWU the right to grant law degrees.

The question now is whether the Law Society of BC will exercise its authority under Rule 2-27(4.1) to declare that TWU's faculty of law is not or has ceased to be an approved faculty of law.

The BCCLA wrote to the Federation in January 2013 while it was considering its decision. We made a number of arguments that were directly in response to a submission by the Canadian Council of Law Deans. In sum, we took the position that any decision to grant or deny TWU's bid to have a law school accredited must be considered properly on its merits, and not be rejected on grounds that would violate the freedom of religion and freedom of association of the school's community. A copy of that letter is attached to this submission for your reference.

### **The BCCLA**

At the outset, we wish to provide some background about our Association and the perspective we bring to bear on the issue now before the Benchers.

The BCCLA has long fought against discrimination on the basis of sexual orientation, including in multiple court cases. This includes our acting as co-plaintiffs in *Little Sisters Book and Art Emporium v. Canada* to protect the rights of the LGBT community from discrimination by Canada Customs agents targeting shipments to bookstores catering to the community, and intervening in *Chamberlain v. Surrey School District No. 36* to support the principle of the public school system remaining secular and to ensure that respectful education of students concerning same-sex relationships was achieved. It is the BCCLA's deeply held conviction that queer rights are human rights.

Of course, we intervened as well in *Trinity Western University v. British Columbia College of Teachers* ("Trinity Western University"), where the issue was whether TWU, as a private, religious-based university, should be denied accreditation for its educational degree program. In that case, as now, we took the position that TWU's Community Covenant should not disqualify its professional programs from accreditation nor bar its students from entry into our self-regulated professions.

In each of these and the many other cases we have been involved with, we have sought to maintain a consistent theme of protecting the rights and freedoms of individual Canadians and safeguarding the pluralistic and diverse nature of Canada. We see those rights and freedoms as both grounded in a profound respect for the dignity of the individual and each individual's inviolable right to choose for themselves how to live, subject only to proven harms to others. It is this respect for human dignity and the right of each person to choose for themselves how to live in accordance with their conception of the good life which enables the BCCLA to both advocate for equality rights for GLBTQ people and to defend the equality rights and fundamental freedoms of those who may not share all of our views.

Given the BCCLA's commitment to both equality and civil liberties, we are well-versed in the challenges that may arise when it appears that rights and freedoms collide. We are convinced that one group's right to equality and non-discrimination cannot be bought at the price of intolerance for the fundamental freedoms of others. As Chief Justice Dickson said in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the *Charter*. Freedom must surely be grounded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or

the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority". (paragraphs 94-96)

Those words, written in 1985 in the infancy of our *Charter* jurisprudence, remain true today, and in our respectful submission, must guide the Benchers in their present deliberations.

### **Discussion**

As civil libertarians, we value the fundamental freedoms of people to come together with like-minded persons to express and seek to further their conscientiously held beliefs. That's what s. 2 of the *Canadian Charter of Rights and Freedoms* is all about, protecting our freedoms of association, of assembly, of belief and of expression.

Those freedoms were called "fundamental" by the framers of the *Charter* for a reason – without them, we would have no right to hold or express our conscientiously held beliefs, religious or not, or to join with

others, whether to worship, to educate, to celebrate, to create art, for mutual support, or to work for political, social or economic change. Indeed, the freedom to join together in accordance with our beliefs with those who share our beliefs, on the terms we choose, is vital, not least for equality-seeking groups. That freedom is essential to the ability of the marginalized, the powerless, and the vulnerable to act collectively to challenge unjust laws, practices and institutions.

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The Law Society is mandated by statute to regulate the legal profession of BC in accordance with the public interest. In the exercise of these responsibilities, the Law Society is bound by the *Canadian Charter of Rights and Freedoms*, and it is bound to respect and comply with the freedoms and rights the *Charter* guarantees in the exercise of its regulatory powers. In the application before you, the right to equality, freedom of expression, freedom of association and freedom of religion are all implicated. In our respectful submission, only through adopting the Federation's approval of TWU's proposed law school for accreditation can the fundamental freedoms of the students and faculty of TWU be recognized and respected.

TWU is a private religious university. TWU requires its students, as a condition of enrolment, to sign a Community Covenant under which they agree to "voluntarily abstain" from "sexual intimacy that violates the sacredness of marriage between a man and a woman." While it is the implications that this aspect of the Community Covenant have for LGBTQ students that that have received the most attention in this current controversy, it is worth noting that that is only one part of a comprehensive faith-based code of conduct that members of the TWU community agree to abide by.

Were such conditions imposed on students attending a public faculty of law they would rightly be seen as unlawful discrimination contrary to s. 8 of the *Human Rights Code* of BC, as well a breach of students' rights to equality under s. 15 of the *Charter*. But it is crucial to remember that TWU is not a public university and these conditions are not imposed on TWU students – they are voluntarily accepted by those students who choose to attend TWU. The *Charter* does not apply to TWU as a private

institution, and, as held by the Supreme Court in *Trinity Western University*, s. 41 of the *Code* means that TWU does not contravene the *Code* where it prefers members of its religious constituency (para. 35).

Human rights anti-discrimination laws and *Charter* guarantees of equality are of vital importance to the legal ordering of Canadian society, but they are not the only the legal norms which play a role in defining and safeguarding our social relations and personal rights and freedoms. Our legal norms also create space for private relationships ordered under self-defined terms and conditions, such as those that exist between TWU, its students and faculty.

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The BCCLA believes that any private religious institution must have the right to its conditions for membership in accordance with the religious beliefs held by that membership. Individual members of a religious faith are similarly free to observe or to reject these conditions, and to make decisions about whether they wish to belong to these institutions accordingly. These freedoms are essential to the ability of any religious group to carry on its existence. People who are not members of a particular religion (and even those who are) may not approve of or be comfortable with the beliefs of that faith. However, BCCLA's position – in accordance with the decision of the Supreme Court of Canada in *Trinity Western University* - is that the repugnance of a certain set of beliefs even to a majority of Canadians cannot be the basis to deny a public good, such as entry to a profession, to members of that faith.

In this case, the public good is accreditation for the purpose of admission to the bar by students graduating from TWU's proposed law school. The denial of that public good to graduates of TWU's law school would infringe the freedom of religion, of association and of expression of the members of the TWU community. We are unaware of any sufficient rationale being offered that would justify that infringement. Permitting graduates of TWU to enter the legal profession does not send the message from the state to LGBTQ Canadians that they are less worthy of respect than others nor does it deny them any rights or freedoms to which they would otherwise be

entitled. All it does is respect the freedom of those who wish to govern their own conduct in accordance with the religious tenets encompassed within the Community Covenant.

In the *Trinity Western University* case, the Supreme Court of Canada considered whether TWU should be certified to train teachers. The Supreme Court held that TWU's policies and standards did not constitute discrimination as understood under section 15 of the *Charter*:

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Although the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the *Charter* does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality. (paragraph 25) (emphasis added)

The Court decided that the BC College of Teachers had inappropriately narrowed its consideration of relevant matters. Instead of considering all rights, it focused just on discrimination to the exclusion of freedom of religion. Instead of considering whether there was real evidence of misconduct, it focused on whether it regarded the beliefs of a particular religious group as acceptable. (paragraphs 32-33)

It is fundamentally wrong to assume that because some law students are prepared to agree to conduct themselves in accordance with the Community Covenant while attending TWU that they will not also conduct themselves in accordance with the legal requirement, found

both in the *Human Rights Code* and the rules that govern the legal profession, that they not discriminate in their practice of law. Again, the decision of the Supreme Court of Canada in *Trinity Western University* is dispositive:

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It cannot be reasonably concluded that private institutions are protected but that their graduates are *de facto* considered unworthy of fully participating in public activities. In *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a “natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it”. In this particular case, it can reasonably be inferred that the B.C. legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985. While homosexuals may be discouraged from attending TWU, a private institution based on particular religious beliefs, they will not be prevented from becoming teachers. In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. Although this evidence is not conclusive, given that no students have yet graduated from a teacher education program taught exclusively at TWU, it is instructive. Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system. (paragraph 35) (emphasis added)

The Court also made clear that a fear about future discrimination by TWU graduates was no reason to deny TWU the ability to train teachers, and that such discrimination could be dealt with through its usual disciplinary processes:

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[T]he proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society. (paragraph 36) (emphasis added)

The same reasoning applies to the accreditation of TWU's law school and the training of lawyers. To apply section 15 *Charter* in a way that would deny a public good to a group of people who have adopted a code of conduct based on their religious beliefs would deeply undermine the freedom of religion, and the freedom of association, of members of the TWU community.

As for graduates of the TWU faculty of law, they, like all lawyers, ought to be judged on their conduct and not on their beliefs. The fact that a law student has graduated from TWU does not mean that he or she will discriminate against people on the basis of sexual orientation in the future. If a lawyer discriminates in the future legal practice, their conduct can and will be addressed by the Law Society, and the *Human Rights Code*.

## Conclusion

We submit that Law Society of BC should, in accordance with the Federation's decision, approve TWU's application for accreditation. The question is not whether the Benchers, individually or as a group, agree with TWU's Community Covenant or would choose to abide by it themselves. The question is whether the acceptance by law students attending TWU of the Community Covenant should bar TWU graduates from joining the ranks of the legal profession in British Columbia. Our commitment to a society in which LGBTQ people are free from unlawful discrimination on the basis of sexual orientation does not give us licence to discriminate against others on the basis of their conscientiously held religious beliefs, not to deny them their fundamental freedoms. There is no basis for believing that accreditation of TWU's law school will lead to unlawful discrimination against LGBTQ people, or would otherwise be contrary to the public interest. To the contrary, for the Law Society to deny TWU's application for accreditation would itself be contrary to law, as established by the Supreme Court of Canada, and would result in unlawful discrimination against and infringement of the fundamental freedoms of those who seek only to be able to study law and be allowed entry to the legal profession without discrimination based on their religious beliefs.

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All of which is respectfully submitted on behalf of the British Columbia Civil Liberties Association.

Yours truly,

Lindsay M. Lyster



President

BY EMAIL to [jherman@flsc.ca](mailto:jherman@flsc.ca) and [dwolfe@flsc.ca](mailto:dwolfe@flsc.ca)  
Jonathan Herman, Chief Executive Officer  
Deborah Wolfe, Director, Law School Programs  
Federation of Law Societies of Canada  
World Exchange Plaza  
45 O'Connor Street Suite 1810  
Ottawa ON K1P 1A4

Dear Mr. Herman and Ms. Wolfe:

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Re: Statement by the Canadian Council of Law Deans (the "CCLD") on the Application by Trinity Western University ("TWU") for Accreditation for a Proposed Law School

We read with concern statements reported in the media and attributed to the CCLD, apparently found in a letter dated November 24, 2012 addressed to you concerning the application by TWU for Accreditation for a Proposed Law School. We are concerned as well to have heard that certain law deans have made presentations to other legal professional groups, apparently in a concerted effort to have the TWU application denied without notice to or an invitation to TWU to respond.

Our concerns are fourfold. First, we entirely reject the notion that existing law schools ought to monopolize legal education in Canada so as to exclude religious or conscience-based universities. Second, we reject the premise of the CCLD's submission that persons who adhere to religious principles ought to be excluded from legal education. Third, we reject the suggestion by the CCLD that the Association of University and College Teachers' concerns over academic freedom in religious or conscience-based universities disqualify such universities from providing an accredited legal education. Fourth, we are concerned that the process of evaluation of TWU's application may be tainted were any of the CCLD or their nominees to participate in the process or decision.

The BCCLA is a non-profit society that was formed 50 years ago to educate people about and promote civil liberties, human rights and freedoms. We have long stood for the protection of freedom of expression, freedom of association, and freedom of religion and conscience. We have long stood for the protection of all persons from unlawful discrimination. We are pleased that those protections are enshrined in our Canadian Charter of Rights and Freedoms and human rights legislation.

Our work has involved us in many court proceedings. Those have included acting as co-plaintiff in *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69, to protect the rights of the GLBT community from discrimination by Canada Customs agents who sought to filter what materials could be imported to Canada. We intervened in *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, to support the principle of the public school system remaining secular and to ensure that respectful education of students concerning same-sex relationships was achieved. We intervened as well in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, where the issue was whether TWU as a private, religious-based university, should be denied accreditation for its educational degree program. In each of these and the many other cases we have been involved with or spoken out about, we have maintained a consistent theme of protecting the rights and freedoms of Canadians and the pluralistic and diverse nature of Canada.

With regard to our first concern, we note that Canada is a country founded upon diversity and tolerance. It is thus startling for deans of publicly-funded university law schools to use their position to attempt to thwart the entry of another voice into academe, particularly where that voice is a religious one. We note that the Human Rights Code of British Columbia expressly provides for religious-based groups, among others, to be exempt from certain of its provisions when they grant preferences to members of those groups. Obviously, in order for such groups to survive they must be able to prescribe the conditions of membership of their group and set out their fundamental beliefs.

The CCLD appear to miss that point. That is surprising given that a decade ago the issue was explicitly and emphatically dealt with by the Supreme Court of Canada in *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31. The court there rejected the attempt to deny accreditation of TWU's educational training program based upon assumptions made about whether religiously-based beliefs that it promoted would result in discrimination if its graduates were hired as teachers in the public school system. The court's majority wrote this:

TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the

voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.

The court decided that the BC College of Teachers had inappropriately narrowed its consideration of matters. Instead of considering all rights, it focused just on discrimination. Instead of considering whether there was real evidence of misconduct, it focused on whether it regarded the beliefs of a particular religious group as acceptable. The court found that the BC College of Teachers was improperly forcing TWU to elect to abandon its beliefs in order to obtain accreditation:

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

Finally, the court concluded that the BC College of Teachers should have left accreditation of TWU's program in place, and deal with any discriminatory misconduct by a TWU-educated teacher (or any other teacher, for that matter) through its usual disciplinary processes:

Instead, the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

The CCLD apparently were aware of that court decision, but reject its application here, calling their view a "principled" approach. With respect, their implicit derogation of the Supreme Court's decision as being

unprincipled is inappropriate. CCLD posits that “Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools.” If the topic were just about public law schools, we would agree. But the topic here is whether private educational institutions formed by religious or conscience-based groups are to have their constitutional rights recognized and protected. Leaving that out of the equation is unprincipled. The CCLD approach is as burdensome to fundamental freedoms and as contrary to the Charter as the BC College of Teachers’ approach was.

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The second concern noted above was the CCLD’s premise that those who are religiously-minded should be excluded from legal education. That would, by extension from their argument, include all professors, students and, eventually, lawyers and judges who held the religious views that the CCLD say are repugnant. Yet the same law schools that the CCLD preside over have admitted TWU undergraduates into their law school programs. There are religious adherents among the student population in existing law schools in Canada. And although no current legal scholar writing from a religious viewpoint readily comes to mind among the academics at existing public law schools, no doubt there are at least some professors who are members of religions.

Also, we note that Law Societies across Canada have not made a question about the religious beliefs of applicants part of their questionnaire for articling student program admissions. In British Columbia, we still have the stain of the *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173, decision of our Law Society and Court of Appeal on the books. There, the Law Society denied admission to the bar on grounds the applicant was a communist. The court upheld that. Such McCarthy-like tests as a condition of entering a profession are something that we would hope had long since disappeared.

The third concern was over the use by the CCLD of the CAUT criticism of TWU and other religiously-based educational institutions as somehow not being places of academic freedom. Given the absence among publicly-funded universities of encouragement for religiously-based academics to voice their perspective, one could be forgiven for questioning why CAUT would find fault elsewhere when diversity is not uniformly practiced in public universities, at least as CAUT preaches it.

The argument of CAUT adopted by CCLD reduces itself to the absurd. Secular universities preclude teaching from a religious perspective in order to maintain their secular and non-sectarian status; religious institutions require

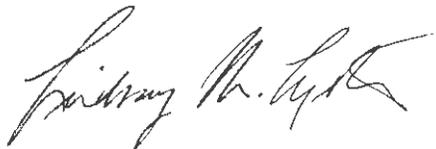
professors to be adherents and provide instruction from the perspective of their group. Positing that academic freedom does not exist in religious educational institutions becomes a front for asserting that the religious perspective simply cannot be taught anywhere. The argument about a lack of freedom in religious educational institutions circles back as a supposed justification for suppression of religious viewpoints. That simply cannot be right.

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Fourth, we note that the Federation of Law Societies of Canada delegates functions to deans of law schools in Canada, including seeking their advice on the examination of credentials of foreign-educated students and also, more recently in the case of Thompson River University and Lakehead University, on the ad hoc committee formed to report on whether to approve accreditation of law schools there. The CCLD has, by putting forward a marker on behalf of all deans of existing accredited law schools in Canada, created a reasonable apprehension of bias were any of their number to be included in the process of evaluating and deciding upon the TWU application for accreditation.

The BCCLA encourages the Federation of Law Societies of Canada to give proper consideration to the application of TWU and to reject the anti-freedom-of-religion precepts of the CCLD's letter and public statements.

Sincerely,



Lindsay M. Lyster  
President

cc: The Council of Canadian Law Deans

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## Letter from the President / Lindsay Lyster

### WHY DOES THE BCCLA SAY TWU'S "COMMUNITY COVENANT" SHOULD NOT PREVENT IT FROM HAVING AN ACCREDITED LAW SCHOOL?

The BCCLA has taken the position that Trinity Western University should not be barred from establishing a law school accredited by the Canadian Federation of Law Societies because its students and faculty are required to sign a Community Covenant.

By that Covenant they commit, among other things, to "observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce". Given that the Covenant provides that "sexual intimacy is reserved for marriage between one man and one woman", this means that TWU's students and faculty promise not to engage in homosexual sex.

The BCCLA's position has been controversial in some quarters, disappointing some of our members, supporters and allies. How, they wonder, can the BCCLA support an organization that discriminates against members of the GLBTQ+ community? Don't we believe in equality?

As a long-time advocate for GLBTQ rights, and as a queer

person who would neither sign such a covenant nor attend a university that had such a requirement, I can understand those concerns. But I still believe the BCCLA got it right on the question of whether TWU's Covenant should bar it from having an accredited law school. Let me try to explain why.

As civil libertarians, we value the fundamental freedoms of people to come together with like-minded persons to express and seek to further their conscientiously held beliefs. That's what s. 2 of the Canadian *Charter of Rights and Freedoms* is all about, protecting our freedoms of association, of assembly, of belief and of expression.

Those freedoms are called "fundamental" for a reason – without them we would have no right to hold or express our conscientiously held beliefs, religious or not, or to join with others, whether to worship, to educate, to celebrate, to create art, for mutual support, or to work for political, social or economic change.

Remember that no one is forced to attend or teach at TWU. There are many other post-secondary institutions

available to those of us that have no desire to attend a private, faith-based university.

Remember that that the Covenant is a promise made by those who have voluntarily chosen to attend TWU, and one which says nothing about anyone else's behavior – it is a commitment about one's own behavior only.

The Supreme Court of Canada recognized the unique nature of an institution such as TWU in its 2001 decision upholding the right of graduates of TWU's Faculty of Education to be accredited as teachers. It stated:

*Although the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important*

*continued on page 11*

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*to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.*

The freedom to join together with those we want to join with, on the terms we choose, is vital, especially for equality-seeking groups. That freedom is essential to the ability of the marginalized, the powerless, and the vulnerable to act collectively to challenge unjust laws, practices and institutions.

Gay, lesbian, bisexual, trans and queer people know a lot about violations of their freedom to associate, even in their most intimate relationships. Police raids on gay bars, criminalization of same sex sexual behavior, stigmatization of gays and lesbians on the basis of their association with others, the denial of marriage equality – all these can be seen as violations of the freedom to associate. Overcoming these injustices has been fundamental to achieving equality for GLBTQ people.

To answer the questions posed by our doubters, yes, the

BCCLA believes in equality, and queer history shows that you cannot have equality without freedom of association.

And to be clear, it is not that we support TWU or its application to have an accredited Law School; it is that we support the fundamental freedoms of its faculty and students. We cannot pick and choose only those whose beliefs we agree with when it comes to protecting freedom of belief and association. If we want freedom of belief and association for ourselves, we must uphold it for all.

Are there no limits to the freedom to believe and to associate in accordance with those beliefs?

Of course there are – one's freedom ends where harm to another begins. The Supreme Court in its TWU decision, said this:

*... the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist,*

*racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society. Acting on those beliefs, however, is a very different matter... Discriminatory conduct by a public school teacher when on duty should always be subject to disciplinary proceedings.*

In the same way, if a graduate of a TWU Law School were to engage in discriminatory conduct, then they should be subject to disciplinary proceedings by the Law Society. If there was evidence of a pattern of discriminatory conduct by such graduates, then that would be reason to rethink the Law School's accreditation. But in the absence of such evidence, students and faculty who wish to attend a private, faith-based Law School, and to voluntarily agree to abide by a Covenant circumscribing their behavior while they do so, should be free to make that choice.

Civil libertarians, by their nature, and by the nature of the issues we care about, will not always agree with one another about everything. It would be shocking if they did! I hope that those of our members and supporters who may disagree with the BCCLA's position on this matter can continue to work together with us to promote civil liberties and human rights for all Canadians.

# Appendix H



Justice Centre  
for Constitutional Freedoms

# In Defence of the Free Society

A submission to the Law Society of Upper Canada  
on Diversity, Tolerance, and Trinity Western University

by

The Justice Centre for Constitutional Freedoms

March 21, 2014

## Introduction

Some Canadians have expressed their opposition to the new law school at Trinity Western University (TWU).

This opposition is based on one section of TWU's Community Covenant, which requires students who choose to attend TWU to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

The Special Advisory Committee of the Federation of Law Societies of Canada, formed specifically to address concerns raised by opponents of the TWU law school, concluded there was no public interest reason to exclude future graduates of the TWU law program from the bar admission program.

Opponents of TWU's law school argue that:

- 1) the Community Covenant discriminates against gays and lesbians;
- 2) the TWU law school will produce lawyers who will discriminate against gays and lesbians;
- 3) the TWU law school itself, by virtue of points 1) and 2) is therefore in violation of, or incompatible with, Canadian law; and
- 4) the TWU law school, by virtue of the Community Covenant, cannot competently teach law.

Opposition to the TWU law school is based primarily on disagreement with what TWU believes about marriage and sexuality. Opponents of the TWU law school argue that adherence to the "wrong" beliefs about sexuality and marriage should disqualify a university from teaching law, even when the Federation of Law Societies of Canada (FLSC) has determined that TWU's academic standards and professional criteria have been met.

This submission will address these arguments, as well as some of the assumptions on which they are founded.

## Executive Summary

### The crucial importance of voluntary associations to a free society

One of the hallmarks of a free society is authentic diversity, consisting of a broad range of robust associations with differing and conflicting beliefs. In a free society, authentic diversity facilitates the formation of a myriad of private institutions based on culture, ethnicity, religion, gender, political belief, and many other factors which recognize and affirm individual and group identity.

True tolerance does not consist of using “diversity” as a slogan to attack authentic diversity, or to censor disagreement. Rather, true tolerance means actually accepting the authentic diversity expressed by a wide range of different associations.

In a free society, nobody is compelled to join, or comply with the beliefs of, a voluntary association, be it TWU or any other private institution. The individual’s freedom to reject the beliefs, practices and standards of voluntary associations does not conflict with an association’s freedom to develop, teach and practice its own beliefs.

Freedom of association is rendered meaningless if private institutions cannot define and live out their own mission and purpose because those in power require the institutions (as a condition of recognizing its graduates’ qualifications to practice a profession) to accept as members people who disagree with that mission and purpose. Those who reject a private association’s beliefs and practices are protected by not being required to join it.

If, in Canada, voluntary associations cannot develop, express and live out their own beliefs, without disqualification of their members from entry into a profession for which they are otherwise qualified, then Canada’s free society will be greatly diminished.

### Lawyers advocate for their clients, regardless of ideology

Opponents of the TWU law school argue that its graduates will discriminate against gays and lesbians.

This argument pre-supposes that lawyers are incapable of advocating resolutely and effectively on behalf of clients who hold beliefs or who engage in conduct with which a lawyer disagrees.

This, in turn, is disproven every day by tens of thousands of Canadian lawyers who competently and professionally represent clients whose values, religion, socio-economic status, sexual orientation, and political beliefs are different from those of the lawyer. Lawyers routinely act for clients whose beliefs, lifestyles, and behaviour differ from their own. The idea that TWU law school graduates will discriminate against gays and lesbian is therefore without any basis.

The Federation of Law Societies of Canada based its approval of TWU's law school on academic and professional criteria. This is how it should be. Opinions about sex and marriage, whether held by lawyers, judges, law professors, or law students, are irrelevant.

#### Lawyers and law professors can advocate for change to the law

No law society in Canada imposes an ideological standard or philosophical requirement on those seeking to join its ranks. Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or the Supreme Court of Canada's interpretation of the *Charter*) and still provide competent and professional legal services to their clients.

The Federation of Law Societies of Canada understood these principles when providing its approval of TWU's law school, *based on academic standards and professional criteria*. Denying TWU the right to start and operate a law school on the basis of its belief about marriage would effectively repudiate a long-standing principle that lawyers need not agree with all laws in order to be competent lawyers.

#### National mobility standards should exclude ideology

The Supreme Court of Canada in *Reference Re Same-Sex Marriage*, 2004 SCC 79, at paragraphs 52-59, and the *Civil Marriage Act*, SC 2005, c. 33, Section 3-3.1, specifically protect the right of religious individuals and religious institutions to adhere to their faith-based definition of marriage, to the exclusion of all other definitions.

The establishment of a philosophical or ideological standard for the creation of new law schools would effectively repudiate the hard work carried out in the past decade by the Benchers and Council Members of Canada's law societies. These lawyers, and others, have devoted thousands of hours to developing national academic standards. The resulting interprovincial mobility of lawyers benefits clients and lawyers. This should not be thwarted by the imposition of an ideological requirement on new law schools.

#### The benefits of diversity in legal education

Our legal system is based on the idea that truth best emerges through a structured adversarial contest of two (or more) opposing viewpoints.

Yet which existing law faculty in Canada can honestly claim to provide its students with significant exposure to libertarian, conservative, and religious perspectives on the law?

Canadian law students stand to benefit from more choice in the law faculties available to them. In a free society, institutional diversity within academia is a public good, not a

threat, to society as a whole. The creation of a law school which differs from others should be welcomed by those who are truly tolerant and cherish authentic diversity.

#### No person is exempt from criticism

The Supreme Court of Canada has held that freedom of expression serves to protect minority beliefs which the majority regard as wrong or false. The view of the majority has no need of constitutional protection; it is tolerated in any event. To facilitate the search for truth, and to develop good public policy, democracy cannot permit the censorship or silencing, whether direct or indirect, of an opponent's expression of belief. Restricting the expression of beliefs merely because they may cause hurt or offense is entirely incompatible with the Court's jurisprudence. Individuals enjoy the freedom to claim that another person's opinions are "discriminatory" or "bigoted," but in a free society the truth of such claims is determined by citizens, not by the government.

The principles governing free expression apply similarly to freedom of association. A free society cannot endure when subjective feelings of offence are recognized as a legal criterion that can be used to undermine the *Charter's* fundamental freedoms of expression and association.

#### TWU does not discriminate

It is not illegal for a voluntary association to define itself in a way that results in some people (or many people) not wanting to join it, or pay for its services.

There is no legal authority for the proposition that a private institution engages in illegal discrimination by virtue of its beliefs or membership requirements.

Every Canadian university has a code of student conduct, which students agree to abide by as a condition of attending that university. The codes of student conduct at other universities are different from TWU's code, and are far less demanding.

The nature and content of the Community Covenant is such that many (and perhaps most) Canadian students, whether gay or straight, would not want to attend TWU. To suggest that the Community Covenant "discriminates" against gays and lesbians is akin to suggesting that the Community Covenant "discriminates" against those wanting to practice any other lifestyle or behaviour prohibited by the Community Covenant (and there are many).

The Community Covenant is a barrier to attending TWU for *all people* who are unwilling to live by Evangelical Christian beliefs and teachings during their course of study. The claim that TWU discriminates against gays and lesbians is therefore unfounded.

## The crucial importance of voluntary associations to a free society

One of the hallmarks of a free society is authentic diversity, consisting of a broad range of robust associations with differing and conflicting beliefs. In a free society with authentic diversity, a myriad of private institutions are formed on the basis of culture, ethnicity, religion, gender, political belief, and many other factors which recognize and affirm individual and group identity. Authentic diversity consists of the fundamental differences which are expressed and lived out by thousands of private organizations in Canada, large and small.

Opponents of the TWU law school argue that those who disagree with same-sex marriage should not be permitted to start or operate a law school, even when the Federation of Law Societies of Canada has approved TWU's academic standards and professional criteria.

This raises the fundamental question of whether, in Canada's free society, private institutions and other voluntary associations have the right to establish their own codes of conduct, and to develop and practice their own beliefs, without their members being denied admission to a profession for which they are otherwise qualified.

True tolerance does not consist of using "diversity" as a slogan, or using "diversity" as a basis for censoring public disagreement. Rather, true tolerance means actually accepting the authentic diversity expressed by a wide range of different associations.

As William Galston explains it:

"[I]f we insist that each civil association mirror the principles of the overarching political community, meaningful differences among associations all but disappear; constitutional uniformity crushes social pluralism."<sup>1</sup>

Through the exercise of freedom of association, Canada's numerous organizations protect minority rights and freedom of expression by forming a healthy and necessary barrier between the individual and the state. A free society demands that all voluntary associations *comply with* the laws of the land, but does not demand of any private institution that it *agree with* the laws of the land. In a free society, the door is always open for the expression of disagreement with existing laws, and for the peaceful advocacy of changes to existing laws.

In stark contrast to the free society, the totalitarian state pervades all aspects of social, cultural, political and religious life, demanding compliance with and adherence to the state's ideology. There are no barriers between the individual and the state, because truly independent associations are prohibited. There is no authentic diversity, and hence no need for tolerance either, because all associations and organizations must comply with

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<sup>1</sup> Galston, "*Expressive Liberty, Moral Pluralism, Political Pluralism: Three Sources of Liberal Theory*", 40 *Wm and Mary LR* 869 at 875 (1999).

the state's ideology. Disagreement with existing laws, and peaceful advocacy of change to those laws, are forbidden both for individuals and for voluntary associations.

Opponents of TWU's law school would presumably agree with the principle that a free society depends on the robust exercise of freedom of association. Opponents of TWU's law school would presumably agree with the principle that citizens in a free society can create private institutions and form voluntary associations while expressing disagreement with some (or many, or all) of society's existing laws. Opponents of TWU's law school would, presumably, agree that true tolerance requires accepting authentic diversity.

In a free society, nobody is compelled to join, or agree with the beliefs of, a voluntary association, be it TWU or any other private institution. The individual's freedom to reject the beliefs and practices of voluntary associations does not conflict with an association's freedom to develop, teach and practice its own beliefs. A free society respects the freedom of *both* the individual *and* the association, recognizing that they are not in conflict with each other.

Freedom ceases to exist when individuals are compelled to join associations they disagree with. In the same manner, freedom is also undermined when associations are required to alter their mission, purpose, or belief system to suit the ideological preferences of individuals who disagree with the association.

Freedom of association is thus a two-way street: a voluntary association has the right to freely determine and live out its beliefs, and the individual has the freedom to refuse to join that association, and to reject its beliefs.

Opponents of TWU's law school are advocating for a one-way street. They cherish, and would rightfully assert, the individual's freedom not to attend TWU. Yet they would deny TWU its right to create and operate a law school, only because they disagree with TWU's beliefs about marriage and sexuality. This is a demand for conformity, and a rejection of the authentic diversity that exists in a society which respects freedom of association.

Any person who disagrees with an Evangelical Christian teaching on a topic could call herself or himself a victim of discrimination on the part of TWU. Recreational marijuana users, and sexually active single people (whether gay or straight) are merely two examples. A review of the Community Covenant's demands would produce numerous other examples of people whose behaviour precludes them from attending TWU. Hence the significance of the fact that no person is compelled to attend TWU, or to fund it through taxation.

Freedom of association is rendered meaningless if private institutions cannot define and live out their own mission and purpose because those in power require the institution (as a condition of recognizing its graduates' qualifications to practice a profession) to accept as members people who disagree with that mission and purpose.

If, in Canada, voluntary associations cannot develop, express and live out their own beliefs, without disqualification of their members from entry into a profession for which they are otherwise qualified, then Canada's free society will be greatly diminished.

## Lawyers advocate for their clients, regardless of ideology

Opponents of the TWU law school argue that its graduates will discriminate against gays and lesbians.

This argument pre-supposes that lawyers are incapable of advocating resolutely and effectively on behalf of clients who hold beliefs, or who engage in conduct, with which a lawyer disagrees.

This, in turn, is disproven every day by tens of thousands of Canadian lawyers who competently and professionally represent clients whose values, religion, socio-economic status, sexual orientation, and political beliefs are different from those of the lawyer.

Lawyers routinely act for clients whose lifestyles, behaviour and beliefs differ from their own. For example, lawyers practicing in family law may be personally opposed to divorce, or may morally disapprove of some of the conduct of some of their clients, but this does not prevent them from providing competent legal services to their clients. Criminal defence lawyers don't care about their clients' views on marriage, nor is the lawyer's personal opinion about marriage relevant to the legal representation being provided. The Canadian Civil Liberties Association, while disagreeing entirely with the pro-life view on abortion, advocates passionately and effectively for the free expression rights of pro-lifers.

To claim that a gay lawyer is incapable of providing excellent legal representation to an Evangelical Christian client would be anti-gay bigotry. And yet, opponents of the TWU law school argue that its graduates, because of their presumed disagreement with same-sex marriage, will discriminate against gay and lesbian clients. This argument, if true, would mean that if a student commits to abstain from illegal drugs and pornography while attending TWU, this commitment will cause that student (when she or he later becomes a lawyer) to discriminate against those who use illegal drugs or pornography. This is disproven every day by lawyers who represent diverse clients whose beliefs and behaviours differ from those of the lawyer.

The Federation of Law Societies of Canada based its approval of TWU's law school on academic and professional criteria. This is how it should be. Opinions about sex and marriage, whether held by lawyers, judges, law professors, or law students, are irrelevant.

Lawyers routinely act for clients whose beliefs, lifestyles, and behaviour differ from their own. The idea that TWU law school graduates will discriminate against gays and lesbian is therefore without any basis.

## Lawyers and law professors can advocate for change to the law

No law society in Canada imposes an ideological standard or philosophical requirement on those seeking to join its ranks. Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or the Supreme Court of Canada's interpretation of the *Charter*) and still provide competent and professional legal services to their clients.

A democracy, by its very nature, leaves the door open for all citizens, including lawyers and law professors, to advocate for what they see as improvements to the law.

It should be noted that TWU does not oppose the federal *Civil Marriage Act*, which expressly protects the freedom of religious institutions to hold and declare their own definition of marriage, and which expressly affirms the right of all people to express publicly their diverse views on marriage.

It should also be noted that the Community Covenant specifically demands of TWU students that they "submit to the laws of this country," which includes federal and provincial human rights legislation.

But even if TWU publicly advocated for changing Canada's marriage laws, a free society allows it to do so, in keeping with the long-standing principle that lawyers, law students, and law professors have the right to advocate for what they see as improvements to the law.

The Federation of Law Societies of Canada understood these principles when providing its approval of TWU's law school, *based on academic standards and professional criteria*. Denying TWU the right to start and operate a law school on the basis of its belief about marriage would effectively repudiate a long-standing principle that lawyers need not agree with all laws in order to be competent lawyers.

The same principle holds true for law professors, whose teaching of the law will be informed by their personal opinions of what the law ought to be. It is not a requirement (nor should it be) that a law professor agree with all laws now in force.

Prior to the change in Canada's marriage laws, should advocates for same-sex marriage have been precluded from creating or running a law school? Should agreement with the then-existing definition of marriage have been a litmus test for those wanting to teach or practice law?

These same questions can be fairly posed today: should opponents of same-sex marriage be precluded from creating and running a law school? Should agreement with current marriage laws be a litmus test for those wanting to teach or practice law?

## National mobility standards should exclude ideology

The Supreme Court of Canada in *Reference Re Same-Sex Marriage*, 2004 SCC 79, at paragraphs 52-59, and the *Civil Marriage Act*, SC 2005, c. 33, Section 3-3.1, specifically protect the right of religious individuals and religious institutions to adhere to their faith-based definition of marriage, to the exclusion of all other definitions.

Adhering to the “correct” view of sexuality and marriage (or any other topic) is not a bona fide occupational requirement for lawyers. Therefore, Canada’s national standards for legal practice should not require adherence to – or rejection of – any particular religious or philosophical belief.

The establishment of a philosophical or ideological standard for the creation of new law schools would effectively repudiate the hard work carried out in the past decade by the Benchers and Council Members of Canada’s law societies. These lawyers, and others, have devoted thousands of hours to developing national academic standards. The resulting interprovincial mobility of lawyers benefits clients, and should not be thwarted by the imposition of an ideological requirement on new law schools.

Canada’s Law Societies cannot require lawyers who are currently practicing to adhere to any particular worldview or belief system, whether religious or non-religious, and this includes a wide range of differing beliefs about sexuality and marriage.

Opponents of the TWU law school do not suggest that current lawyers should be disbarred (or re-educated) on account of their personal beliefs about sexuality and marriage.

If those now practicing law can do so competently and professionally while disagreeing with same-sex marriage, why should new lawyers be held to an ideological standard?

## The benefits of diversity in legal education

Our legal system is based on the idea that truth best emerges through a structured adversarial contest of two (or more) opposing viewpoints.

Yet which existing law faculty in Canada can honestly claim to provide its students with significant exposure to libertarian, conservative, and religious perspectives on the law?

Good advocates fully understand the position of their opponents. But today, few Canadian law students are taught a full and balanced range of worldview perspectives that are important to understanding current debates. Uniformity of thought can lead to intellectual laziness, and to the academic disease of Groupthink, thereby stifling the development of better ways of thinking and doing. Some who shout the loudest for

“tolerance” and “diversity” may in fact be the most intolerant of any *real* diversity in opinion or ideology.

Canadian law students stand to benefit from more choice in the law faculties available to them. In a free society, institutional diversity within academia is a public good, not a threat, to society as a whole. The creation of a law school which differs from others should be welcomed by those who are truly tolerant and cherish authentic diversity.

## No person is exempt from criticism

In Canada’s free society, religious adherents of various faiths frequently experience criticism – sometimes expressed with hatred, contempt, or ridicule – of their most cherished beliefs. Many faith adherents, including law students, find themselves in this situation on a daily basis. True tolerance means accepting, or at least putting up with, vigorous (and even unfair) attacks against one’s own sincerely held beliefs. For the individual whose beliefs are criticized or ridiculed, a free society affords the choice of ignoring the criticism, or responding to it by peaceful means.

The Supreme Court of Canada has held that freedom of expression serves to protect minority beliefs which the majority regard as wrong or false. The view of the majority has no need of constitutional protection; it is tolerated in any event. To facilitate the search for truth, and to develop good public policy, democracy cannot permit the censorship or silencing, whether direct or indirect, of an opponent’s expression of belief. Restricting the expression of beliefs merely because they may cause hurt or offense is entirely incompatible with the Court’s jurisprudence. Individuals enjoy the freedom to claim that another person’s opinions are “discriminatory” or “bigoted,” but in a free society the truth of such claims is determined by citizens, not by the government.

The principles governing free expression apply similarly to freedom of association. A free society tolerates the authentic diversity among private institutions which results from freedom of association.

A free society cannot endure when subjective feelings of offence are recognized as a legal criterion that can be used to undermine the *Charter*’s fundamental freedom of association. Freedom of association is a two-way street: associations cannot compel individuals to join, and individuals cannot compel associations to change their beliefs and practices.

## TWU does not discriminate

There is no legal authority for the proposition that a private institution engages in illegal discrimination by virtue of its beliefs. It is not illegal for a voluntary association to

define itself in a way that results in some people (or many people) not wanting to join it, or pay for its services.

For example, if a health clinic provides reiki treatments, which some religious adherents regard as an occult practice, those religious adherents do not become victims of discrimination by virtue of the clinic's health services being commonly available to the public. Those who regard reiki as morally wrong have the freedom to seek health care elsewhere, but do not enjoy the right to stop the clinic from providing it, or proclaiming its merits. In this example, illegal discrimination would only occur if the clinic refused to provide reiki treatments to religious adherents. The religious adherents' disagreement with reiki does not constitute discrimination, and does not entitle them to demand that the clinic change its beliefs or its practices.

Students choosing to attend TWU, as part of that decision, choose to adhere to the Community Covenant. The Community Covenant asks students to commit themselves to practicing Evangelical Christian teachings, including:

- cultivating Christian virtues, such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice;
- living exemplary lives characterized by honesty, civility, truthfulness, generosity and integrity;
- treating all persons with respect and dignity, and upholding their God-given worth from conception to death;
- being responsible citizens both locally and globally who respect authorities, submit to the laws of this country, and contribute to the welfare of creation and society;
- encouraging and supporting other members of the community in their pursuit of these values and ideals, while extending forgiveness, accountability, restoration, and healing to one another;
- abstaining from harassment or any form of verbal or physical intimidation, including hazing;
- abstaining from the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography;
- abstaining from drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs.

Every Canadian university has a code of student conduct, which students agree to abide by as a condition of attending that university. The codes of student conduct at other universities are different from TWU's code, and are far less demanding.

The nature and content of the Community Covenant is such that many (and perhaps most) Canadian students, whether gay or straight, would not want to attend TWU. To suggest that the Community Covenant "discriminates" against gays and lesbians is akin to suggesting that the Community Covenant "discriminates" against those wanting to

practice any other lifestyle or behaviour prohibited by the Community Covenant (and there are many).

There are Christians who feel attracted to the same sex and who agree with Evangelical Christian teachings about sex and marriage, for whom the Community Covenant poses no barrier to attending TWU. TWU already has gay students in attendance.

In short, the Community Covenant is a barrier to attending TWU for *all people* are unwilling to live by Evangelical Christian beliefs and teachings during their course of study. The claim that TWU discriminates against gays and lesbians is therefore unfounded.

## About the author

John Carpay is President of the Justice Centre for Constitutional Freedoms. He earned his B.A. in Political Science at Laval University, and his LL.B. from the University of Calgary. John has defended constitutional rights and freedoms in the Alberta Court of Queen's Bench (*Boissoin v. Lund*), Saskatchewan Court of Appeal (*Whitcott v. Saskatchewan Human Rights Commission*), Federal Court of Appeal (*Benoit v. Canada*), and Supreme Court of Canada (*R. v. Kapp*). He acts for seven students who are suing the University of Calgary in the Alberta Court of Queen's Bench (*Wilson v. University of Calgary*) in defence of their campus free speech rights, and for Darcy Allen in his constitutional challenge to the government's health care monopoly (*Allen v. Alberta*).

In 2010, John Carpay was presented with the *Pyramid Award for Ideas and Public Policy*, in recognition of John's work in constitutional advocacy and in building a non-profit legal foundation. John Carpay also serves on the Board of Advisors of iJustice, an initiative of the Centre for Civil Society, India.

## About the Justice Centre for Constitutional Freedoms

***"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has."***

The free and democratic society which the *Canadian Charter of Rights and Freedoms* holds out as our ideal can only be fulfilled by honouring and preserving Canada's traditions of freedom of expression, freedom of association, freedom of conscience and religion, constitutionally limited government, the equality of all citizens before the law, and the rule of law.

The Justice Centre for Constitutional Freedoms (JCCF) was founded for the purpose of advancing and promoting the core principles of freedom and equality through education

and litigation. The JCCF is a registered charity, funded entirely by the voluntary donations of freedom-minded Canadians who agree with the Centre's goals, mission, vision and activities. The Centre is independent and non-partisan, and receives no funding from government.

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“Defending the constitutional freedoms of Canadians”

# Appendix I

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March 17, 2014

**Delivered by email**

**Privileged and Confidential**

The Law Society of British Columbia  
845 Cambie Street  
Vancouver, BC V6B 4Z9

**Attention: Deborah Armour, Chief Legal Officer**

Dear Sirs/Mesdames:

**Re: Application of *Labour Mobilty Act* and the *Agreement on Internal Trade* in Relation to Trinity Western University's proposed Faculty of Law**

This is in response to your letter to us of February 3 wherein you had requested our opinion regarding certain aspects of the consideration by the Law Society of British Columbia ("LSBC") of the above-noted matter.

## **1. Factual Background**

Trinity Western University ("TWU") is in the process of establishing a new School of Law at its campus in Langley. This past December the Canadian Common Law Program Approval Committee of the Federation of Law Societies (the "**Federation**") gave preliminary approval for the new Law School following an extensive review by that Committee and a Special Advisory Committee. Before the Law School can become fully accredited, each Canadian law society must individually confirm the Federation's preliminary approval. The LSBC Benchers are now considering whether to accept or to "disapprove" the Federation's preliminary approval pursuant to LSBC Rule 2-27(4.1). That Rule provides that:

"...a common law faculty of law is approved if it has been approved by the [Federation] unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law."

There are strong opinions on both sides of the approval issue and it may come to pass that the Benchers do decide to disapprove of the Federation's preliminary approval. This would mean that TWU law graduates would not be eligible to article in BC. However, should one or more other Canadian law societies choose to approve TWU,<sup>1</sup> but the LSBC does not, TWU graduates

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<sup>1</sup> You have informed us that the Law Society of Alberta has already done so.

would still have the ability to practice law in Canada by articling in one of these other approving jurisdictions and subsequently being admitted to the bar there. Should that occur, it would be likely – perhaps inevitable - that at some time in the future a lawyer admitted to the bar of another Canadian jurisdiction on the basis of his or her TWU law degree will apply to the LSBC to transfer to and practice in BC. The LSBC would then be required to consider any such transfer application on its merits.

## **2. Your Specific Questions and Our Summary Responses**

Generally, you have expressed concern that, were the LSBC to disapprove of the TWU Law School now, and then subsequently refuse transfer applications from TWU graduates who have been called to the bar in another Canadian jurisdiction, BC’s *Labour Mobility Act*, SBC 2009, c. 20 (the “LMA”) may then apply. Below we have rephrased somewhat the specific questions you have posed to us regarding the potential application of the LMA. Our summary responses then follow each question. In Part 3 below we provide a more fulsome discussion of these and certain other related issues.

### **2.1 What constraints, if any, are imposed on the LSBC by the provisions of the LMA (and through that Act the *Agreement on Internal Trade* (the “AIT”))? In particular, if the LSBC is applying the same requirements to all applicants, are the requirements of the LMA and AIT met? If there are constraints, do they affect the decision making process of the LSBC in this matter?**

We define “constraints” here as factors that should be taken into account by LSBC in its decision-making process. Such constraints can be direct or indirect. Direct constraints are legal obligations which are directly applicable to the LSBC, such as those found in the LMA. Indirect constraints are other factors that, while not direct legal obligations, should nevertheless have some influence or effect on the LSBC’s decision-making process.

The AIT is an inter-governmental “contract” among the Federal Government and the Provinces and Territories. Because the LSBC is not itself a “Party” to that contract, the AIT is not directly applicable to or binding on the LSBC. However, the AIT is binding on the Province, and, under the AIT, the Province has agreed to ensure that its regulatory bodies, including the LSBC, comply with its obligations concerning labour mobility found in Chapter Seven, and, further, to take such action as may be necessary to ensure such compliance. Taken by themselves, the applicable obligations of the AIT are clearly an indirect constraint on the LSBC here.

More importantly, in the labour mobility area, the Province has chosen to specifically implement into domestic law its obligation to ensure compliance with Chapter Seven by its regulatory bodies. It has done so through the passage of the LMA. There is no doubt that the LMA applies to the LSBC and that it imposes a clear and direct legal obligation on the LSBC to comply with Chapter Seven of the AIT. Thus, as it applies to the LSBC, the legal effect of the LMA is to convert AIT Chapter Seven from an indirect constraint into a direct constraint.

What then is the nature and extent of that constraint? Under subsection 3(1) of the LMA, any worker who holds a certification issued by another Province may apply to the applicable BC regulator for certification in the equivalent BC occupation and practice that occupation after

obtaining certification. It is thereby clear that the primary application of the LMA is to “extra-provincial applications” – that is, transfer applications from workers qualified in other Provinces. The core legal obligation imposed on regulators relating to such applications is found in subsection 3(3), which provides that, if a BC regulator receives any such application, it is obliged to consider that application in a manner consistent with the Province’s obligations under AIT Chapter Seven. Chapter Seven thereby becomes directly applicable to the LSBC. As a result, in order to understand the nature of the constraints imposed by the LMA on LSBC, one must first understand the underlying obligations found in Chapter Seven.

AIT Chapter Seven, in effect, establishes a system of immediate and automatic recognition of the occupational certifications issued by other Provinces. The Chapter’s essential obligation in this regard is found in Article 706(1), which provides that any worker certified for an occupation by a regulatory authority of one Party shall, upon application, be certified for that occupation by each other Party *without any requirement for material additional training, education, examinations or assessments as part of that certification procedure*. BC regulators, including the LSBC, are thereby required to accept certifications issued by the regulators of other Provinces as being equivalent to their own and generally are not permitted to “look behind” those certifications and to further inquire into, for example, the underlying educational credentials of the worker, or the specific educational institution that the worker may have attended. In basic terms, this requires the LSBC to accept lawyers called to the bar in other Provinces as being fully qualified to practice law in BC without looking behind their existing certifications.

It is important to note that Article 706(1) is not a non-discrimination obligation. It does not impose an “equal treatment” requirement and the obligation cannot be met by simply providing such equal treatment. As a result, the fact that a transfer applicant is being treated the same as an applicant from BC in terms of training, education or examination requirements is not a relevant consideration under the automatic recognition obligation.

While this automatic recognition obligation is expressed in rather categorical terms, the Chapter does provide some limited exceptions. Of importance here, AIT Article 708(1) provides that any measure (that is, any requirement) that is otherwise inconsistent with the basic automatic recognition obligation of Article 706(1) will still be permissible where it can be demonstrated that: (a) the purpose of the measure is to achieve a “legitimate objective” (as defined); (b) the measure is no more restrictive of labour mobility than is necessary to achieve that legitimate objective; and (c) the measure does not create a disguised restriction to labour mobility. Note, however, that for purposes of requirement (b), a mere difference between the certification requirements of one Party relating to academic credentials or education and those of another Party will not, by itself, be sufficient to justify the imposition of additional educational requirements as necessary to achieve a legitimate objective. Rather, a Party wishing to impose any such additional measures must be able to demonstrate that an actual, material deficiency in skills, area of knowledge or ability results from that difference – that is, in order to successfully invoke Article 708, there must be an actual deficiency, it must be material and it must be demonstrable.

Applying these basic direct constraints to this situation, we believe it clear that, if the LSBC were to impose any additional educational requirements on TWU graduates called to the bar in another

Province because of perceived educational deficiencies (a degree from a law school not accredited in BC), such action would be inconsistent with Article 706(1).<sup>2</sup> It would not be relevant that the LSBC is also imposing that same educational requirement on initial applicants from BC.

Whether Article 708 could then be successfully relied upon to shield that inconsistency would depend on a number of factors. It is clear, however, that, at a minimum, in order to do so, it would be necessary for the LSBC to demonstrate that there is an actual material difference in educational outcomes between the TWU Law School and other accredited law schools, and that an actual, material deficiency in skills, area of knowledge or ability results from that difference. As is explained in greater detail below, while perhaps not impossible, we do believe that it would likely be difficult for the LSBC to meet the requirements of Article 708 in these circumstances.

Assume for discussion that the LSBC is of the view that it has identified an actual material difference in educational outcomes and concludes that this difference does lead to an actual, material deficiency in skills, area of knowledge or ability in TWU graduates. Relying on the exception in Article 708, the LSBC then wishes to refuse automatic recognition of any TWU graduates called to the bar in any other Province and to impose certain additional educational requirements aimed at addressing those perceived deficiencies. Before it is able to do so, the additional obligations of section 2 of the LMA must be met. That section requires that any the regulatory authority wishing to impose any additional requirement for purposes of pursuing a legitimate objective must first seek and obtain ministerial approval for that additional requirement from both the Minister of Jobs, Tourism and Skills Training (who has been assigned responsibility for the LMA), and the Minister responsible for that specific regulatory authority (the Minister of Justice in the LSBC's case).

There is no guarantee that such Ministerial approval could be obtained here, and without such Ministerial approval, no additional requirements could legally be imposed by the LSBC. The views of the Minister of Jobs, Tourism and Skills Training and the Minister of Justice on this issue therefore constitute a further potentially significant indirect constraint on the actions of the LSBC here.

**2.2 If the LMA does not impose (direct) constraints on the LSBC, might there nevertheless be legal consequences for the LSBC if the benchers “disapprove” the Federation’s preliminary approval of TWU such as potential action by the BC Government?**

As discussed above, we are of the view that the LMA and, through it, the AIT, impose some significant direct and indirect constraints on the LSBC in this situation. The first part of this question is therefore moot. However, in spite of these constraints, it is at least possible that the LSBC may choose a course of action that is not consistent with the requirements of the LMA – for example, it chooses to implement further educational requirements on TWU graduates without

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<sup>2</sup> It must be recognized here that it may not be the LSBC's disapproval of TWU that causes issues here as much as it is the approval of TWU by one or more other Provinces. If a consensus was reached among law societies not to approve of TWU, the potential problems for the LSBC under the LMA relating to TWU law degrees would disappear.

first seeking Ministerial approval, or it unsuccessfully sought Ministerial approval, but chose to adopt the additional requirements notwithstanding that refusal. It is also possible that Ministerial approval for the additional requirements is obtained but one or more applicants that are subject to them, or another AIT Party, disputes their consistency with the LMA and/or AIT Chapter Seven. What potential legal consequences might result under the LMA or the AIT?

The LMA provides two potentially relevant remedies. First, any applicant affected by such additional requirements would have the ability under the LMA to seek judicial review of those requirements to assess their consistency with the LMA and AIT Chapter Seven. Second, the responsible Minister (the Minister of Justice in the LSBC's case) has the ability to effectively direct the LSBC to comply with the LMA and Chapter Seven, and to issue her own legally consistency requirements in the event that the LSBC still refuses to comply with her direction.

In addition, the AIT allows for both other AIT Parties and affected individuals to challenge the additional requirements as being inconsistent with the Province's obligations under Chapter Seven. In the event the Province is determined to be in violation of its obligations under Chapter Seven in a dispute initiated by another Party, and the Province does not then bring itself into compliance within the stipulated time period, it could be ordered pay financial penalties of up to \$5 million. In light of the explicit powers granted to the Province under the LMA, we consider unlikely that the Province would ever allow itself to be put in a position where financial penalties were ordered against it for the continued non-compliance of the LSBC.

### **3. Discussion**

#### ***3.1 Background to the LMA and its Application to the LSBC***

Before discussing the LMA in detail we believe it is first useful to understand the historical and legal context that led to its introduction.

The AIT entered into force on July 1, 1995. Primarily as a result of the then-recently negotiated *North American Free Trade Agreement*, there was a growing perception that under Canada's international trade agreements some foreigners were entitled to receive better treatment in Canada than that being extended to other Canadians. The AIT was an attempt by the Federal and Provincial governments to address this issue and perceived barriers to the free movement of goods, services, investment and labour within Canada. Chapter Seven of the AIT specifically attempted to address issues relating to labour mobility and to facilitate the intra-Canadian movement of certified workers among Provinces.

The approach initially utilized in AIT Chapter Seven was that of voluntary harmonization through negotiation amongst applicable regulatory authorities. The various bodies that regulate trades and professions within Canada were encouraged to negotiate, on a voluntary basis, the harmonization of their differing occupational standards. Labour mobility was expected to automatically follow once occupational standards were generally the same across Canada. For the most part, this approach proved futile and, after over 15 years of effort, little appreciable progress had been made on the goal of regulatory harmonization for most regulated trades and professions.

Frustrated by the lack of real progress, Canadian Premiers and Territorial leaders finally rejected the voluntary harmonization approach in favour of an entirely different approach based on mandatory, immediate and automatic mutual recognition. Premiers agreed to a complete renegotiation of AIT Chapter Seven, stating that this revised Chapter Seven would be required to:

“...provide that any worker certified for an occupation by a regulatory authority of one province or territory shall be recognized as qualified to practice that occupation by all other provinces and territories. Premiers further directed that any exceptions to full labour market mobility will have to be clearly identified and justified as necessary to meet a legitimate objective such as the protection of public health or safety.

By the 2009 summer meeting of the Council of the Federation, these amendments will result in mutual recognition of occupational credentials between all provinces and territories.”<sup>3</sup>

As directed, the revised Chapter Seven came into effect on August 11, 2009 through the AIT’s Ninth Protocol of Amendment. The Premiers’ direction regarding the purpose of the revised Chapter was then directly incorporated into the Chapter through its new purposive clause, Article 701, which provides:

“The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation in all other Parties.”

The purpose of the new AIT Chapter Seven is one thing; its applicability to the LSBC is another. The AIT is an agreement among the Federal Government, all Provinces and most Territories.<sup>4</sup> The LSBC has not signed the AIT, it is not a “Party” to it and, strictly speaking, it is not directly “bound” by it. However, under the AIT, the Province has explicitly accepted responsibility for compliance with Chapter Seven by all of BC’s “non-governmental bodies that exercise authority delegated by law”, including the LSBC.<sup>5</sup> The Province has further agreed to adopt and maintain such measures as may be required in order to ensure such compliance.

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<sup>3</sup> The Council of the Federation, “Press Release: Successful Fifth Annual Summer Meeting of the Council of the Federation”, July 18, 2008.

<sup>4</sup> Nunavut has not signed the AIT but holds “observer” status.

<sup>5</sup> BC’s obligation to ensure compliance with Chapter Seven by regulatory authorities such as the LSBC flows from the combination of AIT Articles 102 and 703. Article 102(1)(c) provides that each Party is responsible for compliance with the Agreement by its non-governmental bodies that exercise authority delegated by law, but only to the extent specifically provided for in the Agreement. Article 703(1)(a) then provides that, for purposes of Article 102, each Party shall, through appropriate measures, ensure compliance with Chapter Seven by those non-governmental bodies that exercise authority delegated by law. For purposes of Chapter Seven, the term “non-governmental body” is defined in Article 711 to include professional regulatory bodies. The phrase “non-governmental body that exercises authority delegated by law” is then further defined to mean any non-governmental body to whom authority has been delegated by statute to set or implement measures related to: (i) occupational standards or certification requirements; (ii) assessment of qualifications; or (iii) official recognition that an individual meets established occupational standards or certification requirements. There appears little doubt that the LSBC is a non-governmental body that, through section 3 of the *Legal Profession Act*, exercises authority delegated to it by

In the labour mobility area the Province has chosen to directly implement its obligations to ensure compliance with Chapter Seven into domestic law through the adoption of the LMA.<sup>6</sup> In a “Q&A” document that was issued in conjunction with the passage of the LMA, the Province explained the purpose of the LMA as follows:

“Why is legislation necessary? Doesn’t the Agreement on Internal Trade itself grant labour mobility rights?”

- While the AIT is an agreement between governments, the Labour Mobility Act imposes the obligation on regulators within the Province to operate in a manner consistent with the Province’s obligations relating to labour mobility under the AIT.
- Without the legislation, the Province would be less able to hold regulators to account for labour mobility. As self-governing entities, it is the regulators who have the power to make decisions regarding certification, and not the Province.”<sup>7</sup>

Thus, it is clear that the Province has adopted the LMA specifically to provide it with the direct legal ability to ensure BC’s occupational regulators operate in a manner consistent with the Province’s obligations under AIT Chapter Seven. Moreover, as is discussed further below, the LMA specifically requires compliance with the obligations of AIT Chapter Seven. Consequently, it is first necessary to understand the obligations of AIT Chapter Seven before one can fully appreciate the effect and application of the LMA to the LSBC. We therefore first discuss the applicable obligations of Chapter Seven before discussing the application of the LMA to the LSBC in these circumstances.

### ***3.2 Does AIT Chapter Seven Apply to LSBC’s Development of Occupational Standards in the First Instance?***

Although you have not directly questioned us regarding this issue, in light of its history and the background, one may first query as to whether AIT Chapter Seven applies to the LSBC in its development of occupational standards in the first instance – that is, separate and apart from any subsequent specific decision on a transfer application received from a TWU graduate, does Chapter Seven not apply to the LSBC’s initial decision to approve or disapprove of the proposed TWU Law School?

While there are some obligations in Chapter Seven concerning the initial development of occupational standards by regulatory bodies (which would include the consideration and accreditation of educational institutions), in our view these obligations are largely hortatory in nature and are not of material concern (or a direct constraint) in these circumstances.

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Provincial statute to, *inter alia*, establish occupational standards for lawyers and officially recognize that individuals meet those standards. Therefore, we believe it clear that the Province has agreed to ensure that the LSBC complies with AIT Chapter Seven.

<sup>6</sup> BC is not the only province that has adopted labour mobility legislation to directly implement its obligations under AIT Chapter Seven. Other provinces, including Ontario, Manitoba and PEI, have passed similar legislation.

<sup>7</sup> Government of British Columbia, “*Labour Mobility Act: Questions and Answers*” (undated), at page 4.

To understand Chapter Seven's obligations relating to the development of occupational standards, some further context is first necessary. One of the AIT's so-called "General Rules" concerns reconciliation. Article 405 states that, in order to provide for free movement of persons, goods, services and investments within Canada, the Parties shall, in accordance with a process established in Annex 405.1, reconcile their standards and standards-related measures by harmonization, mutual recognition or other means. However, this general reconciliation obligation specifically does not apply to measures covered by Chapter Seven generally, or to occupational standards specifically.<sup>8</sup> Rather, in Chapter Seven the Parties have agreed to a less onerous obligation. Article 707(1) provides that each Party may adopt or maintain any occupational standard and, in doing so, may establish the level of protection that it considers appropriate in the circumstances. In other words, a mandatory reconciliation obligation generally does not apply to occupational standards and, if one Party believes a higher degree of protection is necessary in the circumstances, it remains free to pursue that higher level of protection through a different or more onerous occupational standard. Instead of full reconciliation, Parties have agreed to a cooperative approach, to reconcile differences only "to the extent possible and where practical". Further, Parties have agreed to adopt occupational standards based on common interprovincial standards, also only "to the extent possible and where practical".

In light of the fact that the mandatory reconciliation obligation of Article 405 does not apply, that Parties are specifically accorded the continued freedom to adopt the level of protection that they consider appropriate in the circumstances, and that reconciliation is only required "to the extent possible and where practical", it is reasonable to conclude that there can be no mandatory obligation on the LSBC in the circumstances to harmonization or reconcile its occupational standards, including those relating to approved law schools, with those of other Provinces. The LSBC remains able to chart its own course on its occupational standards if it believes a higher level of protection is justified in the circumstances. While it should remain cooperative and open to discussions with other law societies on the issue, we do not believe that there is anything in Article 707(1) which mandates reconciliation with other Provinces.

Note too that where a Party finds it necessary to make changes to any existing standards, such as increasing the level of protection, that modification *process* is required to occur in a manner conducive to labour mobility, and, under Article 707(5), a Party intending to make such changes is required to notify the other Parties of the modification and afford them an opportunity to comment on it. This notification obligation is intended to contribute to increased transparency and the development of collaborative approaches to occupational standards. In the event that the LSBC did decide to disapprove of the TWU Law School we believe that such action likely constitutes a modification of the LSBC's occupational standards, and the notification obligation would thereby be triggered. However, compliance could be easily achieved here by notifying the other law societies of the LSBC's disapproval decision and providing them with the opportunity to comment on that decision before it becomes final.

Finally, it is also important to understand that this relative freedom regarding the establishment of, or changes to, occupational standards remains consistent with the Premiers' direction on

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<sup>8</sup> An "occupational standard" is defined in Article 711 to mean "...the skills, knowledge and abilities required for an occupation as established by a regulatory authority of a Party and against which the qualifications of an individual in that occupation are assessed."

labour mobility. A Party's ability to chart its own course on occupational standards where considered necessary does not relieve that Party from the much more important and overarching bedrock obligation of Chapter Seven - the mandatory, immediate and automatic recognition of the occupational standards of other Provinces. Thus, the automatic recognition obligation can be seen as imposing a significant indirect constraint on the development and implementation of occupational standards in the first instance. Parties can avoid issues regarding the application of the automatic recognition obligation if they work cooperatively in their development and implementation of occupational standards in the first instance.

In sum, subject to the notification obligation, it is our view that the obligations of Article 707 do not impose any material direct constraints on the LSBC's *initial decision* as to whether it approves or disapproves of TWU's accreditation.<sup>9</sup> The noted indirect disciplining effects of the automatic recognition obligation are further elaborated upon below.

### ***3.3 The Basic Labour Mobility Obligations of Chapter Seven***

As we note, AIT Chapter Seven imposes an "automatic recognition" type system under which worker certifications issued by regulators in one Province are to be automatically recognised in all other Provinces. Mirroring the Premiers' direction in this regard and the Chapter's purposive clause, AIT Article 706(1) provides the specific obligation, stating that:

"...any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for material additional training, education, examinations or assessments as part of that certification procedure."

Canada's Labour Ministers have elaborated on this obligation by noting:

"...governments of provinces and territories have agreed to certify a worker who is already certified in the same occupation in another jurisdiction without any requirement for material additional training, experience, examination or assessment. **This obligation exists, for example, even if training or education requirements are different between provinces/territories,** or even if

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<sup>9</sup> Note, the one caveat to this conclusion relates to obligations the Province owes to Alberta and Saskatchewan under another agreement - the *New West Partnership Trade Agreement* ("NWPTA"). Similar to the AIT, the NWPTA is an "internal" trade agreement among only BC, Alberta and Saskatchewan which is intended to build and improve upon the AIT. Much of the new AIT Chapter Seven has effectively been incorporated into and comprises NWPTA's labour mobility obligations. The two agreements are thus substantially similar in many respects in the area of labour mobility. However, the area of occupational standards has been treated somewhat differently under NWPTA. Similar to AIT Article 405, NWPTA Article 5(1) provides that Parties are generally required to "mutually recognize or otherwise reconcile" their existing occupational standards, and are not to establish any new occupational standards that operate to restrict or impair labour mobility. This obligation is then subject to NWPTA's legitimate objectives exception, which is substantially similar to AIT Article 708, discussed below. Thus, there may be a NWPTA obligation on the Province in the circumstances to subsequently work with Alberta and Saskatchewan to mutually recognize or reconcile potentially differing occupational standards as they relate to the TWU law degree, unless the Province is able to successfully invoke NWPTA's legitimate objectives exception. The issues relating to application of that exception in the circumstances are discussed below. Unlike the AIT, the obligations of the LMA are not directly tied to NWPTA and therefore any potential violation of the NWPTA obligation would not give rise to any issues under the LMA.

examination or assessment requirements are different between provinces/territories. Therefore, subject to the application of other provisions of the Chapter, a worker who is certified for an occupation in one province or territory and who wishes to be recognized as qualified for that occupation in any other province or territory shall, upon receipt of a completed application, be certified by that receiving province or territory in a timely manner.”<sup>10</sup> [emphasis added]

As a general proposition it can therefore be stated that, under Article 706(1), BC regulators are required to accept certifications issued by the regulators of other Provinces as being equivalent to their own and are not permitted to “look behind” those certifications and to inquire into, for example, the underlying education of the worker, or the specific educational institution that the worker may have attended.

It is important to note that Article 706(1) is not a non-discrimination obligation – that is, it does not impose an “equal treatment” requirement and the obligation cannot be met by simply providing such equal treatment. While AIT Chapter Seven does also contain such a general non-discrimination obligation, that obligation is in addition to and operates separate and apart from automatic recognition under Article 706(1). As a result, the mere fact that there is no discriminatory treatment and a transfer applicant is being treated the same as an applicant from BC in terms of educational or other requirements is not a relevant consideration in determining whether the automatic recognition obligation is being met.

### ***3.4 The “Legitimate Objectives” Exception***

While the automatic recognition obligation is expressed in rather categorical terms, there are some limited exceptions to it.

First, there are a series of exceptions in Article 706 that address potential application requirements that are unrelated to training, education, examinations or assessments. Under Articles 706(3) and (4), these permissible additional requirements include, for example, those relating to “currency of practice”,<sup>11</sup> criminal background checks and proof of “good character”.<sup>12</sup> Subject to some disciplines, it therefore remains permissible for regulatory authorities to continue impose additional requirements on extraprovincial applicants unrelated to their training and education. However, we do not consider any of those exceptions to be directly applicable in the circumstances.

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<sup>10</sup> Forum of Labour Market Ministers, Labour Mobility Coordinating Group, “Guidelines for Meeting the Obligations of the Labour Mobility Chapter”, July, 2009, at page 14.

<sup>11</sup> While these exceptions have not yet been considered by any AIT dispute settlement panel, they have been considered in Ontario under Ontario’s similar labour mobility legislation, the *Ontario Labour Mobility Act, 2009*. In *Hine v. College of Respiratory Therapists of Ontario*, 2011 CanLII 4385 (ON HPARB), the Ontario Health Professions Appeal and Review Board (“OHPARB”) concluded (correctly, in our view) that, under Article 706(4), non-discriminatory requirements related to currency of practice remain permissible notwithstanding the automatic recognition obligation in Article 706(1).

<sup>12</sup> Similar to the Hine case, in *Kathirgamanathan v. College of Physicians and Surgeons of Ontario*, 2013 CanLII 1217 (ON HPARB), the OHPARB concluded (again correctly, in our view), that under Article 706(3), non-discriminatory requirements relating to proof of good character also remain permissible notwithstanding the automatic recognition obligation in Article 706(1).

A second more potentially relevant exception is found in Article 708. Known as the “legitimate objectives” exception, Article 708(1) provides that a measure (that is, any requirement) that is otherwise inconsistent with the basic automatic recognition obligation of Article 706(1) will still be permissible where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a “legitimate objective”;<sup>13</sup>
- (b) the measure is no more restrictive to labour mobility than necessary to achieve that legitimate objective; and
- (c) the measure does not create a disguised restriction to labour mobility.

The application of this exception is further clarified in Article 708(2), which states that, with regard to the applicability of paragraph (b) above, a mere difference between the certification requirements of one Party relating to academic credentials, education, training, experience, examination, or assessment methods and those of another Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination, or assessment methods as necessary to achieve a legitimate objective. In the case of any such difference relating to academic credentials, education, training or experience, the Party seeking to impose any additional requirement must be able to further demonstrate that *the difference at issue results in an actual material deficiency in skill, area of knowledge or ability*.

In order to enhance transparency regarding reliance on Article 708(1), Article 708(3) further provides that, where a Party purports to adopt or maintain any measure under the legitimate objectives exception, it must give written notice thereof to Canada’s Forum of Labour Market Ministers.<sup>14</sup> That notice must be in the required form and must include a description of the Party’s justification for the exception and its anticipated duration.<sup>15</sup>

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<sup>13</sup> “Legitimate objective” is defined in Article 711 to mean one or more certain specified objectives pursued within the territory of a Party. This list includes, most importantly, the protection of human life or health. While there is no specifically enumerated objective relating to, for example, the protection of human rights or the prevention of discrimination, we consider that the specified objective of protection of human life and health would most likely be interpreted to include such other human-rights-related objectives.

<sup>14</sup> The Forum of Labour Market Ministers is comprised of all of Canada’s labour ministers at the Provincial, Territorial and Federal level and was established in 1983 to promote national discussion and cooperation on labour-related issues. Under Article 709 the Forum is generally responsible for the implementation and administration of Chapter Seven.

<sup>15</sup> For example, under Article 708(3) all common law jurisdictions including BC have each submitted a “Notice of Measure to Achieve a Legitimate Objective” regarding lawyers from Quebec. In BC’s case the Notice states that:

“... additional training and/or examinations are required for lawyers from Quebec (members of the Barreau du Quebec) so as to ensure competency in provincial common law. British Columbia has a common law legal system whereas Quebec has a civil law system. There are significant differences in the foundational principles of the two legal systems and in the way the law is developed and codified. A person trained to practise law under one legal system will not possess the knowledge or expertise to practise in the other system.”

Quebec has submitted a reciprocal Notice regarding lawyers from all common law jurisdictions. To date, a total of only 42 individual Notices have been filed under Article 708(3), with the Notices relating to lawyers accounting for

To date, only one AIT dispute settlement panel<sup>16</sup> has had the opportunity to consider the application of the new Article 708 exception.<sup>17</sup> The dispute involved measures applied by Ontario to out-of-Province Certified General Accountants (“CGAs”). In effect, Ontario had refused to recognize CGAs certified in other Provinces as being qualified to practice public accounting in Ontario. The Panel concluded that Ontario’s refusal to accept the CGA certifications issued by other Provinces was a clear violation of automatic recognition obligation in Article 706(1). Turning to the application of Article 708, the Panel stated that, as an exception, Article 708 must be “narrowly construed and strictly applied” so as to ensure that the integrity of the basic recognition obligation was maintained. It further stated that:

“In this dispute the Respondent asserts that it requires a specific set of standards to protect consumers of public accounting services in Ontario. It claims that the standards for certification of CGA’s in other provinces are inadequate to protect Ontario consumers. However, the other Parties also claim they place an equally high priority on consumer protection in their regulatory regime and that their own standards are sufficient to accomplish that objective...

If the debate on consumer protection is to centre on whose system protects consumer interests better, it is difficult to understand how Chapter Seven can have any meaningful positive impact on labour mobility...

An important issue with respect to Article 708 is onus. It is not sufficient to simply state that a legitimate objective exists. A Party must clearly demonstrate its necessity. The Premiers’ Communique of July 18, 2008 stated that exceptions must be ‘clearly identified and justified as necessary to meet a legitimate objective’.

...

The conclusion the Panel draws is that the onus falls on the Respondent to justify its Notice of Measure. In doing so, it must do more than allege or surmise. It must substantiate that its Notice of Measure is necessary to protect consumers. It falls to the Respondent to demonstrate the failings in the other jurisdictions. The onus is not on the Complainant or the other provinces to prove they have an adequate system in place to protect consumer interests. Nor is the onus on the individual certified in another province to prove to Ontario that he or she has a certain level of skill, area of knowledge or ability.”<sup>18</sup>

The Panel did find that there were differences in the educational requirements or “pathways” between Ontario and other Provinces; however, relying on the clarification provided in Article 708(2) regarding the application of the legitimate objectives exception, the Panel further concluded that:

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12 of those. The majority of the remaining 30 Notices are in health-related occupations and primarily concern scope-of-practice differences. The only Notice BC has filed is the one quoted from above relating to lawyers from Quebec.

<sup>16</sup> The AIT’s dispute settlement process is briefly outlined below in section 3.7.2.

<sup>17</sup> There have only been two AIT cases in total that have addressed issues arising under the new Chapter Seven. The second case, involving an individual from Quebec who challenged certain Ontario certification requirements relating to crane operators, specifically did not consider the application of Article 708 to the measures at issue. See *Report of the Article 1716 Panel Concerning the Dispute Between Mr. X, a Private Person from Quebec, and Ontario Regarding a Crane Operator Certification*, 23 February 2012.

<sup>18</sup> *Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario’s Notice of Measure with respect to Public Accountants*, 13 January 2012, at pages 10-11.

“Identifying a difference is not sufficient. The Party imposing the measure must be able to demonstrate that there is an actual, material deficiency in skills, area of knowledge or ability. There must be a deficiency, it must be actual, and it must be material. In this dispute, the Respondent bears the burden of meeting that requirement.

...

In the introduction to this section of the Report, the Panel concluded that the bar to justify exceptions to the objective of labour mobility is a high one... [I]t also concluded that the use of Article 708 should be narrowly construed and strictly applied. On that basis, the Panel has been looking for real factual confirmation that there is an actual material deficiency in skills, area of knowledge or ability of CGAs from Manitoba and the rest of Canada.

The Panel also is of the opinion that focussing only on the education pathway is insufficient to demonstrate an actual material deficiency in skills, area of knowledge or ability. Certification can also involve work experience and training. There is no indication that the Respondent...investigated any of those components of the certification process in other provinces to determine if a perceived shortcoming in the education pathway might have been offset by the work experience and training requirements of the certification process.”<sup>19</sup>

It also important to note that, while only one AIT panel has had the opportunity to consider the new Article 708, since the AIT initially came into effect in 1994 a number of dispute settlement Panels have been established to consider disputes between Parties concerning various other AIT obligations. Almost invariably, the application of a substantially similar legitimate objectives exception has been an issue raised by the responding Party in each of these cases. However, to date, in none of these cases has the legitimate objectives exception ever been successfully invoked by the responding Party.

Thus, to summarize with regard to Article 708:

- The bar to utilizing Article 708 is high. As an exception, it will be narrowly construed and strictly applied;
- The Party attempting to rely on the exception bears the burden of “demonstrating” or proving that all of the requirements of the exception are fully satisfied. The onus is not on the worker or the other jurisdiction to demonstrate substantial equivalency;
- The demonstrable purpose of the measure at issue must be to achieve one or more of the specified “legitimate objectives” (such as the protection of human life or health);
- The measure at issue must not be more restrictive of labour mobility than is necessary in the circumstances. This means that identifying a mere difference in occupational standards or certification requirements between jurisdictions will not be sufficient. The Party wishing to impose the additional requirement must be able to further demonstrate that an actual, material deficiency in skills, area of knowledge or ability results from that difference – that is, there must be an actual deficiency, it must be material and it must be demonstrable; and

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<sup>19</sup> *Id.*, at 14.

- The measure must not otherwise create a disguised restriction on labour mobility.

### ***3.5 Application of Chapter Seven to the LSBC***

For discussion purposes, at this point we assume that the LSBC has chosen to disapprove of TWU's Law School. It is then subsequently presented with an inter-Provincial transfer application from a TWU graduate called to the bar in another Province. Based on its prior disapproval decision, the LSBC rejects that application on the basis that the applicant has not met the LSBC's educational requirements – that is, the applicant has not graduated from an approved law school. Such action would clearly involve the LSBC “looking behind” the applicant's existing certification obtained in another Province so as to directly assess the applicant's education. In our view there is no question that such an individual assessment of the transfer applicant's educational credentials would be inconsistent with Article 706(1). The fact that the underlying educational requirement being applied to the transfer applicant is the same as that which is imposed by the LSBC on initial applicants from BC is not a relevant consideration under Article 706(1).

The question then becomes, would such an otherwise inconsistent action be permissible under the Article 708 legitimate objectives exception? In this regard at least some claims have been made that a TWU legal education will be materially different from that of the other currently accredited publicly-funded law schools, and that such differences will lead to certain deficiencies in educational outcomes. For example, the Federation's Special Advisory Committee had noted that:

“Some opponents of TWU's proposed law school argue that it will not provide a balanced quality legal education. They suggest that TWU's policies and intention to teach from a Christian worldview would prevent free, open dialogue and that students in such a program would, as a consequence, fail to develop necessary critical thinking skills. It has also been suggested that TWU's intention to teach law from a Christian worldview would interfere with effective teaching of legal ethics, constitutional and human rights law.”<sup>20</sup>

If such material differences in educational outcomes do, in fact, exist, and they do, in fact, lead to demonstrable material deficiencies in skills, knowledge or ability, then such educational deficiencies could potentially provide a defensible basis for the LSBC to take some form of action under Article 708 to address those actual demonstrable deficiencies. We caution, however, that, bearing in mind the restrictive nature of the exception and its past application, we do see a number of clear potential issues related to any such reliance on Article 708 in this situation.

First, any alleged deficiencies must be “demonstrated” or proven to exist. Mere conjecture is not sufficient. In this regard, the Special Advisory Committee, after reviewing all of the arguments relating to such alleged deficiencies in educational outcomes, wholly dismissed them. It concluded that:

“...the argument that TWU's Christian worldview will have a negative impact on the quality of legal education at the proposed law school and that students

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<sup>20</sup> Special Advisory Committee on Trinity Western's Proposed School of Law, “Final Report”, December, 2013, at page 11.

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

It is also worth noting that the proposed law school would not be the only professional faculty at TWU. The university operates both nursing and teacher education programs and has done so for many years. Graduates of those programs licensed to practise their respective professions must meet codes of professional conduct. To the knowledge of the Special Advisory Committee, there is no evidence that graduates of the nursing and teaching programs at TWU are any less able to fulfill their ethical obligations than are graduates from programs at other schools."<sup>21</sup> [internal footnotes deleted]

Not only do we believe that it will be inherently difficult to demonstrate that such deficiencies in educational outcomes actually exist, but the LSBC may be taking disapproval action now, before operation of the Law School has even commenced and before any graduates (with or without such deficiencies) have been produced, meaning that the LSBC would be making its initial disapproval decision unsupported by any positive evidence that such alleged educational deficiencies actually exist. For purposes of Article 708, this lack of positive evidence will most certainly cloud the application of the disapproval decision to specific transfer cases in the future and complicate its defensibility.

Second, while a demonstrated deficiency could form the basis of some form of permissible action under Article 708, it must be borne in mind that any such action must still be no more restrictive of labour mobility than is necessary to achieve the legitimate objective. The use of the phrase "no more restrictive than necessary" in this context demands a degree of proportionality and direct connectivity between the demonstrated deficiency and the action being taken to address it. To our knowledge, even the harshest critics do not allege that the entire TWU degree would be defective to its core; they allege only that certain aspects of that education will be deficient. This being the case, we consider it highly unlikely that certain demonstrated deficiencies in only some aspects of a TWU legal education could be used successfully to justify a complete rejection of the entire TWU degree. Rather, a more focused approach which specifically identified the demonstrated deficiencies and then prescribed targeted proportional remedies aimed at only

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<sup>21</sup> *Id.*, at page12.

curing those specific deficiencies would stand a far better chance of being successfully defended under Article 708.

For example, if deficiencies in educational outcomes relating to constitutional law, legal ethics or human rights were demonstrated to actually exist, the LSBC could mandate that applicants undertake remedial education at an accredited law school in only those specific subject areas. (We understand that a similar approach is taken in the case of transfer applicants from other non-Canadian jurisdictions.) With such an approach the LSBC would at least have more reasonable arguments available to it that the measures adopted were no more restrictive than necessary to achieve the legitimate objective at issue.

Third, even if certain deficiencies in educational outcomes are proven to exist, we believe that the LSBC would still be required to undertake a more holistic approach to the assessment of a transfer applicant than simply basing its decision on only the applicant's TWU degree. As was noted by the Panel in the CGA case, focussing only on the educational pathway is insufficient to demonstrate a material deficiency in skills, area of knowledge or ability actually exists. Certification can also involve additional work experience and training, or, perhaps more importantly, any identified deficiencies in educational outcomes may still be overcome through additional training that occurs as part of the articling process or post-call work experience. Does articling sufficiently address those deficiencies? If not, does two, five or ten years of practice? In order to successfully defend any additional educational requirement under Article 708 the LSBC would need to fully consider this issue and determine the extent to which any demonstrated deficiencies in educational outcomes can be or are remedied through work experience.

Finally, in order to fully comply with the obligations of Chapter Seven, in the event that the LSBC did decide to impose any type of additional education requirements on TWU graduates, the Province would be required to post a Notice of Measure to Achieve a Legitimate Objective under Article 708(3) regarding such additional requirements.

### ***3.6 Applicable Provisions of the Labour Mobility Act***

Having generally discussed the applicable obligations of AIT Chapter Seven, we now turn to discuss the application of the LMA to the LSBC in the circumstances. As we note, through the LMA, the Province has chosen to directly implement the obligations of Chapter Seven into domestic law so as to ensure compliance with those obligations by its regulatory bodies, including the LSBC.

Under subsection 3(1) of the LMA, any worker who holds a certification issued by another Province in relation to an “extraprovincial occupation”<sup>22</sup> may apply to the “applicable BC regulator”<sup>23</sup> for certification in the BC equivalent occupation and practice that occupation after

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<sup>22</sup> An “extraprovincial occupation” is defined in section 1 to mean an occupation in relation to which a worker holds a certification in a Canadian jurisdiction other than BC. It is clear that this captures lawyers called to the bar in other Provinces.

<sup>23</sup> An “applicable BC regulator” is defined in section 1 to mean, in relation to an occupation, the regulatory authority that is authorized to issue certification in BC in relation to that occupation. When considered in light of the

obtaining certification. The principle obligation imposed by the LMA on BC regulators to then comply with AIT Chapter Seven when processing such applications is found in subsection 3(4), which provides:

“If a regulatory authority that is authorized to issue certification in British Columbia in relation to an occupation is provided with an application in relation to that occupation under subsection (1)(a), the regulatory authority

- (a) *must consider and determine the application in a manner consistent with the government’s obligations under Chapter Seven of the Agreement,*
- (b) must issue any certification required by Chapter Seven of the Agreement, and
- (c) may impose on any certification issued in response to the application any terms, conditions or requirements that the regulatory authority is authorized to impose on the certification in accordance with one or more of the following:
  - (i) Chapter Seven of the Agreement;
  - (ii) this Act or the governing Act, or any regulation, bylaw, rule, resolution or measure under this Act or the governing Act, to the extent that those terms, conditions or requirements are not inconsistent with the government’s obligations under Chapter Seven of the Agreement.” [emphasis added]

In other words, there is no question that, when the LSBC receives an application for certification from a lawyer certified (called to the bar) in another province, it is, by law, required to process that application and issue certification in accordance with the Province’s obligations under AIT Chapter Seven. Based on our discussion above concerning those obligations, this means that: (1) generally, subject to the specified exceptions, the LSBC must grant the requested certification without requiring any material additional training, education, examinations or assessments as part of that application; and (2) the LSBC may be permitted to impose material additional education or training in those circumstances where it is able to demonstrate that there is an actual, material deficiency in skills, area of knowledge or ability that has resulted from a difference in the educational requirements between the worker’s certifying jurisdiction and those applicable in BC (that is, where the additional educational requirement complies with the Article 708 exception).

As a result of subsection 3(4), our discussion above concerning the application of Chapter Seven to this situation is directly applicable. In order to comply with its obligations under that subsection, in the event that the LSBC decides to disapprove of TWU’s Law School and impose additional educational requirements on TWU graduates called to the bar in other Provinces, it will need to be able to demonstrate that the obligations of the Article 708 legitimate objectives exception are fully met.

### ***3.7 The LMA’s Additional Obligation to Seek Ministerial Consent***

Over and above the obligations of subsection 3(4) of the LMA regarding compliance with AIT Chapter Seven, it is important to note that, where any regulatory authority that is *proposing* to

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concomitant definitions of “regulatory authority” and “occupation” there is little doubt that the LSBC is the “applicable BC regulator” under the LMA for purposes of the occupation of lawyer.

apply any measure that it claims is justified under Article 708(1), the authority must first comply with the additional approval requirements found in section 2 of the LMA. That section provides that:

“An applicable BC regulator *must not propose or apply*, in relation to any occupation or an application for certification in relation to an occupation, a measure that constitutes an inconsistent measure referred to in paragraph 1 of Article 708 of the Agreement, *unless that measure is approved* by both the minister charged with administration of this Act and the minister responsible for the Act under which the occupation is or may be regulated.” [emphasis added]

Before any such measure is proposed or applied the regulatory authority must first seek the approval of both the Minister of Jobs, Tourism and Skills Training (who has been assigned responsibility for the LMA), and the Minister responsible for that specific regulatory authority (the Minister of Justice, in the case of the LSBC).<sup>24</sup> This provision is intended to enhance transparency and serve as an “early warning” system for the Province. By requiring regulatory authorities to first seek approval for any such measure, the Province is better positioned to ensure consistency of application, oversee general compliance with Chapter Seven, and avoid potential disputes relating to the inappropriate or unjustified use of such measures.

Thus, in the event that the LSBC decides to disapprove of the TWU Law School, before that decision could be properly implemented through, for example, the imposition of additional educational requirements on TWU graduates called to the bar in other Provinces, the LSBC would first be required to seek and obtain the required Ministerial approval for those additional requirements. There is no guarantee that such approval would be forthcoming.

### ***3.7 Potentially Available Remedies***

#### ***3.7.1 Remedies Under the LMA***

##### ***3.7.1.1 Administrative and Judicial Review***

Under LMA section 4, if the applicable BC regulator refuses the application of an extraprovincially certified worker, or issues the certification subject to any terms, conditions or requirements, the worker may exercise all rights of administrative review and appeal, if any, available to the worker under the regulator’s governing Act. Under subsection 4(2), any person or body considering any such administrative review or appeal is required to consider that review or appeal in accordance with the obligations imposed on the Province and the regulatory authority under AIT Chapter Seven and the LMA.

Upon exhaustion of all such available administrative reviews or appeals, if the worker still alleges that the decision reached in respect of his or her application is not accordance with AIT Chapter Seven or the LMA, under LMA paragraph 4(2)(b), the worker may then refer the matter to the Supreme Court for judicial review. Such an application is to be made in the form of a stated case that identifies, as a question of law to be determined, whether the decision under review was consistent with the Province’s obligations under AIT Chapter Seven. If the Court determines that

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<sup>24</sup> These ministerial assignments are made by way of executive order under the *Constitution Act*, RSBC 1996, c. 66.

the decision was not consistent with those obligations it is to refer the application back to the applicable BC regulator for reconsideration of the decision with directions. The regulator must then reconsider the application and make a new decision on the application consistent with any such direction.

### ***3.7.1.2 Ministerial Override***

Section 5 of the LMA provides the Minister responsible for a regulatory authority with additional powers to ensure compliance with AIT Chapter Seven and the LMA. This section deals generally with “mobility provisions”, defined broadly to be bylaws, rules, resolutions or measures that are made under the regulatory authority’s authorizing enactment which can affect the ability of an extraprovincially certified worker to practice the equivalent occupation in BC. For example, any measure or requirement of a regulatory authority that was inconsistent with the requirements of AIT Article 706(1) would most likely meet the definition of a “mobility provision”. Subsection 5(2) clarifies that a regulatory authority’s ability under its authorizing enactment to make a mobility provision includes the power to amend or repeal any such provision that does not comply with the LMA or the Agreement. This provision thereby ensures that regulatory authorities themselves have all the power necessary to cure any non-compliance with Chapter Seven, regardless of any limitations or constraints that they may otherwise be subject to under their governing statutes.

More importantly, under subsections 5(3), (4) and (5) the responsible Minister has the ability to “trump” any non-compliant mobility provision that might be adopted or maintained by the authority. The responsible Minister may request that the authority repeal or amend a non-compliant mobility provision and, in doing so, may provide direction to the authority as to how the mobility provision should read or what it should, or should not, contain. If the regulatory authority does not then comply with such a Ministerial request within 60 days, the Minister may then, by order, directly amend or repeal the non-compliant provision. Any mobility provision made by way of such a Ministerial order then prevails over any conflicting bylaw, rule, resolution, measure or other record that may be made by the regulatory authority. Thus, either the regulatory authority voluntarily complies with the Minister’s direction, or compliance can be forced upon it.

These override provisions work hand-in-hand with the Ministerial approval requirements of section 2. In the event that a regulatory authority either fails to seek the required approval under section 2, or seeks such approval but is refused, and proceeds to implement the measure in spite of that refusal, the responsible Minister is able to force compliance with Chapter Seven through subsections 5(3), (4) and (5).

### ***3.7.2 Dispute Settlement Under the AIT***

AIT Chapter Seventeen provides the Agreement’s internal dispute settlement processes. In summary terms, the Chapter establishes a type of arbitral process whereby disputes regarding interpretation or application of the AIT are heard by *ad hoc* dispute settlement panels, normally comprised of three members. For the most part, these disputes are Party-to-Party – that is, they are initiated by one Party complaining about an alleged inconsistent measure adopted or maintained by another Party. However, Chapter Seventeen also provides a process through which

private parties are able to initiate challenges on their own behalf in certain circumstances. This process has been utilized by private parties in a few cases to date.

Following an oral hearing the Panel issues a written decision, known as a Panel Report. Included in that Report are necessary findings of fact and a determination as to the consistency of the measure at issue. If the Panel determines that the measure is inconsistent it will commonly recommend that the non-compliant Party bring itself into compliance with the Agreement by amending or revoking the measure. The Panel will normally stipulate a reasonable period of time within which the Party is to bring itself into compliance. For the most part, following the issuance of a Panel Report, the non-compliant Party will then bring itself into compliance by amending or revoking the measure at issue.

Chapter Seventeen does provide a further process in the event that compliance with a Panel Report does not occurred within the stipulated time period. In particular, in the case of a Party-to-Party dispute, the payment of a financial penalty can be ordered for any such failure to comply within the period stipulated by the Panel. In the case of any non-compliance by one of the larger Provinces such as BC, that financial penalty can be up to a maximum of \$5 million. (Financial penalties are currently not available in the case of a person-to-Party dispute.) Financial penalties are due and payable immediately upon issuance of the Panel's order and, in the case of BC, that order is enforceable against the Province in the same manner as an order issued by the Supreme Court against the Crown.<sup>25</sup>

While compliance with Panel Reports had been an issue in the past, to date, no financial penalty order has yet to be issued because, since the time the penalty provisions came into effect, there has been universal compliance non-compliant Parties. At the very least, the prospect of a \$5 million penalty provides a significant economic incentive for the Province to ensure that its regulatory authorities are complying with Chapter Seven. The provisions of the LMA give the Province the clear legal ability to ensure such compliance occurs.

### ***3.8 Other Considerations – Application of the Charter to the LMA***

We note that neither the LMA, nor through it, the AIT, can require the LSBC to do something that would violate the Charter.

For example, if clear evidence of harm was presented, the Benchers may conclude that the Charter would be violated should TWU graduates be permitted to become lawyers (thereby distinguishing this matter from the College of Teachers case<sup>26</sup>) and, on that basis, they refused to recognize TWU degrees for the purpose of “academic qualification” under Rule 2-27(4.1). If a TWU graduate then applied for admission in another Province that did accept TWU degrees and, after call, sought to transfer to BC, the LSBC would presumably refuse that application. The applicant would then likely either seek judicial review under section 4 of the LMA or a Ministerial order under section 5. The rationale for the Benchers' decision to refuse the TWU

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<sup>25</sup> Enforcement of such financial penalty orders issued against the Province is specifically provided for under the *Enforcement of Canadian Judgements and Decrees Act*, SBC 2003, c. 29.

<sup>26</sup> *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 (CanLII).

degree - that the Charter would be violated if it had been approved - would then be tested. If the rationale were to be rejected, the LSBC would be compelled by operation of the LMA to admit the applicant. If the Benchers' rationale was upheld, the LMA could not be relied upon to compel the LSBC to accept the applicant. The LMA is, in other words, subject to the requirements of the Charter.<sup>27</sup>

We trust that this provides the advice you had requested. Please contact either writer should you have any questions arising from our response.

Yours truly,

**Borden Ladner Gervais LLP**

By: *Jeffrey Thomas*

Jeffrey S. Thomas

*Pat Foy*

Patrick G. Foy, Q.C.

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<sup>27</sup> The primacy of the Charter is also at least implicitly recognized in the AIT. Article 300, entitled "Reaffirmation of Constitutional Powers and Responsibilities" provides that nothing in the AIT alters the legislative or other authority of Provincial legislatures or of Provincial governments, or "the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada." The "Constitution of Canada" is defined in section 52(2) of the *Constitution Act, 1982* to include the Charter (which appears as the first 35 sections of that Act). While Article 300 is intended primarily to address issues relating to the separation of powers, there is little doubt that the right of Provinces to exercise legislative authority under the Constitution is itself subject to the Charter and therefore Article 300 can be seen as confirming that nothing in the AIT is intended to alter that.



# Memo

To: File  
From: Deborah Armour  
Date: March 17, 2014  
Subject: Borden Ladner Gervais Opinion on LMA and AIT

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The BLG opinion examines what constraints, if any, are imposed on the Law Society by the *Labour Mobility Act* (LMA) and through the LMA, the Agreement on Internal Trade (AIT). It also addresses what potential legal consequences might result under either the LMA or the AIT. It concludes that neither the LMA nor the AIT can require the Law Society to do something that would violate the Charter.

The BLG opinion does not attempt to answer whether the LMA offends the principle of an independent bar. While an opinion on that issue may be possible to obtain, the law is not settled and therefore any opinion rendered at this point in time would be no more than speculative.

# Appendix J

## **Background Information**

### **INTER-JURISDICTIONAL MOBILITY OF LAWYERS IN CANADA**

#### **FEDERATION OF LAW SOCIETIES OF CANADA NATIONAL MOBILITY AGREEMENTS**

1. In the 1990s national and international agreements that address mobility issues in a variety of contexts were introduced, the effect of which was to cause law societies in Canada to begin considering the issue of lawyer mobility.
2. In 2002 law societies across Canada signed the Federation of Law Societies National Mobility Agreement (“the NMA”) to enable increased inter-provincial and territorial mobility of Canadian lawyers. The Territorial Mobility Agreements (“TMA”<sup>1</sup> and “TMA 2013”) and the Quebec Mobility Agreements (“QMA”<sup>2</sup>, “QMA Addendum”<sup>3</sup> and “QMA 2013”) were then also developed and revised over a number of years with the result that upon implementation,<sup>4</sup> these agreements enable full transfer rights for lawyers across every jurisdiction in Canada. These agreements may be referenced at,

**TAB 3.2.2.1: NMA;**

**TAB 3.2.2.2 TMA;**

**TAB 3.2.2.3: QMA;**

**TAB 3.2.2.4 QMA Addendum;**

**TAB 3.2.2.5 NMA 2013; and**

**TAB 3.2.2.6: TMA 2013.**

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<sup>1</sup> 2006

<sup>2</sup> 2010

<sup>3</sup> 2012

<sup>4</sup> The QMA 2013 will be implemented over the coming months.

3. The Mobility Agreements apply only to situations in which a person already a lawyer licensee/member of a law society in one jurisdiction seeks to practise law in or with the respect to the law of another jurisdiction. There are two components to the NMA: transfer (permanent mobility) and temporary mobility.

**(a) Transfer (Permanent Mobility)**

4. The mobility agreements have been premised on each law society accepting that a lawyer entitled to practise in one jurisdiction is eligible to transfer to and practise in any other signatory province or territory that has implemented the Agreements without having to undertake any further qualification.

5. The permanent mobility or transfer provisions of the NMA provide that,

32. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:

- (a) entitlement to practise law in the lawyer's home jurisdiction;
- (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and
- (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.<sup>5</sup>

6. "Entitled to practise" is defined in the Agreements to mean "allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction."

7. At the time the original NMA and TMA were entered into 2002 and 2006, respectively, and subsequently implemented, there had been no new law schools approved for over 20 years. In devising the original policy report proposing enhanced mobility the Mobility Task Force recommended that,

A lawyer who is called to the bar in a common-law province of Canada may seek call to the bar in another common-law province in Canada if the lawyer has graduated with a common law degree from a university in Canada or has obtained a Certificate from the National Committee on Accreditation (NCA).

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<sup>5</sup> This provision remains in the NMA 2013 and TMA 2013.

8. For all practical purposes law societies treated all Canadian common law degrees as the same and were more interested in ensuring that individual issues such as good character, insurance requirements, and discipline were addressed under the “entitled to practise” requirement.
9. At the time the NMA was entered into Ontario simply accepted that all law schools met the requirements of accreditation. There was no formal process in place for “accrediting” or for considering whether accreditation could be removed.
10. Nonetheless, the Law Society’s licensing by-law (By-Law 4) provides as follows:
  9. (1) The following are the requirements for the issuance of a Class L1 licence:
    1. The applicant must have one of the following:
      - i. A bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.
      - ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.
11. An accredited law school for Ontario is defined as “a law school in Canada that is accredited by the Society.”
12. This requirement would therefore come within the meaning of “any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction” provided in section 32(c) of the NMA.
13. Accordingly, if the Law Society were to deny accreditation to TWU, it would appear that a graduate of TWU called to the bar in any other jurisdiction in Canada would be unable under By-Law 4 to transfer to Ontario to become a member of the Law Society of Upper Canada, unless By-Law 4 were amended to provide an exemption from the accreditation requirement for transfer purposes.

## **Temporary Mobility**

14. If the Law Society were to deny accreditation to TWU, thereby precluding transfer under the permanent mobility provisions, this would not preclude a TWU graduate who is a member of another jurisdiction from exercising temporary mobility in Ontario. This is because in that case the requirements for eligibility are that the lawyer,
- (a) be entitled to practise law in a home jurisdiction;
  - (b) carry liability insurance that:
    - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
    - (ii) extends to the lawyer's practice in the host jurisdiction;
  - (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
  - (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
  - (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
  - (f) have no disciplinary record in any jurisdiction.
15. Lawyers exercising temporary mobility may provide legal services in or with respect to the law of a reciprocating jurisdiction for up to 100 days in a calendar year without a permit. Moreover, they do not have to advise the law society that they are providing legal services on a temporary basis in or with respect to the law of the jurisdiction. Regardless of the accreditation decision the Law Society makes, graduates from TWU who are members of a reciprocating mobility jurisdiction would be eligible to exercise temporary mobility in Ontario under current By-Law 4.

## **AGREEMENT ON INTERNAL TRADE – LABOUR MOBILITY**

16. The Federal, Provincial and Territorial governments first signed the Agreement on Internal Trade ("AIT") in 1994 to facilitate the mobility of people, investments and services across Canada. In 2009 First Ministers undertook an initiative to significantly strengthen compliance with the labour mobility provisions set out in Chapter 7 of the AIT that specify that a qualified worker in

one jurisdiction must have access to similar employment in other Canadian jurisdictions. Professions are subject to Chapter 7, set out at **TAB 3.2.2.7: AIT – Chapter 7**. Parties to the Agreement are governments.

17. Chapter 7 requires that provinces and territories agree to certify <sup>6</sup> workers, already certified in another Canadian jurisdiction, without any requirement for any material additional training, experience, examinations or assessment.
18. A regulatory authority of a party may, however, as a condition of certification, impose requirements on a worker (other than requirements for material additional training, experience, examinations or assessments) that are substantially the same as those imposed as part of its normal licensing or certification process. These could include a requirement to pay an application or processing fee, obtain insurance or post a bond, undergo a criminal records check, provide evidence of good character, or demonstrate knowledge of the measures applicable to the practice of the occupation in a jurisdiction. These can be no more onerous than those demanded of workers already certified in the receiving jurisdiction or applying for certification for the first time within the jurisdiction. <sup>7</sup>
19. An additional measure imposed by a party may be challenged on the grounds that it is inconsistent with the party's obligations under the AIT. In addition to the right of a party to the agreement to initiate a complaint, an individual may request that a party commence dispute resolution proceedings on his or her behalf. If the party refuses, an individual may initiate proceedings on his or her own, but such individual complaints are subject to a screening process and may not be permitted to proceed if found to be frivolous or vexatious, initiated solely to harass the party complained about, or where there is no reasonable case of injury or denial of benefit.

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<sup>6</sup> This is generic language that includes "license."

<sup>7</sup>AIT. Article 706 (3).

20. Chapter 7 does provide for limited exceptions to the requirement to certify without additional training or examination to achieve a “legitimate objective” within certain defined categories.<sup>8</sup> The measure must not be more restrictive than necessary to achieve the legitimate objective and not be a disguised restriction to mobility. As well, a “mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective.”<sup>9</sup> The party seeking to impose an additional requirement must be able to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability.
21. The authority to create a legitimate objective can only be exercised by governments who are parties to the AIT.
22. Chapter 7 includes a provision requiring parties to ensure that non-governmental bodies such as professional regulators comply with the labour mobility provisions. This is mandatory and reflects governmental commitments to compliance.
23. In Ontario the applicable legislation is the *Ontario Labour Mobility Act, 2009* (“OLMA”), set out at **TAB 3.2.2.8: Ontario Labour Mobility Act**, whose purposes are,

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<sup>8</sup>AIT Article 711 **legitimate objective** means one or more of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health; (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers;
- (g) provision of adequate social and health services to all its geographic regions; and
- (h) programs for disadvantaged groups;

<sup>9</sup> AIT Article 708 (2)

(a) to eliminate or reduce measures established or implemented by Ontario regulatory authorities that restrict or impair the ability of an individual to become certified in Ontario in a regulated occupation in which the individual is certified by an out-of-province regulatory authority; and

(b) to support the Government of Ontario in fulfilling its obligations under Chapter Seven of the Agreement on Internal Trade.

24. The Act specifically provides that if the Labour Mobility Code is in conflict with a regulatory authority's authorizing statute or other provisions, including by-laws, the Labour Mobility Code prevails to the extent of the conflict.<sup>10</sup> The Act designates "monitors" to address enforcement of the Act with the right to do one or more of the following:

1. Review the instruments of a legislative nature under the regulatory authority's authorizing statute in order to assess their conformity with the Labour Mobility Code.
2. Request the regulatory authority to take such steps as are within its power to make, amend or revoke an instrument of a legislative nature under its authorizing statute so that the instrument conforms with the Labour Mobility Code.
3. Review the certification processes and practices of the regulatory authority in order to assess their compliance with the Labour Mobility Code.
4. Request the regulatory authority to provide information and reports with respect to any matter relating to compliance with the Labour Mobility Code or any matter relating to the administration of Chapter Seven of the Agreement on Internal Trade.
5. Request the regulatory authority to do anything that, in the opinion of the monitor, is necessary or advisable to implement, or carry out the intent and purposes of, the Labour Mobility Code or a decision of a presiding body established or convened under the Agreement on Internal Trade.
6. If the Lieutenant Governor in Council makes an order in council under subsection 17 (1), request the regulatory authority to publish it in accordance with the monitor's directions.

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<sup>10</sup> OLMA. Section 14(1)

25. The Ministers responsible for regulatory authorities established by public Acts serve as monitors responsible for ensuring that the authorities comply with the OLMA. In the case of the Law Society the monitor is the Attorney General.
  
26. If the Law Society decides that a TWU graduate called to the bar in another Canadian jurisdiction is not to be eligible to transfer pursuant to the By-law 4 provisions implementing the national mobility agreements, it is possible that Chapter 7 of the AIT and the *Ontario Labour Mobility Act, 2009* may be invoked to challenge that decision.



# National Mobility Agreement

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## National Mobility Agreement

### Federation of Law Societies of Canada

August 16, 2002  
Niagara-on-the-Lake, Ontario

The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

In August 2001, the Federation of Law Societies established a National Mobility Task Force to examine full mobility rights and conditions for lawyers to practise law in all Canadian jurisdictions.

In August, 2002, the Federation of Law Societies accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

## National Mobility Agreement

### THE SIGNATORIES AGREE AS FOLLOWS:

#### Definitions

1. In this agreement, unless the context indicates otherwise:

“**Barreau**” means le Barreau du Québec;

“**day**” means any calendar day or part of a calendar day in which a lawyer provides legal services;

“**discipline**” includes a finding by a governing body of any of the following:

- (a) professional misconduct;
- (b) incompetence;
- (c) conduct unbecoming a lawyer;
- (d) lack of physical or mental capacity to engage in the practice of law;
- (e) any other breach of a lawyer’s professional responsibilities;

“**disciplinary record**” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of discipline;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practise;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“**entitled to practise law**” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

“**governing body**” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

“**home governing body**” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “**home jurisdiction**” has a corresponding meaning;

“**host governing body**” means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and “**host jurisdiction**” has a corresponding meaning;

## National Mobility Agreement

**“Inter-Jurisdictional Practice Protocol”** means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

**“lawyer”** means a member of a signatory governing body;

**“liability insurance”** means compulsory professional liability errors and omissions insurance required by a governing body;

**“mobility permit”** means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

**“practice of law”** has the meaning with respect to each jurisdiction that applies in that jurisdiction;

**“providing legal services”** means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

**“Registry”** means the National Registry of Practising Lawyers established under clause 17 of this agreement;

**“resident”** has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

## National Mobility Agreement

### General

2. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;
  - (c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.
4. A signatory governing body will not, by reason of this agreement alone,
  - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
  - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

## National Mobility Agreement

### Temporary Mobility Among Common law Jurisdictions

6. Clauses 7 to 31 apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

### Mobility without permit

7. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:
  - (a) meets the criteria in clause 10; and
  - (b) has not established an economic nexus with the host jurisdiction as described in clause 16.
8. The host governing body will have the discretion to extend the time limit for temporary mobility under clause 7 with respect to an individual lawyer.
9. It will be the responsibility of a lawyer to
  - (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and
  - (b) prove that he or she has complied with provisions implementing clause 7.
10. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 7, a lawyer will be required to do each of the following at all times:
  - (a) be entitled to practise law in a home jurisdiction;
  - (b) carry liability insurance that:
    - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
    - (ii) extends to the lawyer's practice in the host jurisdiction;
  - (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
  - (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
  - (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
  - (f) have no disciplinary record in any jurisdiction.
11. For the purposes of clause 7:
  - (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;

## National Mobility Agreement

- (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:
  - (i) the Supreme Court of Canada;
  - (ii) the Federal Court of Canada;
  - (iii) the Tax Court of Canada;
  - (iv) a federal administrative tribunal.

12. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:
- (a) in the lawyer's home jurisdiction; or
  - (b) operated in the host jurisdiction by a member of the host governing body.

### Mobility permit required

13. If a lawyer does not meet the criteria in clause 10 to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:
- (a) on application;
  - (b) if, in the complete discretion of the host governing body, it is consistent with the public interest to do so;
  - (c) for a total of not more than 100 days in a calendar year; and
  - (d) subject to any conditions and restrictions that the host governing body considers appropriate.

### Temporary mobility not allowed

14. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause 7, but will require the lawyer to do one of the following:
- (a) cease providing legal services in the host jurisdiction forthwith;
  - (b) apply for and obtain membership in the host governing body; or
  - (c) apply for and obtain a mobility permit under clause 13.
15. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause 14(b) or (c).
16. In clause 14, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:
- (a) providing legal services beyond 100 days, or longer period allowed under clause 8;

## **National Mobility Agreement**

- (b) opening an office from which legal services are offered or provided to the public;
- (c) becoming resident;
- (d) opening or operating a trust account, or accepting trust funds, except as permitted under clause 12.

### **National Registry of Practising Lawyers**

- 17. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause 10 to practise law interjurisdictionally without a mobility permit or notice to the host governing body.
- 18. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

### **Liability Insurance and Defalcation Compensation Funds**

- 19. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction
  - (a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and
  - (b) provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.
- 20. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.
- 21. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.
- 22. Signatory governing bodies will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.

## National Mobility Agreement

23. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.

### Enforcement

24. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:
- (a) account for and verify the number of days spent providing legal services in the host jurisdiction; and
  - (b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.
25. If a lawyer fails or refuses to comply with the provisions of clause 24, a host governing body will be entitled to:
- (a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or
  - (b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.
26. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.
27. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:
- (a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and
  - (b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.
28. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.
29. In determining the location of a hearing under clause 27, the primary considerations will be the public interest, convenience and cost.

## **National Mobility Agreement**

- 30.** A governing body that initiates disciplinary proceedings against a lawyer under clause 27 will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.
- 31.** In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

## National Mobility Agreement

### Permanent Mobility Among Common Law Jurisdictions

32. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:
- (a) entitlement to practise law in the lawyer's home jurisdiction;
  - (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and
  - (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.
33. Before admitting as a member a lawyer qualified under clause 32, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction;
  - (c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and
  - (d) certify that he or she has reviewed all of the materials reasonably required by the governing body.

### Public Information

34. A governing body will make available to the public information obtained under clause 33 in the same manner as similar records originating in its jurisdiction.

### Liability Insurance

35. On application, a signatory governing body will exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction :
- (a) is resident;
  - (b) is a member of the governing body; and
  - (c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.

## National Mobility Agreement

36. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 35, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.

## National Mobility Agreement

### Temporary Mobility between Quebec and Common Law Jurisdictions

37. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.
38. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:
  - (a) as provided in clauses 7 to 31; or
  - (b) as permitted by the Barreau in respect of the members of the signatory governing body.

## National Mobility Agreement

### Permanent Mobility Between Quebec and Common Law Jurisdictions

39. While the signatory governing bodies recognize that the Barreau must comply with regulations that apply to all professions in Quebec, the Barreau agrees to consult with the other signatory governing bodies before changing regulations on the mobility of Canadian lawyers to Quebec.
40. A signatory governing body, other than the Barreau, will admit members of the Barreau as members on one of the following bases:
  - (a) as provided in clauses **32** to **36**; or
  - (b) as permitted by the Barreau in respect of the members of the signatory governing body.

## National Mobility Agreement

### Inter-Jurisdictional Practice Protocol

41. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect,
  - (a) with respect to governing bodies that are signatories of that Protocol, but not this agreement;
  - (b) to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.
  
42. Signatory governing bodies will apply or continue to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of defalcation compensation and arbitration of disputes, specifically, clause 10 of the Protocol and Appendices 5 and 6 to the Protocol.

## National Mobility Agreement

### Transition Provisions

43. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
44. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:
  - (a) with respect to all Canadian lawyers until this agreement is implemented;  
and
  - (b) with respect to members of Canadian law societies that are not signatories to this agreement.

## National Mobility Agreement

### Withdrawal

45. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.
46. A signatory that gives notice under clause 45 will:
  - (a) immediately notify its members in writing of the effective date of withdrawal; and
  - (b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

# National Mobility Agreement



Signed by eight jurisdictions on December 7, 2002  
New Brunswick signed on July 8, 2006  
Prince Edward Island signed on November 3, 2006

Saturday, December 7, 2002

SIGNED BY

The Law Society of **Alberta**

The Law Society of **British Columbia**

The Law Society of **Manitoba**

Law Society of **New Brunswick**

The Law Society of **Newfoundland**

**Nova Scotia** Barristers' Society

Law Society of the **Northwest Territories**

The Law Society of **Nunavut**

The Law Society of **Upper Canada**

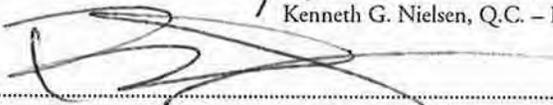
The Law Society of **Prince Edward Island**

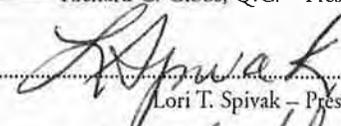
Barreau du **Québec**

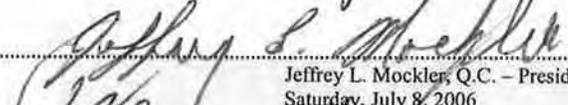
Law Society of **Saskatchewan**

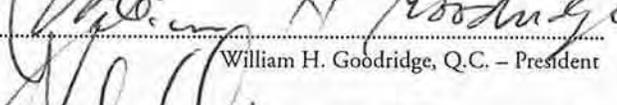
The Law Society of **Yukon**

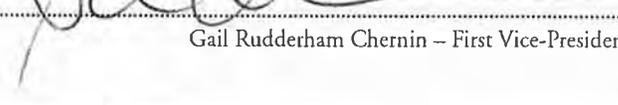
  
Kenneth G. Nielsen, Q.C. – President

  
Richard C. Gibbs, Q.C. – President

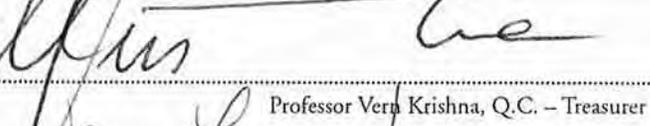
  
Lori T. Spivak – President

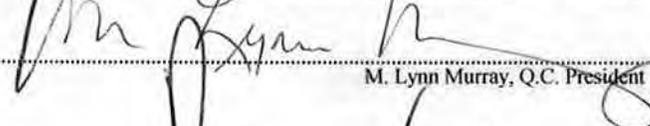
  
Jeffrey L. Mockler, Q.C. – President  
Saturday, July 8, 2006

  
William H. Goodridge, Q.C. – President

  
Gail Rudderham Chernin – First Vice-President

  
Professor Vera Krishna, Q.C. – Treasurer

  
M. Lynn Murray, Q.C. President

  
M. Pierre Gagnon, Vice-President

  
Michael W. Milani, Q.C. – President

DATED December 7, 2002

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# Territorial Mobility Agreement

November 2011

## Territorial Mobility Agreement

# FEDERATION OF LAW SOCIETIES OF CANADA

November , 2011

### Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

### Background

In August, 2002, the Federation of Law Societies of Canada (the "Federation") approved the report of the National Mobility Task Force ("the Task Force") for the implementation of full mobility rights for Canadian lawyers. This led to adoption of the National Mobility Agreement by 10 law societies and its full implementation in nine jurisdictions. Since that time, all Canadian law societies have also signed the Quebec Mobility Agreement, which facilitates reciprocal mobility between Quebec and the common law jurisdictions.

## Territorial Mobility Agreement

### Territorial Mobility Agreement

The resolution adopted by the Federation in approving the Task Force report included an acknowledgement that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force’s terms of reference, but should be undertaken in the future.”

In 2005, an informal Territorial Mobility Group (“the Group”) was formed with representatives of the Task Force, the law societies of the provinces in Western Canada and the law societies of the territories. The Group developed a proposal respecting territorial mobility to address the unique characteristics of the law societies of the territories. This agreement gives effect to the Group’s proposal.

The purpose of this Agreement is to allow the law societies of the territories to participate in national mobility for lawyers to the extent possible for them, given their unique circumstances. Specifically, the signatories agree that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility, or transfer of lawyers from one jurisdiction to another, without a requirement that they participate in temporary mobility provisions.

The signatories to this Agreement who are not signatories to the National Mobility Agreement do not hereby subscribe to the provisions of the National Mobility Agreement, except as expressly stated in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

#### Definitions

1. In this Agreement, unless the context indicates otherwise:

“**governing body**” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

“**home governing body**” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “**home jurisdiction**” has a corresponding meaning;

“**Inter-Jurisdictional Practice Protocol**” means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

“**lawyer**” means a member of a signatory governing body;

## Territorial Mobility Agreement

**“liability insurance”** means compulsory professional liability errors and omissions insurance required by a governing body;

**“National Mobility Agreement”** or **“NMA”** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

**“permanent mobility provisions”** means clauses 32 to 36, 39 and 40 of the National Mobility Agreement;

**“practice of law”** has the meaning with respect to each jurisdiction that applies in that jurisdiction;

**“Registry”** means the National Registry of Practising Lawyers established under clause 17 of the National Mobility Agreement;

### General

2. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
  - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory governing body will not, by reason of this Agreement alone,
  - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

## **Territorial Mobility Agreement**

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

### **Permanent Mobility**

6. The signatories that are signatories to the National Mobility Agreement agree to extend the application of the permanent mobility provisions of the National Mobility Agreement with respect to the territorial signatories to this Agreement.
7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the National Mobility Agreement.
8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the National Mobility Agreement is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

### **Transition Provisions**

9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect: until this agreement is implemented.

### **Dispute Resolution**

11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

### **Withdrawal**

12. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.

## **Territorial Mobility Agreement**

**13.** A signatory that gives notice under clause 12 will immediately notify its members in writing of the effective date of withdrawal.



**Territorial Mobility Agreement**

**Law Society of Prince Edward Island**

**Law Society of Newfoundland and  
Labrador**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Yukon**

**Law Society of the Northwest  
Territories**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Nunavut**

Per: \_\_\_\_\_  
Authorized Signatory

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# Quebec Mobility Agreement

## FEDERATION OF LAW SOCIETIES OF CANADA

March 19, 2010  
Toronto, Ontario

### Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement (the "NMA") in facilitating reciprocal permanent mobility between the common law jurisdictions and the Barreau du Québec ("the Barreau"). Clause 40(b) of the NMA provides that "a signatory governing body, other than the Barreau, will admit members of the Barreau as members on one of the following bases:... (b) as permitted by the Barreau in respect of members of the signatory governing body."

The Barreau has implemented a scheme under which members of the law societies of the other provinces and the territories may become members of the Barreau and practise federal law and the law of their home jurisdictions as Canadian Legal Advisors. It is the intention of the signatories to this Agreement that the other provincial and territorial law societies will reciprocate with the Barreau by implementing provisions that will permit members of the Barreau to become members of other law societies and practise federal and Quebec law in other jurisdictions.

The signatories recognize that,

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.



## Background

In August 2002 the Federation of Law Societies of Canada (the “Federation”) accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

Eight law societies, including the Barreau, signed the NMA on December 9, 2002. The Agreement recognized that special circumstances applicable to the Barreau would necessitate additional provisions to implement mobility between the Barreau and the common law jurisdictions. The signatories also recognized that the requirement for the Barreau to comply with regulations applicable to all professions in Quebec would delay implementation of the NMA with respect to the Barreau.

In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement, along with the law societies of all three territories. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces, for a five-year period ending January 1, 2012.

## Quebec Mobility

In June 2008 Quebec enacted a “Regulation respecting the issuance of special permits of the Barreau du Québec”, which is stated to be “made in order to facilitate the mobility of advocates.” The Regulation provides, *inter alia*, that a member in good standing of a bar of another Canadian province or territory may apply for a “special Canadian legal advisor permit” in Quebec. A person granted such a permit may engage in the following activities on behalf of another person:

- (1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he or she is legally authorized to practise law or involving matters under federal jurisdiction;
- (2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;
- (3) give legal advice and consultations on legal matters involving public international law; and
- (4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction.

Recognizing the provisions of the Quebec Regulation, the signatories to this Agreement agree to enter into an arrangement with the Barreau to enable its members to exercise mobility in the common law jurisdictions on a reciprocal basis. It is recognized that members of other governing bodies will not be able to

exercise the reciprocal right to practise public international law unless they have professional liability insurance coverage that specifically includes such practice.

THE SIGNATORIES AGREE AS FOLLOWS:

### Definitions

1. In this Agreement, unless the context indicates otherwise:

“**Advisor**” means a Canadian Legal Advisor;

“**Barreau**” means the Barreau du Québec;

“**Canadian Legal Advisor**” means a member of a governing body who holds a current Canadian Legal Advisor certificate issued by another governing body;

“**governing body**” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

“**home governing body**” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “**home jurisdiction**” has a corresponding meaning;

“**lawyer**” means a member of a signatory governing body;

“**liability insurance**” means compulsory professional liability errors and omissions insurance required by a governing body;

“**National Mobility Agreement**” or “**NMA**” means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada;

“**permanent mobility provisions**” means clauses 32 to 36, 39 and 40 of the NMA;

### General

2. The signatory governing bodies will

- (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

- (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
  - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory governing bodies will subscribe to this Agreement and be bound by means of the signature of an authorized person affixed to any copy of this Agreement.
  4. A signatory governing body will not, by reason of this agreement alone,
    - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
    - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
  5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

### **Canadian Legal Advisor**

6. The Barreau will continue to issue Canadian Legal Advisor certificates to qualifying members of governing bodies, and the other signatories will establish and maintain an equivalent program in order to issue Canadian Legal Advisor certificates to qualifying members of the Barreau.
7. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted as equivalent by the Barreau are not qualifying members of the Barreau for the purpose of clause 6.
8. The permanent mobility provisions of the NMA apply with respect to requirements and qualifications to obtain a Canadian Legal Advisor Certificate, except that a signatory governing body must require that an

Advisor continue to maintain practising membership in the home governing body.

9. A signatory governing body that has adopted regulatory provisions giving effect to the requirements of clauses 6 and 8 of this Agreement is a reciprocating governing body for the purposes of this Agreement, whether or not the signatory governing body has adopted or given effect to the NMA or any provision of the NMA.

### **Liability Insurance**

10. A governing body will continue to make available to its members who are also Advisors in another jurisdiction ongoing liability insurance as required in the governing body's jurisdiction that provides occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member aggregate.
11. If a member of more than one governing body becomes an Advisor member of a third governing body, the governing body that makes ongoing liability insurance available to the member at the time or did so most recently, will continue to do so or resume doing so, whether or not the member continues to be a resident of that jurisdiction.
12. On application, a signatory governing body will exempt an Advisor member from liability insurance requirements if the Advisor maintains, in another signatory jurisdiction, ongoing liability insurance that provides occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member aggregate.

### **Transition Provisions**

13. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
14. This Agreement is intended to implement clauses 39 and 40 of the NMA. It does not affect the obligations of any party under others provision of the NMA or other agreements in effect.
15. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect
  - (a) until this Agreement is implemented, and
  - (b) when this Agreement is implemented, except to the extent modified by this Agreement.

## **Dispute Resolution**

- 16.** Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice protocol in respect of arbitration of disputes, specifically Clause 13 and Appendix 5 of the Protocol.

## **Withdrawal**

- 17.** A signatory governing body may cease to be bound by this agreement by giving each other signatory governing body written notice of at least one clear calendar year.
- 18.** A signatory governing body that gives notice under clause 17 will immediately notify its members in writing of the effective date of withdrawal.



SIGNED on the 19<sup>th</sup> day of March 2010.

**Law Society of British Columbia**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Alberta**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Saskatchewan**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Manitoba**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Upper Canada**

Per: *[Signature]*  
Authorized Signatory

**Barreau du Québec**

Per: *[Signature]*  
Authorized Signatory

**Law Society of New Brunswick**

Per: *[Signature]*  
Authorized Signatory

**Nova Scotia Barristers' Society**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Prince Edward Island**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Newfoundland and Labrador**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Yukon**

Per: *[Signature]*  
Authorized Signatory

**Law Society of the Northwest Territories**

Per: *[Signature]*  
Authorized Signatory

**Law Society of Nunavut**

Per: *[Signature]*  
Authorized Signatory



*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## **Quebec Mobility Agreement**

**Addendum to Extend Mobility Rights to Members  
of the Chambre des notaires du Québec**

## FEDERATION OF LAW SOCIETIES OF CANADA

(Date)  
(Place)

### Introduction

The purpose of this Agreement is to extend the scope of the Quebec Mobility Agreement (the "QMA") in order to facilitate permanent mobility between the Chambre des notaires du Québec (the "Chambre") and law societies in common law jurisdictions, thereby completing the national mobility regime for all members of the Federation of Law Societies of Canada (the "Federation") and both branches of Quebec's legal profession.

Pursuant to the QMA, the Barreau du Québec (the "Barreau") and the provincial and territorial law societies in common law jurisdictions have entered into an arrangement under which members of the Barreau may become members of the other law societies and practise federal and Quebec law as Canadian Legal Advisors. Accordingly, the QMA establishes mobility rights for members of the Barreau in the same manner as those that have been established by the Barreau for members of the other law societies, thereby meeting the reciprocity requirements set out in the National Mobility Agreement (the "NMA").

It is the intention of the signatories to this Agreement that the provincial and territorial law societies in common law jurisdictions implement provisions that will permit members of the Chambre to become members of such law societies and practise federal and Quebec law in those jurisdictions within the scope set out in this Agreement.

The signatories recognize that,

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures,

while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

## **Background**

In August 2002 the Federation accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

Eight law societies, including the Barreau, signed the NMA on December 9, 2002. The NMA recognized that special circumstances applicable to the Barreau would necessitate additional provisions to implement mobility between the Barreau and the common law jurisdictions. The signatories also recognized that the requirement for the Barreau to comply with regulations applicable to all professions in Quebec would delay implementation of the NMA with respect to the Barreau. The Chambre is not a signatory to the NMA.

In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement (the "TMA"), along with the law societies of all three territories. The Chambre is not a signatory to the TMA. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces, for a five-year period ending January 1, 2012.

## **Quebec Mobility**

In June 2008, the Government of Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Québec", which is stated to be "made in order to facilitate the mobility of advocates." The Regulation provides, *inter alia*, that a member in good standing of a bar of another Canadian province or territory may apply for a "special Canadian legal advisor permit" in Quebec. A person granted such a permit may engage in the following activities on behalf of another person:

- (1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he or she is legally authorized to practise law or involving matters under federal jurisdiction;
- (2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;
- (3) give legal advice and consultations on legal matters involving public international law; and
- (4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction.

In March 2010, recognizing the provisions of the Quebec Regulation, the common law governing bodies entered into the QMA with the Barreau to enable its members to exercise mobility in the common law jurisdictions on a reciprocal basis. It was recognized that members of other governing bodies will not be able to exercise the reciprocal right to practise public international law unless they have professional liability insurance coverage that specifically includes such practice.

Recognizing that Quebec's legal system is founded on the French civil law system and its institutions which are reflected in the division of the legal profession in Quebec between advocates, who are members of and are governed by the Barreau, and notaries, who are members of and are governed by the Chambre, it is desirable that mobility rights be extended to members of the Chambre on the basis set out in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

### **Definitions**

1. In this Agreement, unless the context indicates otherwise:

“**Advisor**” means a Canadian Legal Advisor;

“**Canadian Legal Advisor**” means a member of the Chambre who holds a current Canadian Legal Advisor certificate issued by a common law governing body;

“**Chambre**” means the Chambre des notaires du Québec;

“**common law governing body**” means the Law Society or Barristers' Society in a Canadian common law jurisdiction;

“**liability insurance**” means compulsory professional liability errors and omissions insurance required by the Chambre; and

“**Quebec notary**” means a member of the Chambre.

### **General**

2. The signatory common law governing bodies and the Chambre will

- (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

- (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
  - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Quebec notaries in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory common law governing bodies and the Chambre will subscribe to this Agreement and be bound by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory common law governing body will not, by reason of this agreement alone,
- (a) grant to a Quebec notary greater rights to provide legal services than are permitted to the Quebec notary by the Chambre; or
  - (b) relieve a Quebec notary of restrictions or limits on the Quebec notary's right to practise, except under conditions that apply to all members of the signatory common law governing body.

### **Canadian Legal Advisor**

5. Signatory common law governing bodies will establish and maintain a program in order to issue Canadian Legal Advisor certificates to qualifying members of the Chambre.
6. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted as equivalent by the Chambre are not qualifying members of the Chambre for the purpose of clause 5.
7. A member of the Chambre who is granted the status of Advisor in any jurisdiction outside of Quebec, may, in his or her capacity as Advisor:
- (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;
  - (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a

matter under federal jurisdiction where expressly permitted by federal statute or regulations;

- (c) give legal advice and consultations on legal matters involving public international law; and
  - (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.
- 8.** A signatory common law governing body will require no further qualifications for a Quebec notary to be eligible for membership as Advisor than the following:
- (a) entitlement to practice the notarial profession in Quebec; and
  - (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.
- 9.** Before admitting as a member a Quebec notary qualified under clause 8, a signatory common law governing body will not require the Quebec notary to pass a transfer examination or other examination, but may require the Quebec notary to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the Quebec notary is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction; and
  - (c) consent to access by the governing body to the Quebec notary's regulatory files of all governing bodies of the legal profession of which the Quebec notary is a member, whether in Canada or elsewhere.
- 10.** A signatory common law governing body will make available to the public information obtained under clause 9 in the same manner as similar records originating in its jurisdiction.
- 11.** A signatory common law governing body must require that a member of the Chambre who is granted the status of a Canadian Legal Advisor continue to maintain his or her practising membership in the Chambre.

**Liability Insurance**

12. The Chambre will continue to make available to its members who are also Advisors in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member aggregate.

**Transition Provisions**

13. This agreement is a multi-lateral agreement, effective respecting the common law governing bodies that are signatories and the Chambre, and it does not require unanimous agreement of common law governing bodies and the Chambre.
14. Nothing in this Agreement is intended to affect the obligations of any party under the provisions of the NMA, the QMA or other agreements in effect.

**Dispute Resolution**

15. Signatory common law governing bodies and the Chambre adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

**Withdrawal**

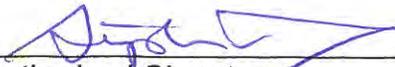
16. A signatory common law governing body or the Chambre may cease to be bound by this agreement by giving each other party written notice of at least one clear calendar year.
17. A party that gives notice under clause 16 will immediately notify its members in writing of the effective date of withdrawal.

SIGNED on the 15th day of March, 2012.

**Law Society of British Columbia**

Per:   
Authorized Signatory

**Law Society of Alberta**

Per:   
Authorized Signatory

**Law Society of Saskatchewan**

Per:   
Authorized Signatory

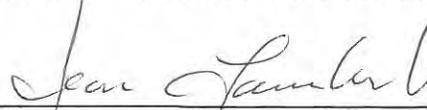
**Law Society of Manitoba**

Per:   
Authorized Signatory

**Law Society of Upper Canada**

Per:   
Authorized Signatory

**Chambre des notaires du Québec**

Per:   
Authorized Signatory

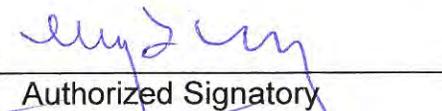
**Law Society of New Brunswick**

Per:   
Authorized Signatory

**Nova Scotia Barristers' Society**

Per:   
Authorized Signatory

**Law Society of Prince Edward Island**

Per:   
Authorized Signatory

**Law Society of Newfoundland and Labrador**

Per:   
Authorized Signatory

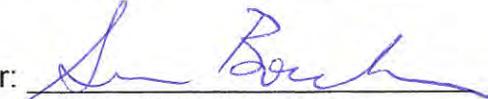
**Law Society of Yukon**

Per:   
Authorized Signatory

**Law Society of the Northwest Territories**

Per:   
Authorized Signatory

**Law Society of Nunavut**

Per:   
Authorized Signatory

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# National Mobility Agreement 2013

Signed October 17, 2013



October, 2013  
St. John's

The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- while differences exist in the legislation, policies and programs pertaining to the signatories, including those differences between common law and civil law jurisdictions in Canada, lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

Since December 2002, all provincial law societies, other than the *Chambre des notaires du Québec* ("Chambre"), have signed the National Mobility Agreement ("NMA") establishing a comprehensive mobility regime for Canadian lawyers.

In 2006 all law societies other than the *Chambre*, signed the Territorial Mobility Agreement. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces for five years. A further agreement made in November 2011 renewed the Territorial Mobility Agreement without a termination date.

In June 2008 Quebec enacted a "Regulation respecting the issuance of special permits of the *Barreau du Québec*" ("*Barreau*"), which provided, inter alia, that a member in good standing of a bar of another Canadian province or territory could become a member of the *Barreau* known as a

## National Mobility Agreement 2013

In March 2010 all law societies, other than the Chambre, signed the Quebec Mobility Agreement (“QMA”). Under that agreement members of the Barreau are able to exercise mobility in the common law jurisdictions on a reciprocal basis as CLAs.

In June 2010 the Council of the Federation approved the Mobility Defalcation Compensation Agreement (“MDCA”) to bring more consistency, certainty and transparency to the process for compensating the public if funds are misappropriated by lawyers exercising their mobility rights under the NMA. Since then, all provincial law societies, other than the Barreau and the Chambre, have signed the MDCA.

In March 2012 all law societies, including the Chambre, signed an addendum to the Quebec Mobility Agreement extending to members of the Chambre the right to acquire CLA status in another province.

In January 2013, the Council of the Federation of Law Societies approved a report from the National Mobility Policy Committee. In that report, the Committee concluded and recommended that it would be in the public interest to implement mobility to and from the Barreau on the same terms as now apply to mobility between common law jurisdictions under the permanent mobility provisions of the NMA. The Committee also reported that the CLA provisions of the QMA and its Addendum should continue in place with respect to members of the Chambre, and the Chambre was in favour of that resolution. The Committee’s report and recommendations do not affect the current rules for temporary mobility between Quebec and other provinces and the territories.

As a result, the signatories hereby agree to adopt this new National Mobility Agreement, 2013 (“NMA 2013”), changing the original NMA to remove the distinction between members of the Barreau and members of law societies outside of Quebec for the purposes of transfer between governing bodies. The signatories also agree to incorporate into the NMA 2013 the provisions for members of the Chambre to be granted status as CLAs by law societies outside of Quebec and to rescind the QMA and its Addendum.



## National Mobility Agreement 2013

### THE SIGNATORIES AGREE AS FOLLOWS:

#### Definitions

1. In this agreement, unless the context indicates otherwise:

“Barreau” means le Barreau du Québec;

“Chambre” means la Chambre des notaires du Québec;

“day” means any calendar day or part of a calendar day in which a lawyer provides legal services;

“discipline” includes a finding by a governing body of any of the following:

- (a) professional misconduct;
- (b) incompetence;
- (c) conduct unbecoming a lawyer;
- (d) lack of physical or mental capacity to engage in the practice of law;
- (e) any other breach of a lawyer’s professional responsibilities;

“disciplinary record” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of discipline;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practise;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“entitled to practise law” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

“governing body” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, the Barreau and the Chambre;

“home governing body” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “home jurisdiction” has a corresponding meaning;

“host governing body” means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and “host jurisdiction” has a corresponding meaning;

.../5



## National Mobility Agreement 2013

“Inter-Jurisdictional Practice Protocol” means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

“lawyer” means a member of a signatory governing body, other than the Chambre;

“liability insurance” means compulsory professional liability errors and omissions insurance required by a governing body;

“mobility permit” means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

“notary” means a member of the Chambre;

“practice of law” has the meaning with respect to each jurisdiction that applies in that jurisdiction;

“providing legal services” means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

“Registry” means the National Registry of Practising Lawyers established under clause 18 of this agreement;

“resident” has the meaning respecting a province or territory that it has with respect to Canada in the Income Tax Act (Canada).

### General

2. The signatories agree to adopt this agreement as a replacement for the National Mobility Agreement of 2002, the Quebec Mobility Agreement of 2010 and the Addendum to the Quebec Mobility Agreement of 2012, all of which are revoked by consent.
3. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;
  - (c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter- jurisdictional mobility.

### National Mobility Agreement 2013

4. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.
5. A signatory governing body will not, by reason of this agreement alone,
  - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
  - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
6. Amendments made under clause 3(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

### Temporary Mobility Among Common Law Jurisdictions

7. Clauses 8 to 32 apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

#### Mobility without permit

8. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:
  - (a) meets the criteria in clause 11; and
  - (b) has not established an economic nexus with the host jurisdiction as described in clause 17.
9. The host governing body will have the discretion to extend the time limit for temporary mobility under clause 8 with respect to an individual lawyer.
10. It will be the responsibility of a lawyer to
  - (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and
  - (b) prove that he or she has complied with provisions implementing clause 8.

## National Mobility Agreement 2013

11. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:
- (a) be entitled to practise law in a home jurisdiction;
  - (b) carry liability insurance that:
    - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
    - (ii) extends to the lawyer's practice in the host jurisdiction;
  - (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
  - (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
  - (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
  - (f) have no disciplinary record in any jurisdiction.
12. For the purposes of clause 8:
- (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;
  - (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:
    - (i) the Supreme Court of Canada;
    - (ii) the Federal Court of Canada;
    - (iii) the Tax Court of Canada;
    - (iv) a federal administrative tribunal.
13. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:
- (a) in the lawyer's home jurisdiction; or
  - (b) operated in the host jurisdiction by a member of the host governing body.



## National Mobility Agreement 2013

### Mobility permit required

14. If a lawyer does not meet the criteria in clause 11 to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:
- (a) on application;
  - (b) if, in the complete discretion of the host governing body, it is consistent with the public interest to do so;
  - (c) for a total of not more than 100 days in a calendar year; and
  - (d) subject to any conditions and restrictions that the host governing body considers appropriate.

### Temporary mobility not allowed

15. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause 8, but will require the lawyer to do one of the following:
- (a) cease providing legal services in the host jurisdiction forthwith;
  - (b) apply for and obtain membership in the host governing body; or
  - (c) apply for and obtain a mobility permit under clause 14.
16. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause 15(b) or (c).
17. In clause 15, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:
- (a) providing legal services beyond 100 days, or longer period allowed under clause 9;
  - (b) opening an office from which legal services are offered or provided to the public;
  - (c) becoming resident;
  - (d) opening or operating a trust account, or accepting trust funds, except as permitted under clause 13.

### National Registry of Practising Lawyers

18. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause 11 to practise law interjurisdictionally without a mobility permit or notice to the host governing body.



## National Mobility Agreement 2013

19. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

### Liability Insurance and Defalcation Compensation Funds

20. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction
- (a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and
  - (b) provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.
21. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.
22. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.
23. Signatory governing bodies that are also signatories to the MDCA will apply or continue to apply the provisions of the MDCA respecting defalcation compensation. Signatory governing bodies that are not signatories to the MDCA will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.
24. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.



## National Mobility Agreement 2013

### Enforcement

25. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:
- (a) account for and verify the number of days spent providing legal services in the host jurisdiction; and
  - (b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.
26. If a lawyer fails or refuses to comply with the provisions of clause 25, a host governing body will be entitled to:
- (a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or
  - (b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.
27. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.
28. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:
- (a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and
  - (b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.
29. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.
30. In determining the location of a hearing under clause 28, the primary considerations will be the public interest, convenience and cost.
31. A governing body that initiates disciplinary proceedings against a lawyer under clause 28 will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.
32. In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.



## National Mobility Agreement 2013

### Permanent Mobility of Lawyers

33. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:
- (a) entitlement to practise law in the lawyer's home jurisdiction;
  - (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and
  - (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.
34. Before admitting as a member a lawyer qualified under clauses 33 to 40, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction;
  - (c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and
  - (d) certify that he or she has reviewed all of the materials reasonably required by the governing body.
35. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau are not qualifying members of the Barreau for the purpose of clauses 33 to 40.

### Public Information

36. A governing body will make available to the public information obtained under clause 34 in the same manner as similar records originating in its jurisdiction.

### Liability Insurance

37. Subject to clause 40, a signatory governing body other than the Barreau will, on application, exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction:
- (a) is resident;
  - (b) is a member of the governing body; and
  - (c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.

### National Mobility Agreement 2013

38. For the purposes of clause 37, a lawyer who is resident in Quebec and who is a member of more than one signatory governing body other than the Barreau will be deemed resident in one of the other jurisdictions in which the lawyer is a member, as determined in accordance with nationally consistent criteria to be included in the insurance programs of all signatory jurisdictions. In the event that nationally consistent criteria are not in place, the lawyer will be deemed resident in the jurisdiction of the signatory body in which the lawyer has been a member continuously for the longest period of time.
39. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 37, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.
40. A lawyer who is a member of the Barreau and one or more of the other signatory governing bodies must comply with the liability insurance requirements of the Barreau and at least one of the other signatory governing bodies of which the lawyer is a member. Insurance coverage is to be provided as follows:
- (a) by the professional liability insurance program of the Barreau with respect to services provided by the lawyer as a member of the Barreau;
  - (b) by the professional liability insurance program of a signatory governing body other than the Barreau with respect to services provided by the lawyer as a member of a signatory governing body other than the Barreau.

### Temporary Mobility between Quebec and Common Law Jurisdictions

41. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.
42. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:
- (a) as provided in clauses 8 to 32; or
  - (b) as permitted by the Barreau in respect of the members of the signatory governing body.



## National Mobility Agreement 2013

### Permanent Mobility of Quebec Notaries

43. Signatory common law governing bodies will establish and maintain a program in order to grant Canadian Legal Advisor ("CLA") status to qualifying members of the Chambre.
44. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Chambre are not qualifying members of the Chambre for the purpose of clauses 43 to 50.
45. A member of the Chambre who is granted the status of CLA in any jurisdiction outside of Quebec may, in his or her capacity as a CLA:
  - (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;
  - (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations;
  - (c) give legal advice and consultations on legal matters involving public international law; and
  - (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.
46. A governing body will require no further qualifications for a notary to be eligible for status as a CLA beyond the following:
  - (a) entitlement to practise the notarial profession in Quebec; and
  - (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.
47. Before granting CLA status to a notary qualified under clauses 43 to 50, a governing body will not require the notary to pass a transfer examination or other examination, but may require the notary to do all of the following:
  - (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the notary is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction; and
  - (c) consent to access by the governing body to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.
48. A governing body will make available to the public information obtained under clause 47 in the same manner as similar records originating in its jurisdiction.



## National Mobility Agreement 2013

49. A governing body must require that a notary who is granted the status of a CLA continue to maintain his or her practising membership in the Chambre.
50. The Chambre will continue to make available to its members who are also CLAs in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member aggregate.

### Inter-Jurisdictional Practice Protocol

51. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect, to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

### Transition Provisions

52. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
53. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:
  - (a) with respect to all Canadian lawyers until this agreement is implemented; and
  - (b) with respect to members of Canadian law societies that are not signatories to this agreement.

### Withdrawal

54. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.
55. A signatory that gives notice under clause 54 will:
  - (a) immediately notify its members in writing of the effective date of withdrawal; and
  - (b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.



National Mobility Agreement 2013

SIGNED on the 17<sup>th</sup> day of October, 2013

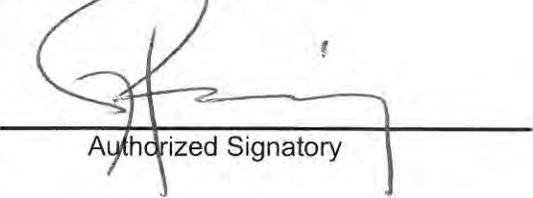
Law Society of British Columbia

Per:   
Authorized Signatory

Law Society of Alberta

Per:   
Authorized Signatory

Law Society of Saskatchewan

Per:   
Authorized Signatory

Law Society of Manitoba

Per:   
Authorized Signatory

Law Society of Upper Canada

Per:   
Authorized Signatory

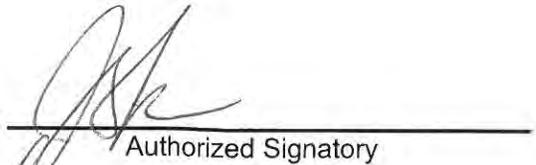
Chambre des notaires du Québec

Per:   
Authorized Signatory

Barreau du Québec

Per:   
Authorized Signatory

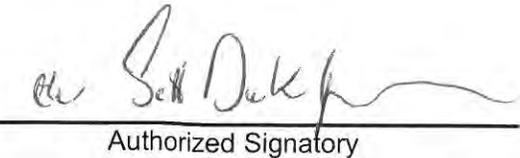
Law Society of New Brunswick

Per:   
Authorized Signatory

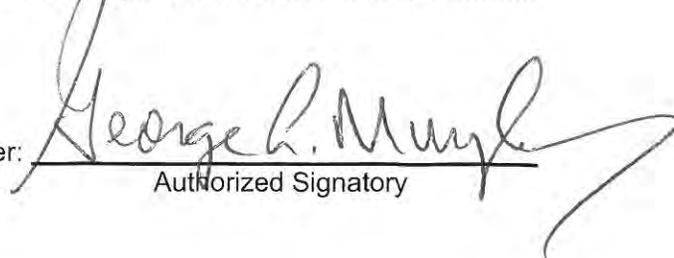
Nova Scotia Barristers' Society

Per:   
Authorized Signatory

Law Society of Prince Edward Island

Per:   
Authorized Signatory

Law Society of Newfoundland and Labrador

Per:   
Authorized Signatory

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## **TERRITORIAL MOBILITY AGREEMENT 2013**

**Territorial Mobility Agreement 2013**

**FEDERATION OF LAW SOCIETIES OF CANADA**

April 2014

**Introduction**

The purpose of this Agreement is to extend the scope of the National Mobility Agreement 2013 ("NMA 2013") in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, including those differences between common law and civil law jurisdictions in Canada, and lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

**Background**

In August, 2002, the Federation of Law Societies of Canada (the "Federation") approved the report of the National Mobility Task Force ("the Task Force") for the implementation of full mobility rights for Canadian lawyers. This led to adoption of the National Mobility Agreement ("NMA") by all provincial law societies other than the Chambre des notaires du Québec ("Chambre").

### Territorial Mobility Agreement 2013

The resolution adopted by the Federation in approving the report of the Task Force included an acknowledgement that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force’s terms of reference, but should be undertaken in the future.”

In 2006 all law societies other than the Chambre signed the Territorial Mobility Agreement (“TMA”). To recognize the unique circumstances of the territorial law societies, the agreement provided for reciprocal permanent mobility between the law societies of the provinces and the territories, without requiring the territorial law societies to participate in the temporary mobility provisions of the NMA. The original term of the TMA was five years. In 2011 the agreement was renewed without a termination date.

In March 2010, all Canadian law societies except the Chambre signed the Quebec Mobility Agreement (“QMA”), facilitating reciprocal mobility between Quebec and the common law jurisdictions. The mobility provisions set out in the QMA were extended to members of the Chambre in March 2012 with the signing by all law societies of the Addendum to the QMA.

The signatories to the NMA and the Chambre have now approved a revised agreement that extends the permanent mobility provisions of the NMA to mobility to and from the Barreau du Québec and incorporates the mobility provisions of the QMA and the Addendum to the QMA applicable to the Chambre. The “NMA 2013” was executed in October 2013.

This Agreement has been amended to ensure that references to the relevant clauses of the NMA 2013 are accurate.

The signatories to this Agreement who are not signatories to the NMA 2013 do not hereby subscribe to the provisions of the NMA 2013, except as expressly stated in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

#### **Definitions**

1. In this Agreement, unless the context indicates otherwise:

“**governing body**” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

**Territorial Mobility Agreement 2013**

**“home governing body”** means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **“home jurisdiction”** has a corresponding meaning;

**“Inter-Jurisdictional Practice Protocol”** means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

**“lawyer”** means a member of a signatory governing body;

**“liability insurance”** means compulsory professional liability errors and omissions insurance required by a governing body;

**“National Mobility Agreement 2013”** or **“NMA 2013”** means the National Mobility Agreement 2013 of the Federation of Law Societies of Canada, as amended from time to time;

**“permanent mobility provisions”** means clauses 33 to 40, and 43 to 50 of the NMA 2013;

**“practice of law”** has the meaning with respect to each jurisdiction that applies in that jurisdiction;

**“Registry”** means the National Registry of Practising Lawyers established under clause 18 of the NMA 2013;

**General**

**2. The signatory governing bodies will**

- (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;
- (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
- (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
- (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

**Territorial Mobility Agreement 2013**

3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory governing body will not, by reason of this Agreement alone,
  - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
  - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

**Permanent Mobility**

6. The signatories that are signatories to the NMA 2013 agree to extend the application of the permanent mobility provisions of the NMA 2013 with respect to the territorial signatories to this Agreement.
7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the NMA 2013.
8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the NMA 2013 is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

**Transition Provisions**

9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect until this agreement is implemented.

**Territorial Mobility Agreement 2013**

**Dispute Resolution**

11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

**Withdrawal**

12. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.
13. A signatory that gives notice under clause 12 will immediately notify its members in writing of the effective date of withdrawal.



**Territorial Mobility Agreement 2013**

**Nova Scotia Barristers' Society**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Prince Edward Island**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Newfoundland and Labrador**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Yukon**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of the Northwest Territories**

Per: \_\_\_\_\_  
Authorized Signatory

**Law Society of Nunavut**

Per: \_\_\_\_\_  
Authorized Signatory

## **Chapter Seven**

### **Labour Mobility**

#### **Article 700: Application of General Rules**

1. Articles 404 (Legitimate Objectives) and 405 (Reconciliation) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), 403 (No Obstacles), and 406 (Transparency) apply to this Chapter.
3. For purposes of Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), and 403 (No Obstacles), any reference in those Articles to Article 404 (Legitimate Objectives) shall be construed as a reference to Article 708.

#### **Article 701: Purpose**

The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties.

#### **Article 702: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) residency requirements for workers as a condition of access to employment opportunities or as a condition of certification relating to a worker's occupation,
  - (b) certification requirements, other than residency requirements, for workers in order to practice an occupation or use a particular occupational title, and
  - (c) occupational standards.
2. This Chapter does not cover
  - (a) social policy measures including, but not limited to, labour standards and codes, minimum wages, employment insurance qualification periods and social assistance, and
  - (b) Quebec's measures pertaining to language requirements.

### **Article 703: Extent of Obligations**

1. For the purposes of Article 102(1)(b) and (c) (Extent of Obligations), each Party shall, through appropriate measures, ensure compliance with this Chapter by

(a) its regional, local, district and other forms of municipal government, and

(b) its other governmental bodies and by non-governmental bodies that exercise authority delegated by law.

2. Each Party shall, through appropriate measures, seek compliance with this Chapter by non-governmental bodies other than those that exercise authority delegated by law.

### **Article 704: Relationship to Other Agreements**

In the event of an inconsistency in a particular case between a provision of this Chapter and a provision of any other agreement between two or more Parties respecting matters covered by this Chapter, the agreement that is more conducive to labour mobility in that particular case prevails to the extent of the inconsistency. It is understood that any such other agreement may prevail only as between the Parties that are party to that agreement.

### **Article 705: Residency Requirements**

1. Subject to Article 708, no Party shall require a worker of a Party to be resident in its territory as a condition of:

(a) eligibility for employment; or

(b) certification relating to the worker's occupation.

2. With respect to the Federal Government, paragraph 1 (a) means that, subject to Article 708, it shall not require a worker of a Party to be a resident of a particular province or territory as a condition of eligibility to apply, in an external appointment or hiring process, for appointment or hiring to a position or job in

(a) federal public service departments, departmental corporations, Crown corporations, separate agencies and other portions of the public administration which are listed in Schedules I to VI of the *Financial Administration Act*, Revised Statutes of Canada, chapter F-10, as amended from time to time, and

(b) other Crown corporations, as defined in the *Financial Administration Act*, Revised Statutes of Canada, chapter F-10, as amended from time to time,

which are not covered under paragraph (a).

### **Article 706: Certification of Workers**

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

2. Subject to paragraphs 3, 4 and Article 708, each Party shall recognize any worker holding a jurisdictional certification bearing the Red Seal endorsement under the Interprovincial Standards Red Seal Program as qualified to practice the occupation identified in the certification.

3. It is understood that a regulatory authority of a Party may, as a condition of certification for any worker referred to in paragraph 1 or 2, impose requirements on that worker (other than requirements for material additional training, experience, examinations or assessments), including requirements to:

- (a) pay an application or processing fee;
- (b) obtain insurance, malpractice coverage or similar protection;
- (c) post a bond;
- (d) undergo a criminal background check;
- (e) provide evidence of good character;
- (f) demonstrate knowledge of the measures maintained by that Party applicable to the practice of the occupation in its territory;
- (g) provide a certificate, letter or other evidence from the regulatory authority in each territory in which they are currently certified confirming that their certification in that territory is in good standing;

provided that:

- (h) subject to paragraph (5)(c), any requirements referred to in paragraphs (a) to (f) are the same as, or substantially similar to but no more onerous than, those imposed by the regulatory authority on its own workers as part of the normal certification process; and
- (i) the requirement does not create a disguised restriction on labour mobility.

4. Nothing in paragraphs 1 or 2 limits the ability of a regulatory authority of a Party to:

- (a) refuse to certify a worker or impose terms, conditions or restrictions on his or her ability to practice where such action is considered necessary to protect the public interest as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to the competency, conduct or character of that worker;
- (b) impose additional training, experience, examinations or assessments as a condition of certification where the person has not practiced the occupation within a specified period of time;
- (c) require the worker to demonstrate proficiency in either English or French as a condition of certification in cases where there was no equivalent language proficiency requirement imposed upon, and satisfied by, the worker as a condition of the worker's certification in his or her current certifying jurisdiction;
- (d) assess the equivalency of a practice limitation, restriction or condition imposed on a worker in his or her current certifying jurisdiction to any practice limitation, restriction or condition that may be applied by the regulatory authority to a worker in its territory, and apply an equivalent practice limitation, restriction or condition to the worker's certification, or, where the regulatory authority has no provision for applying an equivalent limited, restricted or conditional certification, refuse to certify the worker;

provided that:

- (e) any such measure is the same as, or substantially similar to but no more onerous than, that imposed by the regulatory authority on its own workers; and
- (f) the measure does not create a disguised restriction on labour mobility.

5. Subject to Article 708, each Party shall ensure that any measure that it adopts or maintains relating to certification of workers of any other Party:

- (a) is published on the website of the relevant regulatory authority or through a readily accessible website of the Party;
- (b) results in expeditious certification; and
- (c) except for actual cost differentials, does not impose fees or other costs that are more burdensome than those imposed on its own workers.

6. Where a worker has been certified for an occupation by a regulatory authority of a Party, nothing in this Article prevents a regulatory authority of another Party from permitting the worker to practice that occupation in its territory without further certification.

#### **Article 707: Occupational Standards**

1. Each Party may adopt or maintain any occupational standard, and in doing so, may establish the level of protection that it considers to be appropriate in the circumstances. Parties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards.
2. Further to paragraph 1, each Party shall, to the extent possible and where practical, adopt occupational standards based on common interprovincial standards, including occupational standards developed for the Interprovincial Standards Red Seal Program, or international standards. The Parties acknowledge their continued commitment to the Interprovincial Standards Red Seal Program, including the use of National Occupational Analyses, as a well-established means of establishing common interprovincial standards for trades.
3. If occupational standards have not been established in the territory of a Party in respect of a particular occupation but exist in the territory of any other Party, and the Party without the standards wishes to develop such standards, it shall do so in a manner conducive to labour mobility. A Party intending to develop such standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those standards.
4. If occupational standards do not exist in the territories of any of the Parties in respect of an occupation and a Party considers it necessary to establish occupational standards for that occupation, the Parties agree that the process of development of new occupational standards shall occur in a manner conducive to labour mobility. A Party intending to develop new standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those standards.
5. If a Party considers it necessary to make changes to any standards in respect of an occupation, the Parties agree that the process for making such changes shall occur in a manner conducive to labour mobility. A Party intending to make such changes shall notify the other Parties and afford them an opportunity to comment on the modification of those standards.

#### **Article 708: Legitimate Objectives**

1. Where it is established that a measure falling within the scope and coverage of this Chapter is inconsistent with Article 401, Article 402, Article 403 or Article 705, or paragraphs 1, 2 or 5 of Article 706, that measure is still permissible under this Chapter where it can be demonstrated that:
  - (a) the purpose of the measure is to achieve a legitimate objective;
  - (b) the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and
  - (c) the measure does not create a disguised restriction to labour mobility.
2. For greater certainty, for purposes of the application of paragraph 1(b) of Article

708 to paragraph 1, 2 or 5 of Article 706, a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective. In the case of a difference related to academic credentials, education, training or experience, the Party seeking to impose an additional requirement must be able to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability. As an example, the imposition of a requirement for additional, education, training or experience may be justified under paragraph (1)(b) where a Party can demonstrate that:

(a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and

(b) as a result of that difference, the worker lacks a critical skill, area of knowledge or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

3. Where a Party adopts or maintains a measure under paragraph 1, it shall give written notice to the Forum of the measure, in the form, and containing the information, considered appropriate by the Forum. The notice shall indicate the Party's justification for the measure and the anticipated duration of the measure.

4. The Forum shall develop and implement a framework for the Parties to establish a list of specific measures taken under paragraph 1 for which notice has been given to the Forum under paragraph 3. This list will be posted by the Forum on a public website.

### **Article 709: Implementation, Administration and Assessment**

1. The Forum shall:

(a) promote the implementation of and ongoing adherence to this Chapter and develop a work plan or plans related to those objectives;

(b) develop and implement the framework for the implementation of Article 707;

(c) develop the form and content required for notices under paragraph 3 of Article 708;

(d) develop and implement the framework for the posting of measures under paragraph 4 of Article 708; and

(e) annually produce a report on the operation of this Chapter and submit that report to the Committee.

2. The annual report referred to in paragraph 1(e) shall include:

- (a) an assessment of the effectiveness of this Chapter, including an assessment of whether there have been any unintended adverse consequences, together with appropriate recommendations to address concerns identified in the assessment, including recommended amendments to this Chapter;
- (b) a list of measures for which notice has been given under paragraph 3 of Article 708, together with a description of their respective justification and their anticipated duration; and
- (c) a summary of any disputes that have arisen between the Parties during the year concerning the interpretation or application of this Chapter and the results of any consultations or other dispute resolution procedures resorted to by the Parties concerned to resolve the disputes.

3. The Forum may establish any committees that it considers necessary to assist it in the implementation of any work plan. The committees may be composed of representatives of the Parties and, where appropriate, of relevant regulatory authorities, other non-governmental bodies and interest groups.

#### **Article 710: Consultations and Dispute Resolution**

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this Chapter.

#### **Article 711: Definitions**

1. In this Chapter:

**certified** means that a worker holds a certificate, licence, registration or other form of official recognition issued by a regulatory authority of a Party which attests to the worker being qualified and, where applicable, authorized to practice a particular occupation or to use a particular occupational title in the territory of that Party. For greater certainty, “certified” does not include only having work experience in a given occupation gained within a Party where certification is not required in order to practice that occupation;

**Forum** means the Forum of Labour Market Ministers;

**legitimate objective** means one or more of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;

- (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers;
- (g) provision of adequate social and health services to all its geographic regions; and
- (h) programs for disadvantaged groups;

**National Occupational Analysis** means a document developed pursuant to the Interprovincial Standards Red Seal Program that details tasks and subtasks performed by workers in a trade;

**non-governmental body**, with or without authority delegated by law, includes professional corporations and associations, hospitals, health units, long-term care facilities, clinics, other health care/service organizations and authorities, professional regulatory bodies, school authorities, universities, colleges and other educational and training institutions, trade unions and industry associations;

**non-governmental body that exercises authority delegated by law** means any non-governmental body to whom authority has been delegated by provincial or federal statute to set or implement measures related to:

- (a) the establishment of occupational standards or certification requirements;
- (b) the assessment of the qualifications of workers against established occupational standards or certification requirements; or
- (c) the official recognition that an individual meets established occupational standards or certification requirements;

**occupation** means a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed.

**occupational standard** means the skills, knowledge and abilities required for an occupation as established by a regulatory authority of a Party and against which the qualifications of an individual in that occupation are assessed;

**regulatory authority of a Party** means a department, ministry or similar agency of government of a Party or a non-governmental body that exercises authority delegated by law;

**worker** means an individual, whether employed, self-employed or unemployed, who performs or seeks to perform work for pay or profit; and

**worker of a Party** means a worker resident in the territory of a Party.

# Ontario Labour Mobility Act, 2009

S.O. 2009, CHAPTER 24

**Consolidation Period:** From November 6, 2013 to the [e-Laws currency date](#).

Last amendment: 2013, c. 6, s. 75.

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### PART I INTERPRETATION

Purposes

1. The purposes of this Act are,
  - (a) to eliminate or reduce measures established or implemented by Ontario regulatory authorities that restrict or impair the ability of an individual to become certified in Ontario in a regulated occupation in which the individual is certified by an out-of-province regulatory authority; and
  - (b) to support the Government of Ontario in fulfilling its obligations under Chapter Seven of the Agreement on Internal Trade. 2009, c. 24, s. 1.

#### Definitions

2. (1) In this Act,

“Agreement on Internal Trade” means the Agreement on Internal Trade signed in 1994 by the governments of Canada, the provinces of Canada, the Northwest Territories and the Yukon Territory, as amended from time to time; (“Accord sur le commerce intérieur”)

“authorizing certificate”, in relation to an occupation, means,

- (a) a certificate, licence, registration, or other form of official recognition, granted by a regulatory authority to an individual, which attests to the individual being qualified to practise the occupation and authorizes the individual to practise the occupation, use a title or designation relating to the occupation, or both, or
- (b) a certificate, licence, registration, or other form of official recognition, granted by a regulatory authority to an individual, which attests to the individual being qualified to practise the occupation but does not authorize the practice of the occupation or the use of a title or designation relating to the occupation, if the occupation and the regulatory authority granting the certificate, licence, registration or other form of official recognition respecting the occupation are prescribed for the purpose of this clause; (“certificat d’autorisation”)

“authorizing statute”, in relation to an Ontario regulatory authority, means the Act that authorizes the Ontario regulatory authority to certify individuals in one or more occupations, as set out opposite the Ontario regulatory authority in Column 2 of Table 1; (“loi habilitante”)

“certify” means to grant an authorizing certificate for an occupation to an individual; (“accréditation”, “reconnaissance professionnelle”, “accréditer”)

“co-ordinating Minister” means the Minister of Training, Colleges and Universities or such other member of the Executive Council to whom responsibility for the administration of this Act may be assigned or transferred under the *Executive Council Act*; (“ministre coordonnateur”)

“instrument of a legislative nature” includes but is not limited to a regulation, by-law, rule, directive, guideline or order of a legislative nature; (“texte de nature législative”)

“municipal governmental regulatory authority” means an Ontario regulatory authority listed under the heading “Municipal Governmental Regulatory Authorities — Public Acts” in Table 1; (“autorité de réglementation gouvernementale municipale”)

“non-governmental regulatory authority” means an Ontario regulatory authority listed under the heading “Non-Governmental Regulatory Authorities — Private Acts” or “Non-Governmental Regulatory Authorities — Public Acts” in Table 1; (“autorité de réglementation non gouvernementale”)

“occupation” means a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed; (“métier ou profession”)

“occupational standards”, in relation to an occupation, means the knowledge, skills and judgment that an individual must possess in order to be certified in the occupation, as established by a body or individual that is authorized by law to establish them, and against which a regulatory authority measures the qualifications of an individual who applies for certification in the occupation when assessing whether the individual is qualified to practise the occupation; (“normes professionnelles”)

“Ontario regulatory authority” means a body or individual listed in Column 3 of Table 1; (“autorité de réglementation ontarienne”)

“out-of-province regulatory authority” means a regulatory authority that is authorized to certify individuals in an occupation under an Act of Canada or of a province or territory of Canada that is a party to the Agreement on Internal Trade, other than Ontario; (“autorité de réglementation extraprovinciale”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“provincial governmental regulatory authority” means an Ontario regulatory authority listed under the heading “Provincial Governmental Regulatory Authorities — Public Acts” in Table 1; (“autorité de réglementation gouvernementale provinciale”)

“regulated occupation” means an occupation for which an Ontario regulatory authority is authorized, under an Act set out opposite the Ontario regulatory authority in Column 2 of Table 1, to grant a specific authorizing certificate to an individual; (“métier ou profession réglementé”)

“regulatory authority” means a body or individual that is authorized by law to certify individuals in an occupation. (“autorité de réglementation”) 2009, c. 24, s. 2 (1).

**Same**

(2) For greater certainty, the reference in the definition of “out-of-province regulatory authority” in subsection (1) to an Act of Canada that authorizes a regulatory authority to certify individuals in an occupation does not include the *Trade-marks Act* (Canada). 2009, c. 24, s. 2 (2).

**Monitor**

**Monitor re private Acts**

3. (1) For the purposes of this Act, the monitor for a non-governmental regulatory authority whose authorizing statute is a private Act is the individual or body prescribed as the monitor for the regulatory authority. 2009, c. 24, s. 3 (1).

**Monitor re public Acts**

(2) For the purposes of this Act, the monitor for a non-governmental regulatory authority whose authorizing statute is a public Act is,

- (a) if no monitor has been prescribed for the regulatory authority,
  - (i) the member of the Executive Council who is responsible for the administration of the public Act, or
  - (ii) if more than one member of the Executive Council is responsible for the administration of the public Act, the member who is responsible for the administration of the public Act in respect of the regulatory authority; or
- (b) if a monitor has been prescribed for the regulatory authority, the individual or body prescribed as the monitor. 2009, c. 24, s. 3 (2).

**Public Accountants Council**

4. For the purpose of every section of this Act, other than sections 8 and 9, The Public Accountants Council for the Province of Ontario shall be deemed to be a non-governmental regulatory authority and its authorizing statute shall be deemed to be the *Public Accounting Act, 2004*. 2009, c. 24, s. 4.

**Crown bound**

5. This Act binds the Crown. 2009, c. 24, s. 5.

**Commitment to Red Seal Program**

6. Nothing in this Act restricts the Crown from taking any action that it considers advisable in order to fulfil its ongoing commitment to the Interprovincial Standards Red Seal Program. 2009, c. 24, s. 6.

**PART II  
LABOUR MOBILITY CODE**

**Labour Mobility Code**

7. This Part shall be known in English as the Labour Mobility Code and in French as Code de mobilité de la main-d’oeuvre. 2009, c. 24, s. 7.

**Residency**

**Ontario residency cannot be required**

8. (1) No Ontario regulatory authority shall require that an individual reside in Ontario as a condition of being certified in a regulated occupation, if the individual resides in another province or territory of Canada that is a party to the Agreement on Internal Trade. 2009, c. 24, s. 8 (1).

**Residency in municipality cannot be required**

(2) No municipal governmental regulatory authority shall require that an individual reside in its geographic area of jurisdiction as a condition of eligibility for employment, if the individual resides in a province or territory of Canada that is a party to the Agreement on Internal Trade. 2009, c. 24, s. 8 (2).

**When applicant is certified by out-of-province regulatory authority**

9. (1) This section applies if an individual applying to an Ontario regulatory authority for certification in a regulated occupation is already certified in the same occupation by an out-of-province regulatory authority. 2009, c. 24, s. 9 (1).

**Material additional training, etc., cannot be required**

(2) The Ontario regulatory authority shall not require, as a condition of certifying the individual in the regulated occupation, that the individual have, undertake, obtain or undergo any material additional training, experience, examinations or assessments. 2009, c. 24, s. 9 (2).

**Exception, certification requirements listed on website**

(3) Despite subsection (2), the Ontario regulatory authority is not prohibited from imposing on the individual, as a condition of certifying the individual in the regulated occupation, any requirement that,

- (a) is listed on the website of the Ministry of Training, Colleges and Universities or such other publicly accessible website as may be prescribed; and
- (b) is stated on the website to be a permissible certification requirement for that regulated occupation, adopted by the Government of Ontario under Article 708 of the Agreement on Internal Trade. 2009, c. 24, s. 9 (3).

**Other exceptions**

(4) Despite subsection (2), if the conditions set out in subsection (6) are met, the Ontario regulatory authority is not prohibited from requiring that the individual do one or both of the following as a condition of being certified in the regulated occupation:

1. Demonstrate proficiency in English or in French if equivalent proficiency in the language was not a condition of certification of the individual by the out-of-province regulatory authority.
2. Undertake, obtain or undergo material additional training, experience, examinations or assessments if the individual has not practised the regulated occupation within a period of time fixed by the Ontario regulatory authority, before submitting his or her application for certification to the Ontario regulatory authority. 2009, c. 24, s. 9 (4).

**Other permitted certification requirements**

(5) Subsection (2) does not prohibit the Ontario regulatory authority from requiring that the individual do one or more of the following as a condition of being certified in the regulated occupation:

1. If the conditions set out in subsection (6) are met:
  - i. Pay an application or processing fee.
  - ii. Obtain malpractice insurance or any other insurance or similar protection.
  - iii. Post a bond.
  - iv. Undergo a criminal background check.
  - v. Provide evidence of good character.
2. If the condition set out in paragraph 2 of subsection (6) is met, provide a certificate, letter or other evidence from every out-of-province regulatory authority by which the individual is currently certified in the occupation, confirming that the authorizing certificate that the regulatory authority granted to the individual for the occupation is in good standing.
3. If the conditions set out in subsection (6) are met, demonstrate knowledge of matters applicable to the practice of the regulated occupation in Ontario, as long as this does not involve material additional training, experience, examinations or assessments.
4. If the conditions set out in subsection (6) are met, meet any other requirement specified by the Ontario regulatory authority that does not involve material additional training, experience, examinations or assessments. 2009, c. 24, s. 9 (5).

**Conditions for subs. (4) and (5)**

(6) The conditions referred to in subsections (4) and (5) are:

1. Subject to subsection (9), the requirement imposed by the Ontario regulatory authority on applicants who are certified by an out-of-province regulatory authority must be the same as, or substantially similar to but no more onerous than, the requirement imposed by the Ontario regulatory authority on applicants who are not certified by an out-of-province regulatory authority.
2. The requirement imposed by the Ontario regulatory authority must not be a disguised restriction on labour mobility. 2009, c. 24, s. 9 (6).

**Permitted measures**

(7) This section does not prohibit the Ontario regulatory authority from carrying out the following measures in respect of the individual if the conditions set out in subsection (8) are met:

1. Refusing to certify the individual or imposing terms, conditions or limitations on the individual's authorizing certificate if, in the opinion of the Ontario regulatory authority, such action is necessary to protect the public interest as a result of complaints, or criminal, disciplinary or other proceedings, against the individual in any jurisdiction whether in or outside Canada, relating to the individual's competency, conduct or character.

2. If the authorizing certificate granted to the individual by the out-of-province regulatory authority is subject to a term, condition or limitation,
  - i. imposing an equivalent term, condition or limitation on the authorizing certificate to be granted by the Ontario regulatory authority to the individual, or
  - ii. refusing to certify the individual, if the Ontario regulatory authority does not impose an equivalent term, condition or limitation on the authorizing certificate that it grants for the occupation. 2009, c. 24, s. 9 (7).

**Conditions for subs. (7)**

(8) The conditions referred to in subsection (7) are:

1. Subject to subsection (9), the measure carried out by the Ontario regulatory authority with respect to applicants who are certified by an out-of-province regulatory authority must be the same as, or substantially similar to but no more onerous than, the measure carried out by the Ontario regulatory authority with respect to applicants who are not certified by an out-of-province regulatory authority.
2. The measure carried out by the Ontario regulatory authority must not be a disguised restriction on labour mobility. 2009, c. 24, s. 9 (8).

**Costs**

(9) The Ontario regulatory authority shall ensure that any requirements it imposes on the individual, and any measures it carries out with respect to the individual, in connection with the certification of the individual in the regulated occupation do not result in the imposition on the individual of fees or other costs that are more onerous than those the Ontario regulatory authority would impose if the individual were not certified by an out-of-province regulatory authority, unless the difference in such fees or other costs reflects the actual cost differential to the Ontario regulatory authority. 2009, c. 24, s. 9 (9).

**Expeditious certification**

(10) The Ontario regulatory authority shall ensure that its imposition of certification requirements on the individual under subsections (3), (4) and (5) and its imposition of terms, conditions or limitations on the individual's authorizing certificate under subsection (7) do not prevent the expeditious certification of the individual. 2009, c. 24, s. 9 (10).

**Transition**

10. Sections 8 and 9 apply to,

- (a) an application for certification made to an Ontario regulatory authority on or after the day this section comes into force; and
- (b) an application for certification made to an Ontario regulatory authority before the day this section comes into force, if the application has not been finally decided before that day. 2009, c. 24, s. 10.

**Duty to publish**

11. Every Ontario regulatory authority shall publish, on a publicly accessible website maintained by the regulatory authority, every requirement that the regulatory authority imposes, as a condition of certification in a regulated occupation, on applicants who are already certified in the same occupation by an out-of-province regulatory authority. 2009, c. 24, s. 11.

**Occupational standards**

12. (1) Every Ontario regulatory authority shall, to the extent possible and where practical,

- (a) ensure that the process it follows in establishing or amending occupational standards for the occupations for which it is authorized to grant an authorizing certificate is conducive to labour mobility within Canada;
- (b) take steps to reconcile differences between the occupational standards it has established for an occupation and occupational standards in effect with respect to the same occupation in the other provinces and territories of Canada that are parties to the Agreement on Internal Trade; and
- (c) ensure that the occupational standards it establishes for each occupation for which it is authorized to grant an authorizing certificate are consistent with such common interprovincial or international occupational standards as may have been developed for that occupation, including occupational standards developed under the Interprovincial Standards Red Seal Program. 2009, c. 24, s. 12 (1).

**No limitation**

(2) Subsection (1) does not prevent an Ontario regulatory authority from establishing such occupational standards as it considers appropriate to protect the public, if it is authorized to do so by its authorizing statute. 2009, c. 24, s. 12 (2).

**Notice of proposed occupational standards**

13. If an Ontario regulatory authority wishes to establish or amend occupational standards for an occupation for which it is authorized to grant authorizing certificates, it shall,

- (a) give notice of the proposed new or amended standards to,
  - (i) its monitor, if any,
  - (ii) the co-ordinating Minister, and
  - (iii) the out-of-province regulatory authorities that grant authorizing certificates in the same occupation; and
- (b) afford those out-of-province regulatory authorities an opportunity to comment on the development of the new or amended standards. 2009, c. 24, s. 13.

**PART III  
CONFLICTS WITH LABOUR MOBILITY CODE**

**Conflict**

14. (1) If the Labour Mobility Code conflicts with an Ontario regulatory authority's authorizing statute or an instrument of a legislative nature made under that statute, the Labour Mobility Code prevails to the extent of the conflict. 2009, c. 24, s. 14 (1).

**Same**

(2) This conflict provision prevails over a conflict provision in an Ontario regulatory authority's authorizing statute, even if the conflict provision in the authorizing statute is enacted after this Act, unless the conflict provision in the authorizing statute refers expressly to the Labour Mobility Code. 2009, c. 24, s. 14 (2).

**Regulations, etc., to conform**

15. Within 12 months after the day this section comes into force or within such longer period as may be prescribed, every non-governmental and provincial governmental regulatory authority shall take such steps as are within its power to make, amend or revoke instruments of a legislative nature under its authorizing statute so that they conform with the Labour Mobility Code. 2009, c. 24, s. 15.

**PART IV  
ENFORCEMENT  
REVIEWS AND REQUESTS**

**Reviews and requests by monitor**

16. (1) The monitor for a non-governmental regulatory authority may do one or more of the following:
- 1. Review the instruments of a legislative nature under the regulatory authority's authorizing statute in order to assess their conformity with the Labour Mobility Code.
  - 2. Request the regulatory authority to take such steps as are within its power to make, amend or revoke an instrument of a legislative nature under its authorizing statute so that the instrument conforms with the Labour Mobility Code.
  - 3. Review the certification processes and practices of the regulatory authority in order to assess their compliance with the Labour Mobility Code.
  - 4. Request the regulatory authority to provide information and reports with respect to any matter relating to compliance with the Labour Mobility Code or any matter relating to the administration of Chapter Seven of the Agreement on Internal Trade.
  - 5. Request the regulatory authority to do anything that, in the opinion of the monitor, is necessary or advisable to implement, or carry out the intent and purposes of, the Labour Mobility Code or a decision of a presiding body established or convened under the Agreement on Internal Trade.
  - 6. If the Lieutenant Governor in Council makes an order in council under subsection 17 (1), request the regulatory authority to publish it in accordance with the monitor's directions. 2009, c. 24, s. 16 (1).

**Duty to comply**

(2) If the monitor requests the regulatory authority to do anything under subsection (1), the regulatory authority shall comply with the request within such time and in such manner as the monitor may specify. 2009, c. 24, s. 16 (2).

**AMENDING, ETC., ONTARIO REGULATORY AUTHORITY'S INSTRUMENTS**

**Power of L.G. in C. to make, amend or revoke instruments**

17. (1) If the monitor for a non-governmental regulatory authority makes a request under paragraph 2 of subsection 16 (1) and the regulatory authority does not comply with the request within the time and in the manner specified by the monitor, the Lieutenant Governor in Council may make, amend or revoke the instrument in question for the purpose of ensuring that it conforms with the Labour Mobility Code,

- (a) by regulation under the regulatory authority's authorizing statute, if the authorizing statute is a public Act and the instrument in question is required to be published on the e-Laws website because of the application of Part III of the *Legislation Act, 2006*;
- (b) by order in council under the regulatory authority's authorizing statute, if the authorizing statute is a public Act and the instrument in question is not required to be published on the e-Laws website because of the non-application of Part III of the *Legislation Act, 2006*; or
- (c) by order in council under this Act, if the regulatory authority's authorizing statute is a private Act. 2009, c. 24, s. 17 (1).

**Subject matter**

(2) A regulation or an order in council under subsection (1) may be made with respect to any matter in respect of which the regulatory authority's authorizing statute authorizes the instrument in question to be made. 2009, c. 24, s. 17 (2).

**Authority to override**

- (3) In addition to the authority set out in subsection (2), a regulation or an order in council under subsection (1) may,
  - (a) prescribe provisions to operate in place of a provision of the regulatory authority's authorizing statute or of any other instrument of a legislative nature made under that statute; and
  - (b) may state that it applies despite a provision of the regulatory authority's authorizing statute or of any other instrument of a legislative nature made under that statute. 2009, c. 24, s. 17 (3).

**Conflict**

(4) If a provision of a regulation or of an order in council made by the Lieutenant Governor in Council under subsection (1) conflicts with a provision of the regulatory authority's authorizing statute or of any other instrument of a legislative nature made under that statute, the provision of the regulation or order in council made by the Lieutenant Governor in Council under subsection (1) prevails to the extent of the conflict. 2009, c. 24, s. 17 (4).

*Legislation Act, 2006*

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order in council made under subsection (1). 2009, c. 24, s. 17 (5).

**ADMINISTRATIVE PENALTIES**

**Order to pay administrative penalty**

18. (1) If the monitor for a non-governmental regulatory authority believes that the regulatory authority has contravened subsection 16 (2), the monitor may serve an order on the regulatory authority ordering it to pay an administrative penalty in accordance with the regulations made under this Act. 2009, c. 24, s. 18 (1).

**Purpose of administrative penalty**

(2) An administrative penalty may be ordered under subsection (1) to encourage compliance with a request made under subsection 16 (1). 2009, c. 24, s. 18 (2).

**Content of order**

- (3) An order under subsection (1) shall,
  - (a) describe the regulatory authority's contravention;
  - (b) specify the amount of the administrative penalty that the monitor is ordering the regulatory authority to pay, specify that it must be paid to the Minister of Finance, and specify the time within which and the manner in which it must be paid; and
  - (c) state that the regulatory authority may apply in accordance with subsection (8) for a review of the order by the coordinating Minister or his or her designate. 2009, c. 24, s. 18 (3).

**Notice of intent to issue order**

(4) A monitor shall not serve an order on a regulatory authority under subsection (1) unless, before doing so, he or she serves notice on the regulatory authority of the intent to issue the order and gives the regulatory authority an opportunity to make written submissions with respect to the proposed order in accordance with subsection (7). 2009, c. 24, s. 18 (4).

**One-year limitation**

(5) A notice of intent shall not be served under subsection (4) more than one year after the regulatory authority's alleged contravention first came to the knowledge of the monitor. 2009, c. 24, s. 18 (5).

**Content of notice of intent**

- (6) A notice of intent under subsection (4) shall,
  - (a) describe the regulatory authority's alleged contravention;

- (b) state that the regulatory authority may make written submissions to the monitor in accordance with subsection (7). 2009, c. 24, s. 18 (6).

**Written submissions**

(7) A regulatory authority that is served with a notice of intent under subsection (4) may make written submissions to the monitor to explain any matter set out in the notice of intent, within 30 days after the day the notice of intent was served on the regulatory authority or within such longer period as may be specified in the notice of intent. 2009, c. 24, s. 18 (7).

**Application for review**

(8) An application for review of an order to pay an administrative penalty must be in a form approved by the monitor and must be served on the co-ordinating Minister,

- (a) within 15 days after the day the order was served on the regulatory authority; or
- (b) if the co-ordinating Minister or his or her designate considers it appropriate in the circumstances to extend the time for applying, within such longer period as the co-ordinating Minister or his or her designate specifies. 2009, c. 24, s. 18 (8).

**If no review requested**

(9) If a regulatory authority that has been served with an order to pay an administrative penalty does not apply for a review in accordance with subsection (8), the regulatory authority shall pay the administrative penalty specified in the order to the Minister of Finance within the time and in the manner specified in the order. 2009, c. 24, s. 18 (9).

**If review requested**

(10) If a regulatory authority that has been served with an order to pay an administrative penalty applies for a review in accordance with subsection (8), the co-ordinating Minister or his or her designate shall conduct the review in accordance with the regulations made under this Act. 2009, c. 24, s. 18 (10).

**Decision**

- (11) Upon a review, the person conducting the review may,
  - (a) find that the regulatory authority did not contravene subsection 16 (2) and rescind the order;
  - (b) find that the regulatory authority did contravene subsection 16 (2) and affirm the order; or
  - (c) find that although the regulatory authority did contravene subsection 16 (2), the amount of the administrative penalty specified in the order is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances, and amend the order by reducing the amount of the penalty. 2009, c. 24, s. 18 (11).

**Decision final**

- (12) A decision under subsection (11) is final. 2009, c. 24, s. 18 (12).

**Payment after review**

(13) If the person conducting the review finds that the regulatory authority did contravene subsection 16 (2), the regulatory authority shall pay the administrative penalty specified in the decision to the Minister of Finance within the time and in the manner specified in the decision. 2009, c. 24, s. 18 (13).

**Other means not a bar**

(14) An order may be served under subsection (1) and a decision may be made under clause (11) (b) or (c) even though a payment order has been or may be issued to the regulatory authority under section 21 with respect to the same contravention. 2009, c. 24, s. 18 (14).

**Enforcement of administrative penalty**

19. (1) If a regulatory authority that is required to pay an administrative penalty under subsection 18 (9) or (13) fails to pay it within the time specified in the order of the monitor or in the decision of the person who conducted the review, as the case may be, the order or the decision, as the case may be, may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court. 2009, c. 24, s. 19 (1).

**Interest**

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order or decision filed with the Superior Court of Justice under subsection (1), and the date on which the order or decision is filed under subsection (1) shall be deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*. 2009, c. 24, s. 19 (2).

**Debt to Crown**

20. If a regulatory authority that is required to pay an administrative penalty under subsection 18 (9) or (13) fails to pay it within the time specified in the order of the monitor or in the decision of the person who conducted the review, as the case

may be, the unpaid amount of the administrative penalty is a debt due to the Crown in right of Ontario and may be recovered by any remedy or procedure available to the Crown by law. 2009, c. 24, s. 20.

## RECOVERY OF AMOUNTS PAID UNDER AGREEMENT ON INTERNAL TRADE

### Right of recovery by Crown

21. (1) If the Crown in right of Ontario is ordered to pay a penalty or tariff costs under a final order made by a presiding body established or convened under the Agreement on Internal Trade, and the order is wholly or partially the result of non-compliance by a municipal governmental regulatory authority with the Labour Mobility Code, non-compliance by a non-governmental regulatory authority with the Labour Mobility Code and with subsection 16 (2), or non-compliance by a College, as defined in the *Regulated Health Professions Act, 1991*, with any of sections 22.15 to 22.23 of Schedule 2 to that Act and with subsection 5 (2) of that Act, the Crown has the right to recover from the regulatory authority or the College, as the case may be, the amount paid by the Crown under the presiding body's final order. 2009, c. 24, s. 21 (1).

### Payment order

(2) Where the Crown in right of Ontario has a right of recovery against a regulatory authority or a College under subsection (1), the co-ordinating Minister may issue a payment order to the regulatory authority or the College, as the case may be, ordering it to pay to the Minister of Finance all or part of the amount referred to in subsection (1) paid by the Crown under the presiding body's final order. 2009, c. 24, s. 21 (2).

### Content of payment order

- (3) A payment order issued by the co-ordinating Minister under subsection (2) shall,
- (a) set out the amount paid by the Crown in right of Ontario under the presiding body's final order;
  - (b) describe the non-compliance of the regulatory authority or the College that resulted in the presiding body's final order;
  - (c) specify the amount that the co-ordinating Minister is ordering the regulatory authority or the College to pay, specify that it must be paid to the Minister of Finance, and specify the time within which and the manner in which it must be paid; and
  - (d) state that the regulatory authority or the College may appeal the payment order to the Superior Court of Justice on a question of law or fact or both, in accordance with the rules of court. 2009, c. 24, s. 21 (3).

### Other means not a bar

(4) A payment order may be issued under subsection (2) to a non-governmental regulatory authority even though an order to pay an administrative penalty has been or may be served on the regulatory authority under subsection 18 (1), and even though a decision has been or may be made under clause 18 (11) (b) or (c), with respect to the same contravention. 2009, c. 24, s. 21 (4).

### If no appeal brought

(5) If a regulatory authority or College to which a payment order is issued under subsection (2) does not appeal the payment order to the Superior Court of Justice in accordance with the rules of court, the regulatory authority or the College, as the case may be, shall pay the amount specified in the payment order to the Minister of Finance within the time and in the manner specified in the payment order. 2009, c. 24, s. 21 (5).

### Appeal to court

22. (1) A regulatory authority or College to which a payment order is issued under section 21 may appeal the payment order to the Superior Court of Justice on a question of law or fact or both, in accordance with the rules of court. 2009, c. 24, s. 22 (1).

### Co-ordinating Minister is party

- (2) The co-ordinating Minister is a party to every appeal under this section. 2009, c. 24, s. 22 (2).

### Powers of court

(3) On an appeal under this section, the court may affirm, rescind or alter the payment order appealed from and may exercise all powers of the co-ordinating Minister under section 21 and may direct the co-ordinating Minister to take any action which the co-ordinating Minister may take under section 21 and as the court considers proper, and for such purposes the court may substitute its opinion for that of the co-ordinating Minister or the court may refer the matter back to the co-ordinating Minister for reconsideration, in whole or in part, in accordance with such directions as the court considers proper. 2009, c. 24, s. 22 (3).

### Enforcement of payment order

23. (1) If a regulatory authority or College fails to pay the amount specified in a payment order as required by subsection 21 (5), the payment order may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court. 2009, c. 24, s. 23 (1).

## **Interest**

(2) Section 129 of the *Courts of Justice Act* applies in respect of a payment order filed with the Superior Court of Justice under subsection (1), and the date on which the payment order is filed under subsection (1) shall be deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*. 2009, c. 24, s. 23 (2).

## **Debt to Crown**

24. If a regulatory authority or College fails to pay the amount specified in a payment order as required by subsection 21 (5), or fails to pay the amount specified by the court within the time specified by the court on an appeal under section 22, the unpaid amount is a debt due to the Crown in right of Ontario and may be recovered by any remedy or procedure available to the Crown by law. 2009, c. 24, s. 24.

## **PART V REGULATIONS**

### **Regulations made by L.G. in C.**

25. The Lieutenant Governor in Council may make regulations,

- (a) prescribing an individual or body as the monitor for a non-governmental regulatory authority for the purposes of this Act;
- (b) governing the administrative penalties that may be ordered under this Act and all matters necessary and incidental to the administration of a system of administrative penalties under this Act, including,
  - (i) prescribing the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by prescribing the method of calculating the amount and the criteria to be considered in determining the amount,
  - (ii) providing for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid,
  - (iii) providing for the payment of lump sum amounts and daily amounts and prescribing the circumstances in which each type of amount may be required,
  - (iv) prescribing the maximum amount of an administrative penalty, whether a lump sum amount or daily amount and, in the case of a daily amount, prescribing the maximum number of days for which the daily amount may be required,
  - (v) prescribing additional information that must be included in an order for payment of an administrative penalty or a notice of intent to issue the order, and
  - (vi) governing the review by the co-ordinating Minister or his or her designate of an order for payment of an administrative penalty;
- (c) defining, for the purposes of this Act and the regulations, any word or expression that is used but not defined in this Act;
- (d) prescribing anything that is referred to in this Act as prescribed or that is required or permitted to be done in accordance with, or as provided in, the regulations made under this Act and for which a specific power is not otherwise provided in this Act. 2009, c. 24, s. 25.

### **Regulations made by co-ordinating Minister**

26. The co-ordinating Minister may make regulations,

- (a) for the purpose of clause (b) of the definition of “authorizing certificate” in subsection 2 (1), prescribing one or more occupations and, for each occupation, prescribing one or more regulatory authorities that grant individuals a certificate, licence, registration or other form of official recognition that attests to the individual being qualified to practise the occupation but does not authorize the practice of the occupation or the use of a title or designation relating to the occupation;
- (b) prescribing a different publicly accessible website for the purpose of clause 9 (3) (a);
- (c) amending Table 1 in any way, including,
  - (i) adding a statute to, removing a statute from, or changing the title of a statute in Column 2, and
  - (ii) adding a regulatory authority to, removing a regulatory authority from, or changing the name of a regulatory authority in Column 3;
- (d) providing for any transitional matters that arise out of any amendment of Table 1. 2009, c. 24, s. 26.

### **Regulations made by monitors**

27. Subject to the approval of the Lieutenant Governor in Council, the monitor for an Ontario regulatory authority may make a regulation prescribing a longer period for the Ontario regulatory authority for the purpose of section 15. 2009, c. 24, s. 27.

**PART VI (OMITTED)**

28., 29. OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION). 2009, c. 24, ss. 28, 29.

30., 31. OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT). 2009, c. 24, ss. 30, 31.

32.-35. OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION). 2009, c. 24, ss. 32-35.

**PART VII (OMITTED)**

36. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2009, c. 24, s. 36.

37. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2009, c. 24, s. 37.

TABLE 1

NON-GOVERNMENTAL REGULATORY AUTHORITIES — PRIVATE ACTS		
Column 1	Column 2	Column 3
Item	Authorizing Statute	Ontario Regulatory Authority
1.	<i>Association of Architectural Technologists of Ontario Act, 1996</i>	Association of Architectural Technologists of Ontario
2.	<i>Association of the Chemical Profession of Ontario Act, 1984</i>	Association of the Chemical Profession of Ontario
3.	<i>Association of Municipal Clerks and Treasurers of Ontario Act, 1985</i>	Association of Municipal Clerks and Treasurers of Ontario
4.	<i>Association of Ontario Road Superintendents Act, 1996</i>	Association of Ontario Road Supervisors
5.	<i>Association of Registered Graphic Designers of Ontario Act, 1996</i>	The Association of Registered Graphic Designers of Ontario
6.	<i>Association of Registered Interior Designers of Ontario Act, 1984</i>	The Association of Registered Interior Designers of Ontario
7.	<i>Association of Translators and Interpreters of Ontario Act, 1989</i>	Association of Translators and Interpreters of Ontario
8.	REPEALED: 2009, c. 24, s. 31 (3).	
9.	<i>Chartered Industrial Designers Act, 1984</i>	Association of Chartered Industrial Designers of Ontario
10.	<i>Chartered Institute of Marketing Management of Ontario Act, 1988</i>	The Chartered Institute of Marketing Management of Ontario
11.	<i>The Chartered Secretaries of Ontario Act, 1958</i>	The Institute of Chartered Secretaries and Administrators in Ontario
12.	REPEALED: 2013, c. 6, s. 75 (1).	
13.	<i>Institute of Management Consultants of Ontario Act, 1983</i>	Institute of Certified Management Consultants of Ontario
14.	<i>Institute of Municipal Assessors Act, 1987</i>	Institute of Municipal Assessors
15.	<i>Municipal Law Enforcement Officers' Association (Ontario) Inc. Act, 1997</i>	Municipal Law Enforcement Officers' Association (Ontario) Inc.
16.	<i>Ontario Association of Certified Engineering Technicians and Technologists Act, 1998</i>	Ontario Association of Certified Engineering Technicians and Technologists
17.	<i>Ontario Association of Home Inspectors Act, 1994</i>	Ontario Association of Home Inspectors
18.	<i>Ontario Association of Landscape Architects Act, 1984</i>	The Ontario Association of Landscape Architects
19.	<i>Ontario Association of Property Standards Officers Act, 1992</i>	Ontario Association of Property Standards Officers
20.	<i>Ontario Association of Veterinary Technicians Act, 1993</i>	Ontario Association of Veterinary Technicians
21.	<i>Ontario Building Officials Association Act, 1992</i>	Ontario Building Officials Association
22.	<i>Ontario Home Economics Association Act, 1989</i>	Ontario Home Economics Association
23.	<i>Ontario Institute of the Purchasing Management Association of Canada Inc. Act, 1987</i>	Ontario Institute of the Purchasing Management Association of Canada Inc.
24.	<i>Ontario Professional Planners Institute Act, 1994</i>	Ontario Professional Planners Institute
25.	<i>The Ontario Registered Music Teachers' Association Act, 1946</i>	The Ontario Registered Music Teachers' Association
26.	REPEALED: 2009, c. 24, s. 31 (4).	

NON-GOVERNMENTAL REGULATORY AUTHORITIES — PUBLIC ACTS		
27.	<i>Architects Act</i>	Ontario Association of Architects
27.1	<i>Certified General Accountants Act, 2009</i>	The Certified General Accountants Association of Ontario
27.2	<i>Certified Management Accountants Act, 2009</i>	Certified Management Accountants of Ontario
28.	<i>Chartered Accountants Act, 2009</i>	The Institute of Chartered Accountants of Ontario
28.1	<i>Commodity Futures Act</i>	Ontario Securities Commission
29.	<i>Drugless Practitioners Act</i>	The Board of Directors of Drugless Therapy
<b>Note: On the day the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 14 (1) comes into force, item 29 is repealed. See: 2009, c. 24, s. 30 (1).</b>		
30.	<i>Early Childhood Educators Act, 2007</i>	College of Early Childhood Educators
31.	<i>Funeral, Burial and Cremation Services Act, 2002</i>	Registrar appointed by the deputy minister to the Minister responsible for the administration of the Act
<b>Note: On the later of the day section 3 of the <i>Funeral, Burial and Cremation Services Act, 2002</i> comes into force and the day subsection 50 (2) of the <i>Delegated Administrative Authorities Act, 2012</i> comes into force, item 31 is repealed and the following substituted:</b>		
31.	<i>Funeral, Burial and Cremation Services Act, 2002</i>	Registrar appointed by the deputy minister to the Minister responsible for the administration of the authorizing statute, or by the delegated administrative authority prescribed under clause 4 (1) (b) of the <i>Delegated Administrative Authorities Act, 2012</i> in relation to the authorizing statute
<b>See: 2012, c. 8, Sched. 11, ss. 50 (1), 54 (4).</b>		
31.1	<i>Insurance Act</i>	Financial Services Commission of Ontario
32.	<i>Law Society Act</i>	The Law Society of Upper Canada
32.1	<i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i>	Financial Services Commission of Ontario
33.	<i>Ontario College of Teachers Act, 1996</i>	Ontario College of Teachers
33.1	<i>Ontario College of Trades and Apprenticeship Act, 2009</i>	Ontario College of Trades
34.	<i>Professional Engineers Act</i>	Association of Professional Engineers of Ontario
35.	<i>Professional Foresters Act, 2000</i>	Ontario Professional Foresters Association
36.	<i>Professional Geoscientists Act, 2000</i>	Association of Professional Geoscientists of Ontario
37.	<i>Public Accounting Act, 2004</i>	The Certified General Accountants Association of Ontario
38.	<i>Public Accounting Act, 2004</i>	The Institute of Chartered Accountants of Ontario
39.	<i>Public Accounting Act, 2004</i>	Certified Management Accountants of Ontario
39.1	<i>Registered Insurance Brokers Act</i>	Registered Insurance Brokers of Ontario
39.0.1	<i>Registered Human Resources Professionals Act, 2013</i>	Human Resources Professionals Association
39.2	<i>Securities Act</i>	Ontario Securities Commission
40.	<i>Social Work and Social Service Work Act, 1998</i>	Ontario College of Social Workers and Social Service Workers
41.	<i>Surveyors Act</i>	Association of Ontario Land Surveyors
42.	<i>Veterinarians Act</i>	College of Veterinarians of Ontario
MUNICIPAL GOVERNMENTAL REGULATORY AUTHORITIES — PUBLIC ACTS		
43.	<i>City of Toronto Act, 2006</i>	City of Toronto (the municipal corporation)
44.	<i>Municipal Act, 2001</i>	Each municipality, as defined in the authorizing statute (the municipal corporation), other than the City of Toronto
PROVINCIAL GOVERNMENTAL REGULATORY AUTHORITIES — PUBLIC ACTS		
45.	<i>Ambulance Act</i>	Director of the Emergency Health Services Branch of the Ministry of Health and Long-Term Care
46.	REVOKED: O. Reg. 129/13, s. 1 (2).	
47.	<i>Building Code Act, 1992</i>	Director, as defined in subsection 1 (1) of the authorizing statute
48.	<i>Crown Forest Sustainability Act, 1994</i>	Minister responsible for the administration of the authorizing statute
49.	<i>Education Act</i>	Minister of Education
50.	<i>Electricity Act, 1998, Part VIII</i>	The administrative authority designated under subsection 3 (2) of the Safety and Consumer Statutes Administration Act, 1996 or, if there is no designated administrative authority, the Minister responsible for the administration of the authorizing statute
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, item 50 is repealed and the following substituted:</b>		
50.	<i>Electricity Act, 1998, Part VIII</i>	Electrical Safety Authority

<b>See: 2012, c. 8, Sched. 11, ss. 50 (2), 54 (1).</b>		
51.	<i>Environmental Protection Act</i>	Director, as defined in subsection 1 (2) of the authorizing statute
52.	<i>Motor Vehicle Dealers Act, 2002</i>	The administrative authority designated under subsection 3 (2) of the Safety and Consumer Statutes Administration Act, 1996 or, if there is no designated administrative authority, the Minister responsible for the administration of the authorizing statute
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, item 52 is repealed and the following substituted:</b>		
52.	<i>Motor Vehicle Dealers Act, 2002</i>	The delegated administrative authority prescribed under clause 4 (1) (b) of the <i>Delegated Administrative Authorities Act, 2012</i> in relation to the authorizing statute or, if there is no administrative authority, the Minister responsible for the administration of the authorizing statute
<b>See: 2012, c. 8, Sched. 11, ss. 50 (2), 54 (1).</b>		
53.	<i>Nutrient Management Act, 2002</i>	Director, as defined in section 2 of the authorizing statute
54.	<i>Ontario Heritage Act</i>	Minister of Culture
55.	<i>Ontario Water Resources Act</i>	Director, as defined in subsection 1 (1) of the authorizing statute
56.	<i>Pesticides Act</i>	Director, as defined in subsection 1 (2) of the authorizing statute
56.1	<i>Private Security and Investigative Services Act, 2005</i>	Registrar, as defined in section 1 of the authorizing statute
57.	<i>Real Estate and Business Brokers Act, 2002</i>	The administrative authority designated under subsection 3 (2) of the Safety and Consumer Statutes Administration Act, 1996 or, if there is no designated administrative authority, the Minister responsible for the administration of the authorizing statute
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, item 57 is repealed and the following substituted:</b>		
57.	<i>Real Estate and Business Brokers Act, 2002</i>	The delegated administrative authority prescribed under clause 4 (1) (b) of the <i>Delegated Administrative Authorities Act, 2012</i> in relation to the authorizing statute or, if there is no administrative authority, the Minister responsible for the administration of the authorizing statute
<b>See: 2012, c. 8, Sched. 11, ss. 50 (2), 54 (1).</b>		
58.	<i>Safe Drinking Water Act, 2002</i>	Director, within the meaning of subsection 2 (2) of the authorizing statute
59.	<i>Technical Standards and Safety Act, 2000</i>	The administrative authority designated under subsection 3 (2) of the Safety and Consumer Statutes Administration Act, 1996 or, if there is no designated administrative authority, the Minister responsible for the administration of the authorizing statute
<b>Note: On a day to be named by proclamation of the Lieutenant Governor, item 59 is repealed and the following substituted:</b>		
59.	<i>Technical Standards and Safety Act, 2000</i>	Technical Standards and Safety Authority
<b>See: 2012, c. 8, Sched. 11, ss. 50 (2), 54 (1).</b>		
60.	REVOKED: O. Reg. 129/13, s. 1 (2).	

2009, c. 24, Table 1; 2009, c. 24, ss. 30 (2, 3), 31; O. Reg. 333/11, ss. 1, 2; O. Reg. 129/13, s. 1; 2013, c. 6, s. 75.

Français

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# Appendix K



The Law Society  
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Barreau du  
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## For the Record - Trinity Western University proposal

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### **Treasurer Thomas G. Conway's Remarks to Convocation, January 23, 2014**

In December 2013, I sent benchers a memo informing you that the Federation of Law Societies of Canada had issued its reports respecting the Trinity Western University (TWU) application for approval of a proposed law school program. The Federation's Common Law Degree Approval Committee, whose mandate is to apply the national competency requirement that law societies approved in 2009, granted preliminary approval to TWU's proposed program. Links to the Federation Approval Committee Report and the Report of the Federation's Special Advisory Committee were provided to you so that you would have an opportunity to carefully review both reports. If you have not yet had an opportunity to read them, I encourage you to do so.

I also advised you that our Law Society would be considering the TWU application and the Federation reports in the context of our authority to determine admission to the legal profession in Ontario.

Since December, many of you have received letters from a variety of sources setting out the authors' views of the TWU application and how Law Society benchers should vote on the issue. I want to take a few minutes this morning to bring you up-to-date on what is underway across the country respecting the TWU application and what I anticipate will be the process by which our Law Society will consider the issue.

Before I do that, I want to reiterate to benchers that while our process is underway, Convocation and its individual benchers must be in a position to ensure that they are able to make the necessary decisions free of any apprehension of bias or predetermination. I will make any public statements that are required on behalf of the Law Society.

I know that you will continue to take your fiduciary responsibilities seriously to ensure that whatever decision Convocation makes on the TWU application it does so with the utmost attention to fairness and an objective process. This is particularly true because the decision-making process the Law Society is undertaking with respect to TWU is quasi-adjudicative in nature and certain procedural protections are required to safeguard the process.

Let me bring you up-to-date on developments on the TWU application elsewhere in the country. As most of you know, the British Columbia government approved the law school on December 18, 2013. The school is scheduled to receive its first class of 60 students in September 2015.

To date, one law society, the Law Society of Alberta, having approved the national requirement, has determined that for its purposes, the Approval Committee's determination is final on whether an application meets that requirement. Accordingly, it will not be considering the TWU matter further. A number of other law societies may follow that approach.

Some law societies, such as British Columbia, Nova Scotia and the Law Society of Upper Canada, will be considering the issue at their Convocations in the coming months. Law societies are taking the time necessary to ensure a careful consideration of the Federation reports in the context of their own legislation, rules and processes.

As I indicated to you in my December memo, the CEO has directed Law Society staff to review the Federation reports and prepare any necessary background material. That is underway. I have directed that additional background work be undertaken to determine what process-related issues must be addressed to protect the impartiality of Convocation and to ensure that Convocation's ultimate decision is made by following an appropriate and defensible process. The development of the process will also entail an assessment of the questions that Convocation must answer to fully address the issue.

Many of you have raised questions with me about how we will consider the TWU matter. These have included what statements, if any, the Law Society might make in advance of Convocation considering the matter, whether and what opportunity there may be for further input into the Law Society's decision-making process and what material will be before Convocation. The questions all raise serious process concerns that are being considered as part of the background work I have requested.

Once that background work has been completed, I will be in a position to advise Convocation on the process to be followed and the specific timing of the decision-making process. At this point, I anticipate that Convocation will consider the TWU issue at its April 2014 meeting.

I appreciate that this issue has generated a significant amount of interest, and will continue to do so, and that benchers will continue to receive correspondence and questions from interested parties. To ensure that the Law Society is aware of correspondence and questions on this matter please forward TWU-related correspondence and comments you receive to Elliot Spears, Office of General Counsel, and continue to refrain from expressing opinions on the issue that is before Convocation.

I appreciate your continued patience as this matter remains before Convocation. We all have an interest in a fair and defensible process and need to take the time necessary to ensure that.

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# Appendix L

## **Treasurer's Public Remarks respecting TWU for February Convocation (in public)**

The purpose of this statement is to outline the process that the Law Society of Upper Canada will follow in determining the accreditation of TWU.

The decision must be made in the public interest, which is part of the Law Society's mandate, and the process must,

- preserve the impartiality of members of Convocation as decision-makers;
- provide appropriate information to Convocation upon which the decision can be made;
- provide appropriate procedural fairness; and
- comply with legal requirements including the *Charter*, *Human Rights Code*, common law, the *Law Society Act* and Law Society by-laws, rules and policies.

I have determined that only Convocation should consider and decide the accreditation of TWU. The matter will not be referred to a committee or committees for review or consideration prior to Convocation.

As I have said previously, when making the decision on accreditation the Law Society is making an administrative decision that affects rights, privileges and interests. Convocation as a whole is vested with this decision-making power. My role will be to act as the chair, ensuring that the proceeding in convocation is conducted in an orderly fashion.

### **The Question for Convocation**

The question to be put to Convocation is as follows:

Given that the Federation Approval Committee has provided conditional approval to the TWU law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit TWU pursuant to section 7 of By-Law 4?

### **Timing**

The Law Society will hold two Convocations dedicated to the TWU accreditation, the first on April 10, 2014 commencing at 9:00 a.m. and the second on April 24, 2014 commencing at 9:00 a.m. Benchers may participate either in person or by phone.

In anticipation of the first Convocation, the Law Society will invite TWU to provide a written submission for Convocation's consideration.

The Law Society will also invite written submissions from the public and the profession beginning today, February 27, 2014 until March 28, 2014. No submissions received before February 27 or after 5:00 p.m. on March 28, 2014 will be considered by Convocation. Anyone who has previously provided a written comment or submission who wishes it to be considered will have to resubmit it.

## **The Material**

The material before Convocation will consist of the following:

- TWU's written submission prepared in response to the Law Society's invitation.
- The Report of the Federation Approval Committee respecting the TWU application, dated December 2013.
- The Report of the Federation Special Advisory Committee dated December 2013.
- The submissions the Federation received in the course of its consideration of the issues.
- Written submissions the Law Society receives between February 27 and March 28, 2014.
- After the first Convocation and prior to the second Convocation,
  - the transcript of the first Convocation proceeding; and
  - any written submission from TWU in response to the issues raised at the first Convocation.
- Such other material as I determine is relevant to Convocation's consideration.

This material will also be posted on the Law Society public website as it becomes available and also made available to benchers as it is received. Benchers will have received all the material no later than April 4, 2014.

## **The Decision**

At the first Convocation on April 10, 2014 the Secretary will read the question.

Convocation will then be provided with a factual overview of (a) the process that has been followed to date and (b) the material before Convocation.

The debate will commence. Benchers will be invited to raise any questions or concerns they have relevant to the issues before them.

At the end of the debate on April 10 Convocation will adjourn.

Any benchers who cannot attend or participate by phone at the Convocation on April 10 must provide any comments or concerns in writing to the Secretary by noon on April 10 so that these may be provided to TWU following April 10 Convocation.

Benchers who do not attend or participate by phone at the April 10 Convocation may nonetheless attend or participate by phone at the April 24 Convocation.

The transcript of the April 10 proceeding will be provided to TWU, which will be invited to provide a written response to the issues raised. Any written response from TWU will be provided to Convocation by April 22, 2014. The response will also be posted on the Law Society website.

Other than TWU's written response and the transcript from the April 10 Convocation no further written material will be before Convocation on April 24. No further submissions will be accepted.

On April 24 Convocation will consider TWU's written response and will then vote in public on the question before it.

Convocation's decision will be made in public and will be provided to TWU and posted on the Law Society website.

Both Convocations will be held entirely in public and will be webcast. In addition, there will be a media room at the Law Society in which members of the public may watch the proceedings, subject to seating availability.

In making its decision on the accreditation of TWU Convocation is sitting in its deliberative capacity, rather than addressing a question of policy. It will make its decision based on the material described above that all benchers receive, including submissions received from February 27, 2014 to March 28, 2014 at 5:00 p.m. In keeping with this process benchers,

- should not use social media, either by sending or receiving communications, during the course of Convocations on April 10 and 24 on the issues being considered;
- should refrain from expressing their views or considering additional submissions they may receive following the first Convocation on April 10;
- should refrain from reaching a final view until the decision is made on April 24.

A court reporter will be present at both Convocations and the proceedings will be transcribed and made available for public inspection in accordance with By-Law 3.

# Appendix M



The Law Society of  
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February 24, 2014

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VIA FACSIMILE (604-513-2157)

Bob Kuhn, J.D.  
President  
Trinity Western University  
7600 Glover Road  
Langley, B.C.  
V2Y 1Y1

Dear President Kuhn:

**RE: Your Letter of January 6, 2014 to the Treasurer**

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On behalf of the Treasurer, I would like to acknowledge receipt of the above-noted letter and to apologize for the delay in responding.

The Law Society has been working out the process it will follow in determining the issue of the Law Society's accreditation of the law school to be established at Trinity Western University.

At the moment, I can advise you as follows about the process:

The Law Society is targeting April as the month in which Convocation will be considering the issue. Two meetings of Convocation are planned for April: The first on April 10 and the second on April 24. The aim will be to conclude all discussions by the decision-makers and to reach a decision by the end of the meeting on April 24. Both meetings of Convocation will be webcast; anyone wishing to will be able to listen to and observe the meetings. Transcripts of both meetings of Convocation will also be available on the Law Society's website.

The Law Society will be welcoming your written submissions both for the first meeting of Convocation on April 10 and, in response to questions and issues raised during that meeting, for the second meeting of Convocation on April 24.

In addition to your written submissions, the materials to be put to Convocation will include:

- the reports of the Federation Approval Committee and the Federation Special Advisory Committee, respecting the law school to be established at TWU, both dated December 2013; and
- the submissions received and considered by the Federation Approval Committee and the Federation Special Advisory Committee, leading up to their reports of December 2013.

As well as the above-mentioned materials, the Law Society will be issuing an open invitation for written submissions, to be sent during a specified period. All written submissions received during the period will be put to Convocation.

All materials to be put to Convocation will be posted on the Law Society's website prior to April 10. This, of course, will not include any written submissions made by you in response to the April 10 meeting of Convocation. Those written submissions will be posted on the Law Society's website prior to April 24.

The Law Society's consideration and determination of the issue of the accreditation of the law school to be established at TWU is being done in the context of the *Law Society Act*. The *Law Society Act*,

- establishes that it is a function of the Law Society to ensure that,
  - “all persons who practise law in Ontario ... meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide” (clause 4.1 (a)); and
- authorizes the Law Society to prescribe the qualifications and other requirements that an individual must meet in order to be licensed to practise law in Ontario as a barrister and solicitor (paragraph 62 (0.1) 4.1).

In carrying out its functions, duties and powers under the *Law Society Act*, the Act requires the Law Society to have regard to a set of express principles (set out in section 4.2 of the Act). These principles include that the Law Society has a duty to protect the public interest and that the Law Society has a duty to maintain and advance the cause of justice and the rule of law.

The Law Society's consideration and determination of the issue of the accreditation of the law school to be established at TWU will also be done in a context that will consider legislation unique to Ontario, such as the Ontario *Human Rights Code*.

The Law Society expects to be in touch with you again soon, as it finalizes the process it will follow in determining the issue of the Law Society's accreditation of the law school to be established at TWU.

In the meantime, if you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,



A. Elliot Spears  
General Counsel

Cc: Thomas G. Conway  
Treasurer,  
The Law Society of Upper Canada

Robber Lapper  
Chief Executive Officer  
The Law Society of Upper Canada

# Appendix N



BY E-MAIL  
(Original By Mail)

May 17, 2013

Federation of Law Societies of Canada  
World Exchange Plaza  
45 O'Connor Street, Suite 1810  
Ottawa, ON K1P 1A4

**Attention: John J. L. Hunter, QC**  
**Chair of the Special Advisory Committee on Trinity Western University's**  
**Proposed School of Law (the "Special Advisory Committee")**

Dear Sirs/Mesdames:

**Re: Response to Special Advisory Committee**

We write in relation to your letter of May 3, 2013 to Dr. Jonathan Raymond and the mandate given to the Special Advisory Committee by the Federation of Law Societies of Canada (the "Federation"). We thank you for your letter, but TWU continues to have serious concerns with the creation of the Special Advisory Committee.

Canada's law societies are charged with regulating the legal profession in the public interest. They have each approved a national requirement that reflects their collective view as to what is necessary to ensure that potential new members graduating from a law degree program in Canada are competent to practice and understand their professional and ethical obligations. With the express approval of each law society in Canada, the Federation established the Canada Common Law Program Approval Committee (the "Approval Committee"), which applies the national requirement to each proposed new law degree program. As you have noted, TWU's Proposal for a School of Law (the "Proposal") is in the process of being reviewed by the Approval Committee.

As has been clearly and correctly articulated by the Federation, the Approval Committee has no mandate or authority to consider TWU's Community Covenant (the "Covenant") outside of the national requirement. The authority of the Federation arises only from the express approval



given by each of the 14 Canadian law societies to the national requirement and the Approval Committee. The Federation has no mandate with respect to matters outside of the national requirement. You have attempted to address this lack of mandate by indicating that the Special Advisory Committee will only provide advice to the Federation. While this may be true, it does not address the fact that the Federation itself has no jurisdiction from the law societies to consider or make recommendations with respect to the Covenant.

On its website, the Federation attempts to justify the existence and role of the Special Advisory Committee on the basis that issues raised about the Covenant by certain advocates opposing TWU's Proposal "were not anticipated when the national requirement was developed".<sup>1</sup> With respect, this is not a justification for reaching outside of the Federation's mandate. In accordance with administrative law principles, the Federation must remain within that mandate.

TWU accepts that it must, and will, provide an institutional setting that appropriately prepares lawyers for public practice and for the diversity that its graduates will encounter. In *Trinity Western University v. B.C. College of Teachers*<sup>2</sup> ("TWU v. BCCT"), the Supreme Court of Canada found that such was the case with respect to TWU's education program and further held that denial of approval was unlawful since there was no "specific evidence"<sup>3</sup> that graduates would not uphold the basic values of non-discrimination. If such were not also the case with respect to TWU's School of Law Proposal, presumably the Approval Committee would address that in considering whether graduates would meet the "Ethics and Professionalism" component of the "Competency Requirements" of the national requirement. In the context of the national requirement and the role of the Approval Committee, it is not relevant that the Covenant was not specifically anticipated. Either TWU's Proposal meets the national requirement or it does not (and we obviously believe strongly that it does).

The only purpose for the proposed work of the Special Advisory Committee is to provide advice to the Federation, and presumably through the Federation to its member law societies, pertaining to the religious foundations of TWU. It does not appear that the law societies have solicited this advice. The Federation is interposing itself into an area that the law societies themselves may not wish, or be statutorily permitted, to tread. For these reasons, TWU objects to the establishment and mandate of the Special Advisory Committee. We urge the Special Advisory Committee to recommend to the Federation that this matter is, as has been maintained by the Federation in the past, outside of the Federation's mandate. To the extent that matters are external to the national requirement and the work of the Approval Committee, they are of a political nature and, if relevant at all, best left to the Ministry of Advanced Education in British Columbia.

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1 <http://www.flsc.ca/documents/TWUQuestionsandAnswers.pdf>

2 [2001] 1 S.C.R. 772

3 *TWU v. BCCT* at para.38 . See also paras. 12-13.

It is clear that there has been an organized political campaign to oppose TWU's Proposal, which commenced with the letter from the Council of Canadian Law Deans. You should be aware that in preparing the Proposal, TWU specifically consulted with a number of law deans, including all of the law deans in British Columbia. None of them raised any issues or concerns about the Covenant or TWU's religious nature.

All of that having been said, there are responses to all of the significant objections raised in the various submissions that you provided TWU with your letter of May 3, 2013. Below you will find TWU's responses, but these are provided with an express reservation of all of TWU's rights to seek legal redress against the Federation and any individual law society arising from the work of the Special Advisory Committee, including with respect to jurisdictional challenges, should that be necessary in the future.

## **RESPONSES TO OBJECTIONS RAISED BY OPPONENTS OF TWU'S PROPOSED SCHOOL OF LAW**

It would be very difficult to respond to each and every discrete point raised in the unsolicited letters and submissions sent to the Federation, particularly given the short period of time you allowed. The letters in opposition to the Covenant and TWU's Proposal raise a number of similar arguments and we will address these in a summary format. We will provide examples of statements of opposition as appropriate to demonstrate the flaws in the reasoning of TWU's opponents. As part of the legal team that represented TWU in *TWU v. BCCT*, the writer can say that most of these arguments were also made in that case and were rejected by the Supreme Court of Canada.

### ***(a) Compatibility of the Covenant with Training in Ethics and Professionalism***

A number of opponents have suggested that the Covenant is incompatible "with the ethical and legal training appropriately required of those seeking entry into the legal profession"<sup>4</sup>. West Coast LEAF has gone so far as to argue that, because of the Covenant, TWU "cannot impart on prospective lawyers a sufficient understanding of the ethical duty not to discriminate and to honour the obligations enumerated in human rights laws"<sup>5</sup>. Others suggest that TWU is "not up to the challenge of having an open, honest, meaningful discussion about its policies and practices"<sup>6</sup> and that TWU "cannot be trusted to promote [a] constitutionally mandated understanding" of equality<sup>7</sup>.

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4 Egale Canada letter, January 25, 2013

5 See West Coast LEAF letter, February 25, 2013, page 3.

6 Letter from students of Schulich School of Law, undated

7 National Association of Women and the Law, March 8, 2013

These arguments are wrong at law, intellectually flawed, discriminatory in themselves and, at a minimum, deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

It should be beyond question that TWU acknowledges that human rights laws and section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation. The courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life. We trust that you have access to TWU's full proposal, including the course outlines contained therein. You will note that standard texts are proposed for such topics, which reference the historical inequality suffered by homosexuals. No course covering section 15 of the *Charter* or educating students on provincial human rights protections would be complete without fully addressing cases such as *Vriend v. Alberta*<sup>8</sup>, *Egan v. Canada*<sup>9</sup>, and *Reference re Same-Sex Marriage*.<sup>10</sup> We are certain that the Approval Committee will be reviewing these course outlines as part of its work in assessing the academic program to be offered at TWU.

You will also note that TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course on Ethics and Professionalism (LAW 602). A summary description of this mandatory course in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. ***It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.***<sup>11</sup> [Emphasis added]

TWU is committed to fully and appropriately addressing ethics and professionalism and the opponents of the Proposal cannot credibly argue otherwise. We are certain that the Approval Committee will find more than sufficient coverage of these topics.

The opponents of our Proposal must therefore be suggesting that ***the very fact of the*** Covenant and the religious beliefs inherent therein, undermine the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be "equipped to deal with students" and be unable to "offer comfort and support to

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8 [1998] 1 S.C.R. 493

9 [1995] 2 S.C.R. 513

10 [2004] 3 S.C.R. 698

11 TWU Proposal, page 22. See also full description of course at page 93.

the students”<sup>12</sup>. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU’s Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>13</sup>

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of substantive law and ethics and professionalism. TWU agrees with Egale Canada that “the dignity and value of all individuals irrespective of their sexual orientation ... now form part of the fabric of professional ethics and the rule of law”.<sup>14</sup> Each graduate of a TWU School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Covenant. In this regard, we note that there are many TWU graduates who have gone on to Canadian law schools and are now successfully practicing law across Canada.

As evident from the submissions received by the Federation, there are students currently at public law schools that hold these same religious beliefs<sup>15</sup>. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one suggests that they will not do so.

The oaths that graduating law students will take before being admitted to practice law require them to uphold the laws and rights and freedoms of all persons. For example, the oaths used in Ontario and British Columbia contain the following statements, respectively:

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12 B.C. College of Teachers Factum in *TWU v. BCCT*, para. 121. Note that when intervening in *TWU v. BCCT*, Egale Canada made similar arguments.

13 *TWU v. BCCT*, paras. 32-33

14 See letter from Egale Canada, dated January 25, 2013

15 See letter from “Christian law students across Canada” dated March 10, 2013 indicating that the students “hold [the Biblical principles on which TWU’s Covenant is based] trust regardless of the law school [they] attend”. See also letter from current UBC law students dated March 19, 2013 where they make this same point: “Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law.”

I shall champion the rule of law and safeguard the rights and freedoms of all persons<sup>16</sup>.

...uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia.<sup>17</sup>

If the opponents' line of reasoning prevails, it equates to denying accreditation to individuals on the basis of religious belief. The Supreme Court of Canada specifically addressed this concern in *TWU v. BCCT*:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church.<sup>18</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>19</sup>

It would clearly be abhorrent to suggest that the many lawyers across Canada holding similar religious views to those addressed in the Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs<sup>20</sup>. While the opponents of TWU's Proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Covenant are a basis upon which TWU's application should be delayed or denied. As found by the Supreme Court of Canada, they are not a basis upon which the Federation should anticipate that graduates will fail to meet their professional and ethical obligations.

***(b) TWU Graduates will require "Additional Study"***

In a related argument, a number of opponents say that TWU should not have a School of Law as its students should "undertake additional study ... similar to the process for foreign trained lawyers"<sup>21</sup> or that TWU graduates should not "become licensed to practice law without

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16 Oath to practice law in Ontario as a barrister and solicitor (Bylaw 4(21):

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805>

17 Barristers' and Solicitors' Oath: <http://www.lawsociety.bc.ca/docs/publications/mmm/oath.pdf>

18 *TWU v. BCCT*, para. 33.

19 *TWU v. BCCT*, para. 36

20 See *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

21 West Coast LEAF letter, February 5, 2013.

further study and entrance requirements”<sup>22</sup>. This is presumably because such opponents believe that the Covenant will “impair the development of critical thought and legal analytical skill”<sup>23</sup> or the TWU students will not “remain independent and appropriately value-oriented”<sup>24</sup>.

We have already noted how deeply offensive this reasoning is to lawyers and law students holding religious beliefs similar to those embodied in the Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience in order that they be competent to practice law.

There is a serious logical flaw in the argument. It is clear from the submissions sent to the Federation that existing law schools have: (1) students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. The current law schools have apparently not undermined these students’ and lawyers’ religious beliefs; and neither should they try to do so. Lawyers are not required to all believe the same way concerning issues of sexual morality. It is only required that their conduct be ethical and professional.

Again, we note that this same point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to “complete their fifth year of professional teacher education through an approved program at a public university”<sup>25</sup>. The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. ***Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.***<sup>26</sup>  
[Emphasis added]

These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. As stated by a number of Christian law students across the country in their submission to the Federation: “If commitment to Biblical principles results in the denial of a private institution as capable of

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<sup>22</sup> National Association of Women and the Law letter, March 8, 2013.

<sup>23</sup> Letter from UBC law students, March 14, 2013.

<sup>24</sup> Letters from students at a number of law schools. See for example, letter from UVic law students dated March 12, 2013.

<sup>25</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118.

<sup>26</sup> *TWU v. BCCT*, para. 32

teaching law, this implicates our competence as future lawyers also. ... [A]dhering to religious beliefs does not equate to future discriminatory conduct".<sup>27</sup> The Supreme Court of Canada agrees with these Christian students:

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.<sup>28</sup>

...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>29</sup>

...

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>30</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.<sup>31</sup>

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be conclusive in your deliberations as well.

***(c) TWU v. BCCT is Binding Law***

The opponents of TWU argue that *TWU v. BCCT* is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that acknowledging TWU's freedom of religion and association rights to maintain the Covenant would involve a "race to the bottom"<sup>32</sup> since not all human rights legislation across the country contain the same provisions.

Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is "limited to BC law" and is simply a finding that TWU is in "compliance with B.C. legislation"<sup>33</sup>. It has been argued that human rights provisions recognizing religious associational rights are not applicable (despite the Supreme Court of Canada's

<sup>27</sup> Letter from "Christian law students across Canada" dated March 10, 2013.

<sup>28</sup> *TWU v. BCCT*, para. 19

<sup>29</sup> *TWU v. BCCT*, para. 33

<sup>30</sup> *TWU v. BCCT*, para. 35

<sup>31</sup> *TWU v. BCCT*, para. 36

<sup>32</sup> Letter from Ruby Shiller Chan Hassan dated February 28, 2013

<sup>33</sup> For example, see SOGIC letter, dated March 18, 2013, pages 2 and 4.

ruling in *TWU v. BCCT*) and that refusing TWU's application because of the Covenant would not violate freedom of religion or freedom of association. In particular, SOGIC draws on American jurisprudence, where there is no constitutional equality guarantee such as s.15 of the *Charter*, to argue that it is acceptable to allow TWU to exist, but also deny it approval of its programs. This is a surprisingly impoverished view of Canadian equality rights.

As already noted, many of the arguments advanced by the opponents of TWU's Proposal were also made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. It should be clear that the decision in *TWU v. BCCT* was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. We will address a number of the specific legal arguments made by opponents in their attempt to distinguish *TWU v. BCCT*.

(i) *Section 41 of the B.C. Human Rights Code (and similar provisions)*

In *TWU v. BCCT*, the Court made reference to section 41 of the *Human Rights Code* in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution<sup>34</sup>. These were passing references, but the Court's analysis was much broader, based on preserving human rights and *Charter* values in acknowledging TWU's right to a teacher education program. This is conveniently summarized by the following quotes:

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

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>35</sup>

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*<sup>36</sup>, the Supreme Court of Canada wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion"<sup>37</sup>. In *Brossard (Town) v. Quebec (Commission des droits de la*

34 *TWU v. BCCT*, paras.32 and 35.

35 *TWU v. BCCT*, paras. 34-35

36 [1984] 2 S.C.R. 603

37 At 626 (S.C.R.)

*personne*)<sup>38</sup> Beetz J. held that a similar provision promotes “the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits”<sup>39</sup>. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.<sup>40</sup>

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada, not just in B.C..<sup>41</sup> It is trite to point out that all such legislation must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU is permitted to exist as a religious educational community only in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

We would also note that SOGIC has been inclusive in listing protections granted to religious groups such as TWU in human rights legislation. For example, no reference is made to sections 4 and 6 of the *Saskatchewan Human Rights Code*, which state:

Right to freedom of conscience

4 Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free association

6 Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

SOGIC also argues that s.41 and similar provisions do not protect TWU as, they say, TWU does not promote the interests of individuals as members of an identifiable group nor “exclude individuals who do not share its religious beliefs”<sup>42</sup>. This misinterprets and misapplies the *Human Rights Code*. Specifically, it ignores the decision in *Vancouver Rape Relief Society v. Nixon*<sup>43</sup> where the Court of Appeal held that an organization is *not* required

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38 [1988] 2 S.C.R. 279

39 At 324 (S.C.R.). See also *St. James Community Service Society v. Johnson*, 2004 B.C.S.C. 1807 and *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 B.C.H.R.T. 269

40 *Gillis v. United Nations Native Society*, [2005] BCHRT 301 at para. 21, *Sahota, supra* at para. 37

41 See, for example, *Ontario (Human Rights Commission) v. Brockie*, 43 C.H.R.R. D/90 (Ont. Div. Ct.); *Smith v. Knights of Columbus*, 2005 BCHRT 544; *Garrod v. Rhema Christian School* (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); *Kearley v. Pentecostal Assemblies Board of Education*, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

42 SOGIC letter, March 18, 2013, page 5.

43 2005 B.C.C.A. 601 (leave application denied, February 1, 2007, S.C.C. No.31633)

to demonstrate that it exclusively provides services to a group enumerated under s. 41 in order to be protected by that section<sup>44</sup>.

(ii) *Civil Marriage Act*

While it is without question that there have been some important societal changes since *TWU v. BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*<sup>45</sup> are worth noting:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

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

...

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

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

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

Opponents have argued that denying approval of TWU’s School of Law Proposal because of the Covenant will not impair the constitutional rights of TWU and the individuals comprising its community<sup>46</sup>. They promote a penurious view of these *Charter* rights.

Citing *Saskatchewan (Human Rights Commission) v. Whatcott*<sup>47</sup>, SOGIC argues that denying TWU’s application for a School of Law would not infringe s.2(a) of the *Charter* as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of

<sup>44</sup> *Nixon, supra.*, para. 58.

<sup>45</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html>

<sup>46</sup> SOGIC letter, March 18, 2013, pages 5-6

<sup>47</sup> 2013 SCC 11

Canada in *Whatcott* also relied on the oft-cited words of Dickson J. in *R. v. Big M Drug Mart*<sup>48</sup> that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and **without fear of hindrance** or reprisal...”<sup>49</sup> (emphasis added).

In *Alberta v. Hutterian Brethren of Wilson Colony*<sup>50</sup>, it was accepted that Alberta’s mandatory photo requirement for driver’s licensing breached the s.2(a) rights of the Hutterian Brethren because of their religious objection to having their photos taken. Applying the logic of TWU’s opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver’s licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice. This is precisely how the Supreme Court of Canada analyzed the matter in *TWU v. BCCT*:

Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society. Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system.<sup>51</sup>

SOGIC draws on American jurisprudence to suggest that only the **existence** of TWU as a religious community ought to be tolerated, but that its programs need not receive “official imprimatur” or be granted “equal access”<sup>52</sup>. In *TWU v. BCCT*, the College of Teachers made the same argument, relying on similar cases (including *Bob Jones University*), that it was right to withhold the imprimatur that approval of TWU’s program would bring.<sup>53</sup> These arguments were clearly rejected by the Supreme Court of Canada.

Further, and surprisingly, SOGIC fails to recognize the importance of the equality right in the Canadian context. Section 15 of the *Charter* prohibits the imposition of burdens or withholding of benefits on account of personal characteristics, including based on religion. The leading definition of discrimination is still as articulated by McIntyre J. in *Andrews v. Law Society of British Columbia*<sup>54</sup>:

... discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which **has the effect of imposing burdens, obligations, or disadvantages** on such individual or group not imposed upon others, **or which withholds or limits access to opportunities, benefits, and advantages** available to other members of society.

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48 [1985] 1 S.C.R. 295

49 At p.336

50 [2009] SCC 37

51 *TWU v. BCCT*, para. 35

52 SOGIC letter, March 18, 2013, page 7.

53 B.C. College of Teachers Factum in *TWU v. BCCT*, paras. 57, 79, 111, 116

54 [1989] 1 S.C.R. 143

Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.<sup>55</sup> [Emphasis added]

The denial of approval of TWU's School of Law application because of the Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community. As evidenced by many of submissions received by the Federation, opponents of TWU's proposal presume that Christians at TWU have "hostility to gay and lesbian people"<sup>56</sup> and hide "homophobia in Christian values"<sup>57</sup>. There is absolutely no evidence for these statements about TWU or the members of its community. These opponents are guilty of the same type of prejudice and stereotyping about which they say the Federation should be concerned.

All of the opponents of TWU's proposal focus solely on the Covenant. This is, in fact, a focus by them on TWU's sectarian nature<sup>58</sup>. The Federation's creation of the Special Advisory Committee continues this disturbing focus and we strongly encourage both the Special Advisory Committee and the Federation to carefully consider the following words of the majority in *TWU v. BCCT*:

We would add that *the continuing focus of the BCCT on the sectarian nature of TWU is disturbing*. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.<sup>59</sup> [Emphasis added]

If there are pedagogical or other problems with the education to be provided at TWU's proposed School of Law, they will presumably be detected by the Approval Committee, the Ministry of Advanced Education, or both. As a matter of constitutional and human rights, it is not open for the Federation to focus solely on the sectarian nature of TWU, as communicated by the Covenant, to undermine the normal approval processes. The Federation and its law society members are not permitted to express moral disapprobation of the Christian beliefs on which TWU is founded. Again, we urge that the Special Advisory Committee advise the Federation to discontinue any further consideration of the Covenant and TWU's religious nature as separate from the Approval Committee.

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55 At pp.174-175. This definition recently reiterated by the S.C.C. in *Withler v. Canada*, [2011] 1 S.C.R. 396 at para. 29 and *Hutterian Brethren*, *supra*. at para. 108

56 Letter from Ruby Shiller Chan Hassan dated February 28, 2013

57 Letter from UBC law students, dated March 14, 2013

58 Which is derided by the lawyers at Ruby Shiller Chan Hassan as a "fundamentalist and narrow interpretation of Christianity"

59 *TWU v. BCCT*, para. 42

***(d) Diversity in the Legal Profession and Academic Freedom***

Some opponents suggest that approval of TWU's program will "diminish diversity in the legal profession"<sup>60</sup>. It is peculiar, to say the least, that these advocates seek to silence a perspective different from their own within the Canadian legal community in name of diversity. While they express a concern that TWU's School of Law will have a "limited tolerance of diversity", their opposition exhibits exactly that trait.

There is nothing inimical to Canadian society contained in the Covenant. Its contents are to be expected in the context of an evangelical Christian university. As noted by a number of others, including uOttawa OUTLaw, the Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice". As we are sure you will agree, the legal profession encourages lawyers to be inculcated in these values. All opponents focus on only one aspect of the Covenant, ignoring the balance of its contents, which are not only unobjectionable but universally laudable.

As stated by Dickson J. in *Big M Drug Mart*, "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct"<sup>61</sup>. As then noted in *TWU v. BCCT*, "the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected"<sup>62</sup>. The TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

TWU's proposed School of Law should be assessed on its merits, based on the national requirement. As the only privately funded law school in Canada, it may provide a slightly different perspective, but this should be welcomed. As the Supreme Court of Canada suggested, Canada is enriched by having a diversity of institutions. There is no principled reason that secular, public institutions should have a monopoly on legal education in Canada<sup>63</sup>.

A few opponents have questioned academic freedom at TWU. While we expect that this issue is outside of what will be considered by the Special Advisory Committee, we would note for your benefit that TWU maintains a strong policy on academic freedom that was

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60 Letter from UBC law students, dated March 14, 2013

61 At p.336.

62 *TWU v. BCCT*, para. 33.

63 Law students from UBC have written in their letter of March 19, 2013 that, in their experience, their religious beliefs are "often openly derided" in the context of the explicitly secular emphasis at that institution. Not all secular law schools should be judged by this experience, but it does provide context for the opposition made by students at a number of law schools in Canada.

affirmed by British Columbia's Degree Quality Assessment Board in 2004. TWU is a member of the Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. There will be a full range of academic inquiry and debate within TWU's School of Law.

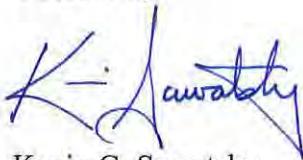
## Conclusion

The arguments of opponents to TWU's proposed School of Law relate to the Covenant and TWU's religious character. As set out above, most of these arguments have already had a thorough hearing before, and been rejected by, the Supreme Court of Canada. One opponent, Egale Canada, raised some of the exactly same arguments as an intervenor in *TWU v. BCCT* as it now references in its letter to the Federation. The Supreme Court of Canada decision in that case should be considered determinative for the reasons set out above.

There is no "specific evidence" that TWU graduates will fail to uphold the basic values of non-discrimination<sup>64</sup>. This does not leave a legitimate role for the Special Advisory Committee. We submit that the appropriate course is for the Special Advisory Committee to advise the Federation and its members that there are no relevant additional considerations to be taken into account in determining whether graduates of a TWU School of Law should be eligible to enroll in the admissions program of any Canadian law society.

We believe that we have answered the important points raised by TWU's opponents. If there are other issues on which you would like to receive TWU's position or views, or if there are additional documents that you would like to review that we may be able to provide, please do not hesitate to contact the writer.

Yours truly,



Kevin G. Sawatsky  
Vice-Provost (Business) and University Legal Counsel

cc: Gerald R. Tremblay, President  
Kuhn LLP

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<sup>64</sup> *TWU v. BCCT* at para.38 . See also paras. 12-13.

# Appendix O

**SUBMISSION OF**  
**TRINITY WESTERN UNIVERSITY (“TWU”)**  
**To**  
**NOVA SCOTIA BARRISTERS’ SOCIETY (“NSBS”)**  
**EXECUTIVE COMMITTEE**

**Date: February 28, 2014**

**1. INTRODUCTION**

The NSBS is charged with regulating the legal profession in Nova Scotia in the public interest. It, together with all other law societies in Canada, approved a national requirement that reflects their collective view as to what is necessary to ensure that graduates of law degree programs in Canada are competent to practice and meet their professional and ethical obligations.

TWU has met all of the criteria of that national requirement and its proposed School of Law has also been approved by a Special Advisory Committee of the Federation of Law Societies (the “Federation”) that was charged with considering aspects of its Community Covenant. Its proposed School of Law has also received approval after extensive review by the Ministry of Advanced Education (the “Ministry”).

Unfortunately, much of the opposition to TWU’s proposal is based on prejudicial caricatures and unfair assumptions about TWU and the members of its religious community. This submission is intended to meet those objections and to provide accurate facts with respect to TWU. It is also intended to be a starting point for any further dialogue that the NSBS wishes to have with TWU to better understand it, and the proposal it made to the Federation for approval of its School of Law program. TWU welcomes this opportunity, including the time being set aside for TWU representatives to meet with the NSBS Executive Committee on March 4, 2014.

## 2. TRINITY WESTERN UNIVERSITY

### (a) *Introduction*

TWU was originally founded in 1962 as a junior college. In 1969, the B.C. Legislature passed the *Trinity Junior College Act*<sup>1</sup>, mandating that TWU's education would be provided "with an underlying philosophy and viewpoint that is Christian". The Legislature gave TWU the privilege to grant degrees in 1979<sup>2</sup> and in 1984 TWU became a member of the Association of Universities and Colleges of Canada.

In 1985, the Legislature changed the name of the college to TWU and granted it authority to offer graduate degrees<sup>3</sup>.

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

Many of TWU's students are in its professional programs. TWU has a professional School of Nursing (M.Sc.N., B.Sc.N.), which was established in 1993 and is approved by the College of Registered Nurses of British Columbia<sup>4</sup>.

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

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

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

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

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<sup>1</sup> S.B.C. 1969, c.44

<sup>2</sup> *Trinity Western College Amendment Act, 1979*, S.B.C. 1979, c.37

<sup>3</sup> *Trinity Western College Amendment Act, 1985*, S.B.C. 1985, c. 63

<sup>4</sup> TWU is a member of the Canadian Association of Schools of Nursing

**(b) Academic Excellence**

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

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

Similar to some of the public universities in British Columbia TWU has been granted “exempt” status by the Ministry. In order to obtain this status, a university must demonstrate that it has “appropriate governance mechanisms, demonstrated organizational capacity for degree granting and a proven track record.”<sup>5</sup> Having achieved exempt status means that TWU is able to use an expedited process for approval of most new undergraduate and graduate (masters) level programs. (This expedited process did not apply to the J.D. program, which received a full and complete review as described below).

Professors at TWU are committed to high-quality teaching. Due to small class size, students regularly interact with their professors. TWU is a community-oriented campus and professors regularly interact with students outside the classroom. This same successful formula will be used in the School of Law.

The University provides a stimulating environment for research. It has an Office of Research which assists faculty research and coordinates grant applications. Faculty members are funded through the Tri-Council Agencies, as well as through a wide variety of foundations and grants. This office holds regular professional development workshops to assist faculty in obtaining grants, publishing their research results and engaging in collaborative research.

TWU has three Canada Research Council Chairs and is currently developing a fourth. TWU joined the Royal Society of Canada in 2009.

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<sup>5</sup> “Institutions with Exempt Status would still require Ministerial consent / approval for each new degree. However, once the institution achieves Exempt Status, the quality assessment process would be expedited so that new degree proposals, up to the degree level of exemption specified, would be forwarded directly to the Minister for review and consent / approval. As such, Exempt Status represents an exceptional condition. For these reasons, Degree Quality Assessment Board (DQAB) applies the highest standards and expectations of quality in its review of applications for Exempt Status.” *Exempt Status Criteria and Guidelines*, p.1: [http://www.aved.gov.bc.ca/degree-authorization/documents/exempt\\_status.pdf](http://www.aved.gov.bc.ca/degree-authorization/documents/exempt_status.pdf)

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

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

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

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

A number of submissions made to the NSBS, in written form as well as orally on February 13, exemplified the characteristics that TWU seeks to instill in its students:

- “...my experience at TWU enhanced my competency by instilling in me a deep love for all people and desire to serve humanity through advocacy.”<sup>6</sup>
- “The TWU students I knew were passionate about making a difference in the world and deeply committed to social justice issues.”<sup>7</sup>
- “These alumni of Trinity are a remarkable group of young people - intelligent, globally aware citizens, with a profound commitment to constructive civic engagement at many different levels, and a deep passion for social justice, expressed in concrete and creative ways.”<sup>8</sup>

TWU is understandably very proud of these graduates. They exhibit the precise results that TWU strives to achieve through its educational programs.

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<sup>6</sup> Jessie Legaree, JD Candidate 2015, University of Toronto - February 6, 2014 letter to NSBS

<sup>7</sup> Mark Witten, lawyer - February 10, 2014

<sup>8</sup> Mark Harris, Senior Pastor - undated written submission and similar comments made at oral hearing on February 13, 2014 (p. 139 of transcript)

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

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

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

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

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

As recognized by the Supreme Court of Canada: “it can reasonably be inferred that the B.C. Legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985.”<sup>9</sup> There is no rational argument that such a religious educational community is somehow against the public interest and virtually all of TWU’s opponents properly concede this point.

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

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

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

...

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

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<sup>9</sup> *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 (“*TWU v. BCCT*”) at para. 35.

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

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

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

...

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

...

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

...

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

...

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

We have long since given up on the belief of trying to assimilate all Canadians to a single point of view."<sup>10</sup>  
[emphasis added]

TWU wholeheartedly adopts these statements as incorporating the ideals that it seeks to imbue in all of its students and graduates.

There is no question that TWU has a right to exist as a religiously based educational community and that this right is protected by the *Charter of Rights and Freedoms*. There is also no question that the members of TWU's community have the right to freely express their religious beliefs and to associate together to put them into practice<sup>11</sup>. The question to be answered by the NSBS is whether, in light of these rights, there is a demonstrably justifiable reason for denying TWU's graduates the right to enrol as articulated clerks in the NSBS. For the reasons set out below, TWU respectfully submits that on a proper analysis, no such reason exists.

<sup>10</sup> Oral submissions of Chris Roper, February 13, 2014 (pp. 210, 211, 212 and 217)

<sup>11</sup> *TWU v. BCCT*, para. 32

### 3. THE SCHOOL OF LAW PROPOSAL

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

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

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

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

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

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

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

TWU has assembled a very strong and very solid proposal for a new School of Law. The School of Law will have a focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas. The School of Law will offer a J.D. degree based on an integrated curriculum that includes the development of core competencies needed for the practice of law. In keeping with the nature of TWU, specializations will be offered in charities and social justice law and in small business and entrepreneurial law.

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

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

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

TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course (LAW 602), Ethics and Professionalism. A summary description of Law 602 in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. ***It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.*** [Emphasis added]

Before the proposal was submitted to the Federation and the Ministry, it was comprehensively reviewed by two highly qualified external reviewers: Albert H. Oosterhoff, LL.B., B.A., LL.M., Professor Emeritus (University of Western Ontario) and Lyman R. Robinson, Q.C., B.A., LL.B., LL.M., Professor Emeritus (University of Victoria). Their external reviews were included with the proposal. Both concluded that the proposed program was a good one. Mr. Oosterhoff concluded that "the proposal is a sound one and highly relevant in the current Canadian market." Mr. Robinson specifically complimented the program's "emphasis on ethical standards and professionalism and the development of the legal skills and competencies".

All of the detail of the proposal, laid out in over 160 pages, cannot be adequately summarized here. TWU has provided or offered to provide a copy of the proposal to all law societies in Canada, including NSBS, updated to implement all of the recommendations of the Federation and the Ministry. **TWU strongly submits that, if the NSBS contemplates any decision that may result in non-approval of TWU's J.D. program for the purposes of admission to the practice of law in Nova Scotia, all members of the NSBS Council should first read and understand the full proposal, together with the Federation's reports on the proposal.** Without doing so, members of the NSBS Council cannot understand the quality and strength of TWU's proposal.

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

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

The Federation's approval committee was comprised of senior members of the bar from across the country, each of whom possesses specific qualifications and experience relevant to the role of assessing TWU's proposal and law school programs. Contrary to the statement of Professor Perryman during the NSBS oral hearing<sup>12</sup>, Catherine S. Walker, QC, a former president of the Nova Scotia Barristers' Society and Federation Council member for Nova Scotia, was a member of the approval committee<sup>13</sup>.

The committee's review began during a teleconference in September of 2012. It continued during six days of in-person meetings and five conference calls between January and December of 2013 (see para. 34 of the final report). The committee was assisted in its work by Professor Bruce Elman of the University of Windsor's Faculty of Law, who provided advice on the administration of the proposed law school and the teaching of law (see para. 41 of the final report)<sup>14</sup>. Professor Elman is a former law dean.

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

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

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

The committee concluded that TWU's proposal was "comprehensive and is designed to ensure that students acquire each competency included in the national requirement" (para. 47). The

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<sup>12</sup> February 13, 2014 oral hearing - "And my issue ... or one issue that I have is that there was not a Nova Scotian on that panel" (p. 82 of transcript, lines 2-3)

<sup>13</sup> Report on Trinity Western University's Proposed School of Law Program, para. 12

<sup>14</sup> Again, this is contrary to the information provided to the NSBS in oral submissions made by Professor Downie on February 13, 2014 - "Both the Approval Committee and the Special Advisory Committee should have had but did not have legal academics on them." (transcript, pp. 55-56).

committee expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching. It found that TWU met that issue and that it was not a deficiency in the proposal. It specifically referenced and relied on TWU's statements that:

- TWU is committed to fully and appropriately addressing ethics and professionalism;
- TWU recognizes and acknowledges its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of both substantive law and ethics and professionalism;
- TWU acknowledges that human rights laws and Section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation and that “the courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.”

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

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

There were only two possible outcomes of the committee's work: “preliminary approval” and “not approved”. TWU was very pleased that its proposal received “preliminary approval”. This preliminary approval will be followed by an annual review process so that TWU will be scrutinized through all phases of the School of Law's establishment, as it hires a dean and faculty, as students enter and progress through the curriculum and as it produces its first graduates. That process will ensure that the national standard is met and that TWU lives up to its commitments. The Federation has a careful comprehensive process that individual law societies can, and should, trust and depend on.

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

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

Contrary to a number of representations made to the NSBS<sup>15</sup>, it is simply untrue that the public did not have input into the considerations of the Federation, including those of the Special Advisory Committee. There were significant public representations and submissions made to the Federation.

The Special Advisory Committee reviewed all of the submissions made to the Federation, together with TWU's response<sup>16</sup>. It should be noted that these submissions included the same arguments, from many of the same opponents, as are now presented to law societies across Canada in opposition to TWU's School of Law.

The Special Advisory Committee also considered the relevant law, including the Supreme Court of Canada's decision in *TWU v. BCCT*. It obtained a legal opinion from John Laskin, QC of Tory's, who reviewed the arguments made against TWU's proposal, including the paper published by Professor Elaine Craig. After thorough review, he concluded that *TWU v. BCCT* is binding law and applicable in these circumstances. Specifically, he opined that "if the TWU teachers program could be relied on to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same."

To quote Mr. Laskin:

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

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

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

In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public

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<sup>15</sup> See for example: (a) February 13, 2014 oral hearing, comments by Jessica Lyle (p. 112); and (b) written submissions of R. MacDonald and A. Sakalauskas, February 10, 2014, p. 10. These comments were made to taint the Federation's thorough review process and were both incorrect and unfair to the Federation.

<sup>16</sup> Report of Special Advisory Committee, para. 8

interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

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

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

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

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

The expert review panel consisted of former and existing faculty of the law schools at Queen's University, University of British Columbia, University of Victoria, University of Alberta, University of Windsor and Thompson Rivers University. Among these panel members were former deans of the law schools of University of Alberta, Queen's, UBC, and Windsor. The composition of this review panel completely eviscerates the arguments made by opponents of TWU's School of Law that its proposal was not sufficiently reviewed by legal academics<sup>17</sup>.

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

On April 17, 2013, the expert review panel provided its report to the Ministry. This report is not public, but was provided on a confidential basis to TWU. TWU responded to the report on May 17, 2013. The expert panel provided its advice and the DQAB, in its meeting on June 10, 2013, found that TWU's proposal met all quality assessment criteria. As did the Federation's Special Advisory Committee, the expert panel and thus the DQAB considered the specific character of TWU as a religious educational community, including consideration of the Community Covenant.

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

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<sup>17</sup> For example, Professor Downie on February 13, 2014 stated "Both the Approval Committee and the Special Advisory Committee should have had but did not have legal academics on them." (transcript, pp. 55-56).

*(e) Conclusions from the Reviews*

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

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

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

**4. MAINTAINING THE NATIONAL STANDARD**

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

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

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

of the Common Law Degree Implementation Committee were approved by each of the law societies and the Approval Committee was established in January, 2012.

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

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

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

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

The Federation's application of the national standard to TWU's School of Law, and its findings, should not be lightly ignored or dismissed. The work of the Federation in reviewing proposed faculties of law at Canadian universities is not merely an issue of delegation of authority by law societies, as has been suggested by a number of opponents of TWU's School of Law. There are formal agreements in place between law societies and governments establishing lawyer mobility, as well as legislation implementing such agreements.

The law societies of each Canadian province entered into the National Mobility Agreement ("NMA") in 2002 (this was complemented by the Territorial Mobility Agreement in 2006)<sup>18</sup>. The NMA is aimed at facilitating temporary and permanent mobility of lawyers between common law provinces.

Section 32<sup>19</sup> of the NMA provides that each law society "will require no further qualifications for a member of another governing body to be eligible for membership" other than: (a) entitlement to practice in the lawyer's home jurisdiction; (b) good character and fitness on the standard ordinarily applied to applicants for membership; and (c) other qualifications that

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<sup>18</sup> The 2013 NMA was signed by all law societies and the Chambre des notaires du Quebec to replace the existing NMA and the Quebec Mobility Agreement. It will come into effect once implemented by each law society.

<sup>19</sup> The same provision is s.33 of the 2013 NMA.

ordinarily apply. As such, under the NMA, TWU School of Law graduates will have the right to have their qualifications recognized across all common law jurisdictions once they have been admitted to practice by any law society in Canada, as can now occur in at least Alberta and Saskatchewan.

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

In 2009, the Agreement on Internal Trade (“AIT”)<sup>20</sup> was amended to address barriers to labour mobility in professions in Canada. Chapter 7 of the AIT now requires mutual recognition of the certification of workers in regulated occupations<sup>21</sup>, subject to narrow exceptions. Each province is required by the AIT to ensure compliance with Chapter 7 by “governmental bodies and by non-governmental bodies that exercise authority delegated by law”, including law societies.<sup>22</sup>

Article 706(1) of the AIT expressly states:

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

While article 706(3) and article 706(4) permit regulators, as a condition of certification of any worker, to impose certain requirements related to payment of fees, background checks, evidence of good character and demonstration of knowledge, such requirements must be the same as or substantially similar to, but no more onerous than, requirements imposed by the regulatory authority as part of its normal certification process. Additionally, such requirement must “not create a disguised restriction on labour mobility”.<sup>23</sup>

Article 708 allows parties to impose additional measures of certification, provided that “the purpose of the measure is to achieve a legitimate objective; the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and the measure does not create a disguised restriction to labour mobility”.<sup>24</sup> Such measures ***cannot be approved by regulatory authorities***. They must be approved by the applicable provincial or territorial government.<sup>25</sup>

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<sup>20</sup> The AIT is an agreement between the Federal government, all provincial governments and all territorial governments except Nunavut.

<sup>21</sup> *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at [http://www.ait-aci.ca/labour\\_en/LM\\_Background-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Background-draft_090302revised.pdf)

<sup>22</sup> Article 703(1)

<sup>23</sup> Article 706(3)(i) and Article 706(4)(f)

<sup>24</sup> Article 708(1)

<sup>25</sup> Article 708(3)

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

- public security and safety;
- public order;
- protection of human, animal or plant life or health;
- protection of the environment;
- consumer protection;
- protection of the health, safety and well-being of workers;
- provision of adequate social and health services to all its geographic regions; and
- programs for disadvantaged groups.<sup>26</sup>

Article 708(2) cautions that “a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective”.<sup>27</sup>

In an Article 1703 Panel decision regarding a complaint by Manitoba regarding Ontario’s imposition of additional requirements for certified general accountants seeking certification to practice public accounting in Ontario, the Panel considered the objectives of the AIT and the 2009 amendments to Chapter 7 and made several findings with respect to the application of Article 708, including:

- The use of Article 708 is an exception to the obligations of Chapter 7 and specifically Article 706(1), and “should be narrowly construed and strictly applied”,<sup>28</sup>
- the bar to justify exceptions to the objective of labour mobility is a “high one”,<sup>29</sup> and
- the onus is on the party seeking to impose the additional requirement to establish that a legitimate objective exists and that the measure is necessary to meet the legitimate objective.<sup>30</sup>

The Nova Scotia legislature enacted the *Internal Trade Agreement Implementation Act* (“AIT Implementation Act”), the purpose of which was to “implement the [AIT]... and thereby reduce or eliminate barriers to the free movement of persons, goods, services and investments and

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<sup>26</sup> Article 711(1)

<sup>27</sup> Article 708(2)

<sup>28</sup> *Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario’s Notice of Measure with respect to Public Accountants* at p. 10, available at [http://www.ait-aci.ca/index\\_en/dispute.htm](http://www.ait-aci.ca/index_en/dispute.htm)

<sup>29</sup> *Ibid.* at p. 14

<sup>30</sup> *Ibid.* at p. 11

promote an open, efficient and stable domestic market ...”.<sup>31</sup> It expressly ratified the AIT.<sup>32</sup> In the Nova Scotia Legislature debate with respect to the AIT Implementation Act in bill form, Mr. Terence Donahoe, the honorable member for Halifax Citadel, pointed out that ratifying the AIT meant being “prepared, as a province, to abide by, to live by and be subject to every one of the provisions appearing in the [AIT]”.<sup>33</sup>

Nova Scotia also has the *Fair Registration Practices Act*<sup>34</sup> (“FRPA”), the focus of which is to “make sure applicants understand how registration practices work within regulated occupations, and to make sure those practices are fair, transparent, and accountable”.<sup>35</sup> The FRPA states that it “recognizes the commitments the Government of the Province has made under the [AIT] to facilitate the free movement of persons, goods, service and investments throughout Canada, as implemented by the Province under the Internal Trade Agreement Implementation Act”.<sup>36</sup>

As a consequence of these agreements and legislation, approval of TWU’s School of Law cannot be treated as merely a local or provincial matter. National mobility, including the NMA, the AIT and related legislation, was a significant motivating factor in the development of national standards for approval of legal education in Canada:

Only individuals who follow a rigorous training program and demonstrate their suitability to serve the public with a high level of competence, are eligible to join Canada’s legal profession and be licensed by a Canadian law society to practise law.

Because Canada’s national mobility regime requires each law society to recognize the credentials of members of the legal profession wherever they were initially licensed to practise law in Canada, the Federation of Law Societies of Canada is leading initiatives to ensure that admission standards are consistent across the country.<sup>37</sup>

As a result, the NSBS can only ignore the approval granted by the Federation in very narrow circumstances and for legitimate and demonstrably justifiable reasons. To the extent that a decision by the NSBS seeks to impose additional measures of certification as contemplated under Article 708 of AIT, those measures must be approved by the Nova Scotia government.

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<sup>31</sup> *Internal Trade Agreement Implementation Act*, Stats N.S. 1995-96, c. 8, s. 2

<sup>32</sup> *Ibid.*, s. 6

<sup>33</sup> *Hansard*, The Nova Scotia Legislature, Fifty-sixth General Assembly, Third Session, available at [http://nslegislature.ca/index.php/proceedings/hansard/C60/56\\_3\\_47/](http://nslegislature.ca/index.php/proceedings/hansard/C60/56_3_47/)

<sup>34</sup> Stats N.S. 2008, c. 38

<sup>35</sup> “Recognition of Prior Learning (RPL) & Labour Mobility”, *Nova Scotia Canada*, <http://novascotia.ca/lae/RplLabourMobility/>

<sup>36</sup> *Fair Registration Practices Act*, Stats N.S. 2008, c. 38, s. 3

<sup>37</sup> “National Admission Standards”, *Federation of Law Societies of Canada*, <http://www.flsc.ca/en/national-admission-standards/>

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

If a law society were to refuse to certify a lawyer applying to transfer from another Canadian jurisdiction on the basis that the lawyer had obtained his or her law degree from TWU, that law society would be acting contrary to the requirement of mutual recognition of the certification of workers under Article 706(1) of the AIT and s. 32 of the NMA. It is difficult to see how such a law society could frame an additional measure to address this and justify it as a legitimate objective exception under Article 708 of the AIT.

If a TWU law degree is acceptable for a transferring lawyer, it cannot reasonably be concluded that a TWU law degree is insufficient for admission as an articling clerk in Nova Scotia. This would be an absurd result.

Additionally, a law society that refuses to recognize a degree from TWU's School of Law, despite the Federations' approval in accordance with the Federation's national standards, and despite other Canadian law societies' acceptance of the sufficiency of the Federation's approval, is adopting an occupational standard in a manner that is not conducive to labour mobility, contrary to Article 707 of the AIT.<sup>38</sup>

The NSBS has been asked by many opponents of TWU's School of Law to refuse approval of TWU graduates based on the religious beliefs on which TWU is founded. This was clearly advocated by one opponent as follows:

...regardless of the calibre of education offered at Trinity Western University, its School of Law should not be publicly accredited in Nova Scotia.<sup>39</sup>

Such an approach would seriously damage the national approach to approval of legal education and mobility rights of lawyers in Canada. Additionally, the NSBS cannot properly take that approach without due regard to its obligations under the NMA, the AIT Implementation Act and the FRPA. It certainly cannot take such an approach that would impose additional restrictions on TWU educated lawyers and articulated students unless they specifically meet a "legitimate objective" as defined in Article 711 of the AIT. In short, it is not legally appropriate for the NSBS to disapprove of TWU's School of Law because it does not agree with tenets of the religious beliefs on which TWU is founded or how those beliefs are realized through the Community Covenant.

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<sup>38</sup> Occupational standards are addressed in Article 707 of AIT. While each party to AIT maintains its right to adopt occupational standards and to establish the level of protection it considers appropriate in the circumstances, the "[p]arties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards". As explained in the Backgrounder, "[w]hen changing a standard or creating a new standard, provinces and territories shall adopt, to the extent possible and where practical, occupational standards based on common interprovincial standards or, at least, in a manner conducive to labour mobility. They shall notify and afford other provinces and territories the opportunity to comment on proposed new or revised standards." *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at: [http://www.ait-aci.ca/labour\\_en/LM\\_Backgrounder-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Backgrounder-draft_090302revised.pdf)

<sup>39</sup> Tajas B. Viridi Madhur, January 22, 2014

## 5. NATURE OF DECISION BEFORE NSBS

For the reasons articulated, the statutory authority of the NSBS with respect to the protection of the public interest should be read and understood in conjunction with the AIT Implementation Act and the FRPA.

Section 4 of the *Legal Profession Act* of Nova Scotia indicates that the purpose of the NSBS is to uphold and protect the public interest in the practice of law. In pursuing its purpose, s.4(2)(a) requires the NSBS to “**establish standards** for the qualifications of those seeking the privilege of membership in the Society”.

Under s.5(2), no person “may become a member of the Society... unless the Council is satisfied that the person **meets the requirements established by the regulations**”. Under s.5(3), “a person who **meets the requirements established by the regulations** for membership in the Society as a lawyer **shall** be called to the Bar...” [All emphasis added.]

The regulations are to be made by Council under the authority granted by these sections of the *Legal Profession Act* and under s.5(8), which expressly authorizes Council to establish “regulations to be met by members, including educational, good character and other requirements, and procedures for admitting ... persons as members of the Society...”

In terms of its obligation to protect the public and pursuant to its statutory authority, the NSBS has established regulations for the enrolment of law graduates as articling clerks in Nova Scotia. Specifically, Regulation 3.3.1 requires an applicant, *inter alia*, to “be of good character”, be a “fit and proper person” and “have a law degree”.

Under Regulation 3.1(b), “law degree” means “a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree, or an equivalent qualification.”

Since the Federation has approved TWU’s School of Law program, its graduates will have a “law degree” as contemplated by the Regulations and will therefore meet the NSBS requirement for enrolment as an articulated clerk in Regulation 3.3.1(d). This is appropriate under the lawyer mobility provisions of the NMA, the AIT Implementation Act and the FRPA.

While Regulation 3.3.2 purports to authorize the NSBS Executive Director to deny the application of a potential articulated clerk for “reasons other than good character or fitness” where “it is in the public interest to do so”, it is difficult to understand how he could reasonably do so for **all** TWU graduates when the TWU J.D. remains a “law degree” under Regulations 3.1 and 3.3.

TWU inquired whether the NSBS was contemplating a change to Regulation 3.1 that would have the effect of revoking the approval of its J.D. program currently enjoyed under the Regulation. TWU was informed by the NSBS on February 10, 2014 that “it would be incorrect to conclude that the consultation is designed to consider revoking Regulation 3.1 and it would be incorrect to conclude that the proposed TWU School of Law has been approved in Nova Scotia.” Given the statutory and regulatory framework, TWU does not fully understand what decision or decisions (if any) are being contemplated by the NSBS as a result of the public consultation it has undertaken. Presumably, the NSBS may make a decision, whether by amendment to the Regulations or otherwise, that would preclude TWU graduates from becoming practicing lawyers in Nova Scotia.

TWU did request confirmation of the “public and other interest issues” that NSBS considers relevant to its deliberations and was initially told by letter on February 10 that the NSBS would provide it “with a statement of the public interest and other issues that have been identified ... and which will therefore be considered by the NSBS” no later than February 18 so that TWU would be able to fully address them.

Instead, on February 18, TWU was advised by further letter to “review all of the submissions and the attached transcript [of the February 13 oral hearing]” and to respond to “all of the matters that have been raised.” The written submissions fill a large binder and the transcript is 237 pages long. A great many issues are raised, both legal and otherwise. It is, frankly, impossible for TWU to respond comprehensively to each one. That said, TWU will attempt to address the major themes that arise from its review of the submissions received by the NSBS to February 13.

Some of the written and oral submissions made to the NSBS on February 13, 2014 suggested that the NSBS could make a decision not to approve TWU’s School of Law, but still recognize TWU School of Law graduates. With respect, these submissions do not reflect either the statutory framework under which NSBS operates or the Regulations already adopted by it. As noted, the *Legal Profession Act* authorizes the NSBS to “make regulations” establishing requirements to be met by applicants for admission to the practice of law. The NSBS has done so through Regulations 3.1 and 3.3.

This consultation by the NSBS must therefore be about whether TWU graduates will be admitted to the practice of law in Nova Scotia and any “disapproval” of TWU’s School of Law by NSBS would be directed at rejecting the validity of a TWU J.D. for such applicants.

When and if the NSBS debates a specific resolution or potential decision, TWU respectfully asks that it be informed of, and be given the opportunity to address the specific concerns relevant to that resolution or potential decision.

For the purposes of this submission, TWU will address the question of whether there is any relevant or legitimate basis to deny the graduates of its School of Law the right to become practicing members of the NSBS.

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

It will come as no surprise that TWU strongly submits that there is no legitimate basis to deny its graduates the right to become full members of the NSBS and to practice law in Nova Scotia. The Federation, through its Approval Committee and Special Advisory Committee, and the Ministry, have both concluded that TWU's proposal should be approved. As explained above, under the NMA and AIT and the AIT Implementation Act and the FRPA, the Federation's conclusions cannot be treated as merely advisory in nature. In the modern context of lawyer mobility, the Federation's conclusion can only be ignored for legitimate reasons within the confines of those agreements and statutes.

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

TWU did not ask the Federation or the Ministry to endorse or agree with the religious beliefs on which it is based. It is similarly not asking any law society to endorse or agree with them. It asks only that those religious beliefs be tolerated as they should be in any equal, just and pluralistic society. Law societies should not be expressing any opinion or official position on the validity or acceptability of religious beliefs.

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

TWU submits that there is no basis upon which the NSBS may deny TWU graduates the ability to practice law in Nova Scotia and will address what appear to be the main arguments made in opposition to TWU's School of Law.

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

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

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

- “I strongly doubt the TWU will be able to actually deliver proper legal education to its students on areas of freedom of thought and expression and ideas about equality in contemporary Canadian Society. ...[The prospect that] a graduate of TWU ... might ...one day be elevated to the bench ... [is] unacceptable”.<sup>40</sup>
- “I fear that the education that TWU’s students receive on these important principles will be shallow, self-serving and hypocritical.”<sup>41</sup>
- “[TWU students] could not be expected to develop an understanding of equality...”<sup>42</sup>
- “[TWU] would skew the teaching of law ... It is difficult to imagine how graduates of such a program would be competent, academically and morally, to articulate and practice law in Nova Scotia.”<sup>43</sup>
- “A student churned out of this school will surely have a biased opinion formed by an establishment that draws its [sic] human rights from the dark ages.”<sup>44</sup>
- “I suggest that an institution founded on prejudice and bigotry cannot be considered capable of adequately teaching [sic] law degree program.”<sup>45</sup>

These statements and arguments are wrong at law, intellectually flawed and deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

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

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

As noted above, TWU’s program of study has two required courses on professionalism and ethics (LAW 508 and LAW 602), the latter of which will specifically challenge students to “reconcile their personal and professional beliefs within a framework of service to clients and

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<sup>40</sup> Jonathan Shapiro, December 22, 2013 email

<sup>41</sup> Jack Townsend, email of January 9, 2014

<sup>42</sup> Letter from Professors Downie, Devlin, Cotter and Kalajdzic, January 21, 2014, page 7

<sup>43</sup> Jennifer Taylor, email of January 24, 2014

<sup>44</sup> Gary Nelson, email of February 3, 2014

<sup>45</sup> Peter Leslie, email of February 4, 2013

community while respecting and performing their professional obligations and responsibilities”<sup>46</sup>. This is, of course, the obligation of every practicing lawyer in Canada.

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

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

These opponents must be suggesting that *the fact of* the Community Covenant undermines the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be “equipped to deal with students” and be unable to “offer comfort and support to the students”<sup>47</sup>. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU’s Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>48</sup>

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of ethics and professionalism. TWU unreservedly affirms the dignity and value of all individuals irrespective of their sexual orientation and agrees that this principle forms part of the fabric of professional ethics and the rule of law. Each graduate of TWU’s School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Community Covenant.

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<sup>46</sup> TWU Proposal, page 22. See also full description of course at page 93

<sup>47</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 121. Note that when intervening in *TWU v. BCCT*, Egale Canada made similar arguments

<sup>48</sup> *TWU v. BCCT*, paras. 32-33

As evident from the submissions received by the Federation and the NSBS, there are many students currently at public law schools that hold these same religious beliefs<sup>49</sup>. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one can seriously suggest otherwise. However, if the opponents' line of reasoning prevails, it opens the door to denying accreditation to individuals on the basis of religious belief. While some may suggest this is alarmist, the Supreme Court of Canada specifically addressed this concern in *TWU v. BCCT*:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church.<sup>50</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>51</sup>

It would clearly be abhorrent to suggest that lawyers holding similar religious views to those addressed in the Community Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs<sup>52</sup>.

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

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<sup>49</sup> See letter from Jessie Legaree, JD Candidate 2015, University of Toronto – February 6, 2014. The Federation also received a letter from “Christian law students across Canada” dated March 10, 2013 indicating that the students “hold [the Biblical principles on which TWU's Covenant is based] trust regardless of the law school [they] attend” and a letter from current UBC law students dated March 19, 2013 where they make this same point: “Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law.”

<sup>50</sup> *TWU v. BCCT*, para. 33

<sup>51</sup> *TWU v. BCCT*, para. 36

<sup>52</sup> See *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

***(b) Different or Additional Requirements for TWU Graduates***

Some opponents have suggested that TWU graduates should be admitted to the practice of law in Nova Scotia, but only after going through an “extra step”<sup>53</sup>, possibly through the National Committee on Accreditation (“NCA”). Such an approach seriously undermines, or is at least radically inconsistent with, a decision not to follow the national accreditation process. With respect, it is difficult to understand on what principled basis the NSBS would recognize the acceptance of TWU graduates by the Federation’s processes if they apply individually, but not accept the Federation’s conclusions that TWU will properly train lawyers for practice.

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

Similarly, others have suggested that TWU graduates require more “due diligence” because they signed the Community Covenant<sup>54</sup> or that they will have a “significant hurdle to overcome”<sup>55</sup>.

Again, this reasoning is deeply offensive to lawyers and law students holding religious beliefs similar to those embodied in the Community Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience, or be subjected to an additional entrance requirement, in order that they be able to practice law.

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

Again, this point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to complete additional requirements outside of TWU<sup>56</sup>. The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. ***Students are***

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<sup>53</sup> Oral submissions of Professor Pothier, February 13, 2014 (transcript, pp.66-67)

<sup>54</sup> Oral submissions of Amy Sakulauskas, February 13, 2014 (transcript, pp.44-45)

<sup>55</sup> Letter from Ray Adlington, Managing Partner/CEO of McInnes Cooper, February 6, 2013

<sup>56</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118

*likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.*<sup>57</sup>  
[Emphasis added]

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

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

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.<sup>58</sup>

...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>59</sup>

...

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>60</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.<sup>61</sup>

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be determinative in the NSBS's deliberations.

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<sup>57</sup> *TWU v. BCCT*, para. 32

<sup>58</sup> *TWU v. BCCT*, para. 19

<sup>59</sup> *TWU v. BCCT*, para. 33

<sup>60</sup> *TWU v. BCCT*, para. 35

<sup>61</sup> *TWU v. BCCT*, para. 36

***(c) Appearance of Acceptance of “Discriminatory Practices”***

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

These opponents ask NSBS to “send a message”<sup>62</sup> that the religious character of the TWU community as articulated in the Community Covenant is unacceptable in Nova Scotia. Examples of these arguments include:

- “It is simply the appearance of acceptance that will send the message that Nova Scotia accepts the views of TWU...”<sup>63</sup>
- “...regardless of the calibre of education offered at Trinity Western University, its School of Law should not be publicly accredited in Nova Scotia”<sup>64</sup>

Opponents articulate this objection in a variety of ways, but it amounts to the same thing: they ask the NSBS not to accredit or recognize TWU graduates because of the nature of TWU as a religious educational community, maintaining a traditional Christian view of marriage. This is not, as suggested by some, merely a separate “institutional test”<sup>65</sup>, that is distinct from an assessment of the quality and qualifications of graduates. It is all about (and certainly should be about) whether TWU can adequately and appropriately educate lawyers. TWU is not seeking agreement with, or approval of, the religious beliefs of its community. Neither should the NSBS withhold recognition of TWU graduates simply because some of its members do not agree with or approve of the religious beliefs of TWU.

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

All this to say that even if it was open to the BCCT to base its decision on perception rather than evidence of actual discrimination or of a real risk of discrimination, there is no reason to give any deference to that decision.<sup>66</sup>

...

For the BCCT to have properly denied accreditation to TWU, it should have based its concerns on specific evidence. It could have asked for reports on student teachers, or opinions of school principals and

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<sup>62</sup> Linda Patriquin, email of February 4, 2014

<sup>63</sup> Jonathan Shapiro, email of December 23, 2013

<sup>64</sup> Tajas Vidri Madhur, email of January 22, 2014

<sup>65</sup> Oral submissions of Amy Sakalauskas, February 13, 2014 (transcript, p. 44)

<sup>66</sup> *TWU v. BCCT*, para. 19

superintendents. It could have examined discipline files involving TWU graduates and other teachers affiliated with a Christian school of that nature. Any concerns should go to risk, not general perceptions.<sup>67</sup>

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

It is simply inappropriate to deny accreditation of graduates based on perceptions. TWU does not ask the NSBS or any other regulatory body to agree with its religious principles. This was recognized in the thoughtful comments of Kevin Kindred made to the NSBS:

And I would remind you that your question is not whether to endorse them and endorse their views. And if it were, I would hope that you would not ... But you are not being asked to endorse them.<sup>68</sup>

TWU asks only that its program be assessed on proper criteria, not a general sense that the religious beliefs on which it is founded are wrong, or as some have said, are "stupid and very silly"<sup>69</sup> or "skewed" and "twisted"<sup>70</sup>. These people are entitled to their views on TWU's religious beliefs, as TWU and the members of its community are entitled to theirs. But such views are not a proper basis upon which TWU's graduates should be refused admission to the practice of law in Nova Scotia.

To paraphrase the Supreme Court of Canada, the freedom of religion of TWU and its students is not accommodated if the consequence of its exercise is the denial of the right to full participation in the bar of Nova Scotia.<sup>71</sup>

#### ***(d) Diversity in the Legal Profession and Academic Freedom***

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

There is nothing inimical to Canadian society contained in the Community Covenant. Its contents are to be expected in the context of an evangelical Christian organization. As noted by a number of others, the Community Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy,

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<sup>67</sup> *TWU v. BCCT*, para. 38

<sup>68</sup> Oral submissions of Kevin Kindred, February 13, 2014 (transcript p. 155)

<sup>69</sup> Oral submissions of Kevin Kindred, February 13, 2014 (transcript p. 154)

<sup>70</sup> Gary Nelson, email of February 3, 2013

<sup>71</sup> *TWU v. BCCT*, para. 35

peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice”. The legal profession can always use lawyers inculcated in all of these values. All opponents focus on only one aspect of the Community Covenant, ignoring the balance of its contents and thereby intimating that they are unobjectionable.

As stated by Dickson J. (as he then was) in *R v. Big M Drug Mart*, “a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct”<sup>72</sup>. As then noted in *TWU v. BCCT*, “the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected”<sup>73</sup>. A TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

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

Some opponents have also questioned academic freedom at TWU. TWU maintains a strong policy on academic freedom that was affirmed by British Columbia’s Degree Quality Assessment Board in 2004. TWU is a member of Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. As such, it is fully expected that there will be a full range of academic inquiry and debate within TWU’s School of Law.

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

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

Citing *Saskatchewan (Human Rights Commission) v. Whatcott*<sup>74</sup>, opponents argue that denying TWU’s graduates accreditation would not infringe s.2(a) of the Charter as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of Canada in *Whatcott* also relied on the oft-cited words of Dickson J. in *R. v. Big M Drug Mart* that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses,

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<sup>72</sup> [1985] 1 S.C.R. 295 at p. 336

<sup>73</sup> *TWU v. BCCT*, para. 33

<sup>74</sup> 2013 SCC 11

the right to declare religious beliefs openly and *without fear of hindrance or reprisal...*” (emphasis added)<sup>75</sup>.

In *Alberta v. Hutterian Brethren of Wilson Colony*<sup>76</sup>, the majority accepted that Alberta’s mandatory photo requirement for driver’s licensing breached the s.2(a) rights of the Hutterian Brethren as they had a religious objection to having their photos taken. Applying the logic of TWU’s opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver’s licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice.

The denial of approval of TWU’s graduates because of the Community Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community.

All of the opponents of TWU’s proposal focus solely on the Community Covenant. This is, in fact, a focus by them on TWU’s sectarian nature. Please carefully consider the following words of the majority in *TWU v. BCCT*:

We would add that the continuing focus of the BCCT on the sectarian nature of TWU *is disturbing*. It should be clear that *the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices*. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.<sup>77</sup> [Emphasis added]

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

### ***(f) TWU v. BCCT is Binding Law***

The opponents of TWU argue that *TWU v. BCCT* is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that the decision was specific to British Columbia law and that, as a result, acknowledging TWU’s freedom of religion and association rights to maintain the

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<sup>75</sup>At p. 336

<sup>76</sup> [2009] SCC 37

<sup>77</sup> *TWU v. BCCT*, para. 42

Community Covenant is unnecessary because not all human rights legislation across the country contain the same provisions.

Similarly, others argue that the Supreme Court of Canada’s analysis related to TWU’s right to equal treatment is merely a finding that TWU is in compliance with B.C. legislation.

Some opponents attempt to avoid the binding result of *TWU v. BCCT* because “the issue here is whether it is contrary to the public interest”<sup>78</sup> to accredit graduates of TWU. With respect, that was exactly the issue and argument advanced by the BCCT. The BCCT decided not to approve TWU’s program “because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest...”<sup>79</sup> The Court held that while the BCCT could consider the discriminatory practices as part of its review of the public interest, it also had to consider religious freedom and was wrong to have “inferred without any concrete evidence that such views will limit consideration of social issues ...[or] have a detrimental impact on the learning environment...”<sup>80</sup> The case is directly applicable to, and clearly undermines, the reasoning advocated by TWU’s opponents.

The arguments advanced by the opponents of TWU’s proposal were made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. The decision in *TWU v. BCCT* was a recognition and balancing of TWU’s constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. This is the same conclusion reached by John Laskin QC, who specifically reviewed and rejected the arguments of Professor Craig in concluding that the grounds advocated by her for refusing approval “would be highly questionable.”

While it is without question that there have been some important societal changes since *TWU v. BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*<sup>81</sup> are worth noting:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

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

...

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and

<sup>78</sup> Ronald J. MacDonald and Amy Sakulauskas, February 10, 2014 submission

<sup>79</sup> *TWU v. BCCT*, para. 5

<sup>80</sup> Paras. 26 and 32

<sup>81</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html>

religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

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

It is also of note that a number of opponents of TWU’s School of Law emphasize the recognition of same-sex marriage in Canada as a societal change since 2001, which it certainly is, but they conveniently ignore or entirely dismiss the preamble and s.3.1 of the legislation that created same-sex marriage in Canada. It has always been recognized and acknowledged, in the *Civil Marriage Act* and in human rights legislation, that there must be a balancing to ensure that freedom of religion and equality on the basis of religion is protected. The Supreme Court of Canada has already determined how that balancing is to occur in these circumstances.

***(g) Human Rights Protections in Nova Scotia***

The Nova Scotia Human Rights Commission<sup>82</sup> and others have argued that differences in the human rights legislation in Nova Scotia and British Columbia justify denying accreditation of TWU graduates.

In *TWU v. BCCT*, the Court made reference to section 41 of the *Human Rights Code* in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution<sup>83</sup>. These were passing references, but the Court’s analysis was much broader, based on the preservation of the values of human rights legislation and the *Charter* in acknowledging TWU’s right to a teacher education program, which is conveniently summarized by the following quotes:

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

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

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<sup>82</sup> Letter dated February 10, 2014

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

beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>84</sup>

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*<sup>85</sup>, the Supreme Court of Canada expressly wrote that the predecessor of section 41 “confers and protects rights” and “permits the promotion of religion”<sup>86</sup>. In *Brossard (Town) v. Quebec (Commission des droits de la personne)*<sup>87</sup> Beetz J. held that a similar provision promotes “the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits”<sup>88</sup>. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.<sup>89</sup>

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada.<sup>90</sup> It is trite to point out that all human rights legislation in Canada, including that in Nova Scotia, must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU could only exist as a religious educational community in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

Subsections 6(c) and (d) of the Nova Scotia *Human Rights Act* include exemptions for religious organizations, which TWU certainly is. Additionally, s.6(f) provides for other forms of “alleged discrimination” that are “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. Based on the noted Supreme Court of Canada jurisprudence, these provisions should be interpreted to recognize and accommodate religious expression within the TWU educational community.

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

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

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

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

<sup>88</sup> At 324 (S.C.R.). See also *St. James Community Service Society v. Johnson*, 2004 B.C.S.C. 1807 and *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 B.C.H.R.T. 269

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

<sup>90</sup> See, for example, *Ontario (Human Rights Commission) v. Brockie*, 43 C.H.R.R. D/90 (Ont. Div. Ct.); *Smith v. Knights of Columbus*, 2005 BCHRT 544; *Garrod v. Rhema Christian School* (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); *Kearley v. Pentecostal Assemblies Board of Education*, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

In any event, it is not appropriate for the NSBS to apply laws applicable only in Nova Scotia to persons that are not subject to them. Otherwise, the NSBS should also review every other law program in Canada to ensure that they comply with the particular requirements and protections of the Nova Scotia *Human Rights Act*, as opposed to the human rights legislation applicable in their own jurisdictions.

## 7. SUMMARY AND CONCLUSION

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

The NSBS's statutory regime may allow it to promulgate amended regulations that could potentially preclude TWU graduates from being articling clerks in Nova Scotia. TWU respectfully submits that such a move would be unfair and, in the circumstances, unsupportable in law, for the following reasons:

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

more perniciously, argue that its Christian principles make it incapable of doing so. There is no legitimate basis for either position.

- (e) It is not open for the NSBS to welcome and accept TWU's graduates and at the same time refuse to accredit TWU's School of Law. Any attempt to do so imposes burdens and additional obligations on religious grounds for no demonstrably justifiable reason.
- (f) To paraphrase the Supreme Court of Canada, the continuing focus on "discriminatory practices" is a focus on TWU's sectarian nature and is "disturbing"<sup>91</sup>. A decision to reject TWU graduates, or place additional burdens on them based solely on the one impugned element of the Community Covenant, ought not be adopted or even countenanced by the NSBS.

TWU welcomes the opportunity to further address and discuss these, or any other relevant issues, with the NSBS Executive Committee and/or the NSBS Council.

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<sup>91</sup> *TWU v. BCCT*, para. 42

**SUBMISSION OF**  
**TRINITY WESTERN UNIVERSITY (“TWU”)**  
**To**  
**NOVA SCOTIA BARRISTERS’ SOCIETY (“NSBS”)**  
**EXECUTIVE COMMITTEE**

**Date: February 28, 2014**

**1. INTRODUCTION**

The NSBS is charged with regulating the legal profession in Nova Scotia in the public interest. It, together with all other law societies in Canada, approved a national requirement that reflects their collective view as to what is necessary to ensure that graduates of law degree programs in Canada are competent to practice and meet their professional and ethical obligations.

TWU has met all of the criteria of that national requirement and its proposed School of Law has also been approved by a Special Advisory Committee of the Federation of Law Societies (the “Federation”) that was charged with considering aspects of its Community Covenant. Its proposed School of Law has also received approval after extensive review by the Ministry of Advanced Education (the “Ministry”).

Unfortunately, much of the opposition to TWU’s proposal is based on prejudicial caricatures and unfair assumptions about TWU and the members of its religious community. This submission is intended to meet those objections and to provide accurate facts with respect to TWU. It is also intended to be a starting point for any further dialogue that the NSBS wishes to have with TWU to better understand it, and the proposal it made to the Federation for approval of its School of Law program. TWU welcomes this opportunity, including the time being set aside for TWU representatives to meet with the NSBS Executive Committee on March 4, 2014.

## 2. TRINITY WESTERN UNIVERSITY

### (a) *Introduction*

TWU was originally founded in 1962 as a junior college. In 1969, the B.C. Legislature passed the *Trinity Junior College Act*<sup>1</sup>, mandating that TWU's education would be provided "with an underlying philosophy and viewpoint that is Christian". The Legislature gave TWU the privilege to grant degrees in 1979<sup>2</sup> and in 1984 TWU became a member of the Association of Universities and Colleges of Canada.

In 1985, the Legislature changed the name of the college to TWU and granted it authority to offer graduate degrees<sup>3</sup>.

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

Many of TWU's students are in its professional programs. TWU has a professional School of Nursing (M.Sc.N., B.Sc.N.), which was established in 1993 and is approved by the College of Registered Nurses of British Columbia<sup>4</sup>.

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

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

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

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

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<sup>1</sup> S.B.C. 1969, c.44

<sup>2</sup> *Trinity Western College Amendment Act, 1979*, S.B.C. 1979, c.37

<sup>3</sup> *Trinity Western College Amendment Act, 1985*, S.B.C. 1985, c. 63

<sup>4</sup> TWU is a member of the Canadian Association of Schools of Nursing

**(b) Academic Excellence**

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

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

Similar to some of the public universities in British Columbia TWU has been granted “exempt” status by the Ministry. In order to obtain this status, a university must demonstrate that it has “appropriate governance mechanisms, demonstrated organizational capacity for degree granting and a proven track record.”<sup>5</sup> Having achieved exempt status means that TWU is able to use an expedited process for approval of most new undergraduate and graduate (masters) level programs. (This expedited process did not apply to the J.D. program, which received a full and complete review as described below).

Professors at TWU are committed to high-quality teaching. Due to small class size, students regularly interact with their professors. TWU is a community-oriented campus and professors regularly interact with students outside the classroom. This same successful formula will be used in the School of Law.

The University provides a stimulating environment for research. It has an Office of Research which assists faculty research and coordinates grant applications. Faculty members are funded through the Tri-Council Agencies, as well as through a wide variety of foundations and grants. This office holds regular professional development workshops to assist faculty in obtaining grants, publishing their research results and engaging in collaborative research.

TWU has three Canada Research Council Chairs and is currently developing a fourth. TWU joined the Royal Society of Canada in 2009.

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<sup>5</sup> “Institutions with Exempt Status would still require Ministerial consent / approval for each new degree. However, once the institution achieves Exempt Status, the quality assessment process would be expedited so that new degree proposals, up to the degree level of exemption specified, would be forwarded directly to the Minister for review and consent / approval. As such, Exempt Status represents an exceptional condition. For these reasons, Degree Quality Assessment Board (DQAB) applies the highest standards and expectations of quality in its review of applications for Exempt Status.” *Exempt Status Criteria and Guidelines*, p.1: [http://www.aved.gov.bc.ca/degree-authorization/documents/exempt\\_status.pdf](http://www.aved.gov.bc.ca/degree-authorization/documents/exempt_status.pdf)

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

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

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

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

A number of submissions made to the NSBS, in written form as well as orally on February 13, exemplified the characteristics that TWU seeks to instill in its students:

- “...my experience at TWU enhanced my competency by instilling in me a deep love for all people and desire to serve humanity through advocacy.”<sup>6</sup>
- “The TWU students I knew were passionate about making a difference in the world and deeply committed to social justice issues.”<sup>7</sup>
- “These alumni of Trinity are a remarkable group of young people - intelligent, globally aware citizens, with a profound commitment to constructive civic engagement at many different levels, and a deep passion for social justice, expressed in concrete and creative ways.”<sup>8</sup>

TWU is understandably very proud of these graduates. They exhibit the precise results that TWU strives to achieve through its educational programs.

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<sup>6</sup> Jessie Legaree, JD Candidate 2015, University of Toronto - February 6, 2014 letter to NSBS

<sup>7</sup> Mark Witten, lawyer - February 10, 2014

<sup>8</sup> Mark Harris, Senior Pastor - undated written submission and similar comments made at oral hearing on February 13, 2014 (p. 139 of transcript)

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

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

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

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

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

As recognized by the Supreme Court of Canada: “it can reasonably be inferred that the B.C. Legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985.”<sup>9</sup> There is no rational argument that such a religious educational community is somehow against the public interest and virtually all of TWU’s opponents properly concede this point.

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

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

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

...

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

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<sup>9</sup> *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 (“*TWU v. BCCT*”) at para. 35.

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

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

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

...

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

...

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

...

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

...

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

We have long since given up on the belief of trying to assimilate all Canadians to a single point of view."<sup>10</sup>  
[emphasis added]

TWU wholeheartedly adopts these statements as incorporating the ideals that it seeks to imbue in all of its students and graduates.

There is no question that TWU has a right to exist as a religiously based educational community and that this right is protected by the *Charter of Rights and Freedoms*. There is also no question that the members of TWU's community have the right to freely express their religious beliefs and to associate together to put them into practice<sup>11</sup>. The question to be answered by the NSBS is whether, in light of these rights, there is a demonstrably justifiable reason for denying TWU's graduates the right to enrol as articulated clerks in the NSBS. For the reasons set out below, TWU respectfully submits that on a proper analysis, no such reason exists.

<sup>10</sup> Oral submissions of Chris Roper, February 13, 2014 (pp. 210, 211, 212 and 217)

<sup>11</sup> *TWU v. BCCT*, para. 32

### 3. THE SCHOOL OF LAW PROPOSAL

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

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

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

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

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

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

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

TWU has assembled a very strong and very solid proposal for a new School of Law. The School of Law will have a focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas. The School of Law will offer a J.D. degree based on an integrated curriculum that includes the development of core competencies needed for the practice of law. In keeping with the nature of TWU, specializations will be offered in charities and social justice law and in small business and entrepreneurial law.

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

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

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

TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course (LAW 602), Ethics and Professionalism. A summary description of Law 602 in TWU's proposal states:

Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. *It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.* [Emphasis added]

Before the proposal was submitted to the Federation and the Ministry, it was comprehensively reviewed by two highly qualified external reviewers: Albert H. Oosterhoff, LL.B., B.A., LL.M., Professor Emeritus (University of Western Ontario) and Lyman R. Robinson, Q.C., B.A., LL.B., LL.M., Professor Emeritus (University of Victoria). Their external reviews were included with the proposal. Both concluded that the proposed program was a good one. Mr. Oosterhoff concluded that "the proposal is a sound one and highly relevant in the current Canadian market." Mr. Robinson specifically complimented the program's "emphasis on ethical standards and professionalism and the development of the legal skills and competencies".

All of the detail of the proposal, laid out in over 160 pages, cannot be adequately summarized here. TWU has provided or offered to provide a copy of the proposal to all law societies in Canada, including NSBS, updated to implement all of the recommendations of the Federation and the Ministry. **TWU strongly submits that, if the NSBS contemplates any decision that may result in non-approval of TWU's J.D. program for the purposes of admission to the practice of law in Nova Scotia, all members of the NSBS Council should first read and understand the full proposal, together with the Federation's reports on the proposal.** Without doing so, members of the NSBS Council cannot understand the quality and strength of TWU's proposal.

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

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

The Federation's approval committee was comprised of senior members of the bar from across the country, each of whom possesses specific qualifications and experience relevant to the role of assessing TWU's proposal and law school programs. Contrary to the statement of Professor Perryman during the NSBS oral hearing<sup>12</sup>, Catherine S. Walker, QC, a former president of the Nova Scotia Barristers' Society and Federation Council member for Nova Scotia, was a member of the approval committee<sup>13</sup>.

The committee's review began during a teleconference in September of 2012. It continued during six days of in-person meetings and five conference calls between January and December of 2013 (see para. 34 of the final report). The committee was assisted in its work by Professor Bruce Elman of the University of Windsor's Faculty of Law, who provided advice on the administration of the proposed law school and the teaching of law (see para. 41 of the final report)<sup>14</sup>. Professor Elman is a former law dean.

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

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

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

The committee concluded that TWU's proposal was "comprehensive and is designed to ensure that students acquire each competency included in the national requirement" (para. 47). The

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<sup>12</sup> February 13, 2014 oral hearing - "And my issue ... or one issue that I have is that there was not a Nova Scotian on that panel" (p. 82 of transcript, lines 2-3)

<sup>13</sup> Report on Trinity Western University's Proposed School of Law Program, para. 12

<sup>14</sup> Again, this is contrary to the information provided to the NSBS in oral submissions made by Professor Downie on February 13, 2014 - "Both the Approval Committee and the Special Advisory Committee should have had but did not have legal academics on them." (transcript, pp. 55-56).

committee expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching. It found that TWU met that issue and that it was not a deficiency in the proposal. It specifically referenced and relied on TWU's statements that:

- TWU is committed to fully and appropriately addressing ethics and professionalism;
- TWU recognizes and acknowledges its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of both substantive law and ethics and professionalism;
- TWU acknowledges that human rights laws and Section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation and that “the courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.”

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

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

There were only two possible outcomes of the committee's work: “preliminary approval” and “not approved”. TWU was very pleased that its proposal received “preliminary approval”. This preliminary approval will be followed by an annual review process so that TWU will be scrutinized through all phases of the School of Law's establishment, as it hires a dean and faculty, as students enter and progress through the curriculum and as it produces its first graduates. That process will ensure that the national standard is met and that TWU lives up to its commitments. The Federation has a careful comprehensive process that individual law societies can, and should, trust and depend on.

*(c) Federation's Special Advisory Committee*

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

Contrary to a number of representations made to the NSBS<sup>15</sup>, it is simply untrue that the public did not have input into the considerations of the Federation, including those of the Special Advisory Committee. There were significant public representations and submissions made to the Federation.

The Special Advisory Committee reviewed all of the submissions made to the Federation, together with TWU's response<sup>16</sup>. It should be noted that these submissions included the same arguments, from many of the same opponents, as are now presented to law societies across Canada in opposition to TWU's School of Law.

The Special Advisory Committee also considered the relevant law, including the Supreme Court of Canada's decision in *TWU v. BCCT*. It obtained a legal opinion from John Laskin, QC of Tory's, who reviewed the arguments made against TWU's proposal, including the paper published by Professor Elaine Craig. After thorough review, he concluded that *TWU v. BCCT* is binding law and applicable in these circumstances. Specifically, he opined that "if the TWU teachers program could be relied on to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same."

To quote Mr. Laskin:

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

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

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

In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public

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<sup>15</sup> See for example: (a) February 13, 2014 oral hearing, comments by Jessica Lyle (p. 112); and (b) written submissions of R. MacDonald and A. Sakalauskas, February 10, 2014, p. 10. These comments were made to taint the Federation's thorough review process and were both incorrect and unfair to the Federation.

<sup>16</sup> Report of Special Advisory Committee, para. 8

interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

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

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

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

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

The expert review panel consisted of former and existing faculty of the law schools at Queen's University, University of British Columbia, University of Victoria, University of Alberta, University of Windsor and Thompson Rivers University. Among these panel members were former deans of the law schools of University of Alberta, Queen's, UBC, and Windsor. The composition of this review panel completely eviscerates the arguments made by opponents of TWU's School of Law that its proposal was not sufficiently reviewed by legal academics<sup>17</sup>.

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

On April 17, 2013, the expert review panel provided its report to the Ministry. This report is not public, but was provided on a confidential basis to TWU. TWU responded to the report on May 17, 2013. The expert panel provided its advice and the DQAB, in its meeting on June 10, 2013, found that TWU's proposal met all quality assessment criteria. As did the Federation's Special Advisory Committee, the expert panel and thus the DQAB considered the specific character of TWU as a religious educational community, including consideration of the Community Covenant.

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

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<sup>17</sup> For example, Professor Downie on February 13, 2014 stated "Both the Approval Committee and the Special Advisory Committee should have had but did not have legal academics on them." (transcript, pp. 55-56).

*(e) Conclusions from the Reviews*

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

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

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

#### **4. MAINTAINING THE NATIONAL STANDARD**

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

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

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

of the Common Law Degree Implementation Committee were approved by each of the law societies and the Approval Committee was established in January, 2012.

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

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

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

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

The Federation's application of the national standard to TWU's School of Law, and its findings, should not be lightly ignored or dismissed. The work of the Federation in reviewing proposed faculties of law at Canadian universities is not merely an issue of delegation of authority by law societies, as has been suggested by a number of opponents of TWU's School of Law. There are formal agreements in place between law societies and governments establishing lawyer mobility, as well as legislation implementing such agreements.

The law societies of each Canadian province entered into the National Mobility Agreement ("NMA") in 2002 (this was complemented by the Territorial Mobility Agreement in 2006)<sup>18</sup>. The NMA is aimed at facilitating temporary and permanent mobility of lawyers between common law provinces.

Section 32<sup>19</sup> of the NMA provides that each law society "will require no further qualifications for a member of another governing body to be eligible for membership" other than: (a) entitlement to practice in the lawyer's home jurisdiction; (b) good character and fitness on the standard ordinarily applied to applicants for membership; and (c) other qualifications that

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<sup>18</sup> The 2013 NMA was signed by all law societies and the Chambre des notaires du Quebec to replace the existing NMA and the Quebec Mobility Agreement. It will come into effect once implemented by each law society.

<sup>19</sup> The same provision is s.33 of the 2013 NMA.

ordinarily apply. As such, under the NMA, TWU School of Law graduates will have the right to have their qualifications recognized across all common law jurisdictions once they have been admitted to practice by any law society in Canada, as can now occur in at least Alberta and Saskatchewan.

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

In 2009, the Agreement on Internal Trade (“AIT”)<sup>20</sup> was amended to address barriers to labour mobility in professions in Canada. Chapter 7 of the AIT now requires mutual recognition of the certification of workers in regulated occupations<sup>21</sup>, subject to narrow exceptions. Each province is required by the AIT to ensure compliance with Chapter 7 by “governmental bodies and by non-governmental bodies that exercise authority delegated by law”, including law societies.<sup>22</sup>

Article 706(1) of the AIT expressly states:

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

While article 706(3) and article 706(4) permit regulators, as a condition of certification of any worker, to impose certain requirements related to payment of fees, background checks, evidence of good character and demonstration of knowledge, such requirements must be the same as or substantially similar to, but no more onerous than, requirements imposed by the regulatory authority as part of its normal certification process. Additionally, such requirement must “not create a disguised restriction on labour mobility”.<sup>23</sup>

Article 708 allows parties to impose additional measures of certification, provided that “the purpose of the measure is to achieve a legitimate objective; the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and the measure does not create a disguised restriction to labour mobility”.<sup>24</sup> Such measures ***cannot be approved by regulatory authorities***. They must be approved by the applicable provincial or territorial government.<sup>25</sup>

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<sup>20</sup> The AIT is an agreement between the Federal government, all provincial governments and all territorial governments except Nunavut.

<sup>21</sup> *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at [http://www.ait-aci.ca/labour\\_en/LM\\_Background-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Background-draft_090302revised.pdf)

<sup>22</sup> Article 703(1)

<sup>23</sup> Article 706(3)(i) and Article 706(4)(f)

<sup>24</sup> Article 708(1)

<sup>25</sup> Article 708(3)

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

- public security and safety;
- public order;
- protection of human, animal or plant life or health;
- protection of the environment;
- consumer protection;
- protection of the health, safety and well-being of workers;
- provision of adequate social and health services to all its geographic regions; and
- programs for disadvantaged groups.<sup>26</sup>

Article 708(2) cautions that “a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective”.<sup>27</sup>

In an Article 1703 Panel decision regarding a complaint by Manitoba regarding Ontario’s imposition of additional requirements for certified general accountants seeking certification to practice public accounting in Ontario, the Panel considered the objectives of the AIT and the 2009 amendments to Chapter 7 and made several findings with respect to the application of Article 708, including:

- The use of Article 708 is an exception to the obligations of Chapter 7 and specifically Article 706(1), and “should be narrowly construed and strictly applied”,<sup>28</sup>
- the bar to justify exceptions to the objective of labour mobility is a “high one”,<sup>29</sup> and
- the onus is on the party seeking to impose the additional requirement to establish that a legitimate objective exists and that the measure is necessary to meet the legitimate objective.<sup>30</sup>

The Nova Scotia legislature enacted the *Internal Trade Agreement Implementation Act* (“AIT Implementation Act”), the purpose of which was to “implement the [AIT]... and thereby reduce or eliminate barriers to the free movement of persons, goods, services and investments and

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<sup>26</sup> Article 711(1)

<sup>27</sup> Article 708(2)

<sup>28</sup> *Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario’s Notice of Measure with respect to Public Accountants* at p. 10, available at [http://www.ait-aci.ca/index\\_en/dispute.htm](http://www.ait-aci.ca/index_en/dispute.htm)

<sup>29</sup> *Ibid.* at p. 14

<sup>30</sup> *Ibid.* at p. 11

promote an open, efficient and stable domestic market ...”.<sup>31</sup> It expressly ratified the AIT.<sup>32</sup> In the Nova Scotia Legislature debate with respect to the AIT Implementation Act in bill form, Mr. Terence Donahoe, the honorable member for Halifax Citadel, pointed out that ratifying the AIT meant being “prepared, as a province, to abide by, to live by and be subject to every one of the provisions appearing in the [AIT]”.<sup>33</sup>

Nova Scotia also has the *Fair Registration Practices Act*<sup>34</sup> (“FRPA”), the focus of which is to “make sure applicants understand how registration practices work within regulated occupations, and to make sure those practices are fair, transparent, and accountable”.<sup>35</sup> The FRPA states that it “recognizes the commitments the Government of the Province has made under the [AIT] to facilitate the free movement of persons, goods, service and investments throughout Canada, as implemented by the Province under the Internal Trade Agreement Implementation Act”.<sup>36</sup>

As a consequence of these agreements and legislation, approval of TWU’s School of Law cannot be treated as merely a local or provincial matter. National mobility, including the NMA, the AIT and related legislation, was a significant motivating factor in the development of national standards for approval of legal education in Canada:

Only individuals who follow a rigorous training program and demonstrate their suitability to serve the public with a high level of competence, are eligible to join Canada’s legal profession and be licensed by a Canadian law society to practise law.

Because Canada’s national mobility regime requires each law society to recognize the credentials of members of the legal profession wherever they were initially licensed to practise law in Canada, the Federation of Law Societies of Canada is leading initiatives to ensure that admission standards are consistent across the country.<sup>37</sup>

As a result, the NSBS can only ignore the approval granted by the Federation in very narrow circumstances and for legitimate and demonstrably justifiable reasons. To the extent that a decision by the NSBS seeks to impose additional measures of certification as contemplated under Article 708 of AIT, those measures must be approved by the Nova Scotia government.

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<sup>31</sup> *Internal Trade Agreement Implementation Act*, Stats N.S. 1995-96, c. 8, s. 2

<sup>32</sup> *Ibid.*, s. 6

<sup>33</sup> Hansard, The Nova Scotia Legislature, Fifty-sixth General Assembly, Third Session, available at [http://nslegislature.ca/index.php/proceedings/hansard/C60/56\\_3\\_47/](http://nslegislature.ca/index.php/proceedings/hansard/C60/56_3_47/)

<sup>34</sup> Stats N.S. 2008, c. 38

<sup>35</sup> “Recognition of Prior Learning (RPL) & Labour Mobility”, *Nova Scotia Canada*, <http://novascotia.ca/lae/RplLabourMobility/>

<sup>36</sup> *Fair Registration Practices Act*, Stats N.S. 2008, c. 38, s. 3

<sup>37</sup> “National Admission Standards”, *Federation of Law Societies of Canada*, <http://www.flsc.ca/en/national-admission-standards/>

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

If a law society were to refuse to certify a lawyer applying to transfer from another Canadian jurisdiction on the basis that the lawyer had obtained his or her law degree from TWU, that law society would be acting contrary to the requirement of mutual recognition of the certification of workers under Article 706(1) of the AIT and s. 32 of the NMA. It is difficult to see how such a law society could frame an additional measure to address this and justify it as a legitimate objective exception under Article 708 of the AIT.

If a TWU law degree is acceptable for a transferring lawyer, it cannot reasonably be concluded that a TWU law degree is insufficient for admission as an articling clerk in Nova Scotia. This would be an absurd result.

Additionally, a law society that refuses to recognize a degree from TWU's School of Law, despite the Federations' approval in accordance with the Federation's national standards, and despite other Canadian law societies' acceptance of the sufficiency of the Federation's approval, is adopting an occupational standard in a manner that is not conducive to labour mobility, contrary to Article 707 of the AIT.<sup>38</sup>

The NSBS has been asked by many opponents of TWU's School of Law to refuse approval of TWU graduates based on the religious beliefs on which TWU is founded. This was clearly advocated by one opponent as follows:

...regardless of the calibre of education offered at Trinity Western University, its School of Law should not be publicly accredited in Nova Scotia.<sup>39</sup>

Such an approach would seriously damage the national approach to approval of legal education and mobility rights of lawyers in Canada. Additionally, the NSBS cannot properly take that approach without due regard to its obligations under the NMA, the AIT Implementation Act and the FRPA. It certainly cannot take such an approach that would impose additional restrictions on TWU educated lawyers and articulated students unless they specifically meet a "legitimate objective" as defined in Article 711 of the AIT. In short, it is not legally appropriate for the NSBS to disapprove of TWU's School of Law because it does not agree with tenets of the religious beliefs on which TWU is founded or how those beliefs are realized through the Community Covenant.

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<sup>38</sup> Occupational standards are addressed in Article 707 of AIT. While each party to AIT maintains its right to adopt occupational standards and to establish the level of protection it considers appropriate in the circumstances, the "[p]arties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards". As explained in the Backgrounder, "[w]hen changing a standard or creating a new standard, provinces and territories shall adopt, to the extent possible and where practical, occupational standards based on common interprovincial standards or, at least, in a manner conducive to labour mobility. They shall notify and afford other provinces and territories the opportunity to comment on proposed new or revised standards." *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at: [http://www.ait-aci.ca/labour\\_en/LM\\_Backgrounder-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Backgrounder-draft_090302revised.pdf)

<sup>39</sup> Tajas B. Virdi Madhur, January 22, 2014

## 5. NATURE OF DECISION BEFORE NSBS

For the reasons articulated, the statutory authority of the NSBS with respect to the protection of the public interest should be read and understood in conjunction with the AIT Implementation Act and the FRPA.

Section 4 of the *Legal Profession Act* of Nova Scotia indicates that the purpose of the NSBS is to uphold and protect the public interest in the practice of law. In pursuing its purpose, s.4(2)(a) requires the NSBS to “*establish standards* for the qualifications of those seeking the privilege of membership in the Society”.

Under s.5(2), no person “may become a member of the Society... unless the Council is satisfied that the person *meets the requirements established by the regulations*”. Under s.5(3), “a person who *meets the requirements established by the regulations* for membership in the Society as a lawyer *shall* be called to the Bar...” [All emphasis added.]

The regulations are to be made by Council under the authority granted by these sections of the *Legal Profession Act* and under s.5(8), which expressly authorizes Council to establish “regulations to be met by members, including educational, good character and other requirements, and procedures for admitting ... persons as members of the Society...”

In terms of its obligation to protect the public and pursuant to its statutory authority, the NSBS has established regulations for the enrolment of law graduates as articling clerks in Nova Scotia. Specifically, Regulation 3.3.1 requires an applicant, *inter alia*, to “be of good character”, be a “fit and proper person” and “have a law degree”.

Under Regulation 3.1(b), “law degree” means “a bachelor of laws degree or a juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree, or an equivalent qualification.”

Since the Federation has approved TWU’s School of Law program, its graduates will have a “law degree” as contemplated by the Regulations and will therefore meet the NSBS requirement for enrolment as an articled clerk in Regulation 3.3.1(d). This is appropriate under the lawyer mobility provisions of the NMA, the AIT Implementation Act and the FRPA.

While Regulation 3.3.2 purports to authorize the NSBS Executive Director to deny the application of a potential articled clerk for “reasons other than good character or fitness” where “it is in the public interest to do so”, it is difficult to understand how he could reasonably do so for *all* TWU graduates when the TWU J.D. remains a “law degree” under Regulations 3.1 and 3.3.

TWU inquired whether the NSBS was contemplating a change to Regulation 3.1 that would have the effect of revoking the approval of its J.D. program currently enjoyed under the Regulation. TWU was informed by the NSBS on February 10, 2014 that “it would be incorrect to conclude that the consultation is designed to consider revoking Regulation 3.1 and it would be incorrect to conclude that the proposed TWU School of Law has been approved in Nova Scotia.” Given the statutory and regulatory framework, TWU does not fully understand what decision or decisions (if any) are being contemplated by the NSBS as a result of the public consultation it has undertaken. Presumably, the NSBS may make a decision, whether by amendment to the Regulations or otherwise, that would preclude TWU graduates from becoming practicing lawyers in Nova Scotia.

TWU did request confirmation of the “public and other interest issues” that NSBS considers relevant to its deliberations and was initially told by letter on February 10 that the NSBS would provide it “with a statement of the public interest and other issues that have been identified ... and which will therefore be considered by the NSBS” no later than February 18 so that TWU would be able to fully address them.

Instead, on February 18, TWU was advised by further letter to “review all of the submissions and the attached transcript [of the February 13 oral hearing]” and to respond to “all of the matters that have been raised.” The written submissions fill a large binder and the transcript is 237 pages long. A great many issues are raised, both legal and otherwise. It is, frankly, impossible for TWU to respond comprehensively to each one. That said, TWU will attempt to address the major themes that arise from its review of the submissions received by the NSBS to February 13.

Some of the written and oral submissions made to the NSBS on February 13, 2014 suggested that the NSBS could make a decision not to approve TWU’s School of Law, but still recognize TWU School of Law graduates. With respect, these submissions do not reflect either the statutory framework under which NSBS operates or the Regulations already adopted by it. As noted, the *Legal Profession Act* authorizes the NSBS to “make regulations” establishing requirements to be met by applicants for admission to the practice of law. The NSBS has done so through Regulations 3.1 and 3.3.

This consultation by the NSBS must therefore be about whether TWU graduates will be admitted to the practice of law in Nova Scotia and any “disapproval” of TWU’s School of Law by NSBS would be directed at rejecting the validity of a TWU J.D. for such applicants.

When and if the NSBS debates a specific resolution or potential decision, TWU respectfully asks that it be informed of, and be given the opportunity to address the specific concerns relevant to that resolution or potential decision.

For the purposes of this submission, TWU will address the question of whether there is any relevant or legitimate basis to deny the graduates of its School of Law the right to become practicing members of the NSBS.

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

It will come as no surprise that TWU strongly submits that there is no legitimate basis to deny its graduates the right to become full members of the NSBS and to practice law in Nova Scotia. The Federation, through its Approval Committee and Special Advisory Committee, and the Ministry, have both concluded that TWU's proposal should be approved. As explained above, under the NMA and AIT and the AIT Implementation Act and the FRPA, the Federation's conclusions cannot be treated as merely advisory in nature. In the modern context of lawyer mobility, the Federation's conclusion can only be ignored for legitimate reasons within the confines of those agreements and statutes.

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

TWU did not ask the Federation or the Ministry to endorse or agree with the religious beliefs on which it is based. It is similarly not asking any law society to endorse or agree with them. It asks only that those religious beliefs be tolerated as they should be in any equal, just and pluralistic society. Law societies should not be expressing any opinion or official position on the validity or acceptability of religious beliefs.

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

TWU submits that there is no basis upon which the NSBS may deny TWU graduates the ability to practice law in Nova Scotia and will address what appear to be the main arguments made in opposition to TWU's School of Law.

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

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

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

- “I strongly doubt the TWU will be able to actually deliver proper legal education to its students on areas of freedom of thought and expression and ideas about equality in contemporary Canadian Society. ...[The prospect that] a graduate of TWU ... might ...one day be elevated to the bench .. [is] unacceptable”.<sup>40</sup>
- “I fear that the education that TWU’s students receive on these important principles will be shallow, self-serving and hypocritical.”<sup>41</sup>
- “[TWU students] could not be expected to develop an understanding of equality...”<sup>42</sup>
- “[TWU] would skew the teaching of law ... It is difficult to imagine how graduates of such a program would be competent, academically and morally, to articulate and practice law in Nova Scotia.”<sup>43</sup>
- “A student churned out of this school will surely have a biased opinion formed by an establishment that draws its [sic] human rights from the dark ages.”<sup>44</sup>
- “I suggest that an institution founded on prejudice and bigotry cannot be considered capable of adequately teaching [sic] law degree program.”<sup>45</sup>

These statements and arguments are wrong at law, intellectually flawed and deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.

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

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

As noted above, TWU’s program of study has two required courses on professionalism and ethics (LAW 508 and LAW 602), the latter of which will specifically challenge students to “reconcile their personal and professional beliefs within a framework of service to clients and

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<sup>40</sup> Jonathan Shapiro, December 22, 2013 email

<sup>41</sup> Jack Townsend, email of January 9, 2014

<sup>42</sup> Letter from Professors Downie, Devlin, Cotter and Kalajdzic, January 21, 2014, page 7

<sup>43</sup> Jennifer Taylor, email of January 24, 2014

<sup>44</sup> Gary Nelson, email of February 3, 2014

<sup>45</sup> Peter Leslie, email of February 4, 2013

community while respecting and performing their professional obligations and responsibilities”<sup>46</sup>. This is, of course, the obligation of every practicing lawyer in Canada.

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

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

These opponents must be suggesting that *the fact of* the Community Covenant undermines the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be “equipped to deal with students” and be unable to “offer comfort and support to the students”<sup>47</sup>. The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU’s Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>48</sup>

TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of ethics and professionalism. TWU unreservedly affirms the dignity and value of all individuals irrespective of their sexual orientation and agrees that this principle forms part of the fabric of professional ethics and the rule of law. Each graduate of TWU’s School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Community Covenant.

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<sup>46</sup> TWU Proposal, page 22. See also full description of course at page 93

<sup>47</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 121. Note that when intervening in *TWU v. BCCT*, Egale Canada made similar arguments

<sup>48</sup> *TWU v. BCCT*, paras. 32-33

As evident from the submissions received by the Federation and the NSBS, there are many students currently at public law schools that hold these same religious beliefs<sup>49</sup>. They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one can seriously suggest otherwise. However, if the opponents' line of reasoning prevails, it opens the door to denying accreditation to individuals on the basis of religious belief. While some may suggest this is alarmist, the Supreme Court of Canada specifically addressed this concern in *TWU v. BCCT*:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church.<sup>50</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>51</sup>

It would clearly be abhorrent to suggest that lawyers holding similar religious views to those addressed in the Community Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs<sup>52</sup>.

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

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<sup>49</sup> See letter from Jessie Legaree, JD Candidate 2015, University of Toronto – February 6, 2014. The Federation also received a letter from “Christian law students across Canada” dated March 10, 2013 indicating that the students “hold [the Biblical principles on which TWU's Covenant is based] trust regardless of the law school [they] attend” and a letter from current UBC law students dated March 19, 2013 where they make this same point: “Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law.”

<sup>50</sup> *TWU v. BCCT*, para. 33

<sup>51</sup> *TWU v. BCCT*, para. 36

<sup>52</sup> See *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

*(b) Different or Additional Requirements for TWU Graduates*

Some opponents have suggested that TWU graduates should be admitted to the practice of law in Nova Scotia, but only after going through an “extra step”<sup>53</sup>, possibly through the National Committee on Accreditation (“NCA”). Such an approach seriously undermines, or is at least radically inconsistent with, a decision not to follow the national accreditation process. With respect, it is difficult to understand on what principled basis the NSBS would recognize the acceptance of TWU graduates by the Federation’s processes if they apply individually, but not accept the Federation’s conclusions that TWU will properly train lawyers for practice.

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

Similarly, others have suggested that TWU graduates require more “due diligence” because they signed the Community Covenant<sup>54</sup> or that they will have a “significant hurdle to overcome”<sup>55</sup>.

Again, this reasoning is deeply offensive to lawyers and law students holding religious beliefs similar to those embodied in the Community Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience, or be subjected to an additional entrance requirement, in order that they be able to practice law.

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

Again, this point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to complete additional requirements outside of TWU<sup>56</sup>. The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. *Students are*

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<sup>53</sup> Oral submissions of Professor Pothier, February 13, 2014 (transcript, pp.66-67)

<sup>54</sup> Oral submissions of Amy Sakulauskas, February 13, 2014 (transcript, pp.44-45)

<sup>55</sup> Letter from Ray Adlington, Managing Partner/CEO of McInnes Cooper, February 6, 2013

<sup>56</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118

*likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.*<sup>57</sup>  
[Emphasis added]

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

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

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.<sup>58</sup>

...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>59</sup>

...

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>60</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.<sup>61</sup>

The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be determinative in the NSBS's deliberations.

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<sup>57</sup> *TWU v. BCCT*, para. 32

<sup>58</sup> *TWU v. BCCT*, para. 19

<sup>59</sup> *TWU v. BCCT*, para. 33

<sup>60</sup> *TWU v. BCCT*, para. 35

<sup>61</sup> *TWU v. BCCT*, para. 36

***(c) Appearance of Acceptance of “Discriminatory Practices”***

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

These opponents ask NSBS to “send a message”<sup>62</sup> that the religious character of the TWU community as articulated in the Community Covenant is unacceptable in Nova Scotia. Examples of these arguments include:

- “It is simply the appearance of acceptance that will send the message that Nova Scotia accepts the views of TWU...”<sup>63</sup>
- “...regardless of the calibre of education offered at Trinity Western University, its School of Law should not be publicly accredited in Nova Scotia”<sup>64</sup>

Opponents articulate this objection in a variety of ways, but it amounts to the same thing: they ask the NSBS not to accredit or recognize TWU graduates because of the nature of TWU as a religious educational community, maintaining a traditional Christian view of marriage. This is not, as suggested by some, merely a separate “institutional test”<sup>65</sup>, that is distinct from an assessment of the quality and qualifications of graduates. It is all about (and certainly should be about) whether TWU can adequately and appropriately educate lawyers. TWU is not seeking agreement with, or approval of, the religious beliefs of its community. Neither should the NSBS withhold recognition of TWU graduates simply because some of its members do not agree with or approve of the religious beliefs of TWU.

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

All this to say that even if it was open to the BCCT to base its decision on perception rather than evidence of actual discrimination or of a real risk of discrimination, there is no reason to give any deference to that decision.<sup>66</sup>

...

For the BCCT to have properly denied accreditation to TWU, it should have based its concerns on specific evidence. It could have asked for reports on student teachers, or opinions of school principals and

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<sup>62</sup> Linda Patriquin, email of February 4, 2014

<sup>63</sup> Jonathan Shapiro, email of December 23, 2013

<sup>64</sup> Tajas Vidri Madhur, email of January 22, 2014

<sup>65</sup> Oral submissions of Amy Sakalauskas, February 13, 2014 (transcript, p. 44)

<sup>66</sup> *TWU v. BCCT*, para. 19

superintendents. It could have examined discipline files involving TWU graduates and other teachers affiliated with a Christian school of that nature. Any concerns should go to risk, not general perceptions.<sup>67</sup>

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

It is simply inappropriate to deny accreditation of graduates based on perceptions. TWU does not ask the NSBS or any other regulatory body to agree with its religious principles. This was recognized in the thoughtful comments of Kevin Kindred made to the NSBS:

And I would remind you that your question is not whether to endorse them and endorse their views. And if it were, I would hope that you would not ... But you are not being asked to endorse them.<sup>68</sup>

TWU asks only that its program be assessed on proper criteria, not a general sense that the religious beliefs on which it is founded are wrong, or as some have said, are "stupid and very silly"<sup>69</sup> or "skewed" and "twisted"<sup>70</sup>. These people are entitled to their views on TWU's religious beliefs, as TWU and the members of its community are entitled to theirs. But such views are not a proper basis upon which TWU's graduates should be refused admission to the practice of law in Nova Scotia.

To paraphrase the Supreme Court of Canada, the freedom of religion of TWU and its students is not accommodated if the consequence of its exercise is the denial of the right to full participation in the bar of Nova Scotia.<sup>71</sup>

#### ***(d) Diversity in the Legal Profession and Academic Freedom***

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

There is nothing inimical to Canadian society contained in the Community Covenant. Its contents are to be expected in the context of an evangelical Christian organization. As noted by a number of others, the Community Covenant promotes positive values, expecting community members to "treat all persons with respect" and "cultivate Christian virtues such as love, joy,

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<sup>67</sup> *TWU v. BCCT*, para. 38

<sup>68</sup> Oral submissions of Kevin Kindred, February 13, 2014 (transcript p. 155)

<sup>69</sup> Oral submissions of Kevin Kindred, February 13, 2014 (transcript p. 154)

<sup>70</sup> Gary Nelson, email of February 3, 2013

<sup>71</sup> *TWU v. BCCT*, para. 35

peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice”. The legal profession can always use lawyers inculcated in all of these values. All opponents focus on only one aspect of the Community Covenant, ignoring the balance of its contents and thereby intimating that they are unobjectionable.

As stated by Dickson J. (as he then was) in *R v. Big M Drug Mart*, “a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct”<sup>72</sup>. As then noted in *TWU v. BCCT*, “the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected”<sup>73</sup>. A TWU School of Law would enhance, not undermine, diversity in legal education in Canada.

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

Some opponents have also questioned academic freedom at TWU. TWU maintains a strong policy on academic freedom that was affirmed by British Columbia’s Degree Quality Assessment Board in 2004. TWU is a member of Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a single allegation of a lack of academic freedom related to research despite a broad range of scholarship. As such, it is fully expected that there will be a full range of academic inquiry and debate within TWU’s School of Law.

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

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

Citing *Saskatchewan (Human Rights Commission) v. Whatcott*<sup>74</sup>, opponents argue that denying TWU’s graduates accreditation would not infringe s.2(a) of the Charter as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of Canada in *Whatcott* also relied on the oft-cited words of Dickson J. in *R. v. Big M Drug Mart* that the “essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses,

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<sup>72</sup> [1985] 1 S.C.R. 295 at p. 336

<sup>73</sup> *TWU v. BCCT*, para. 33

<sup>74</sup> 2013 SCC 11

the right to declare religious beliefs openly and *without fear of hindrance or reprisal...*” (emphasis added)<sup>75</sup>.

In *Alberta v. Hutterian Brethren of Wilson Colony*<sup>76</sup>, the majority accepted that Alberta’s mandatory photo requirement for driver’s licensing breached the s.2(a) rights of the Hutterian Brethren as they had a religious objection to having their photos taken. Applying the logic of TWU’s opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver’s licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice.

The denial of approval of TWU’s graduates because of the Community Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community.

All of the opponents of TWU’s proposal focus solely on the Community Covenant. This is, in fact, a focus by them on TWU’s sectarian nature. Please carefully consider the following words of the majority in *TWU v. BCCT*:

We would add that the continuing focus of the BCCT on the sectarian nature of TWU *is disturbing*. It should be clear that *the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices*. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.<sup>77</sup> [Emphasis added]

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

**(f) TWU v. BCCT is Binding Law**

The opponents of TWU argue that *TWU v. BCCT* is not determinative. This argument takes a number of forms.

Some TWU opponents suggest that the decision was specific to British Columbia law and that, as a result, acknowledging TWU’s freedom of religion and association rights to maintain the

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<sup>75</sup>At p. 336

<sup>76</sup> [2009] SCC 37

<sup>77</sup> *TWU v. BCCT*, para. 42

Community Covenant is unnecessary because not all human rights legislation across the country contain the same provisions.

Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is merely a finding that TWU is in compliance with B.C. legislation.

Some opponents attempt to avoid the binding result of *TWU v. BCCT* because "the issue here is whether it is contrary to the public interest"<sup>78</sup> to accredit graduates of TWU. With respect, that was exactly the issue and argument advanced by the BCCT. The BCCT decided not to approve TWU's program "because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest..."<sup>79</sup> The Court held that while the BCCT could consider the discriminatory practices as part of its review of the public interest, it also had to consider religious freedom and was wrong to have "inferred without any concrete evidence that such views will limit consideration of social issues ...[or] have a detrimental impact on the learning environment..."<sup>80</sup> The case is directly applicable to, and clearly undermines, the reasoning advocated by TWU's opponents.

The arguments advanced by the opponents of TWU's proposal were made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. The decision in *TWU v. BCCT* was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. This is the same conclusion reached by John Laskin QC, who specifically reviewed and rejected the arguments of Professor Craig in concluding that the grounds advocated by her for refusing approval "would be highly questionable."

While it is without question that there have been some important societal changes since *TWU v. BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*<sup>81</sup> are worth noting:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

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

...

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and

<sup>78</sup> Ronald J. MacDonald and Amy Sakulauskas, February 10, 2014 submission

<sup>79</sup> *TWU v. BCCT*, para. 5

<sup>80</sup> Paras. 26 and 32

<sup>81</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html>

religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

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

It is also of note that a number of opponents of TWU’s School of Law emphasize the recognition of same-sex marriage in Canada as a societal change since 2001, which it certainly is, but they conveniently ignore or entirely dismiss the preamble and s.3.1 of the legislation that created same-sex marriage in Canada. It has always been recognized and acknowledged, in the *Civil Marriage Act* and in human rights legislation, that there must be a balancing to ensure that freedom of religion and equality on the basis of religion is protected. The Supreme Court of Canada has already determined how that balancing is to occur in these circumstances.

***(g) Human Rights Protections in Nova Scotia***

The Nova Scotia Human Rights Commission<sup>82</sup> and others have argued that differences in the human rights legislation in Nova Scotia and British Columbia justify denying accreditation of TWU graduates.

In *TWU v. BCCT*, the Court made reference to section 41 of the *Human Rights Code* in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution<sup>83</sup>. These were passing references, but the Court’s analysis was much broader, based on the preservation of the values of human rights legislation and the *Charter* in acknowledging TWU’s right to a teacher education program, which is conveniently summarized by the following quotes:

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

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

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<sup>82</sup> Letter dated February 10, 2014

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

beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>84</sup>

This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*<sup>85</sup>, the Supreme Court of Canada expressly wrote that the predecessor of section 41 “confers and protects rights” and “permits the promotion of religion”<sup>86</sup>. In *Brossard (Town) v. Quebec (Commission des droits de la personne)*<sup>87</sup> Beetz J. held that a similar provision promotes “the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits”<sup>88</sup>. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.<sup>89</sup>

This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada.<sup>90</sup> It is trite to point out that all human rights legislation in Canada, including that in Nova Scotia, must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU could only exist as a religious educational community in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

Subsections 6(c) and (d) of the Nova Scotia *Human Rights Act* include exemptions for religious organizations, which TWU certainly is. Additionally, s.6(f) provides for other forms of “alleged discrimination” that are “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. Based on the noted Supreme Court of Canada jurisprudence, these provisions should be interpreted to recognize and accommodate religious expression within the TWU educational community.

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

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

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

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

<sup>88</sup> At 324 (S.C.R.). See also *St. James Community Service Society v. Johnson*, 2004 B.C.S.C. 1807 and *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 B.C.H.R.T. 269

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

<sup>90</sup> See, for example, *Ontario (Human Rights Commission) v. Brockie*, 43 C.H.R.R. D/90 (Ont. Div. Ct.); *Smith v. Knights of Columbus*, 2005 BCHRT 544; *Garrod v. Rhema Christian School* (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); *Kearley v. Pentecostal Assemblies Board of Education*, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

In any event, it is not appropriate for the NSBS to apply laws applicable only in Nova Scotia to persons that are not subject to them. Otherwise, the NSBS should also review every other law program in Canada to ensure that they comply with the particular requirements and protections of the Nova Scotia *Human Rights Act*, as opposed to the human rights legislation applicable in their own jurisdictions.

## 7. SUMMARY AND CONCLUSION

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

The NSBS's statutory regime may allow it to promulgate amended regulations that could potentially preclude TWU graduates from being articling clerks in Nova Scotia. TWU respectfully submits that such a move would be unfair and, in the circumstances, unsupportable in law, for the following reasons:

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

more perniciously, argue that its Christian principles make it incapable of doing so. There is no legitimate basis for either position.

- (e) It is not open for the NSBS to welcome and accept TWU's graduates and at the same time refuse to accredit TWU's School of Law. Any attempt to do so imposes burdens and additional obligations on religious grounds for no demonstrably justifiable reason.
- (f) To paraphrase the Supreme Court of Canada, the continuing focus on "discriminatory practices" is a focus on TWU's sectarian nature and is "disturbing"<sup>91</sup>. A decision to reject TWU graduates, or place additional burdens on them based solely on the one impugned element of the Community Covenant, ought not be adopted or even countenanced by the NSBS.

TWU welcomes the opportunity to further address and discuss these, or any other relevant issues, with the NSBS Executive Committee and/or the NSBS Council.

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<sup>91</sup> *TWU v. BCCT*, para. 42