

Rene,

I am a member of the Nova Scotia Barristers' Society [though a non-practicing member living in Saskatoon].

First, congratulations on leading a proposed review of the TWU approval. I am quite concerned that the decision-making is problematic.

Second, I wanted to share with you a letter that I sent earlier this week to the President of the Law Society of Saskatchewan encouraging that a similar review take place here. I have attached the letter.

Third, I am in Halifax for other reasons during the week of January 20-24, and if the Council Meeting on Jan. 24 is open to members I will plan to attend, and would be prepared to speak to the matter if that were thought to be helpful and appropriate.

Fourth, if it would be of any assistance to you I would be pleased to get together with you for coffee either in Halifax or in the Valley earlier that week.

Regards,

Brent Cotter

Professor and former Dean

*January 6, 2013*

*Mr. Miguel Martinez  
President, Law Society of Saskatchewan  
1100-2002 Victoria Ave.  
Regina, SK S4P 0R7*

*Dear Mr. Martinez:*

**RE: TRINITY WESTERN UNIVERSITY LAW SCHOOL,**

*I am writing to urge that the Benchers of the Law Society of Saskatchewan give formal consideration to the issue of whether to grant accreditation to the proposed new law school at Trinity Western University in British Columbia.*

*As you will know, the Approval Committee of the Federation of Law Societies of Canada ["Approval Committee"] granted such accreditation associated with TWU's compliance with*

*formal requirements established pursuant to adoption by the Canadian law societies of the recommendations of the FLSC's Task Force on the Common Law Degree. In its decision, the Approval Committee noted the limits of its mandate with respect to approval of the TWU proposal. It highlighted the general authority and responsibility of law societies with respect to such decisions, and in particular with respect to the controversial issues of TWU that it viewed to be beyond its mandate. More specifically, the Approval Committee indicated that these 'public interest' questions exceeded their own mandate but are legitimate questions for law societies to consider. Further, this subject matter, reviewed by an ad hoc Advisory Committee, was understood to be beyond the mandate of the Approval Committee and hence, effectively, functions only as advisory to law societies in their consideration of these 'public interest' questions.*

*I highlight below a number of reasons why, in my opinion, the Law Society of Saskatchewan must undertake this review in fulfilment of its mandate to protect the public interest.*

- First, the controversial policies of TWU that the Approval Committee declined to address are matters of critical public importance.*
- Second, both the ad hoc Advisory Committee and the Approval Committee clearly stated that questions associated with these controversial policies are legitimate topics for law societies to consider in the fulfilment of their 'public interest' mandates. (I would go further and suggest that law societies **must** consider these issues.).*
- Third, it will be noted that the Advisory Committee's views were advisory only and that the Committee's analysis was British Columbia-centric. The Advisory Committee gave significant consideration to a provincial exemption provided by the Government of British Columbia to TWU for policies related to gay and lesbian students and employees that would otherwise be (and were described by the Supreme Court of Canada to otherwise be) clear violations of provincial Human Rights laws. The exemption available to TWU is not available in Saskatchewan, and is probably not available to any publicly funded law school in Canada. This generates the possibility that the Law Society of Saskatchewan could find itself approving and accrediting a Canadian law school whose policies and practices would be a clear violation of the Human Rights Code if they occurred in Saskatchewan. Presumably, such a law school in Saskatchewan would not be accredited here.*
- Fourth, is a matter of deep concern that is not addressed in either FLSC Committee report. The Vision, Mission and Values of TWU as an institution explicitly articulate TWU's belief that that the highest legal authority is not that of Canadian law but of the Christian Bible. The mission of TWU is to advance this perspective. While I am sympathetic to any person's entitlement to hold such views, the idea that a law school 'approved' by the Law Society of Saskatchewan would be authorized to promulgate these views is antithetical to respect for law and the rule of law and is contrary to the public interest.*
- Fifth, I think it is a fair reading of the Vision, Mission and Values of TWU that critiques of non-Christian scholarship are encouraged but critiques of Christian perspectives or Christian scholarship are not acceptable. This constraint on freedom of thought, and on academic freedom, is deeply problematic.*

- *Sixth, even if these critical issues were to be addressed within a public policy framework that did exempt a university from the Human Rights laws of a jurisdiction, in my view there is a significant, and determinative, difference between a general educational program on the one hand that operates with immunity from some aspects of the general law, and a legal education program on the other. Law, fidelity to law and respect for the rule of law are hallmarks of our society and a legal education program institutionally and explicitly dedicated – as TWU's program must be - to calling such hallmarks into question cannot be in the public interest.*

*In closing, I note that the Barristers' Society of Nova Scotia has undertaken an examination of the question of whether it should accredit TWU's proposed law school, and will begin that review in January. I urge you and the Benchers of our Law Society to take the same approach. If a) as the Approval Committee states, it is correct that these are important questions - perhaps defining questions - relating to how law societies fulfil their public interest mandates when it comes to accrediting law schools, and b) it is beyond the Approval Committee's remit to consider the question, in my respectful view the Law Society of Saskatchewan **must** do so.*

*Assuming that the Benchers do undertake a review of this matter, I respectfully request the opportunity to appear before the Benchers to expand on the concerns I have set out here.*

*Sincerely,*

*W. Brent Cotter, Q.C.  
Professor*