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Cc: [equity: Nova Scotia Barristers' Society](#)
Subject: TWU law program
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Rene:

As a member who is known in legal circles and elsewhere for my advocacy on queer issues, I wanted to contact you as NSBS President, to express my thoughts on the controversy surrounding the law program at Trinity Western University. In my view, the opposition to TWU's law program is wrong-minded both in law and in strategy.

Please note that I'm writing in my capacity as a practicing lawyer and NSBS member, and not on behalf of any organization or advocacy group.

As the opposition to TWU is led by lawyers and activists whom I admire, I have struggled to understand and support the arguments they raise. However, I find that I cannot escape a few basic, principled objections, informed by my experience over ten years of advocacy for queer rights.

My first observation is that, in my time practicing as an openly gay lawyer advocating on queer issues, I have encountered several members of the bar who have religious beliefs aligning with those represented by TWU. I have also encountered members of the bar who, whatever their religious beliefs, have forcefully raised legal arguments in opposition to queer rights issues such as same-sex marriage and Human Rights Act amendments. While their arguments have not persuaded me (or ultimately, judges and legislators,) I have never questioned the right of such lawyers to be considered members of the bar in good standing. A moral or religious opposition to homosexuality does not, in my opinion or experience, disqualify a person from the practice of law; nor does a commitment to advocating that the law should reflect that moral stance. I would be frightened for the state of the law and of the profession if that were not the case.

As it is evident to me that a Conservative Christian who advocates against queer rights has the right to join, and continue in, the practice of law, I must then question whether there are unique problems presented where a school catering to such Conservative Christians wishes to offer a law degree.

I have heard it said that TWU discriminates against gay and lesbian students by only accepting students who agree to abide by TWU's code of conduct. While I whole-heartedly believe that regulating the sexual conduct of law students is a silly project, and I have concerns about how that targets gay and lesbian students, I also believe that the question of discrimination can and should be entirely determined by reference to provincial human rights legislation. My understanding is that British Columbia's human rights legislation permits a private educational institution with a religious mandate to have an admissions policy which discriminates against gay & lesbian students in this way. This is not surprising, and in my experience most Canadian human rights regimes make similar accommodations for religious organizations. To my mind, this ought to be a complete answer to concerns about the discriminatory impact of TWU's admissions policy.

It concerns me that this "discrimination" argument suggests that the NSBS ought to second guess provincial human rights codes, and determine that the protection of gay & lesbian students from discrimination is somehow more important, as a public policy, than the accommodation of sincerely-held religious beliefs such as those reflected in TWU's policies. Canadian human rights law reflects the pluralistic nature of our society, and our legal system. Each province has reflected that balance in its human rights system, and we often see that

balance expressed in the conflict between the rights of gays & lesbians and the religious beliefs of those who oppose homosexuality. On occasion, that balance is struck by permitting religious organizations to have policies that otherwise would be struck down as discriminatory. This is not an accidental outcome of our human rights system, nor is it a flaw or something to apologize for. It is the product of the compromises and balancing which are at the core of the Canadian approach to human rights, and which to my mind, are the jewel of the Canadian legal system.

I have also heard the criticism that TWU students will not be taught to respect and uphold the current laws that protect gays and lesbians. I am not so naïve as to think that students at TWU will be taught that the state of the law, when it comes to gay rights and any host of other legal issues, is admirable and morally right. It is very likely that they will be taught and encouraged to oppose and to challenge the status quo in the law. This is, however, far from a disqualification. My generation of law students was also taught, largely, that there were significant flaws in the legal status quo, and were given the tools to advocate for change. I am proud to count myself among those who have advocated for change and won. We should be very hesitant to accept the idea that good legal education indoctrinates students to accept the legal status quo without challenge.

I have heard those objections, and I have tried to state some of my responses. I can, however, imagine other more persuasive objections. I would have significant concerns if it were to come to light that TWU, or any other law school:

- neglected to teach students about the fundamentals of the Canadian legal system, including the aspects which do not align with the beliefs of TWU's administrators;
- mandated that students study courses in religion or other non-legal content in order to obtain a law degree;
- punished or disciplined students who challenged the beliefs of other students or faculty in an academically appropriate way;
- failed to produce students who could understand, and abide by, the ethical standards required to practice law.

I fully support the mandate of the Federation of Law Societies to ensure, aggressively if necessary, that TWU continues to meet these standards and any others applicable to legal education. However, I have seen no evidence to convince me up front that TWU will not provide students with a legal education that is entirely appropriate.

As a final note, I prefaced my comments by saying that I think the opposition to TWU is wrong-minded in law and in strategy. While the NSBS is not a forum for deciding strategic questions for queer rights advocates, I would be remiss not to express my concerns briefly. In my time advocating for queer causes, I have become more and more concerned that we lose sight of the values of pluralism and accommodation that, in my view, make Canada strong and make its legal system one of the greatest in the world.

While I would never be shy to offend someone's religious beliefs by advocating full-throatedly for gay rights, I also recognize a line that I feel is becoming blurred. I do not have to accept a religious view simply because it is sincerely held, nor must I even respect such a view (most often I find myself unable to do either.) But I cannot accept that the law be used to suppress that religious view out of existence. Queer rights advocates have been remarkably successful in seeing religious opposition to homosexuality slowly die out, of its own accord. We do ourselves, and the Canadian legal system, a horrible disfavor when we try to use the power of the law to hasten that process along. If tolerating the repugnant religious views of TWU and its ilk is the cost of preserving the Canadian pluralistic approach to human rights, then it is a small price to pay.

I hope that you find the above thoughts, which I emphasize again are my own and do not represent the views of any client or organization, helpful in your deliberations over this issue.

Kevin Kindred

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