

UVic OUTlaws University of Victoria Faculty of Law
UBC OUTlaws University of British Columbia Faculty of Law
TRU OUTlaws Thompson Rivers University Faculty of Law
OUTlaw Alberta University of Alberta Faculty of Law
USask OUTlaws University of Saskatchewan College of Law
Manitoba OUTlaws University of Manitoba Faculty of Law
Windsor OUTlaws University of Windsor Faculty of Law
Western OUTlaws Western University Faculty of Law



Out In Law University of Toronto Faculty of Law
Osgoode OUTlaws Osgoode Hall Law School, York University
Queen's OUTlaw Queen's University Faculty of Law
uOttawa OUTlaw University of Ottawa Faculty of Law
OUTlaw at McGill McGill University Faculty of Law
UNB OUTlaw University of New Brunswick Faculty of Law
OUTlaw Society Schulich School of Law, Dalhousie University

February 24, 2014

Officers and Members of Council
Nova Scotia Barristers' Society
Cogswell Tower, 800-2000 Barrington Street
Halifax, NS B3J 3K1

Dear President Gallant, Officers, and Members of Council:

We are writing in our capacities as leaders of LGBTQ affinity groups and organizations at Canadian law schools regarding Trinity Western University's (TWU's) proposed law school. TWU's program is currently seeking the approval of the provincial law societies for admission to the bar of each jurisdiction. In your jurisdiction, this accreditation process falls within the authority of the Nova Scotia Barristers' Society (NSBS). We have serious reservations about TWU's discriminatory policies towards LGBTQ students and the suitability of TWU as a forum to train future lawyers. We urge you to refuse or qualify TWU's accreditation. We also encourage you to advance an accreditation requirement in your province that prevents any accredited law school from discriminating on a constitutionally protected ground, such as sexual orientation.

Central to our concerns is the fact that TWU forces its students to sign a 'Community Covenant Agreement' requiring the student to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman".¹ Students who do not comply with the agreement may be removed from the university without readmission.² The Community Covenant Agreement is inconsistent with the *Charter of Rights and Freedoms* and provincial human rights legislation. Accrediting a legal studies program that operates under this policy fetters the profession's obligation to serve the public interest.

Over the past year, a number of prominent stakeholders have echoed this sentiment. These include the Canadian Council of Law Deans,³ the Canadian Bar Association,⁴ the Canadian Federation of Students,⁵ numerous prominent lawyers and academics, law school faculty councils,⁶ editorial boards,⁷ and over one thousand law students.⁸ They have rightly pointed out that TWU's policies place a de facto quota on the number of law school places available to LGBTQ students. More broadly, they assert that given these discriminatory operating policies, TWU is not an appropriate venue for teaching constitutional law, nurturing

¹ Trinity Western University Community Covenant Agreement at page 3, available online: <<http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>>

² Trinity Western University Student Handbook, Student Accountability Process, available online: <<http://twu.ca/studenthandbook/university-policies/student-accountability-process.html>>

³ Canadian Council of Law Deans Letter to the Federation of Law Societies of Canada, November 20, 2012, available online: <<http://www.scribd.com/doc/156263670/CCLD-Letter-to-FLSC>>

⁴ Canadian Bar Association Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <<http://www.scribd.com/doc/156265274/CBA-Letter-to-FLSC>>

⁵ Canadian Federation of Students Letter to the Federation of Law Societies of Canada, December 19, 2013, available online: <<http://cfs-fee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>>

⁶ Four law school faculty councils have passed motions condemning the Community Covenant Agreement: Osgoode (<http://bit.ly/1ICEL16>), Queen's (<http://bit.ly/1e7xLrj>), UBC (<http://bit.ly/1laMBSW>), and Dalhousie (<http://bit.ly/1f1QgX2>). Faculty from Alberta's 2 law schools have also expressed their concerns in an open letter (<http://bit.ly/1f1YkL6>).

⁷ The Globe and Mail, *Trinity Western should emulate its U.S. equivalents*, July 25, 2013, available online: <<http://www.theglobeandmail.com/globe-debate/editorials/trinity-western-should-emulate-its-us-equivalents/article13441598/>>

⁸ Osgoode Hall Law School Students' Letter to the Federation of Law Societies of Canada, March 18, 2013, available online: <<http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>>; Media Release from Canadian Law Students, March 18, 2013, available online: <<http://www.scribd.com/doc/156265623/Letter-from-Osgoode-Law-Students-to-the-FLSC>>

legal ethics, or promoting academic freedom. Our agreement with these views is underscored by the fact that many of our LGBTQ peers have been subjected to systemic discrimination, exclusion, and hatred related to their sexual orientation. It would be tremendously disheartening to see the profession's leadership support policies which perpetuate these unfortunate experiences and constrain access to legal education for LGBTQ individuals. Institutionalizing the targeted humiliation of LGBTQ individuals is unacceptable.

The professional community turns to the law society for leadership and governance on these important issues. To date, it has been disappointing to see some law societies remain silent on this issue - deferring to Federation of Law Societies of Canada (FLSC). In December, it was with profound disbelief that we learned of the FLSC's recommendation that their provincial members approve TWU's law school. This was, in effect, a rubber stamp for discrimination: TWU's discriminatory covenant stands in direct opposition to the significant progress that has been made in the recognition of the rights of LGBTQ individuals over the past decade.

Further, the FLSC's protracted and closed-door process was patently not in the public interest – contrary to the mandate of the NSBS. Notably, there was no opportunity for anyone to present evidence of discrimination by TWU, or the effect of its covenant on LGBTQ faculty or students, even though the absence of such evidence was a key finding on which the committee relied to recommend that the proposed law school be recognized by the FLSC's members. Perpetuating the flawed process, B.C.'s Minister of Advanced Education relied heavily on the FLSC's decision to justify his own, approving the degree-granting program the day after the FLSC report was released.

In 2014, the FLSC's decision offends more than contemporary Canadian sensibilities. Our understanding is that it is also legally incorrect:

- First, the FLSC relies heavily on a 2001 Supreme Court of Canada (SCC) judgment in a case involving TWU and the B.C. College of Teachers.⁹ Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of *Whatcott*¹⁰ departs from the 2001 *Trinity Western* decision in important ways, notably by wholly rejecting the “hate the sin, love the sinner” excuse adopted by TWU to continue its discrimination in 2001. An institution cannot ban “sexual intimacy that violates the sacredness of marriage between a man and a woman” (i.e., sex between LGBTQ individuals) without effectively banning LGBTQ individuals. The effect of the covenant is to exclude anyone who lives in a committed same-sex relationship, which is an issue that was completely overlooked in the 2001 SCC decision.
- Second, the 2012 SCC decision in *Doré*¹¹ now imposes an obligation on law societies to apply the *Charter* and provincial and territorial human rights codes every time they make a decision. The B.C. College of Teachers was under no such obligation in 2001. In practice, this means that private religious organizations can adopt membership rules that reflect their beliefs, but the government and other organizations operating in the public interest are not bound to approve such rules if they discriminate against individuals.

Such significant inconsistencies should prompt NSBS to heavily scrutinize the FLSC recommendation.

The law schools we attend have made a priority of making legal education more accessible, practical, and representative of Canadian society. The leadership of the Nova Scotia profession should demonstrate the same interests in rendering their decision on TWU's accreditation. As future lawyers, we are committed to equality and promoting the values of the *Charter* within our practices. Our experiences have taught us that such professional standards can only be fostered in a learning environment that enshrines these values in policy and practice.

At the most basic level, it is unjust to open a law school that openly discriminates against a vulnerable segment of the Canadian public. We strongly recommend that you oppose or place conditions on TWU's

⁹ *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, available online: <<http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1867/index.do>>

¹⁰ *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, available online: <<http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/12876/1/document.do>>

¹¹ *Doré v Barreau du Québec*, 2012 SCC 12, available online: <<http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>>

NSBS accreditation. We look forward to a properly balanced and progressive decision from the law society on this important issue, and appreciate this opportunity to provide input to the process. Should you wish to correspond with us as a group, please email outlawscanada@gmail.com.

Sincerely,

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