

## I. History of Trinity Western University's accreditation request

### A. Federation of Law Societies of Canada "preliminary approval" of Trinity Western University's proposed school of law program

On 16 December 2013, the Federation of Law Societies of Canada (Canadian Common Law Program Approval Committee) issued a report (**Report**) granting "preliminary approval" to Trinity Western University's (TWU's) proposed school of law program.<sup>1</sup>

The Report states that the Approval Committee considers that its mandate is confined to considering whether TWU's proposed program meets the "national requirement" by offering required courses and complying with minimum admission standards.<sup>2</sup>

The Report expressly does not consider other matters, including concerns about the effect of TWU's "Community Covenant Agreement" on access to a legal education and on TWU employees' and graduates' ability to discharge a lawyers' "special" responsibility of non-discrimination.<sup>3</sup>

TWU has taken the position that the Federation of Law Societies' mandate does not include matters beyond the national requirement and specifically that "the Federation itself has no jurisdiction from the law societies to consider or make recommendations with respect to the [Community] Covenant" Agreement.<sup>4</sup>

Also in December 2013, a "Special Advisory Committee on Trinity Western's Proposed School of Law" (**Special Advisory Committee**) convened by the Federation issued a Final Report concluding that "there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."<sup>5</sup> Specifically, the Special Advisory Committee observed that:

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>6</sup>

The Special Advisory Committee did not express any conclusion about whether approving the proposed TWU school of law program would "preserv[e] and protect the rights and freedoms of all persons".<sup>7</sup>

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<sup>1</sup> Federation of Law Societies of Canada (Canadian Common Law Program Approval Committee), *Report on Trinity Western University's Proposed School of Law Program*, December 2013 at para 56.

<sup>2</sup> Report as above, note 1 at para 29 – 31.

<sup>3</sup> Law Society of BC, *Code of Professional Conduct for BC*, Chapter 6, rule 6.3-5 and commentary. This rule replaces the more elaborate form previously contained in Chapter 2 rule 3 of the *Professional Conduct Handbook for BC* (effective 1 January 2013).

<sup>4</sup> Letter from Jonathon S Raymond, President of Trinity Western University to John JL Hunter, Federation of Law Societies of Canada, dated 17 May 2013, page 2; see also Letter from Jonathon S Raymond, President of Trinity Western University to Canadian Common Law Program Approval Committee, Federation of Law Societies of Canada dated 24 April 2013.

<sup>5</sup> Special Advisory Committee on Trinity Western's Proposed School of Law *Final Report*, December 2013, para 66.

<sup>6</sup> Special Advisory Committee, as above, n 5 at para 37.

<sup>7</sup> *Legal Profession Act* (SBC 1998 c. 9) s. 3(1).

B. BC Ministry of Advanced Education consent to TWU application

On 18 December 2013, the BC Minister of Advanced Education issued a press release indicating that he had granted consent for the proposed TWU school of law program after reviewing the Report, the Special Advisory Committee Final Report and pursuant to a recommendation made by the provincial government's Degree Quality Assessment Board.<sup>8</sup> The report of the Degree Quality Assessment Board does not appear to be publicly available.

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<sup>8</sup> Amrik Virk, BC Minister for Advanced Education, press release dated 18 December 2013.

## II. Motion addressed to the Law Society of British Columbia

**Whereas** the Report offered preliminary approval to the proposed school of law program at TWU;<sup>9</sup>

**Whereas** the Supreme Court of Canada has ruled that “the protection of *Charter* guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it”,<sup>10</sup>

**Whereas** the Law Society of British Columbia has a statutory responsibility to act “in the public interest”, including by “preserving and protecting the rights and freedoms of all persons”,<sup>11</sup>

**Whereas** TWU students are required to sign a “Community Covenant Agreement” that forbids “sexual intimacy that violates the sacredness of marriage between a man and a woman” and TWU reserves the right to discipline or dismiss a student who breaches this agreement;<sup>12</sup>

**Whereas** faculty and staff of the proposed TWU School of Law are bound by a condition of employment that states that “[s]incerely embracing every part of [the Community] covenant is a requirement for employment” at TWU and TWU presumably reserves the right to enforce this condition by disciplining or potentially dismissing an employee for a breach of this term;<sup>13</sup>

**Whereas** the *Code of Professional Conduct for BC* states that a “lawyer must not discriminate against any person”,<sup>14</sup>

**Whereas** individuals’ *Charter* rights to equality, freedom of conscience and religion, and freedom of expression are potentially impacted by the Law Society of British Columbia’s decision whether to accredit the proposed TWU law school program for the purposes of admission to the Bar in British Columbia; and

**Whereas** neither the Federation of Law Societies of Canada nor the British Columbia government adopted a process in respect of TWU’s proposed school of law that addressed how best to discharge the Law Society of British Columbia’s responsibility to ensure the preservation and protection of the rights and freedoms of all persons,

*the voting members of the UBC Faculty of Law Faculty Council call upon the Law Society of British Columbia to take the following steps prior to deciding whether to accredit TWU’s LL.B. or J.D. degree for the purposes of admission to the Bar in British Columbia:*

1. to commit to holding a transparent, public process of inquiry into the legal and ethical appropriateness of accrediting TWU’s proposed school of law program;

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<sup>9</sup> Federation of Law Societies of Canada, *Report* above note 1 at para 56.

<sup>10</sup> *Doré v Barreau du Québec* 2012 SCC 12 at para 4.

<sup>11</sup> *Legal Profession Act* (SBC 1998 c. 9) s. 3.

<sup>12</sup> Trinity Western University Community Covenant Agreement at page 3.

<sup>13</sup> Community Covenant Agreement, above at page 5.

<sup>14</sup> Law Society of BC, *Code of Professional Conduct for BC*, Chapter 6, rule 6.3-5.

2. to take steps to ensure that such process includes representation of and input from those groups who would be excluded by the Community Covenant Agreement from studying law or working in the school of law at TWU or who would be required during a course of study or while working at TWU to accept limitations on their capacity to exercise rights and freedoms enjoyed by peers at other law schools in Canada in addition to seeking representation of and input from those who propose and support the TWU school of law program;
3. to have express regard to TWU's policy of enforcing its Community Covenant Agreement in a manner that discriminates against gay, lesbian, bisexual, transgendered, queer and two-spirited (**GLBTQ**) people, including married GLBTQ people<sup>15</sup> when deciding:
  - a. whether accrediting graduates of TWU's proposed school of law program would be "in the public interest";<sup>16</sup> and
  - b. whether accrediting graduates of TWU's proposed school of law program would fulfill the Law Society's statutory and constitutional obligations to "preserve and protect the rights and freedoms of all persons";<sup>17</sup>
4. to have express regard to the impact of effectively excluding GLBTQ people<sup>18</sup> from the community of students, staff and faculty members at the proposed TWU school of law on TWU's capacity to offer a legal education that prepares students to discharge a lawyer's "special" professional responsibility "to comply with the requirements of human rights laws", including the requirement not to "discriminate against any person"<sup>19</sup> when making employment decisions and when offering legal services;
5. to have express regard to the possibility that TWU's Community Covenant Agreement is inconsistent with the requirement of non-discrimination imposed upon lawyers who are admitted to practice in BC,<sup>20</sup> and, specifically, the possibility that any practicing lawyer who is employed by TWU and in a position to make employment or disciplinary decisions may therefore be forced to choose between enforcing the Community Covenant Agreement and complying with the *Code of Professional Conduct for BC*; and
6. to approach the task of balancing individual rights and freedoms in a manner that distinguishes between beliefs and conduct, including by having due regard to the role of the Community Covenant Agreement as an enforceable obligation within the disciplinary, scholarly, and employment structures of the TWU community (and not simply as an expression of personal religious belief).

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<sup>15</sup> In its Community Covenant Agreement and the employment and disciplinary practices described therein.

<sup>16</sup> *Legal Profession Act* (SBC 1998 c. 9) s. 3.

<sup>17</sup> *Legal Profession Act* (SBC 1998 c. 9) s. 3(1).

<sup>18</sup> And those non-GLBTQ persons who believe strongly in upholding the rights and freedoms of all individuals and who would therefore be unwilling to sign the Community Covenant Agreement.

<sup>19</sup> Law Society of BC, *Code of Professional Conduct for BC*, Chapter 6, rule 6.3-5 and commentary. This rule replaces the more elaborate form previously contained in Chapter 2 rule 3 of the *Professional Conduct Handbook for BC* (effective 1 January 2013).

<sup>20</sup> Law Society of BC, *Code of Professional Conduct for BC*, Chapter 6, rule 6.3-5 and commentary.

### III. Background to motion

Trinity Western University is an evangelical Christian university in Langley, BC. TWU requires its students, staff and faculty to sign a “Community Covenant Agreement” as a condition of studying or working at TWU. The Community Covenant Agreement binds students, faculty, and staff to abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman”. This commitment is prefaced by the following explanation of the Agreement: “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.”

The TWU Student Handbook states that: “The University does not view a student’s agreement to comply with these standards and guidelines as a mere formality.” Students who do not comply with the agreement may be removed from the TWU, or otherwise sanctioned. Thus, the Student Handbook states that: “If a student, in the opinion of the University, is unable, refuses or fails to live up to their commitment, the University reserves the right to discipline, dismiss, or refuse a student’s re-admission to the University.”

The Community Covenant Agreement itself states that “[s]incerely embracing every part of [the Community] covenant is a requirement for employment” at TWU.<sup>21</sup>

In June 2012, TWU submitted an application to the Federation of Law Societies of Canada for approval of a proposed school of law program.

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<sup>21</sup> The text of the *Agreement* can be found at <http://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>. The Student Handbook is at <http://twu.ca/studenthandbook/student-handbook-2012-2013.pdf>.