

Frequently Ask Questions on CCCC Support Of TWU's Law School

Q. Why does CCCC get involved in public policy issues?

A. CCCC's End Statement states that it wants its members to be exemplary, healthy, and effective Christian ministries. We believe that our members will be more effective when they can do their work in a favourable environment. That requires us to be ever on the watch for issues that will affect our members' ability to be all that they are called to be. As a result, once we become aware of public policy issues that affect our members' ability to carry out their mission, we are obligated to speak out. We evaluate the issues, determine what is in our members' best interests, and speak accordingly on a case by case basis.

Q. What is the history of TWU law school proposal?

A. In June 2012, TWU submitted its law school proposal to the B.C. government and to the Federation of Law Societies of Canada (FLSC). The issue lay dormant (publicly) until November 2012 when the Canadian Council of Law Deans (CCLD) wrote to the FCLS on November 20, 2012 in opposition to the proposal because of TWU's Covenant.¹ The story got national traction when the *Vancouver Sun* published a story in January 2013² interviewing Dr. Janet Epp-Buckingham (JEB), a TWU professor. The opposition arises from TWU's "Community Covenant Agreement"³ that requires all students, while attending TWU, to abstain from actions that violate "the sacredness of marriage between a man and a woman."⁴

The protests from legal academics and law students caused the FLSC to appoint a special *Ad Hoc* Committee to review the charges of discrimination against the LGBT community. After an exhaustive review, the committee recommended the approval of TWU. In December 2013, the FLSC issued its approval⁵ and the BC Government followed suit.⁶

Unfortunately, a chorus of opposition arose from the legal academics against the Federation's decision, and a demand was made of the law societies to refuse to allow TWU graduates to practice law in their jurisdiction.⁷ The Nova Scotia,⁸ Ontario,⁹ and British Columbia¹⁰ law societies have said that they will now "consider" for themselves TWU's law school application despite the extensive and thorough review and approval of FLSC.

Q. What exactly is the problem with TWU graduates not being permitted to practise law by a law society that disagrees with the religious belief and practise of TWU on marriage?

A. In short, the matter comes down to this single question: Can religious institutions continue to maintain a religious definition of marriage?

If religious institutions cannot hold to and practise their faith on marriage, we are left with a society where the state is taking upon itself the authority to tell religious institutions (and, by extension, individuals) what to believe and how to practise that belief. This intrusion on religious freedom is unprecedented in Canada.

Q. Is that the only concern?

A. No, it is not. Future TWU law graduates are being denied the opportunity to practise law based solely on what they believe, NOT on what they have done! As John B. Laskin said, "A finding based on no evidence is not just incorrect; it is unreasonable." There are hundreds of lawyers practicing law in Canada with the exact same beliefs as TWU yet, to the best of our knowledge, there is not one case where any such lawyer was not impartially representing their clients. Is it fair that we would punish a law graduate for his or her religious beliefs when there is no evidence of any offense?

If lawyers are prevented from practising law because of their religious beliefs on marriage, what about the other professionals? Nurses? Teachers? Physicians? Counsellors?

Until now, Canada has been open to a diversity of perspectives, but in this case, the secular view is shutting down the religious perspective.

The seriousness of this challenge cannot be overstated.

Q. How is this controversy over TWU's Law School proposal affecting your membership?

A. TWU, as a faith-based university, is one of 54 universities/colleges/Bible seminaries in our membership. As a top-rated academic institution that provides a quality education in a number of professional programs, including education, business, and nursing, it should be judged on its ability to prepare students professionally, not on its religious beliefs and practices. The challenge against TWU has broad application. It is a direct assault on the ability of faith-based institutions to be involved in public service generally. For example, faith-based institutions in education, health, senior housing, childcare, etc. are potentially affected by this challenge against TWU.

Q. How can you say these other faith-based institutions would be affected if TWU cannot have a law school or its graduates will not be permitted to practice law in some jurisdictions because of its religious teaching on marriage? That seems far-fetched.

A. We wish it were far-fetched. In reality, TWU's struggle with the legal academics and their pressure upon law societies to re-evaluate TWU's law school is based on the idea that faith-based communities are not to be involved in the "public square." Or, if they are then they must follow "public values."

"Public square" is hotly debated in the academic literature - fine distinctions are frequently made. For instance, there is a distinction between "public square" and "secular private square" and "private square." It is not necessary to know what all the discussion is about. The main thing to keep in mind is that the academics want nothing less than the removal of faith-based beliefs and practices regarding marriage from all "public" enterprises.

The argument is that religious belief and practice can only be exhibited in private religious entities. Of course, the definition of "religious" is what the secularists say it is. For example, notice the questions asked by King's College London Law Professor Wintemute:

Assuming that the Charter requires an exemption for genuinely religious activities in the private sphere—a question to which I will return in a moment—how do we determine what is “religious”? Is every aspect of every activity of a religious institution automatically religious in nature and therefore entitled to an exemption from human rights legislation? Some activities are clearly not religious even when a religious institution undertakes them. If a religious institution were to start an airline to provide badly needed competition for Air Canada, few would argue that air transportation is a religious activity. Nor is renting space in buildings owned by religious institutions for meetings and conferences. The Québec Superior Court has held that the Montreal Catholic School Commission could not refuse to rent space to an LGBT organization for a weekend conference, when it had granted leases to non-Catholic churches and atheist or agnostic political parties. Other activities are clearly religious, such as being a priest, rabbi, or imam. But what about religiously run schools and hospitals? Should an exemption cover every single job in these workplaces?¹¹

When you control language, you control meaning. Clearly, those opposed to faith-based institutions demand control over what is “religious.” For them, TWU running a law school is not a “religious” activity, but a “public” activity. It would appear that they refuse to accept the idea that a faith-based university is capable of adequately training lawyers, and they seem to have trouble accepting the fact that religious institutions would be permitted to do so.

The same arguments opposing TWU’s law school were used to oppose TWU’s education program in 2001.¹² The Supreme Court of Canada decided that TWU had every right to run its education program. A number of organizations, including the Nova Scotia Human Rights Commission (NSHRC), are now arguing for the Nova Scotia Barrister’s Society to refuse recognition of TWU’s law school so that a judicial review is triggered with the expectation that the Supreme Court of Canada will re-hear the same issues it decided on in 2001.¹³ Obviously, the NSHRC is advocating for the SCC to overrule its 2001 decision.

The threat to a religious university being involved in other “public” programs (such as education, business, and nursing) is clearly in the crosshairs of the human rights establishment. Once the principle is accepted that Christians cannot have a law school because of their belief and practise regarding marriage, then every Christian college or school that issues diplomas that are recognized by the government will be in jeopardy (if they hold to the same beliefs as TWU).

We are dealing with two different visions of the common good. The secular position does not understand the long established Christian tradition of developing institutions of higher learning to make discoveries in all spheres of human endeavour. The Christian “universitas” means “the whole.” In other words, a “university” sought to understand all of God’s creation – it was not limited to the study of theology. This deeper, richer understanding of the Christian pursuit for academic excellence is lost in secular thinking today.

The secular argument demands that religion be removed from the public square. It would be bad taste, according to American political philosopher Richard Rorty, “to bring religion into discussions of public policy.”¹⁴ “We shall not be able to keep a democratic political community going,” he argues, “unless the religious believers remain willing to trade privatization for a guarantee of religious liberty.”¹⁵

So, if you want religious freedom, in secular terms, then you will stay within the walls of your church – and not engage in any “public” enterprises, such as schools, nursing homes, and the like. It is the *quid pro quo* for your freedom – stay out of sight and you can have freedom. If you are in the “public square,” you no longer have freedom. However, even that is no longer the guarantee it once was.

There are many voices calling for the further intervention, even within the “church walls,” if there is discrimination as defined by the secular thought.¹⁶ The inability of the secularist to appreciate the religious understanding that refuses to split life into a secular world, on the one hand, and a religious world, on the other hand, lies at the heart of the disconnect.

Therefore, we have every expectation that most—if not all—faith-based organizations that have the same religious beliefs on marriage as TWU will be subjected to coercive pressure to comply with the state’s values. Our mandate is to do all that we can to raise the issues at stake and seek accommodation of faith-based communities in this increasingly inhospitable environment.

¹ Bill Flanagan, President of the Canadian Council of Law Deans, letter to John J.L. Hunter, and Gerald R. Tremblay, Federation of Canadian Law Societies, November 20, 2012, where he said in part, “The covenant specifically contemplates that gay, lesbian or bisexual students may be subject to disciplinary measures including expulsion. This is a matter of great concern for all the members of the CCLD. Discrimination on the basis of sexual orientation is unlawful in Canada and fundamentally at odds with the core values of all Canadian law schools. We would urge the Federation to investigate whether TWU’s covenant is inconsistent with federal or provincial law. We would also urge the Federation to consider this covenant and its intentionally discriminatory impact on gay, lesbian and bi-sexual students when evaluating TWU’s application to establish an approved common law program.”

² Douglas Todd, “Proposed Christian law school at Trinity Western under fire because of university’s anti-gay rules,” *Vancouver Sun*, January 16, 2013.

³ <http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html>

⁴ <http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html>

⁵ <http://www.flsc.ca/documents/FederationNewsReleaseFIN.pdf>

⁶ <http://twu.ca/news/2013/071-school-of-law-approved.html>

⁷ Elaine Craig, “Law societies must show more courage on Trinity Western application,” online: <http://www.theglobeandmail.com/globe-debate/law-societies-must-show-more-courage-on-trinity-western-application/article16023053/>

⁸ <http://nsbs.org/news/2014/02/seeking-input-trinity-westerns-application-law-school-february-13>

⁹ <http://goo.gl/Os1qZF>

¹⁰ <http://goo.gl/TKt5WW>

¹¹ Robert Wintemute, “Religion vs. Sexual Orientation A Clash of Human Rights?” (Fall 2002) *Journal Of Law & Equality*, Vol. 1, No. 2, 126 at 143.

¹² *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31

¹³ http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-10_NSHC_TWU.pdf at para. 12.

¹⁴ R. Rorty, *Philosophy and Social Hope* (London: Penguin, 2000) at 169.

¹⁵ Philosophy and Social Hope, at 170.

¹⁶ Beverley Baines, "Equality's Nemesis?" (2006) 5 J.L. & Equal. 57 at 78-79. Baines states, "In Canada, entrenching freedom of religion may have led religious societies to expect more protection for their patriarchal beliefs than is justified in a world that is still striving to recognize and implement women's equality rights. Marriage is the contested terrain that the fundamentalists have chosen. However, the more traditional religions also have much to answer for, particularly in the occupational context. For example, women cannot be religious leaders - priests, cardinals, popes - in Roman Catholicism. Similarly, most other major religions deny women the opportunity to take on major leadership roles in their societies."