

CANADIAN COUNCIL of CHRISTIAN CHARITIES  
ADVANCING MINISTRY TOGETHER

February 10, 2014

By Email: Rene.gallant@emera.com; equity@nsbs.org

By Fax: 902.429.4869

Nova Scotia Barristers' Society  
Cogswell Tower, 8  
00-2000 Barrington Street  
Halifax NS B3J 3K1

**ATTN: Mr. J. René Gallant, President**

Dear Mr. Gallant:

**RE: Equality for All - Recognizing the Right of Religious Institutions to Believe and Practice  
Their Faith: The Case of Trinity Western University Law School**

**Who We Are And What We Do**

The Canadian Council of Christian Charities (CCCC) is a member-based association of over 3300 faith-based charities and has been in existence since 1972. Our membership also includes approximately 132 umbrella charities serving districts of churches and parishes, each with twenty-five to several hundred charities in their respective membership. In our membership we also have 54 religious colleges and universities and 66 Christian elementary and primary schools from a broad cross section of the Christian community.

Our association provides two key functions to our sector. First, we provide practical, expert resources in administration, fundraising, and management to our membership organizations as they actively pursue their distinctive roles in the advancement of religion. Each year we answer thousands of calls and emails from our members on a wide range of issues including finance, charity law, governance, and human resources.

The second key function we provide is a charity certification program. Since 1983 CCCC has conferred a Seal of Accountability on charities who have met our standards. These standards include:

- Having an independent, active governing board
- Having an independent financial audit
- Being committed to public financial disclosure
- Undertaking regular evaluation of programs for effectiveness and efficiency
- Adopting a Code of Accountability dealing with Ethical Fundraising & Financial Accountability
- Pursuing integrity

As an organization we have made a strong commitment to accountability and transparency.

You may find more information about our organization at: [www.cccc.org](http://www.cccc.org)

## Introduction

Religious communities rely on the guarantees in the *Charter*<sup>1</sup> to ensure that they will have equal opportunity to live out their beliefs and practices without state intervention, in the same way as those who espouse no religious belief. In other words, religious communities have equality rights, too, under section 15. The Nova Scotia Barristers' Society's ("NSBS") re-examination of the Federation of Law Societies of Canada's (FLSC) decision to approve Trinity Western University's (TWU) Law School, based on its concerns with TWU's Community Covenant, is disconcerting for the religious institutions in this pluralist country.

To begin with, we note that the timeframe for submissions on NSBS' review of this matter, which is heavily nuanced, has not been sufficient for many organizations to fully analyze the wide array of concerns and issues raised in this review that could impact them. CCCC submits that, if the NSBS intends to challenge the approval of TWU's School of Law, more time is needed for affected stakeholders to contribute to this dialogue.

NSBS' deliberations and treatment of TWU will be seen by many of the faith-based community, which includes more than 33,000 religious registered charities, as a litmus test of the extent to which religious institutions are going to be treated equally going forward and whether the guarantees of the *Charter* will be sustained.

Further, we are concerned not only about the treatment of faith-based institutions, but also about lawyers who hold the same religious views as TWU, or who hold any other personal beliefs or convictions which may differ from those of a professional regulator. It is our submission that professional organizations such as the NSBS ought to be more concerned about the legal competency of TWU graduates and other lawyers rather than their religious beliefs and practices. Throughout this country lawyers are properly governed by a code of professional ethics. We respectfully suggest that is what the NSBS should regulate – not religion.

Finally, as a matter of introduction, we wish to state that our concern is not to limit any right of the LGBT community. Rather, our concern is simply that religious organizations and religious individuals who believe and operate with a religious definition of marriage ought to be treated equally and not be held at a disadvantage because professional organizations might adhere to a different set of beliefs.

## Violation of Religious Freedom and Equality

The NSBS' review comes within the context of a concerted campaign of those who disagree with TWU's religious beliefs and practices on marriage. It has been suggested that such a belief and practice is reason enough to deny TWU graduates the ability to practice law.<sup>2</sup> However, it has not been demonstrated that the mere religious belief of marriage and personal expression of that belief will result

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<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part I of The Constitution Act, 1982, enacted as Schedule B to the Canada Act 1982, (U.K.) 1982, c. 11, which came into force on April 17, 1982.

<sup>2</sup> See: Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program," *Canadian Journal of Women and the Law*, Vol. 25, No. 1, 2013, and Jeff Green, "Proposed Christian law school should be denied accreditation, Clayton Ruby says," *Toronto Star*, March 1, 2013, online: [http://www.thestar.com/news/canada/2013/03/01/proposed\\_christian\\_law\\_school\\_should\\_be\\_denied\\_accreditation\\_clayton\\_ruby\\_says.html](http://www.thestar.com/news/canada/2013/03/01/proposed_christian_law_school_should_be_denied_accreditation_clayton_ruby_says.html).

in a deficiency of relevant legal competencies.<sup>3</sup> In fact, given that throughout this country there are hundreds of practicing lawyers who espouse the same beliefs as TWU, it is reasonable to conclude that having a mere religious belief and personal practice regarding marriage does not make one any less competent to impartially practice law than one who has a secular view and practice on marriage. Thus it is hardly a sufficient reason to decline a TWU graduate from legal practice.

Such a prohibition based on religious belief and practice, rather than on legal incompetence, is reminiscent of earlier violations of religious freedom in this country such as the *Roncarelli* case of 1959.<sup>4</sup> In that case, the Quebec premier of the day did not approve of the religious beliefs of the Jehovah's Witnesses and demanded the withdrawal of the liquor license of Mr. Roncarelli. That is not dissimilar to the general theme of the injustice being advocated against TWU:

- TWU's religious views and the requirement of students to abide by its teachings is protected by s. 2(a) of the *Charter*,<sup>5</sup>
- The preamble of the federal *Civil Marriage Act*<sup>6</sup> states that though marriage was redefined for civil purposes, members of religious institutions are free to "hold and declare" their religious views of marriage and that it is not "against the public interest" for religious organizations to hold diverse views of marriage;
- TWU is proclaiming and practising the traditional Christian definition of marriage, which is clearly within its right to do so;
- Legal academics have taken offence to TWU's belief and practice and are demanding law societies across this country to deny potential TWU graduates to practice law without regard to legal competence;<sup>7</sup>
- Law societies have responded to the political pressure from the legal academics by holding further investigations after TWU had already been thoroughly vetted and approved by the Federation of the Law Societies of Canada.

It is a highly unusual procedure for a Law Society to hold a public airing of a review of a decision of the Federation of Law Societies of Canada when it has approved a law school. In fact, our research indicates that the NSBS did not hold such a hearing for the recently approved law schools at Lakehead University and Thompson Rivers University.<sup>8</sup> However, NSBS is holding a review of the approval for Trinity Western University's law school.

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<sup>3</sup> John B. Laskin, "MEMORANDUM Re Trinity Western University School of Law Proposal –Applicability of Supreme Court decision in *Trinity Western University v. British Columbia College of Teachers*," to Gérald R. Tremblay, C.M., O.Q., Q.C., Ad. E., President, Federation of Law Societies of Canada, Jonathan G. Herman, Chief Executive Officer, Federation of Law Societies of Canada, March 21, 2013, p. 8, being Appendix C of the Special Advisory Committee On Trinity Western's Proposed School Of Law, Final Report, December 2013, online: [http://www.flsc.ca/\\_documents/SpecialAdvisoryReportFinal.pdf](http://www.flsc.ca/_documents/SpecialAdvisoryReportFinal.pdf)

<sup>4</sup> *Roncarelli v. Duplessis*, [1959] S.C.R. 121.

<sup>5</sup> *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772.

<sup>6</sup> *Civil Marriage Act*, S.C. 2005, c. 33, Assented to 2005-07-20, online: <http://laws-lois.justice.gc.ca/eng/acts/c-31.5/FullText.html>

<sup>7</sup> 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/>

<sup>8</sup> Federation of Law Societies of Canada, "Ad Hoc Committee on Approval of New Canadian Law Degree Programs: Report on Applications by: Lakehead University and Thompson Rivers University," online: [http://www.flsc.ca/\\_documents/Task-Force-Report-new-law-schools.pdf](http://www.flsc.ca/_documents/Task-Force-Report-new-law-schools.pdf)

The obvious question is, “Why?”

It would be fair to suggest that the faith-based community is highly concerned by this different treatment by the NSBS over the approval of a faith-based University to have a law school. We fully anticipate that the NSBS’s review of this matter will follow all of the legal requirements and protocols that are expected of a Law Society to ensure that the principles of procedural justice are followed. However, CCCC submits that since TWU has already met every requirement of the Federation to be accredited as a law school, it is inappropriate as a matter of administrative law for a Law Society to question that decision solely on the basis of the law school’s religious beliefs.

### **Is There No Room For Diversity?**

The average number of first-year law students in Canada is 2000.<sup>9</sup> TWU plans an entrance class of some 60 students, which would represent only 3% of the first year law class in Canada. With TWU law school coming on stream, approximately 97% of law students in Canada will be attending secular law schools. The question we have to ask is, “With there being 97% of the law students in secular institutions, can 3% have an existence of their own? Or, paraphrasing Douglas Laycock, we ask, “Is the secular model so absolutist that it cannot tolerate a 3% minority with a different solution?”<sup>10</sup>

This controversy raises questions about the ability of charities that hold the same position as TWU on the issue of the sanctity of marriage, to operate in the “public sphere.” Should TWU’s law graduates not be accepted to practice law in a province in Canada, it will have set a troubling precedent for other charities. The same arguments against TWU law graduates could be raised against graduates of Christian schools and universities or any institution which might hold beliefs which differ from those endorsed by the state. This would give support to the very troubling argument, as some have already raised, that such faith based institutions should not have the state’s imprimatur to issue such diplomas.<sup>11</sup> Those institutions will be forced to answer for their religious belief on marriage (or potentially any other issue, for that matter) and their graduates will be suspect as they enter into the various professions, such as medicine, social work, nursing, and education. In effect, their religious beliefs will be used against them rather than any ethical failures they would commit in violation of professional standards.

The message, if NSBS were to deny TWU graduates admission to the bar, would be clear: educational institutions – faith-based or otherwise – must believe and practice as those who oppose TWU demand or else lose their right to be a recognized institution of learning.

There can be no mistaking the message that will be heard by the faith-based community should NSBS deny the practice of law to TWU law graduates. In essence, such a decision would assert that faith-based communities no longer have the right to organize themselves into communities of faith to live and

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<sup>9</sup> Dean David S Cohen, “How Many Lawyers and Law Students? The supply of lawyers in Canada,” online: [http://www.cba.org/dev/BC/bartalk\\_95\\_00/08\\_98/guest\\_cohen.aspx](http://www.cba.org/dev/BC/bartalk_95_00/08_98/guest_cohen.aspx)

<sup>10</sup> Douglas Laycock, “The Rights of Religious Academic Communities,” (1993) 20 J.C. & U.L. 15, p. 26.

<sup>11</sup> Bruce MacDougall, “The Separation of Church and State: Destabilizing Traditional Religion-based Legal Norms on Sexuality,” (2003) 36 U.B.C.L. Rev. 1-27 at para. 37.

operate with a religious definition of marriage. They will have been denied full equality with the secular community of Canada.

Under such a circumstance the pre-amble of the Civil Marriage Act and the guarantees of the Canadian *Charter* in protecting religious practice will have been not only ignored, but expressly violated.

Clearly the Supreme Court of Canada recognized this in 2001 when it stated:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church. The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected.<sup>12</sup>

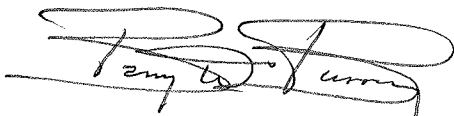
### Conclusion

It is our respectful submission that the NSBS re-evaluate the true purpose of reviewing the approval of TWU in light of the exhaustive treatment of this matter by the Federation of Law Societies of Canada. We respectfully submit that the heart of the matter ought to be the legal competency of its graduates rather than the religious belief and practices of TWU concerning marriage. Lawyers must adhere to a robust code of ethics through rules of professional conduct. Those are the mechanisms that should be used to determine whether an individual candidate is fit to practice law, not a blanket prohibition on graduates from a particular educational institution or on those who hold certain religious or personal beliefs.

Finally, we submit that there ought to be equality for all in Canada – religious as well as secular. No lawyer and no law student should have to face a religious or irreligious test to practice law, nor – we might add – should a religious university such as TWU have to face such a test to have a law school.

CCCC is grateful for the opportunity to make this submission and would be pleased to provide further assistance in any way the NSBS believes would be appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barry W. Bussey', written over a horizontal line.

Barry W. Bussey, B.A., LL.B., M.A., LL.M.  
V-P Legal Affairs

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<sup>12</sup> *Trinity Western University v. British Columbia College of Teachers* 2001 SCC 31, at para. 33.