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UBC OUTlaws University of British Columbia Faculty of Law
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OUTlaw Alberta University of Alberta Faculty of Law
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Osgoode OUTlaws Osgoode Hall Law School, York University
Queen's OUTlaw Queen's University Faculty of Law
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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

November 6, 2014

The Honourable Amrik Virk
Minister of Advanced Education
Room 133, Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister Virk:

We are writing in our capacities as leaders of lesbian, gay, bisexual, trans*, and queer (“LGBTQ”) affinity groups and organizations at Canadian law schools regarding the proposed new law school at Trinity Western University (“TWU”). As you know, TWU’s law program is currently seeking the accreditation of provincial and territorial regulators of the legal profession so that its graduates will be eligible to seek admission to the bar of each jurisdiction. Following the recent decision of the Law Society of British Columbia (“LSBC”) to rescind TWU’s accreditation for the purpose of bar admissions requirements, we would ask that you similarly reverse the approval of TWU’s law degrees by the B.C. Ministry of Advanced Education.

Since the TWU issue first came to light in early 2013, we have had serious concerns about TWU’s discriminatory policies towards LGBTQ students. Central to these 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 The policy plainly discriminates on the basis of sexual orientation. Its breach carries disciplinary sanctions, up to expulsion.² We have attached our letter to the LSBC, dated February 24, 2014, which outlines our view that accrediting TWU is inconsistent with Canadian law and public policy, the equality rights of LGBTQ individuals under the *Charter of Rights and Freedoms*, and the obligation of the legal profession to advance the cause of justice and protect the public interest.

Last December, we were disappointed to learn that the Federation of Law Societies of Canada (“FLSC”) recommended that its member law societies accredit TWU’s law school.³ While some law societies adopted the FLSC recommendation outright, a number of provincial law societies engaged in consultative processes to decide whether to accredit the school. Fortunately, the law societies in Nova Scotia⁴ and Ontario⁵ concluded that TWU could not be accredited, and on October 31, 2014, the LSBC rescinded its earlier approval, after a decisive and binding vote of British Columbia’s lawyers.⁶ The decision to accredit the school in New Brunswick

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 Federation of Law Societies of Canada, *Federation Provides Preliminary Approval of Trinity Western University’s Proposed Law Program*, 16 December 2013, available online: <http://bit.ly/1oiZtsk>

⁴ Nova Scotia Barristers’ Society, *Council votes for Option C in Trinity Western University law school decision*, 25 April 2014, available online: <http://bit.ly/1tyindV>

⁵ Law Society of Upper Canada, *Trinity Western University (TWU) Accreditation*, available online: <http://www.lsuc.on.ca/twu/>

⁶ Law Society of British Columbia, *Proposed TWU law school not approved for Law Society’s admission program*, 31 October 2014, available online: <http://bit.ly/1Afs6f9>

may also soon be reversed.⁷ Following these events, 4 of our organizations are currently intervening alongside Out On Bay Street in TWU's application for judicial review of the Ontario law society's decision.⁸

We understand that your Ministry's role in this process is to decide whether to approve the new degree program at TWU. In reaching its conclusion in December, the Ministry appeared to rely heavily on the FLSC's recommendation. The announcement of your approval came the day after the FLSC released its report,⁹ and in the wake of an expert panel's "serious reservations" about the proposed law school's academic freedom, the breadth of its world view, its ability to teach legal skills, and its course quality.¹⁰

We have since learned that your approval was also conditional. In a letter dated July 11, 2014, you cautioned TWU President Bob Kuhn that:

"The institution must provide a report to the Board on the status of faculty recruitment and regulatory body approval prior to launching the program. ... This term is consistent with the published criteria for quality assessment under the *Degree Authorization Act* in the Degree Program Review Criteria and Guidelines. The criteria to be considered by the Board include evidence that relevant regulatory bodies will recognize the credential... The Federation of Law Societies and the Law Society of BC are the relevant professional and regulatory bodies for the practice of law in BC. ... I request that TWU ensure it fulfills its reporting requirement under the terms and conditions of consent in the event that the Benchers' initial decision to approve the law faculty is ultimately reversed." [emphasis added]

This plainly implies that without regulatory approval by the LSBC, the consent given by the Minister is not effective and the TWU law degrees cannot be issued. Today, it is clear that the LSBC will not accredit the law school. Seventy-four percent of the 8,039 ballots in the LSBC's October 30 referendum were voted in favour of a resolution directing that:

"...the Benchers implement the resolution of the members passed at the special general meeting of the Law Society held on June 10, 2014, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purpose of the Law Society's admissions program."¹¹

The June 10 resolution (which passed with 77% of 4,178 votes) similarly called on the law society benchers to declare that TWU is not an approved law faculty for the purpose of the bar admissions requirements in British Columbia.¹²

In effect, the October 30 referendum results were binding on the LSBC benchers, who rescinded TWU's accreditation on October 31. This was a procedural outcome anticipated in your July 11 letter to President Kuhn. As such, we would like to request that you enforce the terms of TWU's degree approval by the Ministry of Advanced Education. As stated in your letter:

"If TWU law school graduates are not eligible to practice law in British Columbia, that would constitute a substantive change to the program that may require further consideration of the consent granted under the *Degree Authorization Act*."

Our request is underscored by the fact that, at a basic level, it was unjust for the B.C. government to authorize a pathway to the legal profession that openly discriminates against a vulnerable segment of the Canadian

⁷ Law Society of New Brunswick, *Trinity Western University*, 3 September 2014, available online: <<http://lawsociety-barreau.nb.ca/en/public/trinity-western-university>>

⁸ Out On Bay Street, *Leave granted to intervene in Trinity Western University legal dispute*, 25 September 2014, available online: <<http://outonbayst.org/leave-granted-to-intervene-in-trinity-western-university-legal-dispute/>>

⁹ British Columbia Ministry of Advanced Education, *Minister's Statement on Trinity Western University's Proposed Law Degree*, 18 December 2013, available online: <<http://bit.ly/KlOdZA>>

¹⁰ Stanley Tromp, "Experts warned of 'serious reservations' about Trinity Western University's law school plan," *The Province*, 17 August 2014, available online: <<http://bit.ly/1xbDCmi>>

¹¹ Law Society of British Columbia, *Notices to the Profession*, 26 September 2014, available online: <<http://bit.ly/1utZLPh>>

¹² Law Society of British Columbia, *Special General Meeting - June 10, 2014*, 10 June 2014, available online: <<https://www.lawsociety.bc.ca/page.cfm?cid=3946&t=Special-General-Meeting,-June-10>>

public. Although it should never have been necessary to do so, your Ministry can now rely on the numerous regulators, academics, and legal authorities that have consistently rejected TWU's position on this issue.

For these reasons, we look forward to a reversal of your earlier decision that will align with both your statutory mandate and obligation to support the equality rights of LGBTQ students.

We would be pleased to meet with you to discuss our concerns in person. Should you wish to correspond with us as a group, please email outlawscanada@gmail.com. We look forward to hearing from you.

Sincerely,

Ana Chamgoulova, Co-Chairperson
Victor Ryan, Co-Chairperson
Naomi Moses, Co-Chairperson
UBC OUTlaws
University of British Columbia Faculty of Law
ubcoutlaws@gmail.com

Cassidy Thomson, Executive Member
UVic OUTlaws
University of Victoria Faculty of Law
uvic.outlaws@gmail.com

Brent Ryan, President
Geea Atanase, Outreach Director
TRU OUTlaws
Thompson Rivers University Faculty of Law
geea.atanase@gmail.com

Andrew Lawrence, President
Carolyn Grogan, Vice President
OUTlaw Alberta
University of Alberta Faculty of Law
outlaw@ualberta.ca

Desirée Lalonde, Co-Coordinator
Bruce Gordon, Co-Coordinator
Linh Le, Co-Coordinator
USask OUTLaws
University of Saskatchewan College of Law
usaskoutlaws@gmail.com, del949@mail.usask.ca

Justin Morgan, Chair
Joshua Shaw, Executive Member
Manitoba OUTlaws
Robson Hall Faculty of Law, University of Manitoba
justin.morgan@shadowfalls.ca,
joshua.shaw@umanitoba.ca

Patrick Jang, Past President
Queen's OUTlaw
Queen's University Faculty of Law
soundmovescanada@gmail.com

Adriana Nigro, President
Western OUTlaws
Western University Faculty of Law
adriana.d.nigro@gmail.com

Lana McCrea, President
Dan Snyder, Executive Member
OUTlaw at McGill
McGill University Faculty of Law
mcgill.outlaw@gmail.com

Leah Staples, President
Schulich OUTlaw Society
Schulich School of Law, Dalhousie University
schulich.outlaw@gmail.com

Ted Flett, Co-Chair
Bailey Campbell, Co-Chair
UNB OUTlaw
University of New Brunswick Faculty of Law
eflett@unb.ca, bailey.amber.lee@unb.ca

David Ang, Executive Member
Brenna Meade-Clift, Executive Member
Brandon Piva, Executive Member
uOttawa OUTLaws
University of Ottawa Faculty of Law
uottawaoutlaw@gmail.com

Lisa Hartman, Co-Chair
Rodolfo Ticzon, Co-Chair
Osgoode OUTlaws
Osgoode Hall Law School, York University
outlaws@osgoode.yorku.ca

Katelyn Scorer, President
Windsor OUTlaws
University of Windsor Faculty of Law
scorer@uwindsor.ca

Madeleine Burkhardt-Jones, Co-President
Andrew Wang, Co-President
Out In Law
University of Toronto Faculty of Law
outinlaw.universityoftoronto@gmail.com

/dj

Encl. February 24, 2014 Letter from OUTlaws Canada to the Law Society of British Columbia
July 11, 2014 Letter from the Minister of Advanced Education to the President of Trinity Western University

C. Bob Kuhn, President, Trinity Western University,
7600 Glover Road, Langley, BC, V2Y 1Y1; president@twu.ca

Lorne Sossin, Dean, Osgoode Hall Law School, York University,
Ignat Kaneff Building, 4700 Keele Street, Toronto, ON, M3J 1P3; lawdean@osgoode.yorku.ca

Jutta Brunnée, Interim Dean, Faculty of Law, University of Toronto,
84 Queen's Park, Toronto, ON, M5S 2C5; jutta.brunnee@utoronto.ca

Edward Iacobucci, Dean Designate, Faculty of Law, University of Toronto,
84 Queen's Park, Toronto, ON, M5S 2C5; edward.iacobucci@utoronto.ca

Camille Cameron, Dean of Law, University of Windsor,
401 Sunset Avenue, Windsor, ON, N9B 3P4; ccameron@uwindsor.ca

Nathalie Des Rosiers, Dean, Common Law Section, Faculty of Law, University of Ottawa,
Fauteux Hall, 57 Louis Pasteur Street, Ottawa, ON, K1N 6N5; nathalie.desrosiers@uOttawa.ca

Bill Flanagan, Dean, Faculty of Law, Queen's University & President, Canadian Council of Law Deans,
Macdonald Hall, 128 Union Street, Kingston, ON, K7L 3N6; w.flanagan@queensu.ca

W. Iain Scott, Dean, Faculty of Law, Western University,
151 Richmond Street, London, ON, N6A 3K7; iain.scott@uwo.ca

Daniel Jutras, Dean, Faculty of Law, McGill University,
Room 15, Chancellor Day Hall, 3644 Peel Street, Montreal, QC, H3A 1W9; dean.law@mcgill.ca

Kim Brooks, Dean, Schulich School of Law, Dalhousie University,
Weldon Law Building, 6061 University Avenue, P.O. Box 15000, Halifax, NS, B3H 4R2; lawdean@dal.ca

Jeremy Levitt, Interim Dean, Faculty of Law, University of New Brunswick,
Room 220, Ludlow Hall, P.O. Box 4400, Fredericton, NB, E3B 5A3; Jeremy.Levitt@unb.ca

Lorna Turnbull, Dean, Faculty of Law, University of Manitoba,
Room 301A, Robson Hall, 224 Dysart Road, Winnipeg, MB, R3T 2N2; Lorna.Turnbull@umanitoba.ca

Jeremy Webber, Dean, Faculty of Law, University of Victoria,
P.O. Box 1700, STN CSC, Victoria, BC, V8W 2Y2; lawdean@uvic.ca

Mary Anne Bobinski, Dean, Faculty of Law, University of British Columbia,
Allard Hall, 1822 East Mall, Vancouver, BC, V6T 1Z1; bobinski@law.ubc.ca

Anne N. Pappas, Interim Dean, Faculty of Law, Thompson Rivers University,
900 McGill Road, Kamloops, BC V2C 0C8; apappas@tru.ca

Paul D. Paton, Dean, Faculty of Law, University of Alberta,
Room 487, Law Centre, 111 - 89 Avenue, Edmonton, AB, T6H 2H5; deanoflaw@ualberta.ca

Beth R. E. Bilson, Interim Dean, College of Law, University of Saskatchewan,
Room 222, Law Building, 15 Campus Drive, Saskatoon, SK, S7N 5A6; beth.bilson@usask.ca

Michele Hollins, President, Canadian Bar Association,
500-865 Carling Avenue, Ottawa, ON, K1S 5S8; president@cba.org

Kael McKenzie, 1st Co-Chair, Sexual Orientation & Gender Identity Conference, Canadian Bar Association,
Manitoba Justice, Prosecution Service, 510-405 Broadway, Winnipeg, MB, R3C 3L6; kael.mckenzie@gov.mb.ca

Alex Shorten, President, British Columbia Branch, Canadian Bar Association,
270-1075 Georgia Street West, Vancouver, BC, V6E 3C9; ashorten@alexshorten.com

Krystle A. Gill, Equality & Diversity Rep, British Columbia Branch, Canadian Bar Association,
HART Legal, 300-1001 Wharf Street, Victoria, BC, V8W 1T6; kgill@hart-legal.com

Preston Parsons, Co-Chair, Sexual Orientation & Gender Identity Conference, CBA British Columbia,
Overholt Law, 600-889 West Pender Street, Vancouver, BC, V6C 3B2; preston@overholtlawyers.com

Sasa Pudar, Co-Chair, Sexual Orientation & Gender Identity Conference, CBA British Columbia,
McMillan LLP, Royal Centre, 1055 West Georgia Street, Suite 1500, P.O. Box 11117, Vancouver, BC, V6E 4N7;
sasa.pudar@mcmillan.ca

Jan Lindsay, President, Law Society of British Columbia,
Lindsay LLP, 1000-564 Beatty Street, Vancouver, BC, V6B 2L3; jlindsay@lindsayllp.ca

Maria Morellato, QC, Chair, Equality and Diversity Advisory Committee, Law Society of British Columbia,
Mandell Pinder LLP, Suite 422, 1080 Mainland Street, Vancouver, BC, V6B 2T4; maria@mandellpinder.com

Janet Minor, Treasurer, Law Society of Upper Canada,
Osgoode Hall, 130 Queen Street West Toronto, ON, M5H 2N6; lawsociety@lsuc.on.ca, ZPereira@lsuc.on.ca

Tilly Pillay, President, Nova Scotia Barristers' Society,
Cogswell Tower, 800-2000 Barrington Street, Halifax, NS, B3J 3K1; pillaytp@gov.ns.ca

Marie-Claude Bélanger-Richard, QC, President, Federation of Law Societies of Canada,
Stewart McKelvey, Suite 601, Blue Cross Centre, 644 Main Street, P.O. Box 28051, Moncton, NB, E1C 9N4;
mcbelanger@smss.com

Enclosures



Our Ref: 97560

July 11, 2014

Mr. Robert Kuhn, President (Interim)
Trinity Western University
7600 Glover Rd
Langley BC V2Y 1Y1

Dear Mr. Kuhn:

I write further to my letters of December 17, 2013 and February 12, 2014 advising of my consent under the *Degree Authorization Act* to a Juris Doctor program at Trinity Western University (“TWU”).

The consent included a number of terms and conditions. Included in both the original and revised Special Terms and Conditions of Ministerial Consent was the following requirement:

5) **Reporting:** The institution must provide a report to the Board on the status of faculty recruitment and regulatory body approval prior to launching the program.

This term is consistent with the published criteria for quality assessment under the *Degree Authorization Act* in the Degree Program Review Criteria and Guidelines. The criteria to be considered by the Board include evidence that relevant regulatory bodies will recognize the credential (see page 24). The Federation of Law Societies and the Law Society of BC are the relevant professional and regulatory bodies for the practice of law in BC.

I am aware that on June 10, 2014, a special resolution of the members of the Law Society of BC was passed directing the Benchers to declare that TWU is not an approved law faculty for the purpose of the bar admissions requirements in British Columbia. I understand that the special resolution is not binding on the Benchers, however it may nonetheless be adopted and implemented by the Benchers voluntarily. In addition, the *Legal Profession Act* also provides for a further process by which the resolution may become binding following a referendum.

I request that TWU ensure it fulfills its reporting requirement under the terms and conditions of consent in the event that the Benchers’ initial decision to approve the law faculty is ultimately reversed.

.../2

If TWU law school graduates are not eligible to practice law in British Columbia, that would constitute a substantive change to the program that may require further consideration of the consent granted under the *Degree Authorization Act*.

Sincerely,

A handwritten signature in black ink, appearing to read "Amrik Virk". The signature is written in a cursive style with a large initial "A".

Amrik Virk
Minister

pc: Degree Quality Assessment Board

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February 24, 2014

Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear President Lindsay and Benchers:

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 B.C., this accreditation process falls within the authority of the Law Society of British Columbia (LSBC). 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/1fiQgX2>). Faculty from Alberta's 2 law schools have also expressed their concerns in an open letter (<http://bit.ly/1fYkL6>).

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 LSBC. 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 LSBC 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 B.C. 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>>

LSBC 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,

Cassidy Thomson, JD Candidate (2015)
Executive
UVic OUTlaws
University of Victoria Faculty of Law
uvic.outlaws@gmail.com

Flora Vineberg, JD Candidate (2015)
Gord Lamb JD Candidate (2015)
Co-Chairpersons
UBC OUTlaws
University of British Columbia Faculty of Law
flora.vineberg@gmail.com, glamb36@gmail.com

Kendra Morris, JD Candidate (2014)
Brent Ryan, JD Candidate (2015)
Sarah Marsh, JD Candidate (2014)
Executive
TRU OUTlaws
Thompson Rivers University Faculty of Law
truoutlaws@outlook.com

Christine Wilson, JD Candidate (2015)
Shad Turner, JD Candidate (2015)
President & Vice President
OUTlaw Alberta
University of Alberta Faculty of Law
outlaw@ualberta.ca

Leif Jensen, JD Candidate (2014)
Linh Le, JD Candidate (2015)
Bruce Gordon, JD Candidate (2016)
Co-Coordiators
USask OUTLaws
University of Saskatchewan College of Law
usaskoutlaws@gmail.com

Joshua Shaw, JD Candidate (2015)
Co-Chair
Manitoba OUTlaws
Robson Hall Faculty of Law, University of Manitoba
outlaws@umanitoba

Patrick Jang, JD Candidate (2014)
Co-President
Queen's OUTlaw
Queen's University Faculty of Law
patrickjang@gmail.com

Executive
Western OUTlaws
Western University Faculty of Law
OutLawsWestern@gmail.com

Lana McCrea, BCL/LLB Candidate (2015)
Dan Snyder, BCL/LLB Candidate (2015)
Co-Presidents
OUTlaw at McGill
McGill University Faculty of Law
mcgill.outlaw@gmail.com

Leah Staples, JD Candidate (2015)
President
Schulich OUTlaw Society
Schulich School of Law, Dalhousie University
schulich.outlaw@gmail.com

Ted Flett, JD Candidate (2016)
Chair
UNB OUTlaw
University of New Brunswick Faculty of Law
eflett@unb.ca

Allison Vanek, JD Candidate (2014)
Executive Member
uOttawa OUTlaw
University of Ottawa Faculty of Law
avane080@uottawa.ca

Benjamin Vandorpe, JD Candidate (2015)
Jean-Paul Bevilacqua, JD Candidate (2015)
Co-Chairs
Osgoode OUTlaws
Osgoode Hall Law School, York University
outlaws@osgoode.yorku.ca

Katelyn Scorer, JD Candidate (2015)
President
Windsor OUTlaws
University of Windsor Faculty of Law
scorer@uwindsor.ca

Ella Henry, JD Candidate (2015)
Pedram Moussavi, JD/MBA Candidate (2015)
William Goldbloom, JD Candidate (2015)
Co-Presidents
Out In Law
University of Toronto Faculty of Law
outinlaw.universityoftoronto@gmail.com

/dj

c. Lorne Sossin, Dean, Osgoode Hall Law School, York University,
Ignat Kaneff Building, 4700 Keele Street, Toronto, ON, M3J 1P3; lawdean@osgoode.yorku.ca

Mayo Moran, Dean, Faculty of Law, University of Toronto,
84 Queen's Park, Toronto, ON, M5S 2C5; mayo.moran@utoronto.ca

Camille Cameron, Dean of Law, University of Windsor,
401 Sunset Avenue, Windsor, ON, N9B 3P4; ccameron@uwindsor.ca

Nathalie Des Rosiers, Dean, Common Law Section, Faculty of Law, University of Ottawa,
Fauteux Hall, 57 Louis Pasteur Street, Ottawa, ON, K1N 6N5; nathalie.desrosiers@uOttawa.ca

Bill Flanagan, Dean, Faculty of Law, Queen's University,
Macdonald Hall, 128 Union Street, Kingston, ON, K7L 3N6; w.flanagan@queensu.ca

W. Iain Scott, Dean, Faculty of Law, Western University,
151 Richmond Street, London, ON, N6A 3K7; iain.scott@uwo.ca

Daniel Jutras, Dean, Faculty of Law, McGill University,
Room 15, Chancellor Day Hall, 3644 Peel Street, Montreal, QC, H3A 1W9; dean.law@mcgill.ca

Kimberley Brooks, Dean, Schulich School of Law, Dalhousie University,
Weldon Law Building, 6061 University Avenue, P.O. Box 15000, Halifax, NS, B3H 4R2; lawdean@dal.ca

John R. Williamson, Interim Dean, Faculty of Law, University of New Brunswick,
Room 220, Ludlow Hall, P.O. Box 4400, Fredericton, NB, E3B 5A3; jrww@unb.ca

Lorna Turnbull, Dean, Faculty of Law, University of Manitoba,
Room 301A, Robson Hall, 224 Dysart Road, Winnipeg, MB, R3T 2N2; Lorna.Turnbull@umanitoba.ca

Jeremy Webber, Dean, Faculty of Law, University of Victoria,
P.O. Box 1700, STN CSC, Victoria, BC, V8W 2Y2; lawdean@uvic.ca

Mary Anne Bobinski, Dean, Faculty of Law, University of British Columbia,
Allard Hall, 1822 East Mall, Vancouver, BC, V6T 1Z1; bobinski@law.ubc.ca

Anne N. Pappas, Interim Dean, Faculty of Law, Thompson Rivers University,
900 McGill Road, Kamloops, BC V2C 0C8; apappas@tru.ca

Philip Bryden, Dean, Faculty of Law, University of Alberta,
Room 487, Law Centre, 111 - 89 Avenue, Edmonton, AB, T6H 2H5; deanoflaw@ualberta.ca

Sanjeev Anand, Dean, College of Law, University of Saskatchewan,
Room 250, Law Building, 15 Campus Drive, Saskatoon, SK, S7N 5A6; s.anand@usask.ca

Fred W. Headon, President, Canadian Bar Association,
500-865 Carling Avenue, Ottawa, ON, K1S 5S8; president@cba.org

Robert A. Peterson, Co-Chair, Sexual Orientation & Gender Identity Conference, Canadian Bar Association,
500-865 Carling Avenue, Ottawa, ON, K1S 5S8; robert.peterson@govlaw.ca

Bill Flanagan, President, Canadian Council of Law Deans,
57 Louis Pasteur Street, Ottawa, ON, K1N 5N5; w.flanagan@queensu.ca

The Honourable Amrik Virk, Minister of Advanced Education (British Columbia),
Room 133, Parliament Buildings, Victoria, BC, V8V 1X4; aved.minister@gov.bc.ca

Dean Crawford, President, British Columbia Branch, Canadian Bar Association,
10th Floor, 845 Cambie Street, Vancouver, BC, V6B 5T3, B3H 1Y6; dcrawford@cplaw.ca

Sean E. Rowell, Young Lawyers Rep, British Columbia Branch, Canadian Bar Association,
Perry & Company, 1081 Main Street, P.O. Box 790, Smithers, BC, V0J 2N0; sean@perryco.ca

Krystle A. Gill, Equality & Diversity Rep, British Columbia Branch, Canadian Bar Association,
HART Legal, 300-1001 Wharf Street, Victoria, BC, V8W 1T6; kgill@hart-legal.com

Danielle R. Jarvis, Chair, Sexual Orientation & Gender Identity Conference, CBA British Columbia,
300-1090 Homer Street, Vancouver, BC, V6B 2W9, B3H 1Y6; danielle@jarvislegal.ca

Maria Morellato, QC, Chair, Equality and Diversity Advisory Committee, Law Society of British Columbia,
Mandell Pinder LLP, Suite 422, 1080 Mainland Street, Vancouver, BC, V6B 2T4; maria@mandellpinder.com