

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

November 9, 2015

The Honourable Jody Wilson-Raybould, P.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, ON K1A 0A6

Dear Minister Wilson-Raybould:

Congratulations on your recent election to Parliament and appointment to Cabinet. Like many Canadians, we look forward to policy developments in the Justice portfolio under your leadership. To support your transition, we are writing today to assist you with an important and time-sensitive equality and access to justice file, which you will have inherited from the previous government.

Our organizations – the OUTlaws – are lesbian, gay, bisexual, trans*, and queer (LGBTQ) student affinity groups at Canadian law schools. There are 15 OUTlaws chapters across the country and hundreds of OUTlaws alumni in all areas of legal practice. The goal of our organizations is to promote inclusiveness in legal education, foster mentorship relationships between present and future members of the LGBTQ bar, and to advocate and educate on legal issues that impact the LGBTQ community.

Since 2013, we have been expressing serious concerns about the proposed law school at Trinity Western University (TWU), a B.C.-based Evangelical Christian university that has in place policies which systematically exclude, humiliate, and discriminate against LGBTQ students. 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 The policy plainly discriminates on the basis of sexual orientation. Its breach carries disciplinary sanctions, up to expulsion.² In our view, TWU's policies are 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.

As you may be aware, regulators, governments, legal experts, and bar associations across Canada support our position on this issue. TWU's Community Covenant has been criticized by the Canadian Bar Association and law school faculties across the country, approval for TWU's law degrees was revoked by the B.C. government, and TWU's law program was denied accreditation for admission to the lawyer licensing processes governed by law societies in Ontario, Nova Scotia, and British Columbia.

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>.

TWU has sought judicial review of the three law society decisions, and the OUTlaws are participating as an intervenor in each of these proceedings in order to represent the interests of the LGBTQ community.³ To-date, hearings have concluded and decisions have been released by the Nova Scotia Supreme Court⁴ and the Ontario Divisional Court⁵, both of which have been appealed. We are presently awaiting the decision of the B.C. Supreme Court, which we expect will also be appealed. We anticipate that these streams of litigation will eventually converge at the Supreme Court of Canada.

In each of these parallel proceedings, the previous government intervened as of right, presenting arguments in support of TWU's discriminatory policies, on the basis of religious freedom.⁶ It was clear from the outset that their intervention was motivated by the political convictions of the previous government, rather than legal principle or *Charter* values. Not only were the legal authorities relied on by the government's counsel outdated or clearly distinguishable from the present dispute, but the government's participation was misplaced given the definitive provincial jurisdiction over both education and regulation of the legal profession. None of provincial Attorneys General chose to intervene in any of the proceedings.

At present, appeal hearing dates have been scheduled for April 6 to 8, 2016, at the Nova Scotia Court of Appeal,⁷ and we are awaiting dates from the Ontario Court of Appeal. In each appeal, the court will need to hear new motions for leave to intervene in the very near future. As such, we are writing to urge you to reconsider the participation of the Department of Justice in these proceedings, or the position the Crown will advance if it continues its intervention.

If it would be of assistance, we would be pleased to meet with you to discuss our concerns on this issue. We can be reached at outlawscanada@gmail.com or 416-628-3146, and we look forward to hearing from you.

Sincerely,



Douglas Judson
On behalf of OUTlaws Canada

³ See, for example, records from the Ontario proceeding: Motion Record of the Proposed Intervenor OUTlaws and Out On Bay Street, filed 15 August 2014, available online: <<http://bit.ly/1WBVRSx>>; Factum of the Proposed Intervenor OUTlaws and Out On Bay Street, filed 15 August 2014, available online: <<http://bit.ly/1Q8mhHF>>; Endorsement of Justice Nordheimer of the Ontario Divisional Court, dated 24 September 2014, available online: <<http://bit.ly/1NwWCGS>>.

⁴ *Trinity Western University v. Nova Scotia Barristers' Society*, 2015 NSSC 25, available online: <<http://www.canlii.org/en/ns/nssc/doc/2015/2015nssc25/2015nssc25.html>>.

⁵ *Trinity Western University v. Law Society of Upper Canada*, 2015 ONSC 4250, available online: <<http://www.canlii.org/en/on/onscdc/doc/2015/2015onsc4250/2015onsc4250.html?resultIndex=1>>.

⁶ Factum of the Intervenor the Attorney General of Canada, filed in the Ontario Divisional Court on 4 May 2015, available online: <<http://bit.ly/1GOFOKb>> ; Factum of the Intervenor the Attorney General of Canada, filed in the Nova Scotia Supreme Court on 7 November 2014: <<http://bit.ly/1Nh3QtW>>.

⁷ Order of Justice Bourgeois of the Nova Scotia Supreme Court, dated 28 August 2015, available online: <http://nsbs.org/sites/default/files/ftp/TWU_Submissions/Order_CA438894_2015-08-28.pdf>.