March 18, 2014

Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer and Members of Convocation:

Out On Bay Street is a non-profit organization that provides lesbian, gay, bisexual, transgender, and queer (LGBTQ) law students and young professionals with career development, educational, and networking opportunities, working to help them transition from school to the workplace. It is integral to our mandate to promote inclusive and pro-diversity workplaces and schools for LGBTQ individuals.

We are writing to register our concerns regarding Trinity Western University’s (TWU’s) proposed law school, given its impacts on our service community and student membership across Canada. TWU’s program is currently seeking the approval of the provincial law societies for admission to the bar of each jurisdiction. In Ontario, this is a decision that falls to the Law Society of Upper Canada (LSUC). 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 Ontario 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

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>
boards, and over one thousand law students. 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 legal ethics, or promoting academic freedom. Our agreement with these views is underscored by the fact that many of our LGBTQ student members and colleagues have been subjected to systemic discrimination, exclusion, and hatred related to their sexual orientation. It would be tremendously disheartening to see the legal profession's leadership support policies which perpetuate these unfortunate experiences and constrain access to legal education and the legal profession for LGBTQ individuals. We are confident that our membership base and corporate partners would agree that institutionalizing the targeted humiliation of LGBTQ individuals is unacceptable.

The legal profession 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 LSUC’s mandate. 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. Although this precedent cannot be ignored, over the last 12 years the law has transformed. The 2013 case of Whatcott 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.

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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 LSUC to heavily scrutinize the FLSC recommendation.

Current Canadian law schools have made a priority of making legal education more accessible, practical, and representative of society. The leadership of the Ontario profession should demonstrate the same interests in rendering their decision on TWU's accreditation. 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 LSUC 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.

Sincerely,

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