



CHRISTIAN LEGAL FELLOWSHIP

— Alliance des chrétiens en droit —

I N T E G R A T I N G C H R I S T I A N F A I T H & L A W S I N C E 1 9 7 8

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February 10, 2014

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

Nova Scotia Barristers' Society
Cogswell Tower, 800-2000 Barrington Street
Halifax NS B3J 3K1

ATTN: Mr. J. René Gallant, President

Dear Mr. Gallant:

RE: Trinity Western University Consultation

The Nova Scotia Barristers' Society Executive Committee and Council are reviewing the approval of the Trinity Western University (TWU) application for a law school and in so doing, have stated they are sensitive to concerns about discrimination. In particular, in connection with the TWU Community Covenant Agreement, they are reviewing the issue of whether they will permit graduates of Trinity Western University's (TWU) proposed school of law to acquire membership in the Nova Scotia Barristers' Society.

It is noted that the Federation of Law Societies of Canada, to whom the power of approval was granted, has already considered this issue and approved TWU's application. TWU also received approval from the British Columbia Ministry of Advanced Education to grant the degree Juris Doctor (J.D.).

The society has invited submissions from members of the profession and from the public. The Christian Legal Fellowship (CLF) appreciates the opportunity to make submissions to the Nova Scotia Barristers' Society on its consideration of Trinity Western University (TWU)'s proposed law school.

The CLF is a national charitable association that exists to serve the legal profession by deepening and strengthening the spiritual life of its members, and to encourage and facilitate among Christians in the vocation of law the integration of a biblical faith with contemporary legal, moral, social and political issues. The CLF's membership consists of nearly 600 lawyers, law students, professors, and others who support its work. It has 14 chapters in cities across Canada and student chapters in most Canadian law schools. While having no direct denominational affiliation, CLF's members represent more than 30 Christian denominations working in association together.

The CLF was founded out of the conviction that the practice of law is a vocation, a calling from God. As Christian lawyers, we are heirs to a tradition of legal thought that bears on many of the most pressing legal and constitutional

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questions facing our profession, as well as our broader community. We believe it is our responsibility as Christian lawyers to continue to develop that tradition, and to articulate what we understand to be required by justice in a free and democratic society.

As Canada's largest association of Christian lawyers, CLF is uniquely positioned to comment on some of the issues being considered by The Nova Scotia Barristers' Society (NSBS) in this matter.

Our starting point is that, in a multicultural society such as Canada, there can be no single conception of sexual morality and marriage that all must be compelled to believe. Indeed, even within CLF's own membership, there is a divergence of individual beliefs on this matter. However, our members stand united in the conviction that individuals should be free to formulate and adhere to their own understanding of the good, and live according to their individual conscience and religious beliefs. These principles are not only entrenched in the *Canadian Charter of Rights and Freedoms*, but in this particular context, they are specifically affirmed in the preamble to *the Civil Marriage Act*, which states that 'it is not against the public interest to hold and publicly express diverse views on marriage'.¹

CLF would be concerned if TWU refused to admit gay students, but it does not. It does require that all of its students live according to an evangelical Christian code of conduct while in attendance at TWU, including an evangelical Christian understanding of marriage and sexuality.

The current campaign, although directed against TWU specifically, has implications for all those in the legal profession – Christian or otherwise - who understand marriage and sexuality in the same way as TWU, as well as for any lawyer who opposes certain laws, even while abiding by them and advising their clients to do likewise. The message is that it is not enough to accept gay and lesbian colleagues and clients as colleagues and clients and to serve them impartially. The thrust of the opposition to the TWU proposal would prohibit lawyers, judges and law professors from articulating or endorsing, either in the public square, the academy, or the marketplace, a religious understanding of marriage and sexuality which differs from what is defined by the civil law for secular purposes. TWU is not training its students to accept an erroneous understanding of the civil law or provide inaccurate legal advice about the legal impact of the *Civil Marriage Act* – if so, the NSBS would have every right to be concerned. To the contrary, Christian lawyers, like all lawyers, understand the difference between providing accurate, sound legal advice in their professional practices, and formulating personal comprehensive belief systems which may differ from the state's official position.

The implications of refusing TWU accreditation on these grounds will be felt by Christian lawyers – indeed lawyers of all faiths and those of no faith who hold similar conscientious views – throughout Canada. Law deans, law firm diversity committees, corporate counsel initiatives, law student councils, and others with power over lawyers and law students will take from such a refusal a mandate not to tolerate any dissent from their view on matters of sexual morality or marriage.

Canadian society is robust enough to live with the tension of divergent understandings of marriage and sexuality, just as it is robust enough to live with the tension of divergent understandings of the divine. Canadian society can handle disagreements about the morality of sexual practices and the nature of marriage, just as it handles disagreements about the value of religious practices.

There exist, in the courts, law faculties, and firms, Christian lawyers who accept the moral theology behind the TWU code of conduct. They have not, to this point, been viewed as unfit to practice and to teach. But if the TWU application is denied, we can expect that pressure will be brought to bear on them as well. It is intolerable that lawyers should be



required to conform their personal beliefs to someone else's view of what marriage ought to be and what its purpose is. But that will be the message if the TWU application fails.

The legal profession is one that has always promoted independence from the state, diversity of opinion, and freedom from mental and religious coercion. Its existence is predicated on the ability of its members to maintain that independence, and that starts with respecting their freedom to form their own beliefs. Law societies exist to regulate professional conduct and competence, not to police the personal beliefs and convictions of its members. To impose a blanket prohibition on all TWU graduates would be to pre-emptively judge a candidate as unworthy of the profession simply because he or she adheres to certain religious beliefs. Such a ban would violate the very principles of independence, diversity, and natural justice that the profession exists to protect, and would be egregious in the absence of any evidence that the individual candidate would actually engage in unlawful discrimination in his or her practice.

To paraphrase the findings of the Supreme Court of Canada in *BCCT v. TWU*², although members of the legal profession may have reasons to object to TWU's Community Standards, they are not sufficient to deny TWU graduates admission to the bar. Indeed, if TWU's Community Standards could be sufficient in themselves to justify such denial, it is difficult to see how the same logic would not result in the denial of admission to the bar to members of a particular church, or to any future candidate who might hold dissenting and unpopular views on a given political, social, or moral matter. The diversity of Canadian society is partly reflected in the multiple religious and other non-governmental organizations that mark the societal landscape, and this diversity of views should be respected.

As a quasi-governmental body, the NSBS must exercise its authority in a manner consistent with the values enshrined in the *Canadian Charter of Rights and Freedoms*. The NSBS must take into account the *Charter* value of freedom of religion. As the SCC concluded in its careful review of this very issue, where rights appear to be in conflict the appropriate reconciliation involves the toleration of divergent beliefs and respect for the freedom of individuals to adhere to those beliefs.

As the Supreme Court of Canada concluded in *BCCT v. TWU*, tolerance of divergent beliefs is a hallmark of a democratic society. The CLF submits that such tolerance must begin with lawyers themselves, as the guardians of the rule of law.

Please note the more than 100 endorsements, including judicial, that follow. CLF would be pleased to provide further assistance in any way the NSBS believes would be appropriate. Thank you for your attention to this matter.

Sincerely,

Ruth A.M. Ross, B.A., LL.B.

Interim Executive Director

Called to the Nova Scotia Bar 1979 (Ruth Ann Mix)

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