Out On Bay Street
On s'assume sur Bay Street

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>

[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-fcee.ca/open-letter-reconsider-approval-of-law-school-at-trinity-western-university/>

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 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.[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.

---

[6] Four law school faculty councils have passed motions condemning the Community Covenant Agreement: Osgoode (http://bit.ly/1lCEL16), Queen's (http://bit.ly/1e7xLrj), UBC (http://bit.ly/1laMBSW), and Dalhousie (http://bit.ly/1flQgX2). Faculty from Alberta's 2 law schools have also expressed their concerns in an open letter (http://bit.ly/1flYkL6).

[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>

[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>

- 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,

Paul Marai
Chair, Board of Directors
paul.marai@outonbayst.org

Japneet Kaur
President
japneet.kaur@outonbayst.org

/dj

c. Matt Petersen, Chair, Pride At Work Canada; Matt.Petersen@cibc.com

Melissa Kennedy, Chair, Legal Leaders for Diversity,
OTPP, 3rd floor, 5650 Yonge Street, Toronto, ON M2M 4H5; melissa_kennedy@otpp.com

Helen Kennedy, Executive Director, Egale,
185 Carlton Street, Toronto ON, M5A 2K7; hkennedy@egale.ca

Ross Johnstone, Director of Education, Out In Schools; ross@outinschools.com

Craig Daniel & Andrea Love, Co-Chairs, Community One Foundation,
PO Box 760 – Station F, Toronto, ON, M4Y 2N6; info@communityone.ca

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

[11] *Doré v Barreau du Québec*, 2012 SCC 12, available online: <http://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.pdf>

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; jrw@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

Pascale Daigneault, President, Ontario Bar Association,
20 Toronto Street, Suite 300, Toronto, ON, M5C 2B8; president@oba.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

James Edward Merrigan, Chair, Constitutional & Human Rights Section, Canadian Bar Association,
Poole Althouse, 49-51 Park Street, PO Box 812 Stn Main, Corner Brook, NL, A2H 6H7;
jmerrigan@poolealthouse.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 (BC),
Room 133, Parliament Buildings, Victoria, BC, V8V 1X4; aved.minister@gov.bc.ca

Thomas G. Conway, Law Society Treasurer, Law Society of Upper Canada,
Osgoode Hall, 130 Queen Street West, Toronto, ON, M5H 2N6; tconway@cavanagh.ca

The Honourable Brad Duguid, Minister of Training, Colleges and Universities,
3rd Floor, Mowat Block, 900 Bay Street, Toronto, ON, M7A 1L2; bduguid.mpp@liberal.ola.org

The Honourable John Gerretsen, Attorney General of Ontario,
11th Floor, 720 Bay Street, Toronto, ON, M5G 2K1; jgerretsen.mpp@liberal.ola.org

Jonathan M. Richardson, Chair, Young Lawyers' Division (East), Ontario Bar Association,
Augustine Bater Binks LLP, Suite 1100, 141 Laurier Avenue West, Ottawa, ON, K1P 5J3; jmr@abblaw.ca

Sarah L. Kirshin-Neilans, Chair, Young Lawyers' Division (Southwest), Ontario Bar Association,
Nicholson Smith & Partners LLP, 295 Central Avenue, London, ON, N6B 2C9; skneilans@nicholsonsmith.com

Omar Ha-Redeye, Co-Chair, Young Lawyers' Division (Toronto), Ontario Bar Association,
20 Carlton Street, Unit 126, Toronto, ON, M5B 1J2; Omar@FleetStreetLaw.com

Christine A. Jackson, Co-Chair, Young Lawyers' Division (Toronto), Ontario Bar Association,
Osler, Hoskin & Harcourt LLP, 100 King Street West,1 First Canadian Place, Suite 4600, P.O. Box 50, Toronto, ON, M5X 1B8; cjackson@osler.com

Lisa Marie Barnet, President, Young Lawyers' Division, Canadian Bar Association,
Ontario Power Authority, 1600-120 Adelaide St W, Toronto, ON, M5H 1T1; lisa_barnet@hotmail.com

Blake Jones, Chair, Student Division, Ontario Bar Association,
20 Toronto Street, Suite 300, Toronto, ON, M5C 2B8; bjones44@uwo.ca

Janet Whitehead, President, Country and District Law Presidents' Association,
731 9th Street West, Owen Sound, ON, N4K 3P5; jwhitehead@sarnialaw.com

Paul Jonathan Saguil, Chair, Sexual Orientation & Gender Identity Conference, Ontario Bar Association,
20 Toronto Street, Suite 300, Toronto, ON, M5C 2B8; paul.jonathan.saguil@gmail.com

Secretariat, OUTlaws Canada,
Osgoode Hall Law School, York University, 4700 Keele Street, Toronto, ON M3J 1P3;
outlawscanada@gmail.com