

November 18, 2014

Law Society of Nunavut
P.O. Box 149
Building 917, 3rd Floor, Unit B
Iqaluit, NU X0A 0H0

Attention: Executive of the Law Society

Dear Members of the Executive:

Re: Trinity Western University

I am writing in reply to the discussion paper posted by the Law Society dated October 28, 2014. I suggest there is one main issue that needs to be addressed. This relates to the respect for the rule of law.

Rule of Law

As a quasi-judicial body, the Law Society must make its decision based upon what the law is at the time an issue comes before it. The issues involving the proposed law school were decided by the Supreme Court of Canada in *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001. I have not seen any argument that successfully distinguishes the proposed law school situation from that of the college of teachers which was the subject of the SCC decision, nor have I seen a persuasive argument that this decision is no longer the law in Canada. Rather much of the debate appears to be based upon what people think the law should be, or what they believe it will be some day. That is not the way decisions should be made. If *Trinity Western University v. College of Teachers* decision continues to be the law today that should be the end of the debate because TWU is legally entitled to do what it is doing. As lawyers we are supposed to show respect for the law, not undermine it.

Anyone is free to advocate that the law be changed. That freedom extends to all sides of a debate. Until such time as the law changes, courts and quasi-judicial bodies must apply the law as they find it. TWU is entitled to a decision on this basis, and no other.

Some jurisdictions would like to defer a decision for the reason that this issue will once again find its way before the SCC. Any such a hearing is a long way off and a decision of the SCC is in no sense imminent. Again, TWU is entitled to a decision based upon the current state of the law. Courts and quasi-judicial bodies do not defer decisions based on the fact that an issue may someday work its way through the various levels of court. The rare exception is when a matter has been argued before the SCC, the SCC has reserved its decision, and a decision is expected in the near future. Even then, deferral cannot be for an inordinately long time. To do so undermines the rule of law and right of parties to have issues determined within a reasonable period of time.

TWU is entitled to a decision now because that is necessary for it to make appropriate plans for its proposed law school and to ensure that its graduates will have the right to pursue their chosen profession wherever they want to in Canada.

For these reasons, deferral is not an appropriate option in this matter.

Should the law change at some point in the future, I expect the Law Society will have the ability to reconsider the matter.

With respect, the motion that was presented at the Annual General Meeting in May 2014 makes no sense. How can it be legitimate to make a decision that effectively sanctions students-at-law who attended TWU but would have no impact on practising lawyers entering Nunavut through mobility agreements? That in itself is discriminatory to the students and accomplishes nothing. All it means is that students-at-law could not come directly to Nunavut, but rather would first have to qualify as practising lawyers in another jurisdiction before coming to Nunavut. So any TWU student who ultimately wants to practise in Nunavut has his/her plans delayed by approximately one year. Nothing is really accomplished by this other than creating inconvenience and expense to the student-at-law.

Consequences of Rejecting the Application

An underlying theme in this matter as expressed in some submissions to the various law societies and in media reports appears to be that people who hold certain religious beliefs are not fit to practice law. By rejecting accreditation of TWU's proposed law school, these people are prevented from becoming lawyers. This is futile as discussed above. It is clear from the submissions that have been made to date in various jurisdictions that there are many people with Christian religious views that have graduated from other law schools in Canada and are currently practicing law. That will continue to be the case even if TWU's plans for a law school are shut down. Any person with any viewpoint, religious or otherwise, can attend any of the existing law schools in this country (or for that matter in other parts of the world) and then subsequently become a licenced lawyer in this country by meeting the current qualifications.

If it is permissible for a law society to reject accreditation of TWU's law school, what is the next logical step? Would law societies then feel empowered to take action against practising lawyers who hold beliefs that the majority reject, and subject them to disciplinary proceedings, even disbarment? Are we going to see professional governing bodies using disciplinary powers to enforce majority view points? Are we going to prohibit individuals from earning a living in their chosen profession because of what they profess to believe or the people they choose to associate with? This would not reflect the diverse multicultural society which we claim we cherish.

This cannot be confined to issues arising from the community covenant of TWU. Once the precedent is set that accreditation of institutions and ultimately lawyers may depend upon personal beliefs and how those beliefs are reconciled with the larger society, where will it stop?

There is a big difference between expressing beliefs at a personal level and engaging in conduct in a professional context that would violate someone's rights. For centuries lawyers have been

able to make the distinction between their personal beliefs and their duty to their clients. The classic example is in the criminal context. Lawyers can defend people accused of behaviour they do not condone. Similarly lawyers can act for clients on issues they personally do not agree with. Indeed, the legal profession has been far better at this than much of the rest of society. We live by Voltaire's famous words every day. Furthermore, professional codes of conduct now recognize that if a lawyer cannot adequately represent a client for some reason, he or she can fulfil the duty to the client by assisting the client to obtain adequate legal representation. Unlike the 19th Century, lawyers are no longer obligated to accept every person as a client. It is readily apparent that members of the profession have a wide range of beliefs and viewpoints. There is no evidence that this has impaired the delivery of legal services.

The possibility of sanctioning lawyers for their personal beliefs is repugnant. The issue of denying accreditation and licencing to professionals by professional governing bodies based on personal beliefs and associations was considered by the SCC in *Trinity Western University v. College of Teachers* at paragraph 33 and rejected.

In light of the above, I suggest the appropriate course of action is to approve the TWU law school program at this time.

Yours truly,



Geoffrey P. Wiest