

**SUBMISSION OF**  
**TRINITY WESTERN UNIVERSITY (“TWU”)**

**To**

**THE LAW SOCIETY OF THE NUNAVUT  
 (“LSN”)**

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**WRITTEN SUBMISSION TO THE EXECUTIVE OF THE LSN  
 WITH RESPECT TO APPROVAL OF TWU GRADUATES**

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**November 26, 2014**

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## 1. INTRODUCTION AND EXECUTIVE SUMMARY

1. TWU has been working for many years to establish a School of Law that will educate its students to the highest educational and ethical standards and equip them to serve their communities. TWU's efforts have produced a proposed School of Law that has been carefully assessed and approved by those with the responsibility to evaluate it.
2. On December 4, 2014, the Executive of the LSN will have a discussion concerning whether TWU graduates will be accepted as meeting the academic qualification requirement for admission to the Nunavut bar. Additionally, we understand that at the next LSN AGM, a motion will be considered that is targeted at TWU's School of Law and makes reference to the *Human Rights Act* of Nunavut.
3. TWU is a religiously based educational community, as mandated by the Legislature of BC. TWU maintains a Community Covenant that implements its religious faith and objectives. TWU has established a reputation for academic excellence and successfully operates a number of other professional programs.
4. While the LSN is charged with regulating the legal profession in Nunavut, the scope of the Executive's decision is and should be with respect to the academic qualifications of graduates from TWU's School of Law.
5. The LSN, together with all other law societies in Canada, approved a national requirement that reflects their collective view as to what is necessary to ensure that graduates of law degree programs in Canada are competent to practice and meet their professional and ethical obligations.
6. TWU has established beyond any question that its School of Law meets all applicable academic requirements and that students will receive a high quality education that includes both substantive and ethical components. TWU has met all of the criteria of the national requirement. Its proposed School of Law has also been approved by the Common Law Program Approval Committee (the "Approval Committee") of the Federation of Law Societies of Canada (the "Federation") following review by a Special Advisory Committee charged with considering aspects of TWU's Community Covenant. The School of Law has, after extensive review by the Ministry of Advanced Education (the "Ministry"), also received approval from the Ministry.

7. TWU respectfully submits that appropriate regard be extended to the substantial work carried out by the Federation and the Ministry. Other law societies have indicated that they will recognize and enrol TWU graduates. As a result:
- (a) A refusal by the LSN to do the same has the potential to seriously damage and undermine the considerable work done by all of the law societies and the Federation to establish and accept a uniform national requirement; and
  - (b) The LSN will be obligated to recognize TWU graduates that become lawyers elsewhere in Canada as a result of its obligations under labour mobility agreements and s.18(1)(b) of the *Legal Profession Act*, R.S.N.W.T. (NU) 1988, C. L-2.
8. There is no legitimate public interest in refusing accreditation of TWU graduates. TWU embraces its obligations to teach Canadian equality law and professional ethics, including equality based on sexual orientation. All of the evidence unequivocally indicates that graduates from TWU's School of Law will be properly educated in substantive law and prepared to meet their professional and ethical obligations.
9. In any event, the Federation's process involves annual monitoring to ensure that TWU continues to meet the national requirement and lives up to its commitments and obligations.
10. TWU urges the LSN to protect the values of a truly free Canada in which a wide variety of beliefs, "customs and codes of conducts"<sup>1</sup> are accommodated and respected. Much of the opposition to TWU's proposal is based on prejudicial caricatures and unfair assumptions about TWU and the members of its religious community. The objections to TWU's Community Covenant are in many cases based on intolerance towards the Christian beliefs that TWU's community seeks to uphold. The underlying notion that a student agreeing to maintain a Christian code of conduct while at TWU cannot learn to be an excellent lawyer should be offensive to anyone who values the freedom of religion and religious equality rights in Canada.
11. By implementing its religious beliefs and mandate, TWU is only doing what it has been legislatively chartered to do, and in a manner authorized by law. A refusal to recognize TWU graduates because of the Community Covenant would violate *Charter* rights and values, including those rights and freedoms guaranteed under s.2(a) (freedom of religion),

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<sup>1</sup> These terms are taken from the leading decision on freedom of religion by the Supreme Court of Canada in *Big M Drug Mart* [1984] S.C.R. 295 at 336.

s.2(d) (freedom of association) and s.15 (equality and non-discrimination on the basis of religion).

12. With as many as 100 TWU graduates already practicing law, it has already been proven that TWU graduates can become excellent lawyers without abandoning their Christian faith or compromising the profession's ethical standards.
13. The history of this application and of TWU's previous struggle to overcome objections to its education degree granting program should cause the LSN to be very reluctant to overturn the substantial process that has already occurred. Giving effect to the opposition would repeat the very wrong that occurred in the case involving the British Columbia College of Teachers with no legitimate purpose or effect.

## 2. TRINITY WESTERN UNIVERSITY

### (a) *Introduction*

14. TWU was originally founded in 1962 as a junior college. In 1969, the B.C. Legislature passed the *Trinity Junior College Act*<sup>2</sup>, mandating that TWU's education would be provided "with an underlying philosophy and viewpoint that is Christian". The Legislature gave TWU the privilege to grant degrees in 1979<sup>3</sup> and in 1984 TWU became a member of the Association of Universities and Colleges of Canada.
15. In 1985, the Legislature changed the name of the college to TWU and granted it authority to offer graduate degrees<sup>4</sup>.
16. TWU now offers 42 undergraduate majors. It has 17 graduate programs. It serves approximately 4,000 students per year and it has over 22,000 alumni. It is a vibrant and successful religious educational community.
17. Many of TWU's students are in its professional programs. TWU has a professional School of Nursing (M.Sc.N., B.Sc.N.), which was established in 1993 and is approved by the College of Registered Nurses of British Columbia<sup>5</sup>.
18. It also has a School of Education (B. Ed.) and its teacher education program leads to a British Columbia Professional Teaching Certificate issued by the B.C. Teacher

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<sup>2</sup> S.B.C. 1969, c.44

<sup>3</sup> *Trinity Western College Amendment Act, 1979*, S.B.C. 1979, c.37

<sup>4</sup> *Trinity Western College Amendment Act, 1985*, S.B.C. 1985, c.63

<sup>5</sup> TWU is a member of the Canadian Association of Schools of Nursing

Regulation Branch. The School of Education was recently approved to offer an M.A. degree in Education Studies (Special Education).

19. TWU has other professional programs including Business (M.B.A., B.B.A., B.A.), Leadership (M.A.) and Counselling Psychology (M.A.).
20. TWU's main campus is in Langley, British Columbia. It offers all of the facilities and services of a modern, advanced and sophisticated university setting. It has residences, food services, fitness facilities, advanced laboratories, and performing arts facilities. It operates a highly successful C.I.S. Athletics program that has won eight national team championships in the last decade.
21. TWU operates an extension campus in Washington State and the Laurentian Leadership Centre in Ottawa. It also has two ecological research areas (Crow's Nest Ecological Research Area on Salt Spring Island and Blaauw's Eco Forest in Langley, B.C.). TWU was also recently granted approval by both the Ministry and the Chinese government to offer an M.B.A. program in Tianjin, China.

**(b) *Academic Excellence***

22. There is little dispute that TWU and its students perform exceptionally well academically. This is in part because over 80% of TWU full-time faculty have doctorates.
23. TWU has built a reputation for academic quality, earning an A+ for "Quality of Teaching and Learning" (formerly called "Quality of Education") seven years in a row in the Globe and Mail University Report Card. TWU is consistently ranked among the top universities in Canada for Educational Experience by the National Survey of Student Engagement and the Canadian University Survey Consortium ("CUSC"), as reported in *Maclean's* magazine. The 2013 CUSC survey placed TWU first in six categories covering university experience, professor accessibility, and quality of teaching.
24. Similar to some of the public universities in British Columbia, TWU has been granted "exempt" status by the Ministry. In order to obtain this status, a university must demonstrate that it has "appropriate governance mechanisms, demonstrated organizational capacity for degree granting and a proven track record."<sup>6</sup> Having achieved

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<sup>6</sup> "Institutions with Exempt Status would still require Ministerial consent / approval for each new degree. However, once the institution achieves Exempt Status, the quality assessment process would be expedited so that new degree proposals, up to the degree level of exemption specified, would be forwarded directly to the Minister for review and consent / approval. As such, Exempt Status represents an exceptional condition. For these reasons, Degree Quality

exempt status, TWU is able to use an expedited process for approval of most new undergraduate and graduate (masters) level programs. (This expedited process did not apply to the J.D. program, which received a full and complete review by the Ministry as described below).

25. Professors at TWU are committed to high-quality teaching. Due to small class size, students regularly interact with their professors. TWU is a community-oriented campus and professors regularly interact with students outside the classroom. This same successful formula will be used in the School of Law.
26. The University provides a stimulating environment for research. It has an Office of Research which assists faculty research and coordinates grant applications. Faculty members are funded through the Tri-Council Agencies, as well as through a wide variety of foundations and grants. The Office of Research holds regular professional development workshops to assist faculty in obtaining grants, publishing their research results and engaging in collaborative research.
27. TWU has three Canada Research Council Chairs and is currently developing a fourth. TWU has been a member of the Royal Society of Canada since 2009.
28. TWU has seven academic Institutes and four Centres of Excellence and its faculty collaborate with academics throughout Canada and around the world. These include the Gender Studies Institute<sup>7</sup> and the Religion in Canada Institute.<sup>8</sup> The institutes provide opportunities for interdisciplinary collaboration, as well as special colloquia and lectures. The Religion, Culture and Conflict Research Group has, for the last five years, held annual inter-religious symposia on issues such as “Religion, Culture and Middle East Conflict,” and has produced several books of collected papers.

**(c) Community Engagement: Making a Difference**

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Assessment Board (DQAB) applies the highest standards and expectations of quality in its review of applications for Exempt Status.” *Exempt Status Criteria and Guidelines*, p.1: [http://www.aved.gov.bc.ca/degree-authorization/documents/exempt\\_status.pdf](http://www.aved.gov.bc.ca/degree-authorization/documents/exempt_status.pdf)

<sup>7</sup> The Gender Studies Institute fosters interdisciplinary teaching, intellectual dialogue, research and collaboration in all areas of gender studies. The interdisciplinary nature of the institute enables TWU scholars to collaboratively address gender issues that come out of every discipline, such as domestic violence, child abuse, and gendered visions of care, exploring how categories such as class, race, and gender intersect, to train leaders who will enjoy and foster restorative gendered relationships. See: <http://twu.ca/research/institutes-and-centres/university-institutes/gender-studies-institute/default.html>

<sup>8</sup> The Religion in Canada Institute (RCI) is an interdisciplinary research centre and intellectual community of scholars at Trinity Western University committed to understanding the multifaceted role of religion in Canada for culture, individuals, and social institutions. See: <http://www.twu.ca/research/institutes-and-centres/university-institutes/religion-in-canada-institute/>

29. TWU has a strong record of being a good neighbour in both the local and global communities. Faculty and staff members organize a variety of opportunities for students to engage communities at home and abroad - from working with the homeless in Vancouver's Downtown Eastside to serving in hospitals in Zambia. TWU also helps students engage in community work individually by connecting them with non-profit organizations.
30. Over 57% of TWU undergraduate students volunteer in local communities or participate in humanitarian work internationally. TWU believes that this is significantly higher than any other university in Canada. This integration of learning and service transforms students into thoughtful, globally-aware citizens.
31. A number of TWU graduates have made submissions to various law societies, and in doing so have exemplified the citizenship qualities and commitment that TWU seeks to instill in its students:
- "...my experience at TWU enhanced my competency by instilling in me a deep love for all people and desire to serve humanity through advocacy... My values as a future Christian lawyer compel me to respect the law, respect my clients and respect my colleagues, as well as to be a venerable advocate who is held to the highest of ethical standards. These are qualities infused in the servant leadership taught at TWU, and would benefit rather than harm the legal profession."<sup>9</sup>
  - "I graduated valedictorian from TWU and was the gold medalist at the University of Victoria ... It would be a mistake to assume that I somehow had to divest myself of my TWU experience in order to succeed in law; quite the opposite. My TWU education has been foundational to my understanding of legal practice. At TWU, I was imprinted with a profound respect for others' views that is rooted in recognition of the contingency of my own. My time at TWU made me more sensitive to diversity of belief and, as a result, has made me a better lawyer."<sup>10</sup>
  - "The TWU students I knew were passionate about making a difference in the world and deeply committed to social justice issues."<sup>11</sup>
  - "While you are deliberating the various significant issues at play within this debate, I would urge you to look past the caricatures presented of the fictional TWU law school graduate. Behind those caricatures are faces like mine. I have excelled at law school and competitive moots. I have secured articles and will be clerking for our province's Supreme Court. I have enjoyed mutually

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<sup>9</sup> Jessie Legaree, JD Candidate 2015, University of Toronto, Written Submissions Received by the Law Society of New Brunswick ("LSNB Submissions"), pp. 413-414, dated April 30, 2014; Written Submissions Received by the Nova Scotia Barristers' Society ("NSBS Submissions"), February 6, 2014 [http://nsbs.org/sites/default/files/ftp/TWU\\_Submissions/2014-02-06\\_Legaree\\_TWU.pdf](http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-06_Legaree_TWU.pdf)

<sup>10</sup> Lauren Witten, Submissions to Law Society of BC : <http://www.lawsociety.bc.ca/docs/newsroom/TWU-submissions.pdf> ("LSBC Submissions") March 2, 2014

<sup>11</sup> Mark Witten, LSBC Submissions, March 2, 2014

respectful and dynamic relationships with professors and fellow students at law school. These accomplishments have been made, not *in spite of* my status as a TWU alumni, but *because* of all that my education and experience has provided thus far.”<sup>12</sup>

32. A lawyer (not a TWU alumnus) working with the homeless and disadvantaged in the Downtown Eastside of Vancouver wrote this of TWU graduates:

I have had occasion to speak with several students from TWU who also volunteer there. I was inspired by their spirit of service and enthusiastic participation in outreach programs among the underprivileged. They told me of the many programs TWU offers to encourage students to work in community service initiatives throughout Greater Vancouver and abroad. It was therefore with optimism that I heard about the plans of TWU to establish a law school, recognizing the critical demand for lawyers interested in pro bono work as well as in addressing the desperate need for access to justice among the poor and marginalized in our communities.<sup>13</sup>

33. TWU is understandably very proud of these graduates. They exhibit the precise results that TWU strives to achieve through its educational programs. Our society is the beneficiary of the many historical social justice movements that were motivated by Christian beliefs.<sup>14</sup> This is, in part, why TWU’s School of Law will offer a specialization in Charities and Social Justice Law. As described in its proposal:

While charities and not-for-profit organizations have long been engaged in working for the public good, many are increasingly engaged in social innovation, working with social entrepreneurs to devise innovative solutions to society’s problems. Students interested in pursuing social innovation through a specialization in charities and not-for-profit organizations will be encouraged to fulfill their practical requirements in placements related to social innovation. Many charities and not-for-profit organizations have a focus on social justice; for example, shelters for the homeless, international development agencies and food banks. Students pursuing this specialization will engage with theoretical issues, such as the meaning of “justice,” as well as practical issues such as advocacy for those who are marginalized.<sup>15</sup>

34. The opponents of TWU’s School of Law have impugned and sharply criticized evangelical Christian beliefs pertaining to sexual relationships. This is only one aspect of the Christian ethos at TWU, which is primarily directed at creating Christian leaders capable of doing great good for society as a whole.

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<sup>12</sup> Rebecca Stanley, LSBC Submissions, February 23, 2014

<sup>13</sup> Kim Thorpe, LSBC Submissions, February 27, 2014

<sup>14</sup> These include the anti-slavery movement led by William Wilberforce, the abolition movement (in which John Wesley and Sojourner Truth were leaders), along with the YMCA and others

<sup>15</sup> Proposal, pp. 10-11

**(d) *Private Religious Educational Community***

35. TWU is a religiously based educational community. It makes no apologies for that and strongly believes that its success in developing students into service-oriented citizens is partially the result of its religious character.
36. It is private, and does not rely on government monies to fund its educational programs.
37. In those respects, TWU is distinct from the public universities that already offer law programs in Canada.
38. TWU was founded on religious principles and was always intended to be a religious community. This was and continues to be recognized by the B.C. Legislature. As noted, subsection 3(2) of the *Trinity Western University Act* charters TWU to offer university education “with an underlying philosophy and viewpoint that is Christian”.
39. As recognized by the Supreme Court of Canada: “it can reasonably be inferred that the B.C. Legislature did not consider that training with a Christian philosophy was in itself against the public interest since it passed five bills in favour of TWU between 1969 and 1985.”<sup>16</sup> There is no rational argument that such a religious educational community is somehow against the public interest and virtually all of TWU’s opponents properly concede this point.
40. TWU’s religious character and objectives are summarized in the introductory words of its Community Covenant:

The University’s mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible. This identity and allegiance shapes an educational community in which members pursue truth and excellence with grace and diligence, treat people and ideas with charity and respect, think critically and constructively about complex issues, and willingly respond to the world’s most profound needs and greatest opportunities.

The University is an interrelated academic community rooted in the evangelical Protestant tradition; it is made up of Christian administrators, faculty and staff who, along with students choosing to study at TWU, covenant together to form a community that strives to live according to biblical precepts, believing that this will optimize the University’s capacity to fulfil its mission and achieve its aspirations.

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<sup>16</sup> *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 (“*TWU v. BCCT*”) at para. 35.

This biblical foundation inspires TWU to be a distinctly Christian university in which members and others observe and experience truth, compassion, reconciliation, and hope. TWU envisions itself to be a community where members demonstrate concern for the well-being of others, where rigorous intellectual learning occurs in the context of whole person development, where members give priority to spiritual formation, and where service-oriented citizenship is modeled.

41. Too much attention has been paid to, and severe criticism leveled against, one aspect of the Community Covenant. This has been entirely unfair and unbalanced, in part because it has ignored the most important and overarching commitment of members of TWU's community to "treat people and ideas with charity and respect", "demonstrate concern for the well-being of others" and "model service-oriented citizenship", consistent with "the person and work of Jesus Christ." Opponents of TWU's School of Law have also conveniently ignored the Community Covenant requirement that TWU's community members:

Be responsible citizens both locally and globally who respect authorities, submit to the laws of the country, and contribute to the welfare of creation and society.

42. One TWU graduate, who is now a public high school teacher in Nova Scotia, very ably explained this in his submissions to the Nova Scotia Barristers' Society on February 13, 2014:

However, it's not excusable to replace the lack of knowledge of the school with speculation, assumptions based on preconceived ideas, and as I heard earlier false analogies to Nazi Germany and Vladimir Putin's Russia ...

...

The idea that a graduate of Trinity is predisposed to discrimination is something I find difficult to understand.

...

***And if I was to behave in a discriminatory way to a gay or lesbian student or co-worker or anyone else, I would be betraying the very ideals of my education***, which taught me that my personal beliefs do not interfere or override my public responsibilities. ***And if I want to be a person of character, it means I treat all people with dignity, respect and equality, regardless of our differences.***

...

Instead of trying to understand the truth of what it means to be a member of the Trinity Community, people have chosen to focus on one aspect of the community covenant without trying to look at the school and its community as a whole. People it seems are attempting to marginalize the school based on one element of its beliefs that they disagree with.

...

So what sustains the belief that Trinity the community fosters discrimination against gays and lesbians? It is a prejudice rooted in the belief that because Trinity maintains its traditional beliefs regarding marriage and sexuality, they should forfeit their place in the public arena. ...

We have long since given up on the belief of trying to assimilate all Canadians to a single point of view.<sup>17</sup> [Emphasis added]

43. There is no question that TWU has a right to exist as a religiously based educational community and that this right is protected by the *Charter of Rights and Freedoms*. There is also no question that the members of TWU's community have the right to freely express and affirm their religious beliefs and to associate together to put them into practice<sup>18</sup>.
44. In the United States, the rights of religiously based law schools are recognized. While the American Bar Association maintains Standard 211, which prohibits discrimination in law school admission and hiring practices, it expressly does not apply in the context of religiously affiliated schools that maintain codes of conduct consistent with their religious beliefs<sup>19</sup>. Consistent with that Standard, there are a number of ABA approved law schools that maintain a religiously motivated standard regarding sexual behaviour, similar to TWU.<sup>20</sup> (Students graduating from these law schools can be accredited to practice law in Canada through the Federation's National Committee on Accreditation.)
45. The question to be answered by the LSN is whether, in light of these rights, there is a demonstrably justifiable reason for denying TWU's graduates the right to enrol as articulated students or otherwise be admitted to the practice of law in Nunavut. For the reasons set out below, TWU respectfully submits that on a proper analysis no such reason exists.

### 3. THE SCHOOL OF LAW PROPOSAL

46. TWU's proposal for a School of Law started as early as 1993, when it became part of TWU's long term plan. TWU established a task force of lawyers, judges and academics to further consider the issue in 2008. From 2009 through 2012, TWU engaged in wide and detailed consultation with many interested people and constituencies, including:
  - President and Vice President of Law Society of B.C.
  - Law Deans (B.C. Law Deans and Canadian Council of Law Deans)

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<sup>17</sup> Oral submissions of Chris Roper, February 13, 2014 (pp. 210, 211, 212 and 217) [http://nsbs.org/sites/default/files/ftp/TWU\\_Submissions/2014-02-13\\_NSBSTrinityWesternU.pdf](http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-13_NSBSTrinityWesternU.pdf)

<sup>18</sup> *TWU v. BCCT*, para. 32

<sup>19</sup> Special Advisory Committee on Trinity Western's Proposed School of Law Final Report, December 2013 ("Special Advisory Committee Report"), paras. 54-56.

<sup>20</sup> Law Society of British Columbia Memo from Policy and Legal Services Department to Benchers, March 31, 2014, Appendices 10 -15 in relation to Baylor University, Brigham Young University, Boston College, Liberty University, Fordham University and Notre Dame University. <http://www.lawsociety.bc.ca/docs/newsroom/TWU-mem01.pdf>

- Fraser Valley Bar Association
- B.C. Branch of C.B.A.
- Numerous Lawyers, Judges and Legal Academics
- Premier of B.C.
- Minister of Advanced Education
- Numerous MLAs

47. TWU was very encouraged by these consultations. No one, including the law deans of all of B.C.'s existing law schools, expressed any opposition to TWU proceeding with a law school proposal. In 2011, TWU formed a Law School Advisory Council to provide further advice, which included lawyers, academics and judiciary from across the country. There was also a curriculum committee involving additional legal academics, which assisted in preparing the curriculum plan and course outlines that formed part of TWU's proposal.
48. TWU also conducted market research in 2012 to ensure that there was adequate demand for lawyers and articling students graduating from a TWU School of Law.
49. When these processes were completed, TWU's proposal was thoroughly reviewed and approved by the University Senate and Board of Governors.
50. TWU then finalized and submitted the formal proposal for its School of Law to the Federation and the Ministry in June of 2012.

***(a) The Proposal for a School of Law***

51. TWU has assembled a very strong and very solid proposal for a new School of Law. The School of Law will have a focus on training students interested in practising law in small to medium sized firms outside of the major B.C. urban areas. The School of Law will offer a J.D. degree based on an integrated curriculum that includes the development of core competencies needed for the practice of law. In keeping with the nature of TWU, specializations will be offered in charities and social justice law and in small business and entrepreneurial law.
52. TWU's School of Law is not intended to be a large one. Consistent with TWU's philosophy of smaller class sizes, the proposed first year class will be only 60 students, with a total student body growing to 170 students by the third year of operation.

53. The focus of the proposed curriculum, set out in great detail in the proposal, is on the development of core competencies required for the practice of law, including a strong and comprehensive ethics and professionalism component.
54. The background, impetus and rationale for establishing a law school at TWU were articulated in great detail in its proposal. Particulars of the proposed admissions policy, curriculum, library plan, and faculty/staff requirements were also provided, in detail, as were operational particulars, including the facilities plan. A course outline for every course to be provided by the School of Law was prepared and provided as part of the proposal.
55. TWU's program of study will include a required first year course (LAW 508) that will introduce students to professionalism and ethics. There will also be a required second year course (LAW 602), Ethics and Professionalism. A summary description of Law 602 in TWU's proposal states:
- Is law a calling, a job or a business? The lawyer, as a professional, is governed by a professional body of peers that establishes a code of conduct and general practices. This course focuses on the practice of law as public service and addresses the question of what does it mean to be a professional? It will also address the principles of ethical practice, particularly issues covered by the Code of Ethics. ***It challenges students to reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities.*** [Emphasis added]
56. Before the proposal was submitted to the Federation and the Ministry, it was comprehensively reviewed by two highly qualified external reviewers: Albert H. Oosterhoff, LL.B., B.A., LL.M., Professor Emeritus (University of Western Ontario) and Lyman R. Robinson, Q.C., B.A., LL.B., LL.M., Professor Emeritus (University of Victoria). Their external reviews were included with the proposal. Both concluded that the proposed program was a good one. Mr. Oosterhoff concluded that "the proposal is a sound one and highly relevant in the current Canadian market." Mr. Robinson specifically complimented the program's "emphasis on ethical standards and professionalism and the development of the legal skills and competencies".
57. All of the detail of the proposal, laid out in over 160 pages, cannot be adequately summarized here. TWU has provided or offered to provide a copy of the proposal to all law societies in Canada, including the LSN, updated to implement all of the recommendations of the Federation and the Ministry.

58. TWU respectfully submits that no member of the Executive should consider voting against recognizing the academic qualifications of TWU graduates for admission to the bar in Nunavut before she or he first reads and understands the full proposal, together with the Federation's reports on the proposal. Without doing so, members of the Executive cannot understand the quality and strength of TWU's proposed School of Law.

***(b) The Federation Process and Approval***

59. As noted, TWU submitted its proposal to both the Federation and the Ministry on June 15, 2012. At the same time, TWU formally advised the Canadian Council of Law Deans, the British Columbia law deans and the Law Society of B.C. of the formal proposal and offered to provide a copy.
60. The Federation's Approval Committee was comprised of senior members of the bar from across the country, each of whom possesses specific qualifications and experience relevant to the role of assessing TWU's proposal and law school programs.
61. The Approval Committee's review began during a teleconference in September of 2012. It continued during six days of in-person meetings and five conference calls between January and December of 2013 (see para. 34 of the final report). The Approval Committee was assisted in its work by Professor Bruce Elman of the University of Windsor's Faculty of Law, who provided advice on the administration of the proposed law school and the teaching of law (see para. 41 of the final report). Professor Elman is a former law dean.
62. On June 28, 2013, the Approval Committee requested further information on certain aspects of the proposal, including contingency plans, funding, facilities and admissions. TWU provided a detailed response on August 13, 2013.
63. On October 30, 2013, the Approval Committee sought further information on certain aspects of the proposal, including particulars of the criminal law courses and legal research competency. TWU responded on November 1, 2013.
64. On December 16, 2013, after eighteen months of study, the Federation granted preliminary approval to the proposal and TWU's School of Law. The full report can be found here: <http://www.flsc.ca/documents/ApprovalCommitteeFINAL.pdf>.

65. The Approval Committee concluded that TWU’s proposal was “comprehensive and is designed to ensure that students acquire each competency included in the national requirement” (para. 47). The Approval Committee expressly considered whether the religious beliefs underlying the Community Covenant would constrain appropriate teaching. It found that TWU met that issue and that it was not a deficiency in the proposal. It specifically referenced and relied on TWU’s statements that:
- TWU is committed to fully and appropriately addressing ethics and professionalism;
  - TWU recognizes and acknowledges its duty to teach equality and meet its public obligations with respect to promulgating non-discriminatory principles in its teaching of both substantive law and ethics and professionalism;
  - TWU acknowledges that human rights laws and Section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation and that “the courses that will be offered at the TWU School of Law will ensure that students understand the full scope of these protections in the public and private spheres of Canadian life.”
66. TWU completely stands behind all of these statements (see paras. 50-52 of the Federation’s report).
67. The only other issues raised by the Approval Committee were relatively minor points with respect to the annual budget and library acquisitions budget.
68. There were only two possible outcomes of the Approval Committee’s work: “preliminary approval” and “not approved”. TWU was very pleased that its proposal received “preliminary approval”.
69. This preliminary approval will be followed by an annual review process so that TWU will be scrutinized through all phases of the School of Law’s establishment, as it hires a dean and faculty, as students enter and progress through the curriculum and as it produces its first graduates. That process will ensure that the national standard is met and that TWU lives up to its commitments. The Federation has a careful and comprehensive process that individual law societies can, and should, trust and depend on.
- (c) *The Federation’s Special Advisory Committee***
70. In response to submissions from a variety of organizations and people opposed to TWU’s proposal, the Federation established its Special Advisory Committee, chaired by John Hunter, QC to advise on the implications of the Community Covenant. TWU made

submissions to the Special Advisory Committee on May 17, 2013. Those submissions are appended to the report of the Special Advisory Committee, which can be found here: <http://www.flsc.ca/documents/SpecialAdvisoryReportFinal.pdf>.

71. There were significant public representations and submissions made to the Federation, addressing all of the same issues raised in submissions to the LSN by opponents of TWU's School of Law.
72. The Special Advisory Committee reviewed all of the submissions made to the Federation, together with TWU's response.<sup>21</sup> Again, it should be noted that these submissions included the same arguments, from many of the same opponents, as are now presented to law societies across Canada in opposition to TWU's School of Law.
73. The Special Advisory Committee also considered the relevant law, including the Supreme Court of Canada's decision in *TWU v. BCCT*. It obtained a legal opinion from John Laskin of Tory's, who reviewed the arguments made against TWU's proposal, including the paper published by Professor Elaine Craig. After thorough review, he concluded that *TWU v. BCCT* is binding law and applicable in these circumstances. Specifically, he opined that "if the TWU teachers program could be relied on to equip its graduates to be respectful of diversity, there appears to be no reason to conclude that its law program cannot do the same." TWU agrees with this conclusion as it is consistent with its commitment to do exactly that.
74. To quote Mr. Laskin:

In my view, both of these asserted grounds for *refusing approval would be highly questionable*. As for the first, as also already mentioned the Supreme Court concluded that graduates of TWU would "treat homosexuals fairly and respectfully." It was implicit in its decision that their education at TWU did not detract from their ability to comply with "principles of equality, non-discrimination, and the duty not to discriminate." Professor Craig provides no evidence to support the contention that the position would somehow be otherwise for law students.

As for the second, it proceeds from a view of academic freedom that is by no means universally shared. Following its logic would lead to the conclusion that no individual lawyer who adheres to a set of religious principles could engage in critical thinking about ethical issues. This conclusion cannot be tenable. The second argument, like the first one, also fails to give any recognition to the positive value of religious diversity that the Supreme Court embraced in *BCCT*. [Emphasis added]

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<sup>21</sup> Special Advisory Committee Report, para. 8

75. The Special Advisory Committee, after detailed consideration, concluded that there was no valid public interest reason to refuse approval to TWU's proposal. Specifically, it concluded at paras. 65-66:

In carrying out its mandate, the Special Advisory Committee carefully reviewed all of the submissions received by the Federation, and reviewed and analyzed applicable law and statutes. While the arguments made in the various submissions raise important issues that implicate both equality rights and freedom of religion, in light of applicable law none of the issues, either individually or collectively raise a public interest bar to approval of TWU's proposed law school or to admission of its future graduates to the bar admission programs of Canadian law societies.

It is the conclusion of the Special Advisory Committee that if the Approval Committee concludes that the TWU proposal would meet the national requirement if implemented as proposed there will be no public interest reason to exclude future graduates of the program from law society bar admission programs.

**(d) *The Ministry Process and Approval***

76. In addition to the Federation's process, the Ministry undertook a comprehensive review of TWU's proposal. As noted, it received the proposal on the same date as the Federation (June 15, 2012).
77. The Ministry's review was done through its Degree Quality Assessment Board ("DQAB") under the *Degree Authorization Act*. The DQAB is an advisory board to the Minister of Advanced Education. Under the DQAB process, submissions for new degree programs are posted online for public review and comment. No concerns were raised during the public review process. The DQAB secretariat then appointed an expert review panel to review the proposal, review all supporting documents and do a thorough site visit.
78. The expert review panel consisted of former and existing faculty of the law schools at Queen's University, University of British Columbia, University of Victoria, University of Alberta, University of Windsor and Thompson Rivers University. Among these panel members were former deans of the law schools of University of Alberta, Queen's, UBC, and Windsor. (The composition of this review panel eviscerates the arguments made by some opponents that the proposal was not sufficiently reviewed by legal academics.)
79. The site visit occurred on March 26, 2013 and allowed TWU to elaborate on its proposal and provided an opportunity for direct dialogue with the expert panel.
80. On April 17, 2013, the expert review panel provided its report to the Ministry, on a confidential basis to TWU. TWU responded in confidence to the report on May 17, 2013. The expert panel provided its advice and the DQAB found that TWU's proposal

would meet all quality assessment criteria. In reaching this decision, the expert panel and thus the DQAB considered the specific character of TWU as a religious educational community, including consideration of the Community Covenant.

81. On December 17, 2013, the Minister granted approval to the J.D. program at TWU. (This approval is now the subject of a judicial review proceeding before the British Columbia Supreme Court.)

*(e) Conclusions from the Reviews*

82. TWU's proposal for its School of Law has undergone numerous comprehensive reviews by those with significant expertise and law school experience. This has been a long and detailed process, which was started by TWU in 2007. The formal review process alone took 18 months and involved significant dialogue and, in the case of the Ministry, a detailed site visit. All aspects of the proposal have been considered in detail, including all aspects of the "public interest".
83. The Federation took the additional step of appointing the Special Advisory Committee. It did so anticipating the same issues that have been addressed by various parties making representations to the LSN. That committee, which was comprised of exceptionally knowledgeable and respected lawyers with significant experience in regulation by law societies in Canada, concluded that there is no public interest justification to refuse admission of TWU's School of Law graduates to the practice of law.
84. Nothing has been omitted from contemplation by the various committees and experts that reviewed TWU's proposal. The only reasonable conclusion is that TWU's proposal is a very strong one and there is no reasonable basis to refuse approval of it.

**4. MAINTAINING THE NATIONAL STANDARD**

85. Each of Canada's law societies is mandated by provincial or territorial statutes to regulate the legal profession in the public interest. An important aspect of this mandate is to determine the criteria for admission to the profession, including the academic framework for entry into law society bar admission or licensing programs.
86. Recognizing the need to have a common standard among law societies, in 2007 the Federation established a task force to recommend national academic requirements for Canadian common law degrees. The task force released its report and made recommendations for the national requirement in October of 2009. The national requirement was approved by Canada's law societies in 2010.

87. The Federation then established the Common Law Degree Implementation Committee to make recommendations on how to measure compliance with the national requirement. It released its report in August of 2011, recommending that the Federation establish its Approval Committee, mandated to determine whether existing or proposed law school programs meet the national requirement. The composition of the Approval Committee and the manner in which the Approval Committee should assess compliance was prescribed in detail. The recommendations of the Common Law Degree Implementation Committee were approved by each of the law societies and the Approval Committee was established in January, 2012.
88. TWU followed the Approval Committee's compliance process for new common law programs and has received approval by the Federation. Additionally, as noted, the Federation went beyond this national requirement to specifically address concerns and opposition to TWU based on its religious character and foundation.
89. Some law societies, including Alberta, Saskatchewan, and Prince Edward Island, have recognized the considerable work of the Federation and have already indicated that they will accept its determinations. The Benchers of the Law Society of British Columbia upheld the Federation's approval of TWU's School of Law in a vote of 20 to 6. During a meeting on May 22, 2014, the Benchers of the Law Society of Manitoba agreed that it was in the public interest to have this issue addressed on a national basis. The Benchers of the Law Society of Newfoundland and Labrador placed the matter in abeyance at their meeting on June 6, 2014. The Council of the Law Society of New Brunswick also accepted and approved the Federation's approval by a vote of 14 to 5 on June 27, 2014.
90. Given that TWU's proposal has received approval by the Ministry, this presents the possibility that graduates from TWU's School of Law will be admitted to practice in some, but not necessarily all, law societies in Canada. This has the potential to seriously damage and undermine the considerable work done by all of the law societies and the Federation to establish and accept a national requirement. It also may cause unacceptable lawyer mobility issues in the future and may, in fact, create infringements of legal obligations of the LSN, including obligations under labour mobility agreements, as described below.

(a) *The National Standard is an Important Aspect of Public Interest Regulation*

91. The Federation’s application of the national standard to TWU’s School of Law, and its findings, should not be lightly ignored or dismissed. The work of the Federation in reviewing proposed faculties of law at Canadian universities is not merely an issue of delegation of authority by law societies. There are formal agreements in place between law societies and governments establishing lawyer mobility, as well as legislation implementing such agreements.
92. The law societies of each Canadian province, except the *Chambre des notaires du Quebec*, entered into the National Mobility Agreement (“NMA”) in 2002<sup>22</sup>, aimed at facilitating temporary and permanent mobility of lawyers between common law provinces. In 2006, all the provincial law societies, except the *Chambre des notaires du Quebec*, and all the territorial law societies entered into the Territorial Mobility Agreement (“TMA”), which provided for reciprocal permanent mobility between the provincial and territorial law societies for a term of five years and was renewed in November 2011 without a termination date.<sup>23</sup>
93. Section 32<sup>24</sup> of the NMA provides that each law society “will require no further qualifications for a member of another governing body to be eligible for membership” other than: (a) entitlement to practice in the lawyer’s home jurisdiction; (b) good character and fitness on the standard ordinarily applied to applicants for membership; and (c) other qualifications that ordinarily apply. Sections 6 and 7 of the TMA provide that the provincial law society signatories agree to extend the permanent mobility provisions of the NMA to the territorial law societies and the territorial law societies agree to adopt and be bound by the permanent mobility provisions of the NMA. Under the NMA and the TMA, TWU School of Law graduates will have the right to have their qualifications recognized across all common law jurisdictions once they have been admitted to practice by any law society in Canada, as can now occur in at least Alberta, PEI, New Brunswick and Saskatchewan.
94. This obligation under the NMA and the TMA is enshrined in s.18(1)(b) of the *Legal Profession Act*. That provision states that, subject to s.16(1)<sup>25</sup>, an applicant for

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<sup>22</sup> The NMA 2013 was signed by all the provincial law societies, including the *Chambre des notaires du Quebec*, to replace the existing NMA and the Quebec Mobility Agreement. It will come into effect once implemented by each law society.

<sup>23</sup> The TMA 2013 was signed by all the provincial law societies, including the *Chambre des notaires du Quebec*, all the territorial law societies and the Federation in April 2014 to import the provisions of the NMA 2013. It will come into force once implemented by each law society.

<sup>24</sup> The same provision is s.33 of the NMA 2013.

<sup>25</sup> Subsection 16(1) provides, “The Executive shall evaluate the academic qualifications of every applicant for admission as a member of the Society and may, in its discretion, administer a special examination to any applicant.”

membership in the LSN who “has been duly called to the bar or has been admitted to practise as an attorney, advocate, barrister or solicitor in any superior court of a province or territory” and “is of good character and of good standing in the law society of the province or territory of which he or she is an attorney, advocate, barrister or solicitor” is qualified for admission to the LSN. Upon producing satisfactory evidence that he or she is qualified and making payment of the admission fee fixed by the rules, such an applicant is entitled to be admitted as a member of the LSN.<sup>26</sup>

95. The Executive has also enacted rules and policy implementing s.32 of the NMA. Pursuant to subrule 39(1) of the Rules of the LSN (the “Rules”), a person who is qualified for admission under s.18(1)(b) of the *Legal Profession Act* (i.e. a lawyer in another province or territory) may apply for admission as a member of the LSN by submitting certain application materials, including confirmation of good character, confirmation of good standing from each provincial or territorial law society of which the applicant is a member, and payment of the required fees.<sup>27</sup>
96. This is not only a matter of agreement by the law societies or the Executive’s obligations under the *Act*. While Canadian law societies and the Federation were ahead of other government agreements and legislation that enhanced labour mobility in Canada, subsequent agreement between governments in Canada has given additional force of law to the substance of the NMA requirements.
97. In 2009, the Agreement on Internal Trade (“AIT”)<sup>28</sup> was amended to address barriers to labour mobility in professions in Canada. Chapter 7 of the AIT now requires mutual recognition of the certification of workers in regulated occupations<sup>29</sup>, subject to narrow exceptions. Each province is required by the AIT to ensure compliance with Chapter 7 by “governmental bodies and by non-governmental bodies that exercise authority delegated by law”, including law societies.<sup>30</sup>
98. Article 706(1) of the AIT expressly states:

Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

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<sup>26</sup> *Legal Profession Act*, s.18(3).

<sup>27</sup> *Rules of the LSN*, subrule 39(1).

<sup>28</sup> The AIT is an agreement between the Federal government, all provincial governments and all territorial governments except Nunavut.

<sup>29</sup> *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at [http://www.ait-aci.ca/labour\\_en/LM\\_Backgrounder-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Backgrounder-draft_090302revised.pdf)

<sup>30</sup> Article 703(1)

99. While article 706(3) and article 706(4) permit regulators, as a condition of certification of any worker, to impose certain requirements related to payment of fees, background checks, evidence of good character and demonstration of knowledge, such requirements must be the same as or substantially similar to, but no more onerous than, requirements imposed by the regulatory authority as part of its normal certification process. Such requirements must “not create a disguised restriction on labour mobility”.<sup>31</sup>
100. Article 708 allows parties to impose additional measures of certification, provided that “the purpose of the measure is to achieve a legitimate objective; the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and the measure does not create a disguised restriction to labour mobility”.<sup>32</sup> Such measures ***cannot be approved by regulatory authorities***. They must be approved by the applicable provincial or territorial government.<sup>33</sup>
101. “Legitimate objective” is defined in Article 711, meaning one or more of:
- public security and safety;
  - public order;
  - protection of human, animal or plant life or health;
  - protection of the environment;
  - consumer protection;
  - protection of the health, safety and well-being of workers;
  - provision of adequate social and health services to all its geographic regions; and
  - programs for disadvantaged groups.<sup>34</sup>
102. Article 708(2) cautions that “a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective”.<sup>35</sup>
103. In an Article 1703 Panel decision regarding a complaint by Manitoba regarding Ontario’s imposition of additional requirements for certified general accountants seeking certification to practice public accounting in Ontario, the Panel considered the objectives

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<sup>31</sup> Article 706(3)(i) and Article 706(4)(f)

<sup>32</sup> Article 708(1)

<sup>33</sup> Article 708(3)

<sup>34</sup> Article 711(1)

<sup>35</sup> Article 708(2)

of the AIT and the 2009 amendments to Chapter 7 and made several findings with respect to the application of Article 708, including:

- The use of Article 708 is an exception to the obligations of Chapter 7 and specifically Article 706(1), and “should be narrowly construed and strictly applied”;<sup>36</sup>
- the bar to justify exceptions to the objective of labour mobility is a “high one”;<sup>37</sup> and
- the onus is on the party seeking to impose the additional requirement to establish that a legitimate objective exists and that the measure is necessary to meet the legitimate objective.<sup>38</sup>

104. As a consequence of these agreements, approval of TWU’s School of Law cannot be treated as merely a local, provincial or territorial matter. National mobility, including the NMA and the TMA (enshrined in s.18(1)(b) of the *Legal Profession Act* and implemented in subrule 39(1) of the Rules) as well as the AIT, was a significant motivating factor in the development of national standards for approval of legal education in Canada:

Only individuals who follow a rigorous training program and demonstrate their suitability to serve the public with a high level of competence, are eligible to join Canada’s legal profession and be licensed by a Canadian law society to practise law.

Because Canada’s national mobility regime requires each law society to recognize the credentials of members of the legal profession wherever they were initially licensed to practise law in Canada, the Federation of Law Societies of Canada is leading initiatives to ensure that admission standards are consistent across the country.<sup>39</sup>

105. As a result, the LSN should only ignore the approval granted by the Federation in very narrow circumstances and for legitimate and demonstrably justifiable reasons. To the extent that a decision by the LSN seeks to impose additional measures of certification as contemplated under Article 708 of AIT, any such measures must be approved by the Nunavut government.

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<sup>36</sup> *Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario’s Notice of Measure with respect to Public Accountants* at p. 10, available at [http://www.ait-aci.ca/index\\_en/dispute.htm](http://www.ait-aci.ca/index_en/dispute.htm)

<sup>37</sup> *Ibid.* at p. 14

<sup>38</sup> *Ibid.* at p. 11

<sup>39</sup> “National Admission Standards”, *Federation of Law Societies of Canada*, <http://www.flsc.ca/en/national-admission-standards/>

**(b) Harm to National Standards and Labour Mobility Obligations**

106. If a law society were to refuse to certify a lawyer applying to transfer from another Canadian jurisdiction on the basis that the lawyer had obtained his or her law degree from TWU, that law society would be acting contrary to the requirement of mutual recognition of the certification of workers under Article 706(1) of the AIT and s. 32 of the NMA. It is difficult to see how such a law society could frame an additional measure to address this and justify it as a legitimate objective exception under Article 708 of the AIT.
107. With respect to the LSN, the Executive is required by s.18(1)(b) of the *Legal Profession Act* and subrule 40(1) of the Rules to recognize the credentials of members of other law societies in Canada. A refusal to accept a transferring lawyer may also breach that legislative obligation.
108. If a TWU law degree is acceptable for a transferring lawyer, it cannot reasonably be concluded that a TWU law degree is insufficient for admission as a student-at-law in Nunavut. This would be an absurd result.
109. Additionally, a law society that refuses to recognize a degree from TWU's School of Law, despite the Federations' approval in accordance with the Federation's national standards, and despite other Canadian law societies' acceptance of the sufficiency of the Federation's approval, is adopting an occupational standard in a manner that is not conducive to labour mobility, which is arguably contrary to Article 707 of the AIT.<sup>40</sup>
110. The LSN has been asked by opponents of TWU's School of Law to refuse approval of TWU graduates based on the religious beliefs on which TWU is founded, regardless of the calibre of education offered.
111. Such an approach would seriously damage the national approach to approval of legal education and mobility rights of lawyers in Canada. Additionally, the LSN cannot properly take that approach without due regard to its obligations under the NMA and the TMA, s.18(1)(b) of the *Act*, subrule 40(1) of the Rules, and Part II, s.20 of the Policy

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<sup>40</sup> Occupational standards are addressed in Article 707 of AIT. While each party to AIT maintains its right to adopt occupational standards and to establish the level of protection it considers appropriate in the circumstances, the "[p]arties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards". As explained in the Backgrounder, "[w]hen changing a standard or creating a new standard, provinces and territories shall adopt, to the extent possible and where practical, occupational standards based on common interprovincial standards or, at least, in a manner conducive to labour mobility. They shall notify and afford other provinces and territories the opportunity to comment on proposed new or revised standards." *Agreement on Internal Trade New Amended Chapter 7 on Labour Mobility: BACKGROUNDER* at p. 1, available at [http://www.ait-aci.ca/labour\\_en/LM\\_Backgrounder-draft\\_090302revised.pdf](http://www.ait-aci.ca/labour_en/LM_Backgrounder-draft_090302revised.pdf)

Manual. It certainly cannot take such an approach that would impose additional restrictions on TWU educated lawyers and students-at-law unless they specifically meet a “legitimate objective” as defined in Article 711 of the AIT.

112. In short, it is not legally appropriate for the LSN to disapprove of TWU’s School of Law because it does not agree with tenets of the religious beliefs on which TWU is founded or how those beliefs are realized through the Community Covenant. This is quite apart from the fact that the relevant matters to be considered by the LSN should be focused on academic qualifications, as discussed in the next section.

## 5. NATURE OF THE DECISION BEFORE THE LSN

113. For the reasons articulated, the statutory authority of the LSN with respect to the protection of the public interest should be read and understood in conjunction with its labour mobility obligations and the only issue before the Executive, namely whether TWU’s School of Law will provide graduates with adequate academic qualifications to become lawyers.

114. Under subsection 16(2)(1) of the *Legal Profession Act*:

(1) The Executive shall evaluate the *academic qualifications* of every applicant for admission as a member of the Society and may, in its discretion, administer a special examination to any applicant [emphasis added]

115. Under subsection 18(1)(c)(ii)(A) of the *Legal Profession Act*, a person is qualified if she or he is of good character and is a graduate of a law school approved by the Executive. Under s.8(1)(a), the Executive may make rules “prescribing the terms and conditions on which approval for admission as members or as students-at-law may be given ...”.
116. With respect to students-at-law, Rule 40(1)(c) reiterates the legislated requirement that applicants have proof of “graduation from a law school approved by the Executive”.
117. These statutory powers all relate to determining whether individual students-at-law and members of the LSN are adequately prepared and qualified to practice law. With respect to applicants to become students-at-law, subsection 16(1) of the *Legal Profession Act* indicates that the focus of the inquiry is on “academic qualifications.”

118. The issue before the Executive is with respect to the accreditation and admission of TWU's graduates. Given the authority of the LSN and the Executive in the *Legal Profession Act*, approval of TWU's School of Law occurs only in the context of graduates having their "academic qualifications" recognized.
119. The power to "approve" TWU's School of Law must be considered in this context. The LSN does not have general authority to regulate TWU, its School of Law or any other university or law school. The question is whether graduates will be properly qualified to practice law, not whether the Executive agrees with every aspect of a law school.
120. The Executive is not approving or accrediting TWU's School of Law in a broader sense. TWU has the approvals it needs from the B.C. government to open and operate the law program. The LSN does not have any direct statutory authority over TWU or its School of Law. It is not a regulator of TWU. The issues before the Executive are not about whether it is in the "public interest" to recognize or approve the Community Covenant or TWU, itself.
121. The only matter before the Executive is whether TWU's graduates will be recognized. To satisfy its statutory obligation, the Executive must focus on TWU's graduates and ask whether there is any justifiable reason to reject their educational and academic qualifications and ban them from the practice of law in Nunavut.
122. TWU does not ask for approval of its Community Covenant or the religious beliefs on which it is based. It is not proper for the Executive to approach the matter based on whether its decision will amount to an imprimatur or approval of such beliefs or the Community Covenant itself.
123. In this respect, TWU accepts that it is legitimate for the Executive to consider any perceived "discriminatory practices" to the extent that this allegation is relevant to the preparedness of TWU graduates to practice law in Nunavut. In order to comply with the directions of the Supreme Court of Canada, the Executive must do so in a manner that takes into account all rights and freedoms and, most importantly, whether such alleged "discriminatory practices" impact on the education to be provided at TWU's School of Law or the ability of its graduates to practice law.
124. It is not sufficient, as argued by a number of TWU's opponents, to allege "discriminatory practices" or that TWU's Community Covenant may have the effect of limiting admission to members of the LGBT communities. Concluding the analysis at that point amounts to adopting a hierarchy of rights, contrary to the repeated admonitions of the

Supreme Court of Canada, and is inconsistent with the LSN's general obligation to maintain and advance the rule of law.

125. Contrary to the statements of a number of TWU's opponents, and for reasons articulated in more detail below, the Supreme Court of Canada's reasons in *TWU v. BCCT* are directly applicable in these circumstances. The BCCT also made its determination after concluding that TWU engaged in "discriminatory practices" that it found were contrary to the "public interest". Specifically, the College of Teachers decided that:

...approval of a Teacher Education Program be denied because Council still believes that the proposed program follows discriminatory practices which are contrary to the public interest and public policy which the College must consider...<sup>41</sup>

126. A good summary of the Supreme Court of Canada's evaluation of this imprecise and erroneous consideration of the "public interest" can be found at para. 42 of its reasons:

We would add that *the continuing focus* of the BCCT *on the sectarian nature of TWU is disturbing. It should be clear that the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices.* It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system. *The actual impact of the sectarian nature of TWU on the educational environment is what was examined in these reasons.* [Emphasis added]

127. For these reasons, TWU respectfully submits that the Executive must focus only on whether TWU's graduates will be adequately prepared from an academic and competence perspective to practice law in Nunavut.
128. The Ministry and the Federation have already found that graduates from the TWU School of Law will be adequately trained. They will meet all relevant academic qualifications. None of TWU's opponents have provided any evidence to the contrary.

## **6. SHOULD THE LSN EXECUTIVE DENY TWU GRADUATES THE RIGHT TO PRACTICE LAW IN NUNAVUT?**

129. It will come as no surprise that TWU strongly submits that there is no legitimate basis to deny its graduates the right to become full members of the LSN and to practice law in

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<sup>41</sup> *TWU v. BCCT*, para. 5

Nunavut. There is no basis to conclude that TWU graduates will not have sufficient academic qualifications for the practice of law.

130. The Federation, through its Approval Committee and Special Advisory Committee, and the Ministry, have both concluded that TWU's proposal should be approved. The Federation considered all of the same issues raised in submissions before the LSN in great detail. There is no new basis upon which the Executive should deny accreditation of TWU graduates.
131. As explained above, under the NMA, the AIT and the *Act*, the Federation's conclusions should not be treated as merely advisory in nature. In the modern context of lawyer mobility, the Federation's conclusion should only be ignored for legitimate reasons within the confines of those agreements and statutes.
132. TWU did not ask the Federation or the Ministry to endorse or agree with the religious beliefs on which it is based. It is similarly not asking any law society to endorse or agree with them. That is not the question before the Executive.
133. TWU asks only that the religious beliefs of its community be respected and tolerated as they should be in any equal, just and pluralistic society.
134. Neither the LSN nor the courts are qualified or entitled to consider the merits or validity of the religious beliefs on which TWU is founded (*R .v Jones*, [1986] 2 S.C.R. 284 at 295; *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para.51). Some submissions opposed to TWU exhibit a profound misunderstanding of religious belief and practice. Others exhibit a motivation to entirely discredit and disparage religious belief about the morality of sexual practices. It is simply not appropriate and worse, it is discriminatory on the basis of religion, to target such religious beliefs for moral disapprobation.
135. As should be clear to all law societies, many lawyers practicing in Canada today hold religious beliefs similar to those on which TWU is founded. None of them are or should be disqualified from the practice of law, provided that they continue to display professional competence and ethical behaviour. That same measure of respect, tolerance and understanding must be shown to graduates of TWU's School of Law.
136. TWU submits that there is no basis upon which the LSN Executive may deny TWU graduates the ability to practice law in Nunavut and will address what appear to be the main arguments made in opposition to approving TWU's graduates.

(a) *Compatibility of the Covenant with Training in Equality Law and/or Ethics and Professionalism*

137. Some opponents have suggested that TWU is not able to train future lawyers in ethics and professionalism. Others have said that legal education at TWU with respect to equality and human rights will be inherently flawed. They suggest that the fact of TWU's religiously-based Community Covenant is incompatible with the ethical and legal training appropriately required of those seeking entry into the legal profession.
138. For example, Mr. Patrick Orr submitted that TWU's evangelical Christian character "creates a concern that its graduates will pursue goals potentially in conflict with the administration of justice".<sup>42</sup>
139. Such statements and arguments are wrong at law, intellectually flawed and deeply offensive to lawyers and students who hold religious beliefs similar to those on which TWU is founded.
140. TWU has consistently and expressly recognized that human rights laws and section 15 of the *Charter* protect against and prohibit discrimination on the basis of sexual orientation. TWU has no plan nor desire to teach against these important protections.
141. On the contrary, the courses that will be offered at the TWU School of Law will ensure that students understand the scope of these protections in the public and private spheres of Canadian life. The course outlines in TWU's proposal clearly indicate that standard texts are proposed for such topics, all of which cover and include the historical inequality afforded homosexuals. No course on section 15 of the *Charter* or on provincial human rights protections would be complete without addressing cases such as *Vriend v. Alberta*, *Egan v. Canada*, and *Reference re Same-Sex Marriage*.
142. As noted above, TWU's program of study has two required courses on professionalism and ethics (LAW 508 and LAW 602), the latter of which will specifically challenge students to "reconcile their personal and professional beliefs within a framework of service to clients and community while respecting and performing their professional obligations and responsibilities".<sup>43</sup> This is, of course, the obligation of every practicing lawyer in Canada.
143. TWU has offered to encourage all of its law students to become members of the Canadian Bar Association upon enrollment and to cover the cost of such membership

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<sup>42</sup> Letter to LSN, <http://lawsociety.nu.ca/wp-content/uploads/2013/07/Response-to-LSNu-Discussion-Paper-Trinity-Western.pdf>

<sup>43</sup> TWU Proposal, p. 22. See also full description of course at p. 93

during enrollment in the School of Law. TWU has also offered to cooperate with the B.C. Branch of the CBA by facilitating annual information sessions to acquaint TWU law students with the CBA. TWU has expressly suggested that one such annual session could be utilized, in whole or in part, by SOGIC or such other section that the B.C. Branch may designate.

144. The opponents cannot legitimately complain that TWU will fail to adequately and appropriately address substantive equality or ethics and professionalism. The Federation’s two committees and the Ministry agreed that these topics will be properly and appropriately covered.
145. These opponents must be suggesting that *the fact of* the Community Covenant undermines the otherwise appropriate education to be provided at TWU on ethics and professionalism. This is the same error made by the B.C. College of Teachers, which argued that teachers graduating from TWU would not be “equipped to deal with students” and be unable to “offer comfort and support to the students.”<sup>44</sup> The Supreme Court of Canada clearly rejected this argument and line of reasoning:

While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools. ...

TWU’s Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>45</sup>

146. TWU recognizes its duty to teach equality and meet its public obligation with respect to promulgating non-discriminatory principles in its teaching of ethics and professionalism. TWU unreservedly affirms the dignity and value of all individuals irrespective of their sexual orientation and agrees that this principle forms part of the fabric of professional ethics and the rule of law. Each graduate of TWU’s School of Law will be expected to meet all of their professional obligations once in practice, including those related to non-discrimination and equality. This is no different than the obligation of lawyers already in practice who hold religious beliefs similar to those articulated in the Community Covenant.

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<sup>44</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 121. Note that when intervening in *TWU v. BCCT*, Egale Canada made similar arguments

<sup>45</sup> *TWU v. BCCT*, paras. 32-33

147. As evident from the submissions received by the Federation and various law societies, there are many students currently at public law schools that hold these same religious beliefs.<sup>46</sup> They are and will be expected to uphold the law and meet their ethical and legal obligations when in practice and no one can seriously suggest otherwise. However, if the opponents' line of reasoning prevails, it opens the door to denying accreditation to individuals on the basis of religious belief. While some may suggest this is alarmist, the Supreme Court of Canada specifically addressed this concern in *TWU v. BCCT*:

Indeed, if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church.<sup>47</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.<sup>48</sup>

148. It would clearly be abhorrent to suggest that lawyers holding similar religious views to those addressed in the Community Covenant are unworthy to practice law or unable to uphold their professional obligations. We have long ago moved away from prejudging behaviours based on personal beliefs.<sup>49</sup>
149. While the opponents of TWU's proposal clearly do not share its religious beliefs, neither those beliefs nor their manifestation in the Community Covenant is a basis upon which TWU's graduates should be denied admission as lawyers. As found by the Supreme Court of Canada, those beliefs are not a basis upon which anyone should anticipate that graduates will fail to meet their professional and ethical obligations.

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<sup>46</sup> See letter from Jessie Legaree, JD Candidate 2015, University of Toronto - Submissions to the Law Society of New Brunswick, pp. 413-414, dated April 30, 2014. The Federation also received a letter from "Christian law students across Canada" dated March 10, 2013 indicating that the students "hold [the Biblical principles on which TWU's Covenant is based] regardless of the law school [they] attend" and a letter from current UBC law students dated March 19, 2013 where they make this same point: "Students at TWU law school would be taught the law, and will be required to uphold the law. To suggest otherwise does not accord with how our justice system works: judge and lawyers, regardless of their personal beliefs, are expected to apply the law."

<sup>47</sup> *TWU v. BCCT*, para. 33

<sup>48</sup> *TWU v. BCCT*, para. 36

<sup>49</sup> See *Martin v. Law Society of British Columbia*, [1950] 3 D.L.R. 173 where admission to practice law was denied as the applicant was a communist. See also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 in which the court overturned an administrative decision which denied certifying a union because its secretary-treasurer was communist.

**(b) Different or Additional Requirements for TWU Graduates**

150. Some opponents have suggested that TWU graduates should be admitted to the practice of law, but only after going through an extra step, possibly through the National Committee on Accreditation (“NCA”). Such an approach seriously undermines, or is at least radically inconsistent with, a decision not to follow the national accreditation process. With respect, it is difficult to understand on what principled basis a law society would recognize the acceptance of TWU graduates by the Federation’s processes if they apply individually, but not accept the Federation’s conclusions that TWU will properly train lawyers for practice.
151. In any event, and so far as TWU is aware, the NCA has never inquired into the individual religious beliefs of applicants or the community codes of conduct of any university from which such applicants have obtained their law degrees, whether in Canada, the USA or elsewhere. Such inquiries are not material to, or the appropriate subject matter of, the NCA’s approval of individual applicants. The same standard ought to be applied when law societies consider whether to approve all graduates from TWU.
152. Similarly, others have suggested that TWU graduates will be tainted by virtue of attending a religious law school that maintains a Christian code of conduct.
153. Again, this reasoning is deeply offensive to lawyers and law students holding religious beliefs similar to those embodied in the Community Covenant. It suggests that persons holding such beliefs, or wishing to be educated in an environment that respects and encourages them, require some form of contrary educational experience, or be subjected to an additional entrance requirement, in order that they be able to practice law.
154. There is also a serious logical flaw in the argument. Existing law schools: (1) have students currently enrolled who hold religious beliefs similar to those on which TWU is founded; and (2) have produced lawyers who also hold such views. Lawyers need not all believe the same way concerning issues of sexual morality, provided their conduct is ethical and professional.
155. Again, this point was argued in *TWU v. BCCT*. The College of Teachers said that TWU education students should be required to complete additional requirements outside of TWU.<sup>50</sup> The Supreme Court of Canada rejected this reasoning:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and

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<sup>50</sup> B.C. College of Teachers Factum in *TWU v. BCCT*, para. 118

associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. *Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.*<sup>51</sup> [Emphasis added]

156. These arguments evidence a presumption about TWU students (and in fact all those holding similar religious beliefs) and stereotypes them as intolerant. If commitment to Biblical principles results in the denial of a private institution as capable of teaching law, it implicates law students having similar views about sexual relationship in terms of their competence as future lawyers.
157. Adhering to religious beliefs does not equate to future discriminatory conduct. The Supreme Court of Canada agrees with this point:

The evidence in this case is speculative, involving consideration of the potential future beliefs and conduct of graduates from a teacher education program taught exclusively at TWU.<sup>52</sup>

...

TWU's Community Standards, which are limited to prescribing conduct of members while at TWU, are not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour in the public schools.<sup>53</sup>

...

In addition, there is nothing in the TWU Community Standards that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>54</sup>

...

Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.<sup>55</sup>

158. The Supreme Court of Canada equated this type of argument with a failure to accommodate religious belief and a denial of full participation in Canada. This should be determinative in the Executive's deliberations.

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<sup>51</sup> *TWU v. BCCT*, para. 32

<sup>52</sup> *TWU v. BCCT*, para. 19

<sup>53</sup> *TWU v. BCCT*, para. 33

<sup>54</sup> *TWU v. BCCT*, para. 35

<sup>55</sup> *TWU v. BCCT*, para. 36

(c) *Allegations of Discrimination*

159. Many opponents that accuse TWU of discrimination ignore the fact that there is no legal prohibition to the Community Covenant. As noted above, this issue is only relevant to the Executive if there is an impact on the question of academic qualification of TWU graduates. Since there is no evidence that the Community Covenant negatively impacts on the education to be provided at the TWU School of Law, the allegations of discrimination by TWU are entirely beside the point. However, it is worthwhile to point out that many opponents of TWU support an unjustifiably narrow and penurious view of the human rights of the members of the TWU community.
160. First, the *Charter* does not apply to TWU since it is a private religious educational community. As such, it is misguided and clearly wrong at law to argue that TWU's graduates should be rejected because the Community Covenant is "clearly in breach of the Charter".<sup>56</sup> TWU and its students are protected by the *Charter* in order to maintain their religious beliefs and their religious community.
161. Second, the question of "discrimination" should not be considered in the abstract. It must be anchored by the question of whether the impugned beliefs and conduct are legal or not. Legal counsel obtained by the Law Society of British Columbia and the Federation agree that the Community Covenant does not contravene applicable human rights laws. Mr. Gomery QC specifically advised the Law Society of B.C. that:

In my opinion, while a range of Christian creeds and doctrines may be accommodated within TWU's evangelical Christian perspective, it is nevertheless an organization established for the promotion of the interests and welfare of Christian students as contemplated by [section 41 of the Human Rights Code]. Following full argument, the court is likely to conclude that, pursuant to the exemption, TWU is not in violation of the prohibition on discrimination contained in the *Human Rights Code*.<sup>57</sup>

162. In *TWU v. BCCT*, the Court explicitly stated that section 41 of the B.C. *Human Rights Code* recognizes and protects the right of TWU and its community to be a religious educational institution:

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do

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<sup>56</sup> Jonathan Rossall, QC, letter of September 9, 2014

<sup>57</sup> <https://www.lawsociety.bc.ca/docs/newsroom/TWU-opinions.pdf>

not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>58</sup>

163. It would be curious indeed if the LSN denied TWU graduates the right to practice law because of the lawful and constitutionally protected beliefs and conduct of the university they attended.

*(d) Appearance of Acceptance of “Discriminatory Practices”*

164. Despite the lawfulness of the Community Covenant, TWU’s opponents ask the Executive to deny recognition of the graduates for admission to the practice of law simply because of only one aspect of TWU’s Community Covenant, with respect to a traditional Christian view of marriage and sexual relationships.
165. These opponents suggest that accepting TWU graduates would perpetuate historical discrimination against members of the LGBT communities.
166. While articulated differently, these arguments amount to asking the LSN not to accredit or recognize TWU graduates because of the nature of TWU as a religious educational community, maintaining a traditional Christian view of marriage.
167. This is not merely a separate institutional test for “discriminatory practices”, that is distinct from an assessment of the quality and qualifications of graduates. It is all about (and certainly should be about) whether TWU can adequately and appropriately educate lawyers. TWU is not seeking agreement with, or approval of, the religious beliefs of its community. Neither should the Executive withhold recognition of TWU graduates simply because some of its members do not agree with or approve of the religious beliefs of TWU.
168. Acceptance of graduates of TWU is not a statement of acknowledgement or agreement with its religious beliefs. It is a statement that TWU’s graduates are adequately prepared to practice law.
169. The B.C. College of Teachers also argued strongly that because of the perception of “discriminatory practices”, it should not approve TWU’s program. The Supreme Court of Canada carefully and properly explained that there is an important difference between

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<sup>58</sup> Para. 35

perceptions based on improper conduct by individuals and perceptions founded on religious principles on which TWU is established:

All this to say that even if it was open to the BCCT to base its decision on perception rather than evidence of actual discrimination or of a real risk of discrimination, there is no reason to give any deference to that decision.<sup>59</sup>

...

For the BCCT to have properly denied accreditation to TWU, it should have based its concerns on specific evidence. It could have asked for reports on student teachers, or opinions of school principals and superintendents. It could have examined discipline files involving TWU graduates and other teachers affiliated with a Christian school of that nature. Any concerns should go to risk, not general perceptions.<sup>60</sup>

170. The analysis of the Federation and the Ministry focused appropriately on whether graduates from TWU's School of Law will be properly educated and adequately prepared to act as lawyers. The Federation specifically and exhaustively considered whether the Community Covenant undermines the ability of TWU to educate lawyers. Quite rightly, they found that it does not.
171. It is simply inappropriate to deny accreditation of graduates based on perceptions. TWU does not ask LSN or any other regulatory body to agree with its religious principles.
172. TWU asks only that its program be assessed on proper criteria, not a general sense that the religious beliefs on which it is founded are wrong or outdated. Everyone is entitled to their own personal view on TWU's religious beliefs, as TWU and the members of its community are entitled to theirs. But such views are not a proper basis upon which TWU's graduates should be refused admission to the practice of law in Nunavut.
173. To paraphrase the Supreme Court of Canada, the freedom of religion of TWU and its students is not accommodated if the consequence of its exercise is the denial of the right to full participation in the bar of Nunavut.<sup>61</sup>

***(e) Diversity in the Legal Profession and Academic Freedom***

174. Some opponents suggest that accepting graduates of TWU's program will diminish diversity in the legal profession. Some argue that by refusing TWU's graduates, the LSN will "send a message across the country" that all persons will be treated equally.<sup>62</sup>

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<sup>59</sup> *TWU v. BCCT*, para. 19

<sup>60</sup> *TWU v. BCCT*, para. 38

<sup>61</sup> *TWU v. BCCT*, para. 35

<sup>62</sup> Ronald MacDonald and Amy Sakalauskas submission, p.15

175. It is peculiar, to say the least, that these advocates seek to silence a perspective different from their own within the Canadian legal community in the name of diversity. It is surprising that they cannot see that rejecting graduates from a Christian university does the opposite of treating people “equally”.
176. While these opponents express a concern that TWU’s School of Law will have a limited tolerance of diversity, their opposition exhibits exactly that trait.
177. There is nothing inimical to Canadian society contained in the Community Covenant. Its contents are to be expected in the context of an evangelical Christian organization. As noted by a number of others, the Community Covenant promotes positive values, expecting community members to “treat all persons with respect” and “cultivate Christian virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice”. The legal profession can always use lawyers inculcated in all of these values. All opponents focus on only one aspect of the Community Covenant, ignoring the balance of its contents and thereby intimating that they are unobjectionable.
178. As stated by Dickson J. (as he then was) in *R v. Big M Drug Mart*, “a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct”.<sup>63</sup> As noted in *TWU v. BCCT*, “the diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected”.<sup>64</sup> A TWU School of Law would enhance, not undermine, diversity in legal education in Canada.
179. TWU’s proposed School of Law should be assessed on its merits, based on the national requirement. As the only privately funded law school, it may provide a slightly different perspective, but this should be welcomed. There is no principled reason that secular, public institutions should have a monopoly on legal education in Canada.
180. Some opponents have also questioned academic freedom at TWU. TWU maintains a strong policy on academic freedom that was affirmed by British Columbia’s Degree Quality Assessment Board in 2004. TWU is a member of Association of Universities and Colleges of Canada and fully complies with its Statement on Academic Freedom and Institutional Autonomy. TWU has a long history of excellence in research and scholarship. During its almost thirty year history as a university there has not been a

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<sup>63</sup> [1985] 1 S.C.R. 295 at p. 336

<sup>64</sup> *TWU v. BCCT*, para. 33

single allegation of a lack of academic freedom related to research despite a broad range of scholarship.

181. Some opponents assume, without evidence, that TWU classrooms will be impoverished of critical thinking. The fact that a TWU graduate was recently the gold medalist at UVic's law school<sup>65</sup> strongly suggests otherwise. So do the experiences of other people who actually attended TWU:

I do note that while I attended school there I took a course where our professor invited an individual who had undergone the sex change process to speak to our class about the whole situation, and that individual actually spoke to that class over several different years. That always sticks out in my mind because that individual applauded the students of TWU for the respect that they provided her, even though they may not have agreed with her choice from their own moral standpoint.<sup>66</sup>

182. There will be a full range of academic inquiry and debate within TWU's School of Law. There is certainly no evidence to the contrary.

*(f) Hindering Freedom of Religion, Freedom of Association and Equality Rights*

183. Some opponents have argued that denying approval of TWU's School of Law proposal because of the Community Covenant will not impair the constitutional rights of TWU and the individuals comprising its community.<sup>67</sup> They promote an impoverished view of these *Charter* rights.
184. Citing *Saskatchewan (Human Rights Commission) v. Whatcott*,<sup>68</sup> opponents argue that denying TWU's graduates accreditation would not infringe s.2(a) of the *Charter* as it would not threaten religious belief or conduct. This ignores the fact that the Supreme Court of Canada in *Whatcott* also relied on the oft-cited words of Dickson J. in *R. v. Big M Drug Mart* that the "essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and *without fear of hindrance or reprisal*..."<sup>69</sup> (Emphasis added)
185. In *Alberta v. Hutterian Brethren of Wilson Colony*,<sup>70</sup> the majority accepted that Alberta's mandatory photo requirement for driver's licensing breached the s.2(a) rights of the

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<sup>65</sup> Lauren Witten, LSBC Submissions March 2, 2014

<sup>66</sup> Natalie Hebert, LSBC Submissions, January 30, 2014

<sup>67</sup> Ronald MacDonald and Amy Sakalauskas submission, p.5

<sup>68</sup> 2013 SCC 11

<sup>69</sup> At p. 336

<sup>70</sup> [2009] SCC 37

Hutterian Brethren as they had a religious objection to having their photos taken. Applying the logic of TWU's opponents, there would have been no breach of freedom of religion since the Hutterian Brethren would be able to maintain their beliefs without having driver's licenses. The courts disagree, as removing or denying a benefit as a result of religious belief imposes a burden on, and hinders, religious belief and practice.

186. The denial of approval of TWU's graduates because of the Community Covenant would unquestionably deny access to an opportunity or benefit available to students at public institutions based on the religious beliefs of the TWU community.
187. Some opponents argue that the impugned provision of the Community Covenant should be abolished, but that freedom of religion is still protected by allowing TWU to voluntarily abstain from taking part in homosexual practices and relationships. This reasoning misses the point in a way that is very dangerous to freedom of religion in Canada. Further, it is contrary to the Supreme Court of Canada's ruling in *Hutterian Brethren*:

[Freedom of religion] is an expression of the right to believe or not. It also includes a right to manifest one's belief or lack of belief, or to express disagreement with the beliefs of others. *It also incorporates a right to establish and maintain a community of faith that shares a common understanding of the nature of the human person, of the universe, and of their relationships with a Supreme Being in many religions...*<sup>71</sup> [Emphasis added]

188. The freedom of religion, freedom of association and equality rights of TWU's community are not respected and accommodated if it is precluded from establishing and maintaining its community of faith, sharing a common understanding of moral issues.
189. All of the opponents of TWU's proposal wrongfully focus on TWU's sectarian nature. Please carefully consider the following words of the majority in *TWU v. BCCT*:

We would add that the continuing focus of the BCCT on the sectarian nature of TWU *is disturbing*. It should be clear that *the focus on the sectarian nature of TWU is the same as the original focus on the alleged discriminatory practices*. It is not open to the BCCT to consider the sectarian nature of TWU in determining whether its graduates will provide an appropriate learning environment for public school students as long as there is no evidence that the particularities of TWU pose a real risk to the public educational system.<sup>72</sup> [Emphasis added]

190. If there are pedagogical or other problems with the education to be provided at TWU's proposed School of Law, they would have been detected by the Federation, the Ministry,

<sup>71</sup> *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para. 181.

<sup>72</sup> *TWU v. BCCT*, para. 42

or both. As a matter of constitutional and human rights values, it is not open for the LSN to now focus solely on the sectarian nature of TWU, as articulated in the Community Covenant, to undermine the normal approval processes. The Executive is not permitted to express, or base its decision on, moral disapprobation of the particular Christian beliefs on which TWU is founded.

**(g) TWU v. BCCT is Binding Law**

191. Opponents of TWU argue that *TWU v. BCCT* is not binding or determinative. This argument takes a number of forms.
192. Some TWU opponents suggest that the decision was specific to British Columbia law and that, as a result, acknowledging TWU's freedom of religion and association rights to maintain the Community Covenant is unnecessary because not all human rights legislation across the country contain the same provisions.
193. Similarly, others argue that the Supreme Court of Canada's analysis related to TWU's right to equal treatment is merely a finding that TWU is in compliance with B.C. legislation.
194. Some opponents attempt to avoid the binding result of *TWU v. BCCT* because law societies are required to consider and protect the public interest. With respect, that was exactly the issue and argument advanced by the BCCT. The BCCT decided not to approve TWU's program "because Council still believes the proposed program follows discriminatory practices which are contrary to the public interest..."<sup>73</sup> The Court held that while the BCCT could consider the discriminatory practices as part of its review of the public interest, it also had to consider religious freedom and was wrong to have "inferred without any concrete evidence that such views will limit consideration of social issues ...[or] have a detrimental impact on the learning environment..."<sup>74</sup> The case is directly applicable to, and clearly undermines, the reasoning advocated by TWU's opponents.
195. The arguments advanced by the opponents of TWU's proposal were made by the B.C. College of Teachers and expressly rejected by the Supreme Court of Canada. The decision in *TWU v. BCCT* was a recognition and balancing of TWU's constitutional rights and not, as suggested by others, a narrow and reluctant decision to allow TWU to exist within British Columbia. This is the same conclusion reached by John Laskin QC,

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<sup>73</sup> *TWU v. BCCT*, para. 5

<sup>74</sup> Paras. 26 and 32

who specifically reviewed and rejected the arguments of Professor Craig in concluding that the grounds advocated by her for refusing approval “would be highly questionable.”

196. While it is without question that there have been some important societal changes since *TWU v. BCCT* was decided, these changes have not undermined the constitutional protection afforded TWU and the members of its community. In this regard, the preamble and section 3.1 of the *Civil Marriage Act*<sup>75</sup> are worth noting:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;

...

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

197. This language again shows that the recognition of same-sex marriage was not intended to undermine freedom of religion or freedom of association by those holding and expressing religious beliefs that marriage is “the union of a man and woman to the exclusion of all others”. The portion of the Community Covenant to which TWU’s opponents object indicates nothing beyond the recognition of such religious beliefs within a religious educational community.
198. It is also of note that some opponents of TWU’s School of Law have emphasized the recognition of same-sex marriage in Canada as a societal change since 2001, which it certainly is, but they conveniently ignore or entirely dismiss the preamble and s.3.1 of the legislation that created same-sex marriage in Canada. It has always been recognized and acknowledged, in the *Civil Marriage Act* and in human rights legislation, that there must be a balancing to ensure that freedom of religion and equality on the basis of religion is protected. The Supreme Court of Canada has already determined how that balancing is to occur in these circumstances.

**(h) What About Whatcott?**

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<sup>75</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html>

199. A number of TWU opponents, cite *Whatcott* to undermine the conclusions of the Supreme Court of Canada in *TWU v. BCCT*. As noted above, *Whatcott* expressly confirmed the protection of religious freedom in Canada, consistent with and relying on *Big M Drug Mart*.
200. There are two points that should be made, both of which demonstrate that the decision in *Whatcott* does not undermine the result in *TWU v. BCCT*:

- (a) As noted by Mr. Laskin, the Supreme Court of Canada confirmed that courts are required to balance equality and freedom of religion values to the point at which conduct linked to religious belief ***results in actual harm***. This was exactly the approach taken in *TWU v. BCCT*. Perceptions and unsubstantiated anticipation of harm are simply not sufficient.

Mr. Laskin agrees that any decision rooted in assumptions, as opposed to concrete evidence of actual harm, would be struck down.

- (b) *Whatcott* does ***not*** say that there is no remaining valid legal distinction to be drawn between sexual orientation and sexual conduct. In fact, at para. 122, the Court said the opposite:

I agree that sexual orientation and sexual behaviour can be differentiated for certain purposes.

*Whatcott* dealt with hate speech and the Court rightly rejected an artificial distinction between hate directed toward persons and toward behaviour “in an effort to mask the true target”. It does not stand for the proposition that TWU cannot have a Community Covenant proscribing a variety of behaviour that is contrary to the religious beliefs and practices of its community.

201. The attempt of opponents to link TWU with the behaviour of Mr. Whatcott is wrong and offensive. Hate directed towards any person is demonstrably contrary to TWU’s religious values as articulated in the Community Covenant.

(i) ***Human Rights Protections & LSN Potential Rule Change***

202. As noted above, in *TWU v. BCCT*, the Court made reference to section 41 of the *Human Rights Code* in acknowledging that the B.C. legislature recognized the right of TWU to be a religious institution.<sup>76</sup> The Court’s analysis was based on the preservation of the

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<sup>76</sup> *TWU v. BCCT*, paras. 32 and 35

values of human rights legislation and the *Charter* in acknowledging TWU's right to a teacher education program, which is conveniently summarized by the following quotes:

Consideration of human rights values in these circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values. Freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation...

...It cannot be reasonably concluded that private institutions are protected but that their graduates are de facto considered unworthy of fully participating in public activities. In *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 554, McIntyre J. observed that a "natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it". ... Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.<sup>77</sup>

203. This is consistent with the broad interpretation that courts have afforded provisions such as section 41. They are treated as rights-granting provisions deserving of an expansive interpretation, and not as narrow exemptions. In *Caldwell v. Stuart*<sup>78</sup>, the Supreme Court of Canada expressly wrote that the predecessor of section 41 "confers and protects rights" and "permits the promotion of religion"<sup>79</sup>. In *Brossard (Town) v. Quebec (Commission des droits de la personne)*<sup>80</sup> Beetz J. held that a similar provision promotes "the fundamental rights of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits"<sup>81</sup>. Provisions such as s.41 protect freedom of religion and freedom of association, but also serve an important equality seeking purpose, recognizing that true equality sometimes allows, or even necessitates, treating different people differently in ways that recognize their actual needs.<sup>82</sup>
204. This approach is consistent with how courts and tribunals protect religious beliefs in the context of all human rights legislation in Canada.<sup>83</sup> It is trite to point out that all human rights legislation in Canada must be interpreted and applied in a manner consistent with *Charter* rights and freedoms, including the freedom of religion, freedom of association

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<sup>77</sup> *TWU v. BCCT*, paras. 34-35

<sup>78</sup> [1984] 2 S.C.R. 603

<sup>79</sup> At 626 (S.C.R.)

<sup>80</sup> [1988] 2 S.C.R. 279

<sup>81</sup> At 324 (S.C.R.). See also *St. James Community Service Society v. Johnson*, 2004 B.C.S.C. 1807 and *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 B.C.H.R.T. 269

<sup>82</sup> *Gillis v. United Nations Native Society*, [2005] BCHRT 301 at para. 21, *Sahota, supra.* at para. 37

<sup>83</sup> See, for example, *Ontario (Human Rights Commission) v. Brockie*, 43 C.H.R.R. D/90 (Ont. Div. Ct.); *Smith v. Knights of Columbus*, 2005 BCHRT 544; *Garrod v. Rhema Christian School* (1992), 15 C.H.R.R. D/477 (Ont. Bd. Inq.); *Kearley v. Pentecostal Assemblies Board of Education*, [1993] N.H.R.B.I.D. no. 1 (Nfld. Bd. Inq.); *Schroen v. Steinbach Bible College* (1999), 35 C.H.R.R. D/1 (Man. Bd. Inq.)

and equality rights of TWU and the members of its community. It is nonsensical to suggest that TWU could only exist as a religious educational community in British Columbia or possibly a few other jurisdictions within Canada. The *Charter* applies to protect TWU and the members of its community across the country.

205. As such, all human rights legislation must be interpreted and applied in a manner that would preserve, protect and uphold the freedom of association, freedom of religion and freedom of expression of TWU and the members of its religious community. This was confirmed, again, by the Supreme Court of Canada in *Whatcott*<sup>84</sup>.
206. That said, the LSN and its Executive do need to be concerned about its obligations under the *Human Rights Act*. Section 11 prohibits an occupational association from excluding “any person from full membership” because of their religion. As such, a TWU graduate who is precluded from becoming a student-at-law or lawyer in Nunavut because of the religious beliefs of the TWU community would have a direct human rights complaint against the LSN.
207. The proposed revision to the LSN Rules, adding a new section 40.1, would attempt to impose the Nunavut *Human Rights Act* on TWU and other law schools across the country. It is not appropriate for the LSN to apply laws applicable only in Nunavut to persons that are not subject to them. Otherwise, the LSN should also review every other law program in Canada to ensure that they comply with the particular requirements and protections of the *Human Rights Act*, as opposed to the human rights legislation applicable in their own jurisdictions.
208. Neither the Nunavut Legislative Assembly nor the LSN have the constitutional power to impose the *Human Rights Act* extra-territorially on TWU. The principle that human rights legislation cannot apply extraterritorially was addressed in the law school context in *Cohen v. Law School Admission Council*.<sup>85</sup> The Ontario Human Rights Tribunal found that it could not apply the Ontario *Code* to the law school at Dalhousie University because the Ontario *Code* cannot apply to acts occurring outside of Ontario.<sup>86</sup> The same is true with respect to the Nunavut *Human Rights Act*.
209. In short, while denying accreditation of TWU graduates would breach the Nunavut *Human Rights Act*, allowing them to practice law in Nunavut does not.

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<sup>84</sup> See, for example, paras. 180-181

<sup>85</sup> 2011 HRTO 703

<sup>86</sup> At paras.7-9

## 7. SUMMARY AND CONCLUSION

210. For the reasons articulated, TWU respectfully submits that this matter is about whether the graduates of its School of Law will be adequately prepared to practice law in Canada, both from the perspective of understanding substantive law and in terms of their professional and ethical obligations. The Federation and the Ministry put considerable time and effort into assessing that issue and concluded that TWU's proposal is sound.
211. TWU's graduates should only be rejected if the LSN, on a proper evidentiary foundation, concludes that the education provided by TWU will be insufficient to prepare graduates for the practice of law. TWU respectfully submits that, properly considered, there is no such evidentiary foundation and there is no basis upon which its graduates should be banned from the practice of law in Nunavut. This is for the following reasons:
- (a) The LSN can only limit recognition of TWU graduates as lawyers in a manner permitted by the NMA and the AIT, as made applicable in Nunavut under s.18(1)(b) of the *Legal Profession Act*.
  - (b) The Federation's conclusions should not be treated lightly or rejected, both for reasons of lawyer mobility and because of the extensive work it has done. Its work in evaluating TWU's proposal included consideration of the precise issues that continue to be raised by TWU's opponents.
  - (c) The only reasons raised by TWU's opponents for refusing accreditation of its J.D. graduates in Nunavut are directly related to the religious beliefs on which the TWU religious educational community is founded. That community is protected under the *Charter* and is able to define for itself the religious precepts on which it is based. Other than relying on prejudicial stereotypes about Christians and their beliefs, TWU's opponents have not pointed to anything that undermines the conclusion of the Federation and the Ministry that TWU will properly educate lawyers.
  - (d) TWU embraces its obligations to teach Canadian equality law and professional ethics, including equality based on sexual orientation. TWU's opponents have said that they do not believe TWU when it willingly undertakes this obligation or, more perniciously, argue that its Christian principles make it incapable of doing so. There is no legitimate basis for either position. In any event, the School of Law will be subjected to annual reviews by the Federation to ensure that the national standard is met and that TWU lives up to its commitments.

- (e) To paraphrase the Supreme Court of Canada, the continuing focus on “discriminatory practices” is a focus on TWU’s religious nature and is “disturbing”<sup>87</sup>. A decision to reject TWU graduates, or place additional burdens on them based solely on the one impugned element of the Community Covenant, ought not be adopted or even countenanced by the LSN.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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<sup>87</sup> *TWU v. BCCT*, para. 42