

January 29, 2014

## **U of C and U of A Law Profs' Submission to the Law Society of Alberta on Trinity Western University Law School**

**Written by: Jennifer Koshan, Jonnette Watson Hamilton and Alice Woolley**

**Commented on:** [Letter from members of the Faculties of Law at U of C and U of A to the Law Society of Alberta](#)

On January 28, 2014, over 30 law professors and members of affiliated institutes and centres from the University of Calgary and University of Alberta submitted a letter to the president and president-elect of the Law Society of Alberta. The purpose of the letter was “to express our concerns on the decision making process taken to date for the approval of Trinity Western University School of Law’s program and the eligibility of TWU’s graduates to become students-at-law in Alberta.” Trinity Western University (TWU) received approval from the British Columbia government on December 18, 2013 to open a law school. The school is anticipated to commence operations with its first class of 60 law students in September 2015. TWU is a private, Christian university which requires its students and staff to abide by a Community Covenant Agreement (available [here](#)). It is in this context that these concerned legal academics submitted the following letter:

We would like to begin by commending Mr. Jensen for his statement to members of the legal profession in Alberta on January 14, 2014 [available [here](#)]. This statement indicates a concern to ensure the diversity of the legal profession in Alberta and about the impact that TWU’s Community Covenant Agreement would have on gay and lesbian students. It also indicates a willingness “to work together with the other law societies in Canada, through the Federation, to consider amending the law degree approval criteria to address these issues.”

As you know, many members of the public, the legal profession and student groups have also raised concerns about TWU’s Community Covenant and the disciplinary consequences that may flow from a breach of this policy. These concerns extend not only to TWU’s students, but to its faculty and staff as well. TWU’s law school effectively excludes individuals whose sexuality is expressed outside of marriage between a man and a woman. We understand that the Federation of Law Societies has granted preliminary approval of TWU’s proposed law school program based on the Canadian Common Law Program Approval Committee’s decision that the program meets national requirements

for law schools. However, it remains open to Canadian law societies to decide whether to accept TWU graduates as students-at-law.

The Law Society of Alberta is a self-regulating body that exercises critical gatekeeper functions in determining the qualifications for becoming a lawyer in Alberta. We understand that in December, 2013 the LSA delegated to the Federation the decision of which Canadian common law programs will meet the academic requirements for its graduates to be admitted as students-at-law in Alberta (see The Rules of The Law Society of Alberta, section 50(2)(a)(ii) [available [here](#)]). This amounts to a delegation of the LSA's decision-making power under section 37 of the *Legal Profession Act* [[RSA 2000, c L-8](#)], to evaluate the academic qualifications of applicants for admission to the Society as students-at-law.

While we understand the position expressed in Mr. Jensen's statement regarding the harmonization of admission standards across the country in light of mobility interests, we question whether this delegation was authorized under the *Legal Profession Act* and under administrative law principles concerning delegation. In our view, the fact that the LSA's benchers are elected by the profession means that they need to remain fundamentally accountable for decisions about the practice of law in Alberta. Although national standards may be desirable, this remains an area of provincial responsibility constitutionally, and not a federal one. Furthermore, the nature of the appropriate qualifications for a person admitted to the LSA may need to take into account specific provincial matters, such as human rights legislation, that cannot be done at the national level. By way of analogy, we note that the LSA did not delegate to the Federation the decision about the model code of professional conduct; although the LSA did adopt the model code, it was also qualified and amended to reflect practices in Alberta. We also note that section 39(2) of the *Legal Profession Act* requires that a majority of the Education and Credentials Committee be benchers, showing the intention of the legislature to have these sorts of policy decisions made by the elected governors of the legal profession in Alberta.

Based on the foregoing, we submit that it is appropriate for the Law Society of Alberta to reconsider its decision to effectively delegate its powers to the Federation to evaluate the academic qualifications of applicants for admission to the LSA as students-at-law. We submit that this decision concerning qualifications should be made by the LSA following a full and transparent consultation and decision making process in light of the concerns raised regarding TWU Law School. This process would be in keeping with other national procedures for consideration of the issue of admission of TWU graduates as students-at-law, including those of the Nova Scotia Barristers' Society Council and the Law Society of British Columbia, both of which have committed to public hearings in connection with this matter.

In the alternative, we would return to the willingness expressed by Mr. Jensen to work together with the other law societies in Canada to consider amending the law degree approval criteria to address the issues raised by TWU Law School and its Community Covenant. We believe that this is an area where the Law Society of Alberta could and should take leadership. The LSA has a long history of leadership on issues concerning the

diversity of the legal profession, including the work of the Equity, Equality and Diversity Committee, the Equity Ombudsperson, and the Retention and Re-engagement Task Force. We ask that you hold a full and transparent consultation process in Alberta to inform the question of whether and how the Federation's law degree approval criteria should be revised in light of the concerns raised by TWU Law School.

We would appreciate your providing a copy of this letter to each of the benchers of the Society.

Thank you for considering our submission. We look forward to hearing from you.

Sincerely yours,

Members, Faculty of Law, University of Calgary  
Members, Faculty of Law, University of Alberta

Faculties of law at the University of British Columbia and Dalhousie University have passed faculty council resolutions urging law societies in their jurisdictions to have an open consultation process on these issues, and students, lawyers, professors, and NGOs across Canada have made submissions to law societies as well (see e.g. [here](#) and [here](#)). The Law Society of British Columbia has agreed to have public hearings on the matter (see [here](#)) and the Nova Scotia Barristers Society has announced a public consultation process as well ([here](#)), though in neither of these jurisdictions did the law societies delegate decision making to the Federation. The Law Society of Upper Canada is still considering its process (see [here](#)).

The Alberta letter ultimately asks the Law Society of Alberta to have an open process similar to that in other Canadian jurisdictions, or to take leadership on a national level process. We look forward to their response.

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