2015 C.A. No. 438894

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

THE NOVA SCOTIA BARRISTERS' SOCIETY

APPELLANT

- and -

TRINITY WESTERN UNIVERSITY AND BRAYDEN VOLKENANT

RESPONDENTS

- and -

ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA; CANADIAN COUNCIL OF CHRISTIAN CHARITIES; THE CATHOLIC CIVIL RIGHTS LEAGUE AND FAITH AND FREEDOM ALLIANCE; THE ATTORNEY GENERAL OF CANADA; THE EVANGELICAL FELLOWSHIP OF CANADA AND CHRISTIAN HIGHER EDUCATION CANADA; JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS; SCHULICH SCHOOL OF LAW OUTLAW SOCIETY; THE ADVOCATES' SOCIETY; CANADIAN BAR ASSOCIATION; CHRISTIAN LEGAL FELLOWSHIP; THE CANADIAN SECULAR ALLIANCE

INTERVENORS

FACTUM OF THE INTERVENOR THE ADVOCATES' SOCIETY

BRUCE MACINTOSH, Q.C.
MacIntosh, MacDonnell & MacDonald
610 East River Rd, Suite 260, PO Box 368
New Glasgow NS B2H 5E5
Tel: (902)752-8441; Fax: (902)752-7810
Email: bmacintosh@macmacmac.ns.ca
Counsel for the Intervenor
The Advocates' Society

TO:

Marjorie Hickey, Q.C.
Peter Rogers, Q.C.
Jane O'Neill
McInnes Cooper
1300-1969 Upper Water Street
Purdy's Wharf Tower II
Halifax, NS B3J 2V1
Tel: (902) 425-6500
Fax: (902) 425-6350
marjorie.hickey@mcinnescooper.com
Counsel for the Appellant

Brian Casey, Q.C.
Boyne Clarke
99 Wyse Road, Suite 600
Dartmouth, NS B2Y 3Z5
Tel: (902) 469-9500
Fax: (902) 463-7500
bcasey@boyneclarke.ca
Counsel for the Respondents

Lori Rasmussen
Counsel for the Intervenor
Department of Justice
Atlantic Regional Office
1400 – 5251 Duke Street
Halifax NS B3J 1P3
Tel: (902) 425-4472
Fax: (902) 426-2329
lori.rasmussen@justice.gc.ca

Tim Dickson
Counsel for the Intervenor
Canadian Secular Alliance
Farris Vaughan Wills and Murphy LLP
2500 - 700 W Georgia Street
Vancouver BC V7Y 1B3
Tel: (604)661-9341
Fax: (604) 661-9349
tdickson@farris.com

Philip Fourie/Derek B.M. Ross/Deina Warren
Counsel for the Intervenor
Christian Legal Fellowship
c/o David Bond
David Bond Law Office
5832 St. Margaret's Bay Road
Head of St. Margaret's Bay NS B3Z 2E4
Tel: (902) 858-3066
Fax: (902) 820-3957
execdir@christianlegalfellowship.org
dbond@davidbondlaw.com

Mathieu Bouchard
Amy Sakalauskas
Susan Ursel
Counsel for the Intervenor
Canadian Bar Association
c/o Irving Mitchell Kalichman LLP
1400 – 3500 De Maisonneuve Blvd West
Montreal, QC H3Z 3C1
Tel: (514) 935-4460
Fax: (514) 935-2999
mbouchard@imk.ca
amy.sakalauskas@outlook.com
sursel@upfhlaw.ca

Andre Marshall Schutton
Counsel for the Intervenor
The Association for Reformed Political Action (Canada) ("ARPA")
130 Albert Street, Suite 2010
Ottawa ON K1P 5G4
Tel: (613) 297-5172
Fax: (613) 249-3238
andre@arpacanada.ca
dbond@davidbondlaw.com

Barry W. Bussey
Counsel for the Intervenor
Canadian Council of Christian Charities
V-P Legal Affairs
1 – 43 Howard Avenue
Elmira ON N3B 2C9
Tel: (519) 669-5137
Fax: (519) 669-3291
barry.bussey@ccc.org
dbond@davidbondlaw.com

John Carpay
Counsel for the Intervenor
Justice Centre for Constitutional Freedoms
253 – 7620 Elbow Drive, SW
Calgary AB T2V 1K2
Tel: (403) 619-8014
jcarpay@jccf.ca
dbond@davidbondlaw.com
mmoore@jccf.ca

David Bond
David Bond Law Office
5832 St. Margaret's Bay Rd.,
Head of St. Margaret's Bay, N.S. B3Z 2E4

Albertos Polizopoulos/Kristin Debs
Counsel for the Intervenor
The Evangelical Fellowship of Canada & Christian Higher Education
Vincent Dagenais Gibson LLP
260 Dalhousie Street, Suite 400
Ottawa ON K1N 7E4
Tel: (613) 241-2701
Fax: (613) 241-2599
albertos@vdg.ca
kristin@debslaw.ca

Jack Townsend
Counsel for the Intervenor
Schulich School of Law OUTlaw Society
Cox & Palmer
1100 – Purdy's Wharf Tower 1
1959 Upper Water Street
Halifax NS B3J 3E5
Tel: (902) 421-6262
Fax: (902) 421-3130
jktownsend@coxandpalmer.com

Philip Horgan
Counsel for the Intervenor
The Catholic Civil Rights League & Faith & Freedom Alliance
Philip Horgan Law Office
301 – 120 Carlton Street
Toronto ON M5A 4K2
Tel: (416) 777-9994
Fax: (416) 777-9921
phorgan@carltonlaw.ca

CONTENTS

PART 3 - LIST OF ISSUES[1]

1. In this intervention The Advocates' Society restricts its submissions to the whether the public interest mandate of the Nova Scotia Barristers' Society ("NSBS") includes authority to deny accreditation to Trinity Western University ("TWU") because of its discriminatory Covenant. It also addresses the reasonableness and proportionality of the NSBS decision to conditionally deny TWU's application for accreditation, having regard to potential infringement of the *Charter* rights of TWU and/or its prospective law students, the discriminatory effects of the Covenant, and NSBS's obligation to uphold core values of the Canadian justice system, including equality and access to justice.

2. The Advocates Society submits that:

1) The lower court erred in failing to take account of Nova Scotia human rights legislation and values as a signpost for the identification of the public interest in the practice of law, and in attributing to NSBS and its Council vain and inappropriate political motivations;

2) The public interest is properly concerned with policies and practices of accredited law schools that have an effect on the diversity and merit of the law school class and that are inconsistent with core values of the Canadian justice system; and,

3) Law schools are the foundation of the Canadian justice system and the portal of entry to both the legal profession and the judiciary. In the distinctive context of TWU's application for accreditation of its law school, the decision of the NSBS was reasonable and proportionate.

---

[1] The Advocates' Society relies on the submissions of the Appellant as to Parts 1, 2 and 4.

PART 5 - ARGUMENT

A. INTRODUCTION

3. The Advocates' Society supports the decision of NSBS to deny accreditation as an appropriate exercise of its legislative authority. The decision advances NSBS mandate to a) protect the public interest in the practice of law; b) establish standards for membership qualification; and c) improve the administration of justice in Nova Scotia by considering the interests of the LGBTQ community, and others.[2]

4. The Advocates' Society was founded in 1963 as a professional association for trial and appellate lawyers in Ontario. The Society has since grown into an organization of over 5,000 members drawn from all provinces and territories across Canada who practise in virtually all areas of legal advocacy before courts and tribunals, including constitutional, administrative and public law. The mandate of the Society includes advocacy education, legal reform, the protection of the rights of litigants, the protection of the public's right to representation by a courageous and independent bar, and the promotion of access to, and improvement of, the administration of justice. The Society considers access to law schools as an access to justice issue, particularly in the context of the substantive equality goals of the Charter.

5. This Section A addresses the evolving role of the self-governing bar, and its connection to the administration of justice and the public interest in effective protection of human rights. Section B addresses the accreditation authority of the NSBS, and in particular NSBS's discretion to consider the Covenant as a relevant factor in assessing TWU's application for accreditation in

---

[2] *Legal Profession Act*, SNS 2004, c 28, s 4.

Nova Scotia. Section C addresses the reasonableness of NSBS's decision not to accredit, with particular regard for NSBS's statutory objectives and the values and interests at stake.

1. Accreditation and the evolving role of the self-governing bar

6. The more activist role and function of the self-governing bar has evolved over the last few decades, almost as dramatically as societal values have evolved with respect to the LGBTQ community. NSBS is no longer the modest repository of discipline and licensing that it once was. Informed members of the bar have recognized and supported the evolving function of the self-governing bar in the complicated matrix of rights and interests that is the administration of justice in Nova Scotia today.

7. Fundamental to the functions of the self-governing bar is the removal of all barriers to entry to the legal profession, other than merit, talent and potential. In the case of TWU, members of the LGBTQ community, both within Nova Scotia and beyond, are effectively barred from entry, other than through deception or harmful constraints on sexual identity, gender identity and/or gender expression. NSBS has the authority, through accreditation, to measure the consistency of TWU's exclusionary contract with the principles of equality and diversity that are fundamental to the legal profession and the administration of justice in Nova Scotia.

8. The bench and bar are the primary custodians of access to justice. In turn, access to the bar and bench is the exclusive domain of law schools. Consequently, access to justice is directly measurable by both the admission policies of Canadian law schools and by the licensing and accreditation policies of the self-governing bar. Access to law school, access to the bar and access to justice are inseparably intertwined. Access to law school is foundational to access to justice.

9. A law school is not an island unto itself, separate and apart from the administration of justice, including access to justice issues. Law schools are formative not only in the dissemination of technical legal skills, but also in the germination and nurturing of future professionalism. Law students do not arrive at law school with predetermined notions of professionalism: they learn it through osmosis, through the culture and climate of a law school. A law school is the singular portal to both the bar and bench. The policies and practices of that portal must therefore be consonant with the values that underlie the administration of justice. The education of Canadian law students in the 21st century necessarily involves living, breathing and respecting both *Charter* values and professional responsibilities, as part of the law school training experience. Students must walk the walk, talk the talk and not be expected to turn a blind eye to such values and responsibilities as a contractual condition of entrance.

10. The Advocates' Society respectfully submits that the learned review judge mischaracterized material aspects of the reasoned process and principled position adopted by NSBS. Whether correct in law or not, the NSBS process and position was principled and founded upon a good faith exercise of its jurisdiction. Contrary to the various *obiter dicta* of Campbell, J., the position taken by NSBS was not:

a. sanctimonious intolerance blanketed in the comfortable certainty of orthodoxy (para 1);
b. the preferred moral values of NSBS Council (para 10);
c. a moral matrix that blindingly refused debate or proportionate balancing (paras 272 – 274);
d. a clever way to characterize a moral stance (paras 13 and 170);
e. a futile and hypocritical Statement of Principle intended to stand in solidarity with the LGBTQ community (paras 16 and 264);

f. a statement about equality to bar the cloven hoof of discrimination from its door (para 264);

g. the institutional embodiment of equality rights for LGBTQ people (para 12);

h. members of NSBS Bar Council acting outraged because of TWU policies of exclusion (para 8);

And most relevant to this appeal, NSBS was not:

i. claiming power to require TWU to change its law school policies (para 5);

j. regulating TWU law school itself (para 171);

k. dictating what TWU does or does not do (para 174);

l. claiming a grant of jurisdiction over TWU as a consequence of moral outrage or the sufferance of minority stress (para 8).

11. In The Advocates' Society's respectful submission, the decision of the lower Court falls prey to the same type of distraction that the Court wrongly attributed to NSBS and its supporters. The attribution of improper political rather than legal motivation does disservice to NSBS and its Council. NSBS's considered position is the result of extensive consultation and vigorous legal debate amongst learned members of the bar, both within and beyond Council. Its *bona fide* motivation to serve the public interest should not be subject to inferential allegations of political correctness. Given the societal values and emotions that engage both freedom of religion and equality/diversity issues, justice is best served in this matter by judicious and respectful scrutiny of the jurisdictional authority of the *Legal Profession Act*, without more.

2. The public interest and human rights

12. Equality is a fundamental Canadian value. Yet, in its jurisdictional analysis of the scope of the public interest legislatively delegated to NSBS, the lower court made but one footnoted reference to the Nova Scotia *Human Rights Act*.[3] That *Act* provides specific statutory guidance to NSBS and others about what is in the public interest in Nova Scotia:

> The purpose of this Act is to
>
> a. Recognize the inherent dignity and the *equal and inalienable rights of all members of the human family;*
>
> .....
>
> d. Affirm the principle that every person is free and *equal in dignity and rights*;
>
> e. recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that *failure to provide equality of opportunity threatens the status of all persons*;[4]

13. That same *Human Rights Act* prohibits the very types of discrimination that the lower court found unobjectionable within the confines of British Columbia. The court accepted TWU's argument that it is statutorily exempt from liability for such discriminatory conduct.[5] That statutory exemption from liability in British Columbia bears no relevance to the determination of public interest in Nova Scotia. Under the Nova Scotia *Act*, specified categories of discrimination are prohibited, including sexual orientation, gender identity, gender expression, family status or marital status. It matters not whether those categories apply to TWU in British Columbia: these prohibited forms of discrimination provide statutory insight to NSBS regarding the parameters of the public interest in Nova Scotia. Campbell, J. concluded that NSBS's refusal

---

[3] *Human Rights Act*, RSNS 1989, c 214.

[4] *Ibid*, s 2.

[5] See *Human Rights Code*, RSBC 1996, c 210, s 41(1).

to accredit on the basis of TWU's discriminatory exclusion, "will not address discrimination against anyone in Nova Scotia".[6] The Advocates' Society respectfully disagrees. That systemic blindness to the adverse consequences to Nova Scotia students who might wish to seek admission to TWU is secondary only to the more insidious side of such blindness: "condoning discrimination can be ever much as harmful as the act of discrimination itself".[7] In contrast, the NSBS refusal to accredit delivers a clear message to all stakeholders that neither overt nor blind discrimination at the critical portal of law school entry will be countenanced, at least in Nova Scotia.

14. The learned review judge also opined that the refusal to accredit "is not about anyone being discriminated against in Nova Scotia"[8] and that there is no evidence, beyond speculation, that LGBTQ students in Nova Scotia are harmed in any way, however slight.[9] Those unsupportable factual findings have a narrowness of perspective that does injustice to all students of the LGBTQ community in Nova Scotia who are, for all practical purposes, barred from being fully participating members of the TWU student body.

15. The victims of TWU's exclusionary discrimination are flesh and blood members of the LGBTQ community of the LGBTQ community who presently reside in Nova Scotia, as well as in British Columbia and elsewhere across Canada. They are not the imagination of political correctness. Contrary to the comments of the lower court, their primary concerns are not about

---

[6] *Trinity Western University v Nova Scotia Barristers' Society*, 2015 NSSC 25, 355 N.S.R. (2d) 124 [*TWU NSSC*] Appeal Book, Part 1, Tab 3, at para 12.

[7] *Trinity Western University v Law Society of Upper Canada,* 2015 ONSC 4250, 126 O.R. (3d) 1 [*TWU ONSC*] Appellant's Book of Authorities, Tab 47, at para 116.

[8] *TWU NSSC*, *supra* note 6, at para 209.

[9] *Ibid*, at para 254.

hurt feelings, or any failure by NSBS to carve out space so that the constitutional right to freedom of religion can be allowed to ridicule, belittle or affront their dignity.[10] Their concerns are more tangible: they are about access to justice, denied solely on the basis of their sexual orientation.

16. Denied access is qualitatively different from hurt feelings. Contrary to the comments of the lower court, the Covenant creates much more than "a profound sense of hurt".[11] It bars otherwise qualified members of the LGBTQ community in Nova Scotia from seeking entrance to the administration of justice in Canada, through one of the thirteen narrow and competitive portals that exist as law schools in Canada today. The potential availability of twelve non-discriminatory law schools elsewhere in Canada does not diminish or excuse the unnecessary and unjustified religious barrier to equality and diversity that NSBS has declared to be an impediment to accreditation.

17. TWU's purported assertion of tolerance, in the face of contractual intolerance embedded within the Covenant, is illusory protection. As the Ontario Divisional Court noted, such an assertion of tolerance is claimed, not proven.[12] Despite self-serving efforts by TWU to contend that the Covenant does not operate in a discriminatory fashion, it self-evidently does. The lower court recognized the naiveté of TWU's disavowal, by acknowledging the real pain and hurt that such discrimination will cause.[13]

---

[10] *Ibid*, at para 206.

[11] *Ibid*, at para 209.

[12] *TWU ONSC*, *supra* note 7, at para 105.

[13] *TWU NSSC*, *supra* note 6 at paras 106, 116, 117, 209, 249 and **251.**

18. Societal values and expectations evolve. In the evolving definition of the public interest in legal professionalism in 2015, it is appropriate that NSBS exercise its statutory authority to promote diversity and discourage discrimination, from professional cradle to professional grave. Accreditation is an important statutory tool to achieve those public interest objectives.

B. DISCRIMINATION AND NSBS' DISCRETION TO ACCREDIT

19. The Respondents argue and Justice Campbell agreed that NSBS's authority to accredit should be limited to assessing the individual competence of graduates, but not the policies and practices of the law school that teaches such professional competencies. The Respondents further argue that the refusal to accredit has the effect of regulating a law school in British Columbia. Campbell, J. adopted that characterization of the evidence, holding that NSBS's accreditation authority did not extend to matters that would not directly affect the competent practice of lawyers in the Province of Nova Scotia.[14]

1. Scope of accreditation within the *Legal Profession Act*

20. Pursuant to the *Legal Profession Act*, accreditation is a discretionary power, circumscribed only by what is in the public interest. The Legislature placed no pre-defined parameters on the appropriate criteria for accreditation. It delegated to the expertise of NSBS the onerous responsibility of upholding and protecting the public interest in the practice of law, by establishing standards for qualification, by seeking to improve the administration of justice in Nova Scotia, and by ensuring that its authority responds to the needs of, amongst others, sexual

[14] *Ibid*, at paras 166-181.

minorities.[15] Considerable deference should be accorded the determination of how NSBS will exercise that authority, including the exercise of its discretion within that jurisdiction.[16]

21. Nothing in the *Legal Profession Act* narrowly constrains accreditation to educational competency or skills or knowledge. To the contrary, NSBS has broad authority to consider all relevant and material aspects of any training school for lawyers, as measured against both the laws of Nova Scotia and the public interest mandate of NSBS.[17] Particularly given its explicit statutory mandate to ensure the administration of justice is responsive to sexual diversity ,[18] NSBS was obligated to review the Covenant and assess its discriminatory effects on those statutory obligations.[19] Those obligations include reasoned consideration of the impact of the requested accreditation on public trust and confidence in both the legal profession and the legal system as a whole.[20] Such obligations equally include consideration of the adverse impact on the minority group prejudiced, in this case, members of the LGBTQ community.

---

[15] *Legal Profession Act, supra* note 2, s 4(2)(d)(i).

[16] See *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 81 [*Baker*], Appellant's Book of Authorities Tab 3, at para 53; *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9, [2008] 1 SCR 190, Advocates' Society Book of Authorities Tab 5, at para 53.

[17] *Baker, supra* note 16 at para 56 (per L'Heureux-Dubé J.): "...[D]eferential standards of review may give substantial leeway to the discretionary decision-maker in determining the" proper purposes" or "relevant considerations" involved in making a given determination."

[18] *Legal Profession Act, supra* note 2, s 4(2)(d)(i).

[19] See *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 SCR 772, [*BCCT*] Appellant's Book of Authorities, Tab 46, at paras. 11-13 and 21. The Supreme Court held that it was necessary for the regulator to go beyond considerations of training and competence, to "take into account all features of the education program at TWU." It "would not be correct, in this context, to limit the scope of [regulation in the "public interest"] to a determination of skills and knowledge".

[20] *Ibid*, at para 13, quoting *Attis v New Brunswick School District No. 15 (sub nom. Ross v. New Brunswick School District No. 15),* [1996] 1 SCR 825 [*Ross*], Advocates' Society Book of Authorities Tab 1, at para 84.

2. Discrimination and the public interest

22. In a critical statement at the core of its reasons, the lower court held that, "The public interest in the practice of law does not extend to how law schools function."[21] The Advocates' Society respectfully disagrees. That proposition is without authority or legal precedent or evidence. It is a judicial pronouncement reminiscent of less societally complex times. It would restrict the accreditation authority of NSBS to inquiries that begin and end with the ability of a law school to deliver formulaic legal education. That historical perception of both a law school and the self-governing bar ignores the evolving demands of the justice system to uphold and protect the public interest in the practice of law, by ever improving access to justice, diversity and equality, all in a manner consonant with the values of the *Charter of Rights* and the Nova Scotia *Human Rights Act.*

23. The public has a legitimate interest in the operation of law schools, not simply for pedagogical content, but measured against the intrinsic societal values and principles embraced by the Canadian justice system, including equality and access to justice. Law schools have a special responsibility to espouse and nurture the diversity that is an underpinning of both Canadian societal values and Canadian laws. As Dickson, C.J. observed, "...[I]t is legal education which is the *foundation* of the entire legal system and profession".[22] The public rightly expects such a foundation to be buttressed with values, not riddled with exclusionary Covenants.

---

[21] *TWU NSSC*, *supra* note 6, at para 176.

[22] Right Honourable Brian Dickson, P.C., "Excerpts from the speech delivered at the closing dinner of the conference on legal education," in R. J. Matas & D. J.McCawley, *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montréal: Federation of Law Societies of Canada, 1987) 68, Advocates' Society Book of Authorities Tab 7, at 68.

24. Just as a medical school imbues its students with the Hippocratic Oath, so too do Canadian law schools demonstrate an institutional commitment to the basic values of the Canadian and Nova Scotian justice systems. That institutional embrace of fundamental Canadian legal values is a mantle of societal responsibility tracing from the earliest days of formal legal education in Canada. Dalhousie's Dean Weldon was the personification of the belief that service to the administration of justice was an integral component of any law school program. His unwavering resolve to imbue his students with the watermarks of legal professionalism became the exemplar for future law schools and future law students.[23] The close interrelationship between learning the law and paying homage to the administration of justice has since become a distinguishing attribute of the societal fabric and texture of legal education within the administration of justice in Canada. In rejecting TWU's application to join the ranks of accredited Canadian law schools, it was reasonable for NSBS to measure and hold TWU accountable for its deliberate decision to discriminate against a vulnerable minority.

25. The public interest is entitled to demand from law schools a commitment to the fundamental principles of the Canadian justice system, including the pursuit of justice, as part of the training of future lawyers. As Mark R. MacGuigan, P.C. comments:

> ... [T]he legal profession is the most influential law-making profession..... [T]he public has therefore a unique stake in the professional education of lawyers. ... *[T]he public interest demands that legal education relate to social goals or ends as well as to law as means,* and particularly that it present law as the principal social means to the achievement of justice.[24]
>
> ...

---

[23] John Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979), Advocates' Society Book of Authorities Tab 13, at 34-35; John P.S. McLaren, "The History of Legal Education in Common Law Canada," in Matas & McCawley, *supra*, 111, Advocates' Society Book of Authorities Tab 11, at 120.

[24] Mark R. MacGuigan, P.C., "Excerpts from a paper entitled the Public Significance of Legal Education," in Matas & McCawley, eds., *supra*, 174, Advocates' Society Book of Authorities Tab 9, at 174.

> ... [T]he public has a vital stake in legal education oriented to justice as well as to law, because a legal profession with that orientation is crucial to democracy.
>
> Law is the principal means to the attainment of justice, and society cannot accept a system of legal education, any more than it can tolerate a legal profession, which does not recognize its essential orientation to the achievement of justice. *Such a perspective defines the public dimension of legal education.*[25]

26. The 2007 Carnegie Report, *Educating Lawyers*,[26] is a landmark study of legal education in North America. Based on in-depth reviews of teaching and learning practices at sixteen American and Canadian law schools, the Report concludes that an integrative approach to legal education is what best prepares law students for the demands of the profession. In turn, that justice-focused pedagogy will sedulously foster the profession's sense of serving the public interest. The Report identifies the three "apprenticeships", or broad areas of competency, that are critical to any professional legal education. They are the intellectual/cognitive, the practical, and the ethical/social.[27] The authors conclude that the third apprenticeship is the most significant, by giving meaning and context to the forms of knowledge and skill imparted through the first two:

> Through learning about these different aspects of professional knowledge and beginning to practice them, the novice is introduced to *the meaning of an integrated practice of all dimensions of the profession, grounded in the profession's fundamental purposes*. If professional education is to introduce students to the full range of professional demands, it has to initiate learners into all three apprenticeships. *But it is the ethical-social apprenticeship through which the student's professional self can be most broadly explored and developed.*[28]

---

[25] *Ibid*, at 177 [emphasis added].

[26] William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Stanford: Carnegie Foundation for the Advancement of Teaching, 2007) [Carnegie Report], Advocates' Society Book of Authorities Tab 12.

[27] *Ibid*, at 28.

[28] *Ibid*, at 28.

27. Contrary to the analysis of the lower court, the public interest in the professional education of lawyers is not limited to the mechanical nuts and bolts of knowledge and skills. It includes how law schools perceive and deliver their mandate, and in particular how they institutionally convey the values required to nourish and sustain the administration of justice. It is not just what students learn about the law. It is how they learn it, from whom they learn it *and with whom they learn it*:

> In their passage through law school, students apprentice to a variety of teachers, but they also apprentice to the aggregate educative effects of attending a particular professional school and program. *That is, they are formed, in part, by the formal curriculum but also by the informal or "hidden" curriculum of unexamined practices and interaction among faculty and students and of student life itself.* As is typical of organized apprenticeship, much of this informal socialization is tacit and operates below the level of clear awareness. *However, abundant studies have confirmed socialization's great importance for the process of learning what it is to be a professional.*[29]

28. A law school which discriminates on the basis of religious beliefs or sexual orientation/gender identity/gender expression, rather than merit, will be stymied by lack of diversity. Educational socialization that lacks diversity and is deliberately exclusionary on the basis of criteria unrelated to legal learning will be incapable of imparting all the necessary competencies that constitute a justice-centric legal education.

29. In an address to the 2011 CBA Annual Meeting in Halifax, His Excellency Governor General David Johnston, himself a former law school dean, commended the Carnegie Report's integrative approach to the three apprenticeships. As he put it:

> "In my judgment, we have allowed too great a divide to develop between academia and the profession. We do not cure this by forcing the profession back in, but rather by making the compelling case that the three years at law school mark the beginning of the

---

[29] *Ibid*, at 29.

journey of preparing professionals with all three apprenticeships. *We should not leave the practical and the ethical apprenticeships to the end—articling and the bar admission course. We should start with how we choose an entering class.....*" Beginning in law schools, we need to integrate these three apprenticeships – the cognitive, the practical, the ethical/social – as one mutually reinforcing continuum."[30]

It is that very continuum that the NSBS decision seeks to engage.

3. NSBS's decision was not an impermissible attempt to regulate TWU

30. Campbell, J. characterizes NSBS as trying to regulate law schools.[31] Again, The Advocates' Society respectfully disagrees. NSBS has a specialized expertise and capacity to accredit law school programs for purposes of future graduate entry into the legal profession in Nova Scotia. TWU does not question that authority. Instead, it seeks to narrow the scope of accreditation review to exclude inconvenient societal and legal values of equality and diversity that underlie the administration of justice in Nova Scotia. TWU and the lower court insist that accreditation be limited to assessing educational competencies. NSBS has a broader perspective, recognizing public expectations in 2015. It has the license and the expertise to assess all three professional apprenticeships, including whether a proposed law school program inculcates *Charter* values and the values implicit in the Nova Scotia *Human Rights Act*.

31. There is no logical or statutory reason for this Court to narrowly restrict NSBS's expertise in such public interest responsibilities. Oversight and accreditation are limited only by the public interest and the expertise of NSBS in determining the scope of public interest. Equality and diversity are not trifling legal issues. It is right for NSBS to ensure that law

---

[30] His Excellency David Johnston, Governor General of Canada, "The Legal Profession in a Smart and Caring Nation: A Vision for 2017," (Remarks to Canadian Bar Association's Canadian Legal Conference, Halifax: August 14, 2011) Advocates' Society Book of Authorities Tab 8 [emphasis added].

[31] E.g., *TWU NSSC*, *supra* note 6, at paras 128, 173.

students do not spend three years being professionally educated under a Covenant that is incongruent with fundamental principles of both access to justice and equality that underpin the administration of justice in Canada, and Nova Scotia in particular.

32. The lower court fails to explain why such matters as teaching materials, physical facilities, budget, library holdings and admissions policies[32] are all within accreditation jurisdiction, while learning climate and culture, and the inclusiveness of the law school class, are dismissed as regulating a law school. NSBS is a statutory regulator with expertise in professional licensing, the administration of justice and service to the public interest. It has an express mandate to improve the administration of justice in Nova Scotia by ensuring that it reflects the needs of sexual minorities.[33] Nothing in the *Legal Profession Act* justifies the exclusion of climate and culture or the narrowness of mandate urged by the Respondents and adopted by the lower court.

33. In substance, NSBS did what the Law Society of Upper Canada (LSUC) did. LSUC refused accreditation because of discrimination. NSBS did likewise, but with a proviso that indicated how TWU could fix its discriminatory policy. Both approaches to accreditation were substantially the same. The attempt by NSBS to indicate in its Regulation how TWU could solve its problem has been contorted into an attempt to regulate TWU's law school, without fair consideration of context.

34. TWU applied for accreditation within Nova Scotia. NSBS did not seek extra-territorial jurisdiction to control TWU in British Columbia, as the lower court opines. When TWU applied

---

[32] Canadian Common Law Program Approval Committee, *Report On Trinity Western University's Proposed School Of Law Program* (December 2013) Advocates' Society Book of Authorities Tab 6.

[33] *Legal Profession Act, supra* note 2, 4(2)(d).

to Nova Scotia, it suborned to the laws and jurisdiction of Nova Scotia. If TWU wishes its law school graduates to automatically qualify for licensure in Nova Scotia, it must be prepared to abide by the reasonable training standards set by the NSBS. Whether that bar is higher or lower than British Columbia or the Federation of Law Societies matters not. NSBS is entitled to require TWU to be respectful of the societal values of equality and diversity that are reflected legislatively and professionally in the administration of justice in Nova Scotia.

35. The NSBS decision is not a power grab over a law school, as the lower court implies. The NSBS position is not that law schools should be subservient to the profession. Its position is far less intrusive: it simply requires reasonable congruence with the fundamentals of the Canadian justice system. It is not an attempt to impose a specific standard of political correctness consistent with NSBS's preferred values, to paraphrase the lower court. In an accredited law school, there is ample room for all the different perspectives on law and justice that academic freedom will allow, without undue interference by the licensing bar. This may include learning the law in a faith-based context - an issue not before the court in this appeal - but only so long as it is not unduly exclusionary and discriminatory. It is not the religious freedom of evangelical Christians, but TWU's exclusion of LGBTQ persons that is the issue here. By excluding an identified minority group in a substantive manner, or by requiring members of that group to deny fundamental aspects of who they are in order to gain surreptitious access to TWU's coveted law school program, the Covenant contravenes fundamental values of the Canadian justice system. In meeting its statutory public interest obligations, it is fair and right for NSBS to critically examine the Covenant, not only in its own right, but also because, from the first day of classes, it requires future members of the bar to condone a form of discrimination that offends 2015 standards of professionalism.

36. The Canadian justice system in 2015 is firmly committed to equality for LGBTQ persons.[34] While there are corners of Canadian society where the morality of same-sex intimacy is still being debated, the justice system is not one of them. It is not a matter of enforcing "moral conformity with state approved values", as Justice Campbell opined.[35] To the contrary, it is a matter of allowing diversity and rejecting unjustifiable conformity that unnecessarily discriminates. The public has a right to expect that all elements of the justice system, including the accredited law schools which are its initial portal, will uphold substantive societal values of equality and diversity in their institutional conduct.

C. PROPORTIONALITY

37. The NSBS was required to first consider its statutory objectives and then balance the severity of its interference with *Charter* values against those objectives.[36] It was required to ensure that any infringement of *Charter* protections was no more than necessary, given the statutory objectives that it is obliged to pursue.[37] This Court must determine whether, in assessing the impact of the relevant *Charter* protection, and given the statutory and factual contexts, the NSBS decision reflects a proportionate balancing of *Charter* rights and values with

---

[34] E.g. *Human Rights Act, supra* note 3, s 5(1), *Boutilier et al. v. Canada (A.G) and Nova Scotia (A.G)*, [2004] N.S.J. No. 357 [unreported], *Egan v Canada,* [1995] 2 SCR 513 (Appellant's Book of Authorities Tab 14), *Vriend v Alberta*, [1998] 1 SCR 493 (Appellant's Book of Authorities Tab 48), *M v H*, [1999] 2 SCR 3 (Advocates' Society Book of Authorities Tab 4), *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, [2013] 1 SCR 467 [*Whatcott*] (Appellant's Book of Authorities Tab 41).

[35] E.g., *TWU NSSC*, *supra* note 6, at paras 23, 222.

[36] *Doré c Québec (Tribunal des professions),* 2012 SCC 12, [2012] 1 SCR 395 [*Doré*], Appellant's Book of Authorities Tab 13, at paras 55-56.

[37] *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 SCR 613 [*Loyola*], Appellant's Book of Authorities Tab 21, at para 4.

the decision-maker's statutory mandate.[38] The Advocates' Society respectfully submits that any deprivation of religious liberty is heavily outweighed by the discriminatory effects of the Covenant, and on LGBTQ persons in particular, for reasons unrelated to merit, talent or potential.

1. Context

38. The proportionality analysis must be specific to the legal and social context in which the conflict between competing claims arises.[39] In this crucial respect, the judgment in the court below fell short. First, the judgment fails to analyze the distinct and questionable context in which TWU's freedom of religion is asserted. A law school is not a church or a divinity school or a monastery, or even a teachers college. It is the singular portal to the legal profession. The learned review judge failed to adequately differentiate that context. He instead dwelled unduly on the religious preferences of the Respondent,[40] without adequate consideration of the location and manner of exercising such rights, or the adverse consequences of such exclusionary preferences.

39. This narrow context envisions a law school dedicated to religious single-mindedness, to enforced conformity of religious behaviour. The sincerity of those religious preferences is not at issue. However, in the specific context of a law school seeking public accreditation, this faith-based interest in conformity, resulting in discrimination against a vulnerable minority, must be

---

[38] *Doré*, *supra* note 36 at para 57, *Loyola*, *supra* note 37 at para 37, *Bonitto v. Halifax Regional School Board*, 2015 NSCA 80, 388 DLR (4th) 608, Appellant's Book of Authorities Tab 5, at para 38.

[39] *Doré*, *supra* note 36 at paras 7, 36, 54; *Loyola*, *supra* note 37 at paras 37, 41.

[40] See especially *TWU NSSC*, *supra* note 6 at para 234: "There is no real doubt here about the sincerity of the belief of those involved with TWU. It is a sincerely held belief not only that homosexual "behaviour" is sinful but that being at an institution with others who share their beliefs or who are committed a shared Christian life style, is important to their spiritual development." See also paras. 230, 232, 235, 236, 270.

evaluated more strictly than in the case of a divinity school or a monastery or other such sheltered enclave. In view of what a law school is, and particularly with regard to its critical role as the exclusive portal to the legal profession, the balance of competing interests must lean heavily towards the justice system's fundamental values, including equality and diversity.

40. An accredited law school is not just a bearer of *Charter* rights and freedoms. It also bears secular and societal responsibilities, as the institution that is the structural foundation of the justice system. The responsibilities of a law school that seeks public accreditation must include, at a minimum, the obligation to uphold the core principles and commitments of the Canadian justice system. In the case under appeal, that must include freedom from discrimination and recognition of the societal value of diversity.

41. This appeal is not about indirect extension of the *Charter* to regulate private institutions.[41] In accrediting a law school, NSBS is obliged to consider the rights protected by the *Charter* - not because the *Charter* applies to TWU, but because an accredited law school is a fundamental building block of the justice system. This does not mean that the *Charter* will by stealth come to apply to "any government recognition" of a private institution's actions, as Campbell J. intimated.[42] TWU is not asking for an elevator license. Reasonable lines can be drawn, without inferences of political correctness or insidious state interference.

2. Balancing

42. TWU has not proven a significant interference with the ability of prospective law students to act in accordance with their religious beliefs, studying amidst others who do not share

---

[41] *TWU NSSC*, *supra* note 6 at para 222.

[42] *Ibid.*

those beliefs. The proposed law school will not be fundamentally engaged in religious activity in furtherance of religious purposes. To the contrary, it will be undertaking the secular business of training prospective lawyers to provide secular legal services to the public at large in Nova Scotia, including LGBTQ clients, diverse persons of varied faiths, and those with no religious beliefs. The Covenant's discriminatory provisions do not have a direct and substantial relationship to the practice of Evangelical Christianity by those TWU students who profess that faith.[43]

43. TWU insists its law school will successfully teach *Charter* jurisprudence, equality rights, modern family law, cultural competence and critical thinking. To teach by rote is not to imbue. To mouth the words is not to sing. To teach law students successfully, TWU must mentor and inculcate its students with Canadian legal values and standards of professionalism. TWU claims that it welcomes people who hold and express diverse opinions, including contrary views.[44] TWU's evidence reveals that its evangelical community is "thriving" and is strengthened through significant engagement with diverse communities.[45] Assuming those claims to be true, TWU should be able to successfully maintain its religious identity without an expressly discriminatory code of personal conduct, just as the Supreme Court concluded that Loyola could maintain its Catholic identity, while teaching other religious ethics in a neutral and objective fashion.[46]

---

[43] See for example, in the human rights context, *Heintz v. Christian Horizons*, 2010 ONSC 2 105 (Div Ct), Advocates' Society Book of Authorities Tab 2, at para 103, in which the Court said refusal to employ a personal support worker in a same-sex relationship was "a discriminatory qualification [which] cannot be justified in the absence of a direct and substantial relationship between the qualification and the abilities, qualities or attributes needed to satisfactorily perform the particular job."

[44] Affidavit of Dr. W. Robert Wood, Appeal Book Tab 38, at paras 63-67.

[45] Affidavit of Dr. Samuel H. Reimer, Appeal Book Tab 41, at paras 83-86.

[46] *Loyola, supra* note 37 at para 71.

44. Alternatively, for the same reasons, any infringement represents only a modest imposition on TWU's religious interests, relative to the other interests at stake. It may not be TWU's preference, but it is not an undue imposition on the religious liberties of TWU and its prospective students to require compliance with the values of Nova Scotia human rights legislation and respect for the principles of equality and respect for diversity, which are among the foremost values of the administration of justice in Canada

45. The discriminatory Covenant engages the NSBS public interest mandate in three specific ways: a) in its direct discrimination against LGBTQ persons and others; b) in its denial of access to the profession, based on characteristics unrelated to merit, talent or potential; and c) in its tendency to undermine public confidence in the justice system's commitment to equality and diversity.

46. TWU denies discrimination by claiming to "love the sinner - hate the sin". The Supreme Court has rejected this false dichotomy between identity and conduct.[47] The impact of the Covenant is to prohibit LGBTQ students from Nova Scotia from living openly and well within TWU, effectively excluding them from applying, studying, and working there.[48]

47. TWU boldly claims that it does not "encourage discrimination of any kind against LGBTQ individuals."[49] Despite this assurance, Campbell, J. accepted as a fact that living under the Covenant would be traumatic and potentially damaging.[50] Whether such espoused assurances

---

[47] *Whatcott*, *supra* note 34 at paras 123-124, citing with approval L'Heureux-Dubé J.' s statement in *BCCT*, *supra* note 19 at para 69 that the "status/conduct ... distinction for homosexuals and bisexuals should be soundly rejected."

[48] *BCCT*, *supra* note 19 at para 73: LGBTQ students could only attend TWU "at considerable personal cost."

[49] Affidavit of Dr. W. Robert Wood, Appeal Book Tab 38, at paras 116-118.

[50] *TWU NSSC*, *supra* note 6 at para 251.

reconcile with modern day experience in the real world, or the history of religious intolerance amongst those organized religions who compete for conversion, is a matter for this Court to consider, without undue confidence in the bold assurances of the Respondent.

48. In a case of this legal significance, such assurances of good faith tolerance do not obviate overt acts of exclusion and discrimination. If tolerance is to be assessed by this Court as a contextual issue, then it is best assessed through the eyes and experiences of the targets of intolerance, in this instance the LGBTQ community. For an LGBTQ person, the experience of living under the Covenant, denying one's sexual identity and constantly being at risk of being found out, increases the risk of stress, anxiety, depression, and the possibility of suicidal ideation, attempts at suicide or death.[51]

49. In a pluralistic society, the law will sometimes carve out some reasonable space for such "traumatic and potentially damaging" places.[52] An accredited law school is not such a place.

50. TWU's purported entitlement to overt discrimination calls for an attenuated approach to proportionality. TWU claims that its religious values require it to exclude certain people from law school on the basis of their inherent personal characteristics, unrelated to merit, talent or potential as a legal professional. In this respect, TWU's claim is unlike other claims of religious freedom which do not seek to deny the human rights of others.[53] As the Court noted in *Whatcott*, citing *Ross*, the justification for a government's restriction on a right may be more easily

---

[51] *Ibid*, at para 94, citing Affidavit of Elise Chenier, Appeal Book Tab 44, at para 89.

[52] *Ibid*, at para 251.

[53] E.g., *Syndicat Northcrest v. Amselem*, 2004 SCC 47, Appellant's Book of Authorities Tab 44 (freedom to erect ceremonial structure on residential balcony); *Multani v. Commission scolaire*, 2006 SCC 6, Appellant's Book of Authorities Tab 24 (freedom to wear ceremonial dagger to school); *Hutterian Brethren of Wilson Colony v. Alberta*, 2009 SCC 37, Appellant's Book of Authorities Tab 2 (freedom from photographic ID requirement).

established where the exercise of the right claimed is contrary to the values of a free and democratic society: "Where the manifestations of an individual's right or freedom are incompatible with the very values sought to be upheld in the process of undertaking a section 1 analysis, then, an attenuated level of section 1 justification is appropriate."[54] That principle should apply as well under the *Doré-Loyola* framework, requiring considerable deference to NSBS's assessment of the competing value of anti-discrimination. Here, TWU seeks to deny LGBTQ persons entry to the only portal to the legal profession. In such context, the burden of justification on NSBS should not be onerous. It is not beside the point to consider how NSBS should be expected to decide an application for accreditation from a law school that prohibited sexual intimacy between persons of different races.[55]

51. The discriminatory denial of access to legal education is especially troubling in this case, in light of the leading role that the justice system has played in the realization of equality for LGBTQ persons. In Canada, and in a growing number of places around the globe, LGBTQ persons have successfully advanced their rights to non-discrimination and substantive equality through the courts.[56] In this ongoing struggle for equal treatment, ground-breaking court

---

[54] *Ross, supra* note 20 at para 94, quoted with approval in *Whatcott, supra* note 34 at para 162.

[55] See *Bob Jones University v United States*, 461 US 574 (1983), Appellant's Book of Authorities Tab 4, a decision of the United States Supreme Court that the federal government was justified in denying tax exempt status to a private university which, among other things, prohibited interracial dating and denied admission to applicants in an interracial marriage. The Court held, at page 26, that the revocation of tax-exempt status was justified in view of the Government's "fundamental, overriding interest in eradicating racial discrimination in education." See also *Loving v Virginia*, 388 US 1 (1967), Advocates' Society Book of Authorities Tab 3, invalidating US state laws prohibiting interracial marriage. In both cases, as here, the discrimination was grounded in sincerely-held religious beliefs.

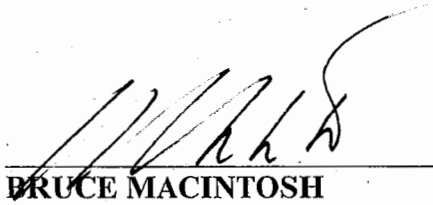
[56] See authorities cited above, note 34. Beyond Canada see, among others [not relied on for authority]: *Romer v Evans*, 517 US 620 (1996) (express exclusion of LGBTQ persons from protection from discrimination is unconstitutional); *Lawrence v Texas*, 539 US 558 (2003) (sodomy law is unconstitutional); *Windsor v United States*, 570 US ___,133 S Ct 2675 (2013) (federal law prohibiting recognition of same sex marriages is unconstitutional); *Obergefell v Hodges*, 576 US ___, 135 S Ct 2584 (2015) (recognizing constitutional right to same sex marriage); *Dudgeon v United Kingdom*, App no 7525/76, (1981) 4 EHRR 149 (EurCtHR) (sodomy laws in Northern Ireland violate European Convention on Human Rights); *Oliari and Others v Italy,* App Nos 18766/11 & 36030/11 (July 21, 2015) (lack of legal recognition and protection for same sex relationships violates European

decisions have paved the way for a dramatic shift in societal attitudes towards a more equal society.[57] In that context, the denial of LGBTQ persons' opportunity to gain a more meaningful voice in the justice system, *because of their sexual orientation*, is ample reason for the NSBS's decision to refuse accreditation.

PART 6 - ORDER OR RELIEF SOUGHT

52. The Advocates' Society requests that the decision of the Nova Scotia Supreme Court be set aside. The Advocates' Society does not seek costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18TH DAY OF DECEMBER, 2015.



BRUCE MACINTOSH
MacIntosh, MacDonnell & MacDonald
610 East River Rd., Suite 260, PO Box 368
New Glasgow NS B2H 5E5
Tel. (902)752-8441; Fax:(902)752-7810
Email: bmacintosh@macmacmac.ns.ca
Counsel for the Intervenor
The Advocates' Society

Convention on Human Rights); *El-Al Israel v Danilowitz*, 4 May 1994, Supreme Court of Israel sitting as the High Court of Justice Cast 721/94 (equal entitlement for same sex spouses to spousal employment benefits); *National Coalition for Gay and Lesbian Equality v Minister of Justice* [1998] ZACC 15, [1999] 1 SA 6 (Const Ct) (sodomy law is unconstitutional); *Minister of Home Affairs v Fourie* [2005] ZACC 19, [2006] 1 SA 524 (Const Ct) (exclusion of same sex relationships from *Marriage Act* is unconstitutional).

[57] See J. Scott Matthews, "The Political Foundations of Support for Same-Sex Marriage in Canada" (2005) 38 CJPS 841, Advocates' Society Book of Authorities Tab 10.

APPENDIX A - LIST OF CITATIONS

Legislation

1. *Human Rights Act*, RSNS 1989, c 214
2. *Human Rights Code*, RSBC 1996, c 210
3. *Legal Profession Act*, SNS 2004, c 28

Cases

4. *Attis v New Brunswick School District No. 15 (sub nom. Ross v. New Brunswick School District No. 15)*, [1996] 1 SCR 825
5. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 81
6. *Bob Jones University v United States*, 461 US 574 (1983)
7. *Bonitto v Halifax Regional School Board*, 2015 NSCA 80, 388 DLR (4th) 608
8. *Boutilier et al v Canada (AG) and Nova Scotia (AG)*, [2004] NSJ No 357
9. *Doré c Québec (Tribunal des professions)*, 2012 SCC 12, [2012] 1 SCR 395
10. *Dudgeon v United Kingdom*, App no 7525/76, (1981) 4 EHRR 149 (EurCtHR)
11. *Egan v Canada*, [1995] 2 SCR 513
12. *El-Al Israel v Danilowitz*, 4 May 1994, Supreme Court of Israel sitting as the High Court of Justice Cast 721/94
13. *Heintz v Christian Horizons*, 2010 ONSC 2 105 (Div Ct)
14. *Hutterian Brethren of Wilson Colony v. Alberta*, 2009 SCC 37
15. *Lawrence v Texas*, 539 US 558 (2003)
16. *Loving v Virginia*, 388 US 1 (1967)
17. *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 SCR 613
18. *M v H*, [1999] 2 SCR 3
19. *Minister of Home Affairs v Fourie* [2005] ZACC 19, [2006] 1 SA 524 (Const Ct)
20. *Multani v. Commission scolaire*, 2006 SCC 6
21. *National Coalition for Gay and Lesbian Equality v Minister of Justice* [1998] ZACC 15, [1999] 1 SA 6 (Const Ct)
22. *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9, [2008] 1 SCR 190

23. *Obergefell v Hodges*, 576 US ___, 135 S Ct 2584 (2015)

24. *Oliari and Others v Italy*, App Nos 18766/11 & 36030/11 (July 21, 2015)

25. *Romer v Evans*, 517 US 620 (1996)

26. *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, [2013] 1 SCR 467

27. *Syndicat Northcrest v. Amselem*, 2004 SCC 47

28. *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 SCR 772

29. *Trinity Western University v Law Society of Upper Canada*, 2015 ONSC 4250, 126 OR (3d) 1

30. *Trinity Western University v Nova Scotia Barristers' Society*, 2015 NSSC 25, 355 NSR (2d) 124

31. *Trinity Western University v The Law Society of British Columbia*, 2015 BCSC 2326

32. *Vriend v Alberta*, [1998] 1 SCR 493

33. *Windsor v United States*, 570 US ___,133 S Ct 2675 (2013)

Commentary

34. Canadian Common Law Program Approval Committee, *Report On Trinity Western University's Proposed School Of Law Program* (December 2013)

35. Dickson, Right Honourable Brian, P.C., "Excerpts from the speech delivered at the closing dinner of the conference on legal education," in R. J. Matas & D. J.McCawley, *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montréal: Federation of Law Societies of Canada, 1987) 68

36. Johnston, David, "The Legal Profession in a Smart and Caring Nation: A Vision for 2017," (Halifax: August 14, 2011)

37. MacGuigan, Mark R., P.C., "Excerpts from a paper entitled the Public Significance of Legal Education," in R. J. Matas & D. J.McCawley, *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montréal: Federation of Law Societies of Canada, 1987) 174

38. Matthews, J Scott, "The Political Foundations of Support for Same-Sex Marriage in Canada" (2005) 38 CJPS 841

39. McLaren, John P.S., "The History of Legal Education in Common Law Canada," in R. J. Matas & D. J.McCawley, *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montréal: Federation of Law Societies of Canada, 1987) at 120

40. Sullivan, William M et al, *Educating Lawyers: Preparation for the Profession of Law* (Stanford:

Carnegie Foundation for the Advancement of Teaching, 2007)

41. Willis, John, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979) at 34-35

APPENDIX B - STATUTES AND REGULATIONS

Human Rights Act, RSNS 1989, c 214

Purpose of Act

2 The purpose of this Act is to

(a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;

(b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;

(c) recognize that human rights must be protected by the rule of law;

(d) affirm the principle that every person is free and equal in dignity and rights;

(e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and

(f) extend the statute law relating to human rights and provide for its effective administration.

...

5 (1) No person shall in respect of

(a) the provision of or access to services or facilities;

(b) accommodation;

(c) the purchase or sale of property;

(d) employment;

(e) volunteer public service;

(f) a publication, broadcast or advertisement;

(g) membership in a professional association, business or trade association, employers' organization or employees' organization,

discriminate against an individual or class of individuals on account of

(h) age;

(i) race;

(j) colour;

(k) religion;

(l) creed;

(m) sex;

(n) sexual orientation;

(na) gender identity;

(nb) gender expression;

(o) physical disability or mental disability;

(p) an irrational fear of contracting an illness or disease;

(q) ethnic, national or aboriginal origin;

(r) family status;

(s) marital status;

(t) source of income;

(u) political belief, affiliation or activity;

(v) that individual's association with another individual or class of individuals having characteristics referred to in clauses (h) to (u).

***Human Rights Code*, RSBC 1996, c 210**

Exemptions

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

***Legal Profession Act*, SNS 2004, c 28**

Purpose of Society

4 (1) The purpose of the Society is to uphold and protect the public interest in the practice of law.

(2) In pursuing its purpose, the Society shall

(a) establish standards for the qualifications of those seeking the privilege of membership in the Society;

(b) establish standards for the professional responsibility and competence of members in the Society;

(c) regulate the practice of law in the Province; and

(d) seek to improve the administration of justice in the Province by

(i) regularly consulting with organizations and communities in the Province having an interest in the Society's purpose, including, but not

limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province, and

(ii) engaging in such other relevant activities as approved by the Council.