



## Letter from the President / Lindsay Lyster

### WHY DOES THE BCCLA SAY TWU'S "COMMUNITY COVENANT" SHOULD NOT PREVENT IT FROM HAVING AN ACCREDITED LAW SCHOOL?

The BCCLA has taken the position that Trinity Western University should not be barred from establishing a law school accredited by the Canadian Federation of Law Societies because its students and faculty are required to sign a Community Covenant.

By that Covenant they commit, among other things, to "observe modesty, purity and appropriate intimacy in all relationships, reserve sexual expressions of intimacy for marriage, and within marriage take every reasonable step to resolve conflict and avoid divorce". Given that the Covenant provides that "sexual intimacy is reserved for marriage between one man and one woman", this means that TWU's students and faculty promise not to engage in homosexual sex.

The BCCLA's position has been controversial in some quarters, disappointing some of our members, supporters and allies. How, they wonder, can the BCCLA support an organization that discriminates against members of the GLBTQ+ community? Don't we believe in equality?

As a long-time advocate for GLBTQ rights, and as a queer

person who would neither sign such a covenant nor attend a university that had such a requirement, I can understand those concerns. But I still believe the BCCLA got it right on the question of whether TWU's Covenant should bar it from having an accredited law school. Let me try to explain why.

As civil libertarians, we value the fundamental freedoms of people to come together with like-minded persons to express and seek to further their conscientiously held beliefs. That's what s. 2 of the Canadian *Charter of Rights and Freedoms* is all about, protecting our freedoms of association, of assembly, of belief and of expression.

Those freedoms are called "fundamental" for a reason – without them we would have no right to hold or express our conscientiously held beliefs, religious or not, or to join with others, whether to worship, to educate, to celebrate, to create art, for mutual support, or to work for political, social or economic change.

Remember that no one is forced to attend or teach at TWU. There are many other post-secondary institutions

available to those of us that have no desire to attend a private, faith-based university.

Remember that that the Covenant is a promise made by those who have voluntarily chosen to attend TWU, and one which says nothing about anyone else's behavior – it is a commitment about one's own behavior only.

The Supreme Court of Canada recognized the unique nature of an institution such as TWU in its 2001 decision upholding the right of graduates of TWU's Faculty of Education to be accredited as teachers. It stated:

*Although the Community Standards are expressed in terms of a code of conduct rather than an article of faith, we conclude that a homosexual student would not be tempted to apply for admission, and could only sign the so-called student contract at a considerable personal cost. TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important*

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*to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.*

The freedom to join together with those we want to join with, on the terms we choose, is vital, especially for equality-seeking groups. That freedom is essential to the ability of the marginalized, the powerless, and the vulnerable to act collectively to challenge unjust laws, practices and institutions.

Gay, lesbian, bisexual, trans and queer people know a lot about violations of their freedom to associate, even in their most intimate relationships. Police raids on gay bars, criminalization of same sex sexual behavior, stigmatization of gays and lesbians on the basis of their association with others, the denial of marriage equality – all these can be seen as violations of the freedom to associate. Overcoming these injustices has been fundamental to achieving equality for GLBTQ people.

To answer the questions posed by our doubters, yes, the

BCCLA believes in equality, and queer history shows that you cannot have equality without freedom of association.

And to be clear, it is not that we support TWU or its application to have an accredited Law School; it is that we support the fundamental freedoms of its faculty and students. We cannot pick and choose only those whose beliefs we agree with when it comes to protecting freedom of belief and association. If we want freedom of belief and association for ourselves, we must uphold it for all.

Are there no limits to the freedom to believe and to associate in accordance with those beliefs?

Of course there are – one's freedom ends where harm to another begins. The Supreme Court in its TWU decision, said this:

*... the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. 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. Acting on those beliefs, however, is a very different matter... Discriminatory conduct by a public school teacher when on duty should always be subject to disciplinary proceedings.*

In the same way, if a graduate of a TWU Law School were to engage in discriminatory conduct, then they should be subject to disciplinary proceedings by the Law Society. If there was evidence of a pattern of discriminatory conduct by such graduates, then that would be reason to rethink the Law School's accreditation. But in the absence of such evidence, students and faculty who wish to attend a private, faith-based Law School, and to voluntarily agree to abide by a Covenant circumscribing their behavior while they do so, should be free to make that choice.

Civil libertarians, by their nature, and by the nature of the issues we care about, will not always agree with one another about everything. It would be shocking if they did! I hope that those of our members and supporters who may disagree with the BCCLA's position on this matter can continue to work together with us to promote civil liberties and human rights for all Canadians.