

WHEREAS it is desirable to adopt common standards for law school curricula across the common law jurisdictions of Canada;

WHEREAS ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice;

WHEREAS discrimination in legal education undermines the ethical underpinnings of the legal profession;

WHEREAS the existence of discrimination may contribute to an educational environment in which freedom of expression is inhibited;

WHEREAS the formation of values in law school has a long-term impact on Canada's future lawyers;

WHEREAS discrimination is not a recognized protected form of freedom of expression;

NOTING the Final Report of the Task Force on the Canadian Common Law Degree; and

NOTING Resolution 14-04-M of the Canadian Bar Association on Non-Discrimination in Legal Education;

BE IT RESOLVED THAT THE RULES OF THE LAW SOCIETY BE AMENDED BY  
ADDING THE FOLLOWING AFTER SECTION 40:

**40.1** (1) Subject to subsection (2), the Executive may only approve for the purposes of paragraph 40(1)(c) of these rules and of subparagraph 18(2)(c)(i) of the *Legal Profession Act*, a law school that, in the opinion of the Executive:

- (a) provides a curriculum of study that is substantially in conformity with the “National Requirement” adopted by the Federation of Law Societies of Canada; and
- (b) provides equal opportunity and equal treatment without discrimination on the basis of any of the prohibited grounds of discrimination enumerated in subsection 7(1) of the *Human Rights Act* to applicants for admission, enrolled students, graduates, faculty, employees and administrators.

(2) The following are deemed to not be discriminatory for the purposes of paragraph (1)(a):

- (a) any program, practice, rule or activity at a law school that, in the opinion of the Executive,
  - (i) has as its objective the amelioration of conditions of disadvantaged individuals or groups,
  - (ii) achieves or is likely to achieve that objective, and
  - (iii) does not perpetuate discrimination against other disadvantaged individuals or groups;
 and
- (b) any justified occupational requirement.

(3) Where the Executive becomes aware that a previously approved law school does not meet the criteria set out in subsection (1), the Executive shall immediately revoke the approval of the law school for the purposes of paragraph 40(1)(c) of these rules and of subparagraph 18(2)(c)(i) of the *Legal Profession Act*.

(4) For further clarity, a revocation under subsection (3) is without prejudice to any person whose application for admission as a student-at-law has been approved by the Executive prior to the revocation.

(5) The Executive shall notify the membership of the Society of any approvals or revocations of approval of a law school.

## Background

The resolution was introduced by a member at the LSN 2013-2014 AGM with the objective of providing guidelines for the Executive to decide how they should or should not approve a law school.

The resolution refers to the FLSC's [National Requirement](#) that must meet Canadian common law programs for their graduates to be admitted to law society admission program.

One of the reasons that led to this proposed amendment was the issue of the Trinity Western University.

### Trinity Western University Law School (TWU)

- The TWU Law School required its student to sign a mandatory covenant that bound students to a strict code of conduct, including abstinence from sex outside of heterosexual marriage.
- In 2014, the Law Societies of British Columbia and Ontario, among other law societies, decided not to approve the proposed law school at TWU for the purpose of the admission process.
- Soon after, TWU applied for judicial review arguing, among other things, that the law societies violated the right to freedom of religion.
- The cases were finally heard by the Supreme Court of Canada in 2017. The SCC affirmed that the Law Societies' decisions not to approve the proposed law school were reasonable and represented a proportionate balance between the right of equality and religious freedom.

### TWU & LSN

- After a roundtable discussion held in December 2014, the Executive decided to strike a Committee that would study the proposed amendment as well as the approval of TWU's proposed law school – See Email Invitation
- Since the cases were most likely going to end up at the Supreme Court, the committee decided to wait before making a decision to accredit or not the law school. The resolution was adjourned *sine die*.

## **Rules Committee's Review**

As indicated in section 8.1 of the Legal Profession Act (LPA), the Rules Committee shall advise the members of the Society that the proposed rule has been examined and indicate any matter to which the attention of the members of the Society should be drawn.

The Rules Committee had the chance to review the resolution and is of the opinion the proposed amendments are properly authorized under the LPA. However, the Committee raises some concerns regarding the concrete consequences of the Resolution and thinks it will create too many gaps and loopholes allowing for potential litigation against the LSN.

### Concerns raised by the Committee:

- The Committee was unable to find any other Canadian jurisdiction that has adopted similar provisions.
- S.40.1(2) seems to target solely Canadian universities.
- Possible logistical difficulties, such as:
  - Is the Executive going to perform annual reviews of schools?
  - How will this effect students currently articling if their law school becomes banned?
    - This unduly punishes articling students who are no longer attached to an institution.
  - What happens to a practicing lawyer who went to an unapproved law school and want to be called in Nunavut?
    - These amendments do not address called or recently called lawyers.
  - Why have these amendments if someone can get called somewhere else from a banned school and can transfer later?
  - Will the LSN notify the said banned law school?
    - This could open the LSN from lawsuits from these schools and strained relations with said schools.