

The Chronicle Herald

Dal law profs use diversity as slogan to demand conformity

March 5, 2014

by JOHN CARPAY

Dalhousie's law professors have urged the Nova Scotia Barristers' Society to ban law school graduates from Trinity Western University (TWU) from practising law in Nova Scotia, claiming the school discriminates against gays and lesbians.

This ban, if enacted, would have the effect of shutting out new lawyers whose views on marriage are anything but theirs.

Many lawyers in Nova Scotia (and every other Canadian province) disagree with same-sex marriage. If one accepts that those who are already called to the bar can be competent and professional lawyers while disagreeing with the current legal definition of marriage, then on what basis can it be justified to exclude new members of the legal profession for adhering to the same opinion?

Students who choose to attend TWU, a Christian university in B.C., agree to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

The nature and content of TWU's code of student conduct is such that most Canadian students, whether gay or straight, would not want to study law (or any other subject) at TWU.

TWU is not opposed to the Civil Marriage Act, which specifically allows religious institutions to maintain their own definition of marriage. As a private religious institution, TWU does insist on its right to define marriage in accordance with evangelical Christian beliefs and teachings. Nobody is compelled to attend TWU, and TWU receives no funding from taxpayers.

If TWU law school graduates did oppose the Civil Marriage Act, the law professors would be rejecting the long-standing and fundamental right of lawyers to disagree with current laws, and to advocate for what they see as improvements to the law.

The law societies in each province do not limit their members' right to advocate freely and publicly for changes to existing laws. No law society in Canada imposes an ideological or philosophical litmus test on those seeking to join its ranks.

Law societies understand that good lawyers can disagree with the current state of the law (whether statutory law, or a Supreme Court of Canada ruling) and still provide competent and professional legal services to their clients.

The Federation of Law Societies of Canada understood these legal principles when providing its approval of TWU's law school, based on academic criteria and professional standards.

Lawyers need not agree with all laws in order to be competent lawyers, and like all citizens, they are entitled to express their own beliefs about the definition of marriage.

Dalhousie's law professors also attack the legal principle that, in Canada's free society, private institutions and voluntary associations have the right to establish their own codes of conduct, and to develop and practise their own beliefs.

One of the hallmarks of a free society is the existence of a broad range of diverse and robust associations. In a free society, a myriad of private institutions are formed on the basis

of culture, ethnicity, religion, gender, political belief, and many other factors which make up an individual's identity.

The fundamental differences that are expressed and lived out by thousands of private organizations in Canada is what constitutes authentic diversity.

True tolerance requires accepting authentic diversity. Using "diversity" as a slogan to demand conformity, and calling for discrimination in the name of ending discrimination, undermines the very foundations of our free society.

In stark contrast to the free society, the totalitarian state pervades all aspects of social, cultural, political and religious life, demanding compliance with and adherence to the state's ideology. Disagreement with existing laws, and peaceful advocacy of change to those laws, are forbidden both for individuals and for voluntary associations.

Dalhousie's law professors would presumably agree with the principle that a free society depends on the robust exercise of freedom of association. But while proudly trumpeting slogans like "diversity" and "tolerance," opponents of TWU's new law school are hostile to the true meaning of both.

If a private institution like TWU loses its freedom to define its own beliefs and purpose, then freedom of association and freedom of expression are rendered meaningless, and Canada's free society will be diminished.

Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms (JCCF.ca)