

NATIONAL POST

WEDNESDAY, AUGUST 12, 2015

www.nationalpost.com

The Bar Association doesn't speak for all

Getting a group of lawyers to agree about anything is a bit like herding cats. Yet the Canadian Bar Association (CBA) claims, in an affidavit filed with the Nova Scotia Court of Appeal, to be “the voice of the legal profession in Canada.”

The CBA is applying for intervener status in *Trinity Western University vs. Nova Scotia Barristers' Society*, to argue against the new law school at Trinity Western University (TWU), a private Christian university in B.C.

TWU's law program is as controversial among lawyers as it is amongst the general public. The Law Societies of Nova Scotia, Ontario and B.C. have each rejected TWU's law school. The Law Societies of the other provinces are satisfied with the recommendation of the Federation of Law Societies of Canada, which states that TWU's program meets all academic and professional standards.

Some lawyers agree with the CBA's support for the Nova Scotia Barristers' Society (NSBS) rejection of TWU's law program. The NSBS won't recognize TWU's law degree solely because the person who earned that degree decided, while studying law, to join others in a religious community where people share a personal commitment to traditional marriage. The underlying message of the CBA seems to be: you're either for the CBA position, or you're homophobic and on the “wrong side of history.”

Many lawyers disagree with the CBA position as an assault on the Charter freedoms of expression, religion and association.

In the name of equality, the NSBS demands that TWU change its code of conduct, which prohibits drunkenness, foul language, sex outside of the marriage of a man and a woman, recreational drug use, and other behaviours that are contrary to traditional Evangelical Christian beliefs. While it is true that this code will dissuade some members of the LGBT community from studying law at TWU, the same holds true for the vast majority of Canadians, who are equally not prepared to abide by one or more of the requirements of TWU's code of conduct. As the Supreme Court of Canada stated in 2001 when upholding TWU's right to establish its own code of conduct: “TWU is not for everybody”.

In a 2013 letter now filed with the Nova Scotia Court of Appeal, the CBA compares TWU's code of conduct to the former policy of Bob Jones University, which prior to 1971 did not admit blacks. The CBA also compares a university with a traditional code of conduct to a “women-free” and “Jew-free” university, as though setting up certain standards of behaviour (which apply to everybody, without exception) is the same as racism and sexism. Left-wing lawyers will be delighted with the CBA's legal brief. But pretending that “the legal profession” supports these vicious attacks on TWU is absurd.

The CBA intervention in this TWU court case, wishing to be “the voice of the legal profession,” is not unique. Over the years, the CBA has taken stances on a long list of issues, including climate change, the federal long-gun registry, prisoners voting, and the deportation of terrorists.

The CBA consults its own members about what position to take and on which issues, but less than one third of Canadian lawyers are CBA members. Even if every lawyer in Canada joined the CBA, there would still be disagreement on capital punishment, same-sex marriage, and other political issues.

Lawyers who disagree with the CBA's political positions are routinely told to join the organization and work from within to change those policies. But Canada already has political parties, not to mention a wide range of diverse lobby groups which advocate on political issues from different angles. Why spend precious time and limited resources on an unwinnable fight to change political positions which “the voice of the legal profession” should not be taking in the first place?

To its credit, the CBA sometimes does speak for the legal profession. For example, some of the CBA's court interventions have addressed confidentiality (solicitor-client privilege) and other issues that are truly of concern to lawyers as lawyers. But when it comes to Canada's immigration and refugee policies, mandatory minimum sentences, and other public policy issues on which the CBA takes positions, lawyers' opinions are as diverse as those of nurses, teachers, doctors, accountants and engineers.

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