

August 7, 2013

OttawaWatch 373: Law school and streetcar questions to ask

By Lloyd Mackey

In the Toronto streetcar case, the officer who fired the bullet ended up leaving the police force and serving time. Similar penalties have been levied for police officers involved in the deaths of people whose cases have been spotlighted by the Black Lives Matter movement.

In the case of Trinity Western University (TWU) and its law school proposal, the Supreme Court of Canada ruled, in June, 2018, that it is "proportionate and reasonable" to limit religious rights in order to ensure open access for LGBT students.

That meant the school could not move forward with the law school project until it changed its covenant to give it a more gay-friendly stance. That, until now, has not happened, at least to the satisfaction of the gay influencers in Canadian legal organizations.

All does not seem lost, however. The president of TWU at the time, Robert Kuhn, himself both a lawyer and a TWU alumnus, retired. (He has been battling Parkinson's for some years.) Not long after his retirement, the university announced plans for construction of the Robert H. Kuhn Building, which would house, among other things, TWU's MBA program and business school.

And, apparently, in the business school, there will be offerings of courses in business and mediation law.

The new TWU president, Alan Husbands, holds a PhD from the University of St. Michael's College, University of Toronto. He came highly recommended as a person who could handle the complexities of religious freedom and gay rights issues.

Sometimes, the backroom role of a journalist who is Christian is to encourage better-positioned colleagues to ask questions that might not have occurred to them.

This is especially true for your humble scribe. Transitioning, through studies and other semi-retirement decision-making, creates the opportunity to think of some questions – and possible answers – that a journalist of faith might want to pose.

Today's OttawaWatch will focus on two such possible questions. One relates to the recent streetcar shooting in Toronto, the other to the current discussion about a law school for Trinity Western University.

Could that streetcar have become a weapon?

This first question grows out of the recent tragic shooting of a young man of reportedly great promise who commandeered a Toronto streetcar.

Much has been written, questioning the police shooter's role and referring to the victim, his family and aspirations. A young life cut down well before his time.

But it would seem logical, in retrospect, for journalists to ask the police about the public safety aspect of what happened that night. Was it possible that, for example, the first thoughts of the police officer who fired the shots related to the possibility that the streetcar was rapidly turning into a potential weapon? All the passengers – and the driver – had fled the vehicle. The young man was virtually in control, if that was his aim.

Was it possible that the shooter recalled the case of a depressed man who took over a snow plow during a recent Toronto winter? The plow ended up running over and killing a police officer.

True, families and friends need to grieve the death, in the streetcar case, of a young man. But, before the case is closed, it does not hurt to pose logical questions that might, in themselves, reflect the stark reality of life in a large city. Such questions tend to help balance the quest for youth justice with the need for public safety.

What kind of law would be taught at Trinity Western?

This second question relates to the ongoing discussion about the establishing of a law school at British Columbia's Trinity Western University. It is admittedly a quick change of venue from the first question, but helps maintain the reasons for good questions.

So far, deans of the law schools at several public universities have maintained that Trinity's faith-based community covenant asking students to commit themselves to certain behavioral standards is discriminatory, particularly toward LGBT people.

Janet Epp Buckingham, a lawyer and director of Trinity's Laurentian Leadership Centre in Ottawa, has been an articulate spokesperson for the law school proposal. She talked about it recently in a small meeting of several people interested in Christian influence on Parliament Hill. Asked by one of the meeting participants what role mediation law would play in the school's curriculum, she emphasized that it was at the very core of the program. In this journalist's view, the question and the answer were both very important, because the critics of the school have tried to make the case that divisiveness and discrimination, not reconciliation and mediation, are at the heart of the law school proposal.

I checked with Dr. Epp Buckingham before writing about this, because I wanted to be sure that I was not putting anything on the record which might have been meant only for a private group. She responded by pointing out that subsequent to that private meeting, she had opportunity to enunciate the mediative concept on *The Current*, a CBC political affairs program hosted by Anna Maria Tremonti. The link to the interview and some counterpointing appears at <http://www.cbc.ca/thecurrent/episode/2013/03/28/would-a-law-school-at-a-private-christian-university-discriminate-against-gays-and-lesbians/>

Briefly summarized, Epp Buckingham answered the question posed above, noting that reconciliation is a major biblical theme that provides a Christian understanding of law and justice. Thus, there is good reason for mediation law being core to the curriculum.

Mediation law: an outside perspective

Both of the above questions help to bring balance to the particular issues involved. The matter of mediation law has a practical aspect as well, and a *Globe and Mail* editorial of July 25 is helpful to that process. The editorial points to our neighbor to the south, to three faith-based universities with bona fide law schools. It briefly describes how those schools – and the American Bar Association (ABA) -- manage the mediation/discrimination/faith interface.

The editorial notes:

The ABA standards do “not prevent a law school from having a religious affiliation or purpose,” and the rules do “not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.”

Further, the *G and M* asserts:

The result is that private, church-affiliated American law schools, including Pepperdine, Baylor and Notre Dame, state in their admissions policies that they do not discriminate based on sexual orientation. At the same time, Pepperdine is free to add that its students and staff, regardless of orientation, are expected not to engage in sex outside of marriage “as a matter of moral and faith witness.”

The editorial concludes:

Trinity Western can easily modify its covenant to respect Canada’s laws on same-sex marriage and Charter protections against discrimination without impinging on its ability to run a faith-based law school or to advocate traditional marriage. Until and unless it does, the [Federation of Law Societies of Canada – the normal law school accrediting body] should not grant its accreditation.

Except for the last sentence, which sounds a bit intimidating, the sentiment of the *Globe’s* position reflects precisely the mediation approach that rests at the core of Trinity Western’s proposed law school curriculum.

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