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## CASE SUMMARY: THE CHARTER AND NOVA SCOTIA HUMAN RIGHTS ACT DO NOT APPLY TO TRINITY WESTERN UNIVERSITY, A PRIVATE UNIVERSITY OPERATING IN BRITISH COLUMBIA

**Administrative law – Decisions of administrative tribunals – Law Societies; Universities – Policies; Barristers and solicitors – Admission to profession – Professional governance and discipline – Training requirements; Human rights complaints – Sexual orientation – Charter of Rights and Freedoms; Judicial review – Legislation – Ultra vires**

*Trinity Western University v. Nova Scotia Barristers' Society*

[2016] N.S.J. No. 292

2016 NSCA 59

Nova Scotia Court of Appeal

July 26, 2016

J.E. Fichaud, D.R. Beveridge, D.P.S. Farrar, P. Bryson and C.A. Bourgeois JJ.A.

Trinity Western University is a private university operating in British Columbia whose law school program had been recently approved by the Federation of Canadian Law Societies. TWU has a Community Covenant to which all students must adhere during their term at TWU that, among other things, prohibits sexual intimacy outside the marriage between a man and a woman. Concerned about the negative impact the Covenant's definition of marriage could have on LGBTQ individuals, the Nova Scotia Barristers' Society passed a resolution that as TWU's Covenant was considered to be discriminatory, the Council would not approve TWU law school graduates in Nova Scotia unless TWU either exempted law students from signing the Covenant or amended the Covenant for law students in a way that ceased to discriminate. The Society then amended its regulatory definition of "law degree" to require that in order to article in Nova Scotia, an applicant must have a law degree from a university that does not "unlawfully discriminate" in its law student admissions or enrollment policies or requirements on grounds prohibited by the Charter or the Nova Scotia Human Rights Act.

TWU sought judicial review of both the amended regulation and the resolution. The Supreme Court judge granted the motion, concluding that the Society did not act reasonably in interpreting its enabling statute, the Legal Profession Act, as granting it the authority to refuse to accept a graduate from TWU unless TWU changed its Covenant, and that it had no authority to pass the resolution or the amended regulation. The Society appealed the ruling that the resolution and amended regulation were invalid.

On appeal, with respect to the amended regulation, the Court of Appeal noted that the new definition of “law degree” directed the Society’s Council to make a free-standing determination as to whether a university “unlawfully” contravened the Human Rights Act and/or the Charter. Nothing in the Legal Profession Act authorizes the Society to issue an independent ruling in this regard, and it completely circumvents the process provided under the Human Rights Act. In the Court’s view, making such a determination was completely unrelated to the Society’s regulation-making authority under the Legal Profession Act and was therefore ultra vires.

With respect to the Society’s resolution to only conditionally approve the TWU law graduates, the Court of Appeal agreed with the Supreme Court judge that it was invalid because it was premised entirely on the amended regulation, which is ultra vires. Even if the amended regulation were intra vires, the resolution would be unauthorized because the Charter does not apply to TWU (being a private university) and the Nova Scotia Human Rights Act does not apply to TWU’s conduct in BC. As TWU could not be said to have unlawfully discriminated under either enactment, the resolution would not satisfy the amended regulation’s stated condition. The Court of Appeal agreed with the judge that the Society was not statutorily authorized to regulate law schools in British Columbia (or Nova Scotia), or to dictate what a university does or does not do, including changing its covenant, and dismissed the appeal.

This case was digested by [Kara Hill](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at [khill@harpergrey.com](mailto:khill@harpergrey.com) or review her biography at <http://www.harpergrey.com>.