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CASE SUMMARY: BC LAW SOCIETY'S DECISION NOT TO APPROVE TRINITY WESTERN UNIVERSITY'S LAW SCHOOL UNREASONABLE

**Administrative law – Decisions of administrative tribunals – Law Societies;
Universities – Policies; Barristers and solicitors – Admission to profession –
Professional governance and discipline – Public interest; Human rights complaints
– Sexual orientation – Charter of Rights and Freedoms – Freedom of Religion;
Judicial review – Natural justice – Procedural fairness**

[Trinity Western University v. Law Society of British Columbia](#)

BC Court of Appeal found the Law Society's decision not to approve Trinity Western University's law school was unreasonable because it limited the right to freedom of religion in a disproportionate way.

[2016] B.C.J. No. 2252

2016 BCCA 423

British Columbia Court of Appeal

November 1, 2016

R.J. Bauman C.J.B.C., M.V. Newbury, H. Groberman, P.M. Willcock and L. Fenlon J.J.A.

Trinity Western University ("TWU") is a private, evangelical Christian postsecondary school. In order to be enrolled, students must agree to the terms of the Community Covenant, which prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman." In this respect, the covenant treats LGBTQ persons unequally. The Law Society Benchers decided to hold a referendum on the question of whether to approve a law school at TWU because of this issue, and to be bound by the outcome. The majority of Law Society members voted against approving the school, and the Benchers subsequently declared pursuant to Law Society Rule 2-27 (4.1) that the school was not approved.

TWU filed a petition for judicial review, and the BC Supreme Court granted it, finding the Law Society's decision not to approve the school was unreasonable. The BCSC found the procedure followed by the Law Society in reaching its decision was improper. More specifically, the Benchers had unlawfully delegated their decision-making powers to the members, and had fettered their own discretion by agreeing to be bound by the referendum. It was incumbent on the Benchers to engage in a process of balancing the statutory objectives of the *Legal Profession Act* against *Charter* values, and they failed to do so by simply leaving it up to the referendum. The BCSC quashed the Law Society's decision.

On appeal, the Court of Appeal found that although the referendum did not constitute an improper sub-delegation of decision-making powers, the Benchers did fail to balance the objectives of the *Legal Profession Act* against *Charter* values and satisfy themselves that adopting the referendum results was consistent with that duty, as they were statutorily required to do. In reaching their decision by binding referendum, the Benchers fettered their discretion in a way that was inconsistent with their statutory duty. As a result, the decision was not entitled to deference. The evidence showed the Law Society's decision was unreasonable because it limited the right to freedom of religion in a disproportionate way, significantly more than was reasonably necessary to meet the Law Society's public interest objective. The impact of non-approval on the religious freedoms at stake was severe in comparison to the minimal impact of approval on the access of LGBTQ persons to legal education and the profession. The appeal was dismissed.

This case was digested by [Kara L. 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 or review her biography at <http://www.harpergrey.com>.