

Trinity Western University v. Ontario and Nova Scotia

This article was written by a law student for the general public.

Introduction

The *Canadian Charter of Rights and Freedoms* protects some of our basic human rights. However, those rights can sometimes conflict with one another. While one group might view its actions as protected by one right, another group might see those actions as intruding upon a different right. It's the court's job to strike a balance between those competing rights.

Trinity Western University is an evangelical Christian university in Langley, British Columbia. The university has a code of conduct called the Community Covenant, which prohibits students from engaging in sexual relations outside of traditional marriage (which the university defines as between one man and one woman). Trinity Western wishes to open a law school. Some law societies in provinces across Canada have voted to deny accreditation to the law school.

A law society is a professional body that has the authority to regulate the practice of law within the province and determine who can and cannot practise law in a province. The law societies' decision to deny Trinity Western accreditation means they would not recognize law degrees from that school. Consequently, Trinity Western graduates would not be permitted to practise law in those provinces.

Trinity Western argues that denying the law school accreditation violates its right to freedom of religion, which is protected by section 2(a) of the *Charter*. The law societies argue that the university's covenant discriminates against LGBT+ persons. Section 15(1) of the *Charter* protects these individuals from discrimination. This article summarizes the decision of two courts involving the law societies of Nova Scotia and Ontario. It focuses on how each court reconciled these two competing rights, and came to different conclusions.

Facts for Both Cases

On April 24, 2014, the Law Society of Upper Canada (Ontario law society) voted to deny accreditation to Trinity Western. On April 25, 2014, the Nova Scotia Barristers' Society (Nova Scotia law society) voted not to allow graduates from Trinity Western to practise in Nova Scotia, unless the law students are exempted from the Community Covenant, or Trinity Western changes its covenant on sexual relations. Trinity Western challenged the decisions in both provinces.

Issues in Both Cases

The courts in Ontario and Nova Scotia dealt with two issues:

- (1) Did the law society have the authority to deny Trinity Western accreditation?
- (2) Did the law society's decision violate freedom of religion?

The Nova Scotia Decision

First, the Supreme Court of Nova Scotia held that the law society did not have the authority to deny Trinity Western accreditation because its decision was an attempt to indirectly regulate Trinity Western's internal policies.^[1] Second, the Court held that even if the law society had the authority to make that decision, it would violate Trinity Western's right to freedom of religion. The Nova Scotia Barristers' Society prevented Trinity Western graduates from exercising their right to obtain a legal education in an institution that is consistent with their beliefs.^[2]

The Ontario Decision

First, the Court held that Ontario's law society had the authority to deny Trinity Western accreditation because the law society was acting in the public interest.^[3] Second, the Court held that the law society's decision was reasonable, even though it violated the university's right to freedom of religion. The Court held that Trinity Western's covenant is discriminatory, and that the law society reasonably balanced the harmful effect of discrimination with the right to freedom of religion.^[4] It was perfectly reasonable to decide that the harm of discrimination outweighed the harm to violating freedom of religion in this case.

A Comparison of the Decisions

Both Ontario and Nova Scotia superior courts acknowledged that the decisions of the law societies involved a balance between freedom of religion and equality rights. Furthermore, both courts accepted that giving Trinity Western accreditation could be viewed as condoning discrimination.^[5]

However, the Nova Scotia Court held that the Nova Scotia Barristers' Society's decision did not actually protect LGBT persons from discrimination. First, both sides accepted that graduates from Trinity Western would not practise discriminatory behaviour. Second, Justice Campbell noted that the Barristers' Society made its decision based on public disapproval of Trinity Western's covenant, and not on any evidence that LGBT+ persons would be protected by denying Trinity Western accreditation. In conclusion, the decision of the Nova Scotia Barristers' Society violated the right to freedom of religion without sufficient justification.

The Ontario Court agreed that the Law Society of Upper Canada violated the right to freedom of religion. However, the Court held that the law society reasonably balanced freedom of religion with equality rights because it acted in the public interest. Justice Nordheimer held that Trinity Western's Community Covenant is discriminatory, and that

condoning discrimination can be as harmful as discrimination itself. [6] It was therefore reasonable for the law society to deny Trinity Western accreditation.[7]

The Ontario Court also distinguished its decision from the Nova Scotia Court's decision, which had come out earlier in the year. The Ontario Court held that the Law Society of Upper Canada was not trying to regulate Trinity Western's internal policies. Rather, it was acting in the public interest. Justice Nordheimer stated that the right to open a law school with a discriminatory policy does not mean that the Ontario law society was compelled to support that right by granting the school accreditation.

As we know, the Nova Scotia Court came to a different decision. Justice Campbell emphasized that the Nova Scotia Barristers' Society's decision not to recognize a law degree from Trinity Western was unrelated to the quality of the degree itself.[8] The Nova Scotia Barristers' Society based its decision on the university policy, not the quality of the law degree. In deciding that a law degree from Trinity Western was invalid unless the university changed its policy, the law society was attempting to regulate the school itself.[9] The Nova Scotia Barrister's' Society does not have this authority.[10]

Conclusion

These two cases demonstrate how conflict can arise between different *Charter* rights. It also reveals the importance of perspective. The Nova Scotia court focused primarily on the fact that the law society was attempting to interfere with Trinity Western's policy, while the Ontario court focused more on the discriminatory aspect of the covenant. These cases will likely reach the Supreme Court of Canada for a final decision. Which decision do you find more persuasive?

[1] *Trinity Western University v Nova Scotia Barristers' Society*, 2015 NSSC 25 at paras 171-175

[2] *Ibid* at para 235

[3] *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 at para 52

[4] *Ibid* at paras 108-125

[5] *Supra* note 1 at para 209

[6] *Supra* note 3 at para 116

[7] *Ibid* at para 117

[8] *Supra* note 1 at para 170

[\[9\]](#) *Ibid* at paras 170-172

[\[10\]](#) *Ibid* at para 173