

Hfx No. 427840

Supreme Court of Nova Scotia

Between:

Trinity Western University and Brayden Volkenant

Applicants

and

Nova Scotia Barristers' Society

Respondent



Notice for Judicial Review

To: Nova Scotia Barristers' Society
and to The Attorney General of Nova Scotia

Request for judicial review

The applicants request judicial review of a decision made by the Nova Scotia Barristers' Society.

Decision to be reviewed

The decision was made April 25, 2014. The decision was made pursuant to s. 4 of the Legal Profession Act and part 3 of the Regulations. The decision was communicated to the applicant April 28, 2014.

Attached to this notice is a copy of the decision.

Grounds for review

The applicant seeks review on the following grounds:

The Nova Scotia Barristers' Society ("NSBS") erred:

- 1. In taking into account matters which were irrelevant to its determination under the Legal Professions Act, including the Community Covenant of Trinity Western University ("TWU") and the religious nature and foundation of TWU as expressed in its Community Covenant, instead of asking whether the graduates of TWU's School of Law were fit and of the proper character to practice law in Nova Scotia;

2. In refusing to accredit graduates of TWU in the absence of evidence that they were lacking in fitness or character to practice law in Nova Scotia;
3. In making its decision based on the incorrect and unreasonable determination that the Community Covenant of TWU is discriminatory, instead of asking whether the graduates of TWU's School of Law were fit and of the proper character to practice law in Nova Scotia;
4. In refusing to accredit students on grounds not authorized by the *Legal Profession Act*;
5. In refusing to accredit students from TWU law school contrary to its own regulations;
6. In failing to take into account the impact of its decision on the freedom of religion, freedom of expression, freedom of association and equality rights of TWU and of students of TWU;
7. In imposing restrictions and burdens as to religious belief, practice, expression and association of TWU, students at TWU and graduates of TWU's School of Law, which are not imposed on graduates of other Canadian law schools;
8. In failing to properly apply and consider s. 2(a), 2(b), 2(d) and s. 15 of the Charter;
9. In reaching a decision that infringes the Charter rights of TWU, Brayden Volkenant ("Brayden") and other students of TWU;
10. By imposing Charter obligations on TWU;
11. In giving extraterritorial effect to the Nova Scotia *Human Rights Act*;
12. In requiring TWU to alter its Community Covenant as a precondition to recognizing and approving the graduates of its School of Law;
13. In failing to consider the obligations of the NSBS under the *Fair Registration Practices Act* and the *Internal Trade Agreement Implementation Act*;
14. In failing to consider the obligations of the NSBS under the agreements it has entered into with other law societies in Canada.

Order proposed

The applicants request an order quashing the decision of Respondent and seek an order in the nature of mandamus requiring the Respondent to accredit graduates of TWU law school on the same basis as graduates of other Canadian common law schools. The applicants request their costs of this application.

You may participate

You may participate in the judicial review if you file a notice of participation no more than ten days after the day a copy of this notice for judicial review is delivered to you. Filing the notice

entitles you to notice of further steps in the judicial review.

Record to be produced

The record is in the possession of the Respondent and includes the information considered by the Respondent in reaching its decision. The Applicants intend to file an affidavit setting out the constitutional facts to be relied on in making the determinations of the constitutional issues.

Notice to decision-making authority

The respondent, Nova Scotia Barristers' Society, is required by Civil Procedure Rule 7 – Judicial Review and Appeal to file one of the following no more than five days after the day the decision-making authority is notified of this proceeding by delivery of a copy of this notice for judicial review:

- a complete copy of the record, with copies of separate documents separated by numbered or lettered tabs;
- a statement indicating that the decision-making authority has made arrangements with the applicants to produce the record, providing details of those arrangements, and estimating when the return will be ready;
- an undertaking that the decision-making authority will appear on the motion for directions and will seek directions concerning the record; a summary of reasons given orally without a record and your certificate the summary is accurate, if you gave reasons orally and not on record.

If you fail in this regard, a judge may order costs against you including a requirement that you indemnify each other party for any expenses caused by your failure, such as expenses caused by an adjournment if that is the result.

Stay of proceedings or other interim remedy

The applicants will not make a motion for a stay of the enforcement of the decision under judicial review.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary 1815 Upper Water Street, Halifax, Nova Scotia.

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The applicants designate the following address:

BOYNECLARKE LLP
99 Wyse Road, Suite 600
Dartmouth, Nova Scotia B2Y 3Z5

Telephone: (902) 469-9500
Fax: (902) 463-7500

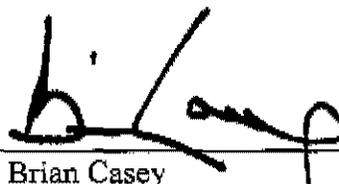
Documents delivered to this address are considered received by the applicants on delivery.
Further contact information is available from the prothonotary.

Motion for date and directions

At 11am on July 3, 2014, the applicant will appear before a judge in Chambers at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia to make a motion for an order giving directions for the judicial review including a date and time for the hearing of it. The judge may make an order or provide directions in your absence if you or your counsel fail to attend, and the court may determine the judicial review without further notice to you.

Signature

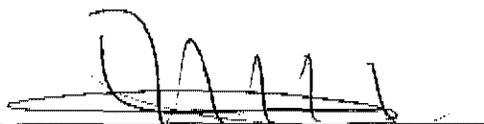
Signed May 29, 2014.



Brian Casey
Counsel for the Applicants

Prothonotary's certificate

I certify that this notice for judicial review was filed with the court on May 29th, 2014.



Prothonotary



NOVA SCOTIA
BARRISTERS' SOCIETY

via email president@twu.ca

April 28, 2014

Mr. Bob Kuhn, J.D.
President
Trinity Western University
7600 Glover Road
Langley BC V2Y 1Y1

Dear President Kuhn:

On Friday, April 25, Council of the Nova Scotia Barristers' Society adopted the following resolution:

Council accepts the Report of the Federation Approval Committee that, subject to the concerns and comments noted, the TWU program will meet the national requirement; Council resolves that the Community Covenant is discriminatory and therefore Council does not approve the proposed law school at Trinity Western University unless TWU either:

- i) exempts law students from signing the Community Covenant; or**
- ii) amends the Community Covenant for law students in a way that ceases to discriminate.**

Council directs the Executive Director to consider any regulatory amendments that may be required to give effect to this resolution and to bring them to Council for consideration at a future meeting.

Council remains seized of this matter to consider any information TWU wishes to present regarding compliance with the condition.

Following the extensive debate in Nova Scotia, Council has concluded that the requirement to subscribe to the Community Covenant is discriminatory. Council was very alive to religious rights and the importance they play in Canadian society. Members recognised the competing interests and in the end favoured a balanced approach. As you will note the resolution accepts the Federation's Approval Committee Report. Further, the resolution identifies the issue that is of profound concern to the Society, namely the application of the Community Covenant to law students.

Exempting law students from signing the Covenant balances TWU's religious values with respect for equality rights.

... 2

Cogswell Tower, 800-2000 Barrington Street, Halifax, NS B3J 3K1 | t: 902.422.1491 | f: 902.429.4869 | nsbs.org

Mr. Bob Kulin, J.D.

April 28, 2014

Page Two

The proposed law school at TWU has caused each law society to apply their own governing legislation and the law regarding both human rights and Charter values. In addition to the work done by the Federation, we have been required to consider the human rights and Charter values that apply in Nova Scotia, and the fundamental requirements of an institution that will be training students who wish to enter our Bar Admission Program. After hours of study and deliberation the Nova Scotia Barristers' Society has thus conditionally approved TWU's planned law school.

As required by the resolution there is action, including regulatory amendment, to be considered at a future meeting of Council. We would welcome the opportunity to discuss the condition noted in the resolution, or any other matter of interest to TWU.

Please do not hesitate to contact me at your convenience as you consider our recent decision.

Sincerely,



J. Rene Gallant
President

Decision of the Respondent:

Council accepts the Report of the Federation Approval Committee that, subject to the concerns and comments noted, the TWU program will meet the national requirement; Council resolves that the Community Covenant is discriminatory and therefore Council does not approve the proposed law school at Trinity Western University unless TWU either:

i) exempts law students from signing the Community Covenant; or

ii) amends the Community Covenant for law students in a way that ceases to discriminate.

Council directs the Executive Director to consider any regulatory amendments that may be required to give effect to this resolution and to bring them to Council for consideration at a future meeting.

Council remains seized of this matter to consider any information TWU wishes to present regarding compliance with the condition.