

Court File No. 250/14

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Applicants

and

THE LAW SOCIETY OF UPPER CANADA

Respondent

APPLICATION UNDER rules 14.05(1), 38 and 68 of the *Rules of Civil Procedure* and the
Judicial Review Procedure Act, RSO 1990, c J.1, s 2

**NOTICE OF APPLICATION TO DIVISIONAL COURT
FOR JUDICIAL REVIEW**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

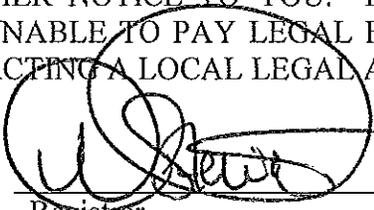
THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicants. The applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicants' application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date May 26, 2014

Issued by 
Registrar

Address of
court office: 130 Queen Street West
Toronto, Ontario
M5H 2N5

TO: THE LAW SOCIETY OF UPPER CANADA
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

AND TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office - Civil
720 Bay Street
8th Floor
Toronto, Ontario
M7A 2S9

APPLICATION

1. The applicants Trinity Western University (TWU) and Brayden Volkenant (**Brayden**) make application for:

- (a) judicial review of the decision of the respondent The Law Society of Upper Canada (the **LSUC**) to refuse to accredit TWU's proposed School of Law (the **Decision**);
- (b) a declaration that the Decision is unauthorized and otherwise invalid;
- (c) an order in the nature of mandamus approving TWU's application for accreditation of its proposed School of Law;
- (d) in the alternative, an order in the nature of mandamus requiring the LSUC to reconsider and approve TWU's application for accreditation of its proposed School of Law; and
- (e) their costs of this application.

2. The ground for the application are:

The Applicants

- (a) TWU is a post-secondary institution located in Langley, British Columbia. It was established in 1962. In 1969, the British Columbia legislature enacted the *Trinity Junior College Act*, mandating that TWU's education would be provided "with an underlying philosophy and viewpoint that is Christian."

- (b) TWU was recognized as a degree-granting institution by the government of British Columbia in 1979. In 1985, the British Columbia legislature changed TWU's name and authorized TWU to offer graduate degrees.
- (c) TWU offers more than 50 undergraduate and graduate programs, including professional programs in nursing, education, business and counselling psychology.
- (d) TWU students are required to read, understand and agree to the terms of the Community Covenant Agreement (the **Community Covenant**).
- (e) In 2001, the Supreme Court of Canada ordered the British Columbia College of Teachers to accredit TWU's Teacher Education Program, which it refused to do on the basis TWU's Community Standards (a predecessor to the Community Covenant) was discriminatory.
- (f) The Supreme Court of Canada held: "Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society."
- (g) Brayden is a graduate of TWU's Bachelor of Arts (Business) program. Brayden intends to go to law school, and his preferred school would be TWU's proposed School of Law. Brayden is interested in practicing as a lawyer in Ontario after graduating from law school.

TWU's Proposed School of Law

- (h) In June 2012, TWU submitted a proposal to the Federation of Law Societies of Canada's Canadian Common Law Program Approval Committee (the **FLSC Approval Committee**) for a School of Law to open in September 2015 (later amended to September 2016).
- (i) During the course of the FLSC Approval Committee's deliberations, the Federation of Law Societies of Canada established a Special Advisory Committee on Trinity Western University's Proposed School of Law (the **FLSC Special Advisory Committee**).
- (j) The FLSC Special Advisory Committee specifically considered whether the Community Covenant should be taken into account in determining whether graduates of TWU's proposed law school should be eligible to enroll in admission programs offered by Canada's law societies.
- (k) The FLSC Special Advisory Committee concluded that if the FLSC Approval Committee decided that TWU's proposed law school meets the national requirement if implemented as proposed, "there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."
- (l) The "national requirement" outlines the knowledge and skills that all applicants for entry to the bar admission programs of the law societies in the Canadian common law jurisdictions must possess, and the law school academic program and learning resources law schools must have in place. The national requirement was approved

by Canada's law societies in 2010 and will come into force for law school graduates in 2015.

- (m) The FLSC Approval Committee concluded that, subject to certain concerns that are to be addressed in TWU's future annual reports, the program would, if implemented as proposed, meet the national requirement and should be given preliminary approval. In particular, the FLSC Approval Committee concluded that TWU's proposal was "comprehensive and is designed to ensure that students acquire each competency included in the national requirement."
- (n) Following the FLSC Approval Committee's preliminary approval of TWU's proposal, TWU communicated with Canada's 14 provincial and territorial law societies to confirm that its graduates would be able to article and be admitted to the bar in those jurisdictions.
- (o) The law societies in British Columbia (after a deliberative process), Alberta, Saskatchewan and Prince Edward Island have decided to accept graduates of TWU's School of Law. Other law societies (except Ontario and Nova Scotia) have not yet made a decision.

The Law Society of Upper Canada's Decision

- (p) The *Law Society Act*, RSO 1990, c L.8, provides that it is the function of the LSUC to ensure that "all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide....".

- (q) In furtherance of this function, the LSUC issues licenses to applicants who meet “the qualifications and other requirements set out in [the *Law Society Act*] and the by-laws for the issuance of that class of licence.”
- (r) The LSUC enacted By-Law 4, Licensing, that provides that applicants for a Class L1 Licence (entitling the applicant to practice law in Ontario as a barrister and solicitor) must have a law degree from “an accredited law school”, which is defined in By-Law 4 as “a law school in Canada that is accredited by the Society”.
- (s) In March 2014, the Treasurer of the LSUC released a statement outlining the process that the LSUC would follow in determining accreditation of TWU’s proposed law school.
- (t) The business of the LSUC is transacted through Convocation, which is a “regular or special meeting of the benchers convened for the purpose of transacting business” of the LSUC.
- (u) The question ultimately put to Convocation was as follows:

Given that the Federation Approval Committee has provided preliminary approval to the Trinity Western University law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit Trinity Western University pursuant to section 7 of By-Law 4?

- (v) On April 10, 2014, members of Convocation discussed the TWU application and spoke to various issues raised in the submissions received by the LSUC. No vote

was taken at this meeting. On April 24, 2014, further discussions took place, after which Convocation voted on the question.

- (w) Convocation voted to reject the accreditation of TWU (and, in doing so, rejected applications for admission by graduates of TWU's proposed law school) by a reported vote of 28 to 21 with one abstention (defined above as the Decision).
- (x) The LSUC did not provide reasons for the Decision.

The Decision Should be Set Aside

- (y) The Decision is *ultra vires* in that the *Law Society Act* does not give the LSUC the authority to deny accreditation to a proposed law school if the law school's graduates meet the LSUC's statutory objectives, which is to ensure that "all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide".
- (z) The FLSC Approval Committee's preliminary approval of TWU's proposed law school, on the basis that its graduates would meet the national requirement, is determinative of whether graduates of TWU's proposed law school meet the LSUC's statutory objectives.
- (aa) The LSUC failed to interpret its statutory objectives in a manner appropriately taking into account *Charter* values, including the freedom of religion, freedom of expression, freedom of association, the equality rights of religious individuals and groups and Canada's multicultural heritage.

- (bb) The Decision infringes sections 2(a), (b) and (d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 (the Charter)*, and such limits cannot be demonstrably justified in a free and democratic society.
- (cc) The Decision infringes Brayden's rights under section 15 of the *Charter*, and such limits cannot be demonstrably justified in a free and democratic society. Further, the Decision infringes Brayden's rights under the *Human Rights Code*, RSO 1990, c H.1.
- (dd) Further, or in the alternative, TWU has public interest standing to assert an infringement of section 15 of the *Charter* and *Human Rights Code*:
 - (i) there is a serious justiciable issue raised by the Decision in that the question raised is an important and substantial constitutional and quasi-constitutional issue;
 - (ii) TWU has a real stake and genuine interest in the issue in that it has a real and continuing interest in protecting the rights of its students to be free from discrimination; and
 - (iii) this application is a reasonable and effective means of bringing the matter before the court.
- (ee) The LSUC erred in ignoring relevant facts, including:

- (i) TWU's, Brayden's and other prospective students' rights under the *Charter*, including the freedom of conscience and religion (section 2(a)), the freedom of thought, belief, opinion and expression (section 2(b)), the freedom of association (section 2(d)) and the right to the equal protection and equal benefit of the law without discrimination based on religion (section 15);
- (ii) both the beliefs expressed in the Community Covenant and the belief that adherence to the Community Covenant for a religious community in an educational environment is a sincerely-held religious belief;
- (iii) TWU is not subject to the jurisdiction of either the *Charter* or the *Human Rights Code*;
- (iv) the Community Covenant does not infringe or violate the *Charter* or the *Human Rights Code*;
- (v) the FLSC Approval Committee concluded that TWU's proposed law school meets the national requirement and, as such, its graduates will meet "standards of learning, professional competence and professional conduct that are appropriate for the legal services" that they will provide;
- (vi) the LSUC's legal obligations pursuant to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, SO 2006, c 31, and the *Internal Trade Agreement Implementation Act*, SC 1996, c 17; and

- (vii) the LSUC's legal obligations pursuant to the Inter-Jurisdictional Practice Protocol, the National Mobility Agreement and the Territorial Mobility Agreement.
- (ff) The LSUC erred in taking into consideration irrelevant facts, including the fact that TWU students are required to read, understand and accept to the terms of the Community Covenant and TWU's religious nature and foundation.
- (gg) The LSUC erred in making the Decision on the basis that graduates of TWU's proposed law school would fail to meet the standards of learning, professional competence or professional conduct that are appropriate for the legal services they provide because they pledged to the terms Community Covenant. There was no such evidence and no such facts to support such a conclusion.
- (hh) The LSUC's proceedings were conducted in such a manner as resulted in a denial of natural justice. Before, during and after the proceedings, members of Convocation acted in a manner that displayed actual bias on the part of Convocation and its members or, in the alternative, gave rise to a reasonable apprehension of bias. Further, TWU was denied the right to make oral submissions at the April 10th meeting of Convocation.
- (ii) The LSUC lost jurisdiction as a result of the denial of natural justice and exceeded the jurisdiction otherwise conferred upon it by the *Law Society Act*.
- (jj) The LSUC made errors of law so fundamental so as to deprive it of jurisdiction.
- (kk) *Judicial Review Procedure Act*, RSO 1990, c J.1.

- (ll) *Statutory Powers Procedure Act*, RSO 1990, c S.22.
- (mm) *Law Society Act*, RSO 1990, c L.8.
- (nn) *Human Rights Code*, RSO 1990, c H.1.
- (oo) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
- (pp) Rules 14.05(2) and 68.01(1) of the *Rules of Civil Procedure*.
- (qq) *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, SO 2006, c 31.
- (rr) *Internal Trade Agreement Implementation Act*, SC 1996, c 17.

Documentary Evidence

3. The following documentary evidence will be used at the hearing of the application:
 - (a) the record of proceedings; and
 - (b) the affidavits of the applicants, to be sworn, and the exhibits thereto.

May 26, 2014

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BRAYDEN VOLKENANT
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LAW SOCIETY OF UPPER CANADA
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Court File No. 25014

ONTARIO
SUPERIOR COURT OF JUSTICE
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APPLICATION UNDER rules 14.05(1), 38 and 68 of the *Rules of Civil Procedure* and the *Judicial Review Procedure Act*, RSO 1990, c J.1, s 2

NOTICE OF CONSTITUTIONAL QUESTION

The applicants Trinity Western University (TWU) and Brayden Volkenant (**Brayden**) intend to question the constitutional validity of the decision of the respondent The Law Society of Upper Canada, dated April 24, 2014, refusing to accredit TWU's proposed School of Law (the **Decision**).

The question is to be argued on a date to be fixed by the registrar at Osgoode Hall, 130 Queen Street West, Toronto.

The following are the material facts giving rise to the constitutional question:

The Applicants

1. TWU is a post-secondary institution located in Langley, British Columbia. It was established in 1962. In 1969, the British Columbia legislature enacted the *Trinity Junior College Act*, mandating that TWU's education would be provided "with an underlying philosophy and viewpoint that is Christian."
2. TWU was recognized as a degree-granting institution by the government of British Columbia in 1979. In 1985, the British Columbia legislature changed TWU's name and authorized TWU to offer graduate degrees.
3. TWU offers more than 50 undergraduate and graduate programs, including professional programs in nursing, education, business and counselling psychology.
4. TWU students are required to read, understand and agree to the terms of the Community Covenant Agreement (the **Community Covenant**).
5. In 2001, the Supreme Court of Canada ordered the British Columbia College of Teachers to accredit TWU's Teacher Education Program, which it refused to do on the basis TWU's Community Standards (a predecessor to the Community Covenant) was discriminatory.
6. The Supreme Court of Canada held: "Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society."

7. Brayden is a graduate of TWU's Bachelor of Arts (Business) program. Brayden intends to go to law school, and his preferred school would be TWU's proposed School of Law. Brayden is interested in practicing as a lawyer in Ontario after graduating from law school.

TWU's Proposed School of Law

8. In June 2012, TWU submitted a proposal to the Federation of Law Societies of Canada's Canadian Common Law Program Approval Committee (the **FLSC Approval Committee**) for a School of Law to open in September 2015 (later amended to September 2016).

9. During the course of the FLSC Approval Committee's deliberations, the Federation of Law Societies of Canada established a Special Advisory Committee on Trinity Western University's Proposed School of Law (the **FLSC Special Advisory Committee**).

10. The FLSC Special Advisory Committee specifically considered whether the Community Covenant should be taken into account in determining whether graduates of TWU's proposed law school should be eligible to enroll in admission programs offered by Canada's law societies.

11. The FLSC Special Advisory Committee concluded that if the FLSC Approval Committee decided that TWU's proposed law school meets the national requirement if implemented as proposed, "there will be no public interest reason to exclude future graduates of the program from law society bar admission programs."

12. The "national requirement" outlines the knowledge and skills that all applicants for entry to the bar admission programs of the law societies in the Canadian common law jurisdictions must possess, and the law school academic program and learning resources law schools must have in

place. The national requirement was approved by Canada's law societies in 2010 and will come into force for law school graduates in 2015.

13. The FLSC Approval Committee concluded that, subject to certain concerns that are to be addressed in TWU's future annual reports, the program would, if implemented as proposed, meet the national requirement and should be given preliminary approval. In particular, the FLSC Approval Committee concluded that TWU's proposal was "comprehensive and is designed to ensure that students acquire each competency included in the national requirement."

14. Following the FLSC Approval Committee's preliminary approval of TWU's proposal, TWU communicated with Canada's 14 provincial and territorial law societies to confirm that its graduates would be able to article and be admitted to the bar in those jurisdictions.

15. The law societies in British Columbia (after a deliberative process), Alberta, Saskatchewan and Prince Edward Island have decided to accept graduates of TWU's School of Law. Other law societies (except Ontario and Nova Scotia) have not yet made a decision.

The Law Society of Upper Canada's Decision

16. The *Law Society Act*, RSO 1990, c L.8, provides that it is the function of the LSUC to ensure that "all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide....".

17. In furtherance of this function, the LSUC issues licenses to applicants who meet "the qualifications and other requirements set out in [the *Law Society Act*] and the by-laws for the issuance of that class of licence."

18. The LSUC enacted By-Law 4, Licensing, that provides that applicants for a Class L1 Licence (entitling the applicant to practice law in Ontario as a barrister and solicitor) must have a law degree from “an accredited law school”, which is defined in By-Law 4 as “a law school in Canada that is accredited by the Society”.

19. In March 2014, the Treasurer of the LSUC released a statement outlining the process that the LSUC would follow in determining accreditation of TWU’s proposed law school.

20. The business of the LSUC is transacted through Convocation, which is a “regular or special meeting of the benchers convened for the purpose of transacting business” of the LSUC.

21. The question ultimately put to Convocation was as follows:

Given that the Federation Approval Committee has provided preliminary approval to the Trinity Western University law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit Trinity Western University pursuant to section 7 of By-Law 4?

22. On April 10, 2014, members of Convocation discussed the TWU application and spoke to various issues raised in the submissions received by the LSUC. No vote was taken at this meeting. On April 24, 2014, further discussions took place, after which Convocation voted on the question.

23. Convocation voted to reject the accreditation of TWU (and, in doing so, rejected applications for admission by graduates of TWU’s proposed law school) by a reported vote of 28 to 21 with one abstention (defined above as the Decision).

24. The LSUC did not provide reasons for the Decision.

The following is the legal basis for the constitutional question:

1. The Decision infringes sections 2(a), (b) and (d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 (the Charter)*, and such limits cannot be demonstrably justified in a free and democratic society.
2. The Decision infringes Brayden's rights under section 15 of the *Charter*, and such limits cannot be demonstrably justified in a free and democratic society.

May 26, 2014

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PROCEEDING COMMENCED AT
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