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NS Judicial Review Hearing Summary

(2014 TWU Decision)

By Deina Warren, Co-Counsel with Philip Fourie representing Christian Legal Fellowship.

Does the Nova Scotia Barristers' Society (NSBS) have the authority to regulate law schools and if yes, did it exercise that authority in a manner compliant with the Charter? Those were, in essence, the questions presented to Justice Jamie Campbell of the Nova Scotia Supreme Court during the December judicial review hearing of *Trinity Western University v. Nova Scotia Barristers' Society*.

The NSBS has, through resolution and regulation, determined that it will not recognize law degrees from law schools that "unlawfully discriminate". Trinity Western, by virtue of its Community Covenant which reserves sexual activity exclusively for marriage (defined biblically as the union of one man and one woman), has been deemed by the NSBS to engage in unlawful discrimination. As such, Trinity Western law graduates are precluded from articling in Nova Scotia.

As a very brief summary that does not do justice to his excellent arguments, Mr. Brian Casey, counsel for Trinity Western, argued that the NSBS did not have authority to pass either the resolution or the regulation, that the level of scrutiny appropriate for this type of judicial review is high (correctness), that the 2001 Supreme Court decision of *Trinity Western University v. British Columbia College of Teachers* was binding and relevant, that the *Charter* had been violated in myriad ways by this decision, that the decision could not withstand judicial review on any level of scrutiny, and that the NSBS' decision must be overturned.

The NSBS denied its decision violated any *Charter* rights and had difficulty acknowledging that the *Charter* right to freedom of religion was even engaged. Its overriding concern regarding *Charter* rights was founded in the s.15 equality rights on the basis of sexual orientation. In its view, by permitting Trinity Western law grads to article, it was effectively condoning the "unlawful discrimination" perpetuated by the law school via the Community Covenant. This would, in turn, cause harm to the LGB community in Nova Scotia and be contrary to the public interest.

Intervenors, including CLF, each presented oral arguments at the hearing, focusing almost exclusively on the *Charter* implications flowing from the NSBS resolution and regulation. Counsel for CLF highlighted the many ways in which the NSBS decision violates s.2(a) freedom of religion, emphasized the right to a variety of perspectives on the definition of marriage, pointed out specific protection for the traditional Christian view of marriage, teased out the practical results of allowing the NSBS decision to stand, and discussed how the decision would - if taken to its logical conclusion - impact individual lawyers and students who have publicly expressed agreement with the principles expressed in the Community Covenant.

Mr. Justice Campbell engaged with counsel throughout the hearing, often asking difficult and pointed, but fair, questions. In his closing remarks he noted that it had been a privilege to preside over the judicial review and that he expected to release a decision before the end of February, 2015.