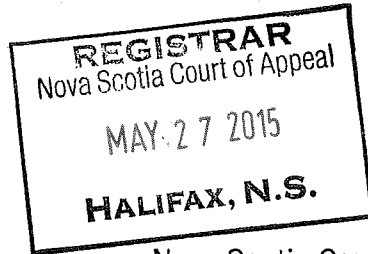


Form 23.03

2015



Nova Scotia Court of Appeal

C.A. No. 438894

Between:

THE NOVA SCOTIA BARRISTERS' SOCIETY

APPELLANT

and

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

RESPONDENTS

JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS
 ASSOCIATION FOR REFORMED POLITICAL ACTION
 EVANGELICAL FELLOWSHIP OF CANADA
 CHRISTIAN HIGHER EDUCATION CANADA
 ATTORNEY GENERAL OF CANADA
 CATHOLIC CIVIL RIGHTS LEAGUE
 FAITH AND FREEDOM ALLIANCE
 CHRISTIAN LEGAL FOUNDATION
 CANADIAN COUNCIL OF CHRISTIAN CHARITIES
 NOVA SCOTIA HUMAN RIGHTS COMMISSION

INTERVENORS IN THE COURT BELOW

Notice of Motion

To: The Nova Scotia Barristers' Society (the "NSBS")
Trinity Western University ("TWU") and Brayden Volkenant
The Intervenors in the Court Below

Motion

Schulich School of Law OUTlaw Society ("OUTlaw") moves for an order granting it leave to:

1. intervene in this appeal, pursuant to Civil Procedure Rule 90.19(1) and (2); and
2. present oral argument at the hearing of the appeal, pursuant to Civil Procedure Rule 90.19(8).

The grounds for the motion to intervene are as follows:

1. OUTlaw is a society incorporated under the *Societies Act*, R.S.N.S 1989, c. 435, with a membership consisting of students at the Schulich School of Law (“Schulich”) at Dalhousie University in Halifax, Nova Scotia.
2. OUTlaw’s objectives are to:
 - a. promote a queer-positive atmosphere within Schulich;
 - b. support queer law students and their allies;
 - c. facilitate a connection between queer law students and the legal community;
and
 - d. advocate for change in its areas of focus.
3. OUTlaw is a chapter OUTlaws Canada, an organization of LGBTQ affinity groups focused on promoting a queer-positive learning environment within Canadian law schools and raising awareness about LGBTQ issues.
3. OUTlaw has an interest in this appeal in light of:
 - a. its mandate;
 - b. its concerns regarding the Community Covenant Agreement which would have to be signed by all TWU law students, which directly engage its mandate; and
 - c. its participation in the proceedings before the NSBS which ultimately culminated in this appeal.
4. OUTlaw’s position would be that the appeal from the Court below should be allowed, and would make the following submissions in support of that position:
 - a. The Community Covenant Agreement would exclude any LGBTQ students married to a spouse of the same sex. It would also effectively exclude (or, at the very least, significantly and unacceptably undermine the dignity and self-respect of) LGBTQ students generally, as they would only be able to attend TWU’s law school if they abstained from relationships with partners during their time at the school, or if they “went into the closet” and effectively hid their relationships from the outside world. This would result in unequal access for LGBTQ students to the total number of available spaces in Canada’s law schools.
 - b. The above-mentioned effects of the Community Covenant Agreement would also serve to perpetuate systemic discrimination against LGBTQ students and the broader LGBTQ community, which has historically been a marginalized and disadvantaged segment of Canadian society.

- c. In determining whether to accredit TWU's proposed law school, the NSBS was required to consider the public interest. In the context of this case, the public interest includes the importance of equitable access to legal education and the profession, as well as the importance of a diverse bar. The NSBS was also required to consider and apply the values and principles set out in the *Charter* and provincial human rights legislation, including values of equity, equality, non-discrimination and inclusivity, as well as the history of systemic discrimination against LGBTQ persons in society generally. In light of these considerations, the NSBS's decision to conditionally accredit TWU's proposed law school was reasonable or, in the alternative, correct.
 - d. As a regulatory authority and statutory actor, the NSBS cannot condone discrimination in the course of carrying out its mandate. As granting accreditation on the terms proposed by TWU would have amounted to the NSBS condoning and perpetuating the discriminatory effect of the Community Covenant Agreement, the NSBS was right to only provide TWU with a conditional accreditation.
 - e. The guarantee of freedom of religion in the *Charter* revolves around the notion of personal choice and individual autonomy and freedom. As such, the key consideration in determining whether a person's right to freedom of religion has been infringed is whether they have been left with a meaningful choice to follow their religious beliefs and practices. The NSBS's decision to conditionally accredit TWU's proposed law school goes not deny TWU's students the ability to practice their faith, particularly as they could still sign the Community Covenant Agreement if they wanted to do so. Rather, it simply denies TWU the ability to open a law school with an admissions policy which discriminates against LGBTQ students.
 - f. Further, depriving TWU of the ability to open a law school with an admissions policy that discriminates against LGBTQ persons cannot and does not outweigh the effect that the Community Covenant Agreement would have upon LGBTQ students. Put slightly differently, a single aspect of a set of religious beliefs cannot in and of itself simply trump the non-discrimination and equality rights of LGBTQ students. As such, the NSBS's decision struck an appropriate balance between freedom of religion, equality rights, and values of non-discrimination and inclusivity, or (alternatively) can be saved under Section 1 of the *Charter*.
5. OUTlaw's submissions would be relevant to the appeal, as they directly speak to the second, fourth, fifth and sixth grounds of appeal.
 6. OUTlaw's submissions would be useful to the Court of Appeal and would be different from those advanced by the other participants, as:

- a. No LGBTQ-focused or LGBTQ-oriented organizations intervened in the proceedings in the Court below. As such, OUTlaw would bring a perspective forward which will not otherwise be before the Court.
- b. Further, OUTlaw would offer the perspective of the group of persons who would be affected by the community covenant at issue in this proceeding – specifically, LGBTQ law students.
- c. As this appeal raises a number of issues relating to the ambit and application of the *Charter*, it is important for the Court to have the benefit of a number of perspectives in disposing of these issues.
- d. The need for a balance of perspectives is especially acute in this proceeding, as 8 of the 9 intervenors in the Court below took a position in support of TWU and against the NSBS.

Time and place

The motion is to be heard by a Judge of the Court of Appeal at a date and time set by the Court.

References

The moving party relies on the following legislation, Rules, or points of law:

- Civil Procedure Rule 90.19.

Evidence

The evidence in support of the motion is as follows:

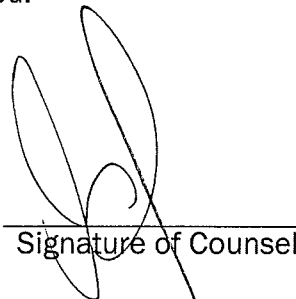
- Affidavit of Jade Fraser, sworn May 26, 2015.

Possible order against you

You may file an affidavit and a brief, attend the hearing of the motion, and state your position on whether the proposed order should be made. If you do not attend, the Judge may grant an order without further notice to you.

Signature

Signed this May 27, 2015.



Signature of Counsel

Jack Townsend as Counsel for Schulich
School of Law OUTlaw Society

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