**The Precedent Setting Nature of**

**Trinity Western University v. The Law Society of Upper Canada**

The Case of Trinity Western University v. The Law Society of Upper Canada was one that broke ground and established important legal precedents. The Law Society of Upper Canada (LSUC) in 2014 refused to automatically accredit law school graduates from Trinity Western University (TWU) due to the belief that its practices were discriminatory (Schmitz, 2017) by forcing students to “abstain from the following actions: … sexual intimacy that violates the sacredness of marriage between a man and a woman” (Community Covenant Agreement, 2014). TWU disagreed and brought it before the Ontario Superior Court of Justice where the ruling by the LSUC was upheld, the TWU appealed to the Ontario Court of Appeal where the ruling by LSUC again was upheld. This case challenges the Canadian Charter of Rights and Freedoms balance between equality and freedom of religion, the authority of the Canadian government to discriminate against institutions based on their practices and the ability for the provincial courts to have contradictory rulings on similar cases. The Case of TWU v. LSUC has established these precedents which challenge the vital legal principles and policies the country of Canada is based on.

This case has challenged the charters balance between equality and freedom, should the government violate the freedoms of individuals to ensure equality or should it violate the right of equality to protect individual freedoms. The Charter of Rights and Freedoms states that “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination”(Canadian Charter,1982,s 15(1)) however the charter also states “Everyone has the following fundamental freedoms: (a) freedom of conscience and religion;”, balancing these two contradicting statements is something the judicial system of Canada must determine. By guaranteeing TWU graduates automatic accreditation, LSUC views that they would be allowing discrimination to continue which goes against the rule of law and it’s principles (Fine, 2016), the LSUC believes that in this case equality should override religious freedoms. While TWU believes that religious freedom should override the right of equality, TWU argues that the society is discriminating against Christian law graduates and is violating their right to practice their religion (Fine, 2016). This case set the priority and extent of religious freedoms and it has been determined by the Ontario Court of Appeal that religious freedom cannot be used to justify hateful practices.

This case reaffirms that the Canadian government can punish private institutions for having practices that are contrary to the government’s ideas and principles. The ruling states that the LSUC has the ability to deny privileges to TWU because they discriminated against students by forcing them to sign a pledge requiring them to not practice homosexuality. Though the courts say that the TWU did not have to abide by the human rights code in this case, the LSUC had to abide by the human rights code, they could not automatically accredit this university, thereby indirectly punishing private institutions (Trinity Western University v. Law Society of Upper Canada (Court of Appeal), 2016). This ruling was quite controversial because it may violate certain portions of the Charter of Rights and Freedoms. In the Charter of Rights and Freedoms it states that everyone has the “freedom of conscience and religion;”(Canadian Charter, 1982, s 2(a)), this implies that people may have this freedom without punishment from the government, however it appears the government even though it is not directly it is indirectly punishing a group for practicing a certain religious value. The TWU attempted to argue this point and claimed that “the government does not tell us what to believe” (Fine, 2016), however this point was made invalid since the courts decided that the government may intervene in private affairs to uphold its values even if it is not explicitly illegal. This debate brought up a very important issue in modern society, whether the government can intervene in private affairs to uphold its moral values and ideas, the TWU believes that the government should stop interfering while the LSUC say that their intervention into private affairs was justified and moral.

One important question that has been left unanswered is whether provincial courts can and should retain contradictory rulings about similar issues. The case of TWU v. LSUC is very similar to one known as TWU v. British Columbia College of Teachers also known as the BCCT (Stueck, 2016). These cases both dealt with TWU against an institution which denied certain privileges to them because of their controversial community covenant which includes discriminatory principles (Stueck, 2016). In the TWU v. BCCT case the courts ruled in favor of TWU however in TWU v. LSUC the courts ruled in their favor. These are two clearly contradictory statements so the question is, whether it is ok for one thing to be legal in one province however in another province the constitution is interpreted in a different way. The case has moved to the Supreme Court of Canada where the justices will determine whether it is lawful for the LSUC and BCCT to deny these privileges to the TWU and whether there can be two separate rulings on similar cases. The justices may establish the precedent that legally two jurisdictions can have conflicting interpretations of the law. Currently, the Supreme Court of Canada has the authority to interpret the Charter of Rights and Freedoms but it must be determined how legally conflicting rulings will work in the future. In the United States of America when two jurisdictions have conflicting rulings it is called a circuit split, there is a debate in the law community whether these circuit splits can be “beneficial and useful” or “are necessary evils that must be eradicated” (Wallace, 1983). Some argue that circuit splits allow certain jurisdictions to change to fit their regional and changing values while others claim that “Americans live under one Constitution and one large, exceedingly complex set of federal statutes and regulations that together comprise the supreme law of the land” (Wallace, 1983). In this case since this resides in Canada it is a legal grey zone that and will be resolved by the Supreme Court of Canada (Mehta, 2017). This is a conflict between provincial judicial jurisdiction and federal judicial jurisdiction and the courts may find either that these cases cannot have conflicting rulings or that they may continue to have conflicting judgements.

This case of TWU v. LSUC was one that changed our interpretation of the law and the Charter of Rights and Freedoms. This case defines the balance between equality and religious freedoms in a democratic society, can religious freedoms override equality rights. It reaffirmed the government’s ability to punish or remove privileges from private institutions for having unethical practices even if such practices are legal. The case also deals with contradictory court rulings and whether they can exist in society, is it legal that one province’s courts can have a separate ruling on an issue than others and should it be allowed that different provinces can have different rulings on cases. This case was a very interesting one that dealt with so many controversial issues and has been a shock to the Canadian law community by the time this case has finished in the Supreme Court of Canada it may change the way cases ruled on for decades into the future.

# References

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