“This Charter applies...”: The Supreme Court of Canada’s Fundamental Error in the Trinity Western University decisions

Ian Peach*

I. Introduction

There has been an ongoing battle between Trinity Western University and the Federation of Law Societies of Canada — the national organization of the law societies that govern the legal profession in Canada — over whether Canada’s law societies will recognize JDs from the law faculty that Trinity Western wishes to establish. At the heart of this controversy is the fact that Trinity Western University, as an avowedly Christian, and some might say conservative, university, requires all of its faculty, staff, and students to sign a Community Covenant. Among other things, this Community Covenant prohibits “sexual intimacy that violates the sacredness of marriage between a man and a woman.”¹ A student’s failure to comply with the Covenant could result in disciplinary measures, including suspension and possibly expulsion.² Several law societies, including the Law Society of British Columbia and the (as it was then known) Law Society of Upper Canada, denied accreditation to Trinity Western’s proposed law faculty because of this Community Covenant.

As one would imagine, the conflict between Canada’s law societies and Trinity Western ended up in the courts, ultimately being subject to two decisions by the Supreme Court of

* Currently a consultant, Ian Peach has worked in senior positions in federal, provincial, and territorial governments, and at universities in Western and Atlantic Canada. His expertise is in constitutional law, federalism and intergovernmental relations, Aboriginal law and policy, and the policy-making process.

1 *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 at para 1 [*Law Society of Upper Canada*].

2 *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 7 [*Law Society of British Columbia*].

Canada in the summer of 2018. Trinity Western argued that the law societies' decision to deny accreditation of their proposed law school violated section 2(a) of the *Canadian Charter of Rights and Freedoms*.³ In both cases, the majority of the Court, (with concurrences by Chief Justice McLachlin and Justice Rowe) found that the law societies' statutory obligation to uphold and protect the public interest in the administration of justice justified the limitation on religious freedom.⁴

At the heart of these decisions, though, lies a fundamental error, one which the Supreme Court has also made in the past: that of assuming that the law societies were undertaking decisions that engaged the *Charter* at all. A substantive analysis of the law societies' decisions to deny accreditation as a violation of section 2 a) of the *Charter* simply skips over whether the *Charter* is even applicable to the decisions at all. This is true whether one believes that Trinity Western's proposed law faculty should have been accredited or that the law societies acted properly in the public interest in not accrediting it.

Section 32(1) of the *Charter* states: "This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province."⁵ Thus, the *Charter* only protects citizens from the actions of *governmental actors* that violate *Charter* rights; it does not protect citizens from the actions of private actors.⁶ As La Forest J observed in *McKinney v University of Guelph*, "[t]he exclusion of private activity from the *Charter* was not a result of happenstance. It was a deliberate choice which must be respected."⁷ The courts, including the Supreme Court of Canada, need to seriously consider this "deliberate choice by the framers of the Constitution. The question of what entities are "government," and whether the *Charter* applies to entities such as law societies, should be a first consideration. Such an approach to understanding the scope of the *Charter's* application in these cases would most likely have simplified the Court's decisions, and provided valuable guidance on the interpretation of section 32 of the *Charter*.

II. The Supreme Court of Canada's *Trinity Western* Decisions

In its *Trinity Western University* judgments, the Supreme Court undertook an extensive analysis of the statutory mandates of law societies. The Court found that statutes governing law societies vest them with the authority to regulate the legal profession (or recognize their pre-existing legal authority to do so) and also vest them with the discretionary authority to consider whether Trinity Western's proposed law faculty, with its Community Covenant, would be inconsistent with the law societies' mandates to protect and promote the public interest. This analysis was appropriate insofar as, in a rule of law culture, all regulated activi-

3 *Ibid* at para 2; *Canadian Charter of Rights and Freedoms*, s 2(a), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [the *Charter*].

4 *Ibid* at paras 3, 84-88, 91-104; *Law Society of Upper Canada*, *supra* note 1 at paras 3, 37-42.

5 The *Charter*, *supra* note 3, s 32(1).

6 One can debate the wisdom of the choice of the drafters of the *Charter* in limiting the scope of the *Charter* to government, but that is a debate for another forum. The fact remains that, wise or unwise, the *Charter* only applies to government.

7 [1990] 3 SCR 229 at 262, 76 DLR (4th) 545 [*McKinney*].

ties — whether undertaken by public or private entities — must be consistent with what the law says is allowed; this is as true of a private individual who drives a vehicle without a valid driver's licence as it is of a public authority that acts inconsistently with the duty of fairness under administrative law or the rights and freedoms protected by the *Charter*. Had the law societies acted beyond the scope of the authority vested in them by the statutes creating them, their decisions would have been illegal. However, this was not the issue under consideration. The issue was whether the exercise of the discretion vested in them by their founding statutes is subject to the *Charter*.

The Court's majority thoughtfully discussed the appropriateness of imposing limits on membership in the legal profession based on personal characteristics that are unrelated to merit and ability. It came to the reasonable conclusion that:

[T]here can be no question that the LSBC [Law Society of British Columbia] was entitled to consider an inequitable admissions policy in determining whether to approve the proposed law school. Its mandate is broad. In promoting the public interest in the administration of justice and, relatedly, public confidence in the legal profession, the LSBC was entitled to consider an admissions policy that imposes inequitable and harmful barriers to entry. Approving or facilitating inequitable barriers to the profession could undermine public confidence in the LSBC's ability to self-regulate in the public interest.⁸

The majority thus determined that the law societies were entitled to conclude that equal access to the legal profession, diversity within the profession, and the prevention of harm to lesbian, gay, bisexual, transgender, and queer (LGBTQ) students were all aspects of the public interest that the law societies were obliged to uphold.⁹ The majority also decided that, as the law societies are the governing bodies of a self-regulating profession, their decisions are entitled to deference.¹⁰ In both cases, Justices Côté and Brown dissented, concluding that the only issue the law societies could legitimately consider is whether the individual graduates of the faculty are competent and professional in their conduct, and therefore fit for licensing. Justices Brown and Côté determined that other considerations leading to denial of accreditation led the law societies to exercise their discretion for an improper purpose and, therefore, their decisions were illegal.

III. The Scope of the *Canadian Charter of Rights and Freedoms*

For the Court to engage in a substantive analysis at all misses the more fundamental point that the *Charter* only governs the actions of governmental entities. There have been several Supreme Court of Canada decisions that provide us with guidance on what entities are “government” for the purposes of understanding section 32 and, therefore, the application of the *Charter*. Universities and hospitals have been found not to be “government” for the purposes of understanding the scope of section 32 of the *Charter*. In *McKinney*, La Forest J came to the conclusion that universities, in their collective bargaining, were not within the ambit of section 32, as they were neither governmental entities nor acting on government instruction. In his words:

⁸ *Law Society of British Columbia*, *supra* note 2 at paras 41-47.

⁹ *Ibid* at paras 30-31, 33-34, 39-47; *Law Society of Upper Canada*, *supra* note 1 at paras 19-27.

¹⁰ *Law Society of British Columbia*, *supra* note 2 at para 34; *Law Society of Upper Canada*, *supra* note 1 at para 18.

These actions are not taken under statutory compulsion ... Unless, then, it can be established that they form part of government, the universities' action here cannot fall within the ambit of the *Charter*. That cannot be answered by the mere fact that they are incorporated and perform an important public service. Many institutions in our society perform functions that are undeniably of an important public nature, but are undoubtedly not part of the government. ... And this may be so even though they are subjected to extensive governmental regulations and even assistance from the public purse ... The fact is that each of the universities has its own governing body. Only a minority of its members (or in the case of York, none) are appointed by the Lieutenant-Governor in Council, and their duty is not to act at the direction of the government but in the interests of the university ... The government thus has no legal power to control the universities even if it wished to do so. ... In a word, these are not government decisions.¹¹

In *Stoffman v Vancouver General Hospital*, La Forest J, for himself, Dickson CJ, and Gonthier J, observed that administrative agencies, but not the broader public sector, fall within the definition of 'government':

McIntyre J. ... was of the view [in *Dolphin Delivery*] that the references in s[ection] 32(1) to the "government of Canada" and the "government of each province" could not be interpreted as bringing within the ambit of the *Charter* the whole of that amorphous entity which in contemporary political theory might be thought of as "the state". Instead, they were to be interpreted as references to what has traditionally been thought of as the institutions of government — those bodies and offices upon which the Constitution confers power to make and enforce laws generally applicable across the body politic. ... [As to] subordinate bodies that are created, supported or supervised by government, McIntyre J. clearly countenanced the application of the *Charter* to such bodies by including the "administrative branch" within his definition of the word "government".¹²

However, La Forest J provided guidance on what should be considered the "administrative branch" of government in his judgment, deciding that:

[I]t is crucial ... to bear in mind the difference between ultimate or extraordinary, and routine or regular control. While it is indisputable that the fate of the Vancouver General is ultimately in the hands of the Government of British Columbia, I do not think it can be said that the *Hospital Act* makes the daily or routine aspects of the hospital's operation, such as the adoption of policy with respect to the renewal of the admitting privileges of medical staff, subject to government control.¹³

He then sought to clarify the distinction between "public" (as in "a public service" or "in the public interest") from "governmental", noting

On the basis of the foregoing, I would conclude that the appellant hospital does not form part of government within the meaning of s[ection] 32 of the *Charter*. ... [I]t follows from what I have said above that the provision of a public service, even if it is one as important as health care, is not the kind of function which qualifies as a governmental function under s[ection] 32.¹⁴

Likely, the Supreme Court of Canada's most careful analysis of the scope of section 32 of the *Charter* is in *Eldridge v British Columbia (Attorney General)*.¹⁵ Continuing along the path of his analysis in *Stoffman*, in *Eldridge*, La Forest J, for the Court, provided a carefully considered set of guidelines for determining whether an entity is "government" under section

11 *McKinney*, *supra* note 7 at 269, 272-73.

12 [1990] 3 SCR 483, at 506-07, 76 DLR (4th) 700 [*Stoffman*].

13 *Ibid* at 513.

14 *Ibid*, at 513, 516

15 [1997] 3 SCR 624, 151 DLR (4th) 577 [*Eldridge* cited to SCR].

32 of the *Charter*, finding, in this case, that health care providers are not. La Forest J commented that the *Charter* does not apply to corporations merely because they are incorporated under the authority of a statute; rather, “once brought into being,” he said, they are “completely autonomous from government,” even if governments may desire corporations to serve certain socio-economic policy goals.¹⁶ On the other hand, La Forest J determines that, in some circumstances, private entities can be considered within the scope of “government”, stating that:

McKinney makes it clear, however, that the *Charter* applies to private entities in so far as they act in furtherance of a specific governmental program or policy. In these circumstances, while it is a private actor that actually implements the program, it is government that retains responsibility for it. ... Two important points must be made with respect to this principle. First, the mere fact that an entity performs what may loosely be termed a “public function”, or the fact that a particular activity may be described as “public” in nature, will not be sufficient to bring it within the purview of “government” for the purposes of s[ection] 32 of the *Charter*. ... In order for the *Charter* to apply to a private entity, it must be found to be implementing a specific governmental policy or program.¹⁷

These judgments make it clear that the scope of the *Charter*’s application is limited. An entity has to be more than something with the authority to make decisions that affect individuals’ lives, or even the authority to enforce its decisions through sanctions against individuals for non-compliance with their decisions for the *Charter* to apply to its actions. Neither is it sufficient that authority is provided to the entity through statute. The fact that an entity serves the public or acts in the public interest in undertaking its activities is also insufficient to trigger the application of the *Charter*. As these judgments make clear, for the *Charter* to apply to an entity, it must be acting under government direction to advance a specific government policy or deliver a specific government program.

IV. The Status of Law Societies in Canada

The legal profession in Canada is a self-governing profession; law societies are therefore private governing bodies, not branches of government. They are not subject to routine or regular control by government. The Supreme Court, in its *Law Society of Upper Canada* decision, referred to the Law Society of Upper Canada as a “public actor”; it did not, however, refer to it as a governmental actor.¹⁸ It is certainly true that the law societies are public actors, as they fulfil the public purposes of ensuring professionalism in the legal profession, and protecting the public interest in the administration of justice. As La Forest J made clear in *McKinney*, however, the mere fact that law societies, like universities, perform “an important public service” does not make them an arm of the governments of the provinces and territories. Neither does the fact that they have been granted the broad, general authority to regulate the legal profession by provincial statutes, as their authorizing statutes do not direct them to implement *specific* governmental policies or programs; they merely empower them to regulate the legal profession in the “public interest,” a term to be defined by the law societies themselves in exercising their regulatory authority.

¹⁶ *Ibid* at para 35.

¹⁷ *Ibid* at paras 42-43 [emphasis in original].

¹⁸ *Law Society of Upper Canada*, *supra* note 1 at para 21.

The Law Society of Ontario has the statutory authority, under the *Law Society Act*, to determine who can be licensed to practice law in Ontario, and to set the conditions for licensing of lawyers.¹⁹ The same is true for statutes establishing all of the law societies across Canada. These statutes similarly give the law societies the discretionary authority to set the conditions for licensing lawyers in their province or territory, consistent with their statutory mandate to protect the public interest. Indeed, the Supreme Court noted this reality in its *Law Society of British Columbia* decision, when the majority commented that “[t]he legal profession in British Columbia, as in other Canadian jurisdictions, has been granted the privilege of self-regulation [and] ... the LPA [*Legal Profession Act*] ... manifests the legislature’s intention to ‘leave the governance of the legal profession to lawyers.’”²⁰

The majority judgment then engaged in an extensive discussion of what this principle means in practice. The majority noted that “[a]s the governing body of a self-regulating profession, the LSBC’s determination of the manner in which its broad public interest mandate will best be furthered is entitled to deference.”²¹ It also observed that “in *Green v. Law Society of Manitoba* ... Wagner J. ... repeatedly noted the deference owed to law societies’ interpretation of ‘public interest’: that they have ‘broad discretion to regulate the legal profession on the basis of a number of policy considerations related to the public interest.’”²² The majority then went on to confirm the importance of law societies being self-regulating and independent - factors which inform the need for deference to law society decisions:

... *Green* affirmed a long history of deference to law societies when they self-regulate in the public interest. For many years, this Court has recognized that law societies self-regulate in the public interest ... To that end, where a legislature has delegated aspects of professional regulation to the professional body itself, that body has primary responsibility for the development of structures, processes, and policies for regulation. This delegation recognizes the body’s particular expertise and sensitivity to the conditions of practice. This delegation also maintains the independence of the bar; a hallmark of a free and democratic society [...]²³

The majority summarized its thinking on this issue by stating, “where legislatures delegate regulation of the legal profession to a law society, the law society’s interpretation of the public interest is owed deference. This deference properly reflects legislative intent, acknowledges the law society’s institutional expertise, follows from the breadth of the ‘public interest’, and promotes the independence of the bar.”²⁴

The Manitoba Law Reform Commission described how self-government of professions such as law operates in its 1994 report *Regulating Professions and Occupations*. The report observes that:

Self-governing occupational groups (practitioner administration) are an exception to the general rule of administration of regulation by government. The classic model of self-government represents a delegation by the Legislature of administrative authority to an organization whose officers and directors are elected by practitioners rather than being appointed by government. This organization

19 *Law Society of Upper Canada*, *supra* note 1 at paras 5, 13.

20 *Law Society of British Columbia*, *supra* note 2 at paras 32-33.

21 *Ibid* at para 34.

22 *Ibid* at para 35.

23 *Ibid* at paras 36-37.

24 *Ibid* at para. 38.

is given the power to apply the entry and practice standards of a regime and to prosecute non-practitioners who infringe on the regime's scope of practice or who use the title reserved for practitioners.²⁵

As John Law put it, “[s]elf-regulation has long been considered to be one of the defining attributes or characteristics of a profession, and as law is considered to be the paradigmatic profession, it must, of course, be self-regulating.”²⁶ This self-regulation of professions such as law also has a long history. As the Manitoba report describes it:

Early in the twentieth century, professions began establishing written codes of ethics to entrench this commitment to the public interest. All members of a profession were bound by its code of ethics and could be punished for breaching it. ... This, then, is the model of professionalism which emerged around the turn of the [20th] century and which remains the image of professionalism for many (and perhaps most) people today: high levels of education (almost invariably obtained at a university), a commitment to the public welfare enshrined in a code of ethics and a higher level of dedication to the interests of individual clients or patients than to one's own interests. ... Historically, groups that fit the profile of a profession have been able to argue convincingly that only individuals who have completed the requisite years of university or equivalent education and are engaged in practice are capable of setting and enforcing appropriate standards for practitioners. ... Therefore, they have taken the position that, while government is able to administer regulatory regimes for other occupations, its only option when it comes to professions is to delegate to professionals the power to administer their own affairs. ... Accordingly, professional bodies have typically been granted the authority by legislatures in Canada to set and enforce standards for initial membership in the professional body and for standards of professional conduct after entry.²⁷

In fact, the self-regulation of the legal profession in Canada extends from well before the 20th century. The Legislature of the colony of Upper Canada conferred self-regulating status on the colony's lawyers, ending the supervision of the profession by the Chief Justice of the colony, on July 3, 1797 — long before self-regulation emerged in the legal profession elsewhere in the British Empire.²⁸ As Pearson describes it, “[e]ventually the legal profession across Canada recognized the benefits of self-governance and obtained the status for themselves.”²⁹

V. The Importance of Law Societies' Self-governance to Liberal Democracy

There is a particularly important rationale for the legal profession to be governed by law societies that are independent of government, as a means to protect the fundamental constitutional principle of constitutionalism and the rule of law. As Pearson puts it:

The profession insists it is of the utmost public interest that regulation of the profession be free from state interference because the independence of lawyers protects individuals 'from the state.' If members of the public are left with the perception that lawyers are subject to the control of the state, they will have

25 Manitoba Law Reform Commission, *Regulating Professions and Occupations* (Winnipeg: Law Reform Commission, 1994) at 46.

26 John M Law, “Regulation and the Legal Profession” (2008) 45:5 Alta L Rev 255 at 255.

27 Manitoba Law Reform Commission, *supra* note 26 at 3-4.

28 John Pearson, “Canada's Legal Profession: Self-Regulating in the Public Interest” (2013) 92:3 Can Bar Rev 555 at 557-58.

29 *Ibid* at 560.

no confidence in the ability of lawyers to resolutely pursue legal proceedings against the state. Lawyers should not only act independently, but manifestly and undoubtedly be seen to do so.³⁰

The Federation of Law Societies of Canada notes that the legal profession being independent of government is a central feature of Canada's legal system and the Law Society of British Columbia clearly states that:

The Law Society is independent of the government. It is not a government authority and is not part of the public sector. It is not subject to instructions from government, nor does it receive any public funding. ... A lawyer's role is to provide advice on behalf of a client, sometimes in disputes involving the government or government institutions. It would pose a conflict of interest if the organization that regulated lawyers was directly or indirectly controlled by the government.³¹

As a consequence of the importance of self-regulation to the protection of the principles of constitutionalism and the rule of law, once the statutes establishing the law societies as the profession's regulatory bodies are passed and receive Royal Assent, governments have no role in the regulation of the legal profession; it is entirely a private matter, purposely insulated from government "interference." The bodies that regulate the legal profession, thus, surely must be understood to not be part of "government" for section 32 purposes.

Mysicka, in a C D Howe Institute commentary, observed that, a "key advantage of self-regulation is that it creates an arm's length relationship with the state, providing the SRO [(self-regulated organizations)] with a layer of insulation from more transitory political imperatives that can negatively influence regulatory decision-making."³² The Supreme Court of Canada also found, in its 1982 decision in *Canada (Attorney General) v Law Society of British Columbia*, that:

The independence of the Bar from the state ... is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must ... be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. ... The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community.³³

Clearly, in 1982 at least, the Supreme Court of Canada saw law societies, the governing bodies of the legal profession, as private, non-governmental organizations.

VI. The Supreme Court's Confusion on the Status of Law Societies

If we understand law societies to be private entities, independent of the state, logic dictates that their accreditation decisions cannot be subject to *Charter* challenge. As the Supreme Court stated in the *Law Society of Upper Canada*, the decision whether to accredit a law faculty as a route of entry into the legal profession is "a decision falling within the core of the LSUC's

30 *Ibid* at 562.

31 "Lawyer Independence and Self Regulation" (last visited 20 February 2021), online: *Law Society of British Columbia* <<https://www.lawsociety.bc.ca/our-initiatives/rule-of-law/lawyer-independence-and-self-regulation-of-law/>>. See also, Pearson, *supra* note 28 at 563.

32 Robert Mysicka, *Who Watches the Watchmen: The Role of the Self-Regulator* (Toronto: CD Howe Institute, 2014) at 10.

33 [1982] 2 SCR 30 at 335-36, 137 DLR (3d) 1.

(Law Society of Upper Canada's) role as the gatekeeper to the profession."³⁴ It is interesting that in discussing the concept of *Charter* values in his concurring judgment in the *Law Society of British Columbia* case, Justice Rowe noted that, because section 32 of the *Charter* limits its scope to the actions of Parliament and the Government of Canada and the legislatures and governments of the provinces (and territories), the *Charter* does not apply to the actions of private parties.³⁵ At the same time, though, Justice Rowe commented that "[w]here *Charter* rights have been infringed by administrative actors, reviewing courts must determine whether *the state* meets the burden of justifying the infringement according to s[ection] 1," apparently failing to recognize that, because of section 32, the *Charter* did not actually apply to law societies, as they are private parties, not administrative arms of the state.³⁶

Justice Rowe's assumption that the *Charter* applies to law societies reflects previous Supreme Court of Canada decisions, such as *Black v Law Society of Alberta*,³⁷ in which the Supreme Court assumed that in imposing a limitation on the right of lawyers to establish an inter-provincial law firm through the law society's rules, rather than through statute, a law society was subject to the *Charter*. As well, in *Doré v Barreau du Québec*,³⁸ the Court assumed that a freedom of expression challenge to a decision of a law society's disciplinary process had to be addressed substantively because, in enforcing professional responsibility within the legal profession, law societies were exercising statutory discretion.

Justices Côté and Brown, in their dissenting judgment in the *Law Society of Upper Canada* case, also demonstrate confusion over the status of law societies. In their judgment, they describe Trinity Western University as "a private denominational institution, which is not subject to the *Canadian Charter of Rights and Freedoms*" but describe the Law Society of Upper Canada as a "public decision-maker" and a "public regulator."³⁹ Later in their judgment, they state that: "TWU [(Trinity Western University)] is a private institution [and] at the risk of stating trite law, private actors are not subject to the *Charter* ... Therefore, neither the Covenant nor any other aspect of TWU's admissions policies may be found to be 'contrary to s[ection] 15 of the *Charter*', or to any other section of the *Charter*."⁴⁰ They refer to this as a basic premise of our constitutional order, yet they seem oblivious to the fact that law societies, too, are private, not governmental, institutions.⁴¹ Indeed, Justices Côté and Brown actually comment that "the point is this simple. The *Charter* binds state actors, like the LSUC, and *only* state actors."⁴² Again, the fact that law societies exercise a public purpose does not make them part of government, as they do not deliver a *specific* government policy or program; Côté and Brown JJ's characterization of law societies as state actors because they fulfil a public purpose through their regulatory mandate seems clearly an error.

34 *Law Society of Upper Canada*, *supra* note 1 at para 13.

35 *Law Society of British Columbia*, *supra* note 2 at para 167.

36 *Ibid* at paras 168, 175 [emphasis added].

37 [1989] 1 SCR 591, 58 DLR (4th) 317.

38 2012 SCC 12.

39 *Law Society of Upper Canada*, *supra* note 1 at para 56.

40 *Ibid* at para 78.

41 *Ibid*.

42 *Ibid* at para 79 [emphasis in original].

VII. Conclusion

It is quite clear, from the jurisprudence and academic commentary on the history of law societies as self-regulating professional bodies, that law societies are and must be independent regulatory entities. While they are established through legislation, and that legislation mandates them to exercise a public purpose, they are, nonetheless, non-governmental entities because they are not mandated to advance a *specific* governmental policy or program. Equally, we know from the wording of, and jurisprudence on the interpretation of, section 32, that the *Canadian Charter of Rights and Freedoms* only governs the actions of governmental entities.

Thus, it seems to have been entirely unnecessary for the Court to undertake an analysis of the meaning of section 2(a) of the *Charter* in making its decision that the law societies acted legally in refusing to accredit Trinity Western University's proposed law faculty. The Court had a much simpler way to dismiss Trinity Western's challenge to these decisions by using section 32 of the *Charter* - it could and should have decided that a *Charter* challenge was inappropriate. In doing so, it could have ensured that the scope of what is "government" — and therefore what entities section 32 applies to — is clear, consistent, and comprehensible to the legal profession and the courts. To ignore the limited scope of section 32 and assume that, in making administrative decisions about the regulation of the legal profession, law societies are subject to the *Charter* is, unfortunately, to make a fundamental analytical error.