



No. S142908
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TREVOR JAMES LOKE

PETITIONER (RESPONDENT)

AND:

**MINISTER OF ADVANCED EDUCATION OF BRITISH COLUMBIA and
TRINITY WESTERN UNIVERSITY**

RESPONDENTS (RESPONDENTS)

NOTICE OF APPLICATION

Name of applicant: The Law Society of British Columbia

To: The Respondents

TAKE NOTICE that an application will be made by the applicant to the presiding judge in Chambers at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on February 24, 2015 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order adding the applicant as a party respondent; or
2. An order granting the applicant intervener status.

Part 2: FACTUAL BASIS

A. The Parties and Proposed Party/Intervener

1. The applicant is the Law Society of British Columbia (the "**Law Society**"). The Law Society is a self-governing body created and authorized by the *Legal Professions Act*, SBC 1998, c.9 to regulate the legal profession in B.C.
2. The Law Society is responsible for protecting the public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers, developing requirements and qualifications for admission to the Bar, and maintaining the honour, integrity and independence of the profession.

3. The Petitioner (Respondent) Trevor James Loke (“**Mr. Loke**”) is a 25 year old Vancouver resident. He is gay and Christian. Mr. Loke wants to attend law school in British Columbia and become a member of the legal profession in this province.
4. The Respondent (Respondent) Trinity Western University (“**TWU**”) is a university located in Langley, British Columbia. It is associated with the Evangelical Free Church of Canada, and was established by an Act of the legislature of British Columbia (*Trinity Western University Act*, SBC 1969, c.44, as amended).
5. On or around June 2012, the Minister received an application from TWU under s. 4(1) of the *Degree Authorization Act*, SBC 2002, c. 24 (“**DAA**”) for consent to grant law degrees at TWU (the “**Law School**”).
6. The Minister granted approval of TWU’s application, permitting TWU to provide, advertise, and grant a Juris Doctor degree with Special and Standard Terms and Conditions. In granting his approval, the Minister stated that any issues beyond the academic quality of the degree program do not fall within his mandate to approve the granting of a degree under the *DAA*.
7. Mr. Loke brought this petition on April 14, 2014 (the “**Loke Petition**”), arguing that TWU’s Community Covenant (the “**Covenant**”), which all members of TWU are required to affirm and uphold, has the effect of excluding students on the basis of sexual orientation, thereby curtailing Mr. Loke’s ability to attend law school in B.C. Mr. Loke also alleged that the effect of the Covenant was to require adherence to a certain religious worldview, constituting religious coercion.
8. Mr. Loke’s petition sought a declaration that the Minister’s decision to permit TWU to grant a law degree under the *DAA* was unconstitutional, as it violated sections 2(a) and 15 of the *Charter*.
9. Based on a referendum of its members, the Law Society adopted a resolution on October 31, 2014 declaring that the proposed law school at TWU is not an approved faculty of law for the purpose of the Law Society’s admission program (the “**Resolution**”).
10. On December 11, 2014, the then-Minister of Advanced Education Amrik Virk announced that he was revoking his approval of the proposed law school at TWU under the *DAA*. The Minister stated in a letter to TWU that TWU may re-apply for approval in the future:

“I am not making any final determination as to whether consent for the proposed Law program at TWU should be forever refused because of the lack of regulatory body approval. Instead, I am making an interim determination that steps must be taken to protect the interests of prospective students until TWU’s legal challenge to the decision of the

Law Society of B.C. (as well as challenges to Law Societies in other provinces) have been resolved...

...It is open to TWU to resubmit its application for consent once there is certainty and finality as to the status of regulatory body approval.

I note that counsel for Trevor Loke has invited me to...review and consider all of the material filed by Mr. Loke in his application for judicial review of my original consent for the TWU law program under the DAA...I have reviewed this material, but do not consider it relevant to my reconsideration of the consent."

11. The effect of the Minister's decision to revoke approval is that TWU is not currently permitted to offer law degrees to students. Until TWU is so permitted, there can be no graduates of TWU seeking admission to the Law Society.
12. TWU filed its petition against the Law Society on December 18, 2014 ("**TWU Petition**"), claiming that the Resolution adopted by the Law Society was *ultra vires*, unreasonable, and unconstitutional.

Part 3: LEGAL BASIS

A. Rule 6-2(7) – Party Status

8. The Applicant should be granted party status under Rule 6-2(7).
9. Rule 6-2(7) provides for the adding of parties to a proceeding. It states:

6-2 (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),

- (a) order that a person cease to be a party if that person is not, or has ceased to be, a proper or necessary party,
- (b) order that a person be added or substituted as a party if
 - (i) that person ought to have been joined as a party, or
 - (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
- (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
 - (i) any relief claimed in the proceeding, or
 - (ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

10. The Court's discretion to add a party under Rule 6-2(7) "should be exercised generously to allow the effective determination of the issues, without delay, inconvenience or separate trials". As such, unless allegations are frivolous, the parties should be added.

Ipsos S.A et al v. Angus Reid et al, 2005 BCSC 1114, at para 107;
Delta Sunshine Taxi (1972) Ltd. v. Vancouver (City), 2014 BCSC 2100,
 at para 12 ("**Delta Sunshine**").

11. Rule 6-2(7) is applicable in two situations. First, where the party seeking to be added has a direct interest in the outcome of the proceeding and their participation is necessary to the effective resolution of the dispute ("**Rule (b)**"). Second, where the applicant and a party to the litigation have between them a question or issue related to the relief claimed or the subject matter of the proceeding, and it would be in the interests of justice to add the applicant as a party ("**Rule (c)**").

Kitimat (District) v. Alcan Inc., 2006 BCCA 562, at paras 30-35 ("**Kitimat**").

12. Being affected by the outcome of a judicial review petition is a "direct interest" under Rule (b).

B.C. Fisheries Survival Coalition v. Canada, [1999] BCJ No. 660, at para. 10;
B.C. Teachers Federation v. British Columbia (Attorney General), 2008 BCSC
 1599.

13. A party will be necessary to a proceeding under Rule (b) in circumstances where it would be difficult to adjudicate the matter completely without their participation. This may occur, for instance, where the matter "could not be completely understood without the perspective" of the applicants, or where participation as a party is "necessary so that full submissions may be made" regarding a material issue in the case.

Delta Sunshine, *supra* at para 18;
Whetung v. Workers' Compensation Board of British Columbia, 2012 BCCA 119,
 at para 31.

14. The word "ought" in Rule (b) has been interpreted "to include situations in which joining the person may be more than mere convenience but less than a necessity".

Kitimat, *supra* at para 29.

15. The circumstances under which an applicant will be added as a party under Rule (c) are not defined by bright line rules. The determination is based on considerations of convenience and expediency, with the ultimate question being whether it would be in the interests of justice to add the applicant as a party.

Kitimat, *supra* at paras 24, 35.

16. Parties have been added to proceedings when it was held that there were issues between the existing parties and the applicant relating to the subject matter of or

the relief sought in the proceedings, and it was just and convenient to add the applicants as parties.

Schoof v. Medical Services Commission, 2009 BCSC 1596, at para 183.

17. In determining whether a party has an interest in the “subject matter of the proceeding”, the threshold is low: “It has been expressed as establishing simply that there is a real issue between them that is not frivolous”. Where this threshold has been met, the “court must next determine whether it would be just and convenient to decide the issue between the parties in this proceeding”.

The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc., 2010 BCCA 329, at para 46.

18. In determining what is in the “interests of justice”, the courts have considered factors including “the prevention of the embarrassment of the court” where there is a risk of two courts making opposing findings. For instance, in *Kitimat*, the Court found that were a party not added, it would be required to commence another action seeking a contrary order.

Ktunaxa Nation Council v. (British Columbia) Forests, Lands and Natural Resource Operations, 2013 BCSC 1921, at para. 20.

19. The Loke Petition seeks a declaration that the Minister’s decision to approve TWU would violate the *Charter*.

20. The Law Society has a statutory duty to protect the public interest in the administration of justice, to uphold the rights and freedoms of all persons, and to ensure the independence, integrity, honour and competence of lawyers.

Legal Profession Act, *supra*, s. 3.

21. In furtherance of this statutory duty, the Law Society passed the Resolution not to approve TWU’s proposed law school for the purpose of admission to the bar.

22. As reflected in the Resolution, the Law Society does not believe that it is in the public interest in the administration of justice for TWU to be allowed to graduate prospective lawyers as long as it maintains its discriminatory admissions policy.

23. The Government’s decision regarding whether to give its consent to TWU’s proposed law school to grant law degrees has a direct effect on the Law Society’s exercise of its statutory powers and ability to fulfil its statutory mandate.

24. If no consent is granted by the Government, then the Law Society does not need to deal with this matter, as the public interest in the administration of justice has already been protected.

25. However, if consent is granted, the Law Society still has to exercise its statutory duty to act to protect the public interest in the administration of justice.

26. The two decisions are therefore interconnected. Indeed, one of the factors the Minister takes into account in the exercise of his statutory power to give consent to a school to issue law degrees is whether the Law Society will admit the graduates of the law school to the Bar.
27. The interconnection of the two decisions confirms that the Law Society has a direct interest in the outcome of the Loke Petition.
28. Adding the Law Society as a party will assist the Court in ensuring that all of the dimensions of the issue of whether TWU should be able to grant law degrees are fully and appropriately considered.
29. Put simply, it is in the interests of justice, just and convenient that the Law Society be added as a party in the Loke Petition pursuant to Rule 6-2(7), and an order should go adding them as Petitioners.

B. Intervener Status

30. In the alternative, the Applicant seeks an order pursuant to the Court's inherent jurisdiction granting them intervener status in the Loke Petition proceeding.
31. In deciding whether to grant intervener status in a proceeding, the courts will consider whether the applicant has a direct interest in the litigation, and whether the applicant can make a valuable contribution or bring a different perspective to a consideration of the issues that is different from those of the parties.

EGALE Canada Inc. v. Canada (Attorney General), 2002 BCCA 346, at para 7.

32. If the potential intervener does not have a direct interest in the litigation, the Court must consider the public law issue before the Court, whether the case has a dimension that legitimately engages the interests of the proposed intervener, whether the applicant can provide a perspective that may be of assistance to the Court, and whether that viewpoint will assist the Court in the resolution of the case or, conversely, likely take the litigation away from those directly affected by it.

R. v. Watson, 2006 BCCA 234, at para 3.

33. At the stage of an application to intervene, it is not necessary for the applicant to set out what its legal arguments will be. There is no specific requirement that the proposed intervener show that it will advance a unique and different legal analysis, particularly when the evidentiary base has not yet been fully established and the parties' precise arguments remain undeveloped.

Schoof, supra at para 201.

34. In British Columbia, applicants have been permitted to intervene at the trial level in instances where they can assist the Court by contributing to the evidentiary record.

Schoof, supra at para 202.

35. Ultimately, the question is whether the applicant will contribute something significant that would otherwise be absent from the proceeding, such that they will be of assistance to the Court as interveners.

Schoof, supra at para 203;
Suncor Energy Inc. and Unifor, Local 707 A, 2014 ABQB 555.

36. For the reasons stated above, it is submitted that the Law Society has a direct interest in the Loke Petition. It will directly relate to and affects the fulfilment of the Law Society's statutory mandate, and may determine the outcome of the TWU Petition.
37. Moreover, the case has a clear public law aspect involving the constitutionality of authorizing an academic institution which discriminates against certain groups. The result in this proceeding may have broad implications for equality rights, the scope of legal practice, and the constitutional obligations of both the Ministry of Advanced Education and the Law Society.
38. The Law Society has extensive knowledge and experience with the issues underlying these proceedings. The Law Society can assist the Court by providing evidence of the broader context, the legislative history of the legal profession in British Columbia and the importance of the Law Society's role in protecting the public interest in the administration of justice.

C. Conclusion

39. As discussed in the related application and petition response, the Law Society submits that the legal issues raised in the Loke Petition will not be resolved by an adjudication of the TWU Petition.
40. The issues in the Loke Petition still have to be determined.
41. For the reasons discussed above, the Law Society submits that it is appropriate and necessary for it be allowed to participate in the Loke proceeding, as a party or, in the alternative, as an intervenor.

Part 4: MATERIAL TO BE RELIED ON

1. The Amended Loke Petition filed on June 3, 2014;
2. The TWU Petition filed on December 18, 2014;
3. The Law Society's Response to the TWU Petition filed on January 16, 2015;
4. The Law Society's Application to Have the Petitions Heard Together filed on January 16, 2015;
5. Affidavit #1 of Tim McGee, Q.C. made on January 16, 2015;
6. Any other materials filed in this Petition; and
7. Such further and other material as counsel may advise and this Court may allow.

Two days have been scheduled for February 24 and 25, 2015 to deal with this application and related applications.

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This matter is within the jurisdiction of the master.

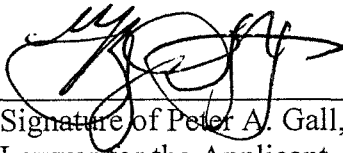
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This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to receive notice of the time and date of the hearing or respond to the application, you must, within 5 business days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Rules, within 8 business days after the date of service of this notice of application,

- (a) File an application response in Form 33,
- (b) File the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 16, 2015


For: Signature of Peter A. Gall, Q.C.
Lawyer for the Applicant

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

.....

Date:

.....

Signature of ☐ Judge ☐ Master

APPENDIX**THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☒ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts