

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

JUN 03 2014



Amended pursuant to the Case Plan Order of Honourable Madam Justice Fitzpatrick
pronounced on June 2, 2014, and pursuant to Rule 16-1(19)(b)(i)

Originally filed April 14, 2014

No. S-142908

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

TREVOR LOKE

PETITIONER

AND

MINISTER OF ADVANCED EDUCATION OF BRITISH COLUMBIA and

TRINITY WESTERN UNIVERSITY

RESPONDENTS

AMENDED PETITION

THIS IS THE PETITION OF:

TREVOR LOKE

c/o Janes Freedman Kyle Law Corporation
Suite 340 – 1122 Mainland Street
Vancouver, BC V6B 5L1

ON NOTICE TO:

Minister of Advanced Education of British Columbia

The Honourable Amrik Virk
Minister of Advanced Education
PO Box 9080 Stn Prov Govt
Victoria BC V8W 9E2

Trinity Western University

7600 Glover Rd
Langley, BC V2Y 1Y1

Attorney General of British Columbia

Deputy Attorney General
Ministry of Justice
PO Box 9280 Stn Prov Govt
Victoria BC V8W 9J7

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- b) serve on the petitioner
 - i. 2 copies of the filed response to petition, and
 - ii. 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the petition anywhere else, within 49 days after that service, or
- d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts 800 Smithe Street Vancouver, B.C. V6Z 2E1 Tel: 604 660-2847 Fax: 604 660-2420
(2)	The petitioner's ADDRESS FOR SERVICE is: Janes Freedman Kyle Law Corporation Suite 340 – 1122 Mainland Street Vancouver, BC V6B 5L1 <u>Optional:</u> Fax number for delivery: 604.687.2696 Email address: kbrooks@jfkllaw.ca and esigurdson@jfkllaw.ca Telephone: 604.687.0549 ext. 102 or ext. 108
(3)	The name and office address of the petitioner's lawyer is: Karey Brooks and Elin Sigurdson Janes Freedman Kyle Law Corporation Suite 340 – 1122 Mainland Street Vancouver, BC V6B 5L1 Clayton Ruby, Gerald Chan, and Angela Chaisson Ruby Shiller Chan Hasan 11 Prince Arthur Ave. Toronto, ON M5R 1B2

Claim of the Petitioner

Overview

1. The Petitioner Trevor James Loke is gay and Christian. He wants to attend law school in British Columbia and become a member of the legal profession.
2. The Minister of Advanced Education (the “Minister”) made a decision on December 17, 2014, to grant consent to Trinity Western University (“TWU”) to provide, advertise and grant a Juris Doctor degree (the “Decision”).
3. TWU’s law school proposal disclosed a discriminatory admission policy that has the effect of excluding students on the basis of sexual orientation. Under the policy, all students must sign the TWU Community Covenant (the “Covenant”), which requires all students to abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman”. A breach of the Covenant can result in expulsion.
4. In making the Decision, the Minister approved a mandatory admission policy that has the effect of excluding gay, lesbian, bisexual and transgendered people from the school.
5. The Minister’s discretionary decision effectively denies Mr. Loke access to one of four possible law schools in British Columbia, and curtailed his entry to the legal profession.
6. A law degree provides the opportunity for significant social and economic benefits, as well as status and recognition. A law degree is the first point of entry to the legal profession. The legal profession holds a unique place in Canadian society. Only lawyers can become judges, who should, in their central role in our legal system, be representative of Canadians. Everyone should have equal access to the legal profession.
7. The admission policy is also a coercive policy that seeks to mandate compliance with a particular religious worldview. The state should not consent to discrimination and religious coercion, particularly in the context of access to legal education, and in turn the legal profession and the judiciary.
8. The actions of the Minister in making the Decision violate the *Charter* rights of Mr. Loke and cannot be justified as a proportionate or reasonable limit.
9. In making the Decision, the Minister also failed to properly consider and balance the application of the *Charter* and the discriminatory and coercive effects of the Decision

alongside the objectives of the statute empowering the Decision, and failed to consider factors relevant to his mandate under the legislation.

PART I—ORDERS SOUGHT

1. The Petitioner seeks the following orders:
 - a. A declaration pursuant to s. 24(1) of the ***Canadian Charter of Rights and Freedoms***, enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.) (the “Charter”) and the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 that the decision of the Minister of Advanced Education (the “Minister”) made December 17, 2014, granting consent to Trinity Western University (“TWU”) to provide, advertise and grant a Juris Doctor degree under the *Degree Authorization Act*, S.B.C. 2002, c. 24 (the “Decision”) is unconstitutional;
 - b. An order quashing the Decision pursuant to s. 24(1) of the *Charter* and the *Judicial Review Procedure Act*;
 - c. In the alternative, an order that the Decision be set aside and remitted to the Minister to be reconsidered having regard to whether or not granting consent to TWU’s proposal would be contrary to protections in the *Canadian Charter of Rights and Freedoms* and *Charter* values;
 - d. In the further alternative, an order that the Decision be set aside and remitted to the Minister to be reconsidered having regard to whether or not granting consent to TWU’s proposal would be contrary to the values and objectives of the *Degree Authorization Act*;
 - e. Such directions as may be necessary for the purpose of carrying out any reconsideration;
 - f. Costs of this application;
 - g. Such further and other orders as counsel may advise and this Honourable Court permit.

PART II – FACTUAL BASIS

The Parties

10. The Petitioner, Trevor Loke, is 25. He resides in Vancouver. He is openly gay and openly Christian.
11. Mr. Loke wants to go to law school in British Columbia. He wants to obtain a law degree to pursue work advocating for social justice and human rights. He was elected Commissioner of Vancouver Board of Parks and Recreation in 2011. He is also the Principal of Loke Strategies, which is a consulting business that works with government agencies, non-profit organizations and businesses.
12. Mr. Loke is a baptized and confirmed Anglican and a member of Christ Church Cathedral. He attends church on special occasions such as Christmas and Easter. He believes that his sexual orientation is compatible with his religious beliefs.
13. The Respondent, the Minister of Advanced Education, is responsible for British Columbia's post-secondary education system. The Minister is granted discretion under s.4 of the *Degree Authorization Act* to consent to degrees and programs offered by institutions such as TWU.

TWU's Application for a Law School

14. The Respondent TWU is a university located in Langley, British Columbia. It is associated with the Evangelical Free Church of Canada.
15. TWU was established by an Act of the legislature of British Columbia (*Trinity Western University Act*, S.B.C. 1969, c.44, as amended) and its activities are circumscribed by this statute.
16. While TWU is a "private" university, it is an institution with public features: it obtains public funding directly for infrastructure and research, and indirectly by way of its charitable tax status. It provides advanced education in British Columbia and charges fees and tuition to its students.

17. On or around June 2012, the Minister received an application from TWU under s. 4(1) of the *Degree Authorization Act* (the “Proposal”) for consent to provide, advertise, and grant a Juris Doctor degree at TWU (the “Law School”).
18. TWU proposed to offer approximately 60 student places during the first year of the Law School. The Law School would be one of 23 law schools in Canada; one of 19 law schools offering a common law degree; and one of only 4 law schools in British Columbia. TWU anticipated a program start date of September, 2015.
19. To establish an accredited law school in Canada, TWU must obtain consent of the Minister to confer a law degree under s.4 of the *Degree Authorization Act*. The primary purpose of the *Degree Authorization Act* is to provide access to education for students in British Columbia.
20. The Law School must also be accredited by at least one law society so that its graduates can practice law. Each Province and Territory has its own law society; but because of a mobility agreement between all of the law societies in Canada, a lawyer licensed by one law society is effectively entitled to practice law in every Canadian jurisdiction.
21. On December 16, 2013, the umbrella organization of Canada’s 14 provincial and territorial law societies, the Federation of Law Societies of Canada, provided preliminary approval of the Law School. Some law societies have indicated they will follow the Federation of Law Societies of Canada and accredit TWU’s law school.

The Minister’s Consent

22. On December 17, 2013, the Minister granted a five-year term of consent to TWU to provide, advertise, and grant a Juris Doctor degree with Special and Standard Terms and Conditions. In doing so, the Minister referred to having considered the findings of the Degree Quality Assessment Board (“DQAB”) and the preliminary approval of the Federation of Law Societies of Canada.
23. Upon issuing the consent, the Minister stated that any issues outside of the academic quality of the degree program do not fall within his mandate.
24. On April 11, 2014, the Law Society of British Columbia approved the Law School for the purposes of the Law Society’s admission program.

The Law School's Admission Policy has the Effect of Excluding Sexual Minorities

25. The Proposal states that admission to the Law School requires students to annually “read, understand and pledge to the terms of the Community Covenant Agreement prior to registering for classes.” The effect of the Law School’s admission policy is that the Law School is closed to individuals who express their sexuality outside of marriage between a man and a woman.
26. Among other things, the Covenant commits signatories to abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman.” This means that opposite sex couples who are married may engage in sexual intimacy; whereas sexual minority students may not engage in same-sex intimacy, regardless of whether they are married.
27. Under the Covenant, students are required to adhere to certain conduct and to hold each other accountable for their conduct. Breaching the Covenant has serious consequences, including expulsion.
28. The Covenant’s prohibition on same-sex intimacy was established before the prohibition on same-sex marriage was recognized by Canadian law as discriminatory and before Parliament legalized marriage between persons of the same sex. The Law School has not changed its admission requirements despite these changes in Canadian law.
29. The Law School’s admission policy imposes a heavy personal burden on gay, lesbian, bisexual and transgendered (“sexual minority”) students, including:
 - a. The very act of signing the Covenant violates the dignity interests of a sexual minority student;
 - b. To gain access to the Law School, sexual minority students must abstain from engaging in sexual intimacy, a core aspect of their identity, or must hide their behaviour and violate the Covenant; and
 - c. The admission policy excludes sexual minority students by creating a hostile and unwelcoming environment. This occurs as a result of the policy’s requirement that all students must disavow same-sex sexual intimacy as being inconsistent with their central values.

30. Students who do not accept that same-sex intimacy is sinful (including other Christians like the Petitioner) and who would not be prepared to sign the Covenant given their objections to those views, are also excluded by the admission policy.

A Law Degree is a Valuable Public Resource

31. Admission to law school, its successful completion, and the receipt of a law degree are prerequisites to admission to the practice of law and, consequently, to the right to be eligible for an appointment to the bench.
32. A law degree also provides the opportunity for significant social and economic benefits as well as status and recognition. Persons holding law degrees are better able to attain positions in public office and other positions of influence. Persons holding law degrees stand to have higher incomes and greater employment and economic security than those who do not.

Seats in Law School are Scarce

33. Access to law school in Canada is limited, as available positions or seats in law schools are far outnumbered by applicants. Many qualified students aspiring to become lawyers are denied admission, delaying or frustrating their ambition to become lawyers.

Non-Discrimination is a Core Principle of the Legal System, Including Legal Education

34. The value of non-discrimination is a component of the rule of law. Non-discrimination is central to our legal system, including at law schools, which are the point of entry to the legal profession.

The Legal Profession is not Diverse or Representative

35. Systemic inequality has compromised access to education and employment equity within law schools, the bar, and on the bench for historically disadvantaged groups in Canada, including women, racial or religious minorities, aboriginal people, and sexual minorities. Members of the legal system have recognized a special concern for ending all forms of discrimination in the law, the legal profession, and legal education.
36. Although significant improvements through law reform and social change to end discriminatory practices within the legal system have been achieved since the enactment

of the **Charter**, members of historically disadvantaged groups remain significantly underrepresented in the legal system. Significant efforts have been made by governments, bar associations, and law societies to ameliorate this disadvantage. Yet sexual minorities and other groups still face unequal pay, unequal professional credibility, recognition and opportunities, and unequal representation at the bar, in political institutions and among the judiciary.

PART III – LEGAL BASIS

37. The discretion vested in the Minister is not absolute. All statutory decision-makers must act consistently with the Constitution and with the values underlying the grant of discretion, including **Charter** values.
38. The Minister's exercise of discretion results in an application of the **Degree Authorization Act** that impairs the s. 15 and/or s. 2(a) rights of individual in a manner not in accordance with the **Charter**. As such, that discretion has been exercised unconstitutionally.
39. In the alternative, the Minister's exercise of discretion violates the **Charter** given he has disproportionately, and therefore unreasonably, limited a **Charter** right in making the Decision. He did so by failing to appropriately balance the rights and objectives he was required to consider.
40. The Petitioner asks that the Decision be set aside because:
 - a. The Decision is in violation of s. 15(1) of the **Charter** and cannot be justified under s. 1;
 - b. The Decision is in violation of s. 2(a) of the **Charter** and cannot be justified under s. 1;
 - c. The Minister failed to consider whether the Decision was consistent with **Charter** values of non-discrimination under s. 15(1) and freedom of religion under s. 2(a), and his decision therefore unreasonably and unjustifiably violates those **Charter** rights;

- d. If the Minister did consider *Charter* values, he failed to properly consider those values alongside the statutory objectives of the *Degree Authorization Act*, unreasonably and unjustifiably violating *Charter* rights; and
- e. The Minister failed to consider relevant factors in making the Decision, and therefore acted in a manner inconsistent with his statutory obligations.
- f. The Minister fettered his discretion by considering himself bound by the analysis provided by the DQAB and the Federation of Law Societies.

The Statutory Regime Permitting New Degree Programs in British Columbia

- 41. All new degree programs in British Columbia, including law schools, must obtain the written consent of the Minister in order to grant degrees. The Minister is, therefore, a statutory gatekeeper for entry to the legal profession in the province.
- 42. The *Degree Authorization Act* applies to all private and out-of-province public post-secondary institutions and enables those institutions to grant degrees in British Columbia. The primary purpose of the *Degree Authorization Act* is to provide access to educational opportunities in British Columbia.
- 43. The Minister is responsible for decision-making under the *Act*. Primary objectives of the Ministry of Advanced Education include: improving access to education and promoting diversity, including by challenging barriers to inclusivity.
- 44. Section 3 of the *Act* requires private institutions to obtain consent from the Minister if they wish to advertise, provide, and grant a degree in British Columbia.
- 45. Section 4(1) of the *Act* provides that the Minister may give consent if the Minister “is satisfied that the applicant has undergone a quality assessment process and been found to meet the criteria” established by the Minister under s. 4(2) of the *Act* for the purposes of giving or refusing consent.
- 46. The DQAB is responsible for the quality assessment process and for making recommendations to the Minister about whether the applicant has met the published criteria. A degree-granting institution may be entitled to exempt status under certain conditions, meaning they are typically exempt from the DQAB review process. The

Minister may however exercise his discretion to order a review under the DQAB if he deems it necessary.

47. TWU is entitled to exempt status, however the Minister exercised his discretion to require the DQAB to conduct a review of the Proposal.
48. Section 4(3) of the *Act* provides that the Minister may attach terms and conditions to his consent to give effect to the criteria established and published under s. 4(2).

The Statutory Regime is Intended to Protect the Public Interest

49. The ***Degree Authorization Act*** and the Minister's published criteria are intended to protect the public interest. Some of the objectives of the *Act* include:
 - a. Increasing accessibility and greater opportunities for higher education in British Columbia;
 - b. Training people close to where they live to encourage them to stay and participate in the local economy;
 - c. Improving student access to programs that are of a high standard and that result from excellent internal and external quality assurance processes;
 - d. Ensuring accountability and transparency to stakeholders and the general public;
 - e. Ensuring student access to programs that meet the education, social, economic and cultural needs of students, employees and society at large as well as addressing current government objectives, including the objectives of improving diversity and eliminating barriers to inclusivity; and
 - f. Encouraging resourcefulness, innovation and responsiveness to current and future societal needs.
50. The Minister's grant of consent for a new degree program, particularly the consent for a law degree program, is a significant public act that confers public recognition and endorsement of a school's degree program.

Statutory Decision-makers are Bound to Consider the Effects of their Decisions on Charter Rights

51. Administrative decision-makers must act consistently with the values underlying the grant of discretion, including ***Charter*** values.
52. In exercising his discretion, and to act consistently with the *Constitution*, the Minister was obliged to consider, among other things:
 - a. the ***Charter*** and ***Charter*** values and the discriminatory effects of his Decision;
 - b. the importance of diversity in legal education, the legal profession and the judiciary;
 - c. the efforts made to challenge barriers to inclusion of minority and historically disadvantaged persons within legal education, the legal profession and the judiciary;
 - d. the Ministry's priority to improve diversity and to eliminate barriers to inclusivity in advanced education;
 - e. reasonable alternatives to the granting of consent, including granting consent with conditions such as:
 - i. requiring that signing the Covenant would be optional and not a mandatory component of the admission policy;
 - ii. requiring that law students are exempt from signing the Covenant; or
 - iii. requiring that the Covenant be amended for law students in a manner that preserves its aspiration to be a faith-based school, but does not exclude or demean students who do not accept the prohibition regarding sexuality.

The Minister Failed to Exercise His Discretion in Accordance with Charter Protections

53. The Decision violates the s. 15(1) and s. 2(a) ***Charter*** rights of the Petitioner.
54. Despite being aware of the Law School's discriminatory admission policy, the Minister did not consider whether his Decision interfered with ***Charter*** protections. He stated that such considerations were beyond his statutory mandate. The failure to consider his

obligations under the **Charter**, alone, means that the Minister has not acted in accordance with his obligations as decision-maker and the Decision must be quashed.

55. In the alternative, if the Minister did consider whether his Decision interfered with **Charter** protections, he failed to reasonably consider the severity of the interference of the **Charter** protections along with the statutory objectives of the **Degree Authorization Act**.

55A. In the further alternative, if the Minister did consider whether the Decision interfered with **Charter** protections, he fettered his discretion by considering himself bound by the analysis of the DQAB and the Federation of Law Societies.

The Charter Protections at Stake

56. The Minister's Decision to consent to the Law School infringes the **Charter** protections of non-discrimination on the basis of sexual orientation and religion, and freedom of religion.

57. Section 15(1) of the **Charter** provides:

15. (1) 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 and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

58. Sections 2(a) of the **Charter** provides:

Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion.

59. The value of freedom of religion under Section 2(a) includes the principle of state neutrality which is assured when the state neither favours nor hinders any particular religious belief.
60. The Decision, which authorizes the Law School to use a discriminatory admission policy, engages the **Charter** protections under s. 15(1) by drawing a distinction on the basis of sexual orientation and religion.
61. The Decision engages the **Charter** protection of s. 2(a) by endorsing a particular set of religious beliefs over another or none.

62. In making the Decision the Minister creates a pool of law school positions in British Columbia (at four British Columbia law schools), a portion of which (at TWU) are not available to people who engage in same-sex intimacy, whether married or not, thereby excluding sexual minority students. The Decision perpetuates disadvantage against a marginalized and vulnerable group in a context that demands inclusivity.
63. Further, the Minister is not entitled to allocate a scarce and valuable resource, like a law degree, to a particular religion. The Decision permits an allocation of law school seats in British Columbia to students who are members of the Evangelical Free Church of Canada or who agree to accept their Biblical interpretation of whether same-sex intimacy is acceptable, to the exclusion of other groups. To do so amounts to the state preferring one set of religious beliefs, which breaches the principle of state neutrality embodied in s.2(a).

The Decision Imposes Burdens on a Differential Basis

64. The Decision allowed for the creation of the Law School, including its admission policy. In doing so, the Minister permitted the differential imposition of the following burdens on sexual minorities. The Decision either:
 - a. excludes gay, lesbian and other sexual minority students from the opportunity to be admitted to law school;
 - b. puts a heavy personal burden on sexual minority students who wish to be admitted to law school by prohibiting them from engaging in same-sex intimacy, whether they are married or not;
 - c. unacceptably requires deceit and concealment of sexual identity from sexual minorities, thereby causing them serious harm; or
 - d. places a stigma on all sexual minority students and lawyers regardless of whether they seek to be admitted to the Law School.
65. The fact that applicants to the Law School might be able to abstain from their sexual intimacy and subscribe to the Covenant does not diminish the Minister's responsibility. Approving a policy that forces people to make such a choice as a precondition to obtaining a legal education violates human dignity, and is inherently discriminatory.

66. The Decision also differentially imposes burdens on the basis of religion by excluding non-religious individuals or religious individuals, particularly religious individuals who are sexual minorities, but who do not ascribe to the religious beliefs imposed in the Covenant.

The Decision Perpetuates Disadvantage

67. Sexual minorities, including gay, lesbian, bisexual and transgendered people have suffered and continue to suffer serious social, political and economic disadvantage.
68. The process of rectifying the history of discrimination against sexual minorities requires the state to ensure that it does not create or endorse barriers that would prevent gay and lesbian students from accessing important public resources, such as law degree programs.
69. Law school seats are a scarce and over-subscribed resource in Canada, and their creation is at the Minister's sole discretion. Many qualified students apply to law school in Canada and are rejected. In allocating new law school seats, the Minister must ensure those seats are not inaccessible on the basis of a prohibited ground of discrimination.
70. A law degree is a valuable public commodity. Admission to and successful completion of a law degree is a prerequisite for admission to the legal profession. The legal profession confers a number of legal, social and economic benefits, including eligibility to the judiciary. The Minister's decision to exclude gay and lesbian students from the Law School perpetuates their exclusion from the legal profession and the judiciary, as well as from social and economic opportunities.
71. The legal profession continues to lack diversity, and has been unwelcoming to openly gay and lesbian people and other sexual minorities. Lawyers have had to conceal their sexual orientation out of fear of condemnation or marginalization. Governments, bar associations and law societies have recognized the importance of diversity in the legal profession and the importance of non-discrimination against disadvantaged groups. These bodies have taken steps to ensure the profession and the judiciary is fully representative of the population. The Minister's decision undermines and frustrates those efforts, including the state obligation to make judicial appointments in a non-discriminatory manner.

The Decision Perpetuates Stigma and Prejudice

72. The Decision approves a legal education program that denies the legitimacy of same-sex intimacy as well as same-sex marriage. In doing so, the Minister has approved a legal education program that perpetuates the prejudicial view of gay and lesbian persons that their sexual intimacy is sinful, immoral, deviant and against God's will. It perpetuates the antiquated and discriminatory view that marriage between persons of the same sex is illegitimate and immoral.
73. While the **Charter** does not prevent a private person or institution from holding such views, it does not allow the state to adopt, endorse or approve such views, given the harms that result from their perpetuation.
74. The effect of a government endorsement of a legal education program with an admission policy that discriminates against individuals who engage in same sex intimacy is harmful to the sense of self-worth and well-being of sexual minority students and lawyers by legitimizing their exclusion from that program.

The Decision Violates the Principle of State Neutrality

75. The principle of state neutrality requires the state to neither favour nor hinder any particular religious belief and to show equal respect for all postures towards religion.
76. The Minister violated this principle by consenting to a law school that requires its students to adhere to a narrow view of sexual morality dictated by a specific brand of Christianity.

The Decision is not a Reasonable Limit on Equality or Religious Freedom

77. The Minister has the burden to prove that the **Charter** breaches effected by the Decision are reasonably justified in a free and democratic society. These breaches cannot be justified. The Decision is not rationally connected to its underlying purpose; the **Charter** rights at stake are not minimally impaired; and the overall effects of the Decision on the claimants are disproportionate and inconsistent with the Minister's objectives.

The Minister Did Not Reasonably Consider the need to Balance the Severity of the Interference of the Charter Protection with Statutory Objectives

78. The Minister knew or ought to have known that the public had raised significant concerns about the Law School's discriminatory admissions policies and its harms to sexual minority students, including Christian gay and lesbian students, as well as to the legal profession and the public generally.
79. The Minister was required to consider the severity of the interference of the ***Charter*** protections of non-discrimination and religious freedom alongside the statutory objective of increasing access to higher education and reducing barriers to inclusivity. As a result of the Minister's failure to consider the ***Charter***, the Minister did not make relevant inquiries into:
 - a. What limitations the Law School's admission policy would have on sexual minority students;
 - b. What effect those limitations would have on the admission of sexual minority students to the Law School;
 - c. What effect the Law School's admissions policy would have on the entrance of sexual minority students to the Legal Profession;
 - d. What effect the government's endorsement of the Law School's degree program would have on the image and self-worth of sexual minority students and lawyers;
 - e. Whether current government and public interest objectives to prevent and ameliorate discrimination and promote diversity in legal education, the legal profession, and the judiciary outweighed TWU's interest in establishing a Law School;
 - f. Whether TWU's interest in establishing a Law School could be addressed in a less intrusive manner, by for example, requiring the Law School to be established without the discriminatory admission policy.
80. As a result of the failure to consider ***Charter*** protections, the Minister failed to properly exercise his statutory obligations under the ***Degree Authorization Act***.

81. Had the Minister made the necessary inquiries, he would have had to conclude that the Law School, with its discriminatory admission policy, should not be approved by the Province given its unconstitutional effects.
82. No reasonable and constitutional exercise of discretion under the *Degree Authorization Act*, reflecting a proportionate balancing of the *Charter* protections engaged, could result in the granting of consent to the Law School. The Minister's decision is unreasonable and must be overturned.

The Minister Did Indirectly What Cannot be Done Directly

83. The Minister authorized a program that favours persons who are married and heterosexual and disfavors any who depart from that norm. The Province could not expressly allow this type of discrimination. It should equally be prohibited when implemented through an administrative decision-maker acting under statute.

The Minister Failed to Consider All Relevant Factors

84. Administrative decision-makers must consider all relevant factors before making a decision, and give proper genuine and realistic consideration in the context of each case. Factors include those specifically provided for under the enabling statute or by implication because of its importance to the attainment of the legislative purposes underlying the statutory scheme, by the purpose and context of the statute, or in a policy guidelines issued by the public body.
85. The Minister should have considered the following additional relevant factors:
 - a. The Law School's admission policy is contrary to the current government objective of improving diversity in the legal profession, and the societal need for improvement of diversity and representation in the profession;
 - b. The Law School's admission policy is contrary to the government objective of improving access to advanced education, improving diversity and removing barriers to inclusivity;
 - c. The Law School's admission policy undermines the government's constitutional obligation to not discriminate when making judicial and other appointments from

candidates in the legal profession, and the government objective to ensure such appointments are representative of the public;

- d. The Law School's admission policy effectively excludes sexual minorities as students, faculty and staff, which impairs the quality of the legal education;
 - e. Endorsing the Law School's admission policy favours a particular religious belief, violating the principle of state neutrality;
 - f. The Law School's admission policy is contrary to the need to be responsive to current and future societal needs, including improving diversity and removing barriers to education;
 - g. In order to be accountable and transparent in his decision-making, the Minister was required to take notice that the community most affected by the Law School's admission policy objected to it on the basis of its discriminatory effects, and the Minister failed to inquire into those views;
 - h. The Law School's admission policy was not consistent with its own statute, which requires non-discrimination on the basis of creed.
86. Had the Minister reasonably considered these factors, he could not have exercised his discretion in favour of granting consent to the Law School.
87. The effect of the Minister's failure to consider relevant factors was that the Decision was unreasonable at law and in direct contradiction to the principles and purposes behind the Minister's mandate under the Act.

The Minister Fettered his Discretion

88. The Minister fettered his discretion by basing the Decision on the analyses performed by the DQAB and the Federation of Law Societies, and failing to perform his own independent assessment and consider all relevant factors.

PART IV – MATERIALS TO BE RELIED ON

- 1. Affidavit #1 of Trevor James Loke, sworn on April 11, 2014;
- 2. Affidavit #1 of Preston Parsons, sworn on April 12, 2014;
- 3. Affidavit #1 of Jill Bishop, sworn on April 9, 2014;


4. Affidavit # 1 of Barry Adam, sworn on April 2, 2014;
5. Affidavit #1 of Mary Bryson, sworn on April 10, 2014;
6. Affidavit #1 of Catherine Taylor, sworn April 9, 2014;
7. Affidavit #1 of Ellen Faulkner, sworn on April 9, 2014;
8. Affidavit #1 of Elise Chenier, sworn on April 14, 2014;
9. Affidavit #1 of Cheryl MacKinnon, sworn on April 9, 2014;
10. Affidavit #1 of William Brent Cotter, sworn on May 27, 2014;
11. Affidavit #2 of Cheryl MacKinnon, sworn on May 28, 2014;
12. Affidavit #1 of Charleen Kilian, sworn on May 29, 2014.

The petitioner estimates that the hearing of the petition will take 5 days.

Date Originally Filed: April 14, 2014

Date Amended: June 2, 2014

Lawyers for Petitioner



Lawyers for Petitioner

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this petition

☐ with the following variations and additional terms:

.....
.....
.....

Date: _____
[dd/mmm/yyyy]

Signature of ☐ Judge ☐ Master

No. S-142908
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TREVOR JAMES LOKE

PETITIONER

AND

MINISTER OF ADVANCED EDUCATION OF BRITISH COLUMBIA and
TRINITY WESTERN UNIVERSITY

RESPONDENTS

AMENDED PETITION TO THE COURT

Janes Freedman Kyle Law Corporation
340 – 1122 Mainland Street
Vancouver, BC V6B 5L1
Telephone: 604-687-0549
Attention: Karey M. Brooks, File No.: 1202-001