



No. S-149837
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**TRINITY WESTERN UNIVERSITY and
BRAYDEN VOLKENANT**

PETITIONERS (RESPONDENTS)

AND:

THE LAW SOCIETY OF BRITISH COLUMBIA

RESPONDENT (RESPONDENT)

NOTICE OF APPLICATION

Name of applicant: The Law Society of British Columbia

To: The Petitioners (Respondents)

And To: Mr. Trevor Loke

And To: Minister of Advanced Education of British Columbia

TAKE NOTICE that an application will be made by the applicant to Chief Justice Hinkson 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 that:
 - a. the TWU Petition be heard at the same time as the Loke Petition;
 - b. the Constitutional issues in the Loke Petition be determined prior to or at the same time as the Constitutional issues in the TWU Petition and prior to the administrative law issues in the TWU Petition; and
 - c. the evidence relating to the Charter issues in each Petition be evidence in the other Petition.

Part 2: FACTUAL BASIS

1. The applicant is the Law Society of British Columbia (the “**Law Society**”). The Law Society is a public 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. TWU 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 a law degree 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 outside of 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 a petition on April 14, 2014 (the “**Loke Petition**”), arguing that TWU’s Community Covenant (the “**Covenant**”), to 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. On October 31, 2014, based on a referendum vote of its members, the Law Society adopted a resolution stating 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. The letter stated in part:

“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."

11. The effect of the Minister's decision to revoke approval is that TWU is not currently permitted to offer law degrees. Unless and 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 22-5(8)

1. The Law Society relies on Rule 22-5(8) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, which states that:

22-5(8) Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

2. The purpose of consolidation is to avoid multiplicity of proceedings.

McKenzie v. Cramer, 1947 CanLII 72 (ONSC).

3. In applying Rule 22-5(8), courts will consider whether the consolidation will result in the saving of time and expense and the better administration of justice. These legal principles have been applied in the context of an application to have two trials heard together.

Orlick v. Easton (Guardian ad litem of), [1967] B.C.J. No. 1 (C.A.);
Shah v. Bakken, 1996 CanLII 2522 (BC SC).

4. An order under Rule 22-5(8) is a discretionary order. A test that that is often applied in the exercise of this discretion is whether there is a common question of law or fact bearing sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matters should be disposed of at the same time.

Tylon Steepe Homes Ltd. v. Landon, 2010 BCSC 192, at para 23 ("**Tylon**");
Schultz v. Schultz, [1985] B.C.J. No. 1077 (S.C.), at para 6.

5. In determining whether an order under Rule 22-5(8) should be made, the Court must answer two questions:

- (a) Do common claims, disputes and relationships exist between the parties?
- (b) Are the actions so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense?

Hui v. Hoa, 2012 BCSC 1045, at paras 33-34 (“*Hui*”);
Bhinder v. 470248 B.C. Ltd. 2007 BCSC 805, at para 2 (“*Bhinder*”);
Merritt v. Imasco Enterprises Inc., [1992] B.C.J. No. 160 (“*Merritt*”).

6. The first question of commonality is normally resolved by examining the pleadings.

Merritt, supra.

7. Answering the second question may include the consideration of the following non-exhaustive factors:

- (a) Whether the order will create a saving in pre-trial process;
- (b) Whether there will be a real saving in experts’ time and witness fees;
- (c) The potential for a party to be seriously inconvenienced by being required to attend a trial at which it may only have a marginal interest;
- (d) Whether the number of trial days will be reduced if the matters are heard together;
- (e) Whether one of the actions is at a more advanced stage than the other;
- (f) Will an order result in a delay of the trial and, if so, will any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have; and
- (g) Whether there is a risk of inconsistent findings.

Hui, supra;
Bhinder, supra;
Merritt, supra.

8. The overarching concern or the “real issue” to be determined in an application to have proceedings heard together is does “*the order make sense in the circumstances.*” [emphasis added].

Merritt, supra, at 282;
Murray v. Morgan, [1999] B.C.J. No. 2871, at para. 2;
Globalnet Management Solutions Inc. v. Aviva Insurance Co. of Canada,
 2013 BCSC 829;
Sohal Estate v. Argitos, 2010 BCSC 916, at para. 22.

9. The Court may order the Petitions to be tried at the same time and that the evidence be evidence in both action.

Peel v. Western Delta, 2003 BCSC 784;
Tylon, supra.

B. The Proceedings Should be Heard Together

10. The issue raised by this application is how best procedurally to deal with the *Charter* issues involving TWU's proposed law school.
11. The proposed law school at TWU raises constitutional issues regarding whether an educational institution that discriminates against Lesbian, Gay, and Bi-sexual (LGB) people in its admission policy can legally be allowed to confer law degrees permitting students to participate as lawyers in the administration of justice.
12. There are presently two separate proceedings dealing with this single integrated issue.
13. There is the Loke Petition regarding Government's decision whether to give consent to TWU to grant law degrees.
14. And there is the TWU Petition challenging the Law Society's decision not to allow prospective graduates of TWU's proposed law school to be admitted to the B.C. Bar.
15. In practical terms, these two cases are tied together, because TWU needs the approval of both the Government and the Law Society to realize its objective of graduating students who are eligible to practice law.
16. There will be no TWU law graduates to be considered for admission to the Law Society if TWU does not receive the Government's consent to grant law degrees.
17. And among the important factors that the Minister will consider in deciding whether TWU should receive consent, is whether the Law Society will admit graduates.
18. As such, the cases raise two sides of a single issue: whether TWU should be permitted to grant law degrees conferring access to the legal profession, despite a Covenant that discriminates against LGB persons.
19. It makes sense in the circumstances to hear the two proceedings together because the two cases raise many similar and overlapping legal and factual issues; it would promote judicial economy and efficiency; and it would permit a more complete understanding of the constitutional issues in play.
20. Both cases require a proper delineation of the scope of the same *Charter* rights and freedoms, issues of constitutional causation, and the proper application of the *Doré* framework, with respect to standards of review and burdens of proof.

Doré v. Barreau du Québec, 2012 SCC 12, at paras. 55.
21. Both cases will also involve similar legislative and social fact finding, for instance, with respect to the impact of the Covenant on the LGB community and the

administrative justice. Hearing the cases together will reduce expert costs and witness fees, and cut down on pre-trial costs.

22. There will be no delay from an order to have the Petitions heard together. Rather, hearing the issues together will ensure a timely resolution of questions that are of importance to not only the parties, but also the public.
23. Therefore, hearing the Petitions together will promote judicial economy and efficiency.
24. Moreover, as *Charter* rights are to be read together and reconciled wherever possible, joining the petitions provides an opportunity for the Court to fully appreciate the constitutional interests at stake.

R. v. N.S., 2012 SCC 72, at paras 30-33.

25. The focus and perspectives of the petitioners in each case are diametrically opposed, which will provide the ideal legal and factual matrix in which the two sets of *Charter* interests can be best understood and reconciled.
26. Finally, if the Petitions are not heard together, there is a substantial risk that there may be inconsistent results on *Charter* interests, or inconsistent findings of fact.
27. Therefore, in terms of judicial economy and consistency, and a complete understanding of the constitutional issues at play, the Law Society submits that it makes sense to deal with the legal issues involving the proposed law school as a whole.

C. The Issues in the Loke Petition will not be resolved by the TWU Petition

28. This application to hear the petitions together should not be dismissed on the basis that the resolution of the TWU Petition would render it unnecessary to adjudicate the legal issues raised in the Loke Petition.
29. That is because a ruling on the TWU Petition will not determine whether the Minister has the constitutional obligation to either approve or to refuse to approve TWU's proposed law school.
30. Currently, TWU is not permitted to issue law degrees. In order to do so, one of two things must occur:
 - a. TWU could successfully petition the Government's refusal to grant consent, which requires determining the constitutional issue raised by the Loke Petition; or
 - b. the Government must change its mind and consent to TWU's application, in which case, the matters raised in the Loke Petition becomes a live issue.

31. Either way, the issue raised in the Loke Petition against the Minister *must* be heard in order for TWU to obtain the relief it seeks.
32. Nor will a ruling on the TWU Petition in the Law Society's favour render the Minister's decision moot; TWU could still be permitted to grant law degrees in B.C., regardless of whether its students are subsequently admitted to the B.C. Bar.
33. TWU has been approved in a number of provinces, and its graduates could be admitted to other provincial bars.
34. The issue raised in the Loke Petition must ultimately be decided, regardless of the outcome of the TWU Petition.

D. Conclusion

35. The two Petitions relate to different aspects of a single fundamental issue: whether it is contrary to the *Charter* to allow a law school that discriminates LGB people in its admission policy to graduate students who are eligible to become practicing lawyers.
36. Despite the legal and factual similarities, the resolution of one case will not resolve the other, as a matter of law. As such, both cases must be heard, subject to the resolution of the Loke Petition rendering the TWU Petition moot.
37. And importantly, it is in the interests of efficiency, consistency, and a full understanding of the constitutional issues, for those issues relating to both the Law Society's and Government's decisions to be dealt with together in one proceeding.
38. This will allow all of the legal issues relating to TWU's proposed law school to be thoroughly considered by the Court in deciding whether TWU's proposed law school should be allowed to proceed with its discriminatory Covenant.

Part 4: MATERIAL TO BE RELIED ON

1. The Amended Loke Petition filed on June 3, 2014
2. The TWU Petition filed December 18, 2014;
3. The Law Society's Response to the TWU Petition filed on December 16, 2015;
4. Affidavit #1 of Tim McGee, QC, made on January 16, 2015;
5. Affidavit #1 of Tracy Tso, made on January 16, 2014;
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.

- This matter is within the jurisdiction of the master.
 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 Applicants

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