



No. S-142908  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**TREVOR LOKE**

PETITIONER

AND:

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

RESPONDENTS

**RESPONSE TO PETITION**

**Filed by:** TRINITY WESTERN UNIVERSITY ("TWU")

THIS IS A RESPONSE TO the Amended Petition filed June 3, 2014 (the "**Petition**").

**PART 1: ORDERS CONSENTED TO**

TWU does not consent to the granting of the orders and relief sought in Part 1 of the Petition.

**PART 2: ORDERS OPPOSED**

TWU opposes the granting of the orders set out in all paragraphs of Part 1 of the Petition.

**PART 3: ORDERS ON WHICH NO POSITION IS TAKEN**

Nil.

**PART 4: FACTUAL BASIS**

1. TWU is a private liberal arts and sciences university located in Langley, British Columbia. TWU offers over 40 undergraduate programs and 17 graduate programs, including professional programs in nursing, education, business, and counselling psychology.
2. TWU is the largest privately funded Christian university in Canada. Approximately 4,000 students attend TWU per year. TWU has over 22,000 alumni. As a private university, TWU does not receive operational funding from the B.C. government.

**(a) TWU is a Christian Community**

3. TWU is affiliated with the Evangelical Free Church of Canada (“EFCC”), a denomination of evangelical Christian congregations. TWU shares the EFCC’s Christian philosophy and its Statement of Faith. The EFCC and the EFCC’s American counterpart each hold a seat on TWU’s Board of Governors. If dissolved, TWU’s assets revert to the EFCC.
4. TWU is an expressly evangelical Christian community. TWU was established to be an educational arm of the church. TWU is legislatively empowered to provide university education “with an underlying philosophy and viewpoint that is Christian.” TWU’s mission is to develop positive, godly Christian leaders with thoroughly Christian minds.
5. Despite TWU being an educational arm of the church, focusing on developing godly Christian leaders, TWU accepts all academically-qualified students, regardless of their personal beliefs, who wish to study in the evangelical Christian community that is TWU.
6. TWU does not consider or ask for information regarding the sexual orientation of student applicants.

7. TWU maintains a code of conduct, called the “Community Covenant”, which is based on TWU’s Christian philosophy and prescribes conduct consistent with TWU’s religious character. Students attending TWU are asked to comply with the Community Covenant as a matter of respect for the Christian values of the TWU community and as a means of achieving TWU’s mission.
8. The Community Covenant is a significant means by which TWU maintains its religious character and facilitates the ability of its community to practice their Christian beliefs in a safe and welcoming environment.
9. The Community Covenant requires TWU students to treat all people with dignity, respect, equality, and love, which is rooted in the Christian belief that all people are created in God’s image.
10. One provision in the Community Covenant requires students to refrain from sexual intimacy outside of marriage between one man and one woman. This understanding of marriage is based on evangelical and historical Christian belief and is shared by religious believers of other major religious faiths. Christian marriage predates, and is distinct from, the civil recognition of marriage. This Community Covenant provision is rooted in evangelical and historical Christian ethics and applies to TWU students of all sexual orientations.
11. A variety of accredited Christian law schools in the United States have a similar provision in their codes of conduct. Like those schools, TWU does not forbid members of sexual minorities from attending; in fact, members of sexual minorities have attended and do attend TWU.

**(b) TWU’s Academic Programs**

12. TWU was established in 1962. In 1969, the British Columbia Legislature enacted the *Trinity Junior College Act*, which states that TWU’s object is to provide university education “with an underlying philosophy and viewpoint that is Christian”. This legislative object is still in effect.

13. TWU was designated a degree-granting institution by the government of British Columbia in 1979. In 1985, the British Columbia legislature enacted the *Trinity Western College Amendment Act*, which changed TWU's name and authorized TWU to offer graduate degrees.
14. TWU has an excellent academic track record, which has been recognized by the Canada Research Program, and by publications such as *Maclean's* and the *Globe and Mail*, among others.
15. TWU offers a vibrant and open academic and community environment. Students are encouraged to think critically and openly discuss all types of issues in class and on campus. TWU does not discourage discussions among, or the opinions of, students that are critical of the Community Covenant or evangelical Christianity.
16. After the *Degree Authorization Act* ("**DAA**") was enacted in 2002, TWU became obligated to seek government consent before offering new degree programs. TWU subsequently obtained exempt status from the requirement that the Degree Quality Assessment Board ("**DQAB**") automatically review proposed baccalaureate and master's degree programs.
17. TWU has applied for and received consent from the Minister of Advanced Education (the "**Minister**") to offer 14 degree programs since 2004.

**(c) TWU's School of Law**

18. Opening a law school at TWU has been part of TWU's long-term plan for over 20 years. TWU assembled a team of advisors from all corners of the legal community to consider the establishment of a School of Law and proposed Juris Doctor common law degree program (the "**JD Program**") at TWU.
19. TWU engaged in extensive consultation with the legal community with respect to its JD Program.
20. Entry into the legal profession is governed by Canada's law societies. Obtaining a law degree does not guarantee that a law school graduate will be able to practice law.

21. TWU sought two consents for the School of Law. TWU sought (a) the Minister's consent under the *DAA* to offer degrees under its JD Program; and (b) approval from the Canadian law societies, which would allow graduates of the JD Program to practice law. Without the latter approval, a graduate of the JD Program would only have an academic degree, but would not be able to be admitted as an articling student or, ultimately, as a lawyer.
22. Canadian law societies adopted a national requirement in 2010, which gave the Approval Committee of the Federation of Law Societies of Canada (the "**Federation**") the responsibility for ensuring new law degree programs complied with a uniform set of standards for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs.
23. On June 15, 2012, TWU submitted proposals for establishing a law school to the Minister and the Federation. TWU notified the public and the legal community of its JD Program proposal.
24. Even though TWU has exempt status under the *DAA*, the JD Program underwent a complete assessment by the DQAB, which selected a special panel composed of five legal academic experts (the "**Expert Panel**"), including four former law school deans, to review the proposal and prepare a report on the proposed JD Program.
25. In 2013, after TWU provided information to the Expert Panel, the Expert Panel produced a report that made a number of recommendations. TWU subsequently responded to those recommendations and made revisions to its proposal.
26. On December 16, 2013, the Federation granted preliminary approval ("**Federation Approval**") to TWU's JD Program.
27. TWU met the criteria for all proposed degree programs established by the Minister under the *DAA* as set out in the Degree Program Review Criteria and Guidelines. On December 17, 2013, the Minister granted conditional consent to TWU's JD Program (the "**Decision**").

28. TWU's law school is scheduled to open in September of 2016.

**(d) The Law Societies**

29. TWU law school graduates would currently be admitted in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, and PEI.

30. The law societies of Ontario and Nova Scotia have passed motions that would prevent TWU law school graduates from being admitted to their law societies. TWU has applied to the superior courts of those two provinces seeking judicial review of those law society decisions.

**PART 5: LEGAL BASIS**

**(a) Preliminary Objections**

**(i) The Petitioner Lacks Standing**

*General Standing*

1. The Petitioner lacks general standing.
2. The Petitioner is not "aggrieved" or "exceptionally prejudiced" by the Decision such that he has a special identifiable personal interest in the outcome of this proceeding. The harm that the Petitioner alleges he will suffer is the loss of a chance to attend TWU, "one of four possible law schools in British Columbia" (Petition, para. 4).
3. The Petitioner does not have an identifiable interest in the Petition's outcome because he would not benefit from the remedy he seeks.
4. The relationship between the alleged prejudice to the Petitioner and the Decision is too indirect, remote, or speculative.

*Public Interest Standing*

5. The Petitioner should not be granted standing under the public interest standing exception.
6. To be eligible for public interest standing, the Petitioner must establish: (1) that the case raises a serious justiciable issue; (2) the Petitioner has a real stake or a genuine interest in the issue(s); and (3) the Petition is a reasonable and effective means of bringing the issues before the Court.
7. The Petitioner's case is hypothetical, not justiciable.
8. The Petitioner lacks a genuine interest, since he would not benefit from the remedy he seeks.
9. The Petition is not a reasonable and effective means of advancing the issues raised, because the Petitioner seeks to circumvent the legal rights and protections of TWU.

(ii) Declaratory Relief

10. The Court should not exercise its discretion to grant a declaratory judgment because the Petitioner's claim lacks certainty and is hypothetical.

**(b) The Petitioner's Evidence**

11. The Petitioner did not place before the Minister any of the evidence on which he now relies to impugn the Decision. The Petitioner and others who knew about TWU's JD Program proposal failed to make any submissions to the Minister during the 30 day public review period after the proposal was received or prior to the Decision.
12. Tendering evidence and expert reports on a judicial review follows the same rules of admissibility as a trial. Evidence and expert reports that are irrelevant, argumentative, unreliable, unnecessary, or contain hearsay, opinion evidence, and advocacy are inadmissible.

13. The Petitioner has filed evidence and expert reports that are irrelevant, argumentative, unreliable, unnecessary, and contain hearsay, opinion evidence, and advocacy. Accordingly, TWU objects to such material, which should be struck, or given little or no weight.

**(c) The *Degree Authorization Act***

14. The purpose of the *DAA* is to ensure the quality of new post-secondary degree programs.
15. Under the *DAA*, a private post-secondary institution requires the Minister's consent to grant or confer a degree in British Columbia. The Minister has the discretion to consent to a degree program if he is satisfied that the applicant has undergone a quality assessment process and meets the published criteria established by the Minister. Such consent permits a private university to offer and grant degrees. In effect, it is a licensing scheme.
16. The Minister is not authorized to make a decision under the *DAA* based on his agreement or disagreement with religious beliefs held by or espoused in a private religious university.
17. TWU met the quality assessment criteria established by the Minister pursuant to his authority under the *DAA*. The criteria established apply to all proposed degree programs equally, and are within the statutory framework of the *DAA*. The Petitioner does not allege otherwise. The Minister acted within his statutory discretion in making the Decision to consent to the JD Program.
18. The Petitioner alleges that the Minister improperly exercised his discretion under the *DAA* by failing to consider a number of policy considerations (Petition, para. 52). The Minister was not required to consider these factors. The law societies of Canada perform the gatekeeper function for entry into the legal profession. The Minister is not bound to exercise his discretion according to policy considerations in the manner suggested by the Petitioner.

19. The Minister cannot interfere with the admission and academic policies and standards established by the governing bodies in public universities. The Minister should not treat private institutions differently or indirectly interfere with TWU's policies or its religious character and mission.
20. The phrase "public interest" is not included in the *DAA*. In response to paragraphs 49-50 of the Petition, the Minister is not required to exercise his discretion in the manner suggested by the Petitioner. The interests explicitly protected under the *DAA* are: (a) student interests related to the financial viability of the educational institution and access to their transcripts, and (b) ensuring that new degrees programs meet established quality assessment criteria. In the alternative, even if the Minister was bound to consider the public interest issues as stated by the Petitioner, the Minister did so and the Decision achieves the legitimate objectives under the *DAA*.

**(d) Judicial Review and the Standard of Review**

21. The Court's limited role on judicial review is only to supervise a decision-maker in the exercise of its jurisdiction, not to treat the matter as a *de novo* hearing.
22. There are two standards of review: reasonableness and correctness.
23. Reasonableness is a standard of review that gives deference to the decision-maker's decision. A court that reviews a decision on the reasonableness standard must consider whether "the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law"; decision-makers have a "margin of appreciation within the range of acceptable and rational solutions" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47). If there is some evidence upon which a decision-maker's decision can reasonably be made, a court should not interfere.
24. There is a rebuttable presumption that the standard of review for a decision-maker applying or interpreting his own statute is reasonableness. Where the question is one of fact, discretion, or policy, a reasonableness standard applies automatically. Only "exceptional" questions of true jurisdiction (narrowly construed), of constitutional division of powers, or concerning the central importance to the legal system as a

whole and outside the decision-maker's specialized area of expertise, attract a correctness review.

25. The Petition does not directly address the appropriate standard of review. However, the Petitioner appears to concede that the appropriate standard of review is reasonableness (Petition, paras. 39, 40(d), 82, 87).
26. TWU agrees that the appropriate standard of review of the Decision is reasonableness. The Decision involves a question of mixed fact and law, interpreting and applying the Minister's home statute, and may raise a question of balancing *Charter* values. Each of these factors, taken individually or together, point toward a reasonableness standard. The question in this case is not of central importance to the legal system. Even if it were, the Decision is connected to the Minister's special expertise in matters of post-secondary education.
27. The Decision was reasonable, fell within the range of possible and acceptable outcomes, and is entitled to deference. Alternatively, the Decision was correct.

**(e) The *Charter***

28. Contrary to para. 77 of the Petition, in order to determine whether an administrative decision-maker has exercised its statutory discretion in accordance with *Charter* protections, the review of that decision should be in accordance with an administrative law approach, not a s. 1 *Oakes* analysis (*Doré v. Barreau du Québec*, 2012 SCC 12 ("*Doré*"). The *Oakes* test is not appropriate when reviewing discretionary decisions of administrative decision-makers (*Doré*, at para. 37).
29. A decision-maker balances relevant *Charter* values by examining the objectives of the statute, assessing how the *Charter* values will best be protected in light of those objectives, and balancing the severity of the interference of the *Charter* protection with the statutory objectives.
30. The Court should not interfere with such balancing as long as it "falls within a range of possible, acceptable outcomes" (*Doré* at para. 56, citing *Dunsmuir* at para. 47).

31. The entirety of the Petitioner's complaint is premised on one sentence in TWU's Community Covenant. That sentence reflects the religious beliefs of TWU and its evangelical Christian community. It has a legitimate purpose within a private and expressly evangelical Christian educational community. Except to the extent that it impacts the quality of the JD Program or whether TWU graduates will be properly educated, the Community Covenant is an irrelevant consideration under the *DAA*.
32. In *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 SCR 772 ("*Trinity Western v. BCCT*"), the Court held (at para. 43):

In considering the religious precepts of TWU instead of the actual impact of these beliefs on the school environment, the BCCT acted on the basis of irrelevant considerations. It therefore acted unfairly.
33. Unlike the legislation in *Trinity Western v. BCCT*, the Minister under the *DAA* is not explicitly required to consider the public interest, generally, in permitting private post-secondary institutions to grant degrees. As in *Trinity Western v. BCCT* (at para. 19), the Petitioner's allegations of harm are speculative.
34. A refusal by the Minister to consent to the JD Program for the reasons proposed by the Petitioner would have placed an impermissible burden on the members of a particular religious group, preventing them from expressing freely their religious beliefs and associating to put them into practice (*Trinity Western v. BCCT*, at para. 32).
35. TWU had a legitimate expectation that the Decision would be based on established criteria, policy, and procedures. Denying consent to the JD Program based on disagreement with religious precepts expressed in the Community Covenant would be discriminatory by treating the JD Program differently than any other educational proposal under the *DAA* and its established criteria. Such a contrary decision would treat TWU unfairly and undermine the *Charter* rights of TWU and the members of its community.

36. The Community Covenant is similarly unrelated to the Minister's exercise of discretion under the *DAA*, the objectives of the *DAA*, and the Minister's published criteria established under the *DAA*. Therefore, the Minister's Decision was correct.

**(f) Alternatively: If the Community Covenant Were a Relevant Consideration**

37. Alternatively, if the Community Covenant were a relevant consideration, which is denied, the Minister's Decision reflects a proper balancing of the *Charter* values with the statutory objectives of the *DAA*.

(i) The Consideration of *Charter* Issues

38. The Petitioner alleges that the Minister failed to properly and reasonably balance *Charter* protections in considering s. 2(a) and s. 15 of the *Charter*.
39. The record demonstrates that *Charter* issues were considered in making the Decision. *Inter alia*, the Expert Panel expressly considered the issues raised by the Petitioner prior to making its recommendation, which were considered by the DQAB and the Minister.

(ii) The *Charter* Does Not Apply to TWU

40. The *Charter* applies to the legislative, executive and administrative branches of government, not to the private sphere. Individuals and organizations are not obliged to subscribe to state values in the private sphere, where such values should not intrude. The legislative requirement of governmental consent does not turn a private activity into a government or public activity that is subject to the *Charter*. The *Charter* does not apply to TWU (*TWU v. BCCT*, at para. 25).
41. The Petition is a thinly-disguised attempt to apply the *Charter* to the policies of a non-governmental, non-profit private body with religious objects. It would be improper for the government to do indirectly what it cannot do directly.
42. If the *Charter* were applied in this way, it would impose an enormous burden on the government to examine the private views of each private actor affected by a

governmental consent or license. It would be inconsistent with the rights and freedoms guaranteed by the *Charter* including, *inter alia*, those guaranteed by s. 2(a), s. 2(b), s. 2(d), and s. 15.

(iii) Freedom of Religion: Section 2(a) of the *Charter*

*State Neutrality*

43. In response to paras. 59, 61, 63, 71, 73, 75, and 76 of the Petition, the Decision does not violate state neutrality toward religion by infringing upon section 2(a) of the *Charter*.
44. State neutrality is assured “when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion” (*S.L. v. Commission scolaire des Chênes*, 2012 SCC 7 at para. 32). This means that no religious view or practice is imposed by government on its citizens (*R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295). Indeed, state neutrality is a legitimate means of creating a free space in which citizens or organizations of various beliefs can exercise their individual rights. The Petitioner would turn this protection on its head by penalizing religious belief, practice, and association.
45. The Decision does not engage s. 2(a) of the *Charter* as an “endorsement” or “approval” of TWU’s religious views. The *DAA* does not use the word “approval” or “endorsement”; it uses the word “consent”. The degree granting criteria under the *DAA* are religiously neutral; they do not favour, endorse, approve, or even encourage any one particular religion. Government action inevitably touches on private actors, including religious persons. Granting consent is akin to granting a permit or license. It is not an endorsement or approval of the private or religious views of those private actors.

*Religious Freedom*

46. Conversely, if the Minister refused to grant TWU consent to offer the JD Program, it would not take into consideration TWU and its students’ section 2(a) *Charter* rights.

Such a decision would breach state neutrality, and interfere with the sincerely held religious beliefs and practice of the TWU community by censuring a religious tenet and disallowing TWU and the members of its community the right to full participation in society. It would demonstrate and evince a lack of respect toward the religious beliefs embedded in the Community Covenant.

47. The Supreme Court of Canada in *Trinity Western v. BCCT* examined the predecessor to the Community Covenant and held at para. 35 that:

Students attending TWU are free to adopt personal rules of conduct based on their religious beliefs provided they do not interfere with the rights of others. Their freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society.

48. To deny the JD Program consent under the *DAA* based on a religious tenet would be a burden on the religious practice of TWU and the members of its religious community that breaches the *Charter*.
49. As stated in *Trinity Western v. BCCT*, “the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system” (at para. 35). There is no similar evidence that TWU law school graduates would have a detrimental effect on the legal system.

(iv) Section 15 of the Charter

*The Decision does not make a distinction on an enumerated or analogous ground*

50. Section 4 of the *DAA* authorizes the Minister to grant consent to private institutions to confer degrees. The Minister has not made any distinction on an enumerated or analogous ground by consenting to TWU’s ability to offer an academic degree program. The Minister’s consent does not connote approval of the religious beliefs or practices of TWU or the members of its community.

*The Decision is not discriminatory*

51. The Decision does not create a disadvantage for sexual minorities. The Minister's consent allows for the creation of additional law school spaces in BC. It does not take away law school seats or funding that would otherwise go to public law schools. The Minister's consent only serves to enhance the availability of law school seats for all potential applicants, including those who are sexual minorities.
52. It is insufficient for a claimant to demonstrate that a distinction has been made on enumerated and analogous grounds, even where it leads to disadvantage, where the decision does not result in the perpetuation of prejudice or stereotyping. Even if the Decision makes a distinction on the basis of sexual orientation, which is denied, and leads to disadvantage, which is also denied, this distinction is not discriminatory as it does not perpetuate prejudice or stereotyping.
53. The Community Covenant is a code of conduct that is voluntarily adopted as an expression of the religious beliefs of the members of the TWU Community. The voluntary adoption of a code of conduct expressing a religious belief in a private institution with a religious character is not in itself discriminatory (*TWU v. BCCT*, at para. 25).
54. The voluntary agreement of individuals to observe a religious (not civil) conception of marriage within a religious community does not perpetuate stereotyping or prejudice against people living in other forms of union, or suggest that these people are not in all respects worthy of equal value and consideration in Canadian society.

*The Decision does not relate to the creation of a benefit or imposition of a burden under the law*

55. The application of subsection 15(1) of the *Charter* is limited to circumstances involving unequal treatment under the law. The Decision does not directly engage the Petitioner's rights under s. 15(1) in that it neither creates a benefit, nor imposes a burden, under the law. The creation of additional law school spaces is not a benefit

of the law created by the Minister. The impetus to create the JD Program was that of TWU and any benefit resulting from this decision is not created by government.

56. The Decision does not result in the Minister imposing any legal burden on the Petitioner.
57. The decision to create and implement the Community Covenant is entirely within the discretion of the TWU religious community and the Minister has no power or control over it.

*TWU's Equality Considerations*

58. Under s. 15 of the *Charter*, every individual has the right to equal benefit and protection before, and under, the law without discrimination based on their religious beliefs and practices. Section 15 is designed to achieve substantive, as opposed to formal, equality. Rather than demanding a formalistic application of identical treatment regardless of individual or group difference, substantive equality demands the law's recognition that society is comprised of private individuals and groups with differing needs, capacities, beliefs and value systems. Substantive equality is furthered where these differences are accommodated and respected.
59. Reasonable accommodation of the religious beliefs of the members of TWU's religious community furthers and helps create substantive equality.
60. Failure to consent to the JD Program on the basis of individuals choosing to adopt and live in accordance with certain religious precepts by attending the JD Program at TWU would result in a denial of a benefit (i.e., attending a law school established by the religious community of which they are a part) on the basis of religion. Such a decision would amount to a denial of equal benefit of the law to the members of the TWU community and communicate that their religious beliefs and practices are less worthy of consideration and value.

(v) Other Relevant Considerations

61. If the Community Covenant were a relevant consideration in exercising the Minister's discretion under *DAA*, which is denied, it would trigger a number of other relevant considerations that favour granting consent to TWU's JD Program:

- (a) TWU is authorized by statute to carry out education "with an underlying philosophy and viewpoint that is Christian".
- (b) A denial of the JD Program on the basis of the Community Covenant would be detrimental to programs offered by TWU and other religious schools which have already been consented to by the Minister.
- (c) TWU, as a religious educational community, is protected by the *Human Rights Code*.
- (d) It has been recognized by the Supreme Court of Canada, by the law societies, and by statute that there are no significant public interest reasons to deny TWU's JD Program on the basis of the Community Covenant. This is confirmed in *Trinity Western v. BCCT*, by the Federation's Special Advisory Committee, and by the *Civil Marriage Act*.
- (e) The Minister must not infringe on the s. 2(a) *Charter* rights protecting TWU and the members of its community's freedom of conscience and religion.
- (f) The Minister must respect the rights and fundamental freedoms of thought, belief, opinion, and expression of TWU and the members of its community under s. 2(b) of the *Charter*.
- (g) The Minister must not interfere with TWU and its community members' freedom of association protected under s. 2(d) of the *Charter*. Precluding TWU from establishing a JD Program because it is an association of people with common religious beliefs would infringe on s. 2(d) of the *Charter*.

- (h) The Minister must not deny members of the TWU community and the evangelical Christian community the right to equal benefit of the law without discrimination based on religion under s. 15(1) of the *Charter*.
- (i) The Minister also must respect the *Charter* values of liberty and autonomy, which grant students the personal freedom to voluntarily attend an institution that respects and encourages their religious beliefs.
- (j) The *Charter* guarantees are to be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians, which include the preservation of religious subcultures such as TWU.

62. The Decision was reasonable.

63. The Decision was made “within a reasonable interpretation of the margin of maneuver contemplated by the legislature” (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817). It reflects a proper balance of the *DAA* with *Charter* values. It fell within a range of reasonable outcomes and is transparently and intelligibly arrived at on the basis of relevant evidence, regardless of whether the reviewing Court would have weighed the evidence differently and come to a different conclusion.

**(g) The Minister Did Not Fail to Consider Relevant Considerations**

64. The exercise of discretion is to be based on weighing considerations that are pertinent to the object of a statute's administration and within the perspective in which the statute is intended to operate. A Minister must not consider factors which clearly depart from a statute's language or objects.

65. The Petitioner alleges that the Minister failed to consider additional relevant factors and that such a failure was unreasonable (Petition, paras. 52(b)-(e), 84-87).

66. The factors listed by the Petitioner, particularly those related to the Community Covenant, are clearly outside the statute's language or objects. Additionally, the Minister's discretion under the *DAA* is not dictated by the variable political and

policy objectives of his Ministry. The *DAA* is only one manner by which the Ministry achieves its policy objectives. The Minister and his Ministry have other means to achieve their policy objectives.

67. As a matter of fact, the JD Program's admission policy does not make inquiries as to the sexual orientation of student applicants. Further, the Community Covenant is not inconsistent with the objects of TWU's statute.

**(h) The Minister Did Not Fetter his Discretion**

68. TWU relies on paragraphs 16-19 of Part 5 of the Minister's Response to Petition. \

**(i) The Proper Remedy**

69. TWU relies on paragraphs 20-23 of Part 5 of the Minister's Response to Petition.
70. If the *Oakes* test is applicable as alleged by the Petitioner, which is denied, the infringements alleged are reasonably justified in a free and democratic society.

**PART 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Dr. W. Robert Wood made July 11, 2014;
2. Affidavit #1 of William (Bill) Taylor made July 23, 2014;
3. Affidavit #1 of Dr. Janet Epp-Buckingham made July 28, 2014;
4. Affidavit #1 of Dr. Sonya Grypma made July 18, 2014;
5. Affidavit #1 of Dr. Kimberly Franklin made July 28, 2014;
6. Affidavit #1 of Dr. Jeffrey P. Greenman made July 28, 2014;
7. Affidavit #1 of Dr. Samuel L. Reimer made July 11, 2014;
8. Affidavit #1 of Dr. Gerald Longjohn Jr. made July 22, 2014;
9. Affidavit #1 of Jack H. Falk made July 15, 2014;
10. Affidavit #1 of Iain Cook made July 22, 2014;

11. Affidavit #1 of Jason Cowan made July 18, 2014;
12. Affidavit #1 of Austin Davies made July 28, 2014;
13. Affidavit #1 of Sabrina N. Ferrari made July 17, 2014;
14. Affidavit #1 of Richard M. Green made July 8, 2014;
15. Affidavit #1 of Kelly P. Hart made July 23, 2014;
16. Affidavit #1 of Natalie L. Hebert made July 7, 2014;
17. Affidavit #1 of Jessie Legaree made July 15, 2014;
18. Affidavit #1 of Joel Reinhardt made July 24, 2014;
19. Affidavit #1 of Arend Strikwerda made July 24, 2014;
20. Affidavit #1 of Geoffrey Trotter made July 28, 2014;
21. Affidavit #1 of Brayden Volkenant made July 30, 2014;
22. Affidavit #1 of Priscilla Wingenbach made July 28, 2014;
23. Affidavit #1 of Jody L. Winter made July 22, 2014;
24. Affidavit #1 of Judy Lura made July 30, 2014.

TWU estimates that the application will take 5 days.

Dated: July 31, 2014



Kevin L. Boonstra  
Lawyer for Petition Respondent

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