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COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANTS

UALBERTA PRO-LIFE, AMBERLEE NICOL, KIANNA
OWEN, AND CAMERON WILSON

RESPONDENT

UNIVERSITY OF ALBERTA

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR
SERVICE AND
CONTACT INFORMATION
OF PARTY FILING
THIS DOCUMENT

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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: September 24th, 2015
Time: 10:00 AM
Where: Law Courts Building Edmonton
Before: Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

The Applicants

1. UAlberta Pro-Life, formerly known as "Go-Life: U of A Campus Pro-Life," is a student group registered under the University of Alberta Students' Union ("Go-Life").

2. Amberlee Nicol is a student at the University of Alberta and is the President of Go-Life.
3. Kianna Owen is a student at the University of Alberta and is the Vice President Membership of Go-Life.
4. Cameron Wilson is a student at the University of Alberta and is the Vice President Finance of Go-Life.

The Respondent

5. The University of Alberta (“the University”) was established in 1908 under the *University Act*, R.S.A. 1906, c. 42, and is currently governed by the *Post-Secondary Learning Act*, S.A. 2003, c. P-19.5 (*PSL Act*).

Removal of the Applicants’ Posters

6. Throughout the 2014-2015 academic year, the Applicant Go-Life and the other named Applicants herein organized several events in order to raise awareness and give information concerning the issue of abortion.
7. At significant cost and effort, over the course of the 2014-15 academic year, Go-Life placed a total of approximately 3,000 posters at various locations throughout the University campus (the “Campus”) to advertise several club events. With few if any exceptions, however, the Go-Life posters were torn down and removed within hours of being posted.
8. In January 2015, the Applicants complained to the University about the destruction of their posters, even providing a video of others tearing down Go-Life posters. On February 6th, 2015, the Applicants filed a formal complaint concerning the destruction of Go-Life’s posters.
9. In February 2015, the Applicants became aware that certain U of A students had, in internet posts on Facebook, admitted to, and in some cases boasted about, tearing down Go-Life posters. The Applicants provided the names of the responsible parties to the University, and requested that an investigation and disciplinary steps for the destruction of Go-Life’s property.
10. The University initially refused to investigate or prosecute these complaints in respect of violations of the *Code of Student Behaviour* (the “Code”). However, the University later did issue a Notice Violation to one student for destroying Go-Life’s property. However,

the University did not order restitution as the *Code* provides, despite the fact that the posters, and putting up the posters, had cost the Applicants a significant amount of time, labour, and money.

Obstruction of the Applicants' Authorized Expression

11. On March 3-4, 2015, the Applicants conducted an event in the main quad on campus, with the knowledge and approval of the University, displaying posters and seeking to engage passersby in discussion about the topic of abortion (the "First March Event").
12. The Applicants had previously become aware of several University students stating on Facebook internet posts that they were planning to block and disrupt the First March Event.
13. On March 2, 2015, the Applicants, through their counsel, informed the Acting Director of UAPS, the University's President and the University's General Counsel, of this planned obstruction and disruption, and provided the University with the names of University students planning this along with copies of Facebook posts evidencing their intentions.
14. The Applicants requested that the University uphold the rule of law on campus and apply the *Code* fairly and equally to all students in light of the planned disruptions. The Applicants further requested that the University take appropriate disciplinary action against those students who, contrary to the *Code*, were inciting inappropriate behaviour, obstruction and disruption, and warn them that their planned actions also violated the *Code*.
15. The Applicants communicated with the University quite extensively prior to the First March Event.
16. Despite this prior notice and request from the Applicants to uphold the *Code* and to protect the Applicants' free expression rights, the University did not take any meaningful steps to confront the planned obstruction and disruption of the Applicants' event, even though the planned obstruction and disruption was contrary to the University's *Code*, contrary to the University's principles and policies, and contrary to the public statement of the University's President issued only days before, on February 27, 2015.
17. On March 3-4, 2015, the Applicants' display was obstructed and their university-related function disrupted by a mob of several dozen University students, as well as non-students, who closely surrounded the display. The mob held banners which effectively blocked the

Applicants' signs, prevented the Applicants from engaging in discussions with passersby, and denied other students the opportunity to see and hear the Applicants' expression.

18. The University failed in its duty to uphold the rule of law and its own stated commitment to freedom of expression, as well as its duty to foster and facilitate discussion in an environment that is a safe space for all students. Moreover, the University failed in its obligation to ensure the equal application of its policies and procedures to all students and student groups, regardless of the popularity of their message or opinions.
19. The University of Alberta Protective Services ("UAPS") personnel permitted and condoned the mob of students obstructing and disrupting the Applicants' event on campus. In particular, UAPS did not require these *Code*-violating students to provide UAPS with their identification, as the *Code* requires students to do when asked by UAPS. UAPS did not photograph the students committing this obstruction and disruption. UAPS did not warn the *Code*-violators that they could be, or would be, prosecuted for violating the *Code* if they failed to cease and desist from their unlawful conduct. UAPS limited its actions to oral suggestions that those engaging in violating the Code should cease their misconduct, but took no action beyond making this suggestion.
20. During the First March Event, UAPS personnel sought to restrict the Applicants' from distributing literature.

Delays and Fees Imposed on Applicants

21. Despite the obstruction and disruption of the First March Event, the Applicants proceeded to schedule another event for March 31, 2015, called "Ask a Pro-Lifer," where speaker Maaike Rosendal (who was flying in from Ontario) would give a 30-minute presentation about abortion and the pro-life perspective, followed by a question-and-answer session (the "Second March Event").
22. On March 16, 2015, the Applicants applied for a room booking and event approval in accordance with University policies, a process the Applicants had previously completed without difficulty or delay, and without being required to request and pay for the presence of UAPS personnel.
23. On March 23, 2015, a week after the application was submitted, the Applicants were notified by Mathieu Trepanier, the Student Event Risk Management Coordinator with the

Dean of Students office, that they needed to have a “security assessment” completed by UAPS before their event could be approved.

24. The Applicants contacted UAPS about a “security assessment” and were directed to the UAPS webpage, which did not have a “security assessment” form. Confused, the Applicants on March 25 requested to speak with Mr. Trepanier to understand what he wanted by requiring a “security assessment.” Mr. Trepanier was not available to meet with the Applicants until March 26, only three business days prior to the March 31 event.
25. On March 26, 2015, Mr. Trepanier told the Applicants that, because their event was controversial and because of the *Code* violations by other students at the First March Event, he required the Applicants to apply and pay for security to be provided by UAPS.
26. The Applicants had not been required to request or pay for security for the First March Event, even though the University knew prior to the First March Event that the Applicants would be displaying controversial pictures (of abortion).
27. The Applicants were not informed prior to March 26 that they would need to fill out a “Special Duty Request Form” and submit it to UAPS. The Applicants expressed their frustration to Mr. Trepanier at the additional requirements being imposed on them due solely to violations of the *Code* by other students prior to, and during, the First March Event. The Applicants requested to be permitted to advertise the Second March Event while these additional requirements were completed, but Mr. Trepanier would not allow them to advertise.
28. Immediately following this March 26 meeting, the Applicants submitted the Special Duty Request Form as required by Mr. Trepanier. This Form did not request any information from Go-Life that was not already within the University’s knowledge. This Form did not request the Applicants to provide information which the Applicants had not already provided to the University on March 16 or which was not already within the University’s knowledge on March 16.
29. The Applicants did not hear back from Mr. Trepanier until 3:20 p.m. on March 31, 2015, less than 15 minutes before their event was scheduled to start. Mr. Trepanier left a voice-mail indicating he wished to discuss the Applicants’ event with the Applicants. The Applicants were informed that their event would only be approved if they paid for a

security guard to attend their event. In order to hold their event, the Applicants agreed to this UAPS demand, but did so under protest.

30. Although the Applicants' event was eventually permitted to proceed, fewer than ten people attended, because the University had prohibited the Applicants from advertising their event until after its commencement on March 31. By imposing these unclear procedural hurdles, which did not provide the University with any information that was not already in its possession, the University substantially silenced the Applicants.
31. Subsequent to the event, the Applicants were invoiced \$225.00 for "Special Duty Service" related to the Second March Event.

Requests for Clarification of the University's Position

32. Given the significant difficulty they experienced trying to express and share their views on campus in the 2014-15 academic year, the Applicants, in a June 11, 2015 letter from their counsel, requested that the University clarify its position concerning their expression and the application of its policies, and also requested that the University withdraw its \$225.00 invoice.
33. Eventually, on July 23, 2015, Robin Overall, the Interim Vice-Provost and Dean of Students, responded with a letter indicating that the University would not withdraw its \$225.00 invoice, and stating that the Applicants, in future, should apply for event approval six weeks prior to the desired date of the proposed event. The University largely ignored the other requests for clarification made in the June 11, 2015 letter.
34. On July 29, 2015, the Applicants' counsel sent another letter to the Ms. Oltean, Senior Legal Counsel for the University of Alberta setting out the following conclusions and assumptions drawn from prior communication with the University, and requesting that Ms. Oltean respond if any of them were not correct:
 - 1) It is the usual and ordinary practice of UAPS to fail to take photos of those who violate the *Code*, and to refrain from asking students engaged in misconduct to produce their identification.
 - 2) UAPS personnel will continue to ask Go-Life members to cease distributing literature on campus.
 - 3) Neither UAPS nor the University of Alberta will contact individuals who are promoting the obstruction or disruption of Go-Life's events. Neither UAPS nor the University of Alberta will warn those individuals that their advocacy and incitement (apart from any such actual conduct) is a violation of the *Code*. Neither UAPS nor the University of

Alberta will warn such individuals that obstructing and disrupting university-related functions, including Go-Life's events, is a violation of the *Code* for which they will be charged.

- 4) Neither UAPS nor the University of Alberta will address the obstruction and disruption of Go-Life's events immediately and decisively, by photographing those engaged in obstruction and disruption, by demanding to see their identification, and by initiating disciplinary proceedings against those who violate the *Code*. Instead, UAPS and the University of Alberta will allow and condone such conduct, and will only take action after the fact, and only upon receipt of a formal written complaint from Go-Life or from its members.
 - 5) The University of Alberta will not require those who steal or vandalize Go-Life's property to pay restitution to Go-Life for the damage they have caused.
 - 6) If Go-Life does not pay the \$225 invoice, Go-Life will not receive approval from the University of Alberta to hold any events on campus during the 2015-16 school year, or thereafter.
 - 7) The University of Alberta will continue to impose "security fees" on Go-Life in respect of events it wishes to hold on campus, based on the potential of misconduct (violations of the *Code of Student Behaviour* and/or violations of the *Criminal Code of Canada*) of people who disagree with Go-Life's opinions and message. The University of Alberta will do so regardless of whether or not Go-Life pays the \$225 invoice.
 - 8) In the 2015-16 school year and thereafter, the University of Alberta will not uphold the legal right of Go-Life to express its opinions peacefully on campus. The University of Alberta will not deal immediately or decisively with property damage, or with the obstruction and disruption of Go-Life events.
35. Neither Ms. Oltean nor anyone else on behalf of the University has responded further, or offered any correction or clarification to these points.
36. While the Applicants did dispute the March 31, 2015 decision of the University to impose "security fees" as a condition for the Applicants being permitted to express their opinions on campus, the Applicants did not file a formal appeal of this decision within 15 days, or at all. Therefore the Applicants have paid the \$225.00 invoice under protest, and do not challenge the legality of said invoice before this Court. Rather, the Applicants challenge, *inter alia*, the University's policy of using "security fees" to penalize the Applicants for *Code* violations perpetrated by students who disagree with the Applicants' expression.

The Applicants' Rights

37. The University has expressly recognized that the Applicants have a right to freedom of expression on campus, including holding university-related functions. After receiving a letter from the Applicants' counsel on February 25, 2015, notifying of the violation of the Applicants' rights, University President Dr. Indira Samarasekera responded publicly, in

reference to the First March Event, by stating that “[t]he University of Alberta will always start from a position that supports a right to freedom of expression. It is our duty to foster and facilitate discussion and debate in an environment that is a safe space for all students.” She recognized Go-Life as a “registered student group on campus and, as such, has the same rights and privileges as other student groups. That includes access to the same spaces as any other student group.” Dr. Samarasekera concluded by stating: “The University does not condone activity that violates the *Student Group Procedures* or the *Code of Student Behaviour*. Any complaints will be investigated by UAPS, according to our existing policies and procedures.”

38. The *Code of Student Behaviour* prohibits, *inter alia*, the following behaviour:

30.3.4 Inappropriate Behaviour towards Individuals or Groups

30.3.4(1) Disruption

30.3.4(1) b No Student shall, by action, words, written material, or by any means whatsoever, obstruct University Activities or University-related Functions.

...

30.2.35 University Activities. "University Activities" include but are not limited to teaching, research, studying, administration, meetings, and public service.

30.2.38 University-related Functions. "University-related Functions" include, but are not limited to activities occurring in the course of work or study assignments inside or outside the University; at work or study-related conferences or training sessions; during work or study-related travel; during events such as public lectures, performances, social or sports.

...

30.3.4(1) c No Student shall use words that incite others to behaviour that is inappropriate to members of the University Community, whether or not in connection with a demonstration, rally or picketing.

...

30.3.6(5) No Student shall counsel or encourage or knowingly aid or assist, directly or indirectly, another person in the commission of any offence under this Code activities; or over the telephone or computer.

...

30.3.5(1) a No Student shall possess, misappropriate, convert, destroy or otherwise damage University property or the property of any other member of the University Community.

...

30.3.6(2) a No Student shall engage in conduct that violates any municipal by-law, Provincial or Federal statute or regulation, or University regulation (Rules External to the Code). Conduct that breaches Rules External to the Code shall be deemed to be an offence under this Code and shall be subject to the disciplinary and appeal processes set out in this Code, if the conduct has a real and substantial link to the University, University Activities, the University Community, or University-related Functions, whether or not the conduct occurred on or in relation to University property.

Further, the Code provides that restitution may be ordered “for damage to or the loss or destruction of any property as the result of the commission of an offence by the Student.” S. 30.4.2(12)a.i.

39. The *Criminal Code of Canada* makes it a crime for any person to willfully destroy or damage property, render property useless or ineffective, or to obstruct, interrupt or interfere with the lawful use, enjoyment or operation of property (s. 430(a), (b) and (c)). Further, the *Criminal Code* prohibits theft (s. 322).
40. The University owes the Applicants and other students the public legal duty under the *PSL Act* to ensure they have the opportunity to participate in learning opportunities. Further, actions by the University which prevent the opportunity to participate in learning opportunities directly impact on the government policy to provide an accessible educational system, which policy is entrusted to the University under the *PSL Act*. Thus, these actions of the University properly engage the Applicants’ *Charter* right to freedom of expression.
41. The individual Applicants are tuition-paying students of the University. The commitments of the University made in the *Code of Student Behaviour*, other policies and the February 27 statement by the University President are implied terms of the contract between the University and the Applicants, which the Applicants are reasonably entitled to rely on.
42. The University owes the Applicants the public legal duty to treat and protect them fairly, as it would protect and treat other groups at the University. Thus, the University is required to appropriately apply and enforce its *Code of Student Behaviour* and other rules and policies for the equal benefit of all students, including the Applicants.

43. The Applicants have repeatedly requested that the University fulfill the duties it owes the Applicants, but the University refuses to do so, and even refuses to express an intention to do so.
44. Unless the University is required to fulfill its duties to the Applicants, the Applicants will suffer irreparable harm by not being permitted to express their views on campus as other groups are permitted to do; by not being permitted to freely create, promote or engage in learning opportunities; and by continuing to be silenced by the undeterred misconduct of other individuals and students. Given the limited period of time the individual Applicants will attend the University, the significance of these violations is increased.
45. Apart from the University being required to fulfill its duties to the Applicants, there is no other adequate remedy available to the Applicants for these violations of their rights.
46. The University has disregarded its public duty to uphold the rule of law for the benefit of the Applicants, and failed in its duty to protect the Applicants' fundamental rights on campus, including particularly, their right to freedom of expression.

Remedy sought:

The Applicants apply to this Court for:

47. An interim-interim, injunction, a temporary injunction and a permanent injunction restraining the University of Alberta from:
 - a. Applying its rules and policies, including without limitation, the *Code of Student Behaviour*, partially and selectively in regards to the Applicants;
 - b. Creating and implementing policies which have, as their purpose, effect or both, the restricting of unpopular or controversial expression on campus; and
 - c. Imposing security fees, delays, or other restrictions on the Applicants on account of the controversial views of the Applicants or on account of the misconduct or potential misconduct of other individuals;
48. An Order in nature of mandamus requiring the University of Alberta to:
 - a. Ensure the Applicants' ability to freely create, promote and engage in learning opportunities;
 - b. Apply and enforce the *Code of Student Behaviour* in a fair and unbiased manner concerning violations of the Applicants' rights guaranteed therein;

- c. Uphold the rule of law on the University campus; and
 - d. Fulfill its duty to protect the Applicants' fundamental rights on the University campus, including their right to freedom of expression;
49. Such further and other relief as this Honourable Court considers just; and
50. Costs.

Affidavit or other evidence to be used in support of this application:

51. The Affidavit of Amberlee Nicol, filed; and
52. Such further and other material as counsel may advise and this Honourable Court will permit.

Applicable Acts and regulations:

53. The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
54. *University Act*, R.S.A. 1906, c. 42
55. *Post-Secondary Learning Act*, S.A. 2003, c. P-19.5

Such further and other material as counsel may advise and this Honourable Court will permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).