

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHRISTIAN NAGGAR, EMILIE HIBBS, JOSHUA HAVILAND, CHRISTIAN BROWN,
KATHLEEN HEPWORTH, ALEXANDRA BROWN and KASSIA ALMEIDA,

Applicants

and

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

Respondent

APPLICATION UNDER section 97 of the *Court of Justice Act*, rule 14.05 of the *Rules of Civil Procedure* and section 2 of the *Canadian Charter of Rights and Freedoms*.

NOTICE OF APPLICATION

TO THE RESPONDENT

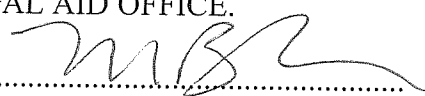
A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing on Friday, February 12, 2016, at 9:30 a.m. at the Oshawa Courthouse, 150 Bond St. E. Oshawa, Ontario, L1G 0A2.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date JAN 28 2016 Issued by 
Local registrar

Address of
court office: 150 Bond Street East
Oshawa, ON L1G 0A2

TO: The Student Association at Durham College and UOIT
2000 Simcoe St. N.
Oshawa, ON L1H 7K4

APPLICATION

1. The applicants make application for:

- a. A Declaration that the decision of The Student Association at Durham College and UOIT (the “SA”) to deny the application of Speak for the Weak (“SFTW”) for ratification as a Campus Club (the “Decision”) (i) was contrary to the principles of natural justice and procedural fairness, (ii) was tainted by a closed mind and bias, and (iii) was not made in good faith as it was based on irrelevant considerations and a breach of the fundamental common law and constitutional rights of the SA and its members to freedom of expression and association.
- b. A Declaration that the SA’s Decision is *ultra vires* by exceeding the SA’s jurisdiction and by violating the SA’s own policies and by-law;
- c. A Declaration that the SA’s Decision is contrary to fundamental common law values and the *Canadian Charter of Rights and Freedoms* by failing to respect Durham College and University of Ontario Institute of Technology (“UOIT”) students’ freedom of expression and association;
- d. A Declaration that the SA’s Decision is void;
- e. An Order directing the SA to ratify STFW as a student club.
- f. An Order prohibiting the SA from limiting Durham College and UOIT students’ and student groups’ (including SFTW’s) access to the services, research, information, materials and other resources of the SA on account of students’ and student groups’ pro-life views and beliefs;
- g. Alternatively, an Order that the SA reconsider SFTW’s application for ratification in accordance with natural justice, in good faith and in accordance with any further directions from this Honourable Court;

- h. Costs; and
- i. Such further and other relief and directions as this Honourable Court considers necessary.

2. The grounds for the application are:

The Applicants

- a. Christian Naggar is a full-time student at UOIT in his first year of a Bachelor of Science program majoring in Biological Science. Mr. Naggar was a student at Durham College in the 2014-15 academic year. Mr. Naggar serves as the President of SFTW.
- b. Emilie Hibbs is a full-time student at Durham College currently in the second year of the 911 Emergency Call Centre and Communications program. Ms. Hibbs is a member of SFTW.
- c. Joshua Haviland is a full-time student at UOIT in his fourth year of the Automotive Engineering Undergraduate Program. Mr. Haviland is a member of SFTW.
- d. Christian Brown is a full-time student at UOIT currently in his first year of mechanical engineering. Mr. Brown is a member of SFTW.
- e. Kathleen Hepworth is a full-time student at UOIT currently in her third year of the nursing program. Ms. Hepworth is a member of SFTW.
- f. Alexandra Brown is a full-time student at UOIT in her third year of a Bachelor of Science program majoring in Life Sciences. Ms. Brown is a member of SFTW.
- g. Kassia Almeida is a full-time student at UOIT in her first year of the forensic psychology program. Ms. Almeida is a member of SFTW.
- h. SFTW is a student group established by students at Durham College and UOIT who seek to advocate for the equal value and protection of all human life from fertilization to natural death, to support students facing crisis pregnancies, and to raise fellow students' awareness and understanding of life issues.

The Respondent

- i. The SA is a non-share capital corporation incorporated under the *Corporations Act*, R.S.O. 1990, c. C.38. The SA is recognized by Durham College and UOIT as the official student union at Durham College and UOIT. Pursuant to agreements with Durham College and UOIT, the SA is funded by mandatory fees collected from students by Durham College and UOIT and then transferred to the SA.
- j. Pursuant to section 2(4) of the *Ontario Colleges of Applied Arts and Technology Act*, 2002, S.O. 2002, c. 8, Sched. F [the “*Colleges Act*”], Durham College is a Crown agent. Durham College states that the SA is responsible for providing the following services to students:

Academic Petitions & Appeals	Meeting space
Advocacy	On-campus employment
Artist Den (Campus Print Studio)	On- and off-campus events
Bursaries	Outreach Services
Campus Clubs	Riot Radio
Campus Emergency Response Team (CERT)	Sexual Health Resource Centre
Campus Food Centre (food bank)	Student Centre
Charity work and fundraising	Student Insurance Plan
Committees	Student Lounge
Daytime and evening programming	Student Societies
E.P. Taylor’s Pub & Restaurant	Study Space
Elections	Textbook Consignment Program
Graduation photos	The Tuck Shop
LGBTQ+ services	Volunteer opportunities
Legal Services (free)	Women’s Centre

Under section 7 of the *Colleges Act*, the Ontario government guarantees the SA the right to carry out its “normal activities”.

- k. UOIT was founded in 2002 as part of the Ontario government’s efforts to create more spaces in post-secondary institutions. Like Durham College, UOIT has made agreements for the SA to provide the above services to students.
- l. Both Durham College and UOIT condition the funding they provide to the SA on the SA exercising good governance and appropriate stewardship of the resources and responsibilities they have been given. In 2013, both Durham College and UOIT halted

payment to the SA on account of their concerns about internal strife within the SA and its failure to exercise good governance. In the interim, both Durham College and UOIT distributed funding to student clubs and for other necessary student services normally overseen by the SA.

The Decision

- m. On August 19, 2015, SFTW applied to the SA to be ratified as a Campus Club. On August 25, 2015, SFTW received an email entitled “Club Ratification Meeting,” stating in part:

The SA Executive Team would like to schedule an in person meeting next week to sit down and review the package in more detail with you due to the sensitive nature of the subject matter being addressed.

- n. SFTW agreed to meet and address any concerns about their ratification application. At the meeting on September 3, 2015, SA President Jesse Cullen informed SFTW that the SA had *already* made the Decision not to ratify SFTW because the SA was committed to abortion as a woman’s right. When Mr. Naggar stated his surprise at the meeting’s departure from its promised purpose, and his expectation that the SA was willing to let SFTW clear up any confusion and go over the application in further detail, Mr. Cullen responded by stating:

No clarification is needed. Everyone here has thoroughly reviewed the application several times and we’ve decided that the SA cannot support a club like Speak for the Weak.

- o. Contrary to what had been promised and contrary to basic procedural fairness, no review or discussion of SFTW’s application took place at the September 3, 2015 meeting.
- p. In a letter dated October 6, 2015, the SA Executive explained that the Decision had been “a collective resolution made by the 2015/2016 Executive Team.” Citing a statement from the SA’s General By-law that the SA aims “[t]o work toward building an environment free of systemic societal oppression and decolonization”, the letter continued setting out the reasons for the Decision:

This statement places responsibility unto [sic] our members to ensure that human rights are not infringed and establish an anti-oppressive framework to make the SA a more equitable and accessible place for everyone. As the democratically elected leaders, it is our responsibility to uphold the mandate of the SA to embrace the freedom of women and uphold a woman's legal right to reproductive freedom. Ultimately, we support a woman's right and freedom to choose her own path.

In your application it states that one of the events includes traveling to Ottawa for the National March for Life organized by the Campaign Life Coalition. This organization openly opposes same-sex marriages and discredits the LGBTQ+ community contradicting our equity mandate as we strive to challenge all forms of oppression based on race, gender, sexuality, class, religion, immigration status, country of origin, age and physical ability.

We are aware that public opinion may differ, however, medical service of abortion is public and legal in Canada and the SA supports that right.

- q. On October 29, 2015, counsel for SFTW sent a letter to the SA's Board of Directors requesting that they exercise their authority to correct the Decision.
- r. On November 23, 2015, counsel for the SA responded, stating that "[f]or the reasons set out in its oral decision of September 3, 2015, and in its written decision, dated October 6, 2015, the SA maintains its decision that Speak for the Weak be denied its application for ratification as a Campus Club."

The Legal Basis for the Application

- s. The SA violated the principles of procedural fairness by not giving SFTW sufficient notice of its specific concerns about ratifying SFTW prior to September 3, 2015 meeting, which meeting the SA represented as having as its purpose "to sit down and review the package in more detail with you due to the sensitive nature of the subject matter being addressed." The SA's failure to disclose its objections to SFTW in advance, and presenting its final Decision at the meeting without first giving SFTW notice and an opportunity to be heard, constituted a serious breach of procedural fairness.
- t. By making a pre-determined Decision before meeting with SFTW on September 3, 2015, by denying SFTW any meaningful right to be heard before making that Decision, and by allowing the personal views of SA Executives on abortion to dictate the Decision, the

Decision was marked by a closed mind and bias, which were again reiterated in the SA's October 6, 2015 letter to SFTW.

- u. In addition to procedural unfairness and bias, the SA's Decision was marked by bad faith as it was based on irrelevant and extraneous considerations, namely SFTW's view on pre-born children and the views of an entity organizing an event SFTW proposed to attend. There is no legitimate basis for SA to believe or assume that it must agree with the opinions or beliefs of SFTW or any other campus club in order to ratify that club.
- v. It is patently unreasonable and lacking in good faith for the SA to characterize the SFTW's promotion of the sanctity of human life as an infringement of human rights and oppression. It was also patently unreasonable and lacked good faith for the SA to fail to recognize the right of a proposed student club to exercise the fundamental freedom to express constitutionally protected political speech that has a high value in relation to self-fulfilment, democratic discourse and truth seeking.
- w. The SA's Decision breaches its own commitment in its policies and General By-law to encourage a diversity of viewpoints and to provide a common framework within which students can communicate, exchange information and share experience, skills and ideas. The Decision breaches the Applicants' rights under the SA's General By-law to access all the services and other resources of the SA, which include the right access the resources available exclusively to ratified Campus Clubs which are recognized by the SA as an integral part of student life. The Decision and the Process by which the SA made it breach the SA's policies requiring the SA to promote social interaction, to inform students of their rights, to provide students with an opportunity to be heard, and to give students good information and assistance in regards their rights, services and appeals. The Decision also breaches the duty of the SA not to cause or allow a Decision that is unlawful, imprudent or in violation of commonly accepted ethics.

- x. The SA's Decision is unreasonable and discriminatory and fails to respect Durham College and UOIT students' fundamental freedoms of expression and association, which are rights guaranteed at common law and by the *Charter* at Durham College and UOIT.
 - y. In addition to the above grounds, this application is based on such further and other grounds as counsel may advise and as this Honourable Court may allow.
 - z. The *Corporations Act*, R.S.O. 1990, c. C.38.
 - aa. The *Ontario Colleges of Applied Arts and Technology Act*, 2002, S.O. 2002, c. 8, Sched. F.
 - bb. The *Courts of Justice Act*, R.S.O. 1990, c. C.43.
 - cc. The *Rules of Civil Procedure*, Rule 14.05
 - dd. The *Charter* sections 2(b) and (d).
3. The following documentary evidence will be used at the hearing of the application:
- a. Affidavit of Christian Naggar;
 - b. Such further and other material as counsel may advise and this Honourable Court will permit.

Date: JAN 28 2016

Justice Centre for Constitutional Freedoms
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CHRISTIAN NAGGAR et al.

and

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

APPLICANTS

RESPONDENTS

Court File No. 94577 /16

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Oshawa

NOTICE OF APPLICATION

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