



# Justice Centre for Constitutional Freedoms

November 28, 2013

Kirpanpreet Dhillon  
Director of Student Life  
Kwantlen Student Association  
12666 – 72 Avenue, Cedar 1240  
Surrey, BC, V3W 2M8

Dear Ms. Dhillon:

We act for Oliver Capko and the Kwantlen pro-life club *Protectores Vitae*.

At the Wednesday, October 2, 2013 meeting of the Kwantlen Student Association (“KSA”), a new pro-choice policy was introduced. This policy has the following provision:

That any material displayed in the Union building should adhere to the principle of ‘safe space’ which has already passed at our Union and which resolves to ‘ensure an accessible environment in which every student feels comfortable, safe and able to get involved in all aspects of the organisation[sic] free from intimidation or judgement[sic].’

This policy comes after the KSA has attempted to discriminate against Mr. Capko on various occasions. This provision, devised to censor any display not found “free from intimidation and judgement[sic]” flies in the face of the right to freedom of expression.

It is not legal for the student union to censor what displays meet its ambiguous definition of “free from intimidation and judgement[sic]”. It is not legal to censor student expression on the basis of whether that expression makes “every student feel(s) comfortable”. Students have the legal right to hold their own opinions, free from punishment if their opinions do not meet with that of the student union.

In *Mowat v. University of Saskatchewan Students’ Union*, [2006] S.J. No. 681, at paragraph 60, the Court ruled that the University of Saskatchewan Student Union (USSU) did not act in good faith when it amended its rules in order to favour a desired outcome. The Court uses a “good faith” test to examine the motivations of decision-makers, and penalizes decision-makers who do not operate in good faith.

This “good faith” principle is applicable to all decisions that the KSA has made or will make.

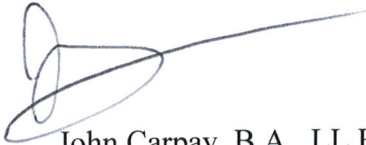
This provision lacks good faith and is a thinly veiled attempt at legitimizing censorship and discrimination. If the KSA decides to use this policy so as to more easily enable discrimination against the pro-life club, such a move will further support the contention that the KSA is not acting in good faith, and has not acted in good faith in past. Keep in mind that there is a record of the prior discrimination you have directed at Mr. Capko. This record will be brought before the Court in a legal proceeding against the KSA.

On behalf of Mr. Capko and the Protectores Vitae, we request that this provision be withdrawn from the new pro-choice policy. If this provision remains within the pro-choice policy and is used to discriminate against our clients, it will be necessary for Mr. Capko and other students to sue the KSA in order to secure their right to freedom of expression, free from discrimination by the student association that they are required by law to join.

If you discriminate against Mr. Capko on the basis of this new policy, you leave him no option but to commence legal proceedings seeking a Court Order that the KSA cease from its illegal discrimination. If that becomes necessary, our client will be seeking his legal costs against you.

I look forward to your response.

Yours truly,

A handwritten signature in blue ink, consisting of a stylized 'J' and 'C' followed by a long horizontal line.

John Carpay, B.A., LL.B

cc:

Richard Hosein, Director of External Affairs

Gaurav Kumar Bhulla, Director of Finance

Jeremy McElroy, General Manager