



# Justice Centre

for Constitutional Freedoms

January 16, 2014

Melissa Palermo, President  
Ryerson Students' Union  
Local 24, Canadian Federation of Students  
SCC-311, Student Campus Centre, 55 Gould St.  
Toronto, Ontario M5B 1E9

Dear Ms. Palermo:

We act for Carter Grant and Preserving Human Dignity at Ryerson (hereafter "PHDR").

Mr. Grant applied to have his club registered on October 11, 2013, and received an email on October 28 from Leatrice O'Neill, Campus Groups Administrator of the Ryerson Students' Union (hereafter "RSU"), on behalf of the Student Groups Committee, informing him that his group had not been approved. Ms. O'Neill gave no reasons for the refusal and directed Mr. Grant to speak to you with further questions. Mr. Carter then emailed you, asking for the reasons for the refusal.

Your response to Mr. Grant on November 6 was as follows: "My sincere apologies for the late reply. To provide some explanation for the rejection of PHDR, the Ryerson Students' Union is committed to creating Safe(r) spaces on campus and after a lengthy discussion the committee was concerned about your group's ability to create a Safe(r) space. Safe(r) spaces mean spaces where students feel welcome and included. After your presentation the committee had concerns regarding your groups [sic] proposed events. Your group discussed that though students from either side of the debate was welcome, some students might not feel comfortable. I hope this provides some clarification".

You referred to no policy to justify your refusal. You gave no information as to whether and how the group could appeal. Mr. Carter was never given the appeal policy, as required by your own Student Groups Appeal Policy, which requires that Mr. Carter was to receive this appeal policy within one day of your refusal.

Mr. Carter proceeded to appeal this decision, first appearing before the Executive Committee on November 18, 2013. PHDR Vice President Margaret McDermott appeared in a second appeal, as allowed for in the Student Groups Appeal Policy, before the Ryerson Students' Union Board of Directors on December 12, 2013.

On December 18, you emailed Ms. McDermott to inform her that the decision of the Board of Directors was that PHDR would not be given club status. No reason for the denied appeal was given or has been given since.

The RSU is an administrative decision-maker which derives its authority from the *Corporations Act* R.S.O. 1990, CHAPTER C.38. All registered full-time undergraduate and bachelor of education students are required to be members of and must pay dues to the RSU. These fees are collected along with tuition and other fees. As a body exercising statutory authority and receiving mandatory dues to carry out a public function, the RSU has a legal obligation to serve the public and all students fairly, without discrimination based on a student's views, opinions, beliefs or philosophy. Penalizing a group due to a subjective determination as to whether they will create a "safe" space as defined by the RSU or others who are not PHDR members constitutes censorship and discrimination.

In *Roncarelli v. Duplessis*, [1959] SCR 121, the Supreme Court of Canada made it abundantly clear that administrative decision-makers must exercise their statutory discretion according to the purpose of the statute, not arbitrarily or based on irrelevant considerations. In *Roncarelli*, the Court held that the Commission's discretion under Quebec's *Alcoholic Liquor Act* could not be used to revoke the liquor licence of the restaurant of a Jehovah's Witness because he had assisted his unpopular co-religionists with their legal troubles. At page 140, Rand J stated:

In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair? The ordinary language of the legislature cannot be so distorted.

Under the *Corporations Act*, the RSU has the right to establish a constitution, bylaws and regulations, and can regulate the operations and conduct of campus clubs. However, the *Corporations Act* does not authorize the RSU to discriminate against its own due-paying members because of their opinions, beliefs, or philosophy, subjectively determining that their message will not create a "safe" space or make others comfortable.

Further, discrimination against PHDR runs counter to the Ryerson University Senate Statement on Freedom of Speech, which reads in part:

Ryerson embraces unequivocally the free exchange of ideas and the ideal of intellectual engagement within a culture of mutual respect. It is a powerful ideal that encompasses every dimension of the University. Everyone who is part of the University, as well as



guests and visitors, has a role to play in this shared enterprise. This responsibility extends to both proponents and detractors of any idea or point of view. Recognizing and respecting diversity of people, thought and expression are essential and an integral part of the ideal.

*In the majesty of the moral order; in the faith that right will triumph; in the courage given us when we ally ourselves to truth in any form; in the privilege of being co-workers in good causes; we celebrate the unseen goals we share and serve.*

In order to achieve and sustain Ryerson's ideal, members of its community must have freedom of thought and expression, freedom from harassment or discrimination and the freedom to consider, inquire, and write or comment about any topic without concern for widely held or prescribed opinions. This right to freedom of thought and expression inevitably includes the right to criticize aspects of society in general and the University itself.

Members of the PHDR are not being allowed “freedom of thought and expression, freedom from harassment or discrimination and the freedom to consider, inquire, and write or comment about any topic without concern for widely held or prescribed opinions” if this freedom is restricted by a subjective opinion as to whether those exposed to a particular message will “feel comfortable” or “welcome and included”. If the RSU requires that all expression make the listener feel comfortable, welcome and included, messages that advocate change or are not agreeable to someone’s subjective determination of “comfortable” will always be excluded.

Who will determine what messages will make the listener “feel comfortable”? If this standard were applied in the past, many messages pivotal to societal change would have been banned.

Indeed, on Ryerson campus, there exist other student clubs that may not make individuals “comfortable”, “welcome and included”. For example, the Socialist Fightback Club: The Marxist Voice of Labour and Youth is a group devoted to revolutionary politics, promoting militant methods. Students for Justice in Palestine support the rights of Palestinians, while A World In Exile: Ryerson’s Counter Culture Campus Group is an anti-authoritarian, anti-capitalist group.

These groups are presently not censored, yet their messages may easily make some individuals uncomfortable, unwelcome, excluded, or all three. These groups are appropriately protected, due to the fact that the individuals within these groups have the right to share divergent opinions, whether or not the listeners feel “comfortable” or “welcome and included”.

Accepting or denying a group on this basis is discriminatory and contrary to the very freedom of expression the RSU espouses in its policies.

In *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395, the Supreme Court of Canada ruled that a decision-maker cannot act disproportionately when limiting *Charter* rights, in this case rights to freedom of expression, freedom of association and freedom from discrimination. The RSU is legally bound to consider the *Charter* rights of the PHDR students.

The RSU cannot deprive the *Charter* right to freedom of expression due to some subjective determination of “safe” space and whether students feel “welcome and comfortable”.

It is only by allowing dissent and debate that institutions of higher learning can provide the rich soil needed for intellectual growth. Student associations should be supporting free speech and vigorous debate, not attempting to muzzle it. As John Stuart Mill stated “To refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility”.

PHDR has met all of the requirements outlined in RSU Student Groups Policy. The only reason that the RSU is refusing club status to PHDR is due to the content of PHDR’s message, based on RSU’s beliefs that this content would make some students feel uncomfortable. This censorship is discriminatory, contrary to freedom of expression and illegal.

On behalf of PHDR, we hereby demand that the RSU immediately revoke its decision to reject the application of PHDR and grant status to the club.

We sincerely hope that it will not be necessary for Mr. Grant and other students to sue the RSU in order to secure their right to freely associate on the Ryerson University campus, free from discrimination by the student association that they are required by law to join.

If you do not grant club status to PHDR, you will leave Mr. Grant no option but to commence legal proceedings, without further warning or notice, seeking a Court Order that the RSU cease from its illegal discrimination against Mr. Grant. If that becomes necessary, our client will be seeking his legal costs against you.

I look forward to your response.

Yours truly,



Carol Crosson

Barrister and Solicitor

cc: Rajean Hoilett, Vice-President Equity  
Roshelle Lawrence, Vice-President Education  
Ifaz Iqbal, Vice-President Operations  
Danielle Brogan, Vice-President Student Life & Events  
Leatrice O'Neill, Campus Groups Administrator  
Carter Grant, President of PHDR  
Margaret McDermott, Vice President of PHDR