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Rule of law at stake in court action against U of A

Fifty-eight years ago, federal troops in Arkansas escorted nine Black students into Little Rock Central High, in furtherance of the U.S. Supreme Court decision of Brown v. Board of Education. This ruling to de-segregate American schools was highly unpopular in the American South. When school started in September 1957, Arkansas Governor Orval Faubus sided with the large, jeering, and violence-threatening mob surrounding the school, which until then had been attended only by whites. Maintaining his popularity with voters, Faubus ordered the Arkansas National Guard to keep the now-famous "Little Rock Nine" out of Central High.

Rather than pander to the mob, President Eisenhower sent federal troops to uphold the rule of law, declaring: "This challenge must be met, and with such measures as will preserve to the people as a whole their lawfully protected rights, in a climate permitting their free and fair exercise … the troops are there pursuant to law." To the chagrin of Faubus, federal troops arrived in Little Rock on September 24. In the days that followed, they protected the Black students from majority opinion as expressed by the hostile mob, and ensured the Nine's safe entrance into Central High. One of the Nine later stated: "For the first time in my life, I felt like an American citizen."

Such is the rule of law, an ancient ideal that entered the Anglosphere's legal tradition through Magna Carta, 800 years ago. Along with the supremacy of God, the rule of law is enshrined as a founding principle in Canada's constitution. It means we are governed by laws, not by the whim of the King, or the will of the mob. It means that the law applies to everyone, and is upheld consistently and equally, even when unpopular. It means that authorities maintain, as Eisenhower said, a climate that permits "the free and fair exercise" of "lawfully protected rights." It means that government upholds an accused person's right to be presumed innocent until proven guilty in a fair trial, even when everyone "knows" that he committed a heinous crime. It means the right to express controversial and upsetting opinions which the majority "knows" to be wrong and false. It means that authorities protect – with force if necessary – the exercise of freedoms by unpopular minorities.

On a scale less dramatic than what took place in Arkansas 58 years ago, the same principles of the rule of law are at stake in a new court action filed against the University of Alberta. When faced with a mob seeking to censor and silence the expression of unpopular views on campus, Canadian universities must choose between following the example of President Eisenhower, or that of Governor Faubus.

Throughout the 2014-15 school year, U of A pro-life students repeatedly saw their posters torn down, whenever they tried to advertise their events. When the U of A finally found one student guilty of this theft and vandalism, she was not required to pay any restitution to Go-Life, the campus club whose posters she had destroyed.

Go-Life's opponents used Facebook to publicize their plans to obstruct and disrupt a pro-life display, a campus event authorized by the U of A. But campus security didn't bother warning any members of this online mob that their planned behaviour was expressly prohibited by the U of A, not to mention the Criminal Code of Canada. Nor was disciplinary action taken against those who violated the U of A's own rules against encouraging the commission of offences.

When the online mob showed up to physically block and disrupt the pro-life display, campus security stood by passively and watched. In spite of clear U of A rules that prohibit the obstruction of university-related functions, not a single student has been found guilty of participating in this mob censorship.

Finally, the U of A slapped Go-Life with an invoice for "security fees" for a subsequent, low-key classroom event, just because Go-Life's opponents might show up and physically disrupt the expression of unpopular ideas.

Rather than maintaining a climate on campus that permits the free and fair exercise of lawfully protected rights, as Eisenhower would have done, the U of A has (thus far) chosen the Faubus approach.

Calgary lawyer John Carpay is President of the Justice Centre for Constitutional Freedoms (www.jccf.ca), which represents three students in their court action against the University of Alberta.