



Justice Centre for Constitutional Freedoms

October 2, 2013

Al Turnbull, President
University of Manitoba Students' Union
101 University Centre
University of Manitoba
Winnipeg, MB R3T 2N2

Dear Mr. Turnbull,

RE: Illegal Discrimination by UMSU against UMSCL

We act for Agnus-Mariae Lucas and the University of Manitoba Students for a Culture of Life ("UMSCL").

We understand from Ms. Lucas, president of UMSCL, that the UMSCL held a pro-life display on campus from September 23-25, 2013. On the evening of the first day of the display, September 23, the University of Manitoba Student Union ("UMSU") held a meeting in which someone requested that the club status of UMSCL be revoked.

On September 24, Thao Lam, Vice-President Student Services and Chair for the Student Group Promotions and Affairs Committee, sent the following email to Ms. Lucas:

Hello,

I am writing to inform you that last night at the UMSU Council Meeting, an emergency motion was put forward by a student at large regarding the University of Manitoba Students For a Culture of Life student group and the Genocide Awareness Project that is currently taking place on the Curry Place Pedway. The motion to revoke Students for a Culture of Life of UMSU student group status was deemed a non-emergency by the Chair of council and was then referred to the SGPAC committee. The SGPAC committee will review UMSCL's pending student group application and the motion and bring forward a recommendation to UMSU Council at the next meeting which will take place Monday, October 7th at 7:00PM in the UMSU Council Chambers. Members of the student group are welcome to attend this meeting and I highly encourage you to do so.

Regards,
Thao Lam

On September 30, Andrée Dupont, the UMSU Executive Assistant, passed on the following Motion to Ms. Lucas:

Whereas: Comparisons to the holocaust, graphic and inappropriate messaging regarding abortion is taking place on campus. Creating an unsafe environment for students and is in direct opposition of Policy 2009. Be it resolved that: UManitoba for Students for a Culture for Life be revoked of their student group status.

Policy # 2009, from the Official Policy Manual of the University of Manitoba Students' Union, states the following, in part:

UMSU does not condone behaviour that is likely to undermine the dignity, self-esteem or productivity of any of its members or employees and prohibits any form of discrimination or harassment whether it occurs on UMSU property or in conjunction with UMSU-related activities. Therefore, UMSU is committed to an inclusive and respectful work and learning environment, free from:

1. discrimination or harassment as prohibited in the Manitoba Human Rights Code;
2. sexual harassment; and
3. personal harassment.

Harassment and discrimination violate an individual's human rights and run contrary to UMSU's fundamental values. UMSU will act promptly and efficiently to deal with these behaviours.

There is no definition of either discrimination or harassment in Policy # 2009, or anywhere in the Official Policy Manual of the University of Manitoba Students' Union. It is illegal for the UMSU to use this policy to discriminate against the UMSCL, based on the content of UMSCL's opinions, beliefs and philosophy. Indeed, Policy #2009 could be used to revoke the club status of any club to which the UMSU decides to apply the ambiguous terms of "harassment" or "discrimination". All controversial opinions can easily be banned from campus as undermining "dignity" and "self-esteem". That is why Policy #2009 refers to behaviour, and not to the peaceful expression of unpopular opinions. To use this policy to revoke the rights of a campus club to express unpopular opinions is illegal and disingenuous.

Further, the Manitoba *Human Rights Code* explicitly protects all students on the University of Manitoba campus under section 9(k), which covers political belief, political association and political activity. The *Code* protects UMSCL students from discrimination.

Section 13(1) of the *Code* prohibits discrimination that is linked to the denial of "any service, accommodation, facility, good, right, licence, benefit, program or privilege available or accessible to the public or to a section of the public, unless bona fide and reasonable cause exists for the discrimination". The UMSU provides students with the service of recognizing and facilitating campus clubs that students may wish to form, and UMSU provides students and campus clubs with the accommodations and facilities in which campus clubs can operate. Since the University of Manitoba expressly recognizes a commitment to academic freedom and to freedom of thought, inquiry and expression, the purpose of the University of Manitoba is to facilitate the peaceful expression of all

views, including unpopular ones. Therefore, UMSU has no legal authority to remove club status from UMSCL.

These provisions are clear and settled law, and apply to protect the UMSCL against discrimination by the UMSU.

In contrast to the UMSU, the UMSCL is not providing any service, accommodation, facility, right, license, or program to anyone. UMSCL is not discriminating against any individuals on campus simply by communicating an unpopular message.

Policy #2009 states that UMSU is committed to adherence to the *Code*, to prevent discrimination or harassment. The UMSU's discrimination on political belief is then not only in breach of the *Code* itself, but in breach of the very Policy the UMSU is relying on to discriminate against the UMSCL.

The UMSU is also an administrative decision-maker which derives its authority from *The Corporations Act*, CCSM c C225. All registered University of Manitoba students are required to be members of, and must pay dues to, the UMSU. As a body exercising statutory authority and receiving mandatory dues to carry out a public function, the UMSU has a legal obligation to serve the public and all students fairly, without discrimination based on a student's views, opinions, beliefs or philosophy.

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 UMSU 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 UMSU to discriminate against a club because of its opinions, beliefs, or philosophy or because it expresses unpopular views on campus.

The Corporations Act requires that every director, officer and trustee must act “honestly and in good faith with a view to the best interests” of the corporation. This, at minimum, demands that the UMSU act without discrimination toward any of its corporation members.

Further, discrimination against UMSCL on the basis of the club’s belief runs counter to the University of Manitoba’s Board of Governor’s *Core Principles* which support the right of UMSCL students to inquire into and present controversial views:

Academic Freedom. We will protect the right of everyone in our academic community to intellectual independence and critical inquiry. Advancement of understanding in research, scholarship and creative work and the transmission of that knowledge to students requires the privilege of speaking and writing freely. Members of our University have a personal and institutional commitment to academic freedom in the performance of their academic duties.

(http://umanitoba.ca/admin/governance/governing_documents/governance/584.html)

The U of M’s Policy: Respectful Work and Learning Environment is especially pertinent when it says the following:

2.2 The University recognizes the following:

- (a) a richly diverse society in Manitoba, as well as beyond;
- (b) a duty to act in a manner consistent with existing legislation regarding human rights;
- (c) a commitment to academic freedom and freedom of thought, inquiry, and expression among its members which may result in respectful disagreements regarding beliefs or principles.

(http://umanitoba.ca/admin/governance/governing_documents/community/230.html)

It is only by allowing dissent and debate that institutions of higher learning can provide the rich soil needed for intellectual growth. Student associations like the UMSU 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”. Mill also opined that “he who knows only his own side of the case, knows little of that.”

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.

When student union representatives make decisions on matters that are not within their authority, to discriminate against students based on their personal likes and dislikes, they are operating in “bad faith”.

The Official Policy Manual of the University of Manitoba Students’ Union, Policy #2008 a) iii. provides that UMSU employees and volunteers can receive legal representation, but there are

exceptions. One exception to this assurance of representation is if that employee or volunteer has operated in "bad faith".

You may have a personal preference for or against a message on campus. However, when you discriminate against a student due to that personal preference, you are operating in "bad faith". This act of bad faith can remove you from the assurance and protection of legal representation.

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 in unreasonably limiting *Charter* rights, in this case rights to freedom of expression, freedom of association and freedom from discrimination. The UMSU is legally bound to consider the *Charter* rights of the UMSCL students.

The UMSU cannot deprive the *Charter* right to freedom of expression based on some vague allegation of "discrimination" and "harassment", or based purely on a dislike for the message of the UMSCL.

On behalf of Ms. Lucas, we hereby demand that the UMSU immediately withdraw the Motion against the University of Manitoba Students for a Culture of Life.

We attach a copy of the Petition filed in the Supreme Court of British Columbia against the student society at the University of Victoria. Like the UMSU, the student society at U-Vic had discriminated against the campus pro-life club, Youth Protecting Youth. The student society at U-Vic mistakenly thought that it could impose its opinion about abortion on all U-Vic students by discriminating against the pro-life club, just because of the club's pro-life opinion. This made court action necessary.

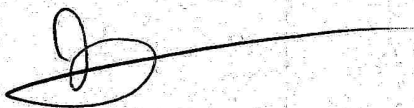
We sincerely hope that it will not be necessary for Ms. Lucas and other students to sue the UMSU in order to secure their right to freely speak and associate on the University of Manitoba campus, free from discrimination by the student association that they are required by law to join.

If the UMSU does not withdraw this Motion, you will leave Ms. Lucas no option but to prepare to commence legal proceedings against you, seeking a Court Order that the UMSU cease from its illegal discrimination against Ms. Lucas and other students. If that becomes necessary, our client will be seeking her legal costs against you.

And please bear in mind that acting in bad faith may disqualify you from receiving legal representation, under Policy #2008 a) iii. of the *Policy Manual*.

I look forward to your response.

Yours truly,



John Carpay, B.A., LL.B

cc: Agnus-Mariae Lucas, President, UMSCL