



# Justice Centre for Constitutional Freedoms

April 30, 2013

Carissa Taylor, President  
Brandon University Students' Union  
270 18th Street  
Brandon MB, R7A 6A9

Dear Ms. Taylor:

**RE: Illegal discrimination by BUSU against Students for Life**

We act for Catherine Dubois and Brandon University Students for Life (hereafter "Students for Life").

Below is a brief summary of how Students for Life have been denied their legal right to form a club by the Brandon University Student Union (hereafter "BUSU") during the entirety of the 2012-13 school year.

In August of 2012, Catherine Dubois and another student met with you and Vice-President External Suz Duff, to speak to them about starting a club. BUSU told the students at this meeting that the executive was apprehensive about allowing a pro-life club because there was no pro-choice club, and BUSU did not want to start a conflict between students.

BUSU then discussed this issue at a board meeting. BUSU proposed that Students for Life have a community group on campus which would allow them to host events on campus, but not have ads or events in public spaces.

On January 23<sup>rd</sup>, Students for Life submitted an official application, and followed it up with an email to the BUSU VP External Suz Duff, stating they hoped their official application would be reconsidered.

On February 4, 2013, Catherine Dubois received an email from Suz Duff with the following:

Hi Catherine,

Sorry that this is a few days later than you had asked for. BUSU council has denied your application for club status. There are articles within your proposed constitution that contradict our internal bylaws, and we cannot approve your group as such. I have copied and pasted our bylaws below for your convenience. As stated before, your group can still form on campus and you can still book the rooms in our building like any other student, you just won't have the formality of club status. If you have any questions, you are more than welcome to come to our board meeting on Wednesday February 6th at 7:00pm in our boardroom.

Ms. Dubois responded by asking Ms. Duff what policies the proposed constitution contradicted. Ms. Duff responded on February 13, 2013, by copying the policies that outline “some of the problems with your club’s constitution”. These policies were listed as follows:

#### **Criteria for New and Returning Student Groups**

- ☐ In order for a Student Group to obtain or retain Student Group Status, it must meet the following criteria:
  - o The group must be one which benefits Brandon University and its’ students.
  - o The group be unlike any other BUSU-recognized Student Group that currently exists.
  - o The group’s membership must consist of at least five (5) members, of whom must be members of the Brandon University Students’ Union.
  - o **Club Constitutions and practices must meet the following criteria:**
    - ☐ **Accords equal membership to any and all interested students**
    - ☐ **Provides for the democratic selection of its executive members**
    - ☐ **Does not contain any discriminatory clauses and has no clauses that are contrary to any existing Canadian laws;**
    - ☐ **Does not contain any provision for its present or future affiliation with any organization that has discriminatory policies or practices as detailed by the Canadian Human Rights Code.**
  - o **Membership of Open Membership student groups, including classes of membership, may not be restricted on the basis of ability, race, religion, political beliefs, sex, gender, age, or sexual orientation, although they can exclude non-students from membership.**
  - o **Membership of Closed Membership student groups, including classes of membership, may not be restricted on the basis of ability, race, religion, political beliefs, sex, gender, age or sexual orientation. Notwithstanding this clause, Closed Membership student groups may restrict membership based on:**
    - ☐ **Political beliefs, if the group has a particular political affiliation (such as the campus wing of an existing political party) or are focused around a particular political program expressed in their constitution;**
    - ☐ **Religious beliefs, if the group has a particular religion or are focused around a particular religious belief expressed in their constitution;**
    - ☐ **Any other factor not mentioned above (such as academic program), although SGPA reserves the authority to disallow any student group from restricting membership on the above criteria or any other.**

**o The club-applicant's constitution must not contain any discriminatory clauses and has no clauses that are contrary to any existing Canadian laws and must not contain any provision for its present or future affiliation with any organization that has a discriminatory policies or practices as detailed by the Canadian Human Rights Code**

o BUSU shall assume no liability or responsibility for those groups recognized or not recognized by BUSU.

(emphasis added by Ms. Duff)

Ms. Dubois met with you and Vice-President External Suz Duff on Friday, February 15, 2013, to discuss the issues that BUSU raised in respect of the constitution of Students for Life. Raymond Thompson (VP internal) was also present.

Ms. Dubois amended the constitution as suggested at the February 15 meeting, and submitted the amended constitution on March 5, 2013.

On April 2, 2013, Ms. Duff emailed Ms. Dubois to inform her that BUSU had decided to let next year's council decide on granting status to Students for Life, thereby prolonging the rejection of club status to the entire year.

BUSU is an administrative decision-maker which derives its authority from *The Corporations Act*, CCSM c C225. All registered Brandon University students are required to be members of, and must pay dues to, BUSU. As a body exercising statutory authority and receiving mandatory dues to carry out a public function, BUSU 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 BUSU 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 BUSU to discriminate against a club because of its opinions, beliefs, or philosophy.

*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 BUSU act without discrimination toward any of its corporation members.

Further, discrimination against Students for Life on the basis of the club’s belief runs counter to the very purpose of BUSU, as described by the BUSU Declaration of Students Rights, which states:

As a member of the Canadian Federation of Students, BUSU upholds the Declaration of Students’ Rights. Every person has the right to equal treatment without being discriminated against because of race, national or ethnic origin, language, place of residence, religion, sex, age, mental or physical disability, physical appearance, marital status, sexual orientation, gender, political belief, or socio-economic background.

BUSU, as well as the Brandon University Statement of Student Rights and Responsibilities Policy states that:

Every student enjoys the opportunity to participate in the academic and social life of the University regardless of race, colour, religion, national origin, ethnic identification, age, political affiliation or belief, sexual orientation, gender, economic status, source of income or disability.

The Brandon University Statement of Student Rights and Responsibilities notes that “Brandon University prizes and defends freedom of speech”. In fact, the University stipulates that a complaint can be made through the Dean of Students in regard to “Freedom of Expression”.

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”.

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.

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.

On behalf of Brandon University Students for Life, we hereby demand that the BUSU immediately a) revoke its decision to reject the application of Brandon University Students for Life and b) grant status as applied for.



We attach a copy of the Petition filed in the Supreme Court of British Columbia against the student association at the University of Victoria. Like KSA, the student association at U-Vic had discriminated against the campus pro-life club, Youth Protecting Youth. The student association 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. This court action was settled when the student association at the University of Victoria agreed to refrain from any further discrimination against the campus pro-life club.

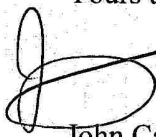
We sincerely hope that it will not be necessary for Ms. Dubois and other students to sue the BUSU in order to secure their right to freely associate on the Brandon University campus, free from discrimination by the student association that they are required by law to join.

By deferring the decision to accept Student for Life's application to next year's Executive, you are prolonging your illegal discrimination against the club. We expect an immediate response from you or from the new Executive, to inform Students for Life that BUSU is ceasing its illegal discrimination, to grant immediate status to Students for Life.

If BUSU does not grant club status to Brandon University Students for Life, you will leave Ms. Dubois no option but to prepare to commence legal proceedings seeking a Court Order that BUSU cease from its illegal discrimination against Ms. Dubois. If that becomes necessary, our client will be seeking her legal costs against you.

I look forward to your response.

Yours truly,



John Carpay, B.A., LL.B

cc: Catherine Dubois  
Suz Duff, BUSU Vice-President External  
Dr. Clive Seligman, Society for Academic Freedom and Fellowship  
Cara Zwibel, Canadian Civil Liberties Association