

File no.

**THE QUEEN'S BENCH
BRANDON CENTRE**

B E T W E E N:

CATHERINE DUBOIS, KYLE COFFEY AND SILAS LEE

Applicants

- and -

BRANDON UNIVERSITY STUDENTS' UNION

Respondent

NOTICE OF APPLICATION

HEARING DATE: _____

Marty Moore
Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW.
Calgary, Alberta T2V 1K2
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Counsel for the Applicants

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TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on August 3, 2016, at 10 a.m., at the Brandon Court of Queen's Bench, 1104 Princess Avenue, Brandon, Manitoba R7A 0P9.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date

Issued _____
Deputy Registrar

To: Brandon University Students' Union
270-18th Street
Brandon, MB R7A 6A9

APPLICATION

The Applicants make application for:

1. A Declaration that the decision by Brandon University Student Union's ("BUSU") to revoke the student group recognition of the campus club Brandon University Students for Life ("Students for Life") 1) violated the principles of natural justice and procedural fairness; 2) exceeded BUSU's jurisdiction and is *ultra vires*; 3) was made in bad faith; 4) was based on irrelevant considerations; 5) was tainted with bias; and 6) unreasonably failed to respect Brandon University students' fundamental freedoms of expression and association.
2. A Declaration that BUSU's revocation of Students for Life's student group recognition (the "Decision") is void;
3. An Order that BUSU reinstate Students for Life's student group recognition forthwith;
4. Alternatively, an Order that BUSU consider Students for Life's application for renewal of student group recognition forthwith, and with an open mind, in good faith, in accordance with the principles of natural justice, in accordance with BUSU's own policies and by-laws, and in accordance with directions from this Honourable Court;
5. An Order prohibiting BUSU from limiting Students for Life's members' access to the booking of BUSU-managed space, services, research, information, materials and other resources of BUSU on account of the views and beliefs of Students for Life;
6. Costs; and
7. Such further and other relief and directions as this Honourable Court considers necessary.

The grounds for the application are:

1. Catherine Dubois is a full-time student at Brandon University, currently in the Bachelor of Business Administration program. Ms. Dubois serves as the President of the Brandon University Students for Life (“Students for Life”).
2. Kyle Coffey is a full-time student at Brandon University, currently in the Bachelor of Business Administration program. Mr. Coffey is the Treasurer of Students for Life.
3. Silas Lee is a full-time student at Brandon University, currently in the Bachelor of Business Administration program. Mr. Lee is a member of Students for Life.
4. Students for Life is a student group established in 2012 at Brandon University to promote the protection of human life from the moment of conception to natural death by engaging and informing students at Brandon University about life issues.
5. BUSU is a not-for-profit society incorporated under *The Corporations Act*, C.C.S.M. c. C225. BUSU is the official student union at Brandon University as recognized in the *The Brandon University Act*, C.C.S.M. c. 890, representing over 3,000 students at Brandon University. All Brandon University students, including the Applicants, are required to be members of BUSU and pay mandatory student-union fees, unless otherwise exempted.

Relevant Background

6. On January 23, 2013, Students for Life submitted its first application for student group recognition to BUSU. BUSU rejected Students for Life’s application. Counsel for Students for Life informed BUSU that its actions constituted discrimination and amounted to an abuse of BUSU’s discretion. In September 2013, BUSU granted student group recognition to Students for Life.

7. In November 2013, Students for Life put on an event referred to as the “Why I am Silent” campaign in which members of Students for Life handed out sheets that discussed abortion statistics and developmental milestones of a foetus. The event was shut down by BUSU because the Brandon University Women’s Collective complained about the event.
8. In April 2014 Students for Life put up a number of posters on the Brandon University campus that contained historical quotes about the definition of “person” and that argued the definition of persons should include a foetus. BUSU demanded Students for Life remove the posters.
9. On October 14, 2015, members of Students for Life conducted a planned event we called “Let’s Chalk About It”. The event involved writing statements related to the issues of abortion, euthanasia, the right to life, and the legal status of “persons” in chalk on sidewalks and paved areas owned by the City of Brandon and adjacent to the Brandon University campus.
10. Students for Life’s student group recognition was renewed in 2014 and again in 2015.

Revocation of Student Group Recognition

11. At a BUSU council meeting on November 4, 2015 (the “November 4 council meeting”), without any notice to Students for Life, BUSU revoked Students for Life’s student group recognition (the “Decision”). BUSU failed to provide Students for Life with the case that was being made against Students for Life. BUSU failed to provide any opportunity for Students for Life to make submissions in its defence. BUSU then failed to inform Students for Life of the Decision that had been taken against this student club.
12. Students for Life did not become aware that its student group recognition had been revoked until January 22, 2016, when Students for Life attempted to book space in the Mingling

Area in the Knowles Douglas Student Union Centre to set up an information table. BUSU refused the booking request, and instead informed Students for Life that its student group recognition had been revoked. Students for Life was forced to cancel its planned event on short notice.

Request for Reasons and Reconsideration

13. On January 29, 2016, Students for Life President Catherine Dubois and Communications Director Andrew Madill met with two members of the BUSU executive, then Interim-President Nick Brown and Vice President External Rhoni Mohanraj, to request that BUSU explain the reasons for the Decision, and to request BUSU's reconsideration of same (the "January 29 Meeting").
14. At the January 29 Meeting, the BUSU executive members gave the following reasons for the Decision:
 - a) that Students for Life had violated the *Respectful Environment Policy* of Brandon University (the "*REP*") by making students feel "uncomfortable" as a result of the "personhood poster" event in April 2014 and the "chalking" event on October 14, 2015;
 - b) that Students for Life was allegedly affiliated with a U.S. pro-life group, which BUSU also alleged is "anti-gay";
 - c) that Students for Life was affiliated with a Canadian pro-life group that BUSU "had issues with";
 - d) that the Students for Life events in April 2014 and October 2015 did not align with the Canadian Federation of Students' pro-choice opinions; and
 - e) that Students for Life was a redundant group because the issues of suicide and abortion were already being addressed by the BUSU's LGBTQ Collective and Women's Collective, respectively.

15. During the January 29 Meeting, the BUSU executive members repeatedly stated that Students for Life may be able to have their student group recognition reinstated if they “changed their views”.
16. At the January 29 Meeting, Mr. Brown and Mr. Mohanraj indicated that Students for Life could appeal the decision to BUSU Council, and give a presentation at the next Council meeting.

Rejection of Appeal

17. Students for Life’s appeal of the Decision was heard at the BUSU Council Meeting on February 12, 2016 (the “Appeal”). Students for Life executive members Kyle Coffey and Andrew Madill gave a presentation in support of the Appeal.
18. At the February 12 Council Meeting, BUSU Council voted to uphold BUSU’s prior Decision to revoke Students for Life’s student group recognition.
19. Following the Appeal, Mr. Mohanraj informed Students for Life of the BUSU Council’s determination via email on February 23, 2016. In his email, the reason provided by Mr. Mohanraj was that Students for Life’s “mission coincides too much with the mission of the women’s collective”. Mr. Mohanraj also reiterated that Students for Life should try applying again once there was a new BUSU Council because the new Council “might have a different perspective.”
20. As a consequence of BUSU’s revocation of its student group recognition, Students for Life can no longer book meeting rooms from either BUSU or Brandon University for its events unless Students for Life pays booking fees, which it cannot afford. Students for Life is further precluded from engaging students during student clubs days, held twice a year, in which recognized clubs set up tables in the Mingling Area to engage with fellow students.

Students for Life also does not have the opportunity to apply for club event reimbursement from BUSU or receive free access to other BUSU services.

Legal Basis for Application

21. By failing to provide Students for Life of 1) notice of the November 4 council meeting; 2) notice of the reasons why BUSU was considering the revocation of Students for Life's student group recognition; 3) an opportunity to make submissions at the November 4 council meeting; and 4) written reasons for the Decision, BUSU violated the principles of natural justice and procedural fairness, its own "Impartiality Clause" (By-law 200-33), section 4.0-f of the *REP*, and the "Principle of Freedom of Expression" section of the *Statement of Student Rights and Responsibilities Policy* of Brandon University (the "*SSRRP*"). BUSU further violated the principles of natural justice and procedural fairness by failing to state how Students for Life had violated the *REP*, thereby precluding Students for Life from having an opportunity to respond to same.
22. Students for Life was at all material times, and still remains, in full compliance with the student group recognition criteria and requirements listed in By-law 2500-6.
23. BUSU acted with bias, bad faith, in excess of its own jurisdiction, and in breach of its own rules, including its "Impartiality Clause" (By-law 200-33), by, *inter alia*:
 - a) failing to provide notice to Students for Life of the November 4 council meeting;
 - b) failing to provide Students for Life with the reasons for, and the opportunity to respond to, the proposed revocation of Students for Life's student group recognition at the November 4 council meeting;
 - c) failing to provide notice to Students for Life of the November 4 council meeting, and failing to provide written reasons for the Decision;

- d) unreasonably accusing Students for Life of violating the *REP* solely because its views allegedly made some students feel “uncomfortable”;
- e) falsely accusing Students for Life of being affiliated with a U.S. group (which is allegedly “anti-gay”) without any evidence;
- f) unreasonably determining that Students for Life was not “unlike any other BUSU recognized student group that currently exists” as required by Bylaw 2500-6.b;
- g) characterizing Students for Life’s statements written in chalk on the public walkways surrounding the University on October 14, 2015, as “intimidating”;
- h) telling Students for Life to “change its views” and to “wait until some of these members graduate and reapply in September”; and,
- i) basing its Decision on the alleged political views and personal beliefs of Students for Life members, the same being said to conflict with the Canadian Federation of Students’ adopted stance on abortion, and on allegations that Students for Life made students “uncomfortable,” both of which are irrelevant considerations in regard to the revocation of Students for Life’s student group recognition.

24. BUSU’s actions evidence serious carelessness and a breakdown of the orderly exercise of BUSU’s authority, as they are irrational, biased, arbitrary, and in breach of the requirements of procedural fairness.

25. BUSU disregarded the fundamental freedoms of expression and association inherent at Canadian university campuses including Brandon University, and which are also recognized in section 4.0-f of the *REP* and the “Principle of Freedom of Expression” section of the *SSRRP*. Specifically, BUSU’s Decision does not allow the Applicants, who are Brandon University students, to engage in the open discussion of all issues, but rather only those issues and viewpoints that BUSU Council members approve of. Students who meet to discuss views and issues not endorsed by BUSU will not have equal access to space and resources afforded by having student group recognition.

26. Such further and other grounds as counsel may advise and as this Honourable Court may allow.

Authorities Relied On:

27. *The Corporations Act*, C.C.S.M. c. C225.

28. *The Brandon University Act*, C.C.S.M. c. 890;

29. Rule 14.05(2), *Court of Queen's Bench Rules*, Manitoba Regulation 553/88

30. *The Canadian Charter of Rights and Freedoms*, sections 2(b) and (d).

The following documentary evidence will be used at the hearing of the application:

1. Affidavit of Catherine Dubois;
2. Such further and other material as counsel may advise and this Honourable Court will permit.