



Justice Centre for Constitutional Freedoms

October 25, 2017

VIA EMAIL AND FACSIMILIE

Nick Brown, President
Brandon University Students' Union
270 18th Street
Brandon, MB R7A 619
Email: pres@busu.ca
Fax: 204-727-3498

Dear Mr. Brown,

Re: *Unlawful censorship of student expression*

We write on behalf of Brandon University Students for Life (“SFL”), a campus club registered with the Brandon University Students’ Union (“BUSU”).

On October 19, 2017, the BUSU Executive Committee refused to allow BUSU to display its pro-life poster. Yet, the Executive Committee immediately thereafter permitted a pro-abortion poster.

BUSU represents the entire student body at Brandon University, and has a duty to encourage the expression and discussion of students’ diverse opinions and beliefs.

We demand that BUSU immediately cease its censorship of SFL and respect all students’ rights to express and hear diverse opinions and beliefs.

BUSU’s Censorship of SFL

SFL 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. In this respect, SFL focuses its activities on generating debate and discussion on campus regarding euthanasia, abortion, suicide and other life issues. Since its inception, SFL has conducted numerous peaceful events on campus to engage with fellow students.

BUSU’s censorship vis-à-vis SFL dates back to 2012, when BUSU initially denied club status to SFL. After receiving a warning letter from the Justice Centre for Constitutional Freedoms (“Justice Centre”), BUSU changed its position and granted student club status to SFL in September 2013. However, in November 2015, BUSU revoked SFL’s student club status without informing SFL until January 2016. The reasons produced by BUSU for this decision were, *inter alia*, that SFL’s

pro-life views made some students feel “uncomfortable” and “intimidated”. The Justice Centre filed a court application on behalf of SFL against BUSU for its unlawful decision to revoke SFL’s club status. The matter was settled on August 24, 2016, when BUSU agreed to reverse its decision to revoke SFL’s club status.

Most recently, BUSU has censored SFL once again. On October 17, 2017, SFL submitted a poster to BUSU, seeking to post it in the Knowles Douglas Student Union Centre (“KDC”). The poster in question contains two images of fetuses (at 6 and 8 weeks) along with an image of a tool used to perform abortions (see enclosed poster). The caption that goes with the images is “Growing...Growing...Gone.” accompanied by “Abortion Kills Children” and an invitation for any student to join the next SFL meeting.

However, on n October 19, 2017, SFL received an email from Mohammed Agavi, Vice President External for BUSU, informing SFL could not post its poster in the KDC (see enclosed email).

Mr. Agavi relied upon Policy #2016 which states that BUSU will not accept advertising that is “sexist, racist, homophobic, discriminatory or derogatory to any group of people.” SFL’s poster is not “sexist, racist, homophobic, discriminatory or derogatory”. Rather, Mr. Agavi states that it was deemed to be “triggering, offensive and aggressive to a large member [sic] of the student body”. Not only are such restrictions on expression not in the cited Policy, they are entirely subjective and incapable of reasonable application.

Censoring expression based on a claim of majority offense eviscerates minority and individual student rights, while ignoring Canada’s fundamental guarantee of freedom of expression and the very purpose of the university: to freely explore, challenge and debate opinions, beliefs and assumptions.

BUSU demonstrated its discrimination against minority opinions and beliefs by concurrently allowing a pro-abortion poster while prohibiting a pro-life poster. The pro-abortion poster, posted by BUSU’s Women’s Collective contains a picture of a coat hanger with the caption “Keep your morality out of our uteruses. She decides. Not You. Never Again”. If “aggressive” posters were in fact prohibited, which they are not, this poster would then need to be prohibited as being “aggressive” to pro-life students.

Rather, it is the duty of BUSU, as the mandatory representative of all Brandon University students, to permit both pro-life and pro-abortion students to express and discuss their opinions and beliefs. The event SFL’s pro-life poster was seeking to advertise did in fact permit just that kind of expression and discussion. On October 24, 2017, SFL held an event where students with varying opinions and beliefs discussed the topic of abortion in a peaceful and engaging way.¹ Yet, rather than encourage such respectful debate, BUSU has threatened to further discriminate against SFL.

¹ See <https://www.brandonsun.com/local/busu-to-review-pro-life-group-after-complaints-452941133.html>.

Rights of SFL

Freedom of expression is not merely an aspiration or ideal, it is a legal right held by students at Brandon University, including SFL members. Yet, BUSU has repeatedly attempted to censor and discriminate against SFL over the course of the past four years.

In *Wilson v University of Calgary*, the Court found a decision censoring pro-life students to be unreasonable because it failed to properly take into account students' expressive rights and the "nature and purpose of a university as a forum for the expression of differing views":

Members of the University community expect to be able to engage in the exchange of ideas and open discourse. Mr. Hickie's reasons fail to demonstrate that he took into account the nature and purpose of a university as a forum for the expression of differing views. Nor do they demonstrate that any prior attempt to balance *Charter* values by interfering "no more than necessary" was reasonably undertaken. Neither Ms. Houghton's nor the Appeal Boards' decisions demonstrate that due regard has been given to the importance of the expressive rights and Mr. Hickie's conclusion to the contrary is unreasonable.²

Apart from the *Canadian Charter of Rights and Freedoms*, freedom of expression must be respected at educational institutions:

Freedom of expression is not, however, a creature of the *Charter*. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society.³

Further, it is important to note the freedom of expression "protects the right to receive expressive material as much as it does the right to create it".⁴

Public Discussion of Abortion is a Recognized Right in Canada

The Decision of BUSU is clearly directed at discouraging the expression of a pro-life viewpoint on campus.

The Supreme Court of Canada held in *R. v. Morgentaler*, [1988] 1 S.C.R. 30 that the protection of unborn human life is a valid legal objective that "hangs in the balance" in the shaping of public policy about abortion (per Beetz and Estey JJ, at pp. 110-114; 123-28), that there is a "public interest in the protection of the unborn" (per McIntyre and LaForest J., at p. 146), that the state has a "compelling legal interest in the protection of the foetus" (per Wilson J. at p. 183) and that the

² 2012 ABCA 139 [*Wilson*] at para 163.

³ *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 12 [emphasis added].

⁴ *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 SCR 1120 at paras 40-41 citing *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at pp 1339-1340.

“protection of foetal interests by Parliament is also a valid governmental objective” (per Dickson CJ and Lamer J. at p. 75). In *Winnipeg Child and Family Services (Northwest Area) v. G.(D.F.)*, [1997] 3 S.C.R. 925, at para. 12, the majority, citing *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, stated that the resolution of the debate about the personhood of the unborn child is “fundamentally normative” and must be resolved by bodies other than courts based on the open consideration of “broad social, political, moral and economic choices”. “[T]he right to express opposition to abortion is a constitutionally protected right” (*R. v. Spratt*, 2008 BCCA 340, at para. 91).

Consequently, there must be room for free and open discussion about the nature of unborn human life and about whether and to what extent that life should be valued and protected within our culture and our legal system. Public educational institutions ought to be a *locus* of peaceful, vigorous and provocative debate on so important an issue.

Peaceful, public and vigorous pro-life advocacy is just as entitled to protection under the fundamental Canadian value of free expression as is pro-choice advocacy.

BUSU is violating the Brandon University Principle of Freedom of Speech

The Brandon University *Statement of Student Rights and Responsibilities Policy* clearly recognizes the “Principle of Freedom of Expression” on campus, noting the following:

Brandon University prizes and defends freedom of speech. It affirms the rights of its members to teach and learn in an environment free from coercive force, intimidation, and interference, and subject only to the constraints of reasoned discourse and peaceful conduct. Behaviour that violates this Principle shall be dealt with through the *Student Discipline Process*. [Emphasis added]

Brandon University recognizes the importance of freedom of expression on its campuses and condemns censorship through coercive force, intimidation or interference. Opposition to SFL’s views should be conducted through “reasoned discourse and peaceful conduct”, not student union censorship.

Conclusion

As an organization representing the interests of a diverse student body, the BUSU cannot justify its censorship of students’ expression on the basis that the expression is “triggering, offensive or aggressive”. To do so violates the foundational values of Brandon University and Canadian society.

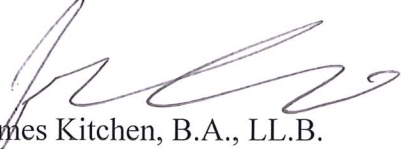
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BUSU's censorship of SFL's pro-life views violates the rights of SFL members. We demand that BUSU reverse its improper decision prohibiting SFL from posting its pro-life poster on campus.

We request a response from BUSU no later than November 2, 2017.

Govern yourselves accordingly.

Sincerely,



James Kitchen, B.A., LL.B.
Barrister and Solicitor
Justice Centre for Constitutional Freedoms
Email: jkitchen@jccf.ca
Fax: (587) 747-5310

Enclosures

cc: Mohammed Agavi,
Emily Simon



GROWING... GROWING... GONE.
ABORTION KILLS CHILDREN.

Brought to you by Brandon University Students for Life

Join us for our meeting!

Tuesday October 24 in @ 12:40pm Charlie Biggs

studentsforlife.bu@gmail.com

Poster Declined

Marty Moore <mmoore@jccf.ca>
Draft

Wed, Oct 25, 2017 at 11:04 AM

----- Forwarded message -----

From: "Mohammed Agavi - VPE" <vpe@busu.ca>
Date: Oct 19, 2017 3:56 PM
Subject: Poster Declined
To: <studentsforlife.bu@gmail.com>
Cc:

Hello,

After reviewing your poster, it has been declined because it violates our Advertising Policy law. The Policy clearly states that:

Policy #2016 - Advertising Guidelines This policy applies to arrangements entered into by BUSU with student groups and other advertisers for displaying commercial advertising in or at BUSU spaces and in BUSU publications, and specifies content guidelines for all advertising acceptable by BUSU. Content for All advertising that is circulated, sponsored or created by BUSU and must meet the following general standards of respect as to form and content. BUSU will not accept advertising that is sexist, racist, homophobic, discriminatory or derogatory to any group of people. If such determination is called into question, acceptability shall be deemed by the Executive Committee,

The Executive Committee has deemed the poster to be triggering, offensive and aggressive to a large member of the student body because of the pictures and the choice of language on the ad. As Brandon University is a space for all students I will be more than happy to help you design a poster that would be suitable to go up at the KDC. Please email me to setup an appointment or if you have any questions comments on concerns.

Thanks

Mohammed Agavi

Vice President External

Brandon University Students Union

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