Court file no.CV 16-550599

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KEVIN ARRIOLA AND ALEXANDRA GODLEWSKI

Applicants

and

RYERSON STUDENTS' UNION

Respondent

APPLICATION UNDER section 97 of the *Court of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*.

APPLICANTS' FACTUM

December 21, 2017

JUSTICE CENTRE FOR
CONSTITUTIONAL FREEDOMS
#253, 7620 Elbow Dr. SW
Calgary, AB T2V 1K2

Marty Moore (AB #18786)
Phone: (587) 998-1806
Fax: (587) 747-5310
Email: mmoore@jccf.ca

Counsel for the Applicants

TO: DLA PIPER (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 6000
P.O. Box 367
Toronto ON M5X 1E2

Jennifer Saville
Phone: (416) 863-3360
Fax: (416) 369-7904
Email: jennifer.saville@dlapiper.com

Counsel for the Respondents
University of Toronto Mississauga Students' Union
and Ryerson Students' Union

AND TO: RICKETTS HARRIS LLP
181 University Avenue
Suite 800
Toronto ON M5H 2X7

Andrea J. Sanche
Phone: (416) 364-6211
Fax: (416) 364-1697
Email: asanche@rickettsharris.com

Counsel for the Respondent
The Student Association of Durham College and UOIT

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PART I – OVERVIEW

1. The issue before this Court in this case is whether a student union can refuse to permit students to access an integral part of student life simply because of the student union executives' personal disagreement with the students' beliefs and opinions.

2. Each year, Canadian students enrol in publicly funded universities from coast to coast, eager to exchange ideas and engage in debate in an environment that fosters intellectual curiosity and diversity. Once on campus, however, they too often find that the intellectual and expressive freedom that was marketed to them is an illusion. They discover that the peaceful expression of beliefs and opinions are not tolerated, but instead they are censored, suppressed, or even punished.

3. This intolerance of divergent viewpoints and hostility towards minority opinions is often sourced in the body responsible for protecting students' best interests, namely the designated students' union.

4. It is not without bitter irony that students realize that they have been treated unfairly, arbitrarily, and ultimately unlawfully, by the same student union they are required to fund, through mandatory student union fees.

5. Students whose rights and freedoms are violated by their own student union have no recourse other than the courts. Judicial intervention is required to protect students from ideological coercion at the hands of student politicians who seek to enforce their own opinions as the only acceptable speech on campus.

6. This case therefore represents an opportunity for this Court to reject a dangerous precedent, namely, the coerced adoption of select ideological viewpoints as a pre-requisite for students to benefit from fair and equal treatment by their student unions on public university campuses.

7. In doing so, this Court can answer the following questions asked by the Alberta Court of Queen's Bench in a judgment pertaining to campus free speech: "Does anyone actually expect to attend a university campus and encounter only the ideas they already embrace? Are only select viewpoints now permissible on our university campuses?"[1]

PART II – FACTS

A. The Parties

8. The Men's Issues Awareness Society ("MIAS") is a student group that was established at Ryerson University in 2015 by Kevin Arriola, Alexandra Godlewski and other Ryerson University students.[2]

9. At the time, the Applicants were both full-time undergraduate students at Ryerson University, and dues-paying members of the Ryerson Students' Union ("RSU").

10. MIAS' foundational purpose is to host discussions and bring social awareness to issues that disproportionately affect men and boys, such as higher rates of suicide, homelessness, workplace injuries and failure in school.[3]

11. MIAS is committed to discussing these issues in an open and safe way, rejecting all forms of violence and hate speech,[4] fostering free speech and healthy debate, while also committing to equality, intersectionality and equity.[5]

12. RSU is a corporation pursuant to the *Corporations Act*, R.S.O. 1990, c. C.38. RSU is a student government organization representing all full-time undergraduate and graduate students enrolled at Ryerson University.

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[1] *R v Whatcott*, 2012 ABQB 231, at par 33.
[2] Affidavit of Kevin Arriola, Sworn January 6, 2016 ("Arriola Affidavit") paras 1-3, CAR Vol 1, Tab 2, p 9.
[3] Arriola Affidavit, para 3, CAR Vol 1, Tab 2, p 9.
[4] Arriola Affidavit, para 21, CAR Vol 1, Tab 2, p 14.
[5] Arriola Affidavit, para 23, CAR Vol 1, Tab 2, p 14.

13. RSU receives student union dues from all full-time undergraduate students. Paying student union dues of about $123 per year[6] is therefore mandatory, without exemptions available, for the Applicants and all other students.

14. RSU, like other Canadian student unions, uses the mandatory dues collected from students, in part, to fund the creation and activities of student clubs.

15. RSU devotes approximately $60,000 to $70,000 per year in base funding for student groups, an average of about $1,200 per student group. Additional grant funding is also available to student groups, based on application and merit, totaling an additional $120,000 to $130,000 per year.[7]

16. Only recognized student groups can access these funds. RSU is the only body authorized to recognize student groups or to deny such recognition.

17. Club recognition is of paramount importance to prospective student groups at RSU, as it entitles them to important benefits on campus, such as RSU funding, facility booking, advertising space and event approval.[8]

18. In 2016, RSU had recognized over 80 different student groups, which promoted a broad range of diverse and divergent religions, cultures, activities, ideologies and views.[9] For example, in 2016 RSU recognized, properly, both "Students for Justice Palestine" and "Students Supporting Israel," two student groups dedicated to supporting opposing positions on issues of significant geo-political debate and controversy.[10]

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[6] Transcript of Cross-Examination of Obaid Ullah Cross-Exam, January 17, 2017 ("Ullah Cross-Examination") 5:25-6:7, CAR Vol 2, Tab 8, 654.
[7] Ullah Cross-Examination, 7:10-8, CAR Vol 2, Tab 8, p 655.
[8] Arriola Affidavit, para 8, CAR Vol 1, Tab 2, p 11.
[9] Arriola Affidavit, para 7, CAR Vol 2, Tab 2, p 10.
[10] RSU Student Groups, CAR Vol 2, Tab 2(B), pp 158-159.

19. According to RSU's *Student Groups Policies*, conditions for club recognition include a valid constitution,[11] a filed membership list with at least 20 RSU members' names,[12] a complete record of its signing and executive officers,[13] and compliance with the Ontario *Human Rights Code* and RSU and Ryerson policies.[14]

20. Nothing in RSU's Letters Patent, By-laws or policies provides RSU with legal authority to consider the beliefs, philosophies or opinions of a prospective student club in granting (or denying) club recognition.

21. To the contrary, several RSU policies, as well as applicable Ryerson University policies, expressly affirm the importance of freedom of expression at Ryerson.

22. In its *Policy Manual*, RSU expressly declares its commitment to support the fundamental freedoms in the *Canadian Charter of Rights and Freedoms*, including freedom of expression and freedom of association:

> The Ryerson Students' Union Supports:
>
> i. Freedom of conscious [*sic*] and religion;
> ii. Freedom of thought, belief, opinion and expression, including freedom of the press and other mediums of communication;
> iii. Freedom of peaceful assembly; and
> iv. Freedom of association.[15]

23. Similarly, Ryerson University's *Student Code of Non-Academic Conduct* also affirms the importance of freedom of expression.[16]

24. In 2010, the Ryerson University Senate issued its *Statement on Freedom of Speech*:

> **Ryerson embraces unequivocally the free exchange of ideas and the ideal of intellectual engagement within a culture of mutual respect. It is a powerful**

[11] RSU Student Groups Policies, section 2.5, CAR Vol 1, Tab 2(C), p 173.
[12] RSU Student Groups Policies, section 2.7, CAR Vol 1, Tab 2(C), p 173.
[13] RSU Student Groups Policies, section 2.6, CAR Vol 1, Tab 2(C), p 173.
[14] RSU Student Groups Policies, section 2.5, CAR Vol 1, Tab 2(C), p 173.
[15] RSU *Policy Manual*, section 4.3, CAR Vol 1, Tab 2(A), p 28.
[16] Ryerson University's *Student Code of Non-Academic Conduct*, section B.1, CAR Vol 1, Tab 2(D), p 183.

> **ideal that encompasses every dimension of the University.** Everyone who is part of the University, as well as guests and visitors, has a role to play in this shared enterprise. This responsibility extends to both proponents and detractors of any idea or point of view. Recognizing and respecting diversity of people, thought and expression are essential and an integral part of the ideal.
>
> In order to achieve and sustain Ryerson's ideal, **members of its community must have freedom of thought and expression, freedom from harassment or discrimination and the freedom to consider, inquire, and write or comment about any topic without concern for widely held or prescribed opinions.** This right to freedom of thought and expression inevitably includes the right to criticize aspects of society in general and the University itself.
>
> **Ryerson does not avoid controversies, difficult ideas, or disagreements over deeply held views. When such disagreements arise within the University or within a broader social context, the University's primary responsibility is to protect free speech within a culture of mutual respect**. The right to freedom of speech comes with the responsibility to exercise that right in an atmosphere free of intimidation and in an environment that supports the free speech rights of those with opposing views.[17]

B. MIAS' Application for Student Club Recognition

25. On October 19, 2015, Kevin Arriola submitted MIAS' application to RSU with the help of RSU Campus Groups Administrator, Leatrice O'Neill.[18]

26. RSU scheduled a meeting with MIAS, to take place on October 26, 2015. RSU requested "an explanation of the nature" of MIAS, including planned events and activities during the year ahead.[19]

27. At this October 26 meeting, the RSU Student Group Committee (the "Committee") claimed that there was no need for a men's issues group at Ryerson, as other groups, such as the Women and Trans Collective, were already addressing many of the issues MIAS sought to focus on.[20]

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[17] Ryerson University's *Statement on Freedom of Speech*, CAR Vol 1, Tab 2(E), p 185 [emphasis added].
[18] Arriola Affidavit, paras 9-10, CAR Vol 1, Tab 2, p 11.
[19] Arriola Affidavit, para 11, CAR Vol 1, Tab 2, p 11; see also Email from Ms. O'Neill, October 22, 2015, CAR Vol I, Tab 2(K), p 208.
[20] Arriola Affidavit, para 12, CAR Vol 1, Tab 2, pp 11-12.

28. The Committee also took issue with MIAS allegedly having associations with the Canadian Association for Equality ("CAFE") and with A Voice For Men ("AVFM"), despite the fact that neither group had any control over MIAS. Further, MIAS has no association with AVFM.

29. Without any credible evidence, the Committee also claimed that MIAS would harass women and make them feel unsafe, and could become "a breeding ground for misogyny and anti-feminism,"[21] simply because of the factual issues that MIAS wished to discuss. These biased and unfounded allegations are neither reasonable nor rationally connected to any of RSU's stated criteria for student club recognition.

30. On October 27, 2015, RSU informed the Applicants that RSU had rejected the application, initially without any reasons (the "Decision").[22]

31. On October 30, 2016, another meeting was held between MIAS and RSU representatives. RSU presented MIAS with a document entitled "Committee Concerns,"[23] claiming five obstacles to RSU club recognition of MIAS:

1) certain speakers and events that could be organized by MIAS could cause safety concerns for "woman-identified" students;
2) associations with external organizations, specifically CAFE;
3) MIAS' refusal to acknowledge "the systematic privilege that men have";
4) the "lack of regulation" in MIAS' constitution to adequately address "safety concerns & associations with external groups"; and
5) non-compliance with RSU's "Women's Issues Policy" due to MIAS' association with CAFE[24] (collectively, the "Committee Concerns").

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[21] Arriola Affidavit, para 14, CAR Vol 1, Tab 2, p 12.
[22] Emails between Mr. Arriola and Ms. O'Neill, October 27-29, 2015, CAR Vol 1, Tab 2(L), p 212.
[23] Affidavit of Obaid Ullah, sworn November 25, 2016 ("Ullah Affidavit"), para 37, CAR Vol 2, Tab 3, p 258.
[24] "Committee Concerns" Document, October 30, 2015, CAR Vol 1, Tab 2(M), pp 214-215.

32. In cross-examination, RSU President, Mr. Obaid Ullah attempted to defend some of the Committee Concerns, noting that "[t]he main overall concern was the **safety for students on campus** and for students identified as women for feeling unsafe **because of the different discussions** and the environment it creates."[25] It seems that, for RSU, "safety" can be jeopardized by the wrong kind of discussions, without any threat of violence or other physical harm.

33. RSU claimed that if MIAS were a recognized student group, the ensuing discussions on campus would threaten the safety of some students, because MIAS did not recognize "systemic male privilege", and because of MIAS' association with an external group, CAFE, which MIAS simply used as a resource.[26]

34. On November 3, 2015, MIAS formally requested an appeal of RSU's Decision.

35. On November 16, 2015, RSU President Andrea Bartlett informed Mr. Arriola, that an appeal would be heard by the Executive Committee the following day, and requesting that MIAS submit any material they wished to present to the Committee.[27]

36. On November 17, 2015, MIAS submitted a revised constitution and appeal presentation, but RSU then postponed the appeal to December 1, 2015.

37. On December 1, 2015, the RSU Executive Committee heard MIAS' appeal. Mr. Arriola clarified some of MIAS' positions in relation to RSU's Committee Concerns. He explained that MIAS had modified its constitution, expressly affirming MIAS' commitment to remain independent of external control, to reject all forms of violence and hate speech, to take all precautions for safety at any group functions and to provide a safe place for discussions free of

[25] Ullah Cross-Examination, 35:17-21, CAR Vol 2, Tab 8, p 662 [emphasis added].
[26] Arriola Affidavit, para 13, CAR Vol 2, Tab 2, p 12.
[27] Emails between Mr. Arriola and RSU, November 3-20, 2015, CAR Vol 1, Tab 2(O), pp 223-225.

fear for personal safety.[28] In this way, MIAS went above and beyond any requirements imposed on other student groups which the RSU has recognized as campus clubs.

38. The Executive Committee claimed the changes made by MIAS to its constitution were unsatisfactory, and refused to overturn the Decision.

39. MIAS's appeal of the Decision was next heard by the RSU Board of Directors, on January 25, 2016. Again, RSU refused to recognize MIAS as a student group at Ryerson University, despite MIAS having made the required amendments and modifications to its constitution at the request of RSU. The Board failed to take into account Mr. Arriola's responses, as well as the changes made to MIAS' constitution.

40. A summary of the reasons for the RSU Decision were subsequently provided to MIAS, on February 29, 2016, which noted, *inter alia*, that the Committee felt that MIAS could not act in accordance with RSU and University criteria, policies and procedures.[29]

PART III – ISSUES AND LAW

41. The legal issues before this Court are as follows:

A. Whether the Court has jurisdiction to review the RSU Decision to deny Club Status to the Applicants; and

B. Whether RSU's Decision to deny Club Status to the Applicants
   i. violated RSU's own Letters Patent, By-laws and policies,
   ii. violated the principles of natural justice, or
   iii. violated the RSU's duty of good faith.

42. The Applicants have filed a separate Applicants' Joint Memorandum of Law that sets out the legal principles to be applied in addressing these issues. Reference to those principles will be made in this factum.

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[28] MIAS Constitution, November 2015, CAR Vol 1, Tab 2(Q), p 231.
[29] RSU's Written Summary of Decision to Reject MIAS, February 29, 2016, CAR Vol 1, Tab 2(T), pp 245-246.

A. The Court has Jurisdiction to Review RSU's Decision to Deny Club Status

43. The Ontario Superior Court of Justice possesses the jurisdiction to review the decisions of student unions such as the RSU.[30] Courts generally apply the principles of private administrative law,[31] even though there is judicial recognition that a student union is not merely a "private club that would expect to conduct its business in private, and without a level of accountability."[32] There is a "substantial public interest" in the services and responsibilities of a student union.[33] This factor weighs in favour of a court exercising jurisdiction more readily over a students' union's decisions than over the decisions of a purely private and voluntary association, such as a religious group or a yacht club.

44. The test set out by the Supreme Court of Canada for jurisdiction in the case of "private" decision-makers comes from the review of the decisions of a religious group, in which the Court stated: "the question is not so much whether this is a property right or a contractual right, but **whether it is of sufficient importance to deserve the intervention of the court**".[34]

45. The Applicants are fee-paying members of RSU, and have a contractual right to expect that RSU will honour its own principles and comply with its own rules and policies, particularly when RSU makes a decision that directly affects the Applicants. The Applicant students also have a

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[30] See *Courchene v Carleton University Students' Association*, 2016 ONSC 3500 [*Courchene*]; *Association of Part-Time Undergraduate Students of the University of Toronto v. University of Toronto Mississauga Students Union*, [2008] O.J. No. 3344 [*APUS v UTMSU*]; *Rakowski v. Malagerio*, 2007 CanLII 2214 (Ont SCJ) [*Rakowski*] at para 30: "courts do get involved in the affairs of associations and clubs", particularly in cases "when the organization's processes and conduct lack the basic hallmarks of natural justice and fairness".

[31] See *APUS v UTMSU*; *Rakowski*; *University of Victoria Students' Society v Canadian Federation of Students*, 2011 BCSC 122 [*UVSS v CFS*].

[32] *Courchene* at para 10.

[33] *Ibid.*

[34] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 SCR 165 [*Hofer*], p 175 [emphasis added].

right to freedom of expression and freedom of association on campus, a right which RSU pledges to support.[35]

46. In this case, the Applicants submit that the rights and interests at stake are of "sufficient importance" to warrant the Court's review. This legal question calls for consideration of the importance of the rights and interests engaged by the Decision, and a comparative analysis of other court decisions finding jurisdiction for review under private administrative law.[36]

47. Student life on a college or university campus is significantly affected by the actions of the students' union, which plays a critical part in providing students with valuable services and opportunities for extra-curricular engagement and interaction. In the case of the RSU, recognized student groups receive base funding of about $1,200 per year (plus potential additional grant funding),[37] the ability to book facilities for free and organize funded events,[38] and the ability to advertise through posters, banners, and other displays at Ryerson.[39]

48. RSU was required to comply with established procedural rights and appeals when it denied Club Status to the Applicants, including an appeal to the RSU Executive Committee, a written decision, and a further appeal to the RSU Board of Directors.[40]

49. The Decision's impact on the Applicants was severe, prohibiting them from numerous opportunities to effectively engage their peers, such as space for events, advertising, and accessing funding for events and activities.[41] Finally, RSU intentionally targeted the Applicants on the basis

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[35] RSU *Policy Manual*, CAR Vol 1, Tab 2(A), 28; Ryerson University's *Student Code of Non-Academic Conduct*, section B.1, CAR Vol 1, Tab 2(D), p 183; Ryerson University's *Statement on Freedom of Speech*, CAR Vol 1, Tab 2(E), p 185.
[36] See *Pal et al v Chatterjee et al*, 2013 ONSC 1329 [*Pal*]; *Woloshyn v. Association of United Ukrainian Canadians*, 2013 ABQB 262 [*Woloshyn*]; *McLachlan v Burrard Yacht Club*, 2008 BCCA 271 [*McLachlan*].
[37] Ullah Cross-Examination, 8:9-18, CAR Vol 2, Tab 8, p 655.
[38] *Facilities Booking and Events Policy*, CAR Vol 1, Tab 2(G), pp 190-191.
[39] *Advertising Policy*, CAR Vol 1, Tab 2(I), pp196-197.
[40] *Student Group Policies*, sections 3.8-3.13.1, CAR Vol 1, Tab 2(C), pp 178-179.
[41] Arriola Affidavit, para 8, CAR Vol 1, Tab 2, p 11.

of their beliefs and opinions as expressed in the MIAS application form, thereby engaging in discrimination and attacking the intellectual, social and cultural diversity that student groups are intended to bring to the campus.

50. Real diversity – intellectual, social and cultural – cannot exist on a campus without freedom of expression. Real diversity is affirmed by Ryerson University, which "embrace[s] unequivocally the free exchange of ideas" as a "powerful ideal that encompasses every dimension of the University".[42]

51. Fundamentally, the RSU's Decision to refuse Club Status recognition of MIAS is a direct violation of RSU's commitment to support freedom of thought, belief, opinion and expression and association.[43]

52. Upon reviewing MIAS' application, RSU claimed to be "concerned" with, *inter alia*, the safety of "woman-identified students" due to **discussions** that MIAS would hold, the refusal of MIAS to commit to the vague concept of "systemic male privilege," and MIAS' links to an external group for resource support.[44] Basing the Decision on concerns stemming from mere **discussions** of men's issues, particularly in the absence of any evidence of harm, directly undermines Ryerson's students' freedom of expression, including the right to hear other viewpoints. Deeming MIAS ineligible for Club Status because it does not specifically affirm the concept of "systemic male privilege" is a rather shocking violation of the freedom of belief, likewise supported in RSU's own policies. Finally, refusing to approve MIAS as a campus club because of alleged associations is an obvious violation of the Applicants' freedom of association.

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[42] Ryerson University's *Statement on Freedom of Speech*, CAR Vol 1, Tab 2(E), p 185.
[43] RSU *Policy Manual*, section 4.3, CAR Vol 1, Tab 2(A), p 28.
[44] "Committee Concerns" Document, October 30, 2015, CAR Vol 1, Tab 2(M), pp 214-215.

53. RSU Committee members claimed that there was no "need" for a student group to raise awareness on men's issues "such as higher rates of suicide, homelessness, workplace injuries and failure in school," stating that this discussion could be handled by the Women and Trans Collective student group.[45] However, RSU provided no evidence to show that the Women and Trans Collective was addressing these issues. Even if that group was "addressing" issues effecting male suicide and homelessness, that does not mean that RSU has the authority to prevent another voice from addressing such issues from a different perspective. If "Students Supporting Israel" addresses Israeli/Palestinian issues, that is not a valid reason for banning "Students for Justice Palestine". When the RSU seeks to create an echo chamber of social and intellectual interaction, it violates its own purpose and policies.

54. RSU's Decision suggests that RSU sees its role as that of "moderating" what type of discussions occur on campus. Acting as a self-appointed censor, RSU refused to acknowledge the clarifications made by Mr. Arriola in Appeal hearings, including changes made by MIAS to its own constitution to comply with the arbitrary demands of the RSU.[46]

55. RSU is required by its Letter Patent "[t]o safeguard the rights of the individual student of the said Institute."[47] Separate and apart from the *Charter*, "[f]reedom of expression … is one of the fundamental concepts that has formed the basis for historical development of the political, social and educational institutions of western society."[48] This is reflected in RSU policies and Ryerson University policies which expressly affirm the freedoms of expression and association.

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[45] Arriola Affidavit, para 12, CAR Vol 1, Tab 2, pp 11-12.
[46] Arriola Affidavit, para 23-25, CAR Vol 1, Tab 2, pp 14-15.
[47] RSU Letters Patent, CAR Vol 2, Tab 3(B), pp 286, 294.
[48] *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 12.

56. Further, freedom of expression is not simply a right for the speaker, it is also a right for the listeners, who are enriched by hearing the beliefs and opinions of others.[49] The Decision not only deprives the Applicants (and the other MIAS members) of freedom of expression, it also deprives the thousands of other members of RSU of the co-equal right to hear, and the enriching experience of receiving a diverse perspective.

57. Indeed, students' unions across Canada are responsible for hundreds of thousands of students enrolled at more than 60 public universities across Canada. These students are compelled to pay mandatory fees to their students' unions, in exchange for the benefits of a more positive student life through resources, support, and other services, and through the real diversity that comes from different campus clubs expressing differing opinions.

58. Despite this context, the Ontario Superior Court of Justice recently refused to protect the rights of a student group that was denied recognition by RSU based on its beliefs and opinions.[50] Justice Stewart provided little in the way of explanation as to why the preservation of viewpoint diversity on campus was not considered to be important by her. Justice Stewart dismissed the application of the student group, notably as a result of her finding that RSU was essentially a "private entity".[51]

59. The Applicants urge this Court to distance itself from the ruling in *Grant*. First, while Justice Stewart found there was not "a pressing principle of natural justice" engaged in *Grant*[52], there are several such principles at stake in the current case, as described below. Second, the situation at Ryerson reveals why students' unions need judicial oversight: once permitted to

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[49] *Ford v Quebec (Attorney General)*, [1988] 2 SCR 712 at pp 766-67; *Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue*, [2000] 2 SCR 1120 at para 41 citing *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at pp 1339-1340.
[50] *Grant v RSU*, 2016 ONSC 5519 [*Grant*]. This case involved a campus pro-life club.
[51] *Grant* at para 41.
[52] *Grant* at para 42.

discriminate against some students' beliefs and opinions (as in the *Grant* case), RSU did not hesitate to discriminate against other beliefs and opinions held by a different group of students (the present case). Finally, RSU is not, as Justice Stewart claimed, a purely "private entity". In fact, in *Courchene v Carleton University Students' Association*, rendered the same year as *Grant*, the Ontario Superior Court of Justice exercised its jurisdiction to review a decision made by the Carleton University Students' Association ("CUSA"), precisely because CUSA had important public elements.

60. As Justice Ray reasoned in part in *Courchene*:

> It is expected by the public and the students, particularly in light of the educational objects of the University, that the student-run institutions such as CUSA will conduct themselves in accord with the rules of natural justice. While deference is owed to the procedures, practices and decisions of CUSA in the conduct of its affairs, its decisions are not immune from judicial review.[53]

61. In reaching this decision, Justice Ray noted that the student union was an integral part of a public university that is responsible for a million-dollar budget for student services in circumstances that required considerable public funds.[54] He further noted:

> There is a substantial public interest in student services, parents' investments, students' investments, and the financial responsibilities of CUSA. This is not a private club that would expect to conduct its business in private, and without a level of accountability.[55]

62. Students' unions, such as RSU, cannot be considered as purely private organizations, but rather as quasi-public in nature. The public has a legitimate interest in ensuring that these unions are managed properly, and required to honour their own principles and policies. The Applicants submit that, as a result of the important public element of students' unions, this Court should exercise its jurisdiction to hold RSU accountable for overstepping its lawful authority and violating

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[53] *Courchene* at para 9.
[54] *Courchene* at para 10.
[55] *Courchene* at para 10.

the Applicants' right to freedom of expression and association, as well as their right to equal treatment and benefits as RSU members.

63. This court is not required to find that RSU engaged "public law" duties under the Ontario *Judicial Review Procedure Act*[56] in order to exercise the requested oversight over RSU.[57] Rather, this Court has jurisdiction to exercise oversight over the decisions of student unions under the principles of private administrative law is established.[58]

64. In *McLachlan v Burrard Yacht Club*, the British Columbia Court of Appeal found that through revocation of membership, the petitioner "lost a right (to moor his boat at the marina) that was an important element of his social life and his family life" and took jurisdiction to reverse the revocation.[59]

65. In the case before us, the rights affected by RSU's Decision included the rights of dues-paying RSU members to be treated equally and fairly in club recognition, as well as the related right to access RSU services and funding in order to organize events, book space and engage with fellow Ryerson students, like other student groups, and most importantly the rights of freedom of thought, belief, opinion, expression and association. Canadian society deems the freedoms of thought, belief, opinion, expression and association to be "fundamental",[60] and they are recognized as even more fundamental on a public university campus.[61]

66. In light of the fact that attending a public university is necessary to enter the teaching, legal, medical, accounting, engineering and numerous other professions, and in light of the fact that

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[56] RSO 1990, c J.1.
[57] *See West Toronto United Football Club v. Ontario Soccer Assn.*, 2014 ONSC 5881; *Setia v. Appleby College*, 2013 ONCA 753.
[58] *See APUS v UTMSU*; *Rakowski*; see also *Courchene*.
[59] *McLachlan v Burrard Yacht Club*, at para 9 [*McLachlan*].
[60] See *The Constitution Act, Schedule B to the Canada Act 1982 (UK),* 1982, c 11 (*Charter*), section 2.
[61] See Ryerson University's *Statement on Freedom of Speech*, CAR Vol 1, Tab 2(E), 185; RSU *Policy Manual*, section 4.3, CAR Vol 1, Tab 2(A), p 28.

students must pay student union dues in order to eventually pursue a career, the Applicants submit that these rights are at least as important as the rights to social and family life associated with yacht club membership in the *McLachlan* case.

67. Similarly, in *Pal v Chatterjee*, the Ontario Superior Court of Justice, in reviewing the commencement of disciplinary proceedings in a private religious organization, noted that the rights to membership in the organization "are of great importance to all members. They include the rights to vote, serve on committees, attend meetings and functions and use the facilities of the organization".[62] The Court in *Chatterjee* found that the rights attached to membership, such as facility use and serving on committees, were sufficiently important to its members in the context of a private, voluntary organization to justify the intervention of the Court. Applied analogously to the facts here, the Applicants clearly have an interest that is of great importance, namely the fundamental rights attached to their mandatory membership in a student union on a public university campus. Here, the rights to freedom of expression and equal treatment and access to the same benefits as all other RSU members, funded by compelled union dues from the Applicants and other students, are in play and weigh in favour of finding a "sufficient interest" by this Court.

68. In *Lee v Yeung*, the court commented on the *Hofer* case, noting:

> [C]ourts will intervene in the private activities of non-statutory bodies where the aggrieved parties have **no other remedy available to them**. In such cases, judicial intervention is not only appropriate but can be expected.[63]

69. Here, as in *Yeung*, there is no other remedy available to the Applicants. The Applicants have exhausted their internal appeal process before the relevant RSU bodies (RSU Executive Committee and RSU Board of Directors) without any success, and require judicial intervention as a last resort. No other recourse or remedy is available to MIAS or the Applicants vis-à-vis RSU.

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[62] *Pal et al v Chatterjee et al*, 2013 ONSC 1329 at para 32 [*Pal*].
[63] 2012 ABQB 40 [*Lee*] at para 52.

70. The Court's refusal to intervene in this matter would essentially give RSU "absolute and untrammelled 'discretion'"[64] in its dealings with student members, without even requiring RSU to comply with its own internal rules and policies, the basic principles of natural justice, or the duty of good faith. This would have a devastating effect on students across Canada, since their membership in, and payment of dues to, their respective student unions is not voluntary.

71. In a recent case involving a decision made by the Canadian Federation of Students ("CFS"), the Quebec Superior Court reiterated that it "must intervene in the case of an unreasonable or arbitrary decision" involving the internal bylaws of a private entity.[65]

72. In *Changoor v. IBEW, Local 353*, the Ontario Superior Court of Justice applied this standard to trade unions, as follows:

> Union tribunals are "domestic tribunals" which must conduct their proceedings fairly. This Court's jurisdiction is restricted to determining whether the Union breached its constitution, acted in bad faith, or failed to accord Mr. Changoor procedural fairness. This limited jurisdiction respects the expertise, autonomy and independence of unions over their internal affairs, while maintaining judicial oversight over the fair application of the union's own rules.[66]

75. The Applicants submit that this Court should respect the expertise, autonomy and independence of student unions over their internal affairs, while also ensuring that student unions apply their own rules, and apply them fairly, without acting in bad faith and without denying procedural fairness. RSU's Decision should be reviewed by the Court because it is contrary to RSU's own Letters Patent, By-laws and policies, is *ultra vires* RSU's jurisdiction, and further breached the principles of natural justice and the duty of good faith.

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[64] *Roncarelli v Duplessis*, [1959] SCR 121, at p 140.
[65] *Ge c Canadian Federation of Students, 2015 QCCS 19 at para 57* [*Ge c CFS*] citing *Club de soccer de ville Sainte-Antoine v Association régionale de soccer des Laurentides,* 2005 CanLII 31366 (QC CS) at para 28-29; see also F.W. Wegenast, *The Law of Canadian Companies*, (Toronto: Burroughs and Co Ltd) at p 782.
[66] 2014 ONSC 4558, at para 5.

73. The Decision made by RSU, in refusing to recognize MIAS as an RSU student group, was an unreasonable and arbitrary decision which necessitates judicial scrutiny.

B. RSU's Decision Violated the Principles of Natural Justice, RSU's Letters Patent, By-laws and Policies, and RSU's Duty of Good Faith

74. In *Hofer*, the Supreme Court of Canada reiterated the established jurisdiction courts have to review the following substantive issues within private associations*:* "first, whether the rules of the club have been observed; secondly, whether anything has been done contrary to natural justice; and, thirdly, whether the decision complained of has been come to *bona fide*."[67]

75. Accordingly, the following section will outline how RSU failed to comply with each of the three substantive issues outlined in *Hofer*.

i. RSU failed to comply with its own Letters Patent, By-laws and policies

76. It is well established that private associations and clubs owe their members a duty to respect the association's own bylaws, policies and rules. Failure to do so can result in judicial intervention and the setting aside of an *ultra vires* decision.[68]

77. In *Mayan v World Professional Chuckwagon Association*, a case involving a disciplinary decision rendered against the association's member, the Alberta Court of Queen's Bench noted that the decision of the association was *ultra vires*, as its bylaws stipulated that only the Board had jurisdiction to suspend members, whereas Officers could only impose fines or penalties, which was interpreted by the Court as not including suspensions.[69] Moreover, the Court noted that in

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[67] *Hofer* at para 10 citing *Baird v Wells* (1890), 44 Ch. D. 661, at p 670.
[68] *Courchene*; *UVSS v CFS*; *Ge c CFS*; *Kwantlen University College Student Association v Canadian Federation of Students—British Columbia Component*, 2011 BCCA 133; *Mayan v World Professional Chuckwagon Association*, 2011 ABQB 140 [*Mayan*].
[69] *Mayan*

case of doubt as to the interpretation of the association's bylaws, "the doctrine of *contra proferentem* would require that it be resolved against the Association".[70]

78. Similarly, the Decision of RSU is *ultra vires*, because its Letters Patent, By-laws and policies do not grant it discretion to refuse to recognize a student group on the basis of the reasons provided in its Decision. Indeed, as mentioned earlier, RSU has limited discretion under its Letters Patent, By-laws and policies concerning student group recognition. Moreover, in case of ambiguity, the RSU's documents should be interpreted in favour of MIAS and the Applicants, especially since adherence to RSU's policies is mandatory for all Ryerson students.

79. Under its *Student Groups Policies*, RSU can refuse to recognize a student group for procedural defects relating to the group's application, such as flaws in the constitution or flaws with respect to its membership list.[71] Similarly, RSU could refuse to recognize a student group for actions contrary to the Ontario Human Rights Code, or RSU, or the University's policies.[72]

80. There is no evidence that MIAS failed to respect either the procedural or substantive conditions required to obtain student group recognition from RSU. In fact, MIAS' constitution was created with the assistance of an RSU Campus Group Administrator, Ms. O'Neill, respecting all the requisite formalities. Moreover, no actions by MIAS were in violation of human rights legislation in Ontario, or Ryerson or RSU policies, and no such specific allegation has been made by the Respondent.

81. The only allegation made by RSU during cross-examination was that MIAS was in violation of RSU Issues Policy Number 15 ("Women's Issues Policy") by refusing to acknowledge "male privilege."[73] The Women's Issues Policy does not require an adherence to any particular

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[70] *Mayan* at paras 49-51.
[71] RSU *Student Groups Policies*, CAR Vol 1, Tab 2(C), pp 173-174.
[72] RSU *Student Groups Policies*, section 2.1, CAR Vol 1, Tab 2(C), p 173.
[73] Ullah Cross-Examination, 83:23-87:25, CAR Vol 2, Tab 8, pp 674-675.

viewpoint or position for student group status, nor does it discuss student group recognition generally. Nonetheless, Mr. Ullah claimed in his cross-examination that since he believes that RSU recognizes "male privilege", all student groups must also acknowledge this.[74]

82. RSU claims that it is precluded from recognizing MIAS because MIAS failed to acknowledge "systemic male privilege," yet RSU has not provided a specific definition of this term.[75] With no authority to justify this non-existent requirement, it is evident that RSU's Decision not to recognize MIAS was based on RSU's intolerance towards any viewpoint different from its own. In addition, MIAS has never "rejected" the notion of "systemic male privilege". To the contrary, Mr. Arriola has stated that MIAS takes no formal position on the issue, so as to encourage "the participation of various perspectives in the discussion of issues facing men and boys"[76] in the interest of free speech, healthy debate, and encouraging a diversity of opinions and viewpoints.

83. In *University of Victoria Students' Society v Canadian Federation of Students*, the court invalidated a decision made by the Canadian Federation of Students because it was based on irrelevant considerations, which were not contemplated by the relevant bylaws.[77] Under private administrative law, a court may find that a decision is *ultra vires* if the considerations underlying the decision are irrelevant. In similar fashion, RSU's Decision was motivated by irrelevant considerations: MIAS' alleged association with external groups, its refusal to acknowledge "systemic male privilege," and unfounded "safety concerns".

84. RSU's conception of "safety" is not limited to freedom from violence, but also includes not being exposed to ideas with which one disagrees. As claimed by Mr. Ullah, exposing Ryerson

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[74] Ullah Cross-Examination, 102:7-104:14, CAR Vol 2, Tab 8, pp 678-679.
[75] *See* "Committee Concerns", CAR Vol 1, Tab 2(M), pp 214-215.
[76] Arriola Affidavit, para 23, CAR Vol 1, Tab 2, pp 14-15.
[77] *UVSS v CFS* at para 58.

students to new ideas which offend them "can lead to scenarios where students feel unsafe".[78] This conception of "safety" is not compatible with RSU policies, or with Ryerson University policies, and is contrary to the very purpose of a university.

85. Nothing in RSU's internal documents indicates that association with an external group is a relevant consideration for denying recognition of a student group. Whether or not a student group formally recognizes "systemic male privilege" is also not a relevant consideration for club recognition per RSU policies. While a *bona fide* concern for physical safety would be a legitimate consideration for the RSU in recognizing a student club, there is no rational link between "safety concerns" and MIAS' mandate to discu**ss** issues faced by men and boys in society. Rather, the so-called "safety concerns" expressed by RSU vis-à-vis MIAS could be described as code for "agree with our beliefs and opinions, or else you will not be a club on campus."

ii. RSU failed to comply with the principles of natural justice

86. The principles of administrative law apply to RSU's Decision to refuse to recognize MIAS as an official student group. The scope of natural justice, and the specific obligations that flow from it, will depend on the nature of the organization and the seriousness of the consequences of the decision on the affected party.[79] The Supreme Court of British Columbia, in *Farren v Pacific Coast Amateur Hockey Association*, noted that in a case concerning a decision made by a minor hockey association to suspend a parent[80], the dictates of natural justice required obligations of (1) good faith and an open mind; (2) notice on the impacted party; (3) the right to be heard.

87. RSU has a substantial public impact on the lives of the thousands of students over whom it has mandatory jurisdiction. The consequences of non-recognition on the Applicants are serious:

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[78] Ullah Cross-Examination, 51:4-8, CAR Vol 2, Tab 8, p 666.
[79] *Farren v Pacific Coast Amateur Hockey Association*, 2013 BCSC 498, at para 19, citing *Barrie v Royal Colwood Golf Club*, 2001 BCSC 1181, at para 59.
[80] *Garcia v Kelowna Minor Hockey Association*, 2009 BCSC 200.

unequal treatment and access to RSU benefits compared to other Ryerson students. Therefore, the dictates of natural justice should include (i) an open mind free from bias; (ii) proper notice; and (iii) the right to be heard.

1. Notice

88. Notice of the specific details and allegations to be discussed at a hearing, including potential sanctions or consequences,[81] is an elementary tenet of procedural fairness and the principles of natural justice.

89. RSU failed to respect this fundamental procedural right to notice. After MIAS had submitted its application, RSU scheduled a meeting with MIAS for October 26, 2015, ostensibly to discuss "the nature of [MIAS] and what plans you have for events/activities during the year ahead".[82] Instead, the meeting consisted of RSU questioning the need for a group to discuss men's issues because men had "systemic privilege"; raising, for the first time, RSU's concerns about MIAS' association with an external group, CAFE; and raising concerns, again for the first time, about the safety of women because of an alleged risk of MIAS turning into "a breeding ground for misogyny and anti-feminism".[83]

90. The day following this meeting, on October 27, 2015, RSU informed MIAS that its application had been rejected, and that it was not a recognized student group at RSU. The meeting held the day prior was therefore the only opportunity, prior to the Decision being made, for MIAS to respond to RSU's objections. However, without being made privy as to the specific concerns held by RSU prior to the October 26 meeting, MIAS was denied its right to receive adequate and

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[81] *Hofer* at para 224.
[82] Emails from Ms. O'Neill, October 26, 2015, CAR Vol 1, Tab 2(K), p 208.
[83] Arriola Affidavit, paras 12-15, CAR Vol 1, Tab 2, 11-12.

timely notice. MIAS therefore could not properly consider its position and either change course, or prepare a defense.[84]

91. Indeed, the email sent by Ms, O'Neill on October 22 was innocuous and vague in nature, asking MIAS for clarifications as to its nature and the activities it was planning for the upcoming year.[85] The e-mail did not allude to the fact that the "meeting" in question was, in substance, a hearing prior to RSU's Decision on MIAS' application. The only reasonable way that MIAS could have interpreted Ms. O'Neill's e-mail was that RSU wanted clarification as to what activities MIAS would be conducting, not that RSU had any concerns regarding the safety of women, the external association with CAFE, and systemic "male privilege", the factors later cited as reasons to reject MIAS as a student group.

92. For RSU to provide adequate and sufficient notice is a *sine qua non* for RSU's Decision to be procedurally fair. In *Hofer*, the Supreme Court of Canada invalidated the Colony's decision to expel some of its members, as the notice to members did not specifically mention that expulsion was a potential consideration at the meeting. Similarly, in addition to no mention of any of RSU's concerns regarding MIAS, Ms. O'Neill's e-mail also failed to indicate that a decision to deny club status was a consequence contemplated by RSU in regard to the meeting. The Decision made by RSU should accordingly be invalidated.

2. Right to be heard

93. The right to be heard is another hallmark of procedural fairness, closely interrelated to the right to notice, because it includes an "opportunity to respond to allegations"[86]. While MIAS was provided with a forum to meet with RSU on October 26, 2015, MIAS was not afforded a real

[84] *Hofer* at para 83.
[85] Emails from Ms. O'Neill, October 26, 2015, CAR Vol 1, Tab 2(K), p 208.
[86] *Hofer* at p 196

"opportunity to respond to allegations", since proper notice was not given to MIAS prior to the meeting.

94. Moreover, in subsequent "appeals" to RSU and its Board of Directors, MIAS was not afforded a *bona fide* right to be heard, because the RSU Executive and Board of Directors demonstrated that they did not have an "open mind".[87]

95. At the Appeal meeting on December 1, 2017, the RSU Executive Committee raised the same unfounded concerns as the RSU Student Group Committee had done in October 2015.[88] In fact, the RSU Executive Committee largely ignored Mr. Arriola's arguments against upholding the Decision, including (1) the changes made to the constitution to address the "Committee Concerns", namely re-affirming "pre-existing commitments to remain independent of any external control"; (2) rejecting "all forms of violence and hate speech"; and (3) a commitment to taking "all precautions for safety at any group functions, and to provide a safe place for discussions free of fear for personal safety".[89]

96. Similarly, on January 25, 2016, the RSU Board of Directors heard MIAS' appeal, and oral submissions made by Mr. Arriola. Once more, the Board repeated many of the same objections, without any indication that the Board had actually heard and considered the clarifications and responses previously offered by Mr. Arriola.[90] In the summary of its written reasons dated February 29, 2016, the RSU Board of Directors provides no reasons for its decision as "the board put a motion to move the discussion in camera", simply alluding to upholding the decision of the

[87] See *Garcia v Kelowna Minor Hockey Association*, 2009 BCSC 200, at para 20.
[88] Arriola Affidavit, para 23, CAR Vol 1, Tab 2, pp 14-15.
[89] Arriola Affidavit, para 21, CAR Vol 1, Tab 2, p 14.
[90] Arriola Affidavit, para 25, CAR Vol 1, Tab 2, p 15.

Student Groups Committee relating to "concerns regarding the ability to create safe(r) spaces on campus".[91]

3. Bias and prejudgment

97. Decision-makers must have an open mind, free from a "reasonable apprehension of bias," when rendering their decision.[92] In *Old St. Boniface*, the Supreme Court of Canada noted that bias could present itself in situations "where there is prejudgment of the matter, in fact, to the extent that any representations at variances with the view, which has been adopted, would be futile."[93]

98. Representations made by MIAS, throughout the recognition process and its meetings, hearings, and e-mail exchanges with RSU and with RSU representatives, were futile. This is evidenced by the fact that RSU's position did not change even after the Applicants explicitly affirmed that MIAS rejects hate and violence,[94] specifically provided that MIAS would be "a safe space for open discussions, free of fear for personal safety",[95] and noted that MIAS was prohibited from compromising its independence to any external group in its amended constitution.[96] Bias is evidenced by RSU ignoring these facts.

99. At least one of the RSU representatives was biased against the Applicants, which rendered the Decision biased. Shortly after presiding over the December 1, 2015 RSU Executive Committee Appeal, and **before she presided on the January 25, 2016 Board of Directors Appeal**,[97] RSU Vice-President Rabia Idrees was quoted as saying that Mr. Arriola's peaceful presence as an

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[91] RSU's Written Summary of Decision to Reject MIAS, February 29, 2016, CAR Vol 1, Tab 2 (T) p 245.
[92] *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623, p 636.
[93] *Old St. Boniface Residents Association Inc v Winnipeg (City)*, [1990] 3 SCR 1170, 1197.
[94] Meeting Minutes from the Committee Meeting, CAR Vol 2, Tab 3(J), p 481; Meeting Minutes of the Executive Meeting, CAR Vol 2, Tab 3(U), p 528.
[95] *MIAS Constitution*, CAR Vol 1, Tab 2(Q), 232.
[96] *MIAS Constitution*, CAR Vol 1, Tab 2(Q), 231.
[97] *Meeting Minutes from the Board Meeting*, CAR Vol 2, Tab 3(W), 536.

observer at the Ryerson Feminist Collective rally on December 1, 2015 turned the rally into an unsafe space for students: "[w]ith his presence, this space became unsafe for some students".[98]

100. In *McLachlan*, the BC Court of Appeal found that a denial of procedural fairness occurred due to the bias and prejudgment of a Board member prior to the Hearing:

> Although Mr. McLachlan was not entitled to be heard by persons unknowledgeable of the dispute, he was entitled, in my view, to appear before a Board that was not then on the record as concluding, without hearing from him, that he had in fact done as was alleged.[99]

101. The bias held by RSU and its members towards MIAS and its opinion, views, and beliefs was perfectly expressed by Mr. Ullah in his cross-examination statement on "systemic privilege":

> "It means that the way that the system of society is right now, that men have more privilege than women […] [i]t means that men naturally in society have more opportunities. They are looked up to. They are looked at in a certain way. They are expected to be in a certain way. They have more of an advantage over women."[100]

102. Mr. Ullah went on to note that any student group would need to acknowledge "systemic male privilege" in order to not violate RSU policies,[101] and inevitably, be eligible for recognition. MIAS takes no formal position on "systemic privilege" but rather seeks "the participation of various perspectives in the discussion of issues facing men and boys,"[102] yet RSU executives only accept one position on this issue, and failure for any proposed student group to align itself wholly with this viewpoint would result in non-recognition.

C. RSU acted in bad faith

103. The Decision is also reviewable by this Court on the basis that it was made in bad faith. Indeed, the term "bad faith" refers to decisions made based on "irrelevant considerations" or for

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[98] Article in the Eyeopener, dated December 3, 2015, CAR Vol 1, Tab 2(S), p 242.
[99] *McLachlan*, at para 41.
[100] Ullah Cross-Examination, 82:8-25, CAR Vol 2, Tab 8, p 673.
[101] Ullah Cross-Examination, 84:6-16, CAR Vol 2, Tab 8, p 674.
[102] Arriola Affidavit, para 23, CAR Vol 1, Tab 2, p 14-15.

"unauthorized purposes" where there exists an improper intention on the part of the decision-maker.[103] In *Pal*, bad faith was described as "where a process is put in place, ostensibly for a legitimate purpose, but really for another oblique, illegitimate or collateral purpose".[104]

104. RSU's bad faith is demonstrated by its unfounded "concerns" relating to the safety of woman-identified students. According to Mr. Ullah, "[t]he problem was the lack of commitment to help safety concerns or to resolve safety concerns."[105] These vague concerns persisted even after MIAS amended its constitution,[106] and through formal meetings with RSU,[107] specifically advocated for peaceful dialogue in a safe space free from violence and hate speech.

105. RSU falsely accused MIAS of creating a safety risk, when RSU's VP Equity alleged that Mr. Arriola's mere presence at a public outdoor event caused the space to become unsafe for some students.[108] As an example of a safety concern, Mr. Ullah referenced registered psychotherapist Lynne MacDonell (who works with men and women who have experienced sexual abuse and trauma) as an example of a proposed MIAS event speaker "that could potentially create safety concerns" on account of nothing more than what she would say.[109] RSU defines "safety" as not hearing or seeing opinions, expressed peacefully, that one fundamentally disagrees with

106. Further, RSU falsely claimed that its president received rape and death threats because her number was allegedly published in a CAFE newsletter. This accusation was proven untrue when the screenshots RSU presented as evidence did not list either the president's name or her contact information. Consequently, the Ryerson campus newspaper, the *Ryersonian*, published a

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[103] CED (online), Judicial Review and Statutory Appeals (III.4.(d).(i).B) at §162**.**
[104] *Pal*, at para 46.
[105] Ullah Cross-Examination, 43:24-44:1,, CAR Vol 2, Tab 8, p 664.
[106] MIAS Constitution, CAR Vol 1, Tab 2(Q), p 232.
[107] Meeting Minutes from the Committee Meeting, CAR Vol 2, Tab 3(J), p 481; Meeting Minutes of the Executive Meeting, CAR Vol 2, Tab 3(U), p 528.
[108] Article in the Eyeopener, dated December 3, 2015, CAR Vol 1, Tab 2(S), p 242.
[109] See Affidavit of Michelle Gusdal, sworn September 5, 2017, CAR Vol 2, Tab 6, pp 566-580.

retraction of its story on RSU's allegations. When the Manager for Investigations and Crime Prevention for Ryerson University was asked about the alleged threats, he responded by referring to the *Ryersonian*'s retraction of their original story.[110]

107. RSU's continued reliance on its undefined objections to MIAS' association with CAFE, as a reason for denying club recognition, also constituted bad faith. MIAS had made clear commitments in its amended constitution,[111] and statements during meetings with RSU,[112] to the effect that it was independent from external control by any third-party organization, including CAFE. Despite this, RSU expressed "concern" with MIAS' association with external groups in points 2, 4 and 5 of its "Committee Concerns", with express reference to CAFE in points 2 and 5.[113] These "concerns" appear arbitrary and invidious, as there is no evidence that RSU pays any attention to the affiliations that other campus clubs have, or might have, with outside or off-campus organizations.

108. None of the "concerns" or reasons put forth by RSU for denying club recognition to MIAS were relevant considerations. The "concerns" were relied on in a bad faith effort to deny club status to a student group for holding opinions that RSU executives disagreed with and were prejudiced towards.

PART IV – ORDER

109. The Applicants, therefore, reiterate their request that this Court issue the declarations requested in their Notice of Application:[114] that the Decision of RSU was *ultra vires*, violated RSU's own Letters Patent, By-laws and policies, failed to respect the Applicants' freedom of

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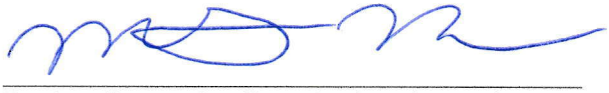
[110] Ryersonian article, dated March 2, 2016, CAR Vol 2, Tab 6(A), pp 569-570.
[111] MIAS Constitution, CAR Vol 1, Tab 2(Q), p 231.
[112] Meeting Minutes from the Committee Meeting, CAR Vol 2, Tab 3(J), p 481; Meeting Minutes of the Executive Meeting, CAR Vol 2, Tab 3(U), p 528.
[113] Written Reasons from Committee, CAR Vol 2, Tab 3(M), pp 493-494.
[114] Notice of Application Issued April 8, 2016, CAR Vol 1, Tab 1.

expression and association, violated the principles of natural justice, was made in bad faith based on irrelevant considerations and consequently is void.

110. Further, the Applicants request that this Court order that RSU ratify MIAS as a student group, or alternatively, that RSU reconsider MIAS' application for ratification with an open mind in good faith and in accordance with directions from this Honourable Court; and that the Court issue an order prohibiting RSU from limiting Ryerson students' and student groups' (including MIAS') access to the services, research, information, materials and other resources of RSU on account of students' and students groups' personal viewpoints, including concerning issues faced by men and boys.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



December 21, 2017

Justice Centre for Constitutional Freedoms

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