

Court File No. CV-16-544546

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DIANE ZETTEL, CAMERON GRANT and CHAD HAGEL

Applicants

and

UNIVERSITY OF TORONTO MISSISSAUGA STUDENTS' UNION

Respondent

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

Court File No. CV-17-575212

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CHRISTIAN NAGGAR, EMILIE HIBBS, JOSHUA HAVILAND, CHRISTIAN  
BROWN, KATHLEEN HEPWORTH, ALEXANDRA BROWN and KASSIA  
ALMEIDA

Applicants

and

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

Respondent

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

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 *Courts of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*

**FACTUM OF THE RESPONDENT, RYERSON STUDENTS' UNION**

January 12, 2018

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## FACTUM OF THE RESPONDENT, RYERSON STUDENTS' UNION

### PART I - OVERVIEW

1. This case is about the freedom of private associations to govern themselves as their members direct, and to adopt policies that reflect those directions. This is not a case about censorship of ideas or thought on university campuses. The university experience is enhanced by the free exchange of ideas and robust debate, and the Ryerson Students' Union ("RSU") is committed to ensuring that all Ryerson University (the "**University**") students are free to express their opinions and beliefs. It is also committed to ensuring that its internal decisions are made in accordance with its policies and by-laws as directed by its members.

2. Kevin Arriola and Alexandra Godlewski are University students and are members of the RSU. They founded a men's rights club called Men's Issues Awareness Society at Ryerson ("MIAS"). As a student club, MIAS can, and does, meet on campus. It can, and does, hold events and debates. It can, and does, communicate with students through social media and other forms of media such as the University newspapers and handing out flyers and pamphlets. As with all RSU members, MIAS members can run for positions on the RSU Board of Directors, introduce motions at the RSU general meetings, and lobby to have new policies adopted or old policies rescinded. The RSU encourages and supports all of these actions.

3. In October 2015, the Applicants applied for MIAS to be a recognized RSU student group. The application was denied by the Student Groups Committee. The Applicants appealed this decision to the Executive Committee, who resolved to send the matter to the Board of Directors for final disposition. The Board of Directors upheld the Student Groups Committee decision to deny MIAS student group status. Unhappy with these decisions, the Applicants ask this Court to intervene.

4. This application ought to be dismissed. The RSU is a private association, not a public body or creature of statute. This is a private matter, and one in which the Court ought not to intervene. Moreover, the decision to deny the MIAS application was wholly within RSU's mandate and power.

5. The Applicants' real complaint is not about the process by which MIAS' application for student group status was considered, but about a pro-feminist policy adopted by RSU's elected representatives, with which the Applicants disagree. The Applicants' remedy is therefore political in nature, internal to the RSU, and cannot be granted by this Court. The decision to deny MIAS' application was properly made and ought to stand.

## **PART II - SUMMARY OF FACTS**

### **A. RYERSON STUDENTS' UNION GOVERNANCE STRUCTURE**

6. The RSU was incorporated in 1967 under the Ontario *Corporations Act*.<sup>1</sup> It is an independent, autonomous corporation without share capital. The RSU is separate and independent from Ryerson University (the "**University**").<sup>2</sup> The University, which is not a party to this Application, is established under the *Ryerson University Act*.<sup>3</sup> The University exercises no statutory, governmental, managerial, electoral, procedural, political, or ideological control over the RSU.<sup>4</sup>

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<sup>1</sup> *Corporations Act*, R.S.O. 1990, CHAPTER C.38 ("*Corporations Act*"); RSU Letters Patent, Affidavit of Obaid Ullah sworn November 25, 2016 ("*Ullah Affidavit*"), Consolidated Application Record ("*CAR*") Vol II, Tab 3B.

<sup>2</sup> Ullah Affidavit para 4, CAR Vol II, Tab 3, p 248.

<sup>3</sup> Ullah Affidavit para 7, CAR Vol II, Tab 3, p 248.

<sup>4</sup> Ullah Affidavit para 7, CAR Vol II, Tab 3, p 248; Policy Manual, Operational Policy #39, Student Union Autonomy, Ullah Affidavit, CAR Vol II, Tab 3D, p 440.

7. The RSU represents all full-time undergraduate students and all graduate students at the University. It acts as the representative of these students in matters related to the University.<sup>5</sup> These students are “members” of the RSU so long as they have paid the RSU’s student activity fee for the current term of study; in 2015, the approximate student fee was \$123.<sup>6</sup> Members of the RSU enjoy a wide array of benefits including the right to vote in RSU elections and referenda, the right to run for election in the RSU Executive, the right to attend regular and special meetings of the RSU Board of Directors, the right to apply for Student Group status, the right to lobby the University and the right to obtain health and dental benefits.<sup>7</sup> The RSU By-Laws, which are passed under the *Corporations Act*, set out the basic membership requirements and governance structure of the RSU.<sup>8</sup>

8. The RSU is not a statutorily created public body; it is a private association. It manages the affairs of the student body and is governed by a board of directors (the “**Board**” or the “**Board of Directors**”) that is elected each year by the members of the RSU.<sup>9</sup>

9. The Board is empowered to adopt policies with respect to any issue.<sup>10</sup> Board policies reflect the “considered” or “general view” of the RSU with respect to any issue and represent the RSU’s general plan of action.<sup>11</sup> The Board may also vote to rescind any policy.<sup>12</sup>

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<sup>5</sup> RSU By-Laws, Article 1.1, Ullah Affidavit, CAR Vol II, Tab 3C, p 298.

<sup>6</sup> Cross-examination of Obaid Ullah held 17 January 2017 (“**Ullah Cross-Examination**”) p 5-6 q 16-18, CAR Vol II Tab 8, p 654.

<sup>7</sup> RSU By-Laws, Articles 1-2, 6-8, Ullah Affidavit, CAR Vol II, Tab 3C, p 298; Policy Manual, Issues Policies #5, #24, #35-36, Ullah Affidavit, CAR Vol II, Tab 3D, p 344.

<sup>8</sup> RSU By-Laws, Ullah Affidavit, CAR Vol II, Tab 3C, p 297.

<sup>9</sup> RSU By-Laws, Articles 1.2, 2.1, 6.1, Ullah Affidavit, CAR Vol II, Tab 3C.

<sup>10</sup> RSU By-Laws, Articles 2.5, 5.6(b)(v), 10, Ullah Affidavit, CAR Vol II, Tab 3C, p 299.

<sup>11</sup> RSU By-Laws, Article 10.2, Ullah Affidavit, CAR Vol II, Tab 3C, p 320.

<sup>12</sup> RSU By-Laws, Article 10.5, Ullah Affidavit, CAR Vol II, Tab 3C, p 320.

10. The RSU is a pro-feminist organization. Issues Policy #15 – Women’s Issues was passed by the Board of Directors in March 2012 and is an acknowledgement that although women have achieved formal legal equality in Canada, gender-based discrimination occurs structurally, individually and institutionally, which directly impacts women’s access to post-secondary education and their experience as students.<sup>13</sup> The Women’s Issues Policy states, among other things:

- 15.3 The Ryerson Students’ Union Opposes:
- i. The exclusion, exploitation and marginalization of women, whether directly or indirectly within patriarchal societies;
  - iv. Sexism and discrimination against women, including structural, cultural, institutional and individual manifestations;

A copy of the Women’s Issues policy, in its entirety, is found in the RSU Policy Manual.<sup>14</sup>

11. In March 2013, Issues Policy #15 – Women’s Issues was amended by the Board of Directors to include the following language:

The Ryerson Students’ Union Opposes:

- 4. Groups, Meetings or events that promote misogynist views towards women and ideologies that promote gender inequality, challenges women’s right to bodily autonomy, or justifies sexual assault.
- 5. The concept of misandry as it ignores structural inequity that exists between men and women.<sup>15</sup>

12. Through inadvertence, the amended language to Issues Policy #15 – Women’s Issues, which was included in the Board Minutes, was not added to the printed Policy Manual.<sup>16</sup>

<sup>13</sup> Ullah Affidavit para 8, CAR Vol II, Tab 3, p 249; Issues Policy #15 – Women’s Issues, RSU Policy Manual, Ullah Affidavit, CAR Vol II, Tab 3D, p 361.

<sup>14</sup> Issues Policy #15 – Women’s Issues, RSU Policy Manual, Ullah Affidavit, CAR Vol II, Tab 3D, p 361.

<sup>15</sup> Meeting Minutes of the Board, Ullah Affidavit, CAR Vol II, Tab3E, p 450.

<sup>16</sup> Ullah Affidavit para 9, CAR Vol II, Tab 3, p 249.

## B. CLUBS AND STUDENT GROUPS AT THE UNIVERSITY

13. Any group of students can form a club at the University (a “**Non-RSU Club**”).<sup>17</sup> Any Non-RSU Club can apply to the RSU to be a recognized Student Group (a “**Student Group**”).<sup>18</sup> In order to become a Student Group, a Non-RSU Club must submit an application to the Student Groups Committee (the “**Committee**”) in accordance with Operational Policy #36 - Student Group Policy.<sup>19</sup> The Committee is, pursuant to the By-Laws, a committee of the Board of Directors and student representatives from the Student Groups.<sup>20</sup> The Committee reviews matters relating to the planning and implementation of student group summits, workshops and other student group events, and has the responsibility to consider and recommend to the Board all matters relating to the expenditure of Student Group funds.<sup>21</sup>

14. In accordance with the Student Group Policy, the Committee reviews applications for compliance with the Ontario *Human Rights Code*, RSU policies and University policies before determining whether to approve or deny an application for Student Group status.<sup>22</sup>

15. When reviewing an application, the Committee also reviews the Policy on New Student Groups, which states, in part:

(2) All new groups are subject to all RSU policies and criteria established for existing groups.

(3) The Board of Directors has the right to recognize new groups or withdraw recognition of any group that does not uphold/respect the RSU's policy. [...]

(6) Social, political issue, or non-academic special interest groups may be formed and subsequently recognized by RSU if the group can prove its viability

<sup>17</sup> Ullah Affidavit para 12, CAR Vol II, Tab 3, p 250.

<sup>18</sup> Ullah Affidavit para 12, CAR Vol II, Tab 3, p 250.

<sup>19</sup> Operational Policy #36 - Student Group Policy, Ullah Affidavit, CAR Vol II, Tab 3D, p 435.

<sup>20</sup> RSU By-Laws, Appendix A, Article 6, Ullah Affidavit, CAR Vol II, Tab 3C, p 323.

<sup>21</sup> RSU By-Laws, Appendix A, Article 6, Ullah Affidavit, CAR Vol II, Tab 3C, p 323.

<sup>22</sup> Operational Policy #36 - Student Group Policy, article 36.2, Ullah Affidavit, CAR Vol II, Tab 3D, p 435.

and can act in accordance with RSU and University criteria, policies, and procedures.

(9) Groups may not duplicate services offered by a currently existing group. [...]<sup>23</sup>

16. These policies, taken together, require that the Committee consider the beliefs, philosophies and/or opinions of a Non-RSU Club when assessing their application for Student Group status. RSU members are not required to believe or agree with all RSU policies, but in order for a Non-RSU Club to obtain Student Group Status, it must comply with all RSU policies.

17. The decision to grant Student Group status is discretionary; there is no right to be a Student Group.<sup>24</sup> If the Committee denies an application for Student Group status, an appeal can be made to the Executive Committee and then to the Board of Directors under Operational Policy #35 - Student Group Appeal Policy.<sup>25</sup>

18. The Student Group Appeal Policy requires that written reasons from the Committee be provided upon request. It does not require the Executive Committee or the Board of Directors to hear submissions from the Non-RSU Club or require the Executive Committee or the Board of Directors to issue reasons for their decision.<sup>26</sup>

19. There are only three benefits to becoming a Student Group that non-RSU Clubs do not enjoy:

- (i) Student Groups receive an RSU operating budget of \$1,200 a year;

<sup>23</sup> Affidavit of Obaid Ullah sworn 6 January 2017 ("Ullah Supplemental Affidavit"), CAR Vol II, Tab 4A, p 559.

<sup>24</sup> Operational Policy #35, Student Group Appeal Policy, Articles 35.1-35.2, Ullah Affidavit, CAR Vol II, Tab 3D, p 433.

<sup>25</sup> Operational Policy #35, Student Group Appeal Policy, Ullah Affidavit, CAR Vol II, Tab 3D, p 433.

<sup>26</sup> Ullah Affidavit at para 23, CAR Vol II, Tab 3, p 254.

- (ii) Student Groups can ask the RSU staff to assist in booking University meeting rooms and space; and
- (iii) the University allows Student Groups to place posters on campus bulletin boards, provided the Student Groups complies with the University's Community Regulation on Posters.<sup>27</sup>

20. The RSU does not have policies on posterings; the University establishes all policies and practices governing posterings on campus bulletin boards. Non-RSU Clubs are free to hand out leaflets and flyers on and around campus.<sup>28</sup>

21. Although Non-RSU Clubs are not eligible for the base funding granted to Student groups, Non-RSU Clubs can apply to the student initiative fund from the University to receive funding for their club.<sup>29</sup>

### C. THE APPLICANTS AND MIAS

22. At the time that the Application was brought, Kevin Arriola was a University student. During the 2015-2016 school year, Mr. Arriola was the President of MIAS. MIAS was started with the assistance of CAFE, the Canadian Association for Equality.<sup>30</sup> The Committee found that CAFE was a men's activist group that had previously held an event on the University campus that was "inherently threatening to women".<sup>31</sup>

23. According to Mr. Arriola's affidavit sworn 6 April 2016, MIAS is "a student group established by students at Ryerson University to host discussions and bring social awareness to

<sup>27</sup> Ullah Affidavit at paras 15-17, CAR Vol II, Tab 3, p 251.

<sup>28</sup> Ullah Affidavit at para 14, CAR Vol II, Tab 3, p 250.

<sup>29</sup> Ullah Cross-Examination p 10-11 q 36-37, CAR Vol II, Tab 8, p 655-656.

<sup>30</sup> Cross-Examination of Kevin Arriola held 17 January 2017 ("Arriola Cross-Examination") p 12-13 q 40, CAR Vol II Tab 7, p 587.

<sup>31</sup> Meeting Minutes of Student Clubs Committee, Ullah Affidavit, CAR Vol II, Tab 3J, p 482, 484.

issues that disproportionately affect men and boys, such as higher rates of suicide, homelessness, workplace injuries and failure in school.”<sup>32</sup>

24. A print-out from Mr. Arriola’s Facebook page contains the following comments:

[...] The fact is, getting an engineering degree is worth more in the rea (sic) world than getting a degree in women’s studies. And if women want to get paid mor (sic) they need to start making different choices.<sup>33</sup>

[...] In medicine alone t (sic) majority of those with specializations like brain surgery are men, while women tend to be physicians. This is because men tend to me (sic) more career oriented while women tend (sic) want to balance their home and career.

25. At the time that the Application was commenced, Alexandra Godlewski was a student at the University and served as MIAS’ Social Media Executive.<sup>34</sup>

26. At the time that the Application was commenced, Mr. Arriola and Ms. Godlewski were members of the RSU. There is no evidence that their membership in the RSU was ever in jeopardy or that they have been denied any membership rights. There is no evidence that either Mr. Arriola nor Ms. Godlewski ever sought to run for the RSU Board or sought to introduce new RSU policies or By-Laws.

**D. MIAS IS DENIED STUDENT GROUP STATUS BY THE COMMITTEE, EXECUTIVE COMMITTEE AND BOARD OF DIRECTORS**

**(i) *The Committee Denies MIAS’ Application***

27. In October 2015, with the assistance of RSU’s Campus Group Administrator, Ms. Leatrice O’Neill, Mr. Arriola submitted MIAS’ application for Student Group status to the Committee. On 16 October 2015, following a lengthy exchange between Ms. O’Neill and Mr. Arriola to prepare

<sup>32</sup> Affidavit of Kevin Arriola sworn 6 April 2016 (“Arriola Affidavit”) at para 4, CAR, Vol I, Tab 2, p 9.

<sup>33</sup> Print-out from Facebook page, Cross-Examination of Kevin Arriola, Exhibit D, CAR Vol 2, Tab 7D, p 646.

<sup>34</sup> Arriola Affidavit at para 3, CAR, Vol I, Tab 2, p 9.

MIAS' constitution for consideration by the Committee, Ms. O'Neill advised Mr. Arriola of the Committee meeting and confirmed that "we will like (sic) be able to have the group some (sic) before the committee on October 26".<sup>35</sup> Mr. Arriola responded and asked whether the meeting would be open to the public.<sup>36</sup>

28. On 22 October 2015, Ms. O'Neill emailed MIAS' executive to confirm that the Committee would consider MIAS' application for Student Group status on 26 October 2015 and that the Committee would "like an explanation of the nature of your group and what plans you have for events/activities during the year ahead".<sup>37</sup>

29. On 26 October 2015, the Committee held a meeting to discuss, among other things, the MIAS application for Student Group status (the "**Committee Meeting**"). Both Mr. Arriola and Ms. Godlewski attended the Committee Meeting and, although they had no obligation to do so, the Committee granted them the opportunity to make a presentation about MIAS' application.<sup>38</sup> During the lengthy Committee Meeting, the members of the Committee asked Mr. Arriola and Ms. Godlewski various questions about MIAS' purpose as a group, what kinds of issues the group would discuss, and what initiatives it would support.<sup>39</sup>

30. In response, Mr. Arriola told the Committee that MIAS' goal was to "raise awareness on issues that affect men and boys especially disenfranchised men and boys" and that MIAS' events would "be focused on men's issues".<sup>40</sup> MIAS planned to bring speakers to campus to discuss mental health issues for boys and "speakers on the education approach for boys". Mr. Arriola

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<sup>35</sup> Ms. O'Neill's 16 October 2015 Email, Arriola Affidavit, Vol I, Tab 2J, p 202.

<sup>36</sup> Ms. O'Neill's 16 October 2015 Email, Arriola Affidavit, Vol I, Tab 2J, p 201.

<sup>37</sup> Ullah Affidavit at para 26, CAR, Vol II, Tab 3, p 255.

<sup>38</sup> Ullah Affidavit at para 27, CAR, Vol II, Tab 3, p 255.

<sup>39</sup> Ullah Affidavit at para 27, CAR, Vol II, Tab 3, p 255.

<sup>40</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 481.

explained that one of the purposes of the group was to raise awareness about the “learning needs of boys” because the “educational system needs to have a more individual approach and right now boys are not benefitting from the blanket approach”.<sup>41</sup> When asked about MIAS’ intention to speak about homelessness, Mr. Arriola responded: “This is true, women do tend to suffer more, they tend to need medical attention and they have shelters. Domestic abuse is almost 50/50. Only 8% of shelters accept men and domestic abuse men to women are 1-6 but shelters are 1-10 in favour of women”.<sup>42</sup>

31. The Committee raised various concerns during this meeting. One of the concerns was that the projects proposed by MIAS were already being done through the Equity Service Centres.<sup>43</sup> Another concern was that MIAS could legitimize anti-women sentiments on campus and could lead to women feeling unsafe on campus. The Committee asked Mr. Arriola and Ms. Godlewski, multiple times, how this would be prevented and addressed by the MIAS executive. Neither Mr. Arriola nor Ms. Godlewski had an answer. One of Mr. Arriola’s responses was simply that he did not understand why MIAS would make students feel unsafe, because he did not feel unsafe when women held events on campus.<sup>44</sup> Another response was that it was out of his control and that it was the RSU’s responsibility to ensure that the group did not violate RSU’s policies.<sup>45</sup>

32. When asked about MIAS’ affiliation to A Voice for Men, which was described by the Committee as an “inherently violent hate group against women and women’s rights”<sup>46</sup>,

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<sup>41</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 482.

<sup>42</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 483.

<sup>43</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 484.

<sup>44</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 484.

<sup>45</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 484.

<sup>46</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 484.

Mr. Arriola's response was not to disavow association with A Voice for Man, but to say: "We won't have anyone from A Voice for Men due to our budget."<sup>47</sup>

33. After discussing MIAS' application and asking Mr. Arriola and Ms. Godlewski various questions about MIAS' purpose and constitution, the Committee denied the motion to approve MIAS as a Student Group. The Committee's main concerns were that MIAS' mandate violated RSU's policies, including Issues Policy #15 – Women's Issues, and that MIAS replicated existing services of the Equity Services Centre. As stated in section 36.2 of Operational Policy #36 - Student Group Policy, a Student Group's actions must not be contrary RSU's policies. Moreover, to ensure that the RSU's resources are appropriately allocated, it is the RSU's practice to deny Student Group status to Non-RSU Groups who replicate services already offered by the RSU, University or another Student Group.<sup>48</sup>

34. MIAS was not the only Non-RSU Club who was denied Student Group status at the Committee's 26 October meeting. After following a similar back and forth discussion, the club "LOL@ Ryerson" was also denied Student Group status.<sup>49</sup>

#### Reasons are Given for the Denial

35. On 27 October 2015, Ms. O'Neill emailed Mr. Arriola to inform him of the Committee's decision to deny MIAS' application for Student Group status. Ms. O'Neill encouraged Mr. Arriola to reach out to Andrea Bartlett, the President of RSU at the time, to see how the group could move forward.<sup>50</sup>

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<sup>47</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 485.

<sup>48</sup> Ullah Affidavit at para 31, CAR, Vol II, Tab 3, p 256.

<sup>49</sup> Committee Meeting Minutes, Ullah Affidavit, CAR, Vol II, Tab 3J, p 378.

<sup>50</sup> Ullah Affidavit at para 32, CAR, Vol II, Tab 3, p 257.

36. The RSU does not routinely give written reasons to a Non-RSU Club who has been denied Student Group status, unless asked. This practice is codified in Operational Policy #15 - Student Group Appeal Policy, which provides that written reasons for the denial will be provided upon request.<sup>51</sup>

37. Mr. Arriola requested the grounds for denial. On 28 October 2015, Ms. O'Neill acknowledged receipt of Mr. Arriola's request and informed him that she would provide reasons as soon as she could.<sup>52</sup>

38. Around the same time, Mr. Arriola reached out to Ms. Bartlett and requested an in-person meeting and an explanation of why the Committee had denied MIAS' application for Student Group status. It is not customary for the President, or any member of the Committee, to meet individually with the representatives of a Non-RSU Club who have been denied Student Group status. Nevertheless, Ms. Bartlett agreed to meet with Mr. Arriola. The two met on 30 October 2015 (the "**30 October Meeting**").<sup>53</sup>

39. During the 30 October Meeting, and in accordance with the Student Group Appeal Policy, Mr. Arriola was given written reasons for the Committee's decision to deny MIAS' application (the "**Written Reasons**"). The Written Reasons are a two-page document outlining the Committee's reasons, including:

- (a) Safety – the group was not aware that having certain speakers and events could cause an unsafe learning environment;

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<sup>51</sup> Ullah Affidavit at para 35, CAR, Vol II, Tab 3, p 257; Operational Policy #35 – Student Group Appeal Policy, CAR, Vol II, Tab 3D, p 433.

<sup>52</sup> Ullah Affidavit at para 32, CAR, Vol II, Tab 3, p 257.

<sup>53</sup> Ullah Affidavit at para 32, CAR, Vol II, Tab 3, p 257.

- (b) Associations with external organizations – there are no parameters set in the event that spokespeople from CAFE, which is an organization closely associated with a Voice for Men, would come on campus and create an unsafe learning environment;
- (c) Systemic privilege – the group refused to acknowledge the systemic privilege that men have;
- (d) Constitution – there was a lack of regulation in MIAS’ constitution for safety concerns and associations with external groups; and
- (e) Non-compliance with RSU policies – MIAS is in violation of RSU’s Issues Policy.<sup>54</sup>

40. After the Written Reasons were discussed in the 30 October Meeting, Ms. Bartlett suggested that the members of MIAS reach out to the Equity Services Centre who could assist with changes to MIAS’ constitution so that MIAS could achieve Student Group status. Ms. Bartlett also informed Mr. Arriola about the process to appeal the Committee’s decision.<sup>55</sup>

#### The RSU Receives Threatening Calls

41. During the appeal process, Ms. Bartlett received approximately 12 to 15 phone calls and voicemail messages from various people, many of whom were not students from the University, demanding that RSU grant MIAS Student Group status. The callers insinuated that if Ms. Bartlett did not grant MIAS Student Group status, something would happen to her. During these calls, callers would reference a newsletter that was sent to members of the Canadian Association for Equality, or CAFE, that contained Ms. Bartlett’s email and personal and business phone numbers.<sup>56</sup>

42. In response to these phone calls, and Ms. Bartlett feeling threatened, the RSU contacted University security. A buzzer was installed in the RSU office so that someone would have to be

<sup>54</sup> Student Clubs Committee Written Reasons, Ullah Affidavit, CAR, Vol II, Tab 3M, p 493.

<sup>55</sup> Ullah Affidavit at para 38, CAR, Vol II, Tab 3, p 258.

<sup>56</sup> Ullah Affidavit at para 46, CAR Vol II, Tab 3, p 260.

buzzed in to be granted access to the RSU office. This kind of security system had never been necessary before.<sup>57</sup>

*(ii) The Applicants Appeal the Decision to the Executive Committee*

43. The executives of MIAS appealed the Committee's decision to the Executive Committee, which was originally scheduled to be heard on 17 November 2015. To accommodate Mr. Arriola, who was not available on this date, the Executive Committee postponed its review of the Committee's decision to the following Executive Committee meeting on 1 December 2015.<sup>58</sup> The Executive Committee meeting was not postponed at whim, as the Applicants suggest in their factum.<sup>59</sup>

44. Prior to the meeting, Mr. Arriola sent a revised copy of MIAS' constitution (the "**Revised Constitution**") and a copy of the appeal presentation that he, and other members of MIAS, planned to give to the Executive Committee.<sup>60</sup>

45. Following a review of the Revised Constitution, Ms. O'Neill emailed Mr. Arriola and suggested that MIAS' constitution be amended to state that the group would not host activities using members of external organizations. Mr. Arriola continually pressed for a further explanation from Ms. O'Neill, stating, "I understand if the RSU doesn't want anyone that is part of AVFM. I may even be willing to do this for CAFE as well, thought (sic) I'm having trouble understanding why, since they are a registered charity and offer services for men". Ms. O'Neill responded to Mr. Arriola's questions, explaining: "My understanding is that the some (sic) people associated with CAFE are also associated with AVFM and that is the problem. If you can specifically state

<sup>57</sup> Ullah Affidavit at para 47, CAR Vol II, Tab 3, p 260.

<sup>58</sup> Ullah Affidavit at para 42-43, CAR Vol II, Tab 3, p 259.

<sup>59</sup> Applicant's Factum para 36.

<sup>60</sup> Ullah Affidavit at para 44, CAR Vol II, Tab 3, p 259.

that your group will not program activities with members of these organizations I think that would help. [...]”<sup>61</sup>

46. Mr. Arriola was seemingly not satisfied by this response, and requested more details from Ms. O’Neill. At that point, Ms. O’Neill responded that she could not comment any further because the appeal was already underway. Ms. O’Neill reiterated that the appeal would be heard by the Executive Committee on 1 December 2015.<sup>62</sup>

47. On 1 December 2015, in accordance with the Student Group Appeal Policy, the Executive Committee heard the appeal of the Committee’s decision to deny MIAS Student Group status (the “**Executive Meeting**”).<sup>63</sup>

48. Although there is no right to do so, Mr. Arriola made a presentation at the Executive Meeting about MIAS’ mandate, the Revised Constitution and MIAS’ association with external organizations. With respect to the Committee’s concerns about MIAS not recognizing systemic privilege and being in contradiction with RSU policy, Mr. Arriola brushed off the topic and took the position that privilege “applies to non-feminists and feminists alike”. With respect to MIAS’ stance on education, Mr. Arriola described how the University should change how it teaches men to learn because it is “not tailor[ed] to their type of learning”.<sup>64</sup> Mr. Arriola then went on to tell the Executive Committee that men have less access to services due to discrimination, explaining that “If men are suffering more they should get more services” and that the “idea that men are not oppressed based on their gender is not comprehensive of the world we live in”.<sup>65</sup>

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<sup>61</sup> Email exchange between Ms. O’Neill and Mr. Arriola, Ullah Affidavit, CAR Vol II, Tab 3S p 520-521.

<sup>62</sup> Email exchange between Ms. O’Neill and Mr. Arriola, Ullah Affidavit, CAR Vol II, Tab 3S p 520.

<sup>63</sup> Ullah Affidavit at para 44, CAR, Vol II, Tab 3, p 261.

<sup>64</sup> Meeting Minutes of the Executive Committee, Ullah Affidavit, CAR Vol II, Tab 3U, p 526.

<sup>65</sup> Meeting Minutes of the Executive Committee, Ullah Affidavit, CAR Vol II, Tab 3U, p 526.

49. Following this presentation, the members of the Executive Committee had the opportunity to ask Mr. Arriola questions. The Executive Committee was particularly concerned about how MIAS' executive would ensure a safe environment on campus. Ms. Bartlett specifically informed Mr. Arriola that she had received threatening telephone calls from people insisting that the RSU grant MIAS Student Group status. In response, Mr. Arriola simply stated that MIAS was against hate and harassment, that he could not control other people, and that it was an issue for the police.<sup>66</sup> MIAS' representatives refused to provide any suggestions for how they would ensure a safe environment on campus.

50. Following a lengthy discussion with Mr. Arriola about MIAS' purpose and constitution, the Executive Committee resolved that the appeal be brought to the RSU Board of Directors for final deliberation.

51. On 8 December 2015, Casey Chu Cheong, RSU Internal Coordinator, wrote to Mr. Arriola to inform him of the Executive Committee's decision and invite him to present at the next Board of Directors meeting, which was being held in January 2016.<sup>67</sup>

52. On 12 January 2016, Ms. Cheong emailed Mr. Arriola and advised that the Board of Directors meeting would be held on 25 January 2016. She repeated that Mr. Arriola would have the opportunity to make a presentation to the Board of Directors.<sup>68</sup>

***(iii) The Board of Directors Denies the Appeal***

53. On 25 January 2016, in accordance with the Student Group Appeal Policy, the Board of Directors heard the appeal of the Committee's decision to deny MIAS Student Group status. As

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<sup>66</sup> Ullah Affidavit at para 49, CAR Vol II, Tab 3, p 261.

<sup>67</sup> Email exchange between Ms. Cheong and Mr. Arriola, CAR Vol II, Tab 3V, p 531.

<sup>68</sup> Email exchange between Ms. Cheong and Mr. Arriola, CAR Vol II, Tab 3V, p 531.

demonstrated in the Meeting Minutes, Mr. Arriola was in attendance at the Board Meeting, had the opportunity to make yet another presentation, and answer the Board of Directors' questions.<sup>69</sup>

54. Following another lengthy back and forth discussion, as demonstrated in the meeting minutes, the Board of Directors voted to uphold the decision of the Committee.<sup>70</sup>

55. Following the Board Meeting, Mr. Arriola wrote to Ms. Bartlett and requested "a written statement about the reasons for our group's rejection". It is not a requirement, nor is it a standard practice, for the Board of Directors to provide written reasons for their decision to grant or deny Student Group status to a Non-RSU Club. Nevertheless, Ms. Bartlett provided Mr. Arriola with a letter containing further reasons for the decision to deny MIAS Student Group status (the "**29 February Letter**"). Among other things, the 29 February Letter explained:

The committee felt is was a violation of the Student Group Policy #6 which reads, "Social, political issue, or non-academic special interest groups may be formed and subsequently recognized by RSU if the group can prove its viability and can act in accordance with RSU and University criteria, policies, and procedures".<sup>71</sup>

56. This wording is found in the Policy on New Student Groups, a copy of which was provided to Mr. Arriola when MIAS began the application process to be a recognized Student Group.<sup>72</sup>

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<sup>69</sup> Ullah Affidavit at para 53-54, CAR, Vol II, Tab 3, p 262; Board Meeting Minutes, CAR Vol II, Tab 3W, p 541.

<sup>70</sup> Ullah Affidavit at para 56, CAR Vol II, Tab 3, p 262.

<sup>71</sup> 29 February Letter, Ullah Affidavit, CAR Vol II, Tab 3X, p 553.

<sup>72</sup> Policy on New Student Groups, Ullah Supplementary Affidavit, CAR, Vol II, Tab 4A, p 559; Arriola Cross-Examination p 6-7 q 7-8, CAR Vol II, Tab 7, p 585.

**E. MIAS CONTINUES TO MAINTAIN A PRESENCE ON CAMPUS**

57. MIAS continues to have an active presence on the University campus. It continues to recruit members, hold meetings, host events and communicate to the University student body and the larger Toronto community.<sup>73</sup>

**PART III - STATEMENT OF ISSUES, LAW AND AUTHORITIES**

58. The Respondent submits that the following issues must be determined by this Court:

- (a) Should the Court intervene in the RSU's decision to deny MIAS' application for Student Group status?
  - (i) Does the Court have jurisdiction over the RSU's decision to deny MIAS' application for Student Group status?
  - (ii) If the Court has jurisdiction, should the Court intervene in the RSU's decision to deny MIAS' application for Student Group status?
- (b) Was the RSU required to consider sections 2(b) and 2(d) of the *Charter*, or *Charter* values, when it considered MIAS' Application for Renewal?

59. This Factum should be read in conjunction with the Respondents' Joint Memorandum of Law dated 15 November 2017, which sets out the legal principles to be applied in addressing these issues. These legal principles will not be repeated here.

**A. ADMINISTRATIVE LAW PRINCIPLES DO NOT APPLY TO THE RSU**

60. The RSU is not a public decision-maker, nor is it a creature of statute; rather, the RSU is a private corporation incorporated under the *Corporations Act*. The RSU is not an agent of the government, and is not directed, controlled or significantly influenced by a public entity. The RSU's decision to grant or deny Student Group status is a private decision, involving private

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<sup>73</sup> MIAS Facebook Page, Arriola Cross-Examination, CAR Vol II, Tab 7A, p 600.

discretion; it is not founded in or shaped by public law. As such, administrative law principles do not apply to this Application.

61. The RSU has broad powers to act independently and without external influence. Section 129(1) of the *Corporations Act* gives the RSU the power to pass By-Laws regulating “the conduct in all other particulars of the affairs of the corporation,” while section 23 gives the RSU “incidental powers to act for the benefit of the corporations”, and to do “... all such things as are incidental or conducive to the attainment of the above objects and of the objects set out in the letters patent”.

62. The Respondent submits that this Court’s jurisdiction to intervene in RSU’s decision, as a corporate entity, to deny Student Group status to the Applicants, if any, arises from the Court’s power to review the decision of a domestic or private tribunal.

## **B. THE COURT SHOULD NOT INTERVENE IN THE RSU’S DECISION**

### **(i) *This Court has no jurisdiction over the RSU’s decision to deny MIAS’ application for Student Group status***

63. It is respectfully submitted that the Court does not have jurisdiction over the RSU’s private decision to deny MIAS’ application for Student Group status.

64. The Courts have recognized a limited supervisory role where the decision of a private tribunal interferes with or affects a member’s property or civil rights.<sup>74</sup> This is not such a case. The RSU’s decision to deny MIAS’ application for Student Group status does not engage the Applicants’ property or civil rights. There is no suggestion that the Applicants’ property is somehow at issue, nor is there a suggestion that the RSU’s decision has affected the Applicants’

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<sup>74</sup> *Street v BC School Sports*, 2005 BCSC 958, [Street], at para 36, Respondents’ Joint Book of Authorities (“BOA”), Tab 8, citing *Peerless (Guardian ad litem of) v BC School Sports* (1998), 157 DLR (4th) 345, 1998 CanLII 6538 (BC CA), BOA, Tab 9; see also *Rakowski v Malagerio et al*, [2007] OJ No 369, 2007 CarswellOnt 539 (Ont SCJ) [Rakowski] at para 39, BOA, Tab 6.

ability to work or make a living. The RSU's decision has not resulted in the expulsion of the Applicants as RSU members. The Applicants continue to be members of the RSU and continue to hold all of the rights associated with RSU membership, including organizing on campus, participating in the RSU election process, and reapplying for Student Group status.

**(ii) *The Court should not intervene in the RSU's decision to deny MIAS' application for Student Group status***

65. Should this Court determine that it will review the RSU's decision, deference is owed to the RSU as a domestic tribunal. Respectfully, it is not the Court's role to conduct a review of the factual merits of a domestic tribunal's decision, nor is it the Court's role to substitute its decision for that of the tribunal.<sup>75</sup> Rather, the Court's limited supervisory role is to review the processes by which a domestic tribunal governs itself.<sup>76</sup> The Court may consider whether the domestic tribunal acted within its jurisdiction, complied with the principles of natural justice, and acted in good faith.

66. In this case, when the RSU denied MIAS' application for Student Group status, it (a) acted within its jurisdiction, (b) complied with the principles of natural justice, and (c) acted in good faith. Consequently, the Respondent respectfully submits that this Court should not intervene in the RSU's decision.

67. The Appellants rely heavily on *Courchene v Carleton University Students' Association Inc*<sup>77</sup> for the proposition that this Court ought to interfere in the RSU's decision. *Courchene*

<sup>75</sup> *Courchene v Carleton University Students' Assn Inc*, 2016 ONSC 3500 [*Courchene*] at para 20, BOA, Tab 12.

<sup>76</sup> *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] SCJ No 87, 1992 CarswellMan 138 (SCC), [*Lakeside Colony*], BOA, Tab 10; *Street* at paras 45-46, BOA, Tab 8; *Changoor v IBEW, Local 353*, 2015 ONSC 2472 (Div Ct), para 6 [*Changoor Div Ct*] paras 6, 8, BOA, Tab 14.

<sup>77</sup> *Courchene*, BOA, Tab 12.

involved a challenge to a decision made by Carleton University's student union to disqualify a candidate from running in a student election based on its application of the "Voting Day Policy."

68. The *Courchene* decision is distinguishable from the current case for two main reasons.

69. First, and importantly, the issue in *Courchene* was an allegation of a misapplication of a policy. There is no such allegation here. Rather, in this case, the Applicants disagree with the RSU's decision but have not challenged the policy which supported the RSU's decision.

70. Second, the process of an election among members attracts a different level of judicial scrutiny as compared to the decision to grant or deny student group status. Elections may very well impede a member's right to property and civil rights, while the same cannot be said of being granted or denied student group status.

71. In contrast, Justice Stewart's recent decision in *Grant v Ryerson Students' Union*<sup>78</sup> is directly on point. In that case, just like in this one, a Non-RSU Club asked this court to intervene when the RSU denied it Student Group status. Justice Stewart weighed all the circumstances of the case and declined to review the RSU's decision. It is respectfully submitted that Justice Stewart's approach was correct and ought to be followed in this case.

a) **The RSU Did Not Exceed its Jurisdiction**

72. Whether a domestic tribunal acted within its jurisdiction depends on whether the facts adduced before the domestic tribunal were "reasonably capable of being held to be a breach of the

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<sup>78</sup> *Grant v Ryerson Students' Union*, 2016 ONSC 5519, Tab 4.

rules.”<sup>79</sup> As stated by the Court in *Lee*: “The whole point of giving jurisdiction to a committee is so that they can determine the facts and decide what is to be done about them.”<sup>80</sup>

73. The RSU, through the Committee, is tasked with receiving and reviewing all Non-RSU Club applications for Student Group status and determining whether to approve or deny those applications.<sup>81</sup> This process includes making factual determinations about whether a Non-RSU Club conforms with the RSU’s policies and By-Laws, including the Policy on New Student Groups.

74. Operational Policy #36 – Student Group Policy requires that a “Student Group’s actions must not be contrary to the Ontario Human Rights Code, RSU or the University’s policies.”<sup>82</sup>

75. Pursuant to the Policy on New Student Groups, the Board of Directors has the discretion to recognize new groups or withdraw recognition of any group that does not uphold/respect the RSU’s policies. This Policy also requires, as a condition to receiving Student Group status, that a social, political issue, or non-academic special interest group must act in accordance with RSU and University criteria, policies, and procedures. It also requires that Student Groups not duplicate services offered by a currently existing Student Group.<sup>83</sup>

76. Issues Policy #15 – Women’s Issues acknowledges RSU’s recognition that:

“[a]lthough women have achieved formal legal equality in Canada, gender-based discrimination occurs structurally, individually and institutionally, which directly impacts women’s access to post-secondary education and their experience as students. Despite some advancement in the participation of women

<sup>79</sup> *Lee v The Showmen’s Guild of Great Britain*, [1952] 2 QB 329 (CA) [*Lee*] p 345, BOA, Tab 7.

<sup>80</sup> *Lee*, p 345, BOA, Tab 7.

<sup>81</sup> *Lee* p 345, BOA, Tab 7.

<sup>82</sup> Operational Policy #36 - Student Group Policy, article 36.2, Ullah Affidavit, CAR Vol II, Tab 3D, p 435.

<sup>83</sup> Policy on New Student Groups, Ullah Supplementary Affidavit, CAR Vol II, Tab 4A, p 559.

in postsecondary education, women remain underrepresented in many areas of study including science, engineering and business.”<sup>84</sup>

77. When the Committee received and reviewed MIAS’ application for Student Group status, the Committee was required to consider whether MIAS complied with all RSU policies. More specifically, the RSU was authorized to consider and decide whether MIAS’ actions contravened its policies.

78. The Applicants have not challenged the RSU’s policies. There is no suggestion that these policies have been improperly passed, or that the RSU Board of Directors did not have the power to pass these policies. Nor did the Applicants take steps to introduce new policies or repeal existing ones.

79. The RSU did not, as the Applicants allege, act with an unauthorized purpose. Rather, the actions of the RSU – including the Committee, Executive Committee and Board of Directors – were authorized by its By-Laws and policies. Moreover, the RSU did not exceed its jurisdiction by considering, and finding, that MIAS’ activities could cause an unsafe learning environment for women-identified students because MIAS refused to acknowledge the systemic privilege that men have. The RSU made the factual determination that MIAS’ constitution and anticipated events violated its policies. It is not the Court’s role to intervene in this finding of fact.<sup>85</sup>

80. The Applicants are conflating the obligations of the University with those of the RSU. The RSU is an entity separate and apart from the University and is not obligated to follow, or enforce,

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<sup>84</sup> Issues Policy #15 – Women’s Issues, RSU Policy Manual, Ullah Affidavit, CAR Vol II, Tab 3D, p 361.

<sup>85</sup> *Lakeside Colony* at para 10, BOA, Tab 10; *Street* at paras 45-46, BOA, Tab 8; *Changoor Div Ct*, paras 6, 8, BOA, Tab 14.

the University's policies or organizing statements. The RSU agrees that it must follow its own Letters Patent, By-Laws and policies when making decisions, and did so in this case.

81. The RSU supports freedom of thought, belief, opinion and expression. The RSU supports the Applicants' rights to hold and express beliefs that differ with or contravene the RSU's policies. The RSU will not, however, pursuant to its existing policies, grant Student Group status to a Non-RSU Club that, in the discretion of the Student Groups Committee and Board, contravenes the RSU's policies.

**b) The RSU Complied with the Rules of Natural Justice**

82. The process by which MIAS' application for Student Group status was reviewed was fundamentally fair. The Applicants were given adequate and timely notice of the decisions, provided with the opportunity to make representations, and were provided with unbiased tribunals at both the Committee and Board levels.

**The Applicants were Given Adequate and Timely Notice**

83. The Applicants were given adequate and timely notice at all stages of the application and appeal process. The Applicants knew the time and place of each meeting, the nature of each meeting, and the fact that the Committee, Executive Committee and Board of Directors, respectively, would be granting or denying MIAS' application based on the Applicants' representations at those meetings.

84. The Applicants were aware that the Committee would consider the MIAS application during the 26 October 2015 meeting. Ms. O'Neill worked with Mr. Arriola for months on MIAS' application to get it ready for review by the Committee. She emailed him on two separate occasions

to confirm the date of the Committee meeting.<sup>86</sup> In both emails, Ms. O'Neill was clear that MIAS would be given the opportunity to make submissions to the Committee. The Applicants' argument that they were unaware that the MIAS application would be reviewed, and a decision would be made, by the very committee to which Mr. Arriola provided MIAS' application for consideration is without merit.

85. The Applicants were also aware that the Executive Committee would consider the MIAS appeal during the 1 December 2015 meeting. In fact, the meeting was rescheduled from 17 November to 1 December to accommodate Mr. Arriola's schedule and ensure that he could be present and make representations to the Executive Committee.<sup>87</sup>

86. Finally, the Applicants were aware that the Board would consider the MIAS appeal during the 25 January 2016 meeting. Mr. Arriola was advised two weeks earlier, on 12 January 2016, that the Board would hear the appeal on 25 January 2016.<sup>88</sup>

*The Applicants were Given the Opportunity to Make Representations*

87. Members must be given an opportunity to respond to the specific allegations made against them.<sup>89</sup> Representatives of MIAS were given the opportunity to make representations before the Committee, the Executive Committee and the Board of Directors.

88. As documented in the minutes from the Student Groups Committee's 26 October 2015 meeting, the representatives of MIAS attended the meeting, made submissions and answered the

<sup>86</sup> Email exchange between Ms. Cheong and Mr. Arriola, CAR Vol II, Tab 3V, p 531.

<sup>87</sup> Ullah Affidavit at para 42-43, CAR Vol II, Tab 3, p 259.

<sup>88</sup> Committee Meeting Minutes, Ullah Affidavit, CAR Vol II, Tab 3J, p 481.

<sup>89</sup> *Polish National Union of Canada v Branch 1 the Polish National Union of Canada*, 2014 ONSC 3134 at para 66, BOA Tab 11.

questions posed by the Committee members.<sup>90</sup> Following this back and forth, the Committee made its decision and denied MIAS' application.

89. After the initial denial by the Committee, the RSU provided reasons for its decision and provided the Applicants with information regarding the appeal process. The Applicants then made a presentation to the Executive Committee on 1 December 2015<sup>91</sup> and to the Board of Directors on 25 January 2016.<sup>92</sup> As the minutes reflect, the Executive Committee and the Board gave the representatives of MIAS an opportunity to make submissions and then asked extensive follow-up questions.

90. In advance of the Executive Committee meeting, which was rescheduled to accommodate Mr. Arriola's schedule, the RSU gave the Applicants extensive reasons – in the form of a two-page letter - explaining why the Committee denied MIAS' application.<sup>93</sup>

91. After the Board of Directors meeting, the Applicants received further reasons for the denial of MIAS' application, again in the form of a letter.<sup>94</sup>

92. The extensive correspondence between the RSU and the representatives of MIAS further reinforces the fairness of the application and internal appeal process. The Applicants knew about each of the three meetings and knew that MIAS' application for Student Group status would be determined at these meetings. The Applicants attended each meeting. Following each meeting, and

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<sup>90</sup> Committee Meeting Minutes, Ullah Affidavit, CAR Vol II, Tab 3J, p 481.

<sup>91</sup> Meeting Minutes of the Executive Committee, Ullah Affidavit, CAR Vol II, Tab 3U, p 526.

<sup>92</sup> Board Meeting Minutes, CAR, Vol II, Tab 3W, p 541.

<sup>93</sup> Student Clubs Committee Written Reasons, Ullah Affidavit, CAR Vol II, Tab 3M, p 493.

<sup>94</sup> 29 February Letter, Ullah Affidavit, CAR Vol II, Tab 3X, p 553.

in advance of the next step in the appeal process, the RSU provided the Applicants with reasons for its decision. In these circumstances, notice was more than adequate and timely.

*The RSU's Decision was Not Biased*

93. A domestic tribunal's decision will only be suspect where the tribunal demonstrates actual bias.<sup>95</sup> This is a high threshold. The Supreme Court has recognized that, given the structure of voluntary associations, it is almost inevitable that the decision makers will have had some previous contact with the issue in question and will have at least an "indirect interest" in the decision being made.<sup>96</sup>

94. The Committee, the Executive Committee and the Board of Directors are authorized, pursuant to the RSU By-Laws and policies,<sup>97</sup> to consider and grant or deny a Non-RSU Club's application for Student Group status. In doing so, they are entitled, and required, to ensure that the Non-RSU Club complies with the RSU policies. The RSU was not biased when it considered, and interpreted, the RSU's policies in determining whether to grant MIAS' application for Student Group status. This includes determining whether a Non-RSU Club complies with the Women's Issues policy and the requirement that Student Groups cannot duplicate services that are already offered by another group. Similarly, the RSU did not discriminate against the Applicants, but rather considered whether MIAS complied with RSU policies. To deny the RSU the ability to consider and apply its policies when determining Student Group status would render the policies meaningless.

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<sup>95</sup> *Changoor Ont Sup Ct*, para 25, BOA, Tab 13, upheld in *Changoor Div Ct*, at para 9, BOA, Tab 14.

<sup>96</sup> *Lakeside Colony*, at para 85, BOA, Tab 10.

<sup>97</sup> RSU By-Laws, 1.2, 1.4, 2.1, 3.1, 4.5(a)(vi), 4.5(d)(i), 5.6(b), 10.1, Ullah Affidavit, CAR Vol II, Tab 3C.

95. The RSU did not simply deny the application without consideration. As documented in the minutes of the Committee, Executive Committee and the Board of Directors,<sup>98</sup> the representatives of MIAS were given a meaningful opportunity to make representations, after which the RSU asked probing questions and considered MIAS' application.

96. As recognized by the Supreme Court of Canada, it is inevitable that decision makers of a voluntary association will have had some previous contact with the issue in question. Ms. Idrees, who was the RSU's Vice-President, was present at a feminist rally which Mr. Arriola attended. Ms. Idrees was aware that Mr. Arriola's presence at the rally made students feel unsafe, which she reported to a University newspaper. The students' concerns mirrored those of the Committee, Executive Committee, and Board of Directors. The fact that Ms. Idrees raised these concerns publicly does not show bias; rather, it reinforces the concerns that were raised throughout the appeal process.

### **The RSU's Decision was Not Made in Bad Faith**

97. The RSU's Board of Directors is empowered to make policies with respect to any issue.<sup>99</sup> The fact that the RSU has adopted a policy that acknowledges systemic male privilege does not, in and of itself, mean that the RSU is biased or acted in bad faith. There is no evidence to suggest that the Committee, Executive Committee, or Board of Directors had a closed or predetermined mind. The RSU ensured that at each stage of the application and appeal process, the Applicants were provided with an opportunity to make representations and respond to RSU's concerns about the group. The Applicants have failed to provide any evidence to establish actual bias. Rather, the

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<sup>98</sup> Committee Meeting Minutes, Ullah Affidavit, CAR Vol II, Tab 3J, p 481; Meeting Minutes of the Executive Committee, Ullah Affidavit, CAR, Vol II, Tab 3U, p 526; Board Meeting Minutes, CAR Vol II, Tab 3W, p 541.

<sup>99</sup> *Corporations Act*, s. 23 and 129(1).

evidence shows that the Applicants were given meaningful opportunities, in accordance with RSU's policies and By-Laws, to present their case.

**C. THE RSU IS NOT OBLIGATED TO CONSIDER CHARTER RIGHTS OR CHARTER VALUES WHEN DETERMINING STUDENT GROUP STATUS**

98. The Applicants rely on section 2(b) and 2(d) of the *Charter* as a basis for the relief they seek.<sup>100</sup> The *Charter* does not apply to the RSU, nor do “the values of the *Charter*”. The Applicants have failed to show how they have a right to these fundamental civil rights distinct and apart from their rights under the *Charter*.

99. In any event, the Applicants' rights as RSU members have not been impeded. The Applicants are free to associate and express themselves on the University campus, hold meetings, host events and raise funds for their cause. The Applicants are free to hold beliefs and communicate those beliefs to others on campus, including beliefs that are not endorsed by the RSU. The only restriction placed on the Applicants is that should they wish to become a recognized Student Group and receive the benefits that come from being a Student Group, that Student Group must abide by RSU's By-Laws and policies, which include endorsing the belief that systemic male privilege exists.

**D. THE APPLICANTS ARE NOT WITHOUT A REMEDY**

100. Unhappy with the RSU's decision to deny MIAS' application, the Applicants ask this Court to step in and act as a supervisor to the RSU's private, internal workings. With respect, this is not the role of the Court. As stated by the Court in *Lee*: “...this court cannot be made a court of appeal from decisions of such tribunals.”<sup>101</sup>

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<sup>100</sup> Notice of Application, para 26, CAR Vol I, Tab 1.

<sup>101</sup> *Lee* at p 341, BOA, Tab 7.

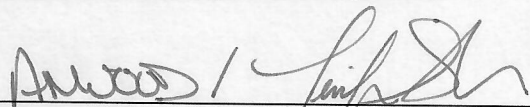
101. The decision at issue was made by RSU student members, who are elected by and from that membership. It is that elected representative body that passes By-Laws and policies. As members of the RSU, the Applicants can run for office and become decision makers themselves. They can campaign for other RSU members who share their beliefs. They can lobby the current RSU executive to pass new policies or By-Laws, and lobby against RSU being a pro-feminist organization that acknowledges systemic male privilege. Until then, MIAS – as every other Student Group - must adhere to RSU's policies in order to be a recognized Student Group. This Court has previously recognized that the Applicants' remedy is political in nature.<sup>102</sup>

#### **PART IV - ORDER REQUESTED**

102. The Respondent requests that this Honourable Court dismiss the application in its entirety, with costs to the Respondent.

103. In the alternative, should this Court intervene in the RSU's decision and determine that the decision was improperly made, the Respondent submits that the decision should be remitted to the RSU Committee for reconsideration.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of January 2018.

  
 Alexi N. Wood / Jennifer P. Saville  
 ST. LAWRENCE BARRISTERS LLP

<sup>102</sup> *Grant* at para 52, BOA Tab 4.

## SCHEDULE “A”

### LIST OF AUTHORITIES

1. Halsbury’s Laws of Canada (online), *Administrative Law* (2013 Reissue), I. Overview of Administrative Law, 1. Definition, at HAD-1.
2. *Dunsmuir v New Brunswick*, 2008 SCC 9.
3. *Setia v Appleby College*, 2013 ONCA 753.
4. *Grant v Ryerson Students’ Union*, 2016 ONSC 5519.
5. Donald Brown & John Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf consulted on 9 December 2015), (Carswell: Toronto, 2015), ch 1.
6. *Rakowski v Malagerio*, [2007] OJ No 369, 2007 CarswellOnt 539, (Ont SCJ).
7. *Lee v The Showmen’s Guild of Great Britain*, [1952] 2 QB 329, (CA).
8. *Street v B.C. School Sports*, 2005 BCSC 958.
9. *Peerless (Guardian ad litem of) v B.C. School Sports* (1998), 157 D.L.R. (4th) 345, 1998 CanLII 6538 (BC CA).
10. *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] SCJ No 87, 1992 CarswellMan 138 (SCC).
11. *Polish National Union of Canada v Branch 1 the Polish National Union of Canada*, 2014 ONSC 3134.
12. *Courchene v Carleton University Students’ Assn Inc*, 2016 ONSC 3500.
13. *Changoor v IBEW, Local 353*, 2014 ONSC 4558 (Ont SCJ).
14. *Changoor v IBEW, Local 353*, 2015 ONSC 2472, (Ont Div Ct).
15. *Association of Part-Time Undergraduate Students of the University of Toronto v University of Toronto Mississauga Students’ Union and Erindale Part-Time Undergraduate Students’ Association*, 2008 CanLII 43054 (Ont SCJ).
16. *Hart v Roman Catholic Episcopal Corporation of the Diocese of Kingston*, 2011 ONCA 728.
17. *Mayan v World Professional Chuckwagon Association*, 2010 ABQB 140.
18. *Canadian Federation of Students v Greater Vancouver Transportation Authority*, 2009 SCC 31.
19. *Eldridge v British Columbia*, [1997] 3 SCR 624 (SCC).
20. *McKinney v University of Guelph*, [1990] 3 SCR 229 (SCC).

21. *Lobo v Carleton University*, 2012 ONSC 254.
22. *Lobo v Carleton University*, 2012 ONCA 498.
23. *Lavigne v OPSEU*, [1991] 2 SCR 211.

## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### Corporations Act, RSO 1990, c C38

##### **Incidental powers**

**23.(1)** A company possesses, as incidental and ancillary to the objects set out in the letters patent or supplementary letters patent, power,

(a) to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of or make profitable any of its property or rights;

(b) to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the company is authorized to carry on;

(c) to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

(d) to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction that the company is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the company, and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, reissue, with or without guarantee, or otherwise deal with the same;

(e) to take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as to benefit the company;

(f) to enter into arrangements with any public authority that seem conducive to the company's objects and obtain from any such authority any rights, privileges or concessions;

(g) to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the company or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this clause, and subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;

- (h) to promote any company for the purpose of acquiring or taking over any of the property and liabilities of the company, or for any other purpose that may benefit the company;
- (i) to purchase, lease or take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the company may think necessary or convenient for the purposes of its business;
- (j) to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches, sidings, bridges, reservoirs, watercourses, wharves, factories, warehouses, electric works, shops, stores and other works and conveniences that may advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
- (k) to raise and assist in raising money for, and to aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or company with whom the company may have business relations or any of whose shares, securities or other obligations are held by the company and to guarantee the performance or fulfilment of any contracts or obligations of any such person or company, and in particular to guarantee the payment of the principal of and interest on securities, mortgages and liabilities of any such person or company;
- (l) to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
- (m) to sell, lease, exchange or dispose of the undertaking of the company or any part thereof as an entirety or substantially as an entirety for such consideration as the company thinks fit, and in particular for shares or securities of any other company having objects altogether or in part similar to those of the company, if authorized so to do by a special resolution;
- (n) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the company in the ordinary course of its business;
- (o) to adopt such means of making known the products of the company as seems expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals or by granting prizes and rewards or making donations;
- (p) to cause the company to be registered and recognized in any foreign country or province or territory of Canada, and to designate persons therein according to the laws of such foreign country or province or territory to represent the company and to accept service for and on behalf of the company of any process or suit;
- (q) to allot and issue fully-paid shares of the company in payment or part payment of any property purchased or otherwise acquired by the company or for any past services rendered to the company;

(r) to distribute among the shareholders of the company in money, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner considered advisable, any property of the company, but no such distribution shall decrease the capital of the company unless made in accordance with this Act;

(s) to pay all costs and expenses of or incidental to the incorporation and organization of the company;

(t) to invest and deal with the money of the company not immediately required for its objects in such manner as may be determined;

(u) to do any of the above things and all things authorized by the letters patent and supplementary letters patent as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;

(v) to do all such other things as are incidental or conducive to the attainment of the above objects and of the objects set out in the letters patent and supplementary letters patent.

### **Powers may be withheld**

(2) Any of the powers set out in subsection (1) may be withheld or limited by the letters patent or supplementary letters patent.

### **By-laws**

**68** (1) The directors may pass by-laws not contrary to this Act or to the letters patent or supplementary letters patent to regulate,

(a) the allotment and issue of shares, the making of calls thereon, the payment thereof, the issue of share certificates, the forfeiture of shares for non-payment, the sale of forfeited shares, the transfer and the registration of transfers of shares;

(b) the declaration and payment of dividends;

(c) the qualification and remuneration of the directors;

(d) the time for and the manner of election of directors;

(e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company and the security, if any, to be given by them to it;

(f) the time and place and the notice to be given for the holding of meetings of the shareholders and of the board of directors, the quorum at meetings of shareholders, the requirements as to proxies, and the procedure in all things at shareholders' meetings and at meetings of the board of directors;

(g) the conduct in all other particulars of the affairs of the company.

**By-laws**

**129.(1)** The directors of a corporation may pass by-laws not contrary to this Act or to the letters patent or supplementary letters patent to regulate,

- (a) the admission of persons and unincorporated associations as members and as members by virtue of their office and the qualification of and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of memberships by the corporation and by the member;
- (e) the transfer of memberships;
- (f) the qualification of and the remuneration of the directors and the directors by virtue of their office, if any;
- (g) the time for and the manner of election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (i) the time and place and the notice to be given for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at members' meetings and at meetings of the board of directors;
- (j) the conduct in all other particulars of the affairs of the corporation.

DIANE ZETTEL et al.

Applicants

-and- UNIVERSITY OF TORONTO MISSISSAUGA STUDENTS'  
UNION et al.  
Respondents

Court File Nos. CV-16-550599  
CV-16-544546  
CV-17-575212

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE RESPONDENT, RYERSON STUDENTS'  
UNION**

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