

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, UNIVERSITY OF TORONTO
MISSISSAUGA STUDENTS' UNION**

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FACTUM OF THE RESPONDENT, UNIVERSITY OF TORONTO MISSISSAUGA 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 University of Toronto Mississauga Students' Union ("UTMSU") is committed to ensuring that all University of Toronto Mississauga (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. Diane Zettel, Cameron Grant and Chad Hagel are University students and are members of the UTMSU who founded a pro-life club called UTM Students for Life ("SFL"). As a student club, SFL 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. SFL members can run for positions on the UTMSU Board of Directors, introduce motions at the UTMSU general meetings and lobby to have new policies adopted or old policies rescinded. The UTMSU encourages and supports all of these actions.

3. In 2014, the Applicants applied for SFL to be a recognized student group by the UTMSU. This application was granted and, as with all new student groups, SFL was put on probation for the first school year. In 2015, in accordance with the UTMSU policies, SFL applied to renew its

Student Group status. This application was denied in accordance with UTMSU's policies. Unhappy with this decision, the Applicants ask this Court to intervene.

4. This application ought to be dismissed. The UTMSU 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 SFL application was wholly within UTMSU's mandate and power.

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

PART II - SUMMARY OF FACTS

A. UTMSU GOVERNANCE STRUCTURE

6. The University is a campus of the University of Toronto located in Mississauga, Ontario. The University of Toronto is established pursuant to *The University of Toronto Act, 1971*, as amended. The University was originally founded as Erindale College. In 1998, Erindale College assumed the dual name of "University of Toronto Mississauga."¹

7. Erindale College Student Union ("ECSU") was incorporated 2 August 1983 pursuant to the laws of Ontario. When Erindale College assumed the name of University of Toronto Mississauga, ECSU began to operate as UTMSU.² The UTMSU is an independent, autonomous

¹ Affidavit of Francesco Otello-DeLuca sworn 4 March 2016 ("**Otello-DeLuca Affidavit**") para 4, Consolidated Application Record ("**CAR**") Vol II, Tab 4, p 188.

² Otello-DeLuca Affidavit paras 5 and 6, CAR Vol II, Tab 4, p 188.

corporation without share capital and is an entity separate and apart from the University. The University has no control over UTMSU's activities and/or dealings.

8. The UTMSU represents all full-time undergraduate students at the University and acts as the representative of these students in matters related to the University.³ These students are "members" of the UTMSU so long as they have paid the UTMSU's student activity fee for the current term of study.⁴ In the 2015-2016 school year, the membership fee was \$14.11 per session.⁵ The UTMSU Constitution and By-Laws, which are passed under the *Corporations Act*, set out the basic membership requirements and governance structure of the UTMSU.⁶

9. Members of the UTMSU enjoy a wide array of benefits including the right to vote in UTMSU elections, referenda and general meetings, the right to sign petitions of the UTMSU, the right to nominate a candidate for election to positions on the Board of Directors, the right to seek election to the Board of Directors, the right to apply for Student Group status, and the right to lobby the University.⁷

10. The UTMSU 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 UTMSU.⁸

³ Otello-DeLuca Affidavit para 12, CAR Vol II, Tab 4, p 189.

⁴ Otello-DeLuca Affidavit para 12, CAR Vol II, Tab 4, p 189; UTMSU Constitution and By-Laws, By-Law II, Otello-DeLuca Affidavit, CAR Vol II, Tab 4C, p 244.

⁵ Otello-DeLuca Affidavit para 12, CAR Vol II, Tab 4, p 189; UTMSU Constitution and By-Laws, By-Law II, Otello-DeLuca Affidavit, CAR Vol II, Tab 4D, p 280.

⁶ UTMSU Constitution and By-Laws, By-Law II, Otello-DeLuca Affidavit, CAR Vol II, Tab 4C, p 244.

⁷ UTMSU Constitution and By-Laws, By-Law II, Otello-DeLuca Affidavit, CAR Vol II, Tab 4C, p 244.

⁸ UTMSU Constitution and By-Laws, By-Laws V, VI, Otello-DeLuca Affidavit, CAR Vol II, Tab 4C, p 248-251.

UTMSU Endorses the Women's Issues Policy

11. The UTMSU is a member local of the Canadian Federation of Students (“CFS”). By referendum in November 2002, full-time and part-time undergraduate students at the University agreed to become a member of CFS. From 2002 to 2008, the University of Toronto Students’ Union represented the University’s full-time undergraduate students to CFS. The UTMSU became the 109th local of the CFS in 2009 after a resolution was approved by the CFS.⁹ As such, every full-time undergraduate UTMSU member is also a CFS member.

12. CFS is a pro-choice organization, as demonstrated by the Post-Secondary Education Policy - Women Students’ Issues. This is a standing policy of the CFS, in which the CFS recognizes a woman’s right to control her own body, including access to safe, reliable birth control, family planning information and a full range of options and to be able to freely exercise whatever decision she makes in the case of pregnancy.¹⁰

13. As a member local of CFS, UTMSU endorses and adopts CFS’s policies, including the Women Students’ Issues policy.¹¹

B. CLUBS AND STUDENT GROUPS AT THE UNIVERSITY

14. Any group of students can form a club at the University (a “**Non-UTMSU Club**”).¹² Any Non-UTMSU Club can apply to the UTMSU to be a recognized Student Group (a “**Student Group**”). To become a Student Group, a Non-UTMSU Club must submit an application to

⁹ Otello-DeLuca Affidavit para 8, CAR Vol II, Tab 4, p 188.

¹⁰ Post-Secondary Education Policy - Women Students’ Issues, Otello-DeLuca Affidavit, CAR Vol II, Tab 4B, p 227.

¹¹ Otello-DeLuca Affidavit para 11, CAR Vol II, Tab 4, p 189.

¹² Otello-DeLuca Affidavit para 16, CAR Vol II, Tab 4, p 190.

UTMSU's Clubs Committee.¹³ In order to ensure that students are given the opportunity to bring forward new clubs, all new Student Groups are required to undergo a one-year probationary period during which only partial benefits of Student Group recognition will be granted.¹⁴ All Student Groups must reapply for recognition every year; the fact that a Student Group was recognized in the past does not guarantee that the Student Group will be granted Student Group status in the future.¹⁵ During the re-recognition process, the Clubs Committee reviews the Student Group's activities from the past year and undertakes a more in-depth review of the Student Group's documents and financials from the previous year.¹⁶

15. UTMSU's Union Clubs' Policy requires that Student Groups "abide by all the conditions and restrictions enumerated in the Union Clubs' Handbook."¹⁷ The Policy goes on to say that the responsibility for the implementation of this policy is delegated to the Clubs Committee and the Vice President Campus Life.¹⁸

16. The Clubs' Handbook specifically requires that "[a]ll Union recognized clubs must adhere to UTMSU's club-related policies as stipulated in this handbook, the UTMSU Constitution, and the University Of Toronto Student Code Of Conduct at the discretion of the Clubs' Committee of UTMSU."¹⁹

17. The Clubs Committee is, under the By-Laws, a committee of the Board of Directors and is made-up of members from UTMSU's executive members and three communication members from

¹³ Otello-DeLuca Affidavit para 17, CAR Vol II, Tab 4, p 190.

¹⁴ Otello-DeLuca Affidavit para 37, CAR Vol II, Tab 4, p 195.

¹⁵ Otello-DeLuca Affidavit para 37, CAR Vol II, Tab 4, p 195.

¹⁶ Otello-DeLuca Cross-Examination p 8 q 22, CAR Vol II, Tab 10, p 629.

¹⁷ Union Clubs' Policy, Otello-DeLuca Affidavit, CAR, Vol II, Tab 4F, p 363.

¹⁸ Union Clubs' Policy, Otello-DeLuca Affidavit, CAR, Vol II, Tab 4F, p 363.

¹⁹ Clubs Handbook, Otello-DeLuca Affidavit, CAR, Vol II, Tab 4E, p 310.

UTMSU. The Clubs Committee is responsible for recognizing, withdrawing recognition, assisting and otherwise dealing with Student Groups. The Clubs Committee makes recommendations to the Board on all matters relating to Student Groups.²⁰

18. The UTMSU does not have a formal policy to appeal a decision by the Clubs Committee. UTMSU's standard practice is to allow a club to ask the Clubs Committee to reconsider the decision. This is often done after the group has implemented the Clubs Committee's recommendations.²¹

19. There is no provision in any of UTMSU's policies that allows a UTMSU member to appeal a decision of the Clubs Committee to the Board of Directors. However, as with all decisions from a UTMSU committee, the Board of Directors may "externalize" any decision made by a committee. This is a practice whereby any Board member can request that the Board of Directors review the decision of a UTMSU committee and make a decision in the committee's place. It is rare that decisions are externalized by the Board of Directors.²²

20. There are only five differences between a Non-UTMSU Club and a recognized Student Group:

- (a) Student Groups receive funding from the UTMSU. For the 2015-2016 school year, a Student Group received \$350.00 in operational funding, with the ability to apply for further funding;

²⁰ Otello-DeLuca Affidavit para 12, CAR Vol II, Tab 4, p 189; UTMSU Constitution and By-Laws, By-Law II, Otello-DeLuca Affidavit, CAR Vol II, Tab 4C, p 244.

²¹ Otello-DeLuca Affidavit paras 39-40, CAR Vol II, Tab 4, p 196.

²² Otello-DeLuca Affidavit para 41, CAR Vol II, Tab 4, p 196.

- (b) Student Groups can book and use space in the UTMSU Student Centre free of charge; Non-UTMSU Clubs are required to pay a nominal fee to book and use the UTMSU Student Centre;
- (c) Student Groups receive an official UTMSU email account;
- (d) Student Groups can apply to receive a locker and shared office space, both of which are limited and are allocated depending on Student Groups' needs. However, lockers are not limited to use by Student Groups; UTMSU members can also apply to receive a locker; and
- (e) Student Groups can put up a certain number of posters, free of charge, on UTMSU bulletin boards. Non-UTMSU Clubs can post on UTMSU's poster boards by paying a nominal administrative fee of \$0.50. The University has separate poster boards which can be used by both Student Group and Non-UTMSU Clubs.²³

C. THE APPLICANTS AND UTM STUDENTS FOR LIFE

21. At the time that the Application was commenced, Diane Zettel was a student of the University. Ms. Zettel was the President of SFL which, according to her affidavit sworn 9 January 2016, is "a student group established by students at the University of Toronto Mississauga who, *inter alia*, encourage discussion on topics important to their belief-system, including respect for the value of human life at all stages."²⁴ SFL was first founded in 2014 with the help of the National Campus Life Network.²⁵

²³ Otello-DeLuca Affidavit paras 20-25, CAR Vol II, Tab 4, p 191-192.

²⁴ Affidavit of Diana Zettel sworn 9 January 2016 para 6, CAR Vol I, Tab 2, p 14.

²⁵ Cross-Examination of Diane Zettel held 15 March 2016 ("**Zettel Cross-Examination**") p 12-13, q 48-53, CAR Vol II, Tab 9, p 611.

22. At the time that the Application was commenced, Cameron Grant was a student at the University and the Treasurer of SFL.

23. At the time that the Application was commenced, Chad Hagel was a student at the University and the Secretary of SFL.

24. At the time that the Application was commenced, Ms. Zettel, Mr. Grant and Mr. Hagel were members of the UTMSU. There is no evidence that their membership in the UTMSU was ever in jeopardy or that they had been denied any membership rights. There is no evidence that any of the Applicants ever sought to run for the UTMSU Board or sought to pass new or amended policies or By-Laws.

D. THE CLUBS COMMITTEE DENIES SFL'S APPLICATION FOR RENEWAL

(i) SFL's 2014-2015 Application for Student Group Status

25. In April 2014, SFL applied for Student Group status for the first time.²⁶ This application was granted. As a new Student Group, SFL was placed on probation for the 2014-2015 school year in accordance with the Clubs' Handbook.²⁷

(ii) SFL's 2015-2016 Application for Renewal

26. All Student Groups must reapply for status each year. In 2015, SFL, along with all Student Groups, reapplied for Student Group status for the 2015-2016 school year (the "**Application for Renewal**"). The Clubs Committee reviewed SFL's written Application for Renewal during its 20

²⁶ Zettel Cross-Examination p 8-9 q 25-28, CAR Vol II, Tab 9, p 610.

²⁷ Otello-DeLuca Affidavit para 46, CAR Vol II, Tab 4, p 198.

July 2015 meeting.²⁸ It is not the Clubs Committee's practice to have a representative from each Student Group attend at these meetings.²⁹

27. During this meeting, members of the Clubs Committee discussed complaints brought forward by UTMSU members about certain events hosted and materials distributed by SFL, including flyers and leaflets with graphic images of fetuses. Some UTMSU members found these to be offensive.³⁰ The Clubs Committee found that the SFL's actions in the 2014-2015 year were not in accordance with the UTMSU's historic pro-choice position, including the positions the UTMSU had endorsed as a CFS local union.³¹ The members of the Clubs Committee were concerned about renewing the SFL's status, but felt this issue needed to be addressed and explored more fully with the benefit of additional time. The Clubs Committee therefore adjourned the SFL's Application for Renewal to a later meeting.

28. At this same meeting, one of Clubs Committee members questioned whether SFL's Application for Renewal could be sent to the Board. Mr. Otello-DeLuca, UTMSU's Vice President Internal, advised that this was not the correct procedure and explained that the decision was that of the Clubs Committee.³² Contrary to the Applicants' contention, Mr. Otello-DeLuca did not impede the Applicants' "opportunity to be heard" by explaining that the Clubs Committee, not the Board, was the appropriate decision-maker; rather, Mr. Otello-DeLuca was ensuring that UTMSU's policies and procedures were being followed.

²⁸ Otello-DeLuca Affidavit para 47, CAR Vol II, Tab 4, p 198.

²⁹ Otello-DeLuca Affidavit para 36, CAR Vol II, Tab 4, p 195.

³⁰ Otello-DeLuca Affidavit para 48, CAR Vol II, Tab 4, p 198.

³¹ Otello-DeLuca Affidavit para 48, CAR Vol II, Tab 4, p 198.

³² Otello-DeLuca Affidavit para 49, CAR Vol II, Tab 4, p 199.

29. On 17 August 2015, the Clubs Committee met and its members decided to table the discussion of SFL's Application for Renewal to the next meeting, which was scheduled for two days later.³³

(iii) 19 August 2016 Clubs Committee Meeting

30. The Clubs Committee discussed SFL's Application for Renewal at its 19 August 2015 meeting. Members raised concerns that approving SFL's Application for Renewal would adversely affect UTMSU's membership, was contrary to UTMSU's policies and would have implications for UTMSU's relation with its sister unions. The Clubs Committee therefore decided not to approve SFL's Application for Renewal.³⁴ This decision was reported to the Board in the Clubs Committee's Report to the Board as follows:

Students For Life, which has been recognized by UTMSU in the past, was not recognized for the up-coming school year due to their stance on Abortion, in terms of being Pro-Life and using their platform to tell women what they should do in those situations.³⁵

(iv) The Members of SFL are Advised of the Clubs Committee's Decision and Provided Reasons

31. Following the Clubs Committee's decision, Russ Adade, UTMSU's Vice President Campus Life, wrote to the executives of SFL to inform them that SFL's Application for Renewal had been denied, and provided the following reasons:

Following a review by the clubs committee of your application for club recognition by the University of Toronto Mississauga Students Union, the decision has been made to deny your request.

This action was executed following a review of the core documentation of the UTMSU, and a total review of the nature and status of "Students for Life". The ruling to find the mandate of your organization in direct conflict with the mission

³³ Otello-DeLuca Affidavit para 51, CAR Vol II, Tab 4, p 199.

³⁴ Otello-DeLuca Affidavit paras 53-54, CAR Vol II, Tab 4, p 200.

³⁵ Report to the Board of Directors, Otello-DeLuca Affidavit, CAR Vol II, Tab 4M, p 447.

statement of the UTMSU was made by the chair of the clubs committee and was ratified by the Board of Directors for the UTMSU.

If you wish to contest this ruling, please contact the V.P. Internal to be made aware of the next scheduled board meeting, at which point you can request the Board of Directors re-vote on this matter.³⁶

32. On 23 September 2015, in response to requests from members of SFL, Mr. Adade provided additional reasons for the Clubs Committee's denial of SFL's Application for Renewal:

The reason why Students For Life was not renewed for the 2015/2016 Academic school year under UTMSU because the club's constitution is a direct conflict with the ITMSU mission statement because you are telling folks especially women what to do with their bodies. Regardless of the situation, every individual (Man or Woman) has the right to make their own decision when it comes to their body and you folks can't put them down for making a decision that doesn't fit with your mandate. [...]³⁷

33. Despite this denial, the Clubs Committee continued to work with the members of SFL to revise their constitution, as detailed below.

E. SFL SEEKS RECONSIDERATION OF THE CLUBS COMMITTEE'S DECISION

34. After receiving these reasons from the Clubs Committee, SFL's executives emailed Mr. Otello-DeLuca to ask when the next Board of Directors' meeting was going to be held so that the decision could be reviewed. Mr. Otello-DeLuca responded and informed SFL's executives of the next Board of Directors' meeting. He also, however, advised that the Board of Directors was possibly not the proper place for a reconsideration of the Clubs Committee's decision.³⁸ Even though Mr. Adade had suggested that the SFL look to the Board for a review of the decision, Mr. Otello-DeLuca was concerned that the Board did not in fact have the authority to review the decision of the Clubs Committee. Mr. Otello-DeLuca, who had been the UTMSU Vice President

³⁶ Mr. Adade's 26 August 2015 Email, Otello-DeLuca Affidavit, CAR Vol II, Tab 4N, p 451.

³⁷ Mr. Adade's 23 September 2015 email, Otello-DeLuca Affidavit, CAR Vol II, Tab 4(O), p 454.

³⁸ Otello-DeLuca Affidavit para 59, CAR Vol II, Tab 4, p 201.

Campus Life in the 2014-2015 school year and had been a member of the Clubs Committee,³⁹ was aware that the UTMSU's longstanding practice was that the Clubs Committee reconsider its decision to deny Student Group status if and when requested to do so.

35. It has never been a practice of the UTMSU that the Board of Directors review the decisions of the Clubs Committee with respect to granting or denying Student Group status.⁴⁰

36. Despite Mr. Otello-DeLuca's advice that the Board of Directors may not be the appropriate avenue for an appeal, the UTMSU's Board of Directors received a letter from the Applicants' counsel on 19 October 2015 which purported to outline "critical considerations for the Board of Directors in deciding Students for Life's appeal, including the legal duties of UTMSU, and the legal rights of Students for Life."⁴¹ The letter ended by threatening legal proceedings against the UTMSU. Despite the threat of legal action, the UTMSU continued to work with the Applicants.

37. While it is not the practice of the Clubs Committee to have members appear in person to discuss Student Group renewal applications, on 26 October 2015, Mr. Adade wrote to SFL's executives and invited them to a meeting with members of the Clubs Committee, which was prepared to hear the SFL's submissions that the Clubs Committee reconsider its decision.⁴²

38. Prior to this in-person meeting, and in the face of threatened litigation, the Clubs Committee again reviewed SFL's Application for Renewal. At that point, in addition to the concerns with SFL's mandate, the Clubs Committee noted various deficiencies with SFL's constitution. Mr. Adade advised SFL's executives of these discrepancies by way of email prior to

³⁹ Otello-DeLuca Affidavit para 2, CAR Vol II, Tab 4, p 187.

⁴⁰ Otello-DeLuca Affidavit para 60, CAR Vol II, Tab 4, p 202.

⁴¹ Mr. Moore's 19 October 2015 Letter, Otello-DeLuca Affidavit, CAR Vol II, Tab 4R, p 463.

⁴² Mr. Adade's 26 October 2015 Email, Otello-DeLuca Affidavit, CAR Vol II, Tab 4S, p 471.

the in-person meeting.⁴³ Again, Mr. Adade reiterated that the reason for which SFL's Application for Renewal had been denied was "due to the violations and discrepancies we found within your constitution in relation to the clubs handbook and UTMSU operational policy as it pertains to clubs."⁴⁴

39. The SFL was not the only Student Group with which the Clubs Committee raised issues in 2015. Issues were found with other Student Groups, including missing receipts for events, incomplete lists of executives, and problems with constitutions. These other Student Groups fixed their deficiencies.⁴⁵

40. On 4 November 2015, SFL's executives agreed to make some, but not all, of the changes suggested by Mr. Adade and emailed him a copy of the revised constitution.⁴⁶ With Mr. Adade's assistance, SFL booked a boardroom in the student centre for SFL's meeting to implement amendments to its constitution.⁴⁷

41. The next day, before Mr. Adade had a chance to review the revised constitution, SFL emailed him to advise that SFL's executives had already voted unanimously on the amendments to SFL's constitution (the "**5 November Constitution**").⁴⁸ Had SFL's executives waited for Mr. Adade to respond, Mr. Adade would have told them not to go ahead with the meeting until all the requirements in the Clubs' Handbook had been met.⁴⁹

⁴³ Mr. Adade's 4 November 2015 Email, Otello-DeLuca Affidavit, CAR Vol II, Tab 4V, p 480.

⁴⁴ Mr. Adade's 3 November 2015 Email, Otello-DeLuca Affidavit, CAR Vol II, Tab 4U, p 477.

⁴⁵ Otello-DeLuca Affidavit para 45, CAR Vol II.

⁴⁶ Otello-DeLuca Affidavit para 71, CAR Vol II, Tab 4, p 202; Zettel Cross-Examination p 28 q 129, CAR Vol II, Tab 9, p 615.

⁴⁷ Zettel Cross-Examination p 29 q 133-135, CAR Vol II, Tab 9, p 615.

⁴⁸ Otello-DeLuca Affidavit para 72, CAR Vol II, Tab 4, p 204.

⁴⁹ Otello-DeLuca Affidavit para 73, CAR Vol II, Tab 4, p 204.

(i) *Representatives of SFL Meet with the Clubs Committee*

42. The Clubs Committee agreed to meet with Ms. Zettel and Mr. Grant on 6 November 2015. During this meeting, Ms. Zettel and Mr. Grant were provided with the opportunity to discuss SFL's Application for Renewal.⁵⁰

43. The Clubs Committee made it clear that regardless of any issues with SFL's mandate, the deficiencies in SFL's Application for Renewal, including the deficiencies in the 5 November Constitution, had to be remedied before the Clubs Committee could reconsider the Application for Renewal.

44. The 5 November Constitution did not comply with UTMSU's requirements. First, the 5 November Constitution provided for three executives, whereas the Clubs Handbook requires that each Student Group have at least four executives. Second, none of the Vice President Campus Life, Clubs Coordinator or Associate were involved in this amendment process, as required by the Clubs Handbook. Third, meetings involving a vote on the modifications to the constitution must be widely advertised through mass email.⁵¹ SFL's members were not informed or invited to the meeting. As Vice President Campus Life, Mr. Adade should be copied on all correspondence between a Student Group and its members; Mr. Adade never received any such email from SFL advising of the meeting and no evidence has been provided that such an email was sent.⁵²

45. The Clubs Committee told Ms. Zettel and Mr. Grant that they were required to hold another meeting, elect a fourth executive and ratify the necessary changes to SFL's constitution. SFL's

⁵⁰ Otello-DeLuca Affidavit para 75, CAR Vol II, Tab 4, p 205.

⁵¹ Clubs' Handbook, Otello-DeLuca Affidavit, CAR Vol II, Tab 4E, p 312.

⁵² Otello-DeLuca Affidavit para 74, CAR Vol II, Tab 4, p 205.

executives were told that this meeting was to be widely advertised. Members of the Clubs Committee offered to assist SFL's representatives to book space.⁵³

46. Following this meeting, SFL's executives advised the Clubs Committee that they would hold a general meeting on 16 November 2015 to elect a fourth executive member.⁵⁴ This meeting was ultimately rescheduled because the person nominated as SFL's fourth executive could not attend.⁵⁵

47. On 23 November 2015, SFL's executives held the general meeting to elect a fourth executive and make various changes to SFL's constitution (the "**23 November Meeting**"). Contrary to the Clubs Committee's instructions, and the Clubs' Handbook, the 23 November Meeting was not widely publicized.⁵⁶ The Clubs' Handbook specifically states:

Any modification in a club's constitution should be approved by unanimous consent of the executives or by a majority of the membership. The VP Campus Life, Clubs Coordinator, or Associate must be involved in the modification process. For modification to pass, a general meeting must occur where all members of the club are informed and invited through mass e-mail. The majority of the attendees to this general meeting must then vote in favour of the modification for it to be subsequently accepted.⁵⁷

48. Despite there being 75 members listed on SFL's Club Office Space Request Form, which formed part of SFL's Application for Renewal, only four listed members came to the 23 November Meeting: SFL's three executives and Marigrace Noronho, who SFL's executives nominated as SFL's fourth executive.⁵⁸ SFL's members were not informed or invited to the meeting by mass email. As Vice President Campus Life, Mr. Adade should be copied on all correspondence between

⁵³ Otello-DeLuca Affidavit para 77, CAR Vol II, Tab 4, p 206.

⁵⁴ Otello-DeLuca Affidavit para 77, CAR Vol II, Tab 4, p 206.

⁵⁵ Affidavit of Russ Adade sworn 4 March 2016 ("**Adade Affidavit**") para 7, CAR Vol II, Tab 5, p 563.

⁵⁶ Adade Affidavit para 11, CAR Vol II, Tab 5, p 564.

⁵⁷ Clubs' Handbook, Otello-DeLuca Affidavit, CAR Vol II, Tab 4E, p 312.

⁵⁸ Adade Affidavit para 12, CAR Vol II, Tab 5, p 564.

a Student Group and its members; Mr. Adade never received any such email from SFL advising of the meeting.⁵⁹ In fact, the email provided by the Applicants to “prove” that they did advise their members of the meeting is for the 16 November 2015 meeting, not the 23 November 2015 meeting.⁶⁰ No other evidence has been provided to suggest that SFL’s 75 members were informed of the important decision that would be made about SFL’s executives during the 23 November 2015 meeting.

49. As required by the Clubs’ Handbook, Mr. Adade attended the 23 November Meeting to oversee the amendments to SFL’s constitution.⁶¹ Five other people were present at the 23 November Meeting, all of whom were involved with UTMSU Student Groups and had heard of the 23 November Meeting.⁶² These five individuals had expressed their concerns about SLF to Mr. Adade, who – rather than engage in detailed discussions with these people – told them that if they had concerns, they could attend an SFL meeting and raise any concerns directly with SFL’s members.⁶³

50. Membership of Student Groups must be open to all UTMSU members. As such, Salma Fakhry, Taman Khalaf, Ariana Serapigia, Hashim Yussuf and Nyasha Chikowor, who are all UTMSU members, were entitled to attend the 23 November Meeting even though they had not gone to a previous SFL meeting, so long as they signed-in at the beginning of the meeting.⁶⁴

51. At the 23 November Meeting, Mr. Grant nominated Ms. Noronha to be Vice President of SFL, which was supported by Ms. Zettel and Mr. Hagel. A vote was then taken by secret ballot

⁵⁹ Otello-DeLuca Affidavit para 74, CAR Vol II, Tab 4, p 205.

⁶⁰ UTM Students for Life Email, Zettel Answers to Undertakings, CAR Vol I, Tab 3D, p 185.

⁶¹ Adade Affidavit para 10, CAR Vol II, Tab 5, p 564.

⁶² Adade Affidavit para 13, CAR Vol II, Tab 5, p 565.

⁶³ Adade Affidavit para 13, CAR Vol II, Tab 5, p 565.

⁶⁴ Adade Affidavit para 14, CAR Vol II, Tab 5, p 565.

and the motion to elect Ms. Noronha as Vice President of SFL failed by a vote of 5-4.⁶⁵ Mr. Adade did not vote on this motion and did not, as the Applicants allege, “welcome them [the five other individuals] to vote in the meeting” or “insist” that they vote.⁶⁶ Rather, SFL’s constitution is silent on voting and does not restrict voting to a certain class of UTMSU members; consequently, everyone present at the 23 November Meeting was entitled to vote.⁶⁷

52. The motion was defeated by a vote of 5-4. The Applicants, unhappy with the result of this democratic election, now allege that “UTMSU actively and deliberately sabotaged SFL’s efforts”.⁶⁸ There is simply no basis for this allegation.

53. Following these events, Counsel for the Applicants sent another letter to the Board of Directors on 24 November 2015, once again threatening legal action.⁶⁹

54. Again, the Board of Directors did not respond to this threat of legal action. Instead, the UTMSU continued to assist the members of SFL. On 1 December 2015, Mr. Adade wrote to SFL’s executives and suggested that SFL’s members call for a general meeting in the winter semester to seek a resolution to have an election for a fourth executive member. Mr. Adade also told SFL’s executives that he would be happy to work with them to book a room for the next general meeting and support them in advertising the meeting to students who were interested in SFL.⁷⁰

⁶⁵ Adade Affidavit para 15, CAR Vol II, Tab 5, p 566.

⁶⁶ Adade Affidavit para 16, CAR Vol II, Tab 5, p 566.

⁶⁷ Adade Affidavit para 16, CAR Vol II, Tab 5, p 566.

⁶⁸ Applicants’ Factum, para 28.

⁶⁹ Mr. Moore’s 24 November 2015 Letter, Otello-DeLuca Affidavit, CAR Vol II, Tab 4Z, p 498.

⁷⁰ Adade Affidavit at paras 17-18, CAR Vol II, Tab 5, p 566.

55. Instead of continuing to work with UTMSU and correct the deficiencies in their club's constitution, the Applicants had their counsel write, a third time, to the Board of Directors and announce legal action.⁷¹ At this stage, UTMSU had its counsel respond and request that all future communication be directed to counsel.⁷²

56. The UTMSU remains committed to working with SFL's members so that Student Group status can be achieved. To date, however, the members of SFL have failed to elect a fourth executive. Without a fourth executive, SFL's constitution cannot be amended and remains deficient. SFL's Application for Renewal cannot be resubmitted to the Clubs Committee for reconsideration until steps are taken to amend SFL's constitution so that it is in compliance with UTMSU's policies.⁷³

F. SFL CONTINUES TO MAINTAIN A PRESENCE ON CAMPUS

57. The denial of SFL's application to become a Student Group has not stopped SFL from having an active presence on the University campus. SFL receives funding and resources from third-parties and continues to hold meetings, host events and communicate to the University student body.⁷⁴

⁷¹ Mr. Moore's 15 December 2015 Email, Otello-DeLuca Affidavit, CAR Vol II, Tab 4BB, p 508.

⁷² Ms. Wood's 21 December 2015 Letter, Otello-DeLuca Affidavit, CAR Vol II, Tab 4CC, p 516.

⁷³ Otello-DeLuca Affidavit para 88, CAR Vol II, Tab 4, p 208.

⁷⁴ Otello-DeLuca Affidavit paras 91-98, CAR Vol II, Tab 4, p 209-210; Zettel Cross-Examination p 18 q 76, p 20-21 q 85-88, p 24 q 108, 110, CAR Vol II, Tab 9.

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 UTMSU's decision to deny SFL's application for Student Group status?
 - (i) Does the Court have jurisdiction over the UTMSU's decision to deny SFL's application for Student Group status?
 - (ii) If the Court has jurisdiction, should the Court intervene in the UTMSU's decision to deny SFL's application for Student Group status?
- (b) Was the UTMSU required to take into account Charter values when it considered SFL's 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 UTMSU

60. The UTMSU is not a public decision-maker, nor is it a creature of statute; rather, the UTMSU is a private corporation incorporated under the *Corporations Act*. The UTMSU 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 discretion; it is not founded in or shaped by public law. As such, administrative law principles do not apply to this Application.

61. The UTMSU has broad powers to act independently and without external influence. Section 129(1) of the *Corporations Act* gives the UTMSU the power to pass By-Laws regulating “the conduct in all other particulars of the affairs of the corporation,” while section 23 gives the UTMSU “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 UTMSU’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 APPLICANTS HAVE FAILED TO EXHAUST THEIR REMEDIES

63. As a threshold issue, the Applicants have failed to exhaust all remedies. The Ontario Court of Appeal has recognized that a person who voluntarily chooses to be a member of a self-governing organization and who has been aggrieved by a decision of that organization must seek redress in the internal procedures of the organization.⁷⁵ The UTMSU cannot review SFL’s Application for Renewal unless and until the deficiencies in SLF’s constitution are fixed. This requires, as a preliminary matter, that SFL elect a fourth executive member. The Applicants were advised of this requirement but have failed to take steps to fix the constitution and, as a result, have failed to exhaust all internal appeal processes before coming to this Court.

⁷⁵ *Hart v Roman Catholic Episcopal Corporation of the Diocese of Kingston*, 2011 ONCA 728 (“Hart”), Respondents’ Joint Book of Authorities (“BOA”), Tab 16.

C. THE COURT SHOULD NOT INTERVENE IN THE UTMSU'S DECISION TO DENY SFL'S APPLICATION FOR RENEWAL

(i) *This Court has no jurisdiction over the UTMSU's decision to deny SFL's application for Student Group status*

64. It is respectfully submitted that the Court does not have jurisdiction over the UTMSU's decision to deny SFL's application for Student Group status.

65. 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.⁷⁶ This is not such a case. The UTMSU's decision to deny SFL's 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 UTMSU's decision has affected the Applicants' ability to work or make a living. The UTMSU's decision has not resulted in the expulsion of the Applicants as UTMSU members. The Applicants continue to be members of the UTMSU and continue to hold all of the rights associated with UTMSU membership, including organizing on campus, participating in the UTMSU election process, and applying for Student Group status.

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

66. Should this Court determine that it will review the UTMSU's decision, deference is owed to the UTMSU as a domestic tribunal. Notably, 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 rehear the evidence and substitute its decision for that of the tribunal.⁷⁷ Rather, the Court's limited supervisory role is

⁷⁶ *Street v BC School Sports*, 2005 BCSC 958, [Street], at para 36 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.

⁷⁷ *Courchene* at para 20, BOA Tab 12.

to review the processes by which a domestic tribunal governs itself.⁷⁸ The Court may consider whether the domestic tribunal acted within its jurisdiction, complied with the principles of natural justice, and acted in good faith.

67. In this case, when the UTMSU denied SFL's 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 UTMSU's decision.

68. The Appellants rely heavily on *Courchene v Carleton University Students' Association Inc*⁷⁹ for the proposition that this Court ought to interfere in the UTMSU's decision. *Courchene* involved a challenge to the decision of the Carleton University's student union to disqualify a candidate from running in a student election based on its application of the "Voting Day Policy."

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

70. 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 UTMSU's decision but have not challenged the policy which supported the UTMSU's decision.

71. 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

⁷⁸ *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.

⁷⁹ *Courchene*, BOA, Tab 12.

impede a member's right to property and civil rights, while the same cannot be said of being granted or denied student group status.

72. In contrast, Justice Stewart's recent decision in *Grant v Ryerson Students' Union*⁸⁰ is directly on point. In that case, just like in this one, a student club asked this court to intervene when the Ryerson Students' Union ("RSU") denied it recognition as a union club. 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 UTMSU Did Not Exceed its Jurisdiction

73. 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 rules."⁸¹ 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."⁸²

74. The UTMSU, through the Clubs Committee, is tasked with receiving and reviewing all Non-UTMSU Club applications for Student Group status and determining whether to approve or deny those applications.⁸³ This process includes making factual determinations about whether a Non-UTMSU Club conforms with the UTMSU's Constitution and By-Laws and the Clubs' Handbook. The Clubs' Handbook requires that all UTMSU Student Groups adhere to, among other

⁸⁰ *Grant v Ryerson Students' Union*, 2016 ONSC 5519, Tab 4.

⁸¹ *Lee v The Showmen's Guild of Great Britain*, [1952] 2 QB 329 (CA) [*Lee*] p 345, BOA, Tab 7.

⁸² *Lee* p 345, BOA, Tab 7.

⁸³ Union Clubs' Policy, Otello-DeLuca Affidavit, CAR, Vol II, Tab 4F, p 363.

things, UTMSU's club-related policies as stipulated in the Clubs' Handbook and the UTMSU Constitution.

75. When the Clubs Committee received SFL's application, the Clubs Committee was required to consider whether SFL was in compliance with all UTMSU policies. More specifically, the UTMSU was authorized to consider and decide whether SFL's actions contravened its policies, constitution, by-laws or the Women Students' Issues policy.

76. The Applicants do not seek to strike down the UTMSU policies. There is no suggestion that these policies have been improperly passed, or that the UTMSU Board of Directors did not have the power to pass these policies. Nor is there a suggestion that the UTMSU is not a member of CFS or that the CFS' standing policy on Women Students' Issues was improperly passed.

77. The UTMSU did not, as the Applicants allege, act with an unauthorized purpose. Rather, the actions of the UTMSU were authorized by its Constitution, By-Laws and policies. Moreover, the UTMSU did not exceed its jurisdiction by considering SFL's intention to promote pro-life beliefs and activities on campus and deciding that SFL's pro-life beliefs and activities contravened the CFS' policy on Women Students' Issues, which the UTMSU endorses and adopts. The UTMSU made the factual determination that SFL's constitution and anticipated events violated its policies. It is not the Court's role to intervene in this finding of fact.⁸⁴

78. The Applicants are conflating the obligations of the University with those of the UTMSU. The Applicants rely on a statement on the University's website, which states that "the most crucial of all human rights are the rights of freedom of speech, academic freedom, and freedom of

⁸⁴ *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.

research". The University is not a party to this Application and, therefore, has not explained what this statement means. In any event, the UTMSU is an entity separate and apart from the University and not obligated to follow, or enforce, statements made by the University. The UTMSU must follow its own Letters Patent, Constitution, Bylaws and policies when making decisions, and did so in this case.

79. The UTMSU's Mission Statement includes the following article: To safeguard the individual rights of the student, regardless of race, colour, creed, sex, nationality, place of origin, or personal or political beliefs.⁸⁵ The UTMSU supports freedom of thought, belief, opinion and expression. The UTMSU supports the Applicants' rights to hold and express beliefs that differ with or contravene the UTMSU's policies. The UTMSU will not, however, pursuant to its existing policies, grant Student Group status to a non-recognized club that, in the discretion of the Clubs Committee, contravenes the UTMSU's policies.

b) UTMSU Complied with the Rules of Natural Justice

80. The process by which SFL's Application for Renewal 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 an unbiased tribunal.

The Applicants were Given Adequate and Timely Notice

81. The Applicants were given adequate and timely notice at all stages of the Application for Renewal. The Applicants knew the time and place of the Clubs Committee meetings where SFL's Application for Renewal would be reconsidered, knew the nature of each meeting, and knew the

⁸⁵ Mission Statement, Constitution and By-Laws, Otello-DeLuca Affidavit, CAR Vol II, Tab 4C, p 237.

fact that the Clubs Committee would be granting or denying SFL Student Group status based on the Applicants' representations at that meeting.

82. In advance of the in-person meeting, the UTMSU gave the Applicants reasons explaining why the Clubs Committee denied the Application for Renewal. When asked for further reasons, the UTMSU provided them.

83. The extensive correspondence between the UTMSU and the Applicants reinforces the inherent fairness of the application and internal appeal process. The Applicants knew about the meeting and knew that SFL's application for Student Group status would be determined at these meetings. The Applicants attended each meeting and had adequate and timely notice of each step of the renewal process.

The Applicants were Given the Opportunity to Make Representations

84. The members of SFLR were given the opportunity to make representations before the Clubs Committee. At the first instance, groups are not present, and SFL's representations were in writing.

85. After the initial denial by the Clubs Committee, the UTMSU provided reasons for its decision and provided the Applicants with information regarding how the decision could be reconsidered. The members of SFL were then provided with an opportunity to appeal the Clubs Committee's decision, in person, make submissions and answer the questions posed by the Clubs Committee members. Following this back and forth exchange, the Clubs Committee made its decision and denied SFL's Application for Renewal.

86. The Applicants complain that they did not get an opportunity to appeal to the Board of Directors. Mr. Adade did, mistakenly, tell the Applicants that they could request Board review the denial. This mistake was quickly corrected. Mr. Otello-DeLuca informed the Applicants that this was not the correct procedure; rather, the procedure was for the Clubs Committee to rehear the application. This is precisely what happened in this case. The Applicants availed themselves of this process, and now seek to complain about it. Moreover, the Board was not required to respond to counsel's three letters, or the threat of legal action, change its practice, and review the Clubs Committee's decision. The Clubs Committee is empowered to make this decision, which it did.

The UTMSU's Decision was Not Biased

87. The Clubs Committee is authorized, pursuant to the UTMSU's Constitution and By-Laws and the Policy Manual to consider and grant or deny SFL's Application for Renewal. In doing so, the Clubs Committee is entitled, and required, to ensure that the group complies with UTMSU policies. This includes determining whether a group's constitution is deficient and whether the group complies with the policy on Women Students' Issues. The UTMSU was not biased when it considered, interpreted, and applied the UTMSU's policies in determining whether to renew SFL's Student Group status. Similarly, the UTMSU did not discriminate against the Applicants, but rather considered whether SFL complied with UTMSU's policies. To deny the UTMSU the ability to consider and apply its policies when determining Student Group status would render the policies meaningless.

88. The UTMSU's Board of Directors is empowered to make policies with respect to any issue.⁸⁶ The fact that the UTMSU has adopted a CFS policy that opposes groups that challenge a woman's right to bodily autonomy or freedom of reproductive choice does not, in and of itself, mean that the UTMSU is biased. There is no evidence to suggest that the Clubs Committee had a closed or predetermined mind. The Clubs Committee attempted to pre-empt SFL's Application for Renewal being denied because of a technicality with the number of SFL's executives, a failing which they have not yet corrected. The Applicants have failed to provide any evidence to establish actual bias. Rather, the evidence shows that the Applicants were given meaningful opportunities, in accordance with UTMSU's Constitution and By-Laws and Policy Manual, to present their case.

89. The UTMSU did not simply deny the Application for Renewal without consideration. As documented in the meeting minutes of the Clubs Committee,⁸⁷ the UTMSU asked probing questions and fully considered the SFL's Application for Renewal.

The UTMSU's Decision was Not Made in Bad Faith

90. Mr. Adade's actions at the 23 November Meeting were not in bad faith. When approached by certain individuals and faced with questions about SFL's mandate and status, Mr. Adade refused to provide his opinion. Instead, in good faith, he informed these individuals that the appropriate people to ask these questions to were members of SFL.

91. As required by the Clubs' Handbook, Mr. Adade attended the 23 November Meeting to oversee the amendments to SFL's constitution.⁸⁸ Mr. Adade did not vote on the amendments to

⁸⁶ *Corporations Act*, ss 23 and 129(1).

⁸⁷ Clubs Committee Meeting Minutes, Otello-DeLuca Affidavit, CAR Vol II, Tab 4J; Clubs Committee Meeting Minutes, Otello-DeLuca Affidavit, CAR Vol II, Tab 4L.

⁸⁸ Adade Affidavit para 10, CAR Vol II, Tab 5, p 564.

SFL's constitution, nor did he encourage or instruct the other people who were present to vote. Following the failed vote, Mr. Adade encouraged SFL's members to invite more members to the next meeting so that these changes could pass.

92. Instead of taking Mr. Adade's suggestions, the members of SFL refused to follow the appropriate procedures to make necessary changes to their constitution.

D. THE UTMSU IS NOT OBLIGATED TO CONSIDER CHARTER VALUES WHEN DETERMINING STUDENT GROUP STATUS

93. The Applicants seek a declaration that UTMSU's decision to deny SFL's Application for Renewal is contrary to fundamental common law values and the values of the *Charter*. The Charter does not apply to the UTMSU, 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*.

94. In any event, the Applicants' rights as UTMSU 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 UTMSU. 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 UTMSU's Constitution, By-Laws and policies, which include endorsing pro-choice beliefs.

E. THE APPLICANTS ARE NOT WITHOUT A REMEDY


95. Unhappy with the UTMSU's decision to deny their Application for Renewal, the Applicants ask this Court to step in and act as a supervisor to the UTMSU'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."⁸⁹

96. The decision at issue was made by UTMSU 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 UTMSU, the Applicants can run for office and become decision makers themselves. They can campaign for other UTMSU members who share their beliefs. They can lobby the current UTMSU executive to pass new policies or By-Laws, and lobby against UTMSU being a member of the CFS and adopting the Women's' Issues Policy. Until then, SFL – as every other Student Group - must adhere to UTMSU's current policies. As the Court has recognized in similar cases, the Applicants' remedy is political in nature.⁹⁰

PART IV - ORDER REQUESTED

97. The Respondent requests that this Honourable Court dismiss the application in its entirety, with costs to the Respondent. In the alternative, should this Court intervene in the UTMSU's decision and determine that the decision was improperly made, the Respondent submits that the decision should be remitted to the UTMSU Clubs Committee for reconsideration.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of January 2018.


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

⁸⁹ *Lee* at p 341, BOA, Tab 7.

⁹⁰ *Grant* 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

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SUPERIOR COURT OF JUSTICE
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TORONTO

**FACTUM OF THE RESPONDENT, UNIVERSITY OF
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